FACULTY OF LAW
Lund University

Archa Baburaj

Can International Human Rights Instruments Prevent Police Torture in Kerala?

JAMM07 Master Thesis

International Human Rights Law
30 higher education credits

Supervisor: Ulrika Andersson

Term: Period 1 Spring Semester 2022

Summary 4

Preface 5

List of Abbrivieations 6

Introduction 11
Background 11
Purpose 12
Disposition 12
Methodology 14

Definition of Torture 15
2.1. Torture Definition in International Jurisprudence 15
2.2. Definition of Torture Under Various International Instruments 16
2.3. Psychological Torture 17
2.4. Gender-Based Violence as a Form of Torture 21
2.5. Torture in India 22
2.5.1. The Ancient Era 22
2.5.2. British Raj Era 23
2.5.3. Post-Colonial Era 26

3. International Human Rights Instruments Preventing and Prohibiting Torture 30
3.1. Prohibition of Torture as Jus Cogens in International Law 30
3.2. Prohibition of Torture under International Humanitarian Law (IHL) 31
3.2.1 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 33
3.3. Torture Prohibition Under Other International Human Rights Instruments 34
3.4. India and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 35
3.5. Constitutional Provisions and other Legal Instruments Prohibiting Torture in India 36
3.5.1. Constitutional Provisions 36
3.5.2 Judicial Response 37
3.5.3 Other Legal Instruments related to Torture 39
3.5.4 Guidelines Issued by the National Human Rights Commission in cases of Custodial Death 42

4. Kerala and the State Police Force 46
4.1. Current Organisational Structure of Police in India 46
4.2. Police Force in the State of Kerala 47
4.3 The Kerala Police Act, 2011 50

4.4. Police Reforms in Kerala 52
4.5. Police Torture in Kerala 55

Can International Human Rights Instruments Prevent Torture in Kerala? 58

Conclusion 60

Table of Cases 61

Bibliography 62

Summary

India signed the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment back in 1997. It has not yet ratified the Convention Against Torture to this day. There have been consistent efforts by activists and several members of the society to enact domestic legislation in line with international standards and obligations. Currently, there is no legislation expressly prohibiting torture in India. This leaves a huge lacuna in the administration of justice for victims of torture.

It is also important to look at the current judicial, legal and constitutional remedies available to victims of police torture. Police torture is something that has plagued India for centuries. Can India live up to its international obligations and hold its servants responsible for their arbitrary actions?

Police torture is not a new phenomenon in today's world. At least five people die every day in India in custody according to recent reports. International Human Rights Instruments have played a key role in ensuring the prevention of torture by police and public servants and holding them accountable for their actions. The research looks at the example of Kerala, the history behind torture, and the normalisation and institutionalisation of police torture in Kerala and India in general.

Preface

This study is a result of the kindness, patience and support of a few people. First and foremost, I would like to extend my heartfelt gratitude to my thesis supervisor, Ulrike Andersson, she has been extremely kind and patient throughout this whole journey and for always making sure that I was doing okay before every meeting. Her expertise and guidance gave me a nudge in the right direction every time I felt lost. Two years ago, I did not know International Human Rights Law would change my life the way it did, I want to thank the faculty and my classmates for being patient with a student who had a million questions.

I couldn't have done this without the constant support from my parents. They have been extremely understanding during the whole process without which I would not be able to complete my study. I would also like to thank my siblings who have been my constant support system.

Finally, I would like to take this opportunity to thank all the political activists and political prisoners who risked their own lives so we could have the rights we enjoy today.

List of Abbrivieations

ADGP – Additional Directors General of Police

AIHRW- Amnesty International Human Rights Watch

AP- Additional Protocols

Art. – Articles

ASP- Additional Superintendent of Police

CG- Central Government

CHRI- The Commonwealth Human Rights Initiative

CI- Circle Inspector

CM- Chief Minister

CrPC – Code of Criminal Procedure

DGP- Director General of Police

DIGP- Deputy Inspector General of Police

DM- District Magistrate

DNA- Deoxyribose Nucleic Acid

DSP- Deputy Superintendent of Police

ECHR- European Convention on Human Rights

FR- Fundamental Rights

GC- Geneva Conventions

HR- Hague Regulations, 1907

ICC- International Criminal Court

ICCPR- The International Covenant on Civil and Political Rights

ICPAPED- International Convention for the Protection of All Persons from Enforced Disappearance

ICRC- The International Committee of the Red Cross

ICTY- International Criminal Tribunal for the former Yugoslavia

IEA- The Indian Evidence Act, 1872

IGP- Inspector General of Police

IHL- International Humanitarian Law

IHRI- International Human Rights Instruments

ILCCC- Indian Law Commission on Custodial Crimes, 1994

IPA- The Indian Police Act, 1861

IPC- Indian Penal Code

IPF- Indian Police Foundation

IPS- Indian Police Service

JR Committee- Julio Ribeiro Committee

KP- Kerala Police

KPA- The Kerala Police Act, 2011

LAO- Legal Aid Organizations

LGBTQ+ - Lesbian, Gay, Bisexual, Transgender, Queer and/or Questioning

MAR- Model Autopsy Report

MCCJR- Maliamath Committee on Police Restructuring, 2000

NCRB- National Crime Records Bureau

NCT- National Capital Territory of Delhi

NHRC- National Human Rights Commission

NHRI- National Human Rights Institution

NPC- National Police Commission

PA- The Police Act, 1861

PCA- Police Complaints Authority

PCPR- Padmanabhaiah Committee on Police Restructuring, 2000

PHRA- The Protection of Human Rights Act, 1993

PTB- Prevention of Torture Bill, 2010

SC - Supreme Court of India

SDPO- Sub Divisional Police Officers

Sec. – Section

SP- Superintendent of Police

SPA- State Police Acts

SPC- State Police Chief

SPF- State Police Forces

TD- Tokyo Declaration

UDHR- Universal Declaration of Human Rights

UN- United Nations

UNCAT- United Nations Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment

UNGA- United Nations General Assembly

UNHRC- United Nations Human Rights Committee

UNMAP- United Nations Model Autopsy Protocol

UNPME- United Nations Principles of Medical Ethics

UNSPT- United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

USA- United States of America

UT- Union Territory

WMA- World Medical Association

1. Introduction

1.1. Background

Torture has existed for a long period. It is often perpetrated by the powerful on vulnerable people or people who go against societal norms. In today's world, there is torture perpetrated by both state and non-state actors. The thesis will look into torture committed by police officials in particular. Police torture is also not a new practice. It continues to take place today rampantly all over the world. Despite the international community's rising opposition to torture, Amnesty International, Human Rights Watch, and the US Department of State have consistently singled out India in their yearly reports for a variety of human rights violations, including torture by police and state security services.[1]

India has not yet ratified the United Nations Convention Against Torture Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. According to Articles 51(c) and 253 of the Indian Constitution, the Indian Government shall enact domestic laws in line with International law and obligations. There are several constitutional, legal and judicial remedies available to a torture victim but the lack of central legislation expressly prohibiting torture by public officials leaves a huge lacuna in the Indian legal system.

The thesis will not study police torture in the entire subcontinent of India as Police come under the State list and they are under the purview of the State Governments. It will focus on Police Torture in Kerala, a state on the Malabar coast in India. Kerala is known for its highest literacy rate in the country and its social welfare policies. Recently, Kerala garnered a lot of attention for how well it handled the Covid-19 crisis. Despite all these factors, police torture and police impunity remain a problem that plagues the state. The thesis will first analyze the situation in Kerala, the factors contributing to police torture and if International Human Rights Instruments can prevent police torture in a state like Kerala.

[1] Laws, Ami, and Vincent Iacopino. "Police Torture in Punjab, India: An Extended Survey." Health and Human Rights, vol. 6, no. 1, 2002, pp. 197, https://doi.org/10.2307/4065321. Accessed 15 May 2022.

International Human Rights Instruments without a doubt play an important role in ensuring there are ramifications for human rights violations perpetrated by state actors on individuals.

Purpose

The purpose of this thesis is to thoroughly examine the compliance of Kerala's State Laws to prevent and prohibit torture in line with India's international obligations. It will also do an analysis looking at how International Human Rights Instruments can make a difference and if they make a difference.

Is India in compliance with its international obligations under the Indian Constitution?

Can International Human Rights Instruments prevent torture in Kerala?

If yes, then to what extent?

The research mainly aims to answer the question of whether International Human Rights Instruments play a role in preventing and prohibiting torture in Kerala. According to my findings, International Human Rights Instruments can help prevent torture to a large extent if we look at a plethora of examples from around the world however taking into account various aspects existing in the Indian society today like post-colonial factors, the intersection of caste, class, race and gender, there exists several limitations when it comes to International Human Rights Instruments especially in a country like India with deep-rooted history and institutionalisation of police torture. The Indian police still have its roots in colonial British raj policing and these factors play a huge role in ensuring that Police officials get away with it Scott free. Even though there are no extreme instances of systemic torture, the Police officials still engage in a plethora of activities contrary to human rights law.

To prevent police torture in my opinion would be to bring a grassroots level change and a monitoring body in every district comprised of members from various backgrounds who can be approached in cases of police torture. The monitoring body can be may report its findings to the National Human Rights Commission which can be empowered to give interim relief in the form of compensation.

Further, the first course of action that must be taken is to ratify the Convention Against Torture by enacting the Prevention of Torture Act. This is of paramount significance as India can only strive forward towards an environment free of torture and cruelty from police

officers once it ratifies the said Convention. The thesis uses the 'black letter' methodology by focusing on current laws, reports, legal documents, journals and articles on the topic as the primary source. The primary strategy used for the purpose of this thesis is legal interpretation. The thesis does qualitative research or non-numerical, empirical legal research.

2. Definition of Torture

2.1. Torture Definition in International Jurisprudence

Torture is something that has existed since time immemorial. Many cultures have practised torture to reprimand wrongdoers. The thesis will first examine what constitutes torture in a general sense and look at the different ways police torture can take place both in custody and otherwise. Torture is usually employed during interrogation methods to make the individual confess or give evidence. As mentioned above, it is not something that gained traction in recent decades. Torture has its roots dating back centuries. Torture is enduring excruciating pain both mentally and physically. There is an absolute prohibition on torture under International Law. This means that no type of torture is permitted and there exists no such thing as a 'reasonable amount' of torture. In simple terms, torture can be defined as the infliction of mental or physical suffering on a person for obtaining a piece of particular information or purpose. Paul D. Kenny in his paper titled "What is Torture"[2], focuses on three important factors of elements of torture, namely;

A. The identity of the torturer
B. The purpose of torture
C. The means of torture

The first element relates to 'who' the torturer is. In most definitions, the identity of the torturer is the State. The torturer for this thesis will be the Police or the State and will focus on state-mandated torture. The next important element according to Paul. D Kenny answers the question 'why' torture is employed. There can be a plethora of reasons for torture - to inflict fear in the minds of people, to get the individual to confess or to give up information or as a form of punishment for an act. The purpose of torture plays an important role in defining police torture. One must keep in mind that police torture takes place within custody and outside custody and its sole purpose is not always obtaining information or getting a confession out of the individual. The second element deals with the intention of the torturer.

---

[2] Kenny, Paul D. "The Meaning of Torture." Polity, vol. 42, no. 2, 2010, pp. 131–55, http://www.jstor.org/stable/40587519. Page 137

The intention behind the torture is very important in distinguishing torture from sadism and masochism.[3] The means of torture can be varied. It can be psychological, sexual, physical etc. According to him, torture can be defined as "the systematic and deliberate infliction of severe pain or suffering on a person over whom the actor has physical control, to induce a behavioural response from that person"

2.2. Definition of Torture Under Various International Instruments

According to the definition in *The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (hereinafter referred to as UNCAT) defines torture is,

"Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a piece of third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."[4]

WMA's Declaration of Tokyo defines 'torture' as,

The deliberate, systematic, or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to confess, or for any other reason.[5]

United Nations' Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as,

---

[3] Kenny, Paul D. "The Meaning of Torture." Polity, vol. 42, no. 2, 2010, pp. 131–55, http://www.jstor.org/stable/40587519. Page 146

[4] UN General Assembly, Resolution 39/46, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/39/46 (December 10, 1984), http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx.

[5] MILES, STEVEN H. The Torture Doctors: Human Rights Crimes and the Road to Justice. Georgetown University Press, 2020, https://doi.org/10.2307/j.ctv15pjzgp. P. 36

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such
purposes as obtaining from him or a piece of third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.[6]

2.3. Psychological Torture

The report of the Special Rapporteur on Torture and other cruel, inhuman, or degrading treatment or punishment (2020) states that “The definition of torture, according to international anti-torture procedures, does not always involve the infliction of physical pain or suffering, but can also include the imposition of mental pain or suffering. However, it's important to note the fact that psychological torture's terrible repercussions are generally overlooked.”[7]

The Special Rapporteur’s report also outlines key constitutive elements of psychological torture such as[8]

1. Severe pain or suffering
2. The intentionality of the perpetrator
3. Purposefulness (the purpose behind the torture by the perpetrator)
4. Powerlessness

“Many interrogation tactics used at Guantánamo Bay and elsewhere were meant to take advantage of detainees' psychological flaws. These tactics, rather than "breaking" the body, could "break" the minds of detainees or elicit collaboration with interrogators while leaving

[6] MILES, STEVEN H. The Torture Doctors: Human Rights Crimes and the Road to Justice. Georgetown University Press, 2020, https://doi.org/10.2307/j.ctv15pjzgp. Pp. 36 - 37
[7] UN. Human Rights Council. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Torture and other cruel, inhuman or degrading treatment or punishment : report of the Special Rapporteur, A/HRC/43/49, Geneva : UN, 20 Mar. 2020, page 8
[8] UN. Human Rights Council. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Torture and other cruel, inhuman or degrading treatment or punishment : report of the Special Rapporteur, A/HRC/43/49, Geneva : UN, 20 Mar. 2020, pp. 8-12

no physical scars. While some interrogation tactics have been labelled as harsh or brutal, these classifications are based on lay impressions of the level of physical suffering involved with procedures such as stress positions or exposure to severe temperatures."[9]

Guantanamo Bay was not the first instance investigators have used psychological torture. There are a plethora of instances where psychological torture has been employed in the past. However, it seems to have gained traction after Guantanamo Bay. Psychological torture is often used as a torture method that leaves no scars however this leaves a deep-rooted emotional and mental trauma to the victim or tortured individual. Psychological suffering is said to cause hallucinations and cause a complete mental breakdown of the victim being tortured. In the current thesis, we look at psychological torture being employed by police officers or law enforcement.

