

Policy Watch

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Citizens and the State: Policing, Impunity, and the Rule of Law in India

Eklavya Vasudev and Thomas Blom Hansen



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Photo Caption: A policeman fires teargas shells during clashes with Indian Secular Front (ISF) activists at a rally in Kolkata on January 21, 2023. File Photo: PTI

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TABLE OF CONTENTS

I	Flawed Foundations Rooted in a Post-Mutiny Context	1
II	Policing In India – For Whom?	12
III	Custodial Violence and Impunity	22
IV	Public Expectations and Punitive Ideologies	31
V	The Problem of Violence and Public Order	38
VI	The Role of Courts	48
VII	What is The Way Forward?	57
	Related Articles and Documents	64

ABSTRACT

In every nation, the police are a prominent representation of the state, backed by a profound constitutional and criminal justice architecture. The rule of law, a cornerstone of robust democracies, binds the triad of voters, elected representatives, and the state through legal frameworks.

Beyond the fundamental question of for whom laws are drafted lies the critical role of law enforcement officers – the police machinery, and officers of the court – the judiciary. In this Policy Watch, **Eklavya Vasudev**, a legal scholar at the University of Erlangen-Nuremberg, and **Thomas Blom Hansen**, Professor and Department Chair of Anthropology at Stanford University, U.S., take a deep look at the dynamics between the citizens and the state in the context of the criminal justice system.

Amidst recent reforms by the Union Government, the authors critique the unchanged, historically rooted design of the criminal justice system, which endows the police with extensive powers often disadvantageous to vulnerable groups. The suggested remedy lies in reshaping the police into a community-sensitive force, steadfast in upholding the rule of law.

Keywords: India's penal laws, IPC, CrPC, Judiciary, Police, Criminal justice system.

I. FLAWED FOUNDATIONS ROOTED IN A POST-MUTINY CONTEXT

“The basic and fundamental problem regarding the police today is how to make them function as an efficient and impartial law enforcement agency fully motivated and guided by the objectives of service to the public at large, upholding the constitutional rights and liberty of the people.”

First Report of the National Police Commission.
Government of India, 1979. p.7

As the year 2023 came to an end, the Union government led by the right-of-centre Bharatiya Janata Party (BJP) reframed three laws that formed the backbone of India’s criminal justice system.¹ The new Acts, which gained Presidential assent on December 25, 2023, and are likely to take “nine months to a year”² to be implemented across India, have also been challenged in the Supreme Court.³ On December 20, 2023, just a little over four months after the Bills were piloted, and without any meaningful parliamentary debate, the world’s largest democracy claimed to shed the colonial vestiges in its criminal laws. Political opponents and legal scholars disagree.

There is a broad view that the changes did not amount to any decolonisation or ‘Indianisation’ of criminal justice, “as the new codes do not envisage any path-breaking change in the way the country is policed, crimes are investigated, and protracted trials are conducted”.⁴ An overriding concern is the continuation of the infamous imprecision and vagueness in many sections of the Indian Penal Code (IPC). For instance,

“Though the word ‘sedition’ has been deleted from the law, the concept is retained through vague provisions, which leaves room for arbitrary

¹ The new Acts are the [Bharatiya Nyaya Sanhita \(BNS\), 2023](#), which replaces the [Indian Penal Code \(1860\)](#); the [Bharatiya Nagarik Suraksha Sanhita \(BNSS\), 2023](#), for the [Criminal Procedure Act \(1973\)](#); and the [Bharatiya Sakshya Adhinyam, 2023](#), to supersede the [Indian Evidence Act \(1872\)](#).

² **The Hindu.** 2023. [President Droupadi Murmu gives assent to the three Criminal Code bills](#), *The Hindu Online*, Dec.25. [tinyurl.com/bddpt3hs] and **Singh, V.** 2024. [Roll-out schedule of 3 new criminal codes will be notified by January 26](#), *The Hindu*, Jan. 3, p.1. [tinyurl.com/2nzve4n8]

³ **The Times of India,** 2024. [Petition filed in Supreme Court against new criminal laws passed by Parliament](#). *PTI*. Jan. 01. [tinyurl.com/muz446ct]

⁴ **The Hindu.** 2023. [Revision sans Vision](#), Editorial, Dec. 22, p. 8. [tinyurl.com/43rftw9v]

application. Executive powers pertaining to search and seizure of digital evidence have also been broadened.”⁵

This continued ‘vagueness’ is not just an inconvenience for legal practitioners. It also makes possible a wide range of interpretations of the law, which, in turn, keeps open ample space for lack of accountability, abuse, interference, and pressures of all kinds of social and political interests outside the legal system. Today, many Indians attribute this state of affairs to what they see as ‘political interference’ in all matters of justice and blame it on elected politicians operating in cahoots with corrupt officials and police officers. However, such vague legal provisions and inordinately wide powers of discretion in the Indian administrative and legal system are not to be taken as distortions from some earlier (golden) age where justice was served and guaranteed by honest and incorruptible judges and officials. These have been chronic distortions that constitute a continuum from colonial times to free India. Legal scholar G. Mohan Gopal argues that the new laws

“weaponize the police and the criminal justice system to give the political leadership at all levels – centre, state and local – even greater opportunity to abuse the criminal justice system for political gain through selective, targeted and politically biased prosecution against ideological and political rivals.”⁶

What the discussion that followed since the three new crime Bills were piloted in August 2023 brought out in sharp relief is that such vagueness and discretion continue to be fundamental ‘design principles’ of the Indian state and its legal system.

Control, coercion, and a discretionary colonial state

The root goes back to colonial experimentations with legal forms. As the East India Company began to firm up its Raj in the first half of the 19th century, officials experimented with incorporating elements of ‘native’ law and jurisprudence drawn both from Hindu and Muslim sources. However, frustrated with what they regarded as internal inconsistencies

⁵ Verma, D and Roy, R. 2023. [Reforming \(or deforming?\) the criminal justice system: A digital rights overview of the three new criminal law Bills](#), *Internet Freedom Foundation*, Dec. 23. [tiny1.io/AEfG]

⁶ Gopal, G.M. 2023. [Second Avatar of the Criminal Law Bills: The Key Changes](#), *The Wire*, Dec. 15. [thewire.in/government/second-avatar-criminal-law-bills-has-anything-changed]

and lack of resolute punishments, they began to opt for more punitive legal practices, including frequent use of capital punishment and the erection of public gallows across India to impress on the colonised populations that British law was both strict and resolute.⁷

The rebellion of 1857 made the maintenance of public order a dominant concern among British officials who also harboured openly racist suspicions of native officials and judges. The administrative and legal architecture that was created in the decades to follow – in which the three old criminal laws that were replaced in December 2023 were cornerstones – accorded wide powers of discretion to magistrates, collectors, judges and other high-ranking officials, as well as to senior police officers and security officials. These positions were held by British officers who were assumed to be capable of sound judgment and detached reasonableness because they were presumed to be neither interested parties nor embedded in the local society they were presiding over. The infamous Ilbert Bill controversy in 1884, concerning whether ‘European subjects’ could be tried by Indian magistrates, laid bare the racist assumptions behind such supposed ‘reasonableness’ of British officers and magistrates.⁸ The net result was an ever more centralised public administration, designed to control and coerce both its own machinery and the populace through application of wide discretionary powers at all levels.

Going beyond the three criminal laws (both old and new), a very substantial part of basic laws in India are still derived from colonial legislation and administrative principles: a large part of the administrative law that governs the inner workings of the Indian state – such as transfer and promotion policies, the revenue system, the police services, and much more. Colonial legislation had multiple rationales: securing the colonial state, maintaining an often-tenuous public order, creating and protecting private property, and reforming and codifying social practices, to mention the most prominent. Some of those legal forms had liberal elements and intentions just as prominent public figures in the 19th and early 20th century India espoused what could be called a liberal agenda.^{9,10}

⁷ **Singha, R. 1998.** *A Despotism of Law: Crime and Justice in Early Colonial India*, New Delhi: Oxford University Press.

⁸ **Sinha, M. 1995.** *Colonial Masculinity: The ‘Manly Englishman’ and the ‘Effeminate Bengali’ in the late Nineteenth Century*, Manchester University Press.

⁹ **Bayly, C.A. 2011.** *Recovering Liberties: Indian Thought in the Age of Liberalism and Empire*, Cambridge University Press.

¹⁰ **Hansen, T.B. 2021.** *The Law of Force: The Violent Heart of Indian Politics*. Aleph. p.72

A preserved inheritance of illiberal contradictions

At Independence, the nascent Indian democratic state thus inherited several contradictions. Famously, the Chairman of the Constitution's Drafting Committee and India's first Law Minister, B.R. Ambedkar, pointed to the contradiction between the formal equalities as defined by the Constitution and the harsh realities of caste hierarchies that continue to define Indian society. There was another contradiction, albeit less remarked upon at the time but starkly visible today: the contradiction between the illiberal and unaccountable core of the Indian state in terms of its laws, its police forces¹¹, its administrative and legal practices, and a sphere of political and social rights as they have been articulated and expanded in a dynamic electoral democracy over many decades.

During the decades of the Five-Year Plans and the License Raj, the public sector and the organs of the state were seen as vectors of progressive social and economic development and even social justice. The excesses of Emergency rule (1975-77), however, made it clear that the state was not just a driver of modernisation but could also be utilised to stifle basic civil and human rights of marginalised populations and of those opposing ruling dispensations. The culture of the state, the police, and the legal system and judiciary was rarely under critical scrutiny during these many decades. The exercise of administrative discretion and the administration of justice was now in the hands of Indians, overwhelmingly drawn from the upper-caste and most privileged sections of society.

It was only with the emergence of a new caste politics and expansion of caste reservations in the 1990s, and the concomitant rise of Hindu nationalism and a pervasive spread of anti-minority sentiments and public violence, that the character of state institutions and the pervasiveness of systemic caste and communal prejudice came into sharper focus. These forms of systemic prejudice had deep historical roots in the parallel regimes and configurations of sovereignty of colonial India. The force of colonial law was always applied in a deeply unequal manner that exposed the poor, lower caste majority of the population to the most despotic and harsh dimensions of governance and punishment. Gradual incorporation of elite segments into representative institutions from the early 20th century went hand in hand with violent police practices in popular neighbourhoods

¹¹ **Note:** As 'Police' is a State subject in India, each State has its own police force. The 'Central paramilitary forces' are more in the nature of reserve police, to be deployed for specific or special purposes. In this Policy Watch, the phrases "police forces" and "police force" are used interchangeably.

(Chandavarkar, 1998).¹² with multiple formulas of indirect rule in the princely States (see, for instance, Beverley, 2015),¹³ and paternalistic inclusion and violent suppression of tribal groups in special zones (see, for instance, Baruah, 2007).¹⁴

The formal construction from the 1950s onwards of a federal Indian nation-state, officially dedicated to what the first Prime Minister, Jawaharlal Nehru, and other leaders called ‘national integration’, changed only little of this substantively. In practice, the Indian state continued to work through several, parallel regulatory regimes, calibrated according to class, caste and region. It also retained and expanded a very extensive regime of secrecy and classification of files and archives.

By the 1970s, the Congress had all but abandoned its commitment to liberal principles in favour of a populist reform agenda that reconfigured the political landscape in India. A standout feature of this reconfiguration was the combination of ‘progressive’ and ‘repressive’ policies. The main elements of the former were the rhetorical embrace of vague socialist Third World-ism and a deep commitment to state sovereignty coupled with several redistributive pro-poor policies. The latter presented itself in the form of harassment of opponents, violent suppression of insurgencies, and the systematic building of a large security state. The expansionist security state manifested itself on the ground through more than a dozen different paramilitary services ranging from central forces such as Central Industrial Security Force, Border Security Forces to the Armed Provincial Constabulary and many armed police forces in each State.¹⁵

¹² **Chandavarkar, R. 1998.** *Imperial Power and Popular Politics: Class, Resistance and the State in India, 1850–1950*, Cambridge University Press, June.

¹³ **Beverley, E.L. 2015.** *Hyderabad, British India, and the World: Muslim Networks and Minor Sovereignty, c.1850–1950*, Cambridge University Press, June.

¹⁴ **Baruah, S. 2007.** *Durable Disorder: Understanding the Politics of Northeast India*, Delhi: Oxford University Press.

¹⁵ Many of these central forces were formed in the 1960s. The biggest are the Central Reserve Police Force (formed in 1939), with a strength of 313,000; the Border Security Force (formed in 1965), strength 257,000; the Assam Rifles (1835), strength 63,000; Central Industrial Security Force (1965), strength 144,000; Indo-Tibetan Border Police (1962), strength 89,000; National Security Guard (1985), strength 7,500; Sashasta Seema Bal (Bhutan Border and Election service) (1963), strength 76,000. In addition, each state has military police but numbers are not publicly available. The expansion of security forces has steadily increased since the 1960s, regardless of which party dominated the Union government. Source: **Hansen, T.B. 2021.** op. cit. p.75 Fn. 56.

The state versus citizenry

This emergent security state waged violent wars and put large populations under permanent emergency laws such as the Armed Forces (Special Powers) Act, 1958, (AFSPA) that grants extensive powers and immunity to the armed forces in so-called ‘Disturbed Areas’ in the north-east since 1958, and Jammu and Kashmir since 1990.¹⁶ The Unlawful Activities (Prevention) Act (UAPA) was passed in 1967 and was used to sanction the violent suppression of, initially, the Naxalite activity in West Bengal in 1971, and today in the so-called ‘red corridor’ in central India, as well as less specified ‘terrorist activity’ after it was amended in 2011.¹⁷ The long and sustained similar state action against Khalistani militants in Punjab was enabled by the application of Terrorist and Disruptive Activities (Prevention) Act, 1987, (TADA), probably the most stringent and sweeping security measure ever passed in India.¹⁸ The ‘cleaning up’ of the Punjab in the 1990s was overseen by a senior Indian Police Service (IPS) officer¹⁹ who was subsequently lionized by the Indian mainstream media.

Most political forces in the country, including the mainstream Left, have tacitly supported this policy of large-scale, ongoing human rights violations in the name of national sovereignty and fending off ‘anti-national’ forces within the country.²⁰ Critiques of such policies and violations by international human rights organisations or international

¹⁶ For text of the **AFSPA, 1958**, see: **Ministry of Home Affairs (online)**. [The Armed Forces \(Special Powers\) Act, 1958](https://mha.gov.in/sites/default/files/armed_forces_special_powers_act1958.pdf). [mha.gov.in/sites/default/files/armed_forces_special_powers_act1958.pdf] See also the report by the committee headed by Justice Jeevan Reddy, [Report of the Committee to Review the Armed Forces Special Powers Act, 1958](#), Government of India, Ministry of Home Affairs, New Delhi 2005. [tinyurl.io/AEfQ]

¹⁷ For text of **UAPA, 1967**, see **Ministry of Home Affairs (online)**. [The Unlawful Activities \(Prevention\) Act, 1967](#). [tinyurl.io/AEfV] For a critical assessment see **Ferreira, A and Gonzalves, V. 2017**. [Fifty Years of Unreasonable Restrictions Under the Unlawful Activities Act](#), *The Wire*, Mar. 09. [tinyurl.io/AEfS]

¹⁸ TADA was widely criticized after its draconian application through mass arrests after the bomb blasts in Bombay in March 1993. It lapsed in 1995. It was replaced by Prevention of Terrorist Activities Act (POTA) in 2002, but this Act was also deemed unconstitutional and was repealed in 2004.

¹⁹ The late K.P.S. Gill, IPS, was Punjab’s Director General of Police between 1988 and 1995 over two spells, when “(h)uman rights groups documented numerous instances of human rights violations”. **Joseph, J. 2017**. [Human rights groups documented numerous instances of human rights violations by Punjab police under Gill’s watch](#), *The Hindu*, May 26. [tinyurl.com/3zjt5c9n], **Hansen. T.B. 2021**. op. cit. p.77

²⁰ The support for a strong state came from many quarters, including Communist Party of India (CPI) and Shiv Sena. Both parties also supported Emergency in 1975-76. See **Lockwood, D. 2016**. *The Communist Party of India and the Indian Emergency*, Sage Publication India. For a defence of Emergency by one of India’s prominent historians, see **Chandra, B. 2017**, *In the Name of Democracy: JP Movement and the Emergency*. Random House Publishers India.

multilateral agencies have for decades been dismissed by the Government of India as undue interference in the domestic affairs of a sovereign nation.

Violence, vulnerability, and public trust

At a more everyday level, the Indian police and security forces have over decades developed an infamous record of systematic brutality, disappearances, systemic corruption and a chronic lack of investigative capacity²¹ that is strangely at odds with the celebrations of India as a democracy. This everyday violence is almost exclusively visited upon poor and vulnerable populations, in particular social and religious minorities. In these communities, the police force is frowned upon as a danger – a source of routine harassment, extortion, and unpredictable violence.

