

Status of Policing in India Report 2025

Police Torture and (Un)Accountability



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Credits: *Amritsar Tribune*

Note: The pictures in this report are for representational purposes only. They do not necessarily portray police torture, which is mostly inflicted at spaces away from the public eye.

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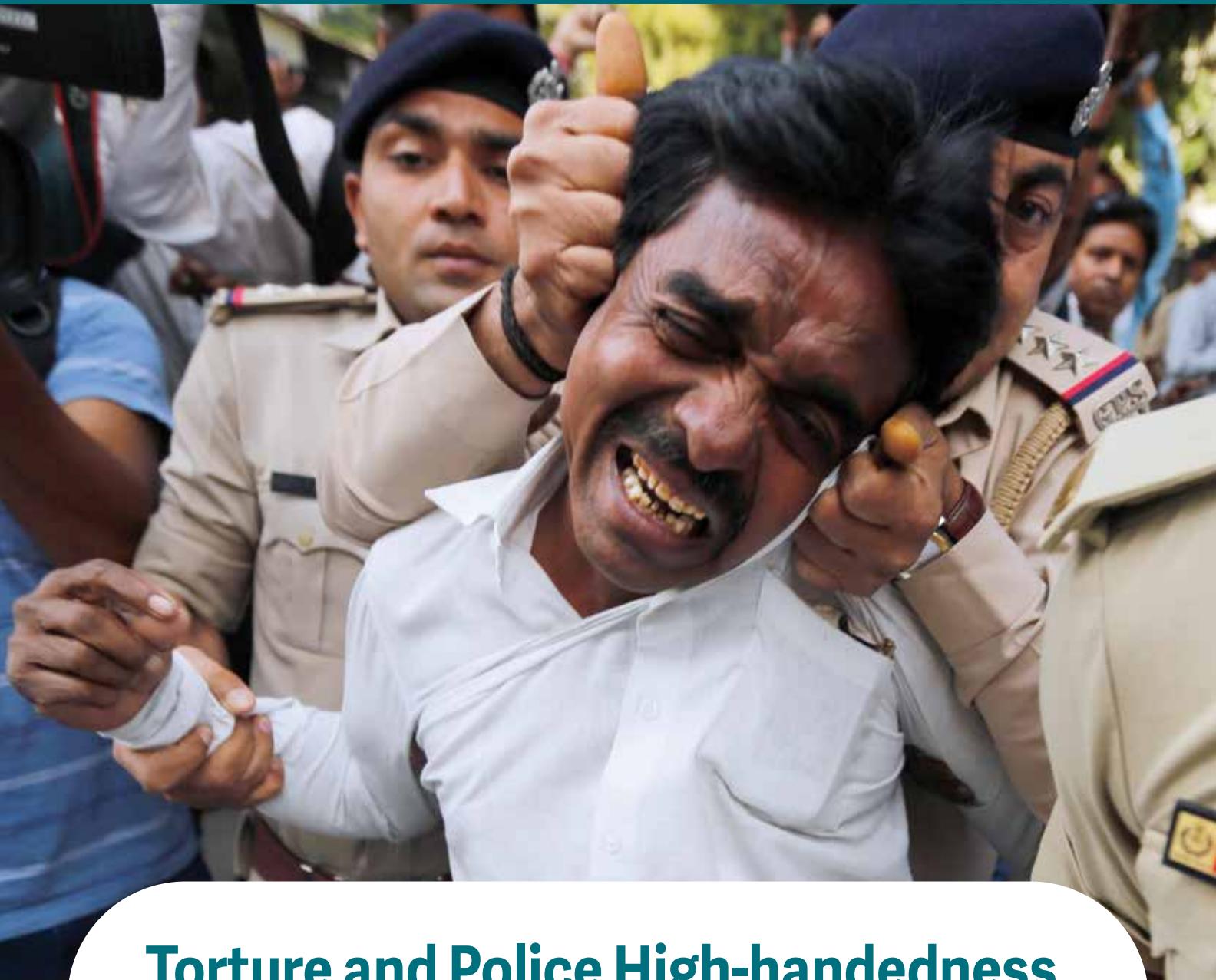
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List of Abbreviations

ACHR	: Asian Centre for Human Rights	NCAT	: National Campaign Against Torture
AHRC	: Asian Human Rights Commission	NCR	: Non-cognizable Report
AIR	: All India Reporter	NCRB	: National Crime Records Bureau
A&N	: Andaman and Nicobar	NGO	: Non-Governmental Organisation
APDP	: Association of Parents of Disappeared Persons	NHRC	: National Human Rights Commission
ASI	: Assistant Sub-Inspector	NT	: Nomadic Tribe
BNS	: Bharatiya Nyaya Sanhita	OBC	: Other Backward Class
BNSS	: Bharatiya Nagarik Suraksha Sanhita	OPD	: Outpatient Department
BPR&D	: Bureau of Police Research and Development	PCA	: Police Complaints Authority
BSA	: Bharatiya Sakshya Adhiniyam	PCR	: Police Control Room
CBI	: Central Bureau of Investigation	PHQ	: Police Headquarters
CCTV	: Closed-Circuit Television	PS	: Police Station
CII	: Crime in India	PTI	: Press Trust of India
CJM	: Chief Judicial Magistrate	PUCL	: People's Union for Civil Liberties
CJP	: Citizens of Justice and Peace	PUDR	: People's Union for Democratic Rights
CJS	: Criminal Justice System	RTI	: Right to Information
CrPC	: Code of Criminal Procedure	SC	: Scheduled Caste
CSDS	: Centre for the Study of Developing Societies	SG	: Secretary General
DGI	: Director General (Investigation)	SP	: Superintendent of Police
DNA	: Deoxyribonucleic Acid	SPIR	: Status of Policing in India Report
DNT	: De-notified Tribe	SPSS	: Statistical Package for the Social Sciences
DO	: Demi Official	ST	: Scheduled Tribe
DySP	: Deputy Superintendent of Police	UDHR	: Universal Declaration of Human Rights
FI	: Field Investigator	UN	: United Nations
FIR	: First Information Report	UNCAT	: United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
GPS	: Global Positioning System	UNODC	: United Nations Office on Drugs and Crime
HRW	: Human Rights Watch	UP	: Uttar Pradesh
HQ	: Headquarters	US	: United States
IEA	: Indian Evidence Act	UT	: Union Territory
IO	: Investigating Officer	VIP	: Very Important Person
IPS	: Indian Police Service		
LGBTQIA+	: Lesbian, Gay, Bi-sexual, Transgender, Queer, Intersex, Asexual, Plus		
MP	: Madhya Pradesh		



Torture and Police High-handedness, the Context

Police officers use physical force against an activist (19th November, 2016. Ahmedabad, Gujarat).
Credits: Ajit Solanki, Associated Press

Highlights

- Police torture is normally committed in undesignated spaces, mostly away from the public eye. Such cases often come to light when, for some reason, torture unexpectedly ‘goes wrong’ particularly when individuals die of brutalities in custody.
- Like the prohibition of slavery, the prohibition of torture is a compelling law or *jus cogens* that cannot be breached by laws or any circumstances. While most countries have ratified the UN Convention Against Torture (UNCAT), adopted by the UN General Assembly in 1984, by making domestic laws, India has yet to do so.
- India’s otherwise robust crime data begins to waver when it comes to incidents of torture or deaths in custody. Whatever data is put out in the public domain is mostly inaccurate and inconsistent.
- The SPIR 2025 seeks to unpack police high-handedness, torture and custodial violence through alternative methods, such as surveys with police personnel, analysis of trends and patterns, and in-depth interviews with accountability actors— judges, lawyers and doctors.
- A common belief among serving police personnel is that using force is a smart way to solve crimes. A substantial number of police personnel believe that being violent is necessary and that confessions are vital for conviction.
- Law enforcement agencies often justify harsh custodial interrogation for heinous crimes or terrorism. However, many torture cases reveal that a typical victim is accused of a relatively minor crime and belongs to poor or marginalised sections of society.
- This report is designed to offer insights for policy and advocacy. Its findings are meant to be a building block for more independent research aimed at tackling more complex questions about preventing torture and excesses commonplace in Indian police stations.

Torture and Police High-handedness, the Context

Introduction

The Indian Constitution prohibits torture in police custody, and yet, its practice is widespread. The systemic safeguards work rarely, if they work at all. So routine is custodial violence by the police that we often fail to see something amiss in it. Incidents of insults, abuses or misconduct are not even reported. A strong belief among society and justice system actors that torture helps to respond to crime goes a long way to normalise its use in police custody. No wonder cases of custodial torture, rapes or deaths are easily hushed up through a smokescreen of unwritten procedures.

But what happens when torture unexpectedly ‘goes wrong’ and blows up in the face? Every now and then, police torture hits the headlines when individuals die of brutalities in custody. It is well-known in police and media circles that a death in police custody almost always stems from torture. The moot question is how the system reacts to such incidents. Does it charge the implicated officers as per law? What are the broad trends? How many FIRs are registered against police personnel and how many lead to convictions? For records, not a single police officer has been convicted for 1107 deaths in police custody between 2011 and 2022, according to NCRB data. Does this mean that police torture is institutionalised in India?

Distressing as they may be, such questions need to be answered in a civilised society. The nation must understand that torture violates every overarching value enshrined in the Constitution—justice, liberty, equality, and fraternity. It destroys the elements of human relationships like mutual trust and belief in a value-based society. And that is why there is no place for torture in a constitutional democracy, no matter how expedient it is deemed by

those in power. The police have to be made professional and accountable if the law has to work for all sections of society.

Torture is among the first things to be entirely and explicitly banned in Article 5 of the Universal Declaration of Human Rights (UDHR) as early as 1948. The spirit of protection of fundamental rights in the UDHR is embodied in our Constitution. Like the prohibition of slavery, the prohibition of torture is a *jus cogens* norm, a fundamental right that cannot be breached by laws or any circumstances, including national emergencies. While most countries have ratified the UN Convention Against Torture (UNCAT), adopted by the UN General Assembly in 1984, by making domestic laws, India has yet to do so, despite past parliamentary deliberations. The UNCAT makes it obligatory for all state parties to investigate all acts of torture, prosecute and punish the perpetrators, and provide legal remedies to the victims.

So, what is stopping India from joining advanced democracies that have outlawed torture by passing a separate law? After all, a specific law will ensure accountability by criminalising torture and all forms of extra-judicial harm and punishment. It will also send a clear message that the perpetrators face prosecution and potentially lose their jobs. But before doing that, the world’s largest democracy will have to stop denying the problem and begin to determine its seriousness. Secondly, our judiciary and other democratic institutions must rise to the occasion when politicians in power fail to do so. No matter how important the position one is holding, anyone justifying torture or extrajudicial killings must be held accountable for promoting illegality. The

courts must protect the victims and punish the perpetrators if we are serious about prevention. The broad context of torture and its fallout on democratic governance is given in the first chapter of this study in the form of a mapping through literature.

However, course correction also requires reliable and accurate data to study the trends and to determine the extent of the problem. India's otherwise robust crime data begins to waver when it comes to incidents of torture or deaths in custody. Whatever data is put out in the public domain is inaccurate and inconsistent, to say the least. Even an independent institution like the National Human Rights Commission (NHRC) is not open about sharing details of the complaints received. The available data is opaque and not conducive to meaningful analysis. Common Cause filed multiple RTI applications to get detailed and disaggregated NHRC data which should have been in the public domain in the first place.

This study is a step in that direction; it seeks to unpack police high-handedness, torture and custodial violence through alternative methods, such as surveys, analysis of trends and patterns, and in-depth interviews with accountability actors. We took some of these questions straight to the police personnel to elicit their views and opinions about the use of violence and torture. Unlike the earlier Status of Policing in India Reports (SPIRs), the views and opinions of the common people are not taken because the purpose here is to tap the views of those who wield the authority to apprehend the accused and who are entrusted with the responsibility to not exceed their legal powers. Hence, this time the whole survey is based on responses from police personnel. We also complemented the survey data by conducting interviews with three categories of professionals supposed to act as deterrents and systemic safeguards—lawyers, doctors, and magistrates.

Identifying the Need Gaps

It must be admitted that though necessary, independent studies cannot make up for the

absence of actual, police station-wise data about officers crossing the red line of legality. Any transformative policy change would require time-series data about torture and custodial abuses at police stations across the country and acts of omission and commission by the officers in charge. However, in the absence of this, research techniques like surveys and the analysis of patterns do offer clues about police attitudes towards excessive arrests, an undue dependence on confessions, and reluctance to follow legal procedures. We hope the findings of the SPIR-2025 will help us understand how and why the system normalises police misconduct and violence.

For instance, a common belief among serving police personnel is that using unlawful force is a smart way to solve crimes. They tend to circumvent legality as part of what they see as their undefined duty and as a means to an end. Many believe they are serving the nation by being stern and unfriendly. There are variations in views across hierarchies but a substantial number of police personnel believe that being violent is necessary. They also feel that confessions are vital for convictions. This narrative emerges in successive chapters of the present study. The officers often take it upon themselves to 'dispense justice' as is demonstrated by acts of moral policing against hapless couples being intimate in public places.

The idea was to understand the patterns and practices of routine policing that contribute to the use of violence and ill-treatment by the police in their day-to-day functions such as detention, investigation, arrests and interrogation. The surveys covered 8,276 police personnel of various ranks at 82 locations such as police stations, police lines and courts, in 16 states and the national capital. The survey spans large and small states covering the North, South, East and West of India, the North-East and the national capital. These include the urban and rural areas, state capitals, district headquarters and other, small, medium and big towns. The respondents cover the ranks of constables, upper subordinates and IPS officers (for details, please see Appendix-2).

An exhaustive questionnaire was designed to bring out their beliefs, views and opinions about torture and a host of related issues such as arrests and arrest procedures, methods of interrogation, the importance of police custody, and confessions to the police. The questions are framed to capture police attitudes towards different socio-economic groups, the workings of the criminal justice system and the apparatuses of accountability. The successive iterations passed through brainstorming sessions and feedback from domain experts. The questionnaire was translated into regional languages and field investigators were trained before conducting face-to-face surveys. The interviews were structured with one open-ended question to provide scope for adding experiential insights.

Misplaced Justifications

Law enforcement agencies often justify harsh custodial interrogation for heinous crimes, or terrorism. The investigating officers are said to be under pressure from departmental bosses, politicians or the public. However, the assumptions hardly stand the scrutiny of real-life examples that get accidentally exposed. And for every case that comes to light, several go unreported and unheeded. Some typical cases, as reported in the media, are mentioned below to give an idea of the sheer barbarity of police actions, the egregiousness of legal violations, and the virtual impunity of the perpetrators. None of the 'crimes' mentioned were heinous or terrorism-related.

The police in Thoothukudi, Tamil Nadu, one of India's better-governed states, tortured and killed a 59-year-old petty shopkeeper, P Jayraj, and his 31-year-old son in 2020 for the 'crime' of violating the COVID-19 curfew hours. There were blood marks on the floor and the walls of the police station and the victims were forced to wipe these with their own clothes before they collapsed, according to the forensic report that CBI submitted to the court (Thirumurthy, 26th October 2020). Within a few weeks of this incident, a 25-year-old autorickshaw driver, Kathiresan, battled for life for weeks before he died of torture injuries in the adjoining Tenkasi

district. The victim was allegedly involved in a property dispute. In 2023, IPS officer Balveer Singh was in the news for breaking the teeth and crushing the testicles of detainees in the Tirunelveli district. Singh was initially suspended under public pressure but soon reinstated, disregarding visual evidence.

In Maharashtra, out of 404 custodial deaths between 1999 and 2017, FIRs were filed only in 53 cases and chargesheets in 38 (Goyal, 10th October 2020). The father of 25-year-old Agnelo Valdaris is still fighting for justice after he was tortured and killed by the Railway Police in 2014. The victim was picked up from his grandparents' shack in a slum allegedly for chain snatching. Agnelo and two of his friends were brutalised and sexually abused. His father was later made to 'admit' that his son died by suicide. A 35-year-old law student Somnath V Suryavanshi died of torture for his role in alleged vandalism in the state's Parbhani district while reacting along with 50 other Dalit youths to a reported desecration of the Constitution. The forensic reports confirmed police torture (Shantha, 16th December 2024).

In UP's Unnao district, Faisal, an 18-year-old vegetable vendor, was beaten to death for defying COVID-19 curfew hours. The guilty policemen were suspended only after people blocked a highway (Siddiqui, 22nd May 2021). A recent case 'blew up' in the Agra district when a viral video showed 32-year-old trader Mohit Pandey, bleeding profusely in the police lock-up. He was pronounced 'brought dead' at a hospital, leading to mass protests. Just a few days earlier, a Dalit man, Aman Gautam, died in police custody in Lucknow after alleged torture (*Hindustan Times*, 28th October 2024). In a case of suspected cattle slaughtering, the police in Badaun district shoved a stick inside the rectum of a 22-year-old youth and gave him repeated electric shocks, *Times of India* quoted the victim's mother (Singh, 5th June 2022). *The Hindu* attributed many deaths in custody to the state government's 'tough' measures publicly praised by the top leadership (Kumar, 9th November 2024).

In Assam, at least two villagers were killed in police firing and dozens were brutally beaten

up during an eviction drive in the Darrang district. The cruelty came to light only after a video clip went viral showing Assam police personnel shooting at protesters, without restraint (Barooh Pisharoty, 24th September 2021). The police fired “at chest height at civilians as if they were doing some target practice,” commented a retired top IPS officer (Asthana, 26th September 2021). In another incident in the Jorhat district, 25-year-old Bhaben Gogoi was beaten up with rifle butts and shot in the leg which had to be amputated, for being drunk and creating a nuisance (Asian Human Rights Commission, 2014).

Hundreds of similar cases are reported from Andhra Pradesh, Madhya Pradesh, Telangana and elsewhere. Between 2020 and 2021, Gujarat reported the highest number of deaths in police custody (15) while UP reported the highest number of deaths in judicial custody (395) according to a report by the Citizens of Justice and Peace (CJP) (Singh, 2021). In January 2019, UN human rights experts expressed alarm in a press release about allegations of at least 59 extrajudicial killings by police in UP since March 2017. A 2020 report by the National Campaign Against Torture notes that in 13 years from 2005 to 2018, not a single police personnel was convicted, even though 281 cases were registered and 54 charge-sheets were filed, for 500 deaths of persons remanded to police custody (NCAT, 2020, p. 11).

These incidents show that most victims of police torture are accused of minor crimes and they come from poor and marginalised communities. They could be farmers, students, hawkers, slum dwellers, and petty shopkeepers. It is unlikely that even children or people with mental illnesses would be tortured under political or departmental pressure. At the same time, people accused of terrorism and national security crimes are also being routinely tortured. It is equally depressing to note that most of these are cases of unchecked bestialities passed off as another day in the life of a police station. A report by Human Rights Watch (2009, p. 67) quoted the Indian Supreme Court as saying that “dehumanising torture, assault and death in custody” are so “widespread”

as to raise “serious questions about credibility of rule of law and administration of criminal justice”.

Problems in Defining the Term

Successive governments in India have avoided defining the terms “torture” or “custodial violence.” The National Crime Records Bureau (NCRB), which brings out fairly comprehensive Crime in India Reports, shows noticeable inconsistencies in its treatment of statistics on police torture or human rights violations. Torture appears briefly in one of the tables in which the state-wise information is mostly negligible. Virtually no information is provided on the subject by the Bureau of Police Research and Development (BPR&D) under the Ministry of Home Affairs, on its website or in its impressive list of theme-wise publications.

Government authorities may have their reasons, but what stops a statutory body like the NHRC from defining torture? It will only be a step in the direction of tackling ambiguities in the usage of “torture” and other similar terms such as “deaths in police custody” (due to natural as well as unnatural causes), “custodial rapes”, “custodial violence” etc. The NHRC’s annual reports use “encounter deaths” and “deaths in police action” interchangeably, while the NCRB report refers to them as “encounter killings”. The NHRC documents cases of “custodial violence”, but this term is entirely missing in the NCRB reports. How can the criminal justice system work with such inconsistencies being followed by different government agencies?

A Policy-Oriented Study

This report is designed to offer insights for policy and advocacy. For instance, the police personnel surveyed are upfront about their lack of faith in the rule of law. Their confession that their job is to dispense justice speaks volumes about their legal training, or the lack of it. Earlier SPIRs have revealed that a significant number of police personnel believe in ‘punishing’ criminals rather than going through legal trials. Indirect questioning techniques allow us to

investigate self-reported lapses/insufficiencies despite a social desirability bias¹ that occurs when survey respondents answer based on society's expectations, rather than their own beliefs or experiences. However, we cannot ignore the fact that a section of police officers are opposed to torture and illegal arrests. Many have shown interest in alternative methods of interrogation to change things for the better. Also noteworthy are the good practices of the states like Kerala that stand out for higher levels of legal compliance.

The survey also elicits the attitudes and approaches of serving police personnel to law enforcement in general and torture in particular. While there are state-wise variations in the levels of compliance with the legally established procedures, it is disheartening that better educated and better-trained IPS officers often justify the use of third-degree methods of interrogation. Irrespective of ranks, the police personnel favoured discretionary actions like preventive arrests and disregarded institutional

safeguards created to restrain excesses. Discounting constitutional provisions, they opposed the presence of a lawyer during interrogation, and supported the idea of making confessions to police admissible in court.

SPIR 2025 covers problems we neither concede nor study institutionally. It is the first such study employing mixed methodological tools of surveys of police personnel, interviews and data analysis. It is the sixth in the series of SPIR reports to be undertaken by Common Cause and the Lokniti programme of the CSDS since 2018, and by far the most challenging of our policy-oriented reports. We see it as a building block whose foundations can be used by India's police establishments and other independent organisations to build upon. We hope that more institutions and think tanks will tackle even more complex questions about preventing torture and police excesses.

As always, your feedback to the findings of this report will be keenly awaited.

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¹ Social desirability bias in survey research occurs when respondents provide answers they believe are more socially acceptable or favourable rather than their true thoughts or behaviours. This bias can lead to inaccurate data as participants may under-report undesirable behaviours or over-report desirable ones.

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CHAPTER
01



**Features of Torture in India:
Mapping Through Literature**

CHAPTER

01

Features of Torture in India: Mapping Through Literature

1.1 Introduction

This chapter endeavours to provide a broad overview of literature on torture in India, with the intent to present what it reveals about the nature and persistence of torture in India. While the chapter tries to cast a wide net, it is not an exhaustive account of the full breadth of the literature. Distilling from it, this chapter summarises the various forms and methods by which torture is practiced in India, purposes and contexts of torture, the individuals and groups who are subjected to torture, and factors that explain the continuation of torture. The literature drawn from focuses on torture by the police.

1.2 The Big Picture: Nature of Torture

Academic scholarship and civil society documentation form the bedrock of the literature on torture in India. These are the sources which point to the frequency of torture in policing, across both everyday policing as well as special security contexts. Eminent legal scholar Upendra Baxi was among the first to argue that torture is “institutionalised” in India. The ‘threshold question’ of Baxi’s 1982 essay titled *Torture: Lest They Come for Me* (pp. 121-141) asked if custodial violence is institutionalised in the Indian police; with his response that “it should be possible to reach a

hypothesis that custodial violence or torture is an integral part of police operations in India”. He couched his response with the recognition that “authoritative information is scanty and episodic” but argued that the evidence available was “substantive enough to warrant close attention” to the prevalence of torture. He went on to stress the need to acknowledge torture’s prevalence, “it is only when we concede the existence of torture as a systematic property of police organisation that we can consider its extent, types, causes and cures”.

In 1992, Amnesty International published an extensive report on the “pattern and practice of torture” on the basis of cases of torture, rape, and deaths in custody. The report recorded 415 deaths in custody in India since 1985. Similar to Baxi, Amnesty found that “torture is pervasive and a daily routine in every one of India’s 25 states, irrespective of whether arrests are made by the police, the paramilitary forces, or the army. It happens regardless of the political persuasion of the party in power. Many hundreds, if not thousands, have died because of torture during the last decade” (Amnesty International, 1992, p.1). In 2008, People’s Watch, an organisation based in Tamil Nadu, published reports on torture cases from 47 districts in nine states. On this basis, they inferred that there are possibly 1.8 million

victims of torture every year in India. On the extent of torture, People's Watch found that torture is "an entrenched and often routine law-enforcement strategy" (People's Watch, 2008, pp. 3-4). In 2011, the Asian Centre for Human Rights (ACHR, 2011, p.1) observed that "torture remains endemic, institutionalised, and central to the administration of justice and counter-terrorism measures. India has demonstrated no political will to end torture". Amnesty International and ACHR point to the use of torture across security contexts, from everyday policing to terrorism.

1.3 Official Denial and its Effect

In spite of these persistent findings of routine, institutionalised torture, a key feature of the discourse on torture in India is resolute official denial of torture by the political executive. State officials often claim that torture does not take place nor is it sanctioned by policy (Lokaneeta, 2011, p. 130). The standard police response on the question of how widely torture is practiced whittles it down to being "random and occasional" (Baxi, 1982, p. 122). This has not changed to match the greater recognition of torture as a human rights violation in the intervening years.

There are several compelling illustrations of official denial. Amnesty International's 1992 report quotes the following statement by former Prime Minister, Rajiv Gandhