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## Life dictated by a rule book in police custody

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This paper is an attempt to understand the difference between laws and enforcement of laws. We are sovereign and a constitutional democracy. Our constitution represents the law of our country whose basic structures are discussed in its Preamble focusing on liberty, equality, justice, freedom etc. Judiciary is one of the three organs of the government, but we don't expect it to be popular rather it has to be just where justice is meted to the innocent and punishment to the guilty. In some of the cases where an individual is accused of a crime and is kept in jail under police custody and succumbs to unwanted torture can we say it to be an erosion of the basic structure of the Indian constitution? If we are the posterity of such a land where great saints gave their philosophies on virtue, ethics etc. and a land where great epics like Geeta and other scriptures were written on moral values why do we need a rule book to guide ourselves and not just follow those moral laws. Keith Hyams rightly observes that, the law forbids us to steal, to murder, to rape, and to do a number of other things that most of us would not dream of doing anyway, even if the law were not to exist. So it looks as though much of the law simply tells us to, or not to, do things that we already think we should or should not do out of an independent sense of right and wrong. Perhaps, then our duty to obey the rules of morality, which distinguish right from wrong. We do not need to consent to these rules in order to be bound by them, because we cannot opt in or out of the demands of morality<sup>[1]</sup>.

From the above argument it becomes apparent that ultimately it is the morality which determines our actions as individuals or as citizens. Since the laws framed in our country have moral sanctity behind them, it is important for all citizens including law-followers as well as law makers to be first moral and endure such moral obligation in practicing, framing or making or exercising any law of the country. In this context I have tried to deal with one such law of the country i.e. preventive detention law provided in article 22 of the Indian constitution, vis-à-vis throw some light on the role of police in India. There have been several debates behind the inclusion of preventive detention laws in India. This law is considered to be the product of violence and political fragility during the time of Indian independence and the partition of India and Pakistan have been instances where pre-trial detainees have suffered harsh treatment.

The role of state comes into question. The ultimate aim of state is to promote good life and not use force which violates human rights and civil liberties. There have been several national regimes acting counter-terrorism like TADA, POTA etc. Apart from these there are some state regimes too like Jammu and Kashmir Public Safety Act (1978) which has been criticized for infringing upon the rights of detainees.

There is a debate on the use of force by the police in custody. Sometimes it is torturous for the prisoner to have succumbed to such force and pressure applied on him. Police use of force can be necessary. Policing engenders situations when the use of force or violence may become inevitable. For example, when confronted with situations they are unable to control

Through other alternative means, such as a riot situation, the police can be left with no choice but to resort to the use of force to disperse rioters and bring public violence under control.

There are lists of incidents where such torture is meted out to the undertrials by the police. Here are some examples as follows (source: internet)

1930: On 12 December 1930, Mumbai cotton mill worker Babu Genu Said was crushed by a truck at the order of police. He was an active participant in the protests, organized by Indian freedom fighters, against the import of foreign-made cloth. His death resulted in a huge wave of anger, strikes, and protests throughout Mumbai.

1980: The Bhagalpur blinding was an incident in 1979 and 1980 in Bhagalpur in the state of Bihar, India when police blinded 31 undertrials (or convicted criminals, according to some versions), by pouring acid into their eyes.

1981: On 11 October, a National Games Winner and a representative of India at 1958 Asian Games, Paan Singh Tomar was killed in a Police shootout.

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1982: On 11 January, the first encounter of Mumbai Police was completed. A Gangster who scored 78% from Kirti College, Mumbai, Manya Surve was killed without giving him proper chance to defend or surrender. Police fired 25 bullets on his chest but his strength kept him alive for about 1 hour. A movie Shootout at Wadala is made on this case.

1987: The Hashimpura massacre took place on 22 May 1987, during the Hindu-Muslim riots in Meerut city in Uttar Pradesh state, India, when 19 personnel of the Provincial Armed Constabulary (PAC) allegedly rounded up 42 Muslim youth from the Hashimpura mohalla (locality) of the city, took them in truck to the outskirts, near Murad Nagar, in Ghaziabad district, where they were shot and their bodies were dumped in water canals. A few days later dead bodies were found floating in the canals.

1994: The Rampur Tiraha firing involved police firing on unarmed Uttarakhand activists at Rampur Tiraha (crossing) in Muzaffar nagar district in Uttar Pradesh in India on the night of 1–2 October 1994. The activists, part of the agitation for the separate state of Uttarakhand, were going to Delhi to stage a dharna at Raj Ghat on Gandhi Jayanti, the following day, when alleged unprovoked police firing in the night of 1 October led to the death of six activists, and some women were allegedly raped and molested in the ensuing melee.

1994: The Koothuparamba firing was a police action on 25 November 1994, in the Kannur district of Kerala. The firing happened after the inauguration of the Co-operative Urban Bank's evening branch, when the DYFI protested against Communist Marxist Party (CMP) leader and Kerala's Minister, M.V. Raghavan. The police fired at the crowd for both the protection of the Minister and public and private property. Five DYFI activists were dead and six people were injured.

1999: Thirunelveli massacre was brutal police action on a procession taken out in support of agitating tea estate workers, claimed 17 lives in Thirunelveli, Tamil Nadu.<sup>2</sup>

2003: The Muthanga incident was a brutal police action on Adivasis who had gathered under Adivasi Gothra Mahasbha (ADMS) in protest to the Kerala Government's delay in allotting them land, which had been contracted in October 2001. Two fatalities were officially confirmed, however the government later put the death toll at 5.<sup>[3, 4]</sup> More than 15 Adivasis fatally wounded.<sup>3</sup>

2011: The Forbesganj firing was an act of state brutality in which four villagers were killed near Forbesganj, a town in Bihar, India, on 3 June 2011. An inquiry into the incident, conducted by reputed NGO ANHAD, suggests a role of politicians from the Bharatiya Janata Party in the killings. The residents of the villages of Bhajanpur were protesting the grant of land to a factory owned by the son of Bharatiya Janata Party politician Ashok Agarwal.

2015: 2015 Andhra shootout was an incident in the Seshachalam forest in Chittoor District, Andhra Pradesh that killed 20 suspected woodcutters.<sup>4</sup>

However, the amount and mode of violence used by the police in any situation is subject to debate. There will be conflicting viewpoints on the advisability and efficacy of police actions in such circumstances and whether the police did all that was necessary to avoid the use of force to control a situation. It is therefore difficult to predict whether a particular incident of use of force would be perceived as legitimate or as police brutality. As Bayley (1996: 277) notes, "brutality is in the eye of the beholder". This subjectivity makes defining the concept fairly contentious. In general, the only principled justification for the use of force is that it is proportionate, i.e. necessary and minimal.<sup>5</sup>

Extralegal violence involves the willful and wrongful use of force by officers who knowingly exceed the bounds of their office. Unnecessary violence occurs when well-meaning officers

prove incapable of dealing with the situations they encounter without needless or too hasty resort to force.<sup>6</sup> Ajay Kumar Mehra has incorporated a detailed understanding on the differences between the 'functions' and 'role' of the police. He adds though they mean same but they differ from each other or their 'formal' and 'informal' aspects. 'One is the formal aspect i.e. the duties, responsibilities and functions clearly laid down and precisely defined under the law' which 'include prevention of detection of crime, and order, and maintenance of public peace. An informal aspect 'creates a dilemma for them. The contradictions built into this aspect simultaneously demand adhering to and transgressing from the limits of laws. This aspect of police functions are governed by expectations from the perception of their role in society, and final, popular expectation as well.<sup>7</sup> However, he has brought out the intention of 'British rulers and the failures of leadership and public opinion in independent India to reorient the police towards meeting the challenges of, a democratic society and polity' with this behavioural analysis of 'formal' and 'informal' aspect, of police 'function' and 'role'.

There is definitely a need to restructure bureaucracy as well as police for meeting contemporary challenges 'unlike a colonial government which thrives on status quo and maintains a distance from people in order to generate a fear of authority in the popular psyche'<sup>8</sup>.

To make democracy live vibrant populous, answerable, representative we all need to be "just" and follow our moral conduct while using our rights and duties in the society and simply not misuse our laws because they define us as sovereign and democratic.

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