It remains one of the major paradoxes of Indian political life that despite a strong presence of Left and progressive political formations and lower caste movements over many decades, no major political formations have ever found it important to promote police reform, or effectively address the daily human rights violations by the Indian police forces that disproportionately affect poor and lower caste populations across the country. The public debate about the endangered independence of the judiciary rarely includes the state of the lower courts where most cases are settled by touts and political operators outside

²¹ It was the excesses during Emergency rule that triggered the first systematic enquiry into policing practices in the country. The National Police Commission (1977-1981) produced eight substantial volumes with many recommendations for reform [See Related Resources] Twenty years later the Ribeiro Report (1999) echoed many of these recommendations and so did the Padmanabhaiah Report (2000), the Malimath Report (2003) and the Soli Sorabjee Report (2005). In 2006, the Supreme Court intervened directly and ordered a number of police reforms to be undertaken. Six years later, the Court again ordered both the Union government and the State governments to implement a series of reforms. Very little has changed for more than 40 years. For a Review of the recommendations of the various committees, see the **Ministry of Home Affairs, 2022. Report of the Mooshabary Committee.** [tinyurl.com/5avfmt5t] There is extensive press reporting on the excesses of the police throughout the country. See, for instance, reporting on the now routinised practice of extra-legal encounter killings that was pioneered by the Bombay Police. (see Chapter 4 *infra*). This policy has been embraced since 2016 by the BJP government in Uttar Pradesh, reportedly resulting in more than 900 deaths in less than two years. (See: **Times of India, 2018. Over 900 encounters in Yogi Adityanath regime, 31 goons gunned down.** Jan. 10. [tinyurl.com/3v9ysep4] There are also multiple reports on the extensive use of custodial torture. See, for instance, **Manubarwala, A. 2017. Revisiting India's Obligations under Custodial Torture.** The London School of Economics and Political Science, May 19. [tinyurl.com/3h84u9s3] **Human Rights Watch, 2016. "Bound by Brotherhood",** Dec. 12. [tinyurl.com/4sfu3mv6]

the courthouses, and where the quality of public prosecution is so low and biased that India has one of the lowest conviction rates in the world.^{22,23}

Social cleavages in the trust on police machinery

A 2018 comprehensive survey of 16,000 Indians across most States bore this out in rather stark terms: the general trust and satisfaction with police is quite low and the rate of contact with the public is very low indeed (only 14 per cent reported contact with the police over the past five years).²⁴ The upper castes reported the highest incidence of contact with the police – predominantly as those reporting incidents and complaints. Muslims, Dalits, and OBCs reported slightly lower rates of contact with the police but these were predominantly involuntary, i.e., as arrests, stops, etc. initiated by the police. The level of trust mirrors the pattern of contact: upper castes have the highest levels of trust and satisfaction, while Muslims and the lower castes have the lowest level of trust and report the highest levels of pressure to pay bribes.²⁵

The educated middle classes rarely face the force of law in India – except if they belong to minority communities. For most members of the middle class, the police remain abstract and distant, or appear in the form of traffic officers that can be easily bribed, or as ordinary constables that most members of the middle class treat assertively, or brush aside condescendingly, as their social inferiors. Any such run-in with the police will be sought to be remedied by phone calls to relatives or friends in bureaucracy or the police force – fellow members of the middle class – and such measures often prove rather effective. An overall perception is that of incompetence of the police force but normally blamed on the poorly educated and underpaid constables. Upper-level officers, still mainly drawn from middle class and upper caste environments, are often lionized and admired for their capacity to navigate the gritty world of crime and corruption, as if those with education and social status can stand above a murky reality.

²² **The Hindu BusinessLine**. 2018. [Why does CBI have a conviction rate of just 3%?](#), Oct. 31.

[[tinyurl.com/mrxwpprv](https://www.tinyurl.com/mrxwpprv)]

²³ **Hansen, T.B.** 2021. op. cit. p.80

²⁴ By comparison, the rate of contact between police and the public in the U.S. per year fluctuates between 21% and 25%. See **Bureau of Justice Statistics**, 2018. [Contacts between Police and Public, 2015](#). Oct.

[[tinyurl.com/2c7hn4ru](https://www.tinyurl.com/2c7hn4ru)]

²⁵ **Common Cause and CSDS**. 2018. [Status of Policing in India Report 2018. A study of perceptions and performance](#). Delhi See especially Chapter 2. [[commoncause.in/pdf/SPIR2018.pdf](https://www.commoncause.in/pdf/SPIR2018.pdf)]

Outline of argument and evidence

What can possibly account for such a long-standing systematic blindness to how the force of law, and the promise of justice, is actually administered in India? In this Policy Watch, we will try to address this core question from five distinct angles. This introductory chapter is followed by one that takes a critical look at how policing practices have evolved in India. Thirdly, on issues of impunity and unaccountability that persists from bottom to top in the many forces across the country, we critically assess the institutional culture of the police and other law enforcement agencies marked by a blatant disregard of due process, the widespread use of custodial torture, and a generally violent approach to everyday policing, and enforcement of public order.

Fourthly, we tackle public and political expectations of policing, punitive ideologies among Indians, complexities of everyday policing and crime reporting, and evolving perceptions and definitions of gender-based and caste-based violence. We then look at how public violence, mass violence threats, and vigilante attacks remain central to political discourse in India and have evolved recently. Sixth, we will take a closer look at the role of the courts, the supposed neutrality of judges, and the role these institutions continue to play in terms of basic requirements of a legal system, such as evidentiary standards, due process and independence vis-à-vis other public institutions. We conclude with reflections on necessary reforms for a more inclusive, accountable, and democratic policing system, drawing on South Africa's police reforms after the Apartheid era, which address the core issue of lingering distrust between large sections of citizens and the state.

A note on sources and definitions

The evidence of violence, crime and law enforcement usually comes from police reports, day-to-day reporting by journalists, and from direct observation, interviews and reporting by scholars and fact finders. However, even the most basic facts, such as casualties during riots and the identity of victims, are highly charged objects of contestation by the interested parties, as well as by post-hoc interpretations by fact finders and historians.

The terms used to categorise events, injuries or deaths crimes, are inevitably imprecise and often strategic. In colonial India, the term 'riot' was applied by colonial authorities to many kinds of gatherings, 'unlawful' behaviour, or bouts of spontaneous violence born out of

rumours or intractable anger and irrational religious and cultural sentiments. To this day, naming an event a ‘riot’, rather than a ‘protest’, or peaceful gathering or demonstration, not only enables authorities to respond with physical and deadly force but it also tends to absolve the authorities and the police force from responsibility or culpability.²⁶

Similarly, in contemporary India, acts of collective violence in a village or town can be characterised as mere ‘local enmities’, or political conflicts, while classifying them as ‘caste atrocities’ can trigger the stringent provisions stipulated in the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act of 1989. As we will discuss below with respect to gender-based violence, the incidence of certain crimes or forms of violation depends crucially on how they are legally defined on the ground, and how well and how consistently they are reported and recorded by police authorities. As we will show in a variety of ways, one of the major problems bedevilling policing and law enforcement in India is the persistence of chronic underreporting and mis-recording of crimes of almost any kind.

Most observers agree that crime figures released by the police tend to underreport casualties and damages in order to portray law enforcement as being in control rather than ineffective or partisan.²⁷ Police figures also trend to mirror the structure of the law because only actions that can be classified as offences according to one or more sections of a law will be recorded as such. The categories and tables rendered by the National Crime Records Bureau (NCRB), for example, change and vary from year to year over the decades, making robust multi-year comparisons very difficult. Other sources are numbers released by security forces, the army and not least the annual reports from the Ministry of Home Affairs (MHA).

This presents a methodological and substantive problem for anyone studying and writing about policing, crime and security in contemporary India. In recent years, the Government of India has increasingly delayed the collection or release of data (including the delay in conducting the 2021 census), concealed or manipulated data (such as the real death toll

²⁶ **Wilkinson, S. 2009.** “Riot” *Annual Review of Political Science* (12): 329–43.

²⁷ **Wilkinson, S.I. 2004.** *Votes and Violence: Ethnic Competition and Ethnic Riots in India*. New York: Cambridge Univ. Press. **Wilkinson, S.I. 2009.** “Data in Indian politics.” In *Companion to Indian Politics*, ed. P.B. Mehta, N.G. Jayal. New Delhi: Oxford University Press.

during the COVID-19 pandemic), or changed the parameters (as in the case of how GDP is calculated). Can one assume that law enforcement agencies and the MHA are involved in similar forms of fudging of data in order to portray its own efforts in the most flattering light? According to official data released by the MHA, India is becoming ever more peaceful every year with declining rates of homicides, riots, public disturbances, but also terrorist attacks. This positive trend began in 2014 if we are to believe the MHA. The editors of a recent volume on internal security in India take these officially reported figures at face value and attribute them to what they call ‘growing state capacity.’²⁸

In what follows, we adopt a more critical and fine-grained approach by considering the reliability of data and the limitations of available information in every section of this essay. We mobilise data and evidence from our own scholarly work as well as multiple studies by independent scholars, NGOs, human rights organisations, and other credible sources. Observations and data on police and public credibility, on legislations and police action, for instance, draw liberally, including as extracts from Hansen (2021).²⁹

[Back to Table of Contents](#)

²⁸ Ahuja, A and Kapur, D. 2023. *Internal Security in India: Violence, Order, and the State*. Oxford University Press.

²⁹ Hansen, T.B. 2021. op. cit. Including as extracts, mainly, from Chapter 2. *Democracy, Policing and Public Order*. pp. 44-71.

II. POLICING IN INDIA – FOR WHOM?

“To seek and preserve public favour, not by pandering to public opinion, but by constantly demonstrating absolute impartial service to law, in complete independence of policy, and without regard to the justice or injustice of the substance of individual laws, by ready offering of individual service and friendship to all members of the public without regard to their wealth or social standing, by ready exercise of courtesy and friendly good humour, and by ready offering of individual sacrifice in protecting and preserving life.”

‘General Instructions’ (#5) issued to every new police officer in England from 1829.
(Popularly known as Robert Peel’s 9 Principles of Policing)

When comedian Vir Das took the stage at Washington DC’s Kennedy Center in 2021, he spoke of “two Indias”.³⁰ The first of these Indias is represented by a booming middle class, burgeoning tech cities, Bollywood’s glamour, and a rapidly modernising urban landscape. Their lives, dreams, and discontents are frequently showcased in the media and, by extension, are perceived as those of the nation’s entirety. This India is one of enhanced aspirations, better quality of lives, and heightened ambition. In stark contrast stands the other India. It remains in the shadows, silent but undeniably vast. This India is inhabited by blue collar workers, daily wage labourers, rural farmers facing the uncertainties of climate change, tribal communities struggling to maintain their identities, and countless others for whom basic amenities are a luxury. Their voices remain submerged amidst dominant narratives. It was a poignant and controversial reflection, yet one that resonated profoundly with those familiar with India’s intricate social fabric. His words illuminated a long existing dualism that has plagued India’s history and governance.

Although socioeconomic disparities are a global reality, the Indian context presents its own unique intricacies. This is not just a narrative of unequal wealth distribution or access to resources. The chasm here is not just material; it stretches into issues of dignity, respect, and, at times, essential human rights. In *An Uncertain Glory: India and its Contradictions* (2013),³¹ Jean Drèze and Amartya Sen delve deeply into these disparities, underscoring a

³⁰ Mogul, R. 2021. [Indian comedian Vir Das sparks explosive online debate with controversial tale of ‘two Indias’](https://www.cnn.com/2021/11/17/india-vir-das-controversial-tale-of-two-indias/), CNN, Nov. 17. [tinyurl.com/53j6kkak]

³¹ Drèze, J. and Sen, A. 2013. *An Uncertain Glory: India and its Contradictions*, Princeton University Press.

troubling truth: those marginalised by these inequalities frequently face apathy and antagonism from the very institutions designed to safeguard them.

One of the critical institutions where this disparity becomes most glaring is the police. Rather than championing the rule of law, it often acts as a conduit for disparity. This pronounced contrast in treatment is not just a side story in the broader tale of policing in India; it is central to its essence.

The Birth of the Modern Policing System in India

To comprehend the existing state of policing in India, it is essential to trace its origins and subsequent evolution which has played a significant role in shaping its current form. The contemporary law enforcement framework in India has its roots in the colonial-era Police Act, instituted in 1861,³² in the wake of the 1857-revolt led by Sepoys against East India Company rule. This legislation was primarily forged as a tool to exert dominance over the colonial populace. Remarkably, this regulatory structure was assimilated by the postcolonial government as a mechanism to uphold societal control, particularly over disenfranchised groups. Consequently, the interaction between the Indian police forces and the general citizenry largely retains a hierarchical character to the day.³³ This continues to be an underlying reality, largely unaltered by the normative Model Police Act^{34,35} and the passing of the three new criminal laws.

Per Article 246 of the Indian Constitution, the governance and administration of the police is under the State List, facilitating individual State governments in crafting their Police Acts, as well as the rules and guidelines that dictate the functioning of their respective police forces. Notably, States that have not enacted their personalised Police Acts operate under the provisions of the Police Act. Furthermore, diverse facets of policing, including work protocols and procedures, are directed by a myriad of laws established through case law and jurisprudential principles.³⁶

³² indiacode.nic.in [online] [The Police Act, 1861](#).

³³ Bayley, D. H. 1971. The Police in India, *Economic and Political Weekly*, 6 (45), 2287–2291.

³⁴ Ministry of Home Affairs. 2015. [The Model Police Bill, 2015](#), Bureau of Police Research and Development, Aug. 21. [tinyurl.com/4kutbf35]

³⁵ An earlier Draft [Model Police Act](#), was circulated by the Ministry of Home Affairs in 2006 to all States, 17 of which had used it to update their Police Acts. [tinyurl.com/mub5k6wv]

³⁶ Homegrown. 2021. [Time's Up For Colonial-Era Policing: Rethinking India's Police & Public Safety](#), Jun. 08. [tinyurl.io/AEeN]

The policing framework in India closely mirrors the Irish approach, incorporating a paramilitary force accountable exclusively to the governmental authorities.³⁷ As Arnold points out, the Irish constabulary was “designed to crush agrarian unrest and sporadic terrorism against British rule”.³⁸ Although the context in which the British introduced the Irish model of policing has changed from a colonial state to a republican one, this aspect has perpetuated as a consistent trait of the Indian police forces, aiming to forge a dynamic of dominance, enforcement, and observation over the populace they govern. The strict organisational structure delineating roles and responsibilities from the chief administrators at the helm, to the oversight personnel intermediate, and finally the police officers at the base level, stands as a fundamental characteristic. The entire law enforcement agency operates under the jurisdiction of the civil service and the regional governmental bodies. The primary role of the high-ranking police officials in this framework is not to partake in routine investigative or security tasks but to supervise and monitor the activities of the lower tiers of the institutional ladder.³⁹

Finally, maintenance of order, rather than crime prevention has characterised policing in India. As David H. Bayley notes:

“The primary function of the police continues to be containment of trouble once it occurs-whether it be mob violence or individual criminal activity. It reacts to threats to law and to government, but it does not actively seek to serve the peculiar security needs of individual citizens. From the citizen's point of view, the police are largely a passive force, difficult to energise, bureaucratic in working, impersonal and offhanded in operation.”⁴⁰

Building upon Bayley's critical perspective, one can examine the inherent limitations and potential implications of a policing system that remains, to a significant extent, reactive rather than proactive in safeguarding the interests of the individual citizen. Bayley

³⁷ **Arnold, D. 1976.** The Police and Colonial Control in South India, *Social Scientist*, 4(12), 3–16. [doi.org/10.2307/3516332]

³⁸ **ibid.** p.4

³⁹ **Subramanian, K.S. 2017.** [The Sordid Story of Colonial Policing in Independent India](#), *The Wire*, Nov. 20. [tinylio/AEeO]

⁴⁰ **Bayley, D.H. 1971.** op. cit. p. 2287.

underscores a prevailing bureaucratic inertia, which seems to perpetuate a disconnect between the police forces and the citizens, fostering an environment of impersonality and inefficiency. This passive stance in police operation can arguably engender a lack of trust and co-operation from the community, thereby undermining the foundational goal of maintaining public safety and order.

Challenges and Concerns in Police Functioning

The functioning of the police forces in India has been critically hampered by several pressing issues in the last many decades. Inadequate funding, barriers in securing successful prosecutions and excess political interference are large systematic issues which make policing in India particularly challenging.

1. Financial Constraints and Inadequate Training Resources

In analysing the challenges facing India's police force, a key determinant in its efficacy and modernisation is the availability and allocation of financial resources. The *India Justice Report – 2022*, draws attention to a pressing concern: a staggering officer-to-citizen ratio, wherein a lone police officer is expected to cater to the needs of approximately 831 citizens.⁴¹ This strain on human resources is further exacerbated when considering the role of the constabulary. Positioned at the foundational tier of the policing hierarchy, constables frequently navigate their entire careers experiencing minimal upward mobility, often limited to a singular promotion. They are underpaid, over worked, and occasionally relegated to domestic chores for higher-ranked officials. Despite these challenges they are expected to perform complex tasks, including intelligence collation and interfacing with senior personnel, without commensurate incentives or motivation to excel.

Moreover, the bar set for entry into the constabulary is disconcertingly low, with a mere foundational school education sufficing in numerous States. This relaxed entry criterion is reflective in the subsequent inadequate training imparted, especially in pivotal domains like investigative protocols and cultivating constructive community engagement. Financial data from the 2020-21 fiscal year further underscores this training inadequacy: a mere 1.3 per cent of the total police budget, translating to Rs. 2,253.09 crore, was designated for training. Alarming, only 84 per cent of this already modest sum was utilised, which

⁴¹ **India Justice Report. 2022** [Ranking States on Police, Judiciary, Prisons and Legal Aid](#), p.37.

translates to an annual per officer investment of a paltry Rs. 9,000. Such a meagre investment in both personnel and training inevitably precipitates a police force that often operates sub-optimally, lacking the requisite training and acumen to serve the multifaceted needs of the public effectively.