"Psychological torture weakens the human mind by inflicting a tremendous assault on the victim's "fundamental mental survival circumstances." These characteristics are referred to by psychologists as "homeostasis," a physiology term that refers to an organism's ability to adjust internally to maintain a stable balance even in the face of external perturbations. A person's response to interruptions in homeostasis in normal conditions is to go through stages of readjustment. Torture, particularly psychological torture, uses stress to produce "high levels of arousal without the appropriate action that allows arousal to readjust."[10] Psychological suffering was widely discussed in the case of Cantoral-Benavides v. Peru.[11] International jurisprudence has been developing the notion of psychological torture. "The European Court of Human Rights has established that the mere possibility of the commission of one of the acts prohibited in Article 3 of the European Convention is sufficient to consider that said article has been violated, although the risk must be real and imminent. In line with this, to threaten someone with torture may constitute, in certain circumstances, at least "inhuman treatment." That same Tribunal has decided that, for purposes of determining whether Article 3 of the European Convention on Human Rights has been violated, not only physical suffering but also moral anguish, must be considered. Having examined

[9] Daniel Kramer, THE EFFECTS OF PSYCHOLOGICAL TORTURE, Berkeley Law, University of California, International Human Rights Law Clinic, Page 1, June 2010

[10] Daniel Kramer, THE EFFECTS OF PSYCHOLOGICAL TORTURE, Berkeley Law, University of California, International Human Rights Law Clinic, Page 3, June 2010

[11] Inter-American Court of Human Rights, Case of Cantoral-Benavides v. Peru, Judgment of August 18, 2000 (Merits)

communications received from individuals, the United Nations Human Rights Committee has classified the threat of serious physical injury as a form of "psychological torture."[12]

- Categories of Psychological Torture
    1. Isolation: Including solitary confinement
    2. Debilitation: Food, water, and sleep deprivation; extreme temperatures.
    3. Sensory deprivation: For example, hooding
    4. Sensory assault: Exposure to loud music/sounds for long periods; exposure to bright lights.
    5. Disorientation: confinement in small spaces; being denied natural light resulting in losing all sense of time and date.
    6. Desperation: Indefinite detention; the sense of futility.
    7. Threats: of death or violence, to self or others, mock executions, witnessing torture. In Iran, threats against family members are a very common form of psychological torture, as reported in our reports on Iran.
    8. Degradation: Verbal abuse, deliberate sexual, ethnic, or religious humiliation, overcrowding, contact with pests, or excrement.
    9. Manipulation with drugs such as tranquillisers and hallucinogens.[13]

According to The Report of the Special Rapporteur on Torture and other cruel, inhuman, or degrading treatment or punishment (2020)[14] the predominant methods used in psychological torture in contrast to physical torture, which uses the body and its physiological needs as a conduit for affecting the victim's mind and emotions, psychological torture does so by directly targeting one or several basic psychological needs, such as:

(a) Security (inducing fear, phobia, and anxiety).
(b) Self-determination (domination and submission).
(c) Dignity and identity (humiliation, breach of privacy and sexual

[12] Inter-American Court of Human Rights, Case of Cantoral-Benavides v. Peru, Judgment of August 18, 2000 (Merits), page 37, para.102
[13] "What is torture?" Freedom from Torture, 25 November 2020, https://www.freedomfromtorture.org/news/what-is-torture. Accessed 15 April 2022
[14] UN. Human Rights Council. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Torture and other cruel, inhuman or degrading treatment or punishment: report of the Special Rapporteur, A/HRC/43/49, Geneva : UN, 20 Mar. 2020, page 21

integrity).

(d) Environmental orientation (sensory manipulation).

(e) Social and emotional rapport (isolation, exclusion and emotional manipulation).

(f) Communal trust (institutional arbitrariness and persecution).

Police torture usually includes physical in many countries. This does not mean psychological torture should be excluded from police torture. Some police officers still use psychological methods to mentally torture their victims. Measuring psychological torture can be very hard, this is also one of the reasons why psychological torture by the police is brushed under the carpet. There is still some ambiguity surrounding the intensity of psychological pain and suffering inflicted that would amount to torture under International Law in my view.

The Report also identifies Cybertorture as growing means of psychological torture. According to the Report, "The delivery of serious threats through anonymous phone calls has long been a widespread method of remotely inflicting fear. With the advent of the Internet, State security services have been reported to use cyber technology, both in their territory and abroad, for the systematic surveillance of a wide range of individuals and/or for direct interference with their unhindered access to cybertechnology. Electronic communication services, social media platforms and search engines provide an ideal environment both for the anonymous delivery of targeted threats, sexual harassment, and extortion and for the mass dissemination of intimidating, defamatory, degrading, deceptive or discriminatory narratives. Individuals or groups systematically targeted by cyber-surveillance and cyberharassment are generally left without any effective means of defence, escape or self-protection and, at least in this respect, often find themselves in a situation of "powerlessness" comparable to physical custody. Depending on the circumstances, the physical absence and anonymity of the perpetrator may even exacerbate the victim's emotions of helplessness, loss of control and vulnerability, not unlike the stress-augmenting effect of blindfolding or hooding during physical torture. Likewise, the generalised shame inflicted by public exposure, defamation and degradation can be just as traumatic as direct humiliation by perpetrators in a closed environment. As various studies on cyberbullying have shown, harassment alone is comparatively limited environments can expose targeted individuals to extremely elevated and prolonged levels of anxiety, stress, social isolation and depression and significantly increases the risk of suicide. Arguably, therefore, much more systematic,

government-sponsored threats and harassment delivered through cyber technologies not only entail a situation of effective powerlessness but may well inflict levels of anxiety, stress, shame and guilt amounting to "severe mental suffering", as required for a finding of torture. More generally, to ensure the adequate implementation of the prohibition of torture and related legal obligations in the present and future circumstances, its interpretation should evolve in line with new challenges and capabilities arising concerning emerging technologies not only in cyberspace, but also in areas such as artificial intelligence, robotics, nanotechnology and neurotechnology, or pharmaceutical and biomedical sciences, including so-called human enhancement"[15]

One should keep in mind that although it is rare that police use extreme psychological torture to torture victims, especially in the context of Kerala. However, it is important to have a clear definition and understanding of psychological torture by Police for the few times it does happen.

2.4. Gender-Based Violence as a Form of Torture

For the longest time, international jurisprudence did not consider rape in custody or sexual abuse by public officials as a form of torture. "In 1986, recognition by United Nations Special Rapporteur on Torture, Peter Kooijmans, stated that rape in prison should be regarded as torture, opened the door to discussion and codification of norms on a subject that had previously been ignored, despite the years of U.N. proscription of torture and ill-treatment.[16]" Rape and sexual assault take place rampantly and the primary victims are women from vulnerable communities who do not have easy access to justice. The public officials or police officers with this in mind often take their position of authority for granted and use it to exploit marginalised women. Gender discrimination is inescapable, especially in a country like India. It is pertinent to note that not just women but other sexual minorities from the LGBTQ+ community also endure torture at the hands of the police.

[15] UN. Human Rights Council. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Torture and other cruel, inhuman or degrading treatment or punishment: report of the Special Rapporteur, A/HRC/43/49, Geneva: UN, 20 Mar. 2020, pp 19-20, para 75,76

[16] Felice D. Gaer, RAPE AS A FORM OF TORTURE: THE EXPERIENCE OF THE COMMITTEE AGAINST TORTURE, Cuny Law Review, Vol. 15:293, page 293

2.5. Torture in India

Torture in different forms has developed over the years in India. Torture has been practised in different forms albeit the ways and methods have evolved over centuries. Tracing the practice of torture in India would bring us to three important periods, namely,

1. The Ancient Era
2. British Raj Era
3. Post-colonial Era

2.5.1. The Ancient Era

In Ancient India, the main source of Law were religious mandates, mainly Hindu scriptures, and texts. "The jurisprudence of Ancient India, which was essentially Hindu rule based upon the collections of ancient hymns and prayers, known by the names of Vedas. There are four Vedas which are the chief sacred books of Hindus: Rig Veda (the science of praise), Atharwa Veda (the science of magic), Yajur Veda (the science of sacrifices), and Sama Veda (the science of melodies). The diversity of Vedas, both in style and contents, shows that they are the production of different periods, between which a considerable interval must have elapsed. The literary traditions of the Vedas are one of the major sources of the compilation of Dharmashastra. Dharmashastra is an ancient Sanskrit works prescribing the rules of Dharma. In short, they are the rules of conduct of man, a narration of dos and don'ts. Amongst the authors of the Dharmashastra, Manu is accepted as the eldest, and the authoritativeness of his code surpasses that of others."[17]

Manusmriti is one of the oldest, and also the most brutal, discriminatory, and archaic scriptures that were present in Ancient India. The concept of rule of law and the administration of justice has been known to exist in India ever since the Vedas came to be recognized as these were the synthesis of Dharma. The concept of crime was there. Manu classified crimes with fewer than eighteen heads which included assault, defamation, theft, robbery, adultery, violence, gambling and betting. Manu refers to the police function prevalent in his times for the prevention and detention of crime. According to P. V. Kane, the

[17] Qadeer Alam, Historical Overview of Torture and Inhuman Punishments in Indian Sub-continent, Journal of the Punjab University Historical Society Volume No. 31, Issue No. 2, July - December 2018, page 127

police problems of the most ancient village communities of India were confined mainly to cattle theft, murder and adultery.[18] It was mainly based on the caste system. Manusmriti set a clear hierarchy of castes that is still followed in some parts of India. Danda (Rod of Punishment) was another form of punishment that would often involve intense pain and suffering. “The laws of Manu, the Arthashastra of Kautilya Chanakya, and the Mahabharata all state that danda must be wielded with maximum discretion by the King to uphold justice. In Indian jurisprudence, dispensing justice and awarding punishment was one of the primary attributes of sovereignty. The King was also the chief of the judiciary of the State.”[19]

In Ancient India punishment revolved around Danda and the caste system. It also prescribed discriminatory practices which divided the people into caste lines that exist even to this day. Trial by Ordeal was another mode of punishment that was used. Manu used trial by ordeal to prove a person's guilt or innocence. This was an excruciatingly painful method used in Ancient India. It becomes increasingly evident that justice was a secondary aim. The main aim would be inflicting a punishment in the form of pain and suffering. People belonging to the ‘untouchable’ caste were often victims of discriminatory, casteist practices. They were not allowed to drink water from the wells of the upper caste community. They were not allowed to walk on the same paths used by the Upper Caste society. The unfortunate reality according to my opinion is that even today, these discriminatory practices are lingering around modern India and the caste system is built into the very DNA of the country.

2.5.2. British Raj Era

One can say beyond any reasonable doubt that the British used extreme torture methods to punish anyone standing against colonisation and the British Empire. The colonial empire committed various atrocities against native Indians. It further divided India along communal lines. Torture was rampant during the British Raj Era and was used against resistance to colonialism and freedom fighters who fought against the British. Although the British sought to codify Indian law over the archaic native laws, the codified laws were still harsh and vicious. British domination relied heavily on racism, brutality, and torture.

---

[18] Sharma, A. (2004). POLICE IN ANCIENT INDIA. The Indian Journal of Political Science, 65(1), 101

[19] Qadeer Alam, Historical Overview of Torture and Inhuman Punishments in Indian Sub-continent, Journal of the Punjab University Historical Society
Volume No. 31, Issue No. 2, July - December 2018, pp. 127,128

Torture practised in Ancient India was rooted in casteism whereas under colonial rule it had its roots in racism. “British colonialists routinely racially abused and beat their Indian servants and methods of torture that were used to enforce taxation included searing with hot irons, rubbing chillies into the eyes and genitals and suspension from tree branches. This type of abuse remained right up until independence in 1947.”[20] The police often got away with this abuse because it was incredibly normalised and condoned by the colonial rulers. They showed no sign of remorse and there was no access to justice for the victims. Beating the victims with *lathi* (Sticks) which was frequently employed is common even today. The police helped maintain colonial rule and were often corrupt.

Custodial violence by the police was the norm and they faced no consequences or repercussions. It was often considered part of the ‘civilising’ mission. Native Indians were considered savages and their ways, barbaric. The British often downplayed the role police had to perpetuate violence by using this narrative. The Indian Penal Code and the Criminal Procedure Code came into force in 1862 and The Evidence Act was enforced in 1872 replacing the former Islamic law and Hindu law. The laws enacted did not bring much justice to victims of police torture.

The police, under India's new overlords, did not dramatically change from their traditional establishment-subordinate model with the entrance of the British and their extreme excitement about how to manage India's colonial society. To maintain a tighter grip on their empire's crown jewel, the British simply implemented organisational improvements to the Indian police model, leaving the police's accountability to the monarch intact. The legal code of the Indian Police Act of 1861, which directly responded to recent changes in India, helped to solidify Britain's imperial grip on India.[21] Instead of holding the police accountable, this Act was created to defend police abuse in Colonial India. This Act cemented Britain's position as a colonial power in India and granted the colonial empire vast powers, allowing oppressive and archaic power structures to flourish. The Army and Police were seen as the twin pillars of stability when the British East India Company transferred Indian sovereignty to Parliament and the Queen through the Government of India Act in 1858. It was thought

[20]"Britain’s Crimes In India - The Truth Behind The Drama - Socialist Worker". Socialist Worker, 2022, https://socialistworker.co.uk/features/britain-s-crimes-in-india-the-truth-behind-the-drama/?fbclid=IwAR2QssS9F1zvXGXCuYV2bg2OROnfjWkcJ2R6rrM_8AxGjpM-6yXkzZno-io.

[21] Hinz, Michael Ray, (2016), TO PROTECT AND SERVE? THE INDIAN COLONIAL POLICE: 1861–1932, Texas A&M University, 24

that before a successful reorganised Army could be put in place, an effective reorganized Police had to be put in place first. Sir Charles Trevelyan, the Governor of Madras, stated: “Until this is done, the Army cannot be concentrated and reduced to the proportions required as a reserve in support of the Civil Power.” Financial reasons too were noted for what stability in India would mean to Britain.[22]

The ruling Court of Directors of the East India Company started in September 1856 that the previous police system had failed miserably in achieving the goals for which it was founded; it was almost useless for crime prevention and woefully ineffective for crime detection. It was unable to control crime and was unethical in the exercise of power, with a widespread reputation for corruption and oppression. After much research and travel, Sir Charles Napier advocated the establishment of an Indian police force modelled after the Irish colonial paramilitary police. This was agreed upon. In colonial Ireland, the police were a centralised paramilitary force that was only accountable to the government and unfettered by local authorities. The Irish police model was perfect for colonial India because it served the colonial ruling elite in a restless and violent country, its availability as an armed force under civilian control, and its centralised organisation. The Police Commissions of 1860 and 1902 established uniformity in British India's police forces. After independence, the trend toward centralization of intelligence activity, which had grown stronger in the final years of colonial rule, was perpetuated and accelerated. A crucial aspect was the strict hierarchy of rank and function between the superintendents at the top, the inspectorate in the middle, and the constabulary at the bottom. The civil service and the provincial government had complete control over the police department. Superior police officers' job was to keep an eye on the lower levels of the departmental hierarchy, not to perform routine detective or protective responsibilities.[23]

Following India's transformation into a British colony, the situation did not improve. The British ruled India in a typical autocratic and repressive manner. It has the potential to be cruel and violent at times. Its claims to legitimacy were adorned with rhetoric about civil liberties and individual freedoms, but in fact, these considerations took a back seat to the

---

[22] Hinz, Michael Ray, (2016), TO PROTECT AND SERVE? THE INDIAN COLONIAL POLICE: 1861–1932, Texas A&M University, 34

[23] “The Sordid Story of Colonial Policing in Independent India.” The Wire, 20 November 2017, https://thewire.in/government/sordid-story-colonial-policing-independent-india. Accessed 24 April 2022.

organisation's goals. It's hardly strange that the organisation and operations of the police should reflect the authoritarian nature of colonial administration in a past marked by annexation and invasion, as well as the maintaining of domination by force. It has been described as "expressive of the very character of colonial power in India" by some.[24]

British rule in India lasted 200 years. It was 200 years of fear, pain, and suffering. The British empire engaged in a plethora of acts that included torture, not just in course of maintaining their empire and getting confessions but also during revenue collection. Poor people were mercilessly tortured during this period if they did not have tax money ready for collection. This colonial nature of police torture is practised even today, it has left a long-lasting scar on the Indian society. Despite various amendments, laws, and police reforms, we can trace back today's broken police system to its colonial roots.

2.5.3. Post-Colonial Era

There have been numerous amendments and reforms enacted in the post-independent era. However, the police still practise violence to a point that 5 people die every day in custody in India. Police still engage in violence and torture to get confessions out of individuals. Police also routinely engage in violence to make sure they are ‘feared’ by the common man. Independent India’s first-ever National Police Commission (NPC) was set up in 1977 after the end of Prime Minister Indira Gandhi-imposed Emergency regime (1975-77). The commission, which was set up by the opposition Janata Party regime, submitted eight volumes of analyses and recommendations. The reports were put in cold storage when Indira Gandhi returned to power in 1980. She never bothered to place the NPC report in parliament mainly perhaps because the commission had been set up by the Janata Party. Until the first decade of this millennium, several largely ineffective committees – the Julio Ribeiro Committee in 1998, the Padmanabhaiah Committee in 1999, the Malimath Committee in 2000, and so on – were established to investigate various aspects of police reform. The National Human Rights Committee has also intervened on occasion to address the issue. Prakash Singh, a senior police officer, filed a public interest lawsuit before the Supreme Court in 2006. The court issued six major police reform guidelines based on the NPC's recommendations and urged the federal and state governments to put them into effect. The principles were primarily intended to protect police organisations from politically motivated

[24] Rajnarayan Chandavarkar, (1998). Imperial Power and Popular Politics: Class, Resistance and the State in India, c. 1850-1950. Cambridge University Press, 180

intrusion.[25]Suffice to say no real change regarding the structure and organisation of police has taken place since independence despite numerous reforms and amendments in the Constitution.

In India, the police force was founded on military principles. Its primary focus as mentioned in the previous section was policing people who had been enslaved, facilitating revenue collection, and ensuring free movement of commerce. Following the establishment of a unified police system in the 1860s, the police's understanding of their duty, as well as their perceptions of crime and social order, were influenced by their military roots. As a result, the police were more likely to view crime in terms of insurrection and disturbance, as well as public and political security, rather than just breaking the law and ensuring the safety of property and people. Of course, no police agency could realistically hope to succeed if it set itself the goal of rooting out criminality wherever it could be located. Police activities, and the operation of the criminal justice system, on the other hand, frequently worked to define and, as a result, create crime. The more determined the police were to eliminate crime, the more likely they were to become aware of it, create new categories of offences, and criminalise existing patterns of behaviour. The police activities gave the concept of public security an explicitly and narrowly political connotation. As a result, it made little attempt to interfere forcefully or to significantly disrupt the processes by which crimes against persons and property were dealt with inside informal social networks or local power structures. Of course, police forces around the world have relied on the cooperation of local populations to varying degrees. In India, it resulted in property elites, merchants, and industrialists, as well as local magnates, forming their private security and policing structures. As a result, the scope, and daily operations of the police, as well as their seeming ambiguities and contradictions, must be placed within the framework of the neighbourhood's social interactions. The Colonial Police was a crucial tool for state repression.[26]

Even in independent India, access to justice is a privilege enjoyed by a select few. Because India has not joined the UNCAT and hence lacks a legal framework forbidding and preventing torture, convicting police officers for torturing individuals is extremely difficult. The majority of torture victims come from working-class or underprivileged backgrounds.

[25] "The Sordid Story of Colonial Policing in Independent India." The Wire, 20 November 2017, https://thewire.in/government/sordid-story-colonial-policing-independent-india. Accessed 24 April 2022.

[26] Rajnarayan Chandavarkar, (1998). Imperial Power and Popular Politics: Class, Resistance and the State in India, c. 1850-1950. Cambridge University Press, 182

For millennia, the people of these communities have been oppressed and subjugated. The police, on the other hand, appear to be complicit and blind to crimes against Dalits and other oppressed castes. The police also play a significant role in maintaining and strengthening this oppression. It is becoming increasingly clear that India's criminal justice system is dysfunctional and corrupt, and that millions of Indians living on the fringes still lack access to justice. In post-independence India, there have been numerous police reforms. The harsh reality is that the state has played a significant role in perpetuating the colonial model of the police force, in which the police are answerable and accountable to the ruler - in the current scenario, it is politicians and powerful men who keep oppressive caste and religious systems alive.[27]

In *Mehmood Nayyar Azam V. State of Chhattisgarh*, the Supreme Court stated that "Torture has not been defined in the Constitution or other penal laws. Torture of a human being by another human being is essentially an instrument to impose the will of the strong over the weak by suffering. The word torture today has become synonymous with the darker side of human civilization. No violation of any one of the human rights has been the subject of so many Conventions and Declarations as torture all aiming at total banning of it in all forms, but despite the commitments made to eliminate torture, the fact remains that torture is more widespread now than ever before. Custodial torture is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilization takes a step backwards and the flag of humanity must on each such occasion fly half-mast. In all custodial crimes what is of real concern is not only the infliction of body pain but the mental agony that a person undergoes within the four walls of a police station or lock-up. Whether it is physical assault or rape in police custody, the extent of trauma, a personal experience is beyond the purview of the law. The main objectives of police are to apprehend offenders, investigate crimes and prosecute them before the courts and prevent the commission of a crime and above all ensure law and order to protect citizens' life and property. The law enjoins the police to be scrupulously fair to the offender and the Magistracy is to ensure a fair investigation and fair trial for an offender. The purpose and object of Magistracy and Police are complementary to each other. Unfortunately, these objectives have remained unfulfilled

[27] See further paper titled "POLICE BRUTALITY IN INDIA AND MARGINALISED COMMUNITIES BEARING THE ULTIMATE BRUNT", paper submitted for Democratic Policing and Human Rights, Spring Semester, 2021

even after 40 years of our Constitution. Aberrations of police officers and police excesses in dealing with the law-and-order situation have been the subject of adverse comments from this Court as well as from other courts but it has failed to have any corrective effect on it. The police have the power to arrest a person even without obtaining a warrant of arrest from a court. The amplitude of this power casts an obligation on the police and it must bear in mind that if a person is arrested for a crime, his constitutional and fundamental rights must not be violated. Mental suffering at any age in life can carry the brunt and may have a nightmarish effect on the victim. The hurt develops a sense of insecurity, and helplessness and his self-respect get gradually atrophied. We have referred to such aspects only to highlight that in the case at hand, the police authorities possibly have sadistic pleasure or to please someone meted out the appellant with this kind of treatment. It is not to be forgotten that when dignity is lost, the breath of life gets into oblivion. In a society governed by rule of law where humanity must be a laser beam, as our compassionate constitution has so emphasised, the police authorities cannot show the power or prowess to vivisect and dismember the same."[28]
There have been judicial activism on the part of the judiciary. But the fact remains that there are very few cases that receive justice in the form of compensation or imprisonment to the perpetrator. There is a clear abuse of power and the lack of definition of torture in the Constitution and other statutory laws makes it harder to convict a police officer accused of practising torture.

Even after decades of Independence, the fact remains that torture still exists. It has become a form of torture that has been institutionalised and normalised today. Torture by police is often brushed under the carpet and is seen as the norm.

Torture differs from other human rights violations in that it is sanctioned by a government with the intent of interrogating, punishing, deterring future criminality, or terrorizing or suppressing dissidents or minorities. Torturers have little to no fear of prosecution because of government policy, and victims' agony is exacerbated by the lack of hope for rescue, justice, or recompense. Victims and their families are aware that the government will shield torturers from prosecution, a privilege known as "impunity."[29] It is of paramount importance that one understands the gravity of Police torture in today's progressive world.

[28] Mehmood Nayyar Azam V. State of Chhattisgarh, AIR 2012, 8 SCC 1, pp 6,10,11 para 10, 11,37,38
[29] MILES, STEVEN H. The Torture Doctors: Human Rights Crimes and the Road to Justice. Georgetown University Press, 2020, https://doi.org/10.2307/j.ctv15pjzgp. Page 37

3. International Human Rights Instruments Preventing and Prohibiting Torture

3.1. Prohibition of Torture as Jus Cogens in International Law

The International Criminal Tribunal for the former Yugoslavia (ICTY) proposed obiter dictum in the case of the Prosecutor v. Anto Furundzija that the violation of a jus cogens norm, such as the prohibition against torture, had direct legal consequences for the legal character of all official domestic actions relating to the violation. The Court held that Torture is forbidden by a peremptory international law norm, which has inter-State and individual implications. It aims to delegitimize any legislative, administrative, or judicial act authorizing torture on an international level. It would be absurd to argue on the one hand that, because of the jus cogens value of the prohibition against torture, treaties or customary rules providing for torture would be null and void ab initio, and then to be unconcerned about a State, say, passing national legislation authorizing or condoning torture or absolving its perpetrators through an amnesty law... Potential victims could bring a civil suit for damages in a foreign court if they had locus standi before a competent international or national body, asking it to declare the national measures to be internationally unlawful; or the victim could bring a civil suit for damages in a foreign court, asking it to disregard the legal value of the national authorizing act, among other things. What's more, torturers who act on or benefit from such national measures may still be held criminally accountable for torture, whether in a foreign country or their own country under a subsequent regime.

Furthermore, it appears that one of the consequences of the international community bestowing the jus cogens character upon the prohibition of torture is that every State is entitled to investigate, prosecute, punish, or extradite individuals accused of torture who are present in a territory under its jurisdiction. Indeed, it would be contradictory to outlaw torture to the point of restricting sovereign States' typically unrestricted treaty-making powers, while also prohibiting States from trying and punishing torturers who had committed this heinous

crime abroad. Other ramifications appear to be that torture may not be covered by a statute of limitations and must not be immune from extradition under any political offence exemption.[30]

3.2. Prohibition of Torture under International Humanitarian Law (IHL)

Even in times of war, the Convention against Torture remains relevant since it allows for no exceptions. Torture and other cruel, inhumane, or degrading treatment are likewise prohibited under humanitarian law. Nonetheless, it does not replicate the Convention against Torture's restrictive conditions regarding the explicit goal of torture or the role of the torturer's agents of the state. Indeed, the prohibition and prevention of torture in armed conflict is intended to apply to all parties to the conflict, not just State actors, but also non-state armed groups that control and detain individuals, regardless of nationality or nature of the non-state actor. Torture is expressly always prohibited by the Geneva Conventions and in all circumstances. They stipulate that no physical or mental torture, as well as any other form of coercion, may be inflicted on protected persons (citizens, the wounded and sick, prisoners of war, or detainees), to obtain information of any kind from them (GIII Art. 17, GIV Art. 31). Intentional violence to a person's life, health, and physical or mental well-being are included in IHL's definition of torture, as are "outrages upon personal dignity, in particular humiliating and degrading treatments" directed at people who are not, or are no longer, participating in hostilities (GIII Art. 17, API Art. 75.2, APII Art. 4.2). GCI–V Common Art. 3 always prohibits these acts and in all places. "Torture, cruel or inhuman treatment, and outrages on personal dignity, in particular humiliating and degrading treatment, are forbidden," according to Rule 90 of the ICRC's 2005 study on the standards of customary international humanitarian law. In both international and non-international armed conflicts, this rule applies.[31]

The main International Humanitarian Law instruments that prohibit torture and other forms of ill-treatment include the 1907 Hague Regulations respecting the Laws and Customs of War on Land (Art. 4); the four Geneva Conventions of 1949 (GC I, Art. 12; GC II, Art. 12; GC

[30] Wet, Erika de. "The Prohibition of Torture as an International Norm of jus cogens and Its Implications for National and Customary Law." EJIL, vol. 15, 2004, pp 97, 98

[31] "Doctors without borders." Doctors without borders | The Practical Guide to Humanitarian Law, https://guide-humanitarian-law.org/content/article/3/torture-inhuman-and-degrading-treatment/. Accessed 5 May 2022.

III, Arts 13, 17 and 87; GC IV, Arts 27 and 32; GC I-IV common article 3 and arts 50, 51, 130 and 147 respectively; Additional Protocol I of 1977 (Art. 75(2)(a)(ii)); and Additional Protocol II of 1977 (Art. 4(2)(a)). The 1998 Rome Statute of the International Criminal Court (ICC) deems torture and other inhuman treatment to be war crimes in both international and non-international armed conflicts (Art. 8(2)(a)(ii) and 8(2)(c)(i) and (ii)) as well as crimes against humanity (Art. 7(1)(f) and (k)). Rule 90 of the ICRC study on customary IHL (2005) establishes that the prohibition of torture, cruel or inhuman treatment and outrages upon personal dignity, in particular humiliating and degrading treatment, in both international and non-international armed conflicts is a norm of customary international law. Further, Rule 156 provides those serious violations of IHL, including torture and other inhuman treatment, constitute war crimes in both international and non-international armed conflicts. States also have an obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and to bring such persons, regardless of nationality, before the State's courts, if such persons are not extradited to another State. This is reflected in Articles 49/50/129/146 of GC I-IV, respectively, and in AP I, Articles 85(1) and 86(1). Torture and other forms of ill-treatment are grave breaches of the Geneva Conventions (GC) and their Additional Protocols (AP), as well as being serious violations of international humanitarian law and war crimes in both international and non-international armed conflicts. States have a duty to enact legislation prohibiting acts of torture and other forms of ill-treatment and punishing those who commit them or order them to be committed. Individuals can be held criminally responsible for committing these war crimes. Further, military commanders are required to prevent, repress, and take action against those under their control who commit acts of torture and other forms of ill-treatment. These protections are listed under Articles 49/50/129/146 of GC I-IV, respectively, and their common Article 3(1)(a); AP I, Articles 86 and 87; AP II, Article 4(2)(a); and Rules 151-153 and 156 of the ICRC study on customary IHL. The Geneva Conventions and Additional Protocol I require states to exercise universal jurisdiction over grave violations, such as acts of torture and other forms of ill-treatment, committed during international armed conflicts. As a result, states have an obligation to find and prosecute suspected perpetrators, regardless of their country or the location of the crime. States also have the right to vest universal jurisdiction in their national tribunals for war crimes, including torture and other types of ill-treatment,

perpetrated in non-international armed conflicts, according to Rule 157 of the ICRC research on customary IHL.[32]

3.2.1 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

This is one of the most important International Human Rights Instruments Preventing and prohibiting torture. The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment places an absolute prohibition on Torture. The Convention's goal is to prevent and eliminate torture and other cruel, inhuman, or humiliating treatment or punishment, as well as to hold those responsible for acts of torture accountable. The Convention now has 165 States Parties and six more signatories. The Convention is the most comprehensive international codification of principles and procedures in torture prohibition. It defines torture (Article 1), requires States to take all necessary legislative, administrative, judicial, and other appropriate measures to prevent acts of torture (Article 2), and specifies several additional steps that States must take to adequately prevent, prohibit, and redress torture and ensure non-recurrence (Article 3). This includes:

- An obligation not to extradite, deport, expel, or otherwise transfer a person to a state where they would be at risk of torture or ill-treatment (non-refoulement) (Article 3).
- The criminalisation of torture under domestic law (Article 4).
- Establishing universal jurisdiction over torture (Articles 5-9).
- Training officials and reviewing detention procedures (Articles 10 and 11).
- Ensuring remedies for victims of torture, including the right to complain and the right to redress (Articles 13 and14).
- Ensuring that torture evidence is not used in any proceedings (the exclusionary rule) (Article 15)[33]

States should guarantee that torture is defined as a distinct criminal offence as per Article 4 of the Convention. Any effort to conduct torture, as well as any act that constitutes complicity or participation in an act of torture, should be criminalized, with suitable punishments

[32] ON INTERNATIONAL HUMANITARIAN LAW, ADVISORY SERVICE. "Prohibition and punishment of torture and other forms of ill-treatment." 2014.pp 1-3
[33] "The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." *Redress*, https://redress.org/wp-content/uploads/2018/10/REDRESS-Guide-to-UNCAT-2018.pdf. Accessed 5 May 2022.

commensurate with the serious nature of the crime. Although there is no specific requirement in the Convention, ensuring that all acts of torture are criminalized and providing a definition of torture that is consistent with the elements of torture in Article 1 of the Convention is one of the most effective ways to ensure compliance with the Convention. The Committee frequently recommends this. Many countries lack a particular criminal offence of torture, as determined by the Committee, under their national legal frameworks. This is true of countries such as Seychelles, Belarus, Germany, Lebanon, Poland, and Thailand, even though several of these countries are undergoing reform or have draft legislation in place.

Other countries lack a definition of torture that is consistent with Article 1 of the Convention or have a definition that is insufficient or incomplete. Rwanda, Congo, Ecuador, Hungary, Lebanon, Lithuania, the United Kingdom of Great Britain and Northern Ireland, Congo, and Pakistan are among the countries affected.[34]

3.3. Torture Prohibition Under Other International Human Rights Instruments

1. Torture may also constitute a “crime against humanity” or “war crime” under international criminal law, such as is specified in the Rome Statute of the International Criminal Court (Arts. 7 and 8)
2. Article 5 of the Universal Declaration of Human Rights states: “No one shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment.”
3. Article 7 of The International Covenant on Civil and Political Rights states that No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

4. Torture is also widely discussed in the following International Instruments
    a. U.N. Special Rapporteur’s Report on Death Penalty and Prohibition of Torture in the United Nations General Assembly (2012)
    b. International Convention for the Protection of All Persons from Enforced Disappearance
    c. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

[34] “The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.” Redress, https://redress.org/wp-content/uploads/2018/10/REDRESS-Guide-to-UNCAT-2018.pdf. Accessed 5 May 2022.

d. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
e. " Code of Conduct for Law Enforcement Officials adopted by the General Assembly in its resolution 34/169 of 17 December 1979

3.4. India and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

India has signed the Convention Against Torture but has not yet ratified it. On July 22, 1987, the government decided to sign. However, according to Aunohita Mojumdar of The Statesman, India has decided not to recognize the Committee Against Torture's competence under articles 20, 21, and 22 of the Convention by completing the necessary declarations.[35]
The Articles read as follows.

The 273rd Law Commission report proposed this Bill which has not been passed by the Parliament. India has faced numerous castigations from the international community for its lack of ratification of UNCAT and enacting domestic legislation preventing and prohibiting torture. The bill exclusively addresses severe bodily harm and significant injuries because of torture; it excludes other types of torture such as verbal or physiological torture which can be seen as a drawback of the proposed bill. With regards to Kerala, there are many instances where Police officers engage in violence other than hurt and grievous hurt and there could be seen as a denial of justice to victims of other forms of Police torture. The Government at the time blames it on the dysfunctionality of Parliament at the time the Bill was introduced. The Law Minister at that time filed a petition in the Supreme Court to give a nudge to the Bill and use its suggestive jurisdiction. The Supreme Court after three years in 2019 ruled against the Bill in an elaborate judgment stating that it is not within their remit to advise the Government or the Parliament due to the Separation of Powers provision in the Constitution. The Supreme Court has previously reversed its judgment in the past and the rising case of police torture and violence might force the Supreme Court to overturn its own decision in the future.[36] In this instance, the Supreme Court failed to exercise judicial review. According to Dr Ashwani Kumar, former Minister of Law and Justice, political leadership has a key role to play in

[35] Noorani, A. G. "India and the Torture Convention." Economic and Political Weekly, vol. 32, no. 52, 1997, pp. 3306–07, http://www.jstor.org/stable/4406222. Accessed 5 May 2022, page 3306
[36] India's 23-Year-Old Failure to Ratify UN Convention Against Torture is Shameful I Karan Thapar, The Wire, 2 July 2020

ratifying UNCAT and enacting domestic legislation in line with the UNCAT. The Government needs to prioritise this Bill and fulfil its treaty obligations.

3.5. Constitutional Provisions and other Legal Instruments Prohibiting Torture in India

3.5.1. Constitutional Provisions

Right not to testify against oneself: According to Article 20(3) of the Constitution, no accused person can be forced to testify against himself. This protection bans police officers from using coercion or torture to get evidence. On the contrary, everyone is legally required to tell the truth to a public official about any issue under Section 179 of the IPC. The police can also question the accused during an investigation under Section 161 of the CrPC. On the other hand, if the authorities exert any pressure on an accused, whether subtle or overt, mental, or physical, direct or indirect, but significant, it is referred to as "compelled testimony." Article 21 stipulates that no one can be deprived of their life or personal liberty unless they follow the legal procedure. The right provides a constitutional guarantee against torture, assault, or harm, and consequently acts as a deterrent to torture and violence in detention. In Maneka Gandhi vs. Union of India[37] (1978), the Supreme Court expanded the scope of Article 21 of the Constitution, emphasising that this right is not confined to bodily existence but also includes the fundamental right to live with dignity. The Supreme Court declared in Inderjeet v. State of Uttar Pradesh (2014)[38] that torture-like punishment is unconstitutional. In Prem Shankar Shukla v. Delhi Administration[39] (1980), the Supreme Court found that mandatory handcuffing of prisoners was inhumane.[40]

Right to know the cause for the arrest: Article 22(1) of the Indian Constitution guarantees the arrested person the right to know the reason for his arrest, as well as the right to confer with a lawyer of his choice to defend him. The accused individual has a comparable privilege under Section 50 of the Criminal Procedure Code, as well as the ability to obtain bail. Article 22(2) of the Indian Constitution guarantees the arrested person a quick trial. Any individual arrested must appear before a magistrate within twenty-four hours of their arrest. Any further

[37] 1978 AIR 597
[38] 9th May, 2014, CRL.A.544/1998
[39] 1980 AIR 1535
[40] Garg, Rachit. "Reasons for India to sign the torture convention." iPleaders, 14 October 2021, https://blog.ipleaders.in/reasons-for-india-to-sign-the-torture-convention-2/#Article_20. Accessed 7 May 2022

detention must be approved by a magistrate. As a result, everyone has the right to seek bail and air his objections about any mistreatment he has received and to have an independent investigation conducted into the validity of his arrest.[41]

Over the years the Supreme Court has increased the scope and ambit of these articles. These articles deal with action by the state exclusively. Fundamental Rights guaranteed in the Constitution are against state action. Torture can be prevented using these constitutional provisions but since the constitution does not explicitly prohibit torture, it is often a grey area surrounding it.

3.5.2 Judicial Response

Shri D.K. Basu vs State Of West Bengal, State Of U.P on 18 December 1996

In this case, the Supreme Court laid down extensively guidelines to be followed by law enforcement officers during the arrest. The Judgment laid down guidelines to be followed by the police during an arrest. The following are the guidelines mentioned in the Judgment.

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

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest such memo shall be attested by at least one witness. who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having an interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town

[41] Garg, Rachit. "Reasons for India to sign the torture convention." iPleaders, 14 October 2021, https://blog.ipleaders.in/reasons-for-india-to-sign-the-torture-convention-2/#Article_20. Accessed 7 May 2022

through the legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer affecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to a medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by the Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a penal for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.

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

(11) A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.[42]

The court also stated that the requirements, referred to above, flow from Articles 21 and 22 (1) of the Constitution and need to be strictly followed and that these would apply with equal force to the other governmental agencies also to which a reference has been made earlier.[43]

State Of Madhya Pradesh vs Shyamsunder Trivedi and Ors on 9 May 1995[44]

The Court in its judgment stated that Tortures in police custody, which have recently become more common, are encouraged by the courts' unrealistic approach because it reinforces the police's belief that no harm will come to them if an odd prisoner dies in custody. After all, the

[42] D.K. Basu v. State of West Bengal (AIR 1997 SC 610), pp 13,14

[43] D.K. Basu v. State of West Bengal (AIR 1997 SC 610), page 14

[44](1995 (4) SCC 262 ; 1995 SCC (Cri) 715)

prosecution will have little evidence to directly implicate them in the torture. Death in police custody is possibly one of the worst types of crime in a civilised society regulated by the rule of law, and it poses a major threat to an ordered civilised society, which the courts must not lose sight of. Torture is an affront to human dignity and a violation of people's basic rights as recognized by the Indian Constitution. The excessive police force and mistreatment of detainees/under trial prisoners or suspects tarnish the image of any civilised nation and encourage the men in 'Khaki' to believe they are beyond the law, if not outright criminals. Unless drastic efforts are taken to combat the disease, the underpinnings of the criminal justice delivery system will be shattered, and civilisation would face extinction. As a result, the courts must deal with such matters realistically and with the compassion that they merit, otherwise the ordinary man's faith in the system would be eroded.[45]

3.5.3 Other Legal Instruments related to Torture

In 2009, Section 41 of the Criminal Procedure Code (CrPC) was amended to include safeguards under 41A, 41B, 41C, and 41D, ensuring that interrogation arrests and detentions have reasonable grounds and documented procedures, that arrests are made transparent to family, friends, and the public, and that legal representation is available. Under Section 24 of the Indian Evidence Act (1872), investigating officers are prohibited from paying, intimidating, or promising anyone, and they are also prohibited from compelling someone to make any statement that they do not want to make. Section 24 of the Indian Evidence Act of 1872 makes all confessions obtained through coercion, intimidation, or promise inadmissible. Because it is widely assumed that if such evidence is found acceptable, the authorities will use torture and force to extract evidence against him, the article gives the accused the right not to make any confession against his will. Wrongful confinement is prohibited under Section 348 of the IPC, which bans such confinement to extort any confession or information to detect any infraction or misbehaviour. Wrongful detention is now a criminal offence punishable by up to three years in jail and a fine. The Criminal Procedure Code Section 49 serves as a safeguard against disproportionate punishment. It stipulates that an apprehended person may not be subjected to more restrictions than are necessary to prevent him from fleeing. According to Section 55A of the Criminal Procedure Code, the accused's custodian is responsible for the accused's health and safety.[46]

---

[45] Shri D.K. Basu vs State Of West Bengal,State Of U.P on 18 December, 1996, (1995 (4) SCC 262 ; 1995 SCC (Cri) 715)
[46] Garg, Rachit. “Reasons for India to sign the torture convention.” iPleaders, 14 October 2021, https://blog.ipleaders.in/reasons-for-india-to-sign-the-torture-convention-2/#Article_20. Accessed 7 May 2022

Section 176 of the Criminal Procedure Code reads as follows:

176. Inquiry by the Magistrate into the cause of death.

(1) When any person dies while in the custody of the police or when the case is of the nature referred to in clause (i) or clause (ii) of sub-section (3) of section 174] the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of section 174, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

(2) The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case.

(3) Whenever such Magistrate considers it expedient to examine the dead body of any person who has been already interred, to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

(4) Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known and shall allow them to remain present at the inquiry.

The National Human Rights Commission 2010 interpreted section 176 [A] of the Code of Criminal Procedure and observed that the interpretation of the law has to be reasonable, and a Judicial Magistrate has to be called upon to conduct an enquiry in cases where serious laws have been violated. It looks incongruous if serious cases of custodial death are being enquired by the Executive Magistrate and simple cases of natural death are investigated by the Judicial Magistrate. (The Judicial Magistrate of India is a part of the judiciary and can contain multiple judges whereas an Executive Magistrate is part of the Indian Administrative Service and part of the executive of the State). The court further noted that the correct position of law is an inquiry by a judicial magistrate into custodial deaths when there is serious suspicion of foul play or well-founded allegations or evidence pointing to the fact that a crime has taken place.

As a result of this interpretation, state police forces have been registering most custodial deaths incidents as natural deaths or suicides, according to experts. For example, according to the National Crime Records Bureau (NCRB), out of 85 total cases of custodial deaths in 2019, 33 were recorded as suicides and 36 as being caused by illnesses. Only two deaths were recorded due to physical assault in police custody. Similarly, almost 70% of deaths in police custody in the past decade (out of a total of 1,004) have been attributed to illness, suicide, or death from natural causes.

The human rights body issued a revised order in September 2020 that was not made public. The order stated that the enquiry in all cases of custodial deaths, including natural deaths or deaths due to any illness, shall be conducted by a judicial magistrate or metropolitan magistrate. This was seen as a positive step toward the prevention of custodial deaths and holding police officers criminally responsible if there is foul play involved.[47]

The 113th Law Commission Report titled Injuries in Police Custody recommended amendments to the Indian Evidence Act following a Supreme Court judgment recommending the power should be given to the Court to draw a presumption where there is bodily injury present while they were in the custody of the police. The court should proceed to assume that the injuries they sustained occurred while police officials were holding them. The exercise of such power would be acceptable because it is exceedingly unlikely that anyone other than a police officer would be able to cause harm. Due to exceptional circumstances, the power would be rebuttable and discretionary.[48]The 152nd Report of the Indian Law Commission on Custodial Crimes (1994) The report acknowledged police officers' pervasive and disproportionate use of torture during questioning and investigations. It covered police structure, factors that contribute to custodial offences, legislation provisions intended to serve as protections, and international covenants. It examined provisions on evidence, official sanction, and compensation, among other things, and explored the laws and practices that apply to arrests. It recommended that provisions relevant to arrest procedure, cognizance of offences committed by officials on an accused in custody, medical examination of arrested persons, and other provisions be added to existing penal statutes. It was suggested that the

[47] Chauhan, Neeraj. "Probe all custodial deaths, rules NHRC | Latest News India." *Hindustan Times*, 14 January 2021, https://www.hindustantimes.com/india-news/probe-all-custodial-deaths-rules-nhrc-101610567294556.html. Accessed 12 January 2022.
[48]Law Commission of India. "113th Report on Injuries in Police Custody." Law Commission of India, 1985, https://lawcommissionofindia.nic.in/101-169/Report113.pdf. Accessed 9 May 2022.

police force be divided into two divisions, one for law enforcement and the other for inquiry. Both of these units would be self-contained. There were additional suggestions for changes to the Code of Criminal Procedure, the Indian Penal Code, and the Indian Evidence Act.[49]

177th Report of the Law Commission (2001) titled “Law Relating to Arrest” which recommended amendments to be brought into the Criminal Procedure Code by inserting section 55A stating that it should be the duty of the person having custody of the arrested person to take care of his/her/their health and safety. It also recommended several amendments to previous provisions and the insertion of more provisions to guarantee and safeguard the rights of an accused especially in cases where there is an arrest without a warrant. 268th Report (2017) suggested amendments to the Criminal Procedure Code, 1973 in provisions relating to bail. 273rd Law Commission (2017) recommended that the Indian government ratify the Convention Against Torture for ratification and enact a Prevention of Torture Law. The Fourth Report of the National Police Commission recommended the Police do a more comprehensive work when it comes to notifying and giving information to the arrested persons' family members. It also made certain recommendations to reduce third-degree methods during interrogation.

3.5.4 Guidelines Issued by the National Human Rights Commission in cases of Custodial Death

According to the Paris Principles relating to the Status of National Human Rights Institutions (NHRIs) developed in 1991 (subsequently endorsed by the UN General Assembly in 1993), the Government of India established NHRC by the Protection of Human Rights Act, 1993 (PHRA). It is one of few NHRIs established in the early 1990s. NHRC generally takes up the issues involving cases of human rights violations that are of significance, either through suo motu, or when the civil society organisations, the media, and concerned citizens bring the cases to its knowledge. Following an inquiry, it can “recommend” the government to grant immediate interim relief and/or payment of compensation or can even approach the higher courts for necessary orders/directions.[50]

---

[49] “Project 39A — Reports 2 Torture.” Project 39A, https://www.project39a.com/torture-reports. Accessed 9 May 2022.
[50] Sarkar, Subhradipta. “NHRC: The tale of a flagging institution.” Times of India, 17 July 2021, https://timesofindia.indiatimes.com/blogs/sarkari-thoughts/nhrc-the-tale-of-a-flagging-institution/. Accessed 14 January 2022

I. According to the guidelines issued by the Commission following guidelines should be followed while conducting the magisterial enquiry in case of custodial death or death in the course of police action.

The magisterial enquiry is conducted at the earliest without undue delay.

The Enquiry magistrate should visit the place of occurrence to the acquaintance with the facts on the ground. During the visit to the scene of the crime, the Enquiry Officer should attempt to identify natural witnesses who are likely to have been present at the scene of the crime. The Enquiry Officer should take them into confidence and try to record their statements. Many times members of the family of the deceased narrate the motive of the police officer who staged the encounter for killing the deceased. The motive so given should be thoroughly investigated for its veracity or otherwise.

Public notice is issued through the vernacular newspapers to inform witnesses concerned with the enquiry. The enquiry magistrate should ensure that the information reaches all concerned particularly the close relatives of the victim. A free and fair opportunity should be given to the relatives of the victim while recording their statements.

The magisterial enquiry should cover the following aspects.

a) The circumstances of death

b) The manner and sequence of incidents leading to death

c) The cause of death

d) Any person found responsible for the death, or suspicion of foul play that emerges during the enquiry.

e) Act of commission/omission on the part of public servants that contributed to the death

f) Adequacy of medical treatment provided to the deceased.

The enquiry magistrate must verify and check records like the inquest report, final cause of death, Medical treatment report, report by police regarding the investigation conducted etc.

The magistrate should examine family members and relatives of the deceased, eyewitnesses having information of the circumstances leading to the encounter, doctors who have conducted the post mortem/provided treatment to the deceased, concerned police/prison officials, independent witnesses, co-prisoners and other such relevant persons.[51]

[51] Guidelines regarding conducting of Magisterial Enquiry into Custodial Death issued by National Human Rights Commission

Even before a case brought against the State is resolved, the National Human Rights Commission might give interim remedies in the form of compensation. In numerous situations, the state has been ordered to compensate the victims' relatives.

Wali Ahmed v. State of Haryana[52]

The court noted that "serious concern shown by the Courts and strict measures to check custodial death or use of criminal force during investigation/interrogation, has not deterred the police force to mend its way and go in for scientific investigation of a crime. The use of violence by police sometimes leading to death has gone unabated, despite concerns having been expressed by various Courts in this regard from time to time. The facts in the present case are indicative of custodial death, though police have made elaborate and detailed efforts to give it a colour of crime on the part of the deceased boy, who has lost his life at the young age of about 17 years". Furthermore, it noted that, "every incident of custodial death/rape is to be reported to the National Human Rights Commission. District Magistrate and Superintendent of Police of every District are under obligation to report to the Secretary-General of the Commission of any incident of custodial death. Importantly, failure to report promptly is to give rise to a presumption that there has been an attempt to suppress the incident. On being deeply disturbed over the rising incidents of deaths in police lock-ups and jail, the Commission has issued directions for Video recording of postmortem. As per the Commission, scrutiny of reports in respect of all these custodial deaths very often showed that the postmortem in many cases had not been done properly. It was noticed that the reports were drawn up casually and did not help in forming an opinion as to the cause of death. The Commission, thus, was of the impression that a systematic attempt is being made to suppress the truth and report is merely the police version of the incident. Since the postmortem report is considered to be a most valuable record and is of considerable importance for concluding the death, it was required to be given due importance. The Commission has formed a prima-facie view that local doctors succumb to police pressure which leads to distortion of facts and accordingly, the Commission has required that all postmortem examinations done in respect of deaths in police custody and jail should be video filmed and cassettes be sent to the Commission along with the postmortem report. The Commission was alive of the extra cost

[52] See further, paper titled "What role does the National Human Rights Commission play in the administration of justice for victims of custodial death in India?" submitted for Procedural Human Rights Law, Autumn Semester, 2021

involved in doing this exercise but still did not consider it more valuable than a human life commission also recommended a Model Autopsy Report as the existing autopsy report form was not considered comprehensive enough and left scope for doubts and manipulation. After having discussed with the experts and ascertaining the views of the State, a UN Model Autopsy Protocol is prepared as a Model Autopsy Form, which is enclosed with the report. Guidelines have also been issued by the National Human Rights Commission on the deaths caused by police action. In this regard, the Commission has recommended modified procedure to be followed by the State Government in all cases of death in the course of police action ”

Smt. Soubhagya vs The Chief Secretary, State Of Karnataka[53]

The court found the respondents/defendants guilty and ordered 500,000 Indian Rupees to be paid to the victims' wife and minor son. It stated that “if a person dies in the police custody, the State and the Police personnel are not entitled to seek sovereign immunity for payment of damages by way of compensation, further the dependents of such deceased person are entitled to claim the compensation from the State and the persons who are responsible for making such person die during their custody. Such incidents strike at the very foundation of rule of law. Deprivation of life without due process of law is banned and barred under Article 21 of the Constitution. Yet such incidents take place. Those who think that they can detect and eradicate crime by resorting to crime are stoking the fire which they want to extinguish. The police can surely interrogate a person accused of an offence, but it cannot torture him to extract information otherwise tyranny will replace the law.”
Despite all these provisions, case laws and guidelines, there are numerous cases when it comes to custodial death that needs further examination and why the conviction rate in such cases is extremely low.

These are the Constitutional Provisions, judicial remedies, legal provisions and instruments currently in place in India for victims and individuals who face torture and violence at the hands of Police officers. Since the victims are usually people belonging to marginalised communities, there is often a practice of police impunity. Regardless of these specific provisions and case laws, in modern India, police torture remains a challenge.

[53] 2001 CriLJ 238

4. Kerala and the State Police Force

This thesis will deal with the state of Kerala, a state on the southwestern coast of India known for its high literacy rates, its progressive social welfare programmes and gender equality. It will examine whether International jurisprudence on Torture is being followed by the State and its machinery in the course of enforcing the law and look into how it is being implemented or not implemented and what can be an alternative if the implementation of International Human Rights Instruments does not work in the State. Before studying the state police force in Kerala one needs to understand the Organisational Structure of Police in India;

4.1. Current Organisational Structure of Police in India

The police is a state subject in Independent India and its organisation and work are governed by rules and regulations framed by the state governments. These rules and regulations are outlined in the Police Manuals of the state police forces. Each State/Union Territory has its separate police force. Despite the diversity of police forces, there is a good deal that is common amongst them. This is due to four main reasons:

- ➔ The structure and working of the State Police Forces are governed by the Police Act of 1861, which is applicable in most parts of the country, or by the State Police Acts modelled mostly on the 1861 legislation.
- ➔ Major criminal laws, like the Indian Penal Code, the Code of Criminal Procedure, the Indian Evidence Act etc are uniformly applicable to almost all parts of the country.
- ➔ The Indian Police Service (IPS) is an All India Service, which is recruited, trained and managed by the Central Government and which provides the bulk of senior officers to the State Police Forces.
- ➔ The quasi-federal character of the Indian polity, with specific provisions in the Constitution, allows a coordinating and counselling role for the Centre in police matters and even authorises it to set up certain central police organisations.[54]

[54] Commonwealth Human Rights Initiative, Police Organisation In India

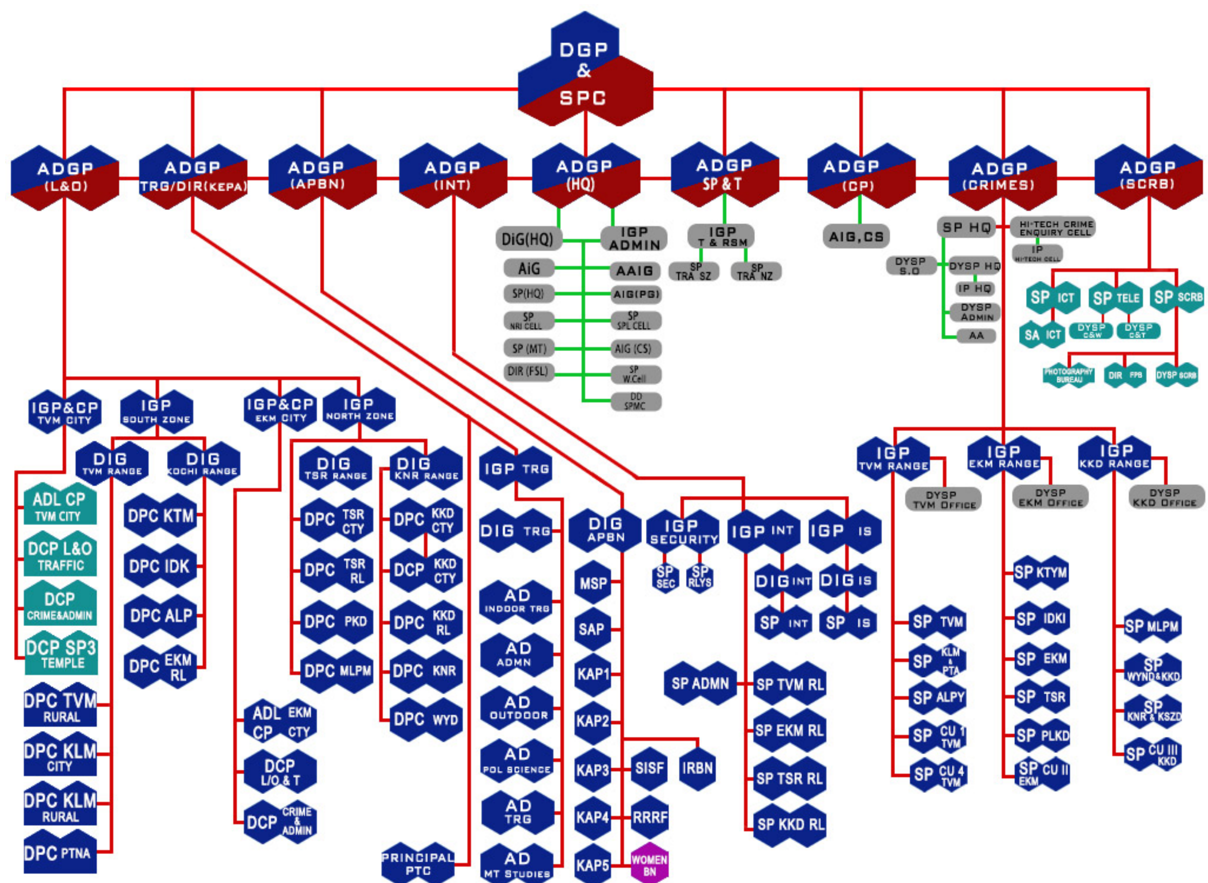
4.2. Police Force in the State of Kerala

For a better understanding, it is imperative to know the organisation, structure and ranking of police in the state of Kerala. States are divided territorially into administrative units known as districts. An officer of the rank of Superintendent of Police heads the district police force. A group of districts form a range, which is looked after by an officer of the rank of Deputy Inspector General of Police. Some states have zones comprising two or more ranges, under the charge of an officer of the rank of an Inspector General of Police. To enable the police to have greater and speedier reach and the public to gain easier access to police help, police posts have been set up under police stations, particularly where the jurisdiction of the police station, in terms of area and population, is large.[55]

Police administration is more or less uniform across the country at the state level. The police administration is coordinated and supervised by the Home Department. The Director-General of Police/Inspector General of Police is in charge of the actual police administration. The Commissioner of Police oversees the police forces in major cities including Delhi, Kolkata, Mumbai, Chennai, and Hyderabad. The state is organized into ranges, which are territorial divisions. A range is made up of several districts. Police divisions, circles, and police stations are all part of each district's police force. A Deputy Inspector General of Police oversees each range. Each Police range has a few districts, which can range from two to eight in number depending on the district's size, population, and importance. One of the DIG's main responsibilities is to coordinate the actions of district police and to take steps to improve inter-district cooperation. He also guarantees that the police and executive magistrates have a good working relationship. The district plays an important function in police administration. At this level, all of the laws and norms enacted by the police are put into action. The Superintendent of Police (SP) is in charge of the district's law and order and other law enforcement activities. Although SP is technically under the Collector's ultimate command, he and his subordinate officers have operational autonomy in the performance of their duties. Several units, including home guards, women police, criminal branch, dog squad, and others, operate at the district level to aid the police. The district police organization is organized into several subdivisions for operational convenience. Police circles are created from sub-divisions. Each circle could have anywhere from three to ten police stations. The

[55] "Police Organisation In India." *Commonwealth Human Rights Initiative*, https://www.humanrightsinitiative.org/publications/police/police_organisations.pdf. Accessed 25 April 2022, pp 9,11,12

Inspector of Police is in charge of the Police Circle, while the Deputy Superintendent of Police or Additional Superintendent of Police is in charge of the sub-division. The lowest grade of the police force is the police station. It is the basic and major unit in charge of maintaining law and order, preventing and controlling crime, and protecting community life and property. All state senior police positions are filled from the Indian Police Service (IPs) cadre, which is recruited "on an all-India basis." State governments are responsible for recruiting and promoting lower-level officers from Police Constables to Deputy Superintendents of Police.[56]



Source: Organisational Chart, keralapolice.gov.in

[56] DasGupta, Rohini. "Notes on the organization and structure of police in India." *PreserveArticles.com*,https://www.preservearticles.com/notes/notes-on-the-organization-and-structure-of-police-in-india/4373. Accessed 13 May 2022.

- ➔ The Police force of the Kerala State is under the general control of the Inspector General of Police appointed by the State Government.
- ➔ The Inspector-General of Police is assisted by Deputy Inspectors General, each in charge of a Range. Another Deputy Inspector General will be in charge of Criminal Investigation work throughout the State.
- ➔ Each Range consists of 4 or more Districts. A Superintendent of Police is in charge of each District except Trivandrum and Ernakulam and he is assisted by one or more Assistant or Deputy Superintendents commonly designated as Sub Divisional Police Officers, each in charge of a Subdivision. There are also personal Assistants to Superintendents of police.
- ➔ A Subdivision is further divided into Circles, of which Circle Inspectors are in charge, and a Circle is subdivided into Police Station areas, each of which is under a sub Inspector with Head Constables and Constables and if necessary an additional Sub Inspector to assist him. Some Police Stations have outposts attached to them, each of which is manned by a Head Constable assisted by some Constables.[57]

Kerala Police is headed by the State Police Chief (SPC). He is the senior-most Indian Police Service officer in the State and is of the rank of Director General of Police. The State Police Chief is designated as the Head of the department for all administrative and operational purposes. He is assisted by Police officers and subject domain experts posted all over the state of Kerala for effective police administration. SPC is assisted by officers in the rank of Additional Directors General of Police to manage a multitude of areas such as Law & Order, Crimes, Intelligence, Traffic, Armed Police Battalions, Training, Coastal Policing, Police Headquarters and State Crime Records Bureau. For the purpose of maintenance of law & order and traffic management, the state of Kerala is divided into two police zones, the North Zone and the South Zone, which are headed by officers of the rank of Inspectors General of Police. These two zones are further divided into four Police Ranges, namely, Thiruvananthapuram range, Ernakulam Range, Thrissur Range and Kannur Range, and are headed by officers of the rank of Deputy Inspectors General. Each Range consists of three to five police districts, each headed by a District Police Chief, usually in the rank of a Superintendent of Police. The only exceptions are the police districts of Thiruvananthapuram city and Kochi city which are headed by officers of the rank of Inspector General of Police

[57] Kerala Police. Organisation. vol. I, The Kerala Police Manual, 1961. Page 4

and the police district of Kozhikode city which is headed by an officer of the rank of Deputy Inspector General of Police. There are 19 police districts in Kerala. All the police districts of Kerala are co-terminus with the boundaries of Revenue districts except in five districts.[58]

Kerala Police have achieved great heights in terms of administration of justice. According to the official website of the Kerala Police, it is regarded as one of the best-managed state police forces in the country, as well as one of the top-ranking states in terms of law and order enforcement. Kerala Police is also one of the first police departments in South Asia to use an enactment to execute community policing. It is commonly referred to as 'Janamaithri' policing, which means 'people-friendly policing.' Kerala Police, second only to the National Capital Territory of Delhi, has the highest number of cognizable offences in the country. This must be evaluated in the context of the state's largely tranquil image. This reflects the state's strong practice of registering every cognizable incident recorded at the police station level and dealing legally with the crimes and offenders.[59]

4.3 The Kerala Police Act, 2011

The Kerala Police Act 2011 is the main legislative framework followed by the Police regarding organisation, regulation, control and discipline of the Police force etc. According to the Act the State Police performs the following functions;
The Police Officers shall, subject to the provisions of this Act, perform the following functions,
namely:-

(a) to enforce the law impartially;

(b) to protect the life, liberty, property, human rights and dignity of all persons by the law;

(c) to protect the internal security of the nation and act vigilantly against extremist activities, communal violence, insurgency, etc;

(d) to promote and protect arrangements ensuring public security and maintaining public peace;

(e) to protect the public from danger and nuisance;

[58] "Official Website of Kerala Police - Governance." Kerala Police, 19 November 2020, https://keralapolice.gov.in/page/governance. Accessed 25 April 2022.
[59] "Official Website of Kerala Police - About Kerala Police." Kerala Police, 10 February 2022, https://keralapolice.gov.in/page/about-kerala-police. Accessed 25 April 2022.

(f) to protect all public properties including roads, railways, bridges, vital installations and establishments;

(g) to prevent and reduce crimes by exercising lawful powers to the maximum extent;

(h) to take action to bring the offenders to the due process of law by lawfully investigate

(i) to control and regulate traffic at all public places where there is the movement of people and goods;

(j) to strive to prevent and resolve disputes and conflicts which may result in crimes;

(k) to provide all reasonable help to persons affected by natural or manmade disaster, calamity or accident;

(l) to collect, examine and, if necessary, disseminate information in support of all activities of the police and the maintenance of security of the State;

(m) to ensure the protection and security of all persons in custody by law;

(n) to obey and execute lawfully all lawful commands of competent authorities and official superiors;

(o) to uphold and maintain the standards of internal discipline;

(p) to instil a sense of security among people in general;

(q) to take charge of and ensure the security of persons, especially women and children found helpless and without support in any public place or street;

(r) to discharge any duties imposed by any law for the time being in force;

(s) to discharge such other functions as may be lawfully assigned to them by the Government, from time to time.[60]

Protection of life, liberty, property, human rights and dignity of all persons as well as ensuring the protection and security of all persons in custody are amongst the key functions of the police. It is the statutory duty of the Police according to the Constitution and the Kerala Police Act to ensure they do not engage in any activity that might lead to the destruction of property or infringement of any human rights guaranteed in the Constitution. Section 7 and 8 of the Act also talk about the rights of the public to an efficient police system and the rights of the public at a police station respectively. Section 29 of the Act which talks about the behaviour of the Police officer ensures that they do not use force against anybody or threaten that force is used or take any adverse police action or legal action unless it is necessary to

[60] Act 8 of 2011, THE KERALA POLICE ACT, 2011, chapter II, section 4

carry out any lawful purpose. The section also goes on to state that the police officer shall give up an unnecessary show of aggression and avoid intemperate behaviour even on provocation and finally that Police officers shall not misbehave or use indecent language to anyone in their care or custody. The Act clearly states that Police officers should not use force against anybody or threaten anybody unless it is necessary, the last part of the provision is often used to justify using force and threatening people and can be seen as a loophole that is often employed by the Police in Kerala. Section 32 of the Act is also important and reads as follows;

32. Police officers are liable to explain.-

(1) Any person or his representative in interest shall have the right to seek and be informed of the reason for any police action which adversely affected his body or property or reputation.

(2) A Police Officer while performing any act which is likely to endanger or adversely affect the body, property or reputation of any person, shall, as is reasonably practicable under each particular circumstance, maintain records of his actions which are done under any law or order of the State Police Chief which governs such acts as may be prescribed by any law governing such act or as ordered by the State Police Chief.[61]

According to section 32, the Police officers are liable to give a proper explanation to the individual for actions which have adversely affected his body, property or reputation. This section calls for accountability of Police officers and also asks the officers to keep a record of their actions. This section can be seen as a statutory provision ensuring the liability of the Police in any given situation.

These are main provisions that one can interpret in such a way that it entails liability of the Police in situations where violence or torture is used. However, since India has not ratified the UNCAT, which means there is a lack of national as well as state legislation prohibiting torture other than the provisions in the Constitution, not much is said about interrogation methods that may be employed or redressal of victims of torture.

4.4. Police Reforms in Kerala

There have been numerous Police reforms introduced in the State of Kerala by the Central Government following Supreme Court orders over the years. However, none of them has

[61] Act 8 of 2011, THE KERALA POLICE ACT, 2011, chapter V, section 32

been implemented completely and lacks enforcement. The State Governments do not seem to take a lack of initiation when it comes to Police reforms as many of the reform policies would undermine the power of the Government over the Police. “Discussing how police reforms remain a distant dream even after the 2006 Supreme Court judgment on it, members of the Indian Police Foundation (IPF), a multi-disciplinary think tank, appealed to implement these reforms at the earliest. “There were great expectations that changes would usher in a new era for the police and make it people-friendly. The Rulers’ Police would metamorphose into People’s Police,” the Foundation said in an appeal during an online event on its fifth anniversary. “Fourteen years have passed since the judgment was delivered and the transformational changes are not to be seen yet. The Supreme Court has been monitoring the implementation of its directions, but obviously, these have not been effective,” it said.”[62]
In the past, several noteworthy proposals for police changes have been made by various committees and commissions. The National Police Commission (1978–1982), the Padmanabhaiah Committee on Police Restructuring (2000), and the Malimath Committee on Criminal Justice Reforms are among the most notable (2002-03). On the orders of the Supreme Court of India, another Committee, headed by Shri Ribero, was established in 1998 to review the actions taken by the Central Government, State Governments, and UT Administrations in this regard, and to suggest ways and means for implementing the above Commission's pending recommendations. The Supreme Court of India has passed a judgement on September 22, 2006, in Writ Petition (Civil) No.310 of 1996 – Prakash Singh and others vs Union Of India and others on several issues concerning Police reforms.[63]

(i) Constitute a State Security Commission on any of the models recommended by the National Human Right Commission, the Ribeiro Committee or the Sorabjee Committee.
(ii) Select the Director General of Police of the State from amongst three senior-most officers of the Department empanelled for promotion to that rank by the Union Public Service Commission and once selected, provide him with a minimum tenure of at least two years irrespective of his date of superannuation.
(iii) Prescribe minimum tenure of two years to the police officers on operational

[62] Bhardwaj, Ananya. “There can be no modern India without an improved police force — think tank urges for reforms.” ThePrint, 23 September 2020, https://theprint.in/india/there-can-be-no-modern-india-without-an-improved-police-force-think-tank-urges-for-reforms/509124/. Accessed 4 May 2022.
[63] “Status Note on Police Reforms.” Ministry of Home Affairs, https://www.mha.gov.in/sites/default/files/PoliceReforms%28E%29181013.pdf. Accessed 4 May 2022.

duties.

(iv) Separate investigating police from law & order police, starting with towns/ urban areas having a population of ten lakhs or more, and gradually extend to smaller towns/urban areas also,

(v) Set up a Police Establishment Board at the state level for inter alia deciding all transfers, postings, promotions and other service-related matters of officers of and below the rank of Deputy Superintendent of Police, and

(vi) Constitute Police Complaints Authorities at the State and District level for looking into complaints against police officers.[64]

With immediate effect, the sixth directive mandated each state and union territory to establish Police Complaints Authorities (PCAs) at the state and district levels. These are independent organizations that receive and investigate accusations of police wrongdoing ranging from in-custody rape/attempt to rape/death, grave harm, and corruption to wrongful arrest or detention. The PCAs were established in seventeen states through State Police Acts and ten states by executive orders. They are intended to serve as strong oversight bodies for the police. The purpose of the PCAs is to ensure that a local mechanism specialising in handling a wide range of police complaints, including the most serious, is easily accessible to the general public. The PCAs' long-term goal is to change the policing culture and make it more professional. The Commonwealth Human Rights Initiative (CHRI) monitors the PCAs' operation and progress, which appears to be insufficient. States have either constructed PCAs on paper or chosen to disobey the court ruling, according to the CHRI. Assam, Chhattisgarh, Goa, Gujarat, Haryana, Jharkhand, Karnataka, Kerala, Maharashtra, Meghalaya, Nagaland, Punjab, Rajasthan, Tripura, and Uttarakhand are among the states that have operating PCAs. PCAs are in use in seven Union Territories. At the state and district levels, only Assam, Karnataka, Kerala, Maharashtra, Nagaland, and Rajasthan have them.[65]Despite numerous efforts, recommendations and reports on this front, there hasn’t been much reform amongst Police officers to change the existing model of police structure.

64 “Status Note on Police Reforms.” Ministry of Home Affairs, https://www.mha.gov.in/sites/default/files/PoliceReforms%28E%29181013.pdf. Accessed 4 May 2022.

65 “Police reforms still largely only on paper.” *Frontline*, 9 August 2019, https://frontline.thehindu.com/dispatches/article28960801.ece. Accessed 4 May 2022

4.5. Police Torture in Kerala

Police torture in Kerala, like the rest of the country, is often normalised. Section 29 of the Kerala Police Act provides for use of minimum force or use of force necessary to carry out any lawful purpose. This part of the section is often taken for granted. However, they do not engage in extreme forms of torture as described in Chapter I. They still resort to verbal and physical abuse and there have been several cases of custodial death and custodial torture. Police are known to often employ torture during protests especially if the protest escalated. They use torture to get a confession out of a person or to get information regarding a certain case. However, there is very less police accountability in instances like this. The case of Mofiya Parveen is one such example. She faced extreme insult and humiliation by the Police which drove her to commit suicide. The Police had not taken action regarding her complaint against her husband and her in-laws. Mofiya's humiliation and insult in the police station was not an isolated incident. Many women and their relatives from around the state have come forward to complain about the police officers' inhumane treatment of them when they file complaints against their husbands and in-laws. They claim that when accusations about partner violence are received, authorities are too sluggish to respond. Shyamili, another woman from Kerala, had been complaining about her husband and his mother for years, but the police had remained nothing. They only took action against him after a video of him severely striking a woman in public went viral on social media. The couple married in 2009, and she began knocking on the doors of the police station in vain the following year.[66]

R Kumar, an Ambalathara resident in Kerala was attacked by cops from the police station after they confused him for someone else who was a suspect in a theft case. Kumar's family said that the cops apprehended him without disclosing the charges against him. On the spot, in the police van, and at the station, he was allegedly assaulted. Kumar's close relative, Deepu A S, claims that the cops tortured him without disclosing the allegations against him. The cops eventually realized they had arrested the incorrect guy and released Kumar after paying him a pittance for an ayurvedic treatment.[67]A 40-year-old man died after suffering from chest

[66] Mili, Anupama. “Kerala Police found wanting as helpless, tortured women plead for help.” The New Indian Express, 30 November 2021, https://www.newindianexpress.com/cities/kochi/2021/nov/30/kerala-police-found-wanting-as-helpless-tortured-women-plead-for-help-2389664.html. Accessed 4 May 2022.

[67] Brutality of Kerala Police at the fore again as autorickshaw driver taken into custody by mistake faces spine injury.” The New Indian Express, 17 March 2022, https://www.newindianexpress.com/cities/thiruvananthapuram/2022/mar/17/brutality-of-kerala-police-at-the-for

trouble in the days following his arrest by the police in February 2022 for allegedly harassing a woman. Based on a harassment charge submitted by a woman, the Thiruvallam police took Kumar and four others into jail under the Thiruvananthapuram city police limit. The suspects were then brought to the police station. Suresh, one of the accused, complained of chest trouble in the morning and was rushed to the hospital, where he was pronounced dead. Meanwhile, other residents flocked to the police station after hearing that Kumar had been tortured while in detention.[68]

Another example of torture is the death of Rajkumar in 2019. Over a week after the death of Rajkumar, a 49-year-old remand prisoner in Idukki, the autopsy report of the deceased revealed disturbing evidence of police mistreatment in custody. Rajkumar was so frail that he was unable to walk to court, but a magistrate walked to his jeep and took him into custody. While pneumonia was the cause of death, the post mortem reveals that the subject had sustained blunt force injuries. According to multiple media accounts, the deceased was refused access to drinking water, causing his health to deteriorate. Rajkumar was seen begging, according to a report citing a fellow inmate at the Peermedu sub-jail where he was remanded. "He had stated that his hands and legs hurt and that he needed some water. However, the officers informed him that he did not need to drink any water at this time. "This is what his fellow convict saw, and he even told the media about it," Antony, Rajkumar's relative, stated. Rajkumar's relatives had previously claimed that he was abused for hours in his home and interrogated before being arrested. "While the police came to question him on the 12, he was beaten quite violently in his residence." He was admitted to the hospital on June 15 after complaining of chest trouble. Because he had so many injuries, the doctor referred him to another hospital. Rather than taking him there, the officers took him to the magistrate and remanded him in the Peerumedu sub-jail. Antony, a relative, claimed, "He was carried to the jail around 1:20 a.m. and he died 5 days later on June 21, 2019."[69]

---

e-again-asautorickshawdriver-taken-into-custody-by-mistake-faces-spine-injury-2430913.html. Accessed 4 May 2022.

[68] "Man dies in police custody in Kerala, locals allege custodial torture." Deccan Chronicle, 28 February 2022, https://www.deccanchronicle.com/nation/in-other-news/280222/man-dies-in-police-custody-in-kerala-locals-allege-custodial-torture.html. Accessed 4 May 2022.

[69] Pillarisetti, Naveen Saradhi. "22 injuries, 'Falanga' torture used: Shocking autopsy of Kerala custodial death victim." *The News Minute*, 2019 https://www.thenewsminute.com/article/22-injuries-falanga-torture-used-shocking-autopsy-kerala-custodial-death-victim-104633. Accessed 4 May 2022.

These are not isolated incidents, there have been several cases of custodial torture and violence used by Police both inside and outside custodial limits. But the majority of the torture and violence seem to have taken place in Police custody. In January 2022, following the numerous complaints against police officials, the Chief Minister of Kerala held a meeting of senior police officials. The tragic encounter between a foreigner and police officers in the State capital had garnered much attention. Following this, the department was tarnished by a recent incident that occurred inside the train. A police officer has been charged with thrashing a railway passenger. The incident occurred after the officer requested the man for a ticket. The officer slapped the man while he was looking for the ticket. Soon after, the passenger collapsed, and the officer was seen kicking him, even though he was not causing any inconvenience, according to other passengers.[70]

Police officers in Kerala use a term called 'instant justice' to describe an instance where an accused is tortured in custody if the complainant does not want to proceed with filing a case before the court. This usually happens in cases where there is prima facie evidence that the accused has committed the crime. Since litigation takes years, most complainants are not looking forward to filing a case.

These are only a handful of the incidents that made the news; there are many more that go unreported and are typically swept under the rug. There is no framework in place to ensure accountability, and the victims are typically members of marginalised communities. Because victims from marginalised communities have little to no access to justice, police officers nearly invariably get away with it. They also threaten others who disagree with them, making victims afraid to denounce police brutality.

[70] "Complaints against police on the rise; CM holds high-level meet." Mathrubhumi English, 3 January 2022, https://english.mathrubhumi.com/news/kerala/kerala-police-1.6326183. Accessed 4 May 2022.

5. Can International Human Rights Instruments Prevent Torture in Kerala?

For India to ratify UNCAT, it has to enact central domestic legislation in line with the International Human Rights standards. As mentioned earlier, the Prevention of Torture Bill, 2010 has not yet been passed by the parliament. However, even with the enactment of central legislation, the question would remain if the central legislation can prevent Police torture at state levels as Police officials come under the purview of the Home Ministry of every State. However, according to the proposed Bill, Police officials would find it harder to evade accountability for torture. Currently, there are no special provisions in the State of Kerala, prohibiting torture by Police officers and the current laws are not in conformity with international obligations and standards.

Once the central legislation has been passed, it becomes easier to implement and enforce International Human Rights Instruments at the state level. However, as this research shows, the State government still has control over the state police force and it is often quite difficult to hold the State Government responsible for the actions of its servants. Taking the USA as an example which ratified the UNCAT back in 1994, it can be seen that all three US periodic reports to the Committee Against Torture acknowledge that there are still instances of police brutality, prison abuses—including sexual assaults within prisons—and a variety of other minor offences that are difficult for the government to control other than by punishing the perpetrators after the fact. Furthermore, both the 2006 and 2013 reports address the challenges generated by the treatment of detainees at Guantanamo Bay and the treatment of people accused of terrorism against the United States in the aftermath of the September 11, 2001, attacks.[71] According to Katherine E.Tate, although varying degrees of adherence to UNCAT exist among states that have signed the treaty, the fact stands that UNCAT has not been particularly effective in preventing the practice of torture around the world. Whether this is because governments ratify the Convention without intending to implement it, or because state enforcement is just insufficient to successfully eliminate torture, is a topic for

[71] Tate, Katharine E. "TORTURE: DOES THE CONVENTION AGAINST TORTURE WORK TO ACTUALLY PREVENT TORTURE IN PRACTICE BY STATES PARTY TO THE CONVENTION?" Willamette Journal of International Law and Dispute Resolution, vol. 21, no. 2, 2013, page 213, JSTOR, http://www.jstor.org/stable/26207555. Accessed 23 May 2022.

another day.[72] Katherine. E. Tate also looks at the example of Ethiopia which has ratified UNCAT and draws the conclusion that Despite the Ethiopian Constitution's and Criminal Code's prohibitions on torture, reports of torture have been documented in alarming numbers. Those have been tortured because they are "government critics, including students and nonviolent protesters, members of political opposition groups, people thought to be supporters or members of insurgent groups, and individuals alleged to be linked to terrorist activities," according to reports. 'While these acts of torture are awful enough in and of themselves, there are numerous accusations that the government exploits the pretext of suspected insurgency to target students or members of political opposition groups solely to keep the opposition under control.[73]

According to my view, there needs to be a body that acts as a monitoring committee to hear cases of torture people have endured at the hands of the Police. The body should comprise members from the local community, representatives from vulnerable communities and social workers. They must not be political appointments and must act independently from the executive as much as possible. An anti-torture committee independent of external influence would be the best course of action, in my opinion, to reduce torture to a large extent and hold the police officials responsible and accountable for their actions.

---

[72] Tate, Katharine E. "TORTURE: DOES THE CONVENTION AGAINST TORTURE WORK TO ACTUALLY PREVENT TORTURE IN PRACTICE BY STATES PARTY TO THE CONVENTION?" Willamette Journal of International Law and Dispute Resolution, vol. 21, no. 2, 2013, page 209, JSTOR, http://www.jstor.org/stable/26207555. Accessed 23 May 2022.

[73] Tate, Katharine E. "TORTURE: DOES THE CONVENTION AGAINST TORTURE WORK TO ACTUALLY PREVENT TORTURE IN PRACTICE BY STATES PARTY TO THE CONVENTION?" Willamette Journal of International Law and Dispute Resolution, vol. 21, no. 2, 2013, page 219, JSTOR, http://www.jstor.org/stable/26207555. Accessed 23 May 2022.

6. Conclusion

The research mainly aims to answer the question of whether International Human Rights Instruments play a role in preventing and prohibiting torture in Kerala. According to my findings, International Human Rights Instruments can help prevent torture to a large extent if we look at a plethora of examples from around the world however taking into account various aspects existing in the Indian society today like post-colonial factors, the intersection of caste, class, race and gender, there exists several limitations when it comes to International Human Rights Instruments especially in a country like India with deep-rooted history and institutionalisation of police torture. The Indian police still have its roots in colonial British raj policing and these factors play a huge role in ensuring that Police officials get away with it Scott free. Even though there are no extreme instances of systemic torture, the Police officials still engage in a plethora of activities contrary to human rights law.

To prevent police torture in my opinion would be to bring a grassroots level change and a monitoring body in every district comprised of members from various backgrounds who can be approached in cases of police torture. The monitoring body can be may report its findings to the National Human Rights Commission which can be empowered to give interim relief in the form of compensation.

Further, the first course of action that must be taken is to ratify the Convention Against Torture by enacting the Prevention of Torture Act. This is of paramount significance as India can only strive forward towards an environment free of torture and cruelty from police officers once it ratifies the said Convention.

Table of Cases

- **Inter-American Court of Human Rights**
    - Inter-American Court of Human Rights, Case of Cantoral-Benavides v. Peru, Judgment of August 18, 2000 (Merits)
- **Supreme Court of India**
    - Mehmood Nayyar Azam V. State of Chhattisgarh, AIR 2012, 8 SCC 1
    - Inderjeet v. State of Uttar Pradesh, 9th May 2014, CRL.A.544/1998
    - Prem Shankar Shukla v. Delhi Administration, 1980 AIR 1535
    - D.K. Basu v. State of West Bengal (AIR 1997 SC 610)
    - State Of Madhya Pradesh vs Shyamsunder Trivedi and Ors, (1995 (4) SCC 262; 1995 SCC (Cri) 715)
- **International Criminal Tribunal For Former Yugoslavia**
    - Prosecutor v. Anto Furundzija (Trial Judgement), IT-95-17/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 10 December 1998, available at: https://www.refworld.org/cases,ICTY,40276a8a4.html

Bibliography

Alam, Qadeer. *Historical Overview of Torture and Inhuman Punishments in Indian Sub-Continent*. 2018, p. 10.

'Britain's Crimes in India - the Truth behind the Drama'. *Socialist Worker*, 10 Feb. 2015, https://socialistworker.co.uk/features/britain-s-crimes-in-india-the-truth-behind-the-drama/.

'Brutality of Kerala Police at the Fore Again as Autorickshaw Driver Taken into Custody by Mistake Faces Spine Injury'. *The New Indian Express*, https://www.newindianexpress.com/cities/thiruvananthapuram/2022/mar/17/brutality-of-kerala-police-at-the-fore-again-asautorickshawdriver-taken-into-custody-by-mistake-faces-spine-injury-2430913.html.

Chandavarkar, Rajnarayan, and Rajnarayan (university Of Cambridge). *Imperial Power and Popular Politics: Class, Resistance and the State in India, 1850-1950*. Cambridge University Press, 1998.

---. *Imperial Power and Popular Politics: Class, Resistance and the State in India, 1850-1950*. Cambridge University Press, 1998.

Complaints against Police on the Rise; CM Holds High-Level Meet, Violence of Kerala Police, Latest News, Pinarayi Vijayan. https://english.mathrubhumi.com/news/kerala/kerala-police-1.6326183.

Cruel, UN Human Rights Council Special Rapporteur on Torture and Other, and Inhuman or Degrading Treatment or Punishment. *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment :* Mar. 2020. *digitallibrary.un.org*, https://digitallibrary.un.org/record/3870734.

de Wet, E. 'The Prohibition of Torture as an International Norm of Jus Cogens and Its Implications for National and Customary Law'. *European Journal of International Law*, vol. 15, no. 1, Feb. 2004, pp. 97–121. *DOI.org (Crossref)*, https://doi.org/10.1093/ejil/15.1.97.

Doctors without Borders | The Practical Guide to Humanitarian Law. https://guide-humanitarian-law.org/content/article/3/torture-inhuman-and-degrading-treatment/.

'Effects of Psychological Torture'. *Berkeley Law*, https://www.law.berkeley.edu/experiential/clinics/international-human-rights-law-clinic/do-no-harm-intelligence-ethics-health-professionals-and-the-torture-debate/effects-of-psychological-torture/.

Gaer, Felice D. 'Rape as a Form of Torture: The Experience of the Committee Against Torture'. *CUNY Law Review*, vol. 15, no. 02, July 2012, p. 293. *DOI.org (Crossref)*, https://doi.org/10.31641/clr150213.

Garg, Rachit. 'Reasons for India to Sign the Torture Convention'. *IPleaders*, 14 Oct. 2021, https://blog.ipleaders.in/reasons-for-india-to-sign-the-torture-convention-2/.

'India and the Torture Convention'. *Economic and Political Weekly*, vol. 32, no. 52, June 2015, pp. 7–8.

Kenny, Paul D. 'The Meaning of Torture'. *Polity*, vol. 42, no. 2, 2010, pp. 131–55.

Kerala Cabinet Orders Judicial Probe into Rajkumar Custodial Death | The News Minute. https://www.thenewsminute.com/article/kerala-cabinet-orders-judicial-probe-rajkumar-custodial-death-104884.

'Kerala Police Found Wanting as Helpless, Tortured Women Plead for Help'. *The New Indian Express*,

https://www.newindianexpress.com/cities/kochi/2021/nov/30/kerala-police-found-wanting-as-helpless-tortured-women-plead-for-help-2389664.html. Accessed 24 May 2022.

Laws, Ami, and Vincent Iacopino. 'Police Torture in Punjab, India: An Extended Survey'. *Health and Human Rights*, vol. 6, no. 1, 2002, p. 195. *DOI.org (Crossref)*, https://doi.org/10.2307/4065321.

Man Dies in Police Custody in Kerala, Locals Allege Custodial Torture. https://www.deccanchronicle.com/nation/in-other-news/280222/man-dies-in-police-custody-in-kerala-locals-allege-custodial-torture.html.

Tyler, Tom R. 'Methodology in Legal Research'. Utrecht Law Review, vol. 13, no. 3, 3, Dec. 2017, pp. 130–41. www.utrechtlawreview.org, https://doi.org/10.18352/ulr.410.

Miles, Steven H. *The Torture Doctors: Human Rights Crimes and the Road to Justice*. Georgetown University Press, 2020. *DOI.org (Crossref)*, https://doi.org/10.2307/j.ctv15pjzgp.

'Notes on the Organization and Structure of Police in India'. *PreserveArticles.Com: Preserving Your Articles for Eternity*, 26 Apr. 2011, https://www.preservearticles.com/notes/notes-on-the-organization-and-structure-of-police-in-india/4373.

Official Website of Kerala Police - Governance. https://keralapolice.gov.in/page/governance.

Police Reforms Still Largely Only on Paper - Frontline. https://frontline.thehindu.com/dispatches/article28960801.ece.

'Probe All Custodial Deaths, Rules NHRC'. *Hindustan Times*, 14 Jan. 2021, https://www.hindustantimes.com/india-news/probe-all-custodial-deaths-rules-nhrc-101610567294556.html.

‘Project 39A — Reports 2 Torture’. *Project 39A*, https://www.project39a.com/torture-reports.

Kiel-Morse, Maggie. Research Guides: Legal Dissertation: Research and Writing Guide: Home. https://law.indiana.libguides.com/dissertationguide/home.

Saini, R. S. ‘CUSTODIAL TORTURE IN LAW AND PRACTICE WITH REFERENCE TO INDIA’. *Journal of the Indian Law Institute*, vol. 36, no. 2, 1994, pp. 166–92.

Sarkar, Dr Subhradipta. ‘NHRC: The Tale of a Flagging Institution’. *The Times of India*. *The Economic Times - The Times of India*, https://timesofindia.indiatimes.com/blogs/sarkari-thoughts/nhrc-the-tale-of-a-flagging-institution/.

Sess.: 1984-1985), UN General Assembly (39th. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment :* Dec. 1984. *digitallibrary.un.org*, https://digitallibrary.un.org/record/74216.

Sharma, Anupam. ‘POLICE IN ANCIENT INDIA’. *The Indian Journal of Political Science*, vol. 65, no. 1, 2004, pp. 101–10.

Tate, Katharine E. ‘TORTURE: DOES THE CONVENTION AGAINST TORTURE WORK TO ACTUALLY PREVENT TORTURE IN PRACTICE BY STATES PARTY TO THE CONVENTION?’ *Willamette Journal of International Law and Dispute Resolution*, vol. 21, no. 2, 2013, pp. 194–221.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Koninklijke Brill NV. *DOI.org (Crossref)*, https://doi.org/10.1163/2210-7975_HRD-5555-20180011.

‘The Sordid Story of Colonial Policing in Independent India’. *The Wire*, https://thewire.in/government/sordid-story-colonial-policing-independent-india.

There Can Be No Modern India without an Improved Police Force — Think Tank Urges for Reforms – ThePrint. https://theprint.in/india/there-can-be-no-modern-india-without-an-improved-police-force-think-tank-urges-for-reforms/509124/.

To Protect and Serve? The Indian Colonial Police: 1861-1932 - ProQuest. https://www.proquest.com/openview/e9f007aaf42d148b409528d9633d05ab/1?pq-origsite=gscholar&cbl=18750&diss=y.

'Watch | "India's 23-Year-Old Failure to Ratify UN Convention Against Torture Is Shameful"'. *The Wire*, https://thewire.in/rights/watch-indias-23-year-old-failure-to-ratify-un-convention-against-torture-is-shameful.

'What Is Torture?' *Read about How Torture Is Defined, Where Torture Happens around the World, Why People Are Still Being Tortured, and How We Work with Torture Survivors to Rebuild Their Lives.*, https://www.freedomfromtorture.org/news/what-is-torture.