2. Difficulty in Sustaining Prosecutions

The Indian police often face pressure to *solve* cases, (i.e.) successfully identifying and arresting ‘suspects’. This pressure can come from multiple sources: public sentiment (especially in high-profile cases), media scrutiny, political demands, or even internal departmental expectations. A *solved* case can indeed serve as a metric of performance and can sometimes be equated with the efficiency or effectiveness of a police department. Given the implicit expectation that effective police work will lead to convictions, police often measure their success, in part, by their ability to hand over strong cases to the prosecution that can lead to convictions. In this regard, one of the core responsibilities shouldered by the police and other similar agencies is crime investigation. This encompasses a myriad of complex duties ranging from documenting complaints and preserving evidence, to identifying perpetrators and aiding in their prosecution in court to secure a conviction.

Between 2005 and 2015, India witnessed a surge in crime rate by 28 per cent coupled with an escalation in the complexity of these: a spike in cybercrimes and economic fraud. However, the rates of conviction remain one of the lowest in the world, with only 47 per cent of cases registered under the IPC leading to convictions in 2015 as noted by NCRB.⁴²

The Law Commission of India identifies the inferior quality of police investigations as a significant factor behind unsatisfactory legal outcomes.⁴³ Effective investigations require a combination of specialised expertise, comprehensive training, sufficient time and resources, and state-of-the-art infrastructure equipped with forensic tools. However, the Law Commission and the Second Administrative Reforms Commission emphasise that the police, overwhelmed by understaffing and a plethora of duties, tend to neglect this

⁴² PRS Legislative Research. n.d. [Police Reforms in India](https://tinyurl.com/AEeU). [tinyurl.com/AEeU]

⁴³ Law Commission of India. 2012. [Expeditions Investigation and Trial of Criminal Cases Against Influential Public Personalities](https://tinyurl.com/AEeV) - Report No. 239; Government of India, March. [https://tinyurl.com/AEeV] and **Second Administrative Reforms Commission. 2007. [Public Order](https://tinyurl.com/AEeX)**, Government of India. [https://tinyurl.com/AEeX]

pivotal role. Added to this is a discernible deficit in legal knowledge, particularly concerning the admissibility of evidence, and an infrastructure that falls woefully behind in terms of both forensic and cyber capabilities. Consequently, there is a troubling tendency to resort to force or even torture to extract evidence, deviating from the principles of fair and unbiased investigation. These factors, which we will discuss later, greatly increases the chances of custodial violence by the police.

3. Political interference

In India, impressions, tales, and anecdotes of political interference in the functioning of the police and the judiciary are commonplace – finding their way into books and films and featuring in everyday conversations. While some of them can be put down to extrapolations of popular perceptions, there are others based on lived experiences.

The pressing question remains: do the police serve the ruling government more than the law itself? In India, the distinction is murky. With each election, numerous police postings are shuffled. Politicians invariably categorise police officers (as they tend to do with other arms of the permanent executive) into camps of "us" or "them". This entanglement of politics with policing unfolds against a backdrop of escalating social tensions in the nation.⁴⁴

As Bayley writes in his seminal work, *Police and Political Order in India*, political influence on police often operates in subtle ways, rather than through overt threats or explicit requests.⁴⁵ For instance, an MLA (Member of Legislative Assembly) or a State Cabinet Minister might simply hint to a Superintendent of Police (SP) about their interest in a certain matter, an implication that their watchful gaze would be over it. Thus, even without a direct request, the mere knowledge of a high-ranking politician's interest in a case can skew the decision-making process. As several grey areas exist in law enforcement, where one course of action is not necessarily more justifiable than another, such indirect influences are particularly potent. For an SP, therefore, leaning in the direction that avoids potential conflict with a powerful politician might seem like a pragmatic choice, especially when the stakes are perceived as low. However, when we shift our gaze to the lower ranks of the police forces,

⁴⁴ Bayley, D.H. 1993. The Police and Political Order in India, *Asian Survey*, Apr., Vol. 23, No. 4, pp. 484-496, University of California Press. [jstor.org/stable/2644234]

⁴⁵ *ibid.*

the methods of influence are often more direct and forceful. These officers, usually with lower levels of education and exposure, might find it daunting to resist the pressure from influential locals. A mere suggestion that the matter could be escalated to higher authorities could sway their decisions, especially if they have seen these figures in close association with high-ranking officials.

An interesting take on the functioning of the police in this regard is explained by Beatrice Jauregi,⁴⁶ who contends that various elements of police operations in India, such as recruitment, promotions, assignments, and transfers, along with routine investigations and crime prevention efforts, are heavily dependent on 'jugaad' (a flexible approach to problem-solving). This can range from knowing the right people for assistance with jobs or transfers to establishing informal agreements with the community. Police adherence to legal codes and procedures, including arrest, interrogation, and evidence gathering, is often executed through creative and non-standard methods. This reliance on 'jugaad' in policing highlights two significant issues: firstly, the acute lack of funding at the lower levels of the police department, coupled with rampant corruption; and secondly, the inherent instability in police authority. Police authority is fluid, varying with the situation and not founded on stable, rational-legal principles, making it inherently unstable and subject to change.

The official stance on interference also rests significantly on top political figures. Given India's parliamentary democracy, a pivotal role is played by ministers responsible for line departments, including the police. While responsible for the actions of the civil servants under their purview, they must also cater to their political allies. A balance must be struck, and how well they manage these dual pressures depends on their personal integrity, as well as the political climate of the State. A secure minister, from a dominant party or faction, may more easily reject undue requests. In contrast, a minister in a precarious position might be more tempted to wield their power for personal or political gains.

4. The impact of the Emergency, 1976-77: In the name of the state

The Internal Emergency, declared in June 1975, was a turning point for the character of modern Indian governance. For the police, it was a turning point in both its culture of operation as well as public perception of its objectivity. On June 12, 1975, the Allahabad

⁴⁶ Jauregi, B, 2017. *Provisional Authority: Police, Order, and Security in India*. Ranikhet: Permanent Black.

High Court found then Prime Minister, Indira Gandhi, guilty of electoral malpractices and declared her election to the Indian Parliament void. She was barred from holding any elected office for six years. This posed a threat to her political career and leadership. The judgment came against the backdrop of rising unrest and organised political opposition against Mrs. Gandhi's leadership. It spurred the opposition to press for her resignation. Massive political rallies and protests became common.

Given these circumstances, on the midnight of June 25-26, 1975, Indira Gandhi recommended the declaration of a state of emergency to President Fakhruddin Ali Ahmed, citing threats to national security based on an alleged imminent threat of internal disturbances.⁴⁷ The President approved it, and the emergency was declared, granting the Prime Minister the authority to rule by decree, which led to the suspension of many civil liberties.

During this period, the police played a pivotal role in enforcing the Union government's directives. They were instrumental in arresting opposition figures and activists, enforcing media censorship, suppressing protests, and facilitating controversial family planning programmes, including forced sterilizations, as highlighted in the Shah Commission Report.⁴⁸

Operating with heightened powers and diminished accountability, their actions often bypassed regular legal procedures, leading to allegations of abuse, torture, and widespread human rights violations, a theme extensively documented in Gyan Prakash's *Emergency Chronicles*.⁴⁹ The period stands as a contentious chapter in India's history, especially because of the impacts of Indira Gandhi's leadership on various institutions, including the police, as analysed in Christophe Jaffrelot's *India's First Dictatorship*.⁵⁰

⁴⁷ **Ministry of Home Affairs. 2014.** [Reply to question filed under the Right to Information Act](#). (See Gazette notifications on the announcement and withdrawal of the state of Emergency. pp. 2-4.) [tinyurl.com/3vjwcr42]

⁴⁸ **Ministry of Information and Broadcasting. 1978.** *The Shah Commission Report: Circumstances Leading to Declaration of Emergency*, Directorate of Advertising and Visual Publicity, Government of India.

⁴⁹ **Prakash, G. 2019.** *Emergency Chronicles: Indira Gandhi and Democracy's Turning Point*. Princeton University Press.

⁵⁰ **Jaffrelot, C and Pratinav, A. 2020.** *India's First Dictatorship: The Emergency, 1975-1977*, C. Hurst & Co., December.

5. 1984 anti-Sikh riots and a culture of impunity

In the aftermath of Prime Minister Indira Gandhi's assassination in 1984, anti-Sikh riots erupted in India, particularly in Delhi, resulting in the death and displacement of thousands of Sikhs. The police's role during these riots has been heavily criticised for their alleged inaction, complicity, and, in some cases, direct participation in the violence.⁵¹ Many assert that political influences, especially from the ruling Congress party, may have impacted the police's actions. While various commissions, notably the Nanavati Commission,⁵² Ranganath Misra Commission, and a report by Kusum Lal Mittal⁵³ have probed the events, accountability remains elusive. Numerous accounts from survivors and independent observers indicated that the police, in many instances, did not intervene to prevent the violence or protect Sikh individuals and their properties. Their inaction gave violent mobs a free hand, leading to escalation in many areas.⁵⁴ There have been allegations that the police were acting, either directly or indirectly, under the influence of political figures from the ruling Congress party.⁵⁵ Such political connections are believed to have shaped the police's response, making them passive spectators or collaborators.

6. 2002 Gujarat Riots: Impunity and attempts at accountability

The 2002 Gujarat riots broke out after the burning of the Sabarmati Express near Godhra, which resulted in the death of 59 Hindu pilgrims. This incident led to widespread violence primarily against the Muslim community, resulting in the deaths of about 1,000 to over 2,000 people,⁵⁶ a subject thoroughly examined in Parvis Ghassem-Fachandi's ethnographic study *Pogrom in Gujarat*.⁵⁷ The then Chief Minister of Gujarat, Narendra Modi, and his administration, including key members like Amit Shah, faced significant criticism and allegations of inaction, complicity, and possibly even facilitating the violence. Although subsequent investigations, as detailed in Manoj Mitta's *The Fiction of Fact-Finding*, absolved

⁵¹ **India Today.** 2014. [Delhi Police officials were complicit in 1984 anti-Sikh riots: Cobrapost sting](#), Apr. 22. [tinyurl.com/mt3vcyv5]

⁵² **Ministry of Home Affairs,** 2005. [Justice Nanavati Commission of Inquiry \(1984 Anti-Sikh Riots\): Report - Volume – I](#). Feb. 9. [tinyurl.com/yc29frue]

⁵³ **India Today.** 2014. op. cit.

⁵⁴ **Mitta, M and Phoolka, H.S.** 2007. *When a Tree Shook Delhi*. Roli Books.

⁵⁵ Most notably, a former Member of Parliament from the Congress party, Sajjan Kumar was accused of inciting violence against Sikhs during the riots. In December 2018, he was sentenced to life imprisonment by the Delhi High Court for his role in the riots. The court convicted him of criminal conspiracy, promoting enmity, and acts against communal harmony.

⁵⁶ **Varadarajan, S.** 2002. *Gujarat the Making of a Tragedy*, New Delhi: Penguin Books.

⁵⁷ **Ghassem-Fachandi, P.** 2012. *Pogrom in Gujarat: Hindu Nationalism and Anti-Muslim Violence in India* Princeton, NJ].

Mr. Modi of direct involvement, many critics still argue that his administration did not do enough to prevent or mitigate the violence.⁵⁸ The role of the police during this crisis became a focal point of criticism. Reports and eyewitness accounts highlighted instances of police inaction when mobs targeted minority neighbourhoods. In certain instances, the police were even accused of either directly participating in the violence or by guiding mobs to Muslim areas.⁵⁹ The events of 2002 remain deeply contentious topics in India's political discourse.

Echoes: Delhi, 2020

Concerns over political interference in the Indian police force continue to resonate in contemporary times as well. A stark manifestation of this was observed in early 2020. As tensions flared over the controversial Citizenship Amendment Act (CAA), the national capital was engulfed in a fiery surge of anti-CAA riots. The ensuing violence left over 53 dead and hundreds injured.⁶⁰

Accusations against the Delhi Police ranged from gross inaction and negligence to outright complicity in some of the violent acts. Videos circulated on social media platforms, seemingly showcasing police personnel either standing by as violent mobs wreaked havoc or, in some instances, purportedly participating in the aggression. The aftermath of the riots saw a series of investigations, arrests, and debates over the role of law enforcement.⁶¹

[Back to Table of Contents](#)

⁵⁸ **Mitta, M. 2014.** *Modi and Godhra: The Fiction of Fact Finding*, Harper Collins.

⁵⁹ **Human Rights Watch. 2002.** *'We have no Orders to Save You'*. Apr. 30. [tinyurl.com/bdhhf9mn]

⁶⁰ **The Indian Express. 2021.** [One year after Northeast Delhi riots | The 53 killed: the lives in their wake](#), Mar. 02. [tinyurl.com/v8adyb5r]

⁶¹ **Amnesty International. 2020.** *India: Delhi police committed multiple human rights abuses during February riots = new briefing* [tinyurl.com/yt2r6vc2]

III. CUSTODIAL VIOLENCE AND IMPUNITY

“Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

IPC 1860. Sec. 330

“Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

BNS 2023. Sec. 120 (1)

Despite a transition from “a slave country to an independent, socialist, democratic and welfare state”,⁶² India’s police forces have remained out of step in this evolutionary process. This disconnect is evident in the persistence of custodial violence and the systemic issues within the forces, which starkly contrast with the ideals of democracy and social welfare that India aspires to uphold. Although the country has made significant strides in many areas since independence, its police forces appear to be anchored in attitudes that are remnants of a colonial past. This lag in reform and adaptation to the modern ideals of justice and human rights reflects the persistence of a critical gap in India's journey towards being a fully democratic and welfare-oriented state.

⁶² **Arora, N. 1999.** Custodial torture in police stations in India: A radical assessment. *Journal of the Indian Law Institute*, 41(3/4), 513–529. [[jstor.org/stable/43953348](https://www.jstor.org/stable/43953348)]

The widespread occurrence of custodial violence in India can be attributed to a mix of sociological and legal factors that nurture an environment of impunity. This is not just a result of individual actions but stems from deep-seated structural and systemic issues. The sociological factors involve the hierarchical nature of the police forces, the cultural ethos within them, and societal perceptions that sometimes reinforce the propensity for violence. Legally, the framework is riddled with conflicting provisions, inadequate protections against violent practices, and often a lack of punitive consequences for acts of torture. This combination of factors creates a complex web that not only permits, but in some cases also encourages, custodial violence making it a persistent and troubling aspect of law enforcement in India.

1. Sociological factors

The higher levels of India's police forces are drawn from the rigorous crucible of the Civil Services Examination conducted by the Union Public Service Commission (UPSC). A demanding selection process, along with the significant powers granted by law, creates a sense of superiority to the successful candidate who, upon completion of probation, joins the elite IPS – a thin, albeit better qualified, officer cadre that is hierarchically placed above the massive constabulary and upper subordinate ranks. As of January 2016, the constabulary comprised about 86 per cent of the State police forces, with the remainder divided between upper subordinate ranks (13 per cent) and officers' ranks (1 per cent).⁶³

The constabulary predominantly comprises individuals with lower educational and social standing. Joining the police force offers them a sense of authority and dominance. This dynamic is exacerbated by a system that implicitly encourages the use of force on individuals in custody, with an eye more on convictions than the pursuit of justice. Remnants of a colonial legacy are vivid in the present-day functioning of the police forces in India. Instead of focusing on fostering justice, the existing modus operandi prioritises punitive actions. This approach is further reinforced by a conspicuous deficit in training and resources, which impinges on their ability to conduct thorough and scientific investigations. The prevalent belief, consequently, is that resorting to violence can be an

⁶³ PRS Legislative Research. n.d. o.p. cit.

effective method to obtain confessions, a mindset fortified by the lack of modern investigative methodologies at their disposal.

The use of torture is disturbingly normalised. Between 2020 and 2022, official records document an alarming 4,484 custodial deaths.⁶⁴ Many argue that this count is likely a significant understatement.⁶⁵ The accountability mechanism seems ineffective, as reflected in the fact that between 2005 and 2010, a mere 21 officers faced conviction for such acts, and astonishingly, this figure plummeted to zero from 2010 to 2019.⁶⁶

India's complicated legal system is notorious for its protracted trials and low conviction rates. It is against this backdrop that some perceive police violence as a swift, albeit brutal, avenue to justice. A 2019 survey by Common Cause revealed startling insights: 37 per cent of officers polled felt it was acceptable to administer "minor punishments" in lieu of court proceedings for minor infractions. Even more disturbingly, a significant 83 per cent (of officers) found no issue with resorting to violence to elicit confessions from suspects.⁶⁷

This acceptance of brutality is not just systemic; it is also interwoven into the fabric of the policing ethos. N.C. Asthana, a former Director-General of Police, Kerala, highlights that the endorsement of torture is often seen as a manifestation of "macho" policing, juxtaposed against the perceived "effeminate" approach of legal and non-violent procedures.⁶⁸ Within the police, this cultural acceptance pressures officers, from fresh recruits to senior ranks, to see torture as an essential initiation into "pragmatic" police work. As pointed out by Bhinder and Nevers in *Demons Within: The Systematic Practice of Torture by Indian Police*, this very ethos often ensures that the most aggressive officers are revered and positioned for leadership.⁶⁹

⁶⁴ **Kalia, S. 2022.** [4,484 People Died in Police Custody Since 2020: Govt Data](https://www.theswaddle.com/4484-people-died-in-police-custody-since-2020-govt-data), *The Swaddle*, Jul. 27. [tinyurl.com/5n953c24]

⁶⁵ **Rao, M. 2020.** [Indian police use violence as a shortcut to justice. It's the poorest who bear the scars](https://www.cnn.com/2020/12/03/india-police-violence/index.html), *Cable News Network*, Dec. 03. [tinyurl.com/2ntucjn9]

⁶⁶ **Ibid.**

⁶⁷ **Common Cause and CSDS 2019.** [Status of Policing in India Report 2019: Police Adequacy and Working Conditions](https://www.commoncauseindia.org/reports/status-of-policing-in-india-report-2019-police-adequacy-and-working-conditions). [tinyurl.com/4593thkz]

⁶⁸ **Asthana, N.C. 2021.** [Why Police Brutality and Torture Are Endemic in India](https://www.thewire.com/2021/12/13/why-police-brutality-and-torture-are-endemic-in-india/), *The Wire*, Dec. 13. [tinyurl.com/ypb54f2u]

⁶⁹ **Bhinder, B.S. and Nevers, P. J. 2011.** [Demons Within: The Systematic Practice of Torture by Indian Police](https://www.ofmi.org/wp-content/uploads/2013/08/Demons-Within.pdf), Organization for Minorities of India. [ofmi.org/wp-content/uploads/2013/08/Demons-Within.pdf]

Additionally, prevailing societal views can sometimes reinforce this propensity for violence within the police forces. There exists a pervasive narrative which suggests that certain groups, including Indian Sikhs, Muslims, northeastern communities, and Left-wing activists, pose a threat to national stability. In the maze of India's complex legal system, there is a growing sentiment that those labelled as threats should be pressured into confessions and, once they have outlived their relevance, could be eliminated outside the purview of the law. Actions rooted in such stark breaches of human rights are, alarmingly, at times applauded and perceived as acts of "national interest", occasionally resulting in accolades for the officers involved.⁷⁰

2. The Legal framework

The use of violence and torture in police operations both originates from and is perpetuated by conflicting legal provisions and laws. This manifests in four primary ways: firstly, through laws that both allow and incentivise violence; secondly, due to the system's inadequate protections against such violent practices; and thirdly, because in practice, there often are no punitive consequences for acts of torture committed against the marginalised and economically disadvantaged. Fourthly, the perception among police officers that adherence to legal procedures is cumbersome and ineffective significantly contributes to the use of violence and torture.

2.1 Contentious Laws

Numerous laws, such as anti-terror statutes or those specific to conflict zones like Kashmir, endorse the use of force.

2.1.1 Many of these legislations grant police officers immunity from legal action, while others permit force to extract information or ensure peace. Additionally, police guidelines in various states empower certain officers to command a baton charge (officially termed "lathi charge") for crowd control, necessitating a subsequent report detailing the operation. However, these baton charges frequently occur

⁷⁰ Asthana, N.C. 2021. [Why Police Brutality and Torture Are Endemic in India](https://thewire.in/government/why-police-brutality-and-torture-are-endemic-in-india), *The Wire*, Dec. 13. [thewire.in/government/why-police-brutality-and-torture-are-endemic-in-india]

without official authorisation. Moreover, if a public grievance arises, it is common for police from the same department to investigate the actions of their colleagues.⁷¹

- 2.1.2 Furthermore, the legal framework, which allows for the apprehension of suspects without a judicial arrest warrant in cases of cognizable offenses,⁷² grants the police an alarming degree of freedom to infringe upon citizen liberties. This provision has unfortunately opened doors to misuse of power for personal gains, including intimidation, bribery, and settling political vendettas, often influenced by higher authority directives.
- 2.1.3 As per the Criminal Procedure Code, 1973, (referred to as the CrPC), certain offences empower the police to arrest the accused without needing a warrant or magistrate's approval. These offences, known as cognizable offences, typically involve those more severe and grievous in nature, and are listed under the CrPC's First Schedule. Examples include rape, murder, theft, kidnapping, and abduction, all of which pose significant threats to societal peace and harmony. For these crimes, police can take the accused into custody and commence investigations without waiting for court authorisation. Punishments for these offences often exceed three years and can range up to life imprisonment or even the death penalty. Whether these offences are bailable rests on the court's discretion, with the First Schedule of the Code clarifying the bail ability of each crime.
- 2.1.4 Another law that has facilitated police torture is Section 27 of the Indian Evidence Act. While confessions made to the police are generally not considered admissible evidence; a notable exception exists: the police can legally leverage these admissions to facilitate the retrieval of stolen or misappropriated items. This potentially creates an avenue for the police to emphasise recoveries as a measure of their effectiveness, even if the foundational confession might have been obtained under questionable circumstances.

⁷¹ Rao, M. 2020. [Indian police use violence as a shortcut to justice. It's the poorest who bear the scars](https://www.cablenewsnetwork.com/2ntucjn9), *Cable News Network*, Dec. 3. [tinyurl.com/2ntucjn9]

⁷² Section 2 (c) of the Code of Criminal Procedure, 1973.

2.2 Inadequate preventive mechanisms

What compounds this already critical situation is the protective shield that the law extends to the police officers, making legal retribution a rarity. On the infrequent occasions when action is taken, it is usually limited to internal disciplinary inquiries or temporary suspensions, thereby fostering a culture where accountability is the exception, not the norm. This lack of judicial recourse cultivates a breeding ground for impunity, a phenomenon deeply rooted in both the legislative framework and the prevailing societal and institutional ethos.

Legally, police officers are not immune to prosecution for transgressions. However, the path to holding them accountable has not been straightforward. Section 197 of the CrPC mandates prior government sanction for prosecuting public servants, a provision that many times shields officers from legal scrutiny.⁷³ Additionally, controversial laws, such as the AFSPA in specific regions, further compound the issue by granting considerable protection to security forces. Further, while internal disciplinary avenues within the police force do exist, their effectiveness can be inconsistent. Moreover, despite the existence of legal mechanisms to ensure accountability, practical challenges such as witness intimidation and evidence manipulation remain.

Notably, India stands as one of mere five member-countries yet to ratify the United Nations Convention against Torture (UNCAT). A fundamental step towards this ratification is the enactment of a domestic law against torture. Advocates within India argue that implementing this law could significantly enhance accountability and streamline investigative procedures. Although a draft for such a law was introduced in 2010, it remains unapproved by Parliament. Updated in 2017, the draft Bill is presently under consultation with individual States, given their jurisdiction over police, to gather their perspectives.⁷⁴

⁷³ [indiankanoon.org. Central Government Act: Section 197 in The Code of Criminal Procedure, 1973.](https://indiankanoon.org/doc/12704/) [indiankanoon.org/doc/12704/]

⁷⁴ [Rao, M. 2020. Indian police use violence as a shortcut to justice. It's the poorest who bear the scars, Cable News Network, Dec. 3.](https://www.cnn.com/2020/12/03/india/police-violence/index.html) [tinyurl.com/2ntucjn9]

2.3 Fuzzy Jurisprudence

The Supreme Court of India has made some efforts in addressing concerns related to police conduct, but the practical enforcement of their rulings remains questionable. A pivotal case that underscores this is *Nilabati Bebera v. State of Orissa*.⁷⁵ In this case, an individual was arrested by the police for alleged involvement in theft. The following day, his body was discovered near railway tracks with evidence of handcuff injuries on his wrists. The police maintained that the individual died accidentally while attempting to flee from custody. However, the man's mother wrote to the Supreme Court, suggesting that her son died while in police custody. This letter was recognised as a petition under Art. 32 of the Constitution. Pursuant to the Court's directive, a District Judge undertook an investigation and concluded that the individual's death resulted from injuries sustained during his detention. The Court, after determining that the death was a result of police custody, identified the state's obligation to compensate the deceased's mother. The State was held strictly accountable for breaching Fundamental Rights, and claims of sovereign immunity⁷⁶ were dismissed. It was observed that the compensation for human rights violations warrants a constitutional redress based on strict accountability, separate from tort claims in private law. Considering the deceased's age (22 years) and monthly earnings (Rs.1,200 to Rs. 1,500), the Court set the compensation at Rs.1,50,000. Furthermore, the State of Orissa was instructed to determine individual culpability and initiate legal action against those responsible.

Later, in the case of *State of M.P. v. Shyamsunder Trivedi*⁷⁷ revolving around the issue of evidence, the Court acknowledged the prevailing challenge in custodial violence cases: a palpable lack of firsthand evidence implicating police officers. Typically, only fellow police officers could provide insight into the conditions leading to the death of someone in custody. Yet, often these officers refrain from testifying, driven by a sense of loyalty to their peers. The Court emphasised that strict adherence to stringent evidence requirements could potentially obstruct justice. The Court cited the 113th Law Commission of India Report, which proposed an assumption of police culpability for

⁷⁵ 1993 2 SCC 746.

⁷⁶ Sovereign immunity is a legal doctrine that holds that the state or the governing authorities cannot be sued or prosecuted without their consent. This principle stems from the idea that the state, as the sovereign, is immune from civil suits or criminal prosecution under its own laws, thereby protecting it from being held liable in its own courts.

⁷⁷ 1995 4 SCC 262.

injuries inflicted in custody. The judiciary was encouraged to adopt a more empathetic stance in these cases, rather than a strictly legalistic one, to ensure that culprits are held accountable.

Finally, in *D.K. Basu v. State of West Bengal*⁷⁸ came the most significant Indian judgment on rights of persons under arrest. In this judgment, the Supreme Court underscored the urgency of police reforms, emphasising the importance of upholding the dignity and rights of every individual, regardless of their role within the criminal justice system. Importantly, the court emphasised that Article 21 of the Constitution, which assures the right to life and personal liberty, remains intact even when an individual is detained. To address prevalent concerns, the court established several vital guidelines encompassing detailing the rights of an individual upon arrest, during questioning, or while detained, as well as the responsibilities a police officer must uphold.

The guidelines outlined in *D.K. Basu* have been reaffirmed in numerous subsequent cases, yet their implementation remains sporadic. Several factors, including State-specific procedures or challenges in judicial oversight, influence this. However, a stronger judicial resolve could address some of these issues. The court's inconsistent involvement in certain cases, coupled with its reluctance to penalise rogue police officers, undermines efforts to hold the police and the state accountable, especially in the absence of political will. A deeper reflection on the judiciary's role can provide better insight into this matter.

2.4 Procedural Encumbrances

The perception among police officers that adhering to legal procedures is cumbersome and ineffective can significantly impact their use of violence and torture. This sentiment often stems from frustrations with the judicial process, where known culprits are frequently released on bail, leading to a sense of futility in following due process. Police officers may view the legal system as overly lenient or slow, especially in cases where they believe they have clear evidence against suspects. This mindset fosters a belief that extrajudicial methods, such as violence or torture, are more efficient in delivering justice

⁷⁸ 1997 1 SCC 416.

or deterring crime. However, this rationale undermines the rule of law, encouraging officers to take justice into their own hands rather than relying on the judicial system.

The legitimacy of police actions is crucial in shaping public perception and co-operation. Legitimacy can be created by individual police officers in their encounters with the public, and it is affected by their behaviour and the perception of fairness in their actions.⁷⁹ Legal authorities are generally seen as more legitimate and are more likely to be obeyed when they are perceived as fair and just in their procedures, including how they handle disputes and enforce the law.⁸⁰ Key elements influencing perceptions of procedural justice include participation in the process, neutrality in decision making, dignity and respect shown to individuals, and clarity in explaining the reasons behind actions and decisions. When police officers disregard procedural fairness, it not only damages their credibility and the public's trust, but also risks escalating conflicts and reducing co-operation from the community. It can also lead to a feeling of powerlessness among the public, who may perceive that the state operates under the dominance of force rather than adhering to the principles of law.

[Back to Table of Contents](#)

⁷⁹ National Academies Press. [Fairness and Effectiveness in Policing: The Evidence \(2004\) - Chapter: 8 Police Fairness: Legitimacy as the Consent of the Public](#). [<https://tinyl.io/AEev>]

⁸⁰ *ibid.*

IV. PUBLIC EXPECTATIONS AND PUNITIVE IDEOLOGIES

“The fact of the matter is that encounters are not the problem but the symptoms of a collapsing system of justice, and shrill public demand for quick and extra-legal solutions pose problems.”

Sankar Sen, IPS

Former Director General

National Human Rights Commission⁸¹

Mumbai, India’s financial capital, is also the centre of selling dreams and public perceptions, thanks to its position as ‘Bollywood’, the hub of cinema production. Therefore, it plays a major role in creating and changing public perceptions of crime and punishment in India. Since the 1970s, Bollywood produced a steady stream of movies featuring popular avengers who faced (and defeated) corrupt cabals of politicians and policemen. In real life, the 1980s and early 1990s saw the rise of major crime syndicates in the city, breathlessly and almost admiringly reported by the media and transformed to the silver screen by the film industry.

The city’s police remained the primary source of the detailed information to the media about these ‘gangs of Mumbai’, each with a kingpin, deputies, designated shooters, and financiers. This, in turn, helped spin a tale of the pervasive powers of the underworld; wherein the police appeared almost helpless, supposedly restrained by political and financial interests in the city. Figures like Haji Mastan, a dockworker-turned-kingpin-smuggler in the 1970s, became something of a celebrity and later immortalised in several films in Hindi and other Indian languages. That was the 1980s. These spawned several films based on organised gangs and the police as sequels even decades later.⁸²

⁸¹ **Sen. S. 2007.** Fake Encounters are Symptoms of a Systemic Malaise. *Indian Police Journal*, Vol. LIV. No. 2, Apr.-Jun.2007, pp. 78-81.

⁸² Significant movies being *Don* (Hindi, 1978), *Billa* (Tamil, 1980, eponymously titled after the alias of one of convicted criminal duo, Billa and Ranga, who were subsequently hanged in 1982), *Nayakan* (1987, Tamil and *Dayavan*, 1988, Hindi, loosely based on the real-life story of Varadaraja Mudaliar, a runaway boy from southern Tamil Nadu who emerged as a feared gangster in Bombay, and scripted along the lines of the Hollywood blockbuster, *Godfather*).

In the 1990s, the ground shifted rapidly. The romanticised gangster-police storyline violently mutated into a reality that struck at the roots of national security. The Bombay bomb blasts, which shook the city in March 1993, transformed crime from smuggling and other economic/social offences to acts of terror. Dawood Ibrahim and his transnational D-company emerged as the evil incarnate, an enemy of the Indian state and often mentioned at the time as the biggest threat to India's security.

In this tense and deeply polarised atmosphere after the riots and bomb blasts, a coalition of the Shiv Sena and BJP, each with its own version of the nature of the relationship between state and the citizenry, came to power in 1995, promising law and order. The new Home Minister for Maharashtra, Gopinath Munde, let it be understood that he thought 'encounter killings' of suspected criminals was a fair practice.⁸³ After this point, encounter killings became a routine practice and Mumbai Police⁸⁴ began to heavily promote some of their officers as 'encounter experts'⁸⁵ – prolific killers of more than 600 suspects including 'gang members' between 1994 and 2004 alone.⁸⁶

Tracing such deaths to the "early part of the last century" Venugopal says, "Perhaps it was the British who invented this devious method of killing" when a tribal who led a rebellion against the British, was killed in May 1924.⁸⁷ This modus operandi was adopted later for 'crime fighting' in other parts of India, endorsed by politicians eager to feed into public opinion that was quickly moving towards a more punitive and revenge driven notion of justice and public order. Continuing into free India, this caught the public and political

⁸³ Munde, G. 2017. [If policemen kill criminals who are harmful to society I don't see anything wrong with it](https://tinyurl.com/Rediff.com), *Rediff.com*, Aug. 09. [https://tinyurl.com/Rediff.com]

⁸⁴ The name of the city, Bombay, was changed to Mumbai in 1996, by Shiv Sena after it came to power.

⁸⁵ An 'encounter death' is now largely a euphemism for the abuse of legal force to maintain law and order. Although such acts violate Article 21: "No person shall be deprived of his life or personal liberty *except according to procedure established by law*", Sec. 46 of the Cr.P.C. says "the police or any person so authorised shall" among other things, [use] "all means necessary to effect the arrest; but death cannot (*sic*) be caused unless the person to be arrested is *accused of an offence punishable with death or imprisonment for life*."⁸⁵ [Emphases added.]

⁸⁶ Ahmed, Z. 2004. [Bombay's crack 'encounter' police](https://tinyurl.com/Bombay's crack 'encounter' police), *BBC News*. Jun. 09. [https://tinyurl.com/Bombay's crack 'encounter' police]

⁸⁷ For accounts on extrajudicial killings, and how they came to be termed in official and popular parlance as 'encounters' read: Venugopal, N. 2007. **Fake Encounters:** Stories from Andhra Pradesh, *Economic and Political Weekly*, Vol. 42, No. 41. (Oct. 13-19), pp. 4106-4111 and Mukhopadyay, A.J. 2006. Through the Eyes of the Police: Naxalites in Calcutta in the 1970s, *Economic and Political Weekly*, Vol. 41, No. 29 (Jul. 22-28) pp. 3227-3233. [tinyurl.com/mvtrzv98]

imagination in other States, most recently and with brash-bordering-on-celebratory impunity by the BJP government in U.P. led by Yogi Adityanath, which swiftly adopted ‘encounters’ as a preferred mode of crime prevention. Official data claimed the deaths of hundreds of suspects: an unaccountable form of public punishment that worry legal experts about India’s descent in an already endemic culture of political and executive impunity.⁸⁸

Gender-based violence and outcries for capital punishment

Sharper national and global focus on gender-based violence and the danger to women in public places have created a new and more punitive approach to law enforcement and justice. Two very public cases set the stage for an expansion of the sections of the IPC that pertained to rape and other crimes against women.⁸⁹ They also demonstrated how pivotal public fury, teetering at the brink of mass violence, were to these changes.

The 2012 Delhi rape case (known as the “Nirbhaya case”) generated outrage across India and abroad. Tumultuous scenes in the Indian parliament and mass protests across the country demanded prompt punishment for the guilty. The case and the senseless nature of the violence resonated profoundly with the everyday sufferings endured by millions of Indian women in public places. Many from the middle-class were also frustrated with the apathy of law enforcement vis-à-vis gendered violence, the abysmal reporting rates, and negligible efforts at seeking conviction of rapists.

The heinous torture, gang-rape, and murder of an educated young woman from a lower middleclass family who was traveling with her boyfriend on a bus after watching a film took place on the night of December 16, 2012.⁹⁰ The victim, a 23-year-old physiotherapist, seemed to represent a new and more modern India that would afford women a more

⁸⁸ **The Week**. 2019. [‘5,178 encounters since 2017’: UP Police boasts of killing 103, injuring 1,859](#), Dec. 06. [tinyt.io/AEdU], **Jacob, N.** 2022. [Encounter Killings: Fivefold Rise in Pending Cases, No Convictions in 6 Years](#), *factChecker.in*, Jul. 25. [tinyt.io/AEdV], and **Bhushan, A.** 2020. [Extrajudicial Killings in India: Rule of Law v. Police Impunity](#), *Jurist*, Jul. 30. [tinyt.io/AEdW]

⁸⁹ The Criminal Law (Amendment) 2013 included offences previously not specified in a number of sections (acid attack (326 A&B) voyeurism, disrobing, stalking, harassment – sections 354 A, B, C and D) and section 375 that pertains to rape now also includes offences other than penetration. See, [Cornell Law School, The Criminal Law \(Amendment\) Act 2013](#) [tinyt.io/AEdY. For the text of IPC 375, see [India Code](#) [tinyt.io/AEda]

⁹⁰ **The Times of India**. 2019. [What is the Nirbhaya case?](#), *ToI-Online*, Dec. 18. [tinyt.io/AEdb]

substantive experience of freedom and security. The public revulsion over this case resulted in the Parliament passing the *Criminal Law (Amendment) 2013 Act* that tightened the existing provisions and introduced the death penalty for rape.⁹¹ All convicted in the 2012 Delhi rape case were hanged in 2020, after years of protests and pressure from a variety of groups demanding justice for the victim.⁹²

In 2019, another incident demonstrated that public emotions around rape and violence against women run high and that public violence is an ever-present possibility. That November, a young female veterinarian was abducted, gang-raped and murdered in Hyderabad. The police arrested four suspects within a day of the discovery of the body. The four were kept in custody while large public protests were building up outside police stations, jails, and in public places across the city and elsewhere in the country. Many protesters demanded that the guilty be executed – a call endorsed by former U.P. Chief Minister, Mayawati. In the following days, crowds tried to block the movement of police vehicles suspected of transporting the accused and threw stones at those vehicles demanding the death of the suspects.⁹³ The local bar association refused any legal aid to the four arrested men.⁹⁴ After less than a week of investigations, the police took the four suspects to what was believed to be the scene of the crime. Within minutes, the suspects had been killed by the police. The police claimed that the suspects tried to attack them and escape custody. A day later, thousands celebrated at the spot where the four men had been shot dead.⁹⁵

These cases and the vehement public emotions they generated were testament to a changing perception of women, especially educated women. They were also social dramas of class and caste anxiety among middle-class Indians harbouring deep fears that these marked the start of a breakdown of established social hierarchies of respect and deference,

⁹¹ **Ministry of Law and Justice.** 2013. [The Criminal Law \(Amendment\) Act, 2013](#), *The Gazette of India (Extraordinary)*, Government of India, Apr. 2. [tinyurl.io/AEdd]

⁹² **BBC News.** 2020. [Nirbhaya case: Four Indian men executed for 2012 Delhi bus rape and murder](#), Mar. 20. tinyurl.io/AEdg]

⁹³ **Change.org.** 2019. [Burn the accused in Dr. Priyanka Reddy's rape and murder case, alive publicly](#), Nov. 30. [tinyurl.com/2zupczvw]

⁹⁴ **Ishaqui, S.A.** 2019. [Priyanka Reddy case: Lawyers say won't fight for accused](#), *Deccan Chronicle*, Dec. 01. [tinyurl.com/2bwdbn8v]

⁹⁵ **Pandey, G.** 2019. [Hyderabad case: Why Indians are celebrating the killings](#), BBC News, Dec.06. [tinyurl.io/AEdi]

the tacit ‘social contract’ of modern India. Cases that evoked public outcries for ‘retribution and revenge’ revolved around the brutal death of educated, Hindu, metro-dwelling women. The perpetrators, suspected or convicted, were marginal men from slums and semi-rural areas. In stark contrast, over the past decade, other cases of rapes and murders of young girls, mostly belonging to poor and lower caste communities,⁹⁶ made it to the headlines from time to time but never on the scale as the Delhi and Hyderabad cases.⁹⁷

It is almost universally accepted that the reporting of rape in India is woefully inadequate. The official numbers (33,000 in 2019) reflect but a fraction of the actual number.^{98,99} This under-reporting is particularly pronounced among the most socially marginalised: SC/ST communities, Muslims, and populations in rural and remote areas. A study of violence against Dalit women in three districts of Gujarat found that a staggering 29 per cent of the cases were classified as ‘Accidental/Unnatural Deaths’; that the conviction rate was 0.7 per cent (all convicted were Dalit men though almost a third of the accused were non-Dalit men); only 17 per cent of cases reached court (within two to six years); that all suspects were released on bail within days of their arrest.¹⁰⁰

However, more attention is being paid to violence against women. As in the case of under-reporting of rape in India, the real scale of the problem of domestic violence is difficult to assess for scholars, activists, and others. One consistent challenge is the effects of changing legal frameworks and new reporting categories. The provisions and detailed categories outlined in the *Protection of Women from Domestic Violence Act (2005)* are resulting in a rising number of cases of domestic abuse (rape, dowry related violence/death, honour killings, beatings, etc.) recorded by the NCRB each year.¹⁰¹ Those figures are likely to only be the tip of the iceberg and possibly reflect higher reporting of such crimes by victims to the police. A comprehensive study of the available medical and social science literature and

⁹⁶ Such as the Delta Meghwal case (2016); the Unnao case (2017); Kathua case (2018) and others.

⁹⁷ For a critical analysis of crime reporting in India – both official and media – see Rukmini, S. *Whole Numbers and Half Truths*. 2021, Westland Books. pp.1-27.

⁹⁸ **Bhattacharya, P. and Kundu, T. 2018.** [99% cases of sexual assaults go unreported, govt data shows](#), *Mint*, Apr. 24. [tinylio/AEdj]

⁹⁹ **Nagarathinam, N. 2015.** [Enabling Reporting of Rape in India – Policy Watch No. 15](#), *The Hindu Centre for Politics and Public Policy*, Chennai, Dec., 28. [tinylio/AEdk]

¹⁰⁰ **Navsarjan Trust. 2011.** *Gender Violence and Access to Justice for the Dalit Woman, Final Report*, Navsarjan: Ahmednagar.

¹⁰¹ **NCRB. n.d.** [Crime in India](#). [ncrb.gov.in/crime-in-india.html]

surveys of the incidence of domestic violence in India between 2004 and 2015 concluded that as many as four in ten Indian women report some form of domestic violence and abuse in their lifetime, a figure that corresponds with estimates by the WHO and other UN agencies.¹⁰² This may be a more accurate indication of the real incidence of domestic violence and untimely deaths that rarely make it to the public domain.

Ordinary policing

While the alarming prevalence of domestic violence in India underscores a significant societal challenge, it also highlights the crucial role of law enforcement in addressing such issues. The police force, particularly the constabulary, stands as the most visible arm of the state and often serves as the first point of contact for citizens facing threats to their safety and security. As in other interactions with the state, India's most marginalised citizens and communities place extremely low trust on the police.

As *The Status of Policing in India Report, 2018*, vividly brings out, a majority of Indians, especially those belonging to minorities and poorer communities, see police stations as sites of risk rather than places where one can seek protection or redress of an injustice. As police stations play a complex and multipronged role in the life of local communities, this lack of a larger public trust opens the space for private deals to overcome the overall trust deficit. Local business owners, realtors, political and religious leaders, other notables, and even individuals actively try to cultivate some form of relationship with the police. Local builders may present gifts to the commanding officers to keep themselves in good standing; police officers will be invited to major public functions at local schools and institutions; trustees of temples and mosques will consult with the police and request help with traffic regulation prior to major festivals; political leaders and the police enter into *quid pro quos*, and individual families may at times seek assistance from the police, or specific officers from their own community, for a range of dispute settlements or to resolve petty crimes.

All these dynamics are premised on fundamental uncertainty, necessitating an element of 'precaution'. The police play a role as a powerful yet whimsical force that needs to be

¹⁰² Kalokhe, A., et. al. 2017. [Domestic violence against women in India: A systematic review of a decade of quantitative studies](#), *Global Public Health*, 12:4, 498-513, DOI: [10.1080/17441692.2015.1119293]

informed, bribed, placated or in other ways reckoned with. A culture of impunity within the police force, in which punitive measures are a norm rather than an exception, means that the police tend to act with more force and limited accountability. This also means that their power over, and knowledge of, activities within their jurisdiction straddle both legitimate and less legitimate forms of activities. In 2018, a builder and self-made ‘social worker’ in a lower middle-class area in Aurangabad pithily summed up to me [TBH] what he saw as the necessary evil of the police. “It is always risky and costly when the police know about what we do. But it can be even more risky to cut them out.”¹⁰³

[Back to Table of Contents](#)

¹⁰³ This section summarises a co-author’s [TBH’s] insights from ethnographic fieldwork and participant observation in low income and minority neighbourhoods over many years in Mumbai in the 1990s and Aurangabad in 2012 and 2017-2018. See for example Chapter 5, “In the Muslim Mohalla’ in Thomas B. Hansen. 2012. *Wages of Violence. Naming and identity in postcolonial Bombay* (Princeton University Press). The material from Aurangabad will be published in *City of Enemies. Unsettled belonging, property, and neighborliness in middle India*. (Forthcoming).

V. THE PROBLEM OF VIOLENCE AND PUBLIC ORDER

‘SCENE III. A street.

CINNA THE POET: *Truly, my name is Cinna.*

First Citizen: Tear him to pieces; he's a conspirator.

CINNA THE POET: *I am Cinna the poet, I am Cinna the poet.*

Fourth Citizen: Tear him for his bad verses, tear him for his bad verses.

CINNA THE POET: *I am not Cinna the conspirator.*

Fourth Citizen: It is no matter, his name's Cinna; pluck but his name out of his heart, and turn him going.”

Shakespeare, W.

Julius Caesar, Act 3. Scene 3.

Postcolonial India, Pakistan, and Bangladesh inherited a rich repertoire of political actions and rituals from the nationalist movement. At the heart of this new political vernacular was the notion that ‘the people’ are always right and that every effective political action must stage this ‘people’ or a community in significant numbers to make a point. As democracy took hold in India, crowds – angry, mobilised, determined, or undisciplined – became an ever more powerful currency of political transaction. The bigger the crowd, the stronger the argument. In the first decades of the new Indian nation state, senior bureaucrats, against all their instincts, had to appear from time to time in front of angry crowds to apologise for the non-delivery or failure of some government service.¹⁰⁴

By public violence, we mean attacks on people and property in public places. This violence is generally meant to be demonstrative and to be witnessed and noticed by victims and their community, officials and law enforcement, media, and by other members of the attacker’s community and/or movement. Unlike private violence motivated by personal grievances, public violence is generally communicative, designed to make a political or cultural argument, and to generate an event.

¹⁰⁴ Chakrabarty, D. 2007. [“In the Name of Politics”: Democracy and the Power of the Multitude in India](http://read.dukeupress.edu/public-culture/article-abstract/19/1/35/31846/In-the-Name-of-Politics-Democracy-and-the-Power-of?redirectedFrom=PDF), *Public Culture*, (19), 35-57. [read.dukeupress.edu/public-culture/article-abstract/19/1/35/31846/In-the-Name-of-Politics-Democracy-and-the-Power-of?redirectedFrom=PDF]

The evidence of such violence usually comes from police reports, day-to-day reporting by journalists, and from direct observation, interviews, and reporting by scholars and fact finders. However, even the most basic facts, such as casualties during riots and the identity of victims, are highly charged objects of contestation by the interested parties, as well as by post-hoc interpretations by ‘fact finders’ and ‘historians’. Police figures tend to underreport casualties and damages in order to show law enforcement as in control rather than ineffective or partisan.¹⁰⁵ Three types of public violence can be outlined:

1. Performative violence

Across India today, protesters often describe incidents of public violence as the inevitable effect of pent-up anger and outrage.¹⁰⁶ Protesters in India often mirror the language of the law (such as article 295A of the IPC that banned ‘offences to religious sentiments’) when they blame the offenders for provoking such anger. Vigilante groups in Karnataka or Maharashtra blame the conduct of ‘immoral youth’ for the anger that wells up in themselves. This latter violence is ‘inevitable’, always caused by the perpetrator who took ‘offence’ because a ‘natural’ urge to ‘protect Hindu values’ is provoked and leads young vigilantes to beat up and molest middle class youth.¹⁰⁷ In a similar vein, the activists who attack contemporary art exhibition spaces, artists and writers blame the artists for the attacks. In their view, ‘immoral’ art and other expressions are ‘offensive’ to Indian culture and the activists claim that they cannot control their own pride and anger. They must seek and destroy these.¹⁰⁸

Such language of outrage and hurt pride has today become a dominant justification for public violence across South Asia. In Pakistan, allegations of blasphemous speech and conduct are at the centre of such outrage, as we shall see in the next section. In India, Hindu nationalism has played an exceptionally important role in this process. The Shiv Sena was a particularly radical heir to this politics of popular emotion of the linguistic

¹⁰⁵ **Wilkinson, S. 2004.** *Votes and Violence: Ethnic Competition and Ethnic Riots in India*, New York: Cambridge University Press. **Wilkinson, S. 2009.** “Data in Indian politics.” In *Companion to Indian Politics*, ed. PB Mehta, NG Jayal. New Delhi: Oxford University Press.

¹⁰⁶ **Blom, A and Jaoul, N. 2008.** [Introduction: The Moral and Affectual Dimension of Collective Action in South Asia](https://samaj.revues.org/1912), *South Asia Multidisciplinary Academic Journal (SAMAJ)*, no2. [samaj.revues.org/1912]

¹⁰⁷ **Cook, I. 2019.** ‘Immoral Times: Vigilantism in a South Indian City’. In *Majoritarian State. How Hindu nationalism is changing India*, Edited by Christophe Jaffrelot, Thomas Blom Hansen, Angana Chatterji. London: Hurst & Co. pp. 69-82.

¹⁰⁸ **Maheshwari, M. 2018.** *Art Attacks: Violence and Offence-taking in India*, Delhi: Oxford University Press.

movement in Maharashtra. The Shiv Sena developed fury (*raag*/Marathi) and anger (*gussa*/Hindi) into a public virtue, an increasingly legitimate style of politics whose forceful directness indexed its authenticity and association with a rougher plebeian world. Although the Shiv Sena has built its reputation around a hyper-masculine rhetoric and street presence, the party's women's wing also deploys threats of violence to discipline errant husbands and deter potential molesters in their strongholds.¹⁰⁹ This sentiment was directly relayed by the name of Shiv Sena's newspaper *Saamna* (confrontation) which has been pivotal in making a coarser style of colloquial Marathi acceptable and legitimate.

Since the 1980s, the Hindu nationalist movement increasingly adopted a style of forceful anger and hurt sentiments – such as the presumed historical humiliation of Hindus by the very existence of the Babri Masjid on the birthplace of Lord Ram – or the theme of a Hindu pride (*Hindu gaurav*), presumably resurgent after centuries of humiliation that was so prominent during the 2002 anti-Muslim pogrom in Gujarat.

In these public actions, even excessive and cruel violence is purified and made just and moral by the imputed injury to a community or a collective emotion that provoked it in the first place. Violence is presented as purely reactive, spontaneous, and therefore inherently just. It is '*natural n'yaya*' as a Shiv Sena activist in Mumbai put it to me [TBH] many years ago, something like a force that is inherent in a brave and self-respecting man: "If someone slaps me, my hands come out and I slap him. It is natural *n'yaya* (justice)." It is as if the violent act has autonomous force, pure reaction without culpability or moral responsibility. In this light, the contemporary *gauraksha* ("cow protection") patrols across north-western India and their lynching of mostly Muslim men suspected of transporting beef in the past years appear as extensions of an existing grammar of action whereby righteous anger – especially that of the putative majority community - is already justified and legitimate.¹¹⁰

2. Punitive Violence

Incidents of communal violence, especially between Hindus and Muslims, have attracted considerable political and scholarly attention for many decades. From a low in the 1950s,

¹⁰⁹ Bedi, T. 2016. *The Dashing Ladies of Shiv Sena, Political Matronage in Urbanizing India*, Albany: SUNY Press.

¹¹⁰ Hansen, T.B. 2021. *op. cit.*

incidents of communal violence have steadily risen to major peaks in the 1980s and 1990s where the death toll in such incidents exceeded a thousand for several years.¹¹¹ The character of the violence has also changed from being ‘inter communal’ conflicts with organised violence perpetrated by both sides, to pogroms, attacks, and lynching, perpetrated by Hindus against Muslims. Since the 1980s, most of these pogroms have been organised and orchestrated by groups and individuals affiliated with the RSS and like-minded organisations who have also decisively changed the public perception of communal violence and minorities in a more Hindu-majoritarian direction.

Since the 1970s, another form of public inter-community violence has become ever more debated and noticed in media and among social activists in India: attacks on Dalits and other lower castes, or tribal groups, by members of the upper and middle castes, often as punishment for what is perceived as assertive and ‘arrogant’ behaviour in public spaces, temples, or in electoral politics. It is safe to assume that acts of violence and punishment of lower caste communities have occurred for a very long time indeed and that such violence, whether individualised or collective, is endemic to the caste system as such.¹¹² However, it is only when such acts of violence are reported, and registered as offences, that any record can be established, and that the magnitude of the phenomenon can be assessed. The first legal framework that protects the rights of Dalits and other marginalised communities against abuses, violence, and attacks was the Untouchability (Offences) Act of 1955. This was later strengthened and made more effective as the Protection of Civil Rights Act 1976 (PCRA or PCR Act). This Act made it punishable to deny admission to temples, public institutions, water tanks, restaurants, etc. to any community and it made it unlawful to demand or compel members of Dalit communities to perform tasks such as scavenging, removal of carcasses. The rate of reporting and registration of such offences

¹¹¹ The most comprehensive compilation of data on communal riots is the Varshney Wilkinson Dataset (2006) based on data drawn from newspapers reporting between 1950 and 1995. **Varshney, A and Wilkinson, S. 2006.** [Varshney-Wilkinson Dataset on Hindu-Muslim Violence in India, 1950-1995, Version 2.](#) Inter-university Consortium for Political and Social Research [distributor], Feb. 17. [doi.org/10.3886/ICPSR04342.v1] See also **Graf and Gallonier’s (2013)** [Hindu-Muslim Communal Riots in India \(1947-1986\)](#) for a contextualised account of major riots and pogroms between 1947 to 1986. [tinyt.io/AEdl]

¹¹² This was not the first time that the question of the role of caste in public life has been adjudicated by the judiciary. See Gilmartin’s interesting account of the attempts to keep the ‘passions’ and ‘irrationalities’ of caste out of the electoral process. Gilmartin, D. 2010. “Rule of Law, Rule of Life: Caste, Democracy, and the Courts in India”, *The American Historical Review*, Volume 115, Issue 2, Apr. 2010, pp. 406–427.

was low and only expanding slowly.¹¹³ Dalit communities were reluctant to report cases out of fear of retribution, and police officers were either reluctant or unwilling to issue an FIR in cases that were routinely dismissed as mere ‘quarrels.’¹¹⁴ The scale of these offences was only beginning to be reported by the NCRB in 1995, when a mere 1,528 crimes were reported under this law. This number fell progressively to as low as 62 reported in 2013.¹¹⁵ A major explanation for this is to be found in the steep rise in reported crimes under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (PoA) passed during V.P. Singh’s tenure as Prime Minister in 1989. The PoA Act defines atrocities broadly in 18 categories ranging from “dumping waste matter on land”, “intimidation during voting” to “outrage of modesty”, “sexual exploitation” and “destruction of property”.

From the early 1990s, the police began to collect data on “Crimes against weaker sections ST/SC” although the exact classification criteria are unclear. Some of these reported crimes (33,000 in 1995; 47,000 in 2014; 43,000 in 2018) fall under the IPC while an increasing number are reported under the PoA Act to the point that the vast majority of crimes reported against SC/ST groups in 2018 were recorded as a PoA offence.¹¹⁶ Well over half of these offences were directed against women under the categories “rape”, “kidnapping and abduction”, and “assault on woman”.¹¹⁷ However, the Act has been slow in producing justice for Dalits and ST communities. The processing of these cases is painfully slow, the pendency rate of PoA offences is above 88 per cent, while the conviction rate hovers around 22 per cent of concluded cases (relatively high compared to most other categories of crime). However, Dalit activists point out that the conviction rate must be understood in the context of the total number of cases brought forward over many years, and that the real conviction rate is between two and three per cent.¹¹⁸

¹¹³ For a fulsome account of legal regulation of caste relationships in India since the 19th century, and the slow encoding of legal protections of Dalits and other marginalised groups, see **Mitta, M. 2023.** *Caste Pride. Battles for Equality in Hindu India*, Chennai: Westland Press.

¹¹⁴ **Saumya, U. 2017.** “Atrocities and Discrimination Against Dalits. A Critical Examination of the Response of the Law”, *Caste in Modern India, Atrocities against Dalits*. Edited by Ramesh Jare and Sampat Kale. Delhi: Studium Press. pp. 67-86.

¹¹⁵ **Thorat, S. 2017.** “Why Caste Atrocities Still Persist and How to Prevent Them”, *Caste in Modern India. Atrocities against Dalits*. Edited by Ramesh Jare and Sampat Kale. Delhi: Studium Press. pp.1-33.

¹¹⁶ **National Dalit Movement for Justice. 2020.** *Quest for Justice. Implementation of Scheduled caste and Scheduled Tribes (Prevention of Atrocities) Act 1989 and Rules 1995.* A Status Report 2009-2018. Delhi: NDMJ

¹¹⁷ **ibid.** p. 53

¹¹⁸ **ibid.** p. 95

The PoA offence data of the past decades certainly seem to suggest that they are strongly shaped by the strength and visibility of Dalit political organising and activism in several ways. First, the total number of offences is high in States with strong Dalit movements (such as Maharashtra, Bihar, U.P., and Tamil Nadu) but also high in States known for deep social hierarchies and dominated by conservative Hindu values (Rajasthan, Madhya Pradesh). It is correspondingly low in States without a pronounced presence of Dalit activism. States with strong Dalit movements also see a higher conviction rate at the “special courts” mandated under the PoA Act.¹¹⁹

Second, the enactment of the PoA Act made the very act of reporting offences into a rallying point for Dalit communities. The fact that offences under the PoA Act now seem to account for almost all reported caste-based offences in the national crime statistics seems to bear out this dynamic. Considering that dominant caste groups are over-represented in the Indian police forces, and that such communities generally are resistant to reporting of offences under the PoA Act, the reported figures should be read as evidence of such efforts rather than a reflection of the actual incidence of violence against Dalit and tribal communities. Activists and scholars generally concur that the actual scale of caste-based violence is vastly underreported.¹²⁰

Thirdly, caste-based violence against Dalits also seems to be linked to the economic position of upper caste communities relative to that of SC/ST communities. Recent research that correlates nation-wide crimes against SC/ST communities (both IPC and PoA) with evidence of changing consumption patterns suggests that, “a widening of the gap in expenditures between the lower and upper castes is associated with a decrease in crimes committed by the upper castes against the SC STs.”¹²¹ Conversely, the same study found that a narrowing economic gap between upper and lower caste communities seem to drive an increase in violent crime against SC/ST communities. Strikingly, the author documents that, “... it is the non-body crimes – crimes that seek to deprive the victim of

¹¹⁹ **National Dalit Movement for Justice. 2020.**, op. cit. p. 56

¹²⁰ **Shah, G., et al. 2006.** *Untouchability in Rural India*, Delhi: Sage Publications. See also *Understanding Untouchability. A comprehensive study of practices and conditions in 1589 villages.* Navsarjan and the Robert F. Kennedy Center for Justice and Human Rights 2010.

¹²¹ **Smriti, S. 2015.** “Caste-based crimes and economic status: Evidence from India”, *Journal of Comparative Economics* (43), 204-226.

his property symbolic of his material progress – that are affected by the changes in relative standards of living.”¹²²

Most research on practices of untouchability, and instances of violence against individuals and groups belonging to SC/ST communities, demonstrate that violence increasingly is ignited by perceived ‘status crimes’: when members of SC or ST communities act in ways that are seen as the traditional preserve of upper and dominant castes (wearing expensive clothes, riding on a horse, driving a motor cycle or car through a village) or when owning prestigious assets and consumer goods – new houses, tiled bathrooms, flat screen televisions, expensive smart phones.¹²³ The latter objects are often the object of theft or destruction by the upper castes during attacks and conflagrations.

3. Everyday violence

The forms of public violence discussed so far are driven and motivated by political demands, by majoritarian sentiments, or by caste sentiments. However, as evidence from India indicates, the bulk of public disturbances causing death and injury, destruction of property, and interruption of traffic and normal life, are in fact small scale and dispersed. These protests and disturbances are mostly local, and they often involve local political and social activists who stage or encourage attacks on officials, public property, or a neighbouring community in order to demonstrate their credentials as defenders of their community. Slum leaders and social workers connected to political parties tend to be the most effective in providing services to their communities because they tap into larger networks of trust and connection with people of influence.¹²⁴

In the published statistics from the NCRB in 2016, for instance, there were around 75,000 registered breaches of public order. As many as 60,000 of those were registered as ‘other incidents’. The numbers of individuals booked and charged (and then released) in connection with such ‘everyday’ violence runs into several hundreds of thousands each

¹²² *ibid.* p. 220.

¹²³ Navsarjan 2010; Barman, R. K. 2010. “[Caste Violence in India: Reflections on Violence against the Dalits of Contemporary India](#)”, *Contemporary Voice of Dalit*, Jul. 1, (3): 193-212. For a detailed study of the centrality of the PoA Act for Dalit communities see Fuchs, S. 2024. *Fragile Hope. Seeking Justice for Hate Crimes in India*, Stanford University Press. (available June 2024)

¹²⁴ **Auerbach, Adam.** 2018. *Demanding Development. The Politics of Public Goods Provisions in India’s Slums*, Cambridge University Press.

year in India alone. These acts are often recorded in police records as mere “public vandalism” rather than political events, and not always classified as a disturbance of public order, let alone riots.

Chapter 8 of the IPC, “Offences against Public Tranquillity”, consists of 18 sections ranging from the milder “unlawful assembly” (section 141) to “rioting with a deadly weapon” (section 148) all the way to sections 153A (promoting enmity between groups) and 153B (assertions prejudicial to national integration), the latter carrying more severe punishments, especially if they involve ‘places of worship or religious ceremonies’.

Official crime statistics only began to be aggregated in India in 1986 with the formation of the NCRB. Tables going back to 1960 have been made available online since 2009. The aggregated number of reported offenses against public order (all 18 sections of Chapter 8 of the IPC) stood at less than 30,000 across India in 1960s. This number climbed to above 90,000 in 1980, and above 95,000/year in the early 1990s. After a dip during the early 2000s to under 60,000 per year, the number has been rising since 2012 reaching 73,000 in 2016.¹²⁵ In 2018, the total number of offences rose to over 82,000, with 72,000 reported riot incidents.¹²⁶ In the last decade, the NCRB has started detailing the specific category of riot – as “caste riot” (2,500 in 2016; 1550 in 2018), “communal” (1200 in 2016; 1000 in 2018), “student”, or “political” (1800 in 2016; 2000 in 2018). The rest of these disturbances – fluctuating between 60,000 and 67,000 in recent years - fall in the category of “other riots”, defined as “Civil Unrest, Community Dispute, Attack on Police, Dispute over Water supply”.^{127,128}

The 2018 figures specify 15,000 riots as ‘property related’, and 5,000 caused by ‘Rivalry’. But neither the wider public, nor social scientists, have any clear idea about what these tens

¹²⁵ **Ministry of Home Affairs, 2017.** *Crime In India 2016: Statistics*. National Crime Records Bureau, Government of India. [tinyLio/AEfe] For an analysis of the correlation between riots and other public disturbances, and the rate and scale of public service delivery, see **Justino, P. 2015.** *Civil Unrest and Government Transfers in India*. IDS Evidence Reports (108), Sussex: IDS, Feb. 01. [tinyLio/AEdn]

¹²⁶ **Ministry of Home Affairs, 2019.** *Crime in India - 2018*. Table 1A.4, pp. 32-40. National Crime Records Bureau. [tinyLio/AEdo]

¹²⁷ **Crime Statistics, 2016**, op. cit. Table 16 B.1

¹²⁸ **Hansen, T.B. 2021.** op. cit. pp. 93-96.

of thousands of registered incidents are about, and how they get classified. However, two inferences can be made with a high degree of certainty.

First, the constant possibility of transfer or other administrative punishments make police officers determined to classify as many incidents as possible in this category as they seem less serious and politically impactful than those specified as “caste” or “communal” incidents. We can also assume that for political activists it is advantageous to have an incident registered as a public disturbance because it is a relatively light and bailable offense, low risk and yet high profile (compared to an individual act of violence), something that may get one noted in the local newspaper and media. It can be an effective way of demonstrating that a group, or community, is willing to publicly demonstrate its anger, risk arrest, and make a point.¹²⁹

Secondly, the provisions of Chapter 8 of the IPC structure the very forms that political and social protest and expression take. The IPC defines the perceived injury of religious sentiments of a group/community as a criminal offence (295A) and it bans the incitement of enmity among groups and communities (153A and B). Since such collective offence is banned, it becomes imperative that the effect of the offence be demonstrated, not as individual sentiments but – mirroring the spirit of the law itself – as a collective sentiment that can be made to threaten public order. Similarly, being booked under one of the Sections of Chapter 8 of the IPC becomes in itself a form of proof of a collective sentiment and anger, and indeed a measure of success – as proof that something has happened, *kuchh to huaa hain*.¹³⁰

Why has public violence emerged as such a common expression of anger, demands and punishment across the postcolonial societies of South Asia? The typical answer from officials, police officers and many commentators is that it has to do with political orchestration and instrumental interest, that is, that public disorder is staged for short term political gain. While we have discussed examples that support this interpretation, another explanation springs to mind: violent crowd action – destroying public property, beating up,

¹²⁹ The 2018 figures have added two new categories that probably overlap substantially: ‘Rioting while in Andolan/morcha’: 4000; and ‘Rioting/Attacks on police personnel and government servants’: 3,500.

¹³⁰ Hansen, T.B. 2021. op. cit. pp. 94-98

attacking and punishing opponents, or staging large protests that threaten to turn violent – are rarely prosecuted with much vigour, if at all. It is a relatively risk-free undertaking. Countless reports and inquiries since the 1960s have depicted incidence of crowd violence as symptoms of underlying social or communal tensions, and rarely as concrete action perpetrated by identifiable actors. After riots, police and public figures have for decades attributed the destruction and the violence to unnamed, and unidentified ‘criminal elements’.¹³¹ On closer inspection, the National Crime Statistics in India confirm this lack of punishment of rioters. Each year, thousands of cases of riots are classified as ‘communal’, ‘caste’ or ‘sectarian’. However, the number of individuals charged under IPC Sections 153A and 153B – that describe the “incitement of enmity between groups” - fluctuate between as little as 400 and 600/year in 2014-16. These are, we should keep in mind, often overlapping charges. Probing a bit deeper in these numbers for 2016 one finds, for example, that only 13 cases led to conviction in 2016.¹³²

The Indian police claim a 16 per cent conviction rate in cases related to disturbance of public order (2016). Around 300,000 people are arrested in most years in about 30,000 cases/year. In most years the ‘pendency rate’ is around 95 per cent - mostly comprising cases carried over from previous years.¹³³ This tells us that only a few per cent of those charged with disturbing public order are ever convicted. Most of those charged (more than 2 million individuals reported in 2014) - and we cannot assume their guilt - are out on bail for years, if not decades.

[Back to Table of Contents](#)

¹³¹ The judicial aftermath of the pogrom in Gujarat in 2002 was one of the first high-profile instances of individuals being named, prosecuted and convicted of crimes committed in the context of crowd violence. See **Sonnenberg, S. 2014.** *When Justice becomes the Victim. The Quest for Justice after the 2002 violence in Gujarat*, Stanford Law School. [tiny.io/AEfm]

¹³² **Crime in India 2016.** op. cit. Table 18A.1

¹³³ **Hansen, T.B. 2021.** op. cit.

VI. THE ROLE OF COURTS

“Speedy justice is of the essence of an organised society and it is in the interest of both the State and the citizen that disputes which go to the law courts for adjudication are decided as early as possible. Justice delayed is, in most cases, justice denied.”

Law Commission of India, Seventy-ninth Report. 1979. p.2

The primary mandate of courts is to safeguard citizens' freedom and liberty, a responsibility enshrined in the Indian Constitution under Articles 20 (Protection in respect of conviction of offences),¹³⁴ 21 (Right to life),¹³⁵ and 22 (Protection against arrest and detention in certain cases).¹³⁶ These articles collectively underscore the courts' duty to protect personal liberty. Similarly, the golden triangle of fundamental rights in India, rooted in the triad of Articles 14,¹³⁷ 19,¹³⁸ and 21,¹³⁹ demands that no person be deprived of their liberty without legal sanction. This principle acquires heightened significance in cases involving custodial torture or breaches of fundamental rights, where the perpetrators are often state actors themselves. The Supreme Court of India, through numerous judgments, has detailed the various dimensions of these constitutional rights.¹⁴⁰ In the face of custodial torture, the judiciary's role is pivotal, serving as a shield against the abuse of power by the state.

This Chapter will delve into three critical aspects of the judiciary's role. First, it will analyse the constitutional and statutory provisions that obligate courts to prevent and penalise custodial torture. Next, it will highlight the crucial role of magistrate courts in deterring such practices. Lastly, it will scrutinise the inconsistency of Constitutional courts in

¹³⁴ indiankanoon.org. [Central Government Act: Article 20 in The Constitution of India 1949](http://indiankanoon.org/doc/655638/).

[indiankanoon.org/doc/655638/]

¹³⁵ indiankanoon.org. [Central Government Act: Article 21 in The Constitution of India 1949](http://indiankanoon.org/doc/1199182/).

[indiankanoon.org/doc/1199182/]

¹³⁶ indiankanoon.org. [Central Government Act: Article 22 in The Constitution of India 1949](http://indiankanoon.org/doc/581566/).

[indiankanoon.org/doc/581566/]

¹³⁷ indiankanoon.org. [Central Government Act: Article 14 in The Constitution of India 1949](http://indiankanoon.org/doc/367586/).

[indiankanoon.org/doc/367586/]

¹³⁸ indiankanoon.org. [Central Government Act: Article 19 in The Constitution of India 1949](http://indiankanoon.org/doc/1218090/).

[indiankanoon.org/doc/1218090/]

¹³⁹ indiankanoon.org. [Central Government Act: Article 21 in The Constitution of India 1949](http://indiankanoon.org/doc/1199182/).

[indiankanoon.org/doc/1199182/]

¹⁴⁰ *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225, *Maneka Gandhi v. Union of India* AIR 1978 SC 597, *Indra Sambhney and Ors. v. Union of India* AIR 1993 SC 477.

addressing custodial torture, examining how this affects the common citizen's trust in the rule of law.

1. Constitutional and Statutory provisions

The importance of safeguarding individuals' rights in police custody has been emphatically underscored in Constitutional and statutory provisions. In *D.K. Basu v. State of West Bengal*, the Supreme Court interpreted the term “life or personal liberty” in Article 21 of the Constitution as encompassing the right to live with human dignity, thereby including a guarantee against torture and assault by state functionaries.¹⁴¹ Similarly, in *Nilabati Behera v. State of Orissa*, it was emphasised that prisoners and detainees retain their fundamental rights under Article 21, subject only to lawful restrictions.¹⁴² Furthermore, Article 22 of the Indian Constitution fortifies these protections by mandating that no person shall be arrested without being informed of the grounds for arrest. It also requires that anyone arrested must be presented before a magistrate within 24 hours.

Complementing these constitutional safeguards, the CrPC lays down detailed provisions governing arrests. Chapter V of the CrPC outlines the powers and limits of police during an arrest. For instance, Section 49¹⁴³ restricts the use of force by police, allowing only the minimum necessary to prevent escape. Section 50¹⁴⁴ mandates that a police officer arresting a person without a warrant must clearly inform them of the arrest's grounds and their right to bail, particularly in bailable offences. Section 50A¹⁴⁵ reinforces this by entitling the arrested individual to inform someone of their choice about the arrest and location of detention, ensuring they have adequate support during investigation and trial.

¹⁴¹ (1997) 1 SCC 416. [indiankanoon.org/search/?formInput=1997%201%20scc%20416]

¹⁴² [indiakanoon.org. Supreme Court of India: Smt. Nilabati Behera Alias Lalit ... vs State of Orissa and Ors on 24 Mar. 1993](#), (1993) 2 SCC 746. [indiankanoon.org/doc/1628260/]

¹⁴³ [Central Government Act: Section 49 in The Code of Criminal Procedure, 1973](#). [indiankanoon.org/doc/129574/]

¹⁴⁴ [Central Government Act: Section 50 in The Code of Criminal Procedure, 1973](#). [indiankanoon.org/doc/1848903/]

¹⁴⁵ [latestlaws.com. CrPC Section 50A. Obligation of person making arrest to inform about the arrest, etc. to a nominated person](#). [tinyurl.com/yc28k74s]

Sections 53,¹⁴⁶ 53A,¹⁴⁷ and 54¹⁴⁸ provide procedural safeguards regarding the medical examination of an arrested person, while Sections 56¹⁴⁹ and 57,¹⁵⁰ echoing Article 22(2) of the Constitution, require that an arrested individual be produced before a magistrate within 24 hours to prevent unnecessary detention. In cases where investigations extend beyond 24 hours, Section 167¹⁵¹ authorizes magisterial remand of the arrested person.

Additionally, as noted by Sarfaraz Nawaz, general provisions of the IPC which apply in case of any crime also apply to crimes committed on detainees who are under arrest.¹⁵² However, there are also certain provisions which deal specifically with custodial crimes in the IPC, such as Section 220 (punishment for an officer who has legal authority to confine a person but who corruptly or maliciously keeps a person in confinement),¹⁵³ Section 330 (punishment for voluntarily causing hurt to extort confession, or to compel restoration of property),¹⁵⁴ Section 331 (punishment for voluntarily causing grievous hurt to extort confession, or to compel restoration of property),¹⁵⁵ Section 348 (punishment for wrongful confinement to extort confession, or compel restoration of property),¹⁵⁶ and Section 376(2) (punishment for custodial rape).^{157,158}

¹⁴⁶ indiankanoon.org. [Central Government Act: Section 53 in The Code of Criminal Procedure, 1973.](#)
[indiankanoon.org/doc/633996/]

¹⁴⁷ latestlaws.com. [CrPC Section 53A. Examination of person accused of rape by medical practitioner.](#)
[tinyt.io/AEdq]

¹⁴⁸ indiankanoon.org. [Central Government Act: Section 54 in The Code of Criminal Procedure, 1973.](#)
[indiankanoon.org/doc/441720/]

¹⁴⁹ indiankanoon.org. [Central Government Act: Section 56 in The Code of Criminal Procedure, 1973.](#)
[indiankanoon.org/doc/1670784/]

¹⁵⁰ indiankanoon.org. [Central Government Act: Section 57 in The Code of Criminal Procedure, 1973.](#)
[indiankanoon.org/doc/571025/]

¹⁵¹ indiankanoon.org. [Central Government Act: Section 167 in The Code of Criminal Procedure, 1973.](#)
[indiankanoon.org/doc/1687975/]

¹⁵² Nawaz, S. n.d. [Custodial Violence and the Role of Magistrate](#), *studocu.com*

¹⁵³ indiankanoon.org. [Central Government Act: Section 220 in The Indian Penal Code, 1860.](#)
[indiankanoon.org/doc/218156/]

¹⁵⁴ indiankanoon.org. [Central Government Act: Section 330 in The Indian Penal Code, 1860.](#)
[indiankanoon.org/doc/2858386/]

¹⁵⁵ indiankanoon.org. [Central Government Act: Section 331 in The Indian Penal Code, 1860.](#)
[indiankanoon.org/doc/1135572/]

¹⁵⁶ indiankanoon.org. [Central Government Act: Section 348 in The Indian Penal Code, 1860.](#)
[tinyt.io/AEg6].

¹⁵⁷ indiankanoon.org. [Central Government Act: Section 376\(2\) in The Indian Penal Code, 1860.](#)
[indiankanoon.org/doc/1677485/]

¹⁵⁸ *ibid.*

These legal regulations are, in principle, essential for safeguarding individuals against abuse in custody and upholding the rule of law within India's judicial system. Nonetheless, as explored further below, there has been inconsistency in the application of these laws by magistrates and higher courts.

2. The crucial role of Magistrates

The judiciary, particularly at the level of ordinary magistrates, plays a critical role in curbing custodial violence and deaths. While higher courts often rely on directives and guidelines, their effectiveness is limited without ground-level implementation. Magistrates, as the first judicial point of contact for arrested individuals, are pivotal in upholding the constitutional rule of law.¹⁵⁹

However, incidents like the Thoothukudi case in Tamil Nadu, where a father and son, P. Jayaraj, and J. Bennix, tragically succumbed to injuries sustained in police custody, highlight glaring lapses. The father-son duo was reportedly taken into police custody on June 19, 2020, for violating lockdown rules by keeping their mobile phone shop open past permitted hours. According to reports and allegations, both were subjected to severe physical abuse while in police custody. This alleged mistreatment led to serious injuries, and both father and son were hospitalised. Ultimately, they succumbed to their injuries within a day of each other - Bennix on June 22 and Jayaraj on June 23, 2020.¹⁶⁰

Earlier on June 20, following their arrest, Jayaraj and Bennix were presented before Sathankulam Magistrate D. Saravanan. Despite the apparent injuries on both individuals, Magistrate Saravanan did not conduct the necessary physical examination as mandated by law. He gave the remand orders without physically examining the accused.¹⁶¹ In this act, Magistrate Saravanan demonstrated a lack of due diligence and seemingly aligned himself with the police without adhering to the required judicial procedures. As per Abhinav Sikri, this kind of laxity is not an exception but the norm in remanding persons to judicial and police custody.¹⁶² Another common practice observed is the issuance of show cause

¹⁵⁹ Sekhri, A. 2020. [Police reform and the crucial judicial actor](https://www.thehindu.com/news/national/police-reform-and-the-crucial-judicial-actor), *The Hindu*, Jul. 02. [tinyurl.com/jkv89tvu]

¹⁶⁰ Kaveri, M. 2020. [Justice for Jayaraj and Bennix: Timeline of two shocking custodial deaths in TN](https://www.thenewsminute.com/article/justice-for-jayaraj-and-bennix-timeline-of-two-shocking-custodial-deaths-in-tn), *The News Minute*, Jun. 26. [tinyurl.com/2ctes3cm]

¹⁶¹ Kaveri, M. 2020. [Demand grows stronger to probe role of Sathankulam magistrate in custodial deaths](https://www.thenewsminute.com/article/demand-grows-stronger-to-probe-role-of-sathankulam-magistrate-in-custodial-deaths), *The News Minute*, Jun. 26. [tinyl.io/AEdq]

¹⁶² Sekhri, A. 2020. [Police reform and the crucial judicial actor](https://www.thehindu.com/news/national/police-reform-and-the-crucial-judicial-actor), *The Hindu*, Jul. 02. [tinyl.io/AEeB]

notices by magistrates when an arrested person alleges custodial torture.¹⁶³ However, this raises questions about its legal basis. Show cause notices are typically used in administrative or employment contexts for disciplinary actions, not in judicial proceedings. The CrPC, which guides magisterial actions, does not specifically include the issuance of such notices for police officers accused of violent conduct. The Supreme Court's judgment in *Chandra Deo Singh v. Prokash Chandra Bose and Anr*¹⁶⁴ further clarifies that a prospective accused has no right to participate in such proceedings at this stage. Therefore, the practice of issuing show cause notices in these situations is not only misplaced but also legally unsound.¹⁶⁵

To address these challenges, a multifaceted approach is necessary. Firstly, comprehensive training for magistrates on the legal and ethical aspects of custodial management is crucial. Magistrates need to be acutely aware of the signs of torture and abuse and the importance of adhering to legal procedures. Secondly, systemic reforms to reduce caseloads and streamline processes are imperative. This could involve appointing more magistrates, leveraging technology to manage cases more efficiently, and improving judicial infrastructure. Thirdly, there must be a strict adherence to legal procedures, with accountability mechanisms in place to ensure that lapses like those in the Thoothukudi case are not repeated.

The Thoothukudi incident serves as a stark reminder of the consequences of judicial oversight failures. It underscores the urgent need for reform at the magistrate level to ensure that the constitutional rule of law is upheld, and the rights of the most vulnerable are protected. Finally, Constitutional courts, while not directly responsible, play a role in this situation and have the potential to enact meaningful change.

3. Inconsistency of Constitutional Courts

In a liberal democracy like India, the judiciary plays a crucial role in safeguarding the rights of marginalised and victimised individuals.¹⁶⁶ We have highlighted how police brutality in India is exacerbated by bureaucratic stagnation, unchecked police authority, and systemic

¹⁶³ Nawaz, S. n.d. op. cit.

¹⁶⁴ AIR 1963 SC 1430.

¹⁶⁵ Nawaz, S. n.d. op. cit.

¹⁶⁶ Holladay, Z. 2012. [Public Interest Litigation in India as a Paradigm for Developing Nations](#), *Indiana Journal of Global Legal Studies*, 19(2), 555–573. [doi.org/10.2979/indjglolegstu.19.2.555]

issues. Given these challenges, the role of India's Constitutional Courts, including both the High Courts and the Supreme Court, becomes increasingly critical. Their proactive intervention is not only necessary for providing justice to the victims of police brutality but also for maintaining the foundational principles of a liberal democracy where the rule of law prevails.

In landmark cases such as *D.K. Basu* and *Nilabati Bebra*, the Supreme Court of India has brought to the forefront the critical issue of custodial torture, emphasising how it breaches constitutional rights. These cases have been pivotal in highlighting the severe implications of custodial abuse on human rights and dignity. The courts, recognising the gravity of this issue, have even established comprehensive guidelines to better structure the process of custody, aiming to safeguard individuals' rights while in police detention. These guidelines are integral in setting a standard for lawful and humane custodial practices.

However, despite these progressive steps, two significant problems persist in the judiciary's approach. The first issue is the reluctance to hold police officers accountable for acts of violence and deaths in custody. This hesitation undermines the principles of justice and accountability, allowing violations to occur without adequate redress. The second problem lies in the inconsistency of the judiciary in exercising its power to bring about meaningful change. On numerous occasions, the courts have cited the doctrine of separation of powers as a reason to shy away from enforcing substantial constitutional reforms. This contrasts starkly with instances where they issue directives or statements that, while seemingly authoritative, lack enforceable consequences if disregarded. This inconsistency not only undermines the authority of the judiciary but also leads to a lack of uniformity in addressing and rectifying issues of custodial abuse and police accountability.

The challenge of holding police officers accountable in India is starkly highlighted by the statistics of custodial deaths over the past two decades. Official records reveal that there were 1,888 deaths in custody during this period. Notably, police officers were involved in 893 of these cases. Despite this, charge-sheets were filed against police personnel in only 358 cases, leading to a mere 26 convictions. Further analysis of this data uncovers a troubling aspect: out of the 1,888 custodial deaths, 1,185 occurred among individuals who had not been placed on remand, while 703 were in remand custody. This indicates that

over 60 per cent of these deaths involved individuals who had not been presented in court prior to their death.¹⁶⁷

More recent figures from the National Human Rights Commission are equally concerning. In the fiscal year 2021-22 alone, there were 2,150 deaths in judicial custody and 155 in police custody. Yet, in the face of these alarming numbers, the response has been inadequate. The Union Minister of State for Home Affairs reported that in the past five years, disciplinary actions were initiated in only 21 instances of custodial deaths.¹⁶⁸

Retired Madras High Court Justice K. Chandru has pointed out that the *D.K. Basu* guidelines are often disregarded by both the police and magistrates.¹⁶⁹ The relationship dynamics between local magistrates and the police contribute to this issue. Magistrates, who frequently work in close co-operation with the police, particularly in smaller places may, be reluctant to confront them fearing potential conflicts. The intricacies of the law of evidence and criminal procedure further complicate the situation. For instance, an illegal action by a police officer does not invalidate a trial in India. This legal framework is particularly evident in cases of custodial torture, where Section 27 of the Evidence Act often comes into play. The provision permitting the use of evidence obtained from an illegal confession is often used to produce murder weapons or other incriminating objects claiming it was discovered due to an accused's coerced confession.¹⁷⁰ Additionally, even in the rare instances where police officers are brought to trial for their actions, their conviction is subject to the norms of regular criminal law. The typical outcome apart from possible criminal sanction is a court order to pay compensation. This approach was notably applied in the *Nilabati Bebra* case. However, this compensation is usually paid by the state and not individual officers, which fails to serve as an effective deterrent against police misconduct.

¹⁶⁷ **India Today Web Desk. 2021.** [1,888 custodial deaths in India over last 20 years but only 26 cops convicted: Official data](#), Nov.17. [tinyurl.com/2p943uk9]

¹⁶⁸ **Press Trust of India. 2022.** [Over 2,150 cases of deaths in judicial custody in 2021-22: Govt](#), India Today, Mar. 23. [tinyurl.com/ynakrm6v]

¹⁶⁹ **Loganathan, S. 2023.** [Hostile witness, doctored evidence, erring judges: Justice K. Chandru on why police are not convicted for custodial violence | Data Point podcast](#), *The Hindu*, Apr. 13. [tinyurl.com/7smd6ukd]

¹⁷⁰ **ibid.**

In his analysis of judicial inaction and inconsistency, Rohin Bhatt highlights a troubling trend: the Supreme Court's inertia is eroding faith in the Constitution.¹⁷¹ Article 32 of the Indian Constitution empowers the Supreme Court to issue writs against the state in instances where fundamental rights are breached. However, the Court's failure to act is increasingly rendering these rights, and consequently, belief in the Constitution, meaningless. The Indian constitutional system is founded on a framework of checks and balances, where each branch of government is expected to monitor and balance the others, ensuring a distribution of power. When one branch neglects its duties, it disrupts this delicate equilibrium, leading to a constitutional crisis. This is starkly contrasted with the Supreme Court's previous proactive stance, exemplified by its formulation of the D.K. Basu Guidelines and the awarding of compensation in certain cases. The current trend, however, shows a hesitance to act, most notably seen in the reluctance to release political prisoners on bail despite weak legal grounds, while simultaneously ignoring overt calls for genocide and ethnic cleansing.¹⁷² The Supreme Court's silence in these matters is alarmingly pronounced.

Another striking example of judicial evasion emerged when the Supreme Court declined to direct the government to enact a standalone law on custodial torture, aligning with the UN Convention against Torture.¹⁷³ The Court maintained that laws are enacted following thorough debate and deliberation, and once a consensus is achieved. It was argued that any direction from the Court instructing Parliament to draft or amend a law in a specific way would infringe upon the doctrine of separation of powers, a fundamental element of the Constitution. The Court diverged from the petitioners' view that it possessed the authority, as part of its judicial review role, to compel the Centre to formulate laws in accordance with the UN Convention.¹⁷⁴ This stance contrasts sharply with instances where the Supreme Court effectively created laws in their absence. A notable example is the *Vishaka v. State of Rajasthan*¹⁷⁵ case, where the Court established comprehensive guidelines for

¹⁷¹ **Bhatt, R. 2022.** [How Judicial Inaction is Killing Constitutional Faith with a Thousand Cuts](https://www.tinyurl.com/2hctfw8s), *The India Forum*, May 5. [tinyurl.com/2hctfw8s]

¹⁶² **ibid.**

¹⁷³ **Supreme Court of India. 2019.** [Dr. Ashwani Kumar v. Union of India and Another](https://www.tinyurl.com/yafvfayn), Sep. 05. [tinyurl.com/yafvfayn]

¹⁷⁴ **The Wire. 2019.** [SC Refuses to Direct Parliament To Enact Stand-Alone Law Against Custodial Torture](https://www.tinyurl.com/3wz4y25y), Sep.05. [tinyurl.com/3wz4y25y]

¹⁷⁵ **Supreme Court of India: Vishaka & Ors vs State of Rajasthan & Ors on 13 August, 1997.** [indiankanoon.org/doc/1031794/]

addressing sexual harassment of women in the workplace. In summary, the Court must remember its role as a guardian of civil liberties and strive for consistency in enforcing the rule of law. This is essential to ensure that constitutional faith, a term borrowed from Rohin Bhatt¹⁷⁶, does not become an empty concept.

[Back to Table of Contents](#)

¹⁷⁶ **Bhatt, R.** 2022. [How Judicial Inaction is Killing Constitutional Faith with a Thousand Cuts](#), *The India Forum*, May 5. [tinyurl.com/2hctfw8s]

VII. WHAT IS THE WAY FORWARD?

No free man shall in future be arrested or imprisoned or disseised of his freehold, liberties or free customs, or outlawed or exiled or victimised in any other way, neither will we attack him or send anyone to attack him, except by the lawful judgment of his peers or by the law of the land. To no one will we sell, to no one will we refuse or delay right or justice.

Clause 29, Magna Carta, 1255

This essay has catalogued and discussed a large number of systemic and historical factors that have shaped the culture of impunity within the Indian police forces and the generally poor state of policing in India on most imaginable parameters. The Indian police is one of the country's least respected institutions, and the most feared by the country's poorer and marginalised communities. Is there a way out of this situation? Can there be a path to greater accountability and better delivery of security and justice to the vast majority on Indians? As we have indicated, the police institutions in India have been critically reviewed by multiple official commissions but very few of the many recommendations for change and reform have ever been implemented. The institutional inertia has been too great and there has been a conspicuous lack of concerted political will and efforts by both political parties and civil society organisations to make police reform a top priority.

Considering that law enforcement on the whole – from the powerful agencies controlled by the central government to the police forces at the State level – have proven to be malleable and amenable to political pressure, the lack of concerted reform should be no surprise. Many of the recommendations of the Ribeiro Committee report (1999)¹⁷⁷ and the Sorabjee report (2005), for example revolved around strengthening accountability, internal procedures (including a mechanism for receiving and processing complaints from the public and from within the police) and investigative capacity, in turn making the police institution more autonomous and less amenable to directions and pressures from elected officials. In 2006, the Supreme Court of India mandated seven steps

¹⁷⁷ humanrightsinitiative.org. n.d. [Summary of Ribeiro Committee's Recommendations](#)

[<https://tinyurl.com/AGLx>] However, the proposed changes for improved oversight remained very top-heavy and had little regard for the citizen experience and vulnerability vis-à-vis the routine use of excessive force. The first recommendation is to set up a 'Security Commission' in each state consisting of top politicians, senior bureaucrats and a few carefully selected "non-political citizens of integrity and proven merit".

towards (moderate) reforms, including the establishment of a complaints mechanism in each State.¹⁷⁸ Almost two decades later, very few jurisdictions have implemented more than a fraction of the reforms.¹⁷⁹

Most political parties in power benefit immensely from having at their disposal a law-and-order apparatus that can be bent and influenced in multiple ways. Influential leaders and interests can be shielded from investigations, political opponents or whistle blowers can be isolated or threatened into silence and compliance by registering criminal cases against them, or by threatening expropriation or demolitions of their assets and properties. The current government in U.P. has taken the use of policing and encounters for partisan political and communal ends to a new extreme.¹⁸⁰

A recent global initiative offers a relevant perspective for India's policing reforms. In June 2020, the 'Principles on Effective Interviewing for Investigations and Information Gathering', known as the 'Méndez Principles', were introduced.¹⁸¹ Developed through extensive expert consultation, these principles advocate for replacing coercive interrogation methods with rapport-based interviews, supported by legal and procedural safeguards. This approach is backed by empirical evidence across various disciplines—psychology, criminology, neuroscience, sociology which demonstrates that coercive methods often lead to unreliable information and false confessions.¹⁸²

Consequential police reforms are rare, and they usually only happen against a backdrop of dramatic political change. In India, the first such initiative was the National Police Commission that was motivated by the authoritarian excesses during Emergency 1975-77. Other examples would include reforms to policing (along with disarming and demilitarisation) in Northern Ireland after the Good Friday Agreement between Protestants

¹⁷⁸ [humarightsinitiative.org](https://www.humarightsinitiative.org). n.d. *Seven Steps to Police Reform* [tinyurl.com/26ax7khx]

¹⁷⁹ Raman, S. and Paliath, S. 2020. [Fourteen years on, no Indian state has fully complied with Supreme Court-ordered police reforms](#), *scroll.in*, Sep. 27. [tinyurl.com/45x33sew]

¹⁸⁰ Pandey, B. 2023. [Since 2017 when Yogi Adityanath took charge, over one killed every fortnight in UP police encounters](#), *The Indian Express*, May 25. [tinyurl.com/3jzz92np]

¹⁸¹ Washington College of Law. n.d. [Principles on Effective Interviewing for Investigations and Information Gathering](#). [tinyurl.com/435wrfpv]

¹⁸² Prasad, D. 2021. [Méndez's anti-torture vision is still distant for India](#), *The Hindu*, Jun. 30. [tinyurl.com/47kfzxrww]

and Catholics in 1998. Another example, perhaps more relevant to the Indian context, is the effort at police reform in South Africa after the end of apartheid in the early 1990s.

In the early 1990s, South Africa was coming out of decades of repressive police action against civil protests across the country's townships, and armed and covert operations against armed militants affiliated with the armed wing of the ANC, Umkhonto we Sizwe, or MK (the nation's spear). The country's police force, South Africa Police (SAP) was militarised both in form and function. Commanding officers bore titles of captain, colonel, general, etc. and all policing units were fully armed and trained for violent suppression of dissent, demonstrations, and maintaining public order. Its detective unit and intelligence branches were predominantly focused on identifying and suppressing political dissenters and members of the ANC, maintaining vast networks of informers across the country. Ordinary policing mainly consisted of violent intrusions and the use of force, what in Afrikaans was known as '*Skoop, skiet en donder*' (kick, shoot and thunder).¹⁸³

After the election of Nelson Mandela as the country's first Black president in 1994, a series of reforms began in short order. The militarised hierarchies were replaced, and the police was renamed South African Police Service. All stations were physically changed to be more inviting, with a desk facing the public, ready to receive information, complaints, or requests from ordinary citizens. This was in itself an unprecedented historic change. From the late 1990s, uniformed police spent most of their time addressing complaints or requests from black and brown citizens and slowly forging new expectations and demands of what policing could look like.

Let us briefly discuss three areas that have been particularly important in the process of police reform in South Africa – all three of them of direct relevance and applicability to India, where credibility and trust gaps exist between citizens and the most visible face of the state – the police.¹⁸⁴

¹⁸³ **Cock, J. 2005.** "‘Guards and Guns’: Towards Privatised Militarism in Post-Apartheid South Africa", *Journal of Southern African Studies*, Dec. Vol. 31, no. 4, pp. 791–803. [jstor.org/stable/25065047]

¹⁸⁴ These conclusions are based on several years of ethnographic studies in South Africa between 1998 and 2010, particularly in formerly Indian townships in Durban. See in particular, Chapters 1 and 2 in **Hansen, T.B. 2012.** *Melancholia of Freedom. Social Life in an Indian Township in South Africa*. Princeton University Press.

1. Changes in personnel and training

With the rapid political changes of the 1990s, many older and mostly white officers and constables left the force. Many disagreed with the new more rights-driven approach to policing in the country, and many complained that they were not trained to do detective work, let alone do arrests and obtain confessions and evidence by the non-coercive means that were now recommended (if far from always practiced) and institutionalised in new training manuals.

As a result, many new recruits from the Black majority community entered the police and its demographic profile today reflect the composition of the country in a way that was never the case before. There are still disproportionate numbers of white policemen in leading and commanding ranks but that will gradually change over time as a new and more meritocratic promotion system is taking effect. One unforeseen consequence was that the retired policemen and soldiers and officers retired from the country's bloated armed forces, flocked into a new and thriving private security industry that took over the de facto policing and protection of commercial entities and affluent residential areas ready to pay for these services.¹⁸⁵

2. Changes in investigative capacity

During apartheid, the detective units had been very centralised, mostly manned by white officers, and devoted to solving 'political crimes'. These units were generally well resourced and had high investigative capacity albeit applied only within a narrow remit, protecting white people from common crime, and protecting the regime from opposition and dissent. As a new leadership appointed by President Mbeki took over, these units were seen as bastions of white privilege sceptical of change and a broader remit of investigative work, including economic crimes and ordinary crimes in townships.

¹⁸⁵ For a discussion of the privatisation of security in a formerly Indian township in Durban, see **Hansen, T. B. 2006. [Performers of Sovereignty: On the Privatization of Security in Urban South Africa](#), *Critique of Anthropology*, Sage Journals, 26(3), 279-295. [doi.org/10.1177/0308275X06066583]**

In the early 2000s, these centralised units were broken up and distributed across the country in an effort to make their expertise more available to the uniformed police units across the country's thousands of police jurisdictions. However, the net result was discouraging, and many highly trained detectives left the force for more lucrative work in the private sector. As a result, the investigation of ordinary crimes, including murders, is slow, under-resourced, uneven and a source of great frustration to many South Africans today. But unlike in the past, there is today a widespread expectation that the police should solve more crimes and be more involved in the life of local communities.¹⁸⁶

3. Creation of Community Policing Forums

One of the signature reforms of the 1990s was the creation of Community Policing Forums around every police station in the country. The idea was that each forum would have a number of elected representatives, typically drawn from NGOs, activist networks, small business owners, etc. who would consult with, and meet with the local station commander and other local officers on a regular basis in public meetings, open to all. These meetings were often testy and difficult because of the deeply held suspicions and enmities felt vis-à-vis the police force. However, over time, these forums have proven viable and as important sites for 'taking the temperature', allowing local officers to build a working relationship with local communities and getting a real sense of the sentiments and needs in the communities they are serving. Often frustrated with the lack of personnel, resources and interest in crime prevention, these forum at times established citizens patrols and ran educational initiatives that sought to dissuade young men from entering a career in crime.¹⁸⁷

Though riddled with contradictions and tensions, these probably mark one of the most significant changes in the relationship between the poorer and disadvantaged majority of the country's population and the police force. Today, community policing across the

¹⁸⁶ For an incisive account of internal transformation in the police bureaucracy and police functions since the 1990s in South Africa, see **Steinberg, Jonny. 2014.** "Policing, state power and the transition from apartheid to democracy: a new perspective," *African Affairs*, Vol. 113, no. 451, pp.173–91. [jstor.org/stable/43817307]

¹⁸⁷ For a relatively rare discussion of the dynamics of Community Policing Forums, see **Makondo, S.S, Mofokeng, J.T. and Khosa, D. 2021.** "Perspectives on Community Policing Forums in rural areas of Limpopo Province, South Africa", In *International Journal of Criminal Justice Sciences*, Vol. 16, Issue 1, Jan.-Jun. 2021, pp. 161-185. See also a recent account of women-led initiatives in Community Policing Forums **Dewa, C. 2023.** [Women-Led Community Policing Forums Are Reviving Hope In South African Cities](https://www.nextcity.com/story/2023/06/07/women-led-community-policing-forums-are-reviving-hope-in-south-african-cities/), *Next City*, Jun. 07. [tinyurl.com/bdecxma5]

country plays a key role in providing accountability and to constantly force local policemen to attend to at least some of the security needs of the communities they serve.

The police station is no longer the site of danger it once was, and ordinary non-privileged people report crime at a higher rate than ever before. The rates of murder, theft and other crimes are still high in South Africa although far from its peak in the mid- and late-1990s where policing all but collapsed and the murder rate soared to almost 70/100,000. Today it stands at 33/100,000 – still high and rising again but no longer catastrophic. One of the interesting outcomes of the police reforms, however imperfect, is that the rates of reporting of all crime has gone up because the police are seen as more accessible.¹⁸⁸ At the same time, the rising but frustrated expectations when it comes to policing, and the effects of the accountability measures of Community Policing Forums, mean that the level of trust in the South Africa Police Service are once again dwindling to dangerously low levels.

Either way, the South African Police Service is today closer to, and more reflective of, the communities they serve and therefore at the receiving end of many frustrations and complaints. The most glaring problem in South Africa is that none of the root causes of crime have been addressed. The country is one of the most unequal in the world, and one of the more dangerous places to live for disadvantaged communities. The major change is that unlike in the past, the police is no longer a part of the problem or an active perpetrator of violence. The South African Police Service has taken some steps to perhaps become part of the solution, in the future.¹⁸⁹

The relevance of these three dynamics in South Africa to the Indian context is obvious. Each of them – 1) creating a more ‘public facing’ and socially representative police culture based on non-violent solutions and human rights-based training; 2) the decentralisation and deployment of investigative competence and capacity across all police jurisdictions;

¹⁸⁸ The rate of reporting of crimes (against the total number of crimes that are assumed to take place) is difficult to measure precisely. However, crime reporters and criminologists report that the reporting and data management has improved dramatically, giving a more comprehensive, if bleak, picture of the crime situation in the country. [issafrika.org/iss-today/new-sa-crime-trends-are-bleak-but-at-least-we-have-the-data/]

¹⁸⁹ For an incisive reflection on the current state of policing in South Africa and the lack of resolution of deeper societal contradictions, see **Stuurman, Z. 2022.** “[We can’t give the police what we don’t have. A reflection on policing in contemporary South Africa](#)”, *urbanviolence.org*, Feb. 03. [tinyurl.com/43wytnaz]

and 3) the creation of Community Policing Forums enabling an ongoing dialogue and a measure of accountability vis-à-vis local communities – are all practical, feasible and well-tested in other jurisdictions in the world. India has only limited experience with exposing police forces to various forms of public accountability, or more institutionalised dialogues with various communities. One example was the ‘mohalla committees’ set up in Mumbai after the 1992-3 riots. As described by ethnographers and others at the time, these committees initially had some public standing but soon deteriorated into public relations exercises on the part of the Bombay Police. The committee also became platforms for ambitious local political and social entrepreneurs.¹⁹⁰

A key lesson from South Africa is that as public perceptions as to what to expect and demand from a police force change and intensify, so do frustrations and public anger. India never ever experimented broadly or in earnest with initiatives of this kind, so raising expectations may well be a risk well worth taking.

[Back to Table of Contents](#)

¹⁹⁰ Hansen, T.B. 2001. "Governance and State Mythologies in Mumbai" In *States of Imagination: Ethnographic Explorations of the Postcolonial State* edited by Thomas Blom Hansen, Finn Stepputat, 221-254. New York, USA: Duke University Press. [doi.org/10.1515/9780822381273-010]

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[Back to Table of Contents](#)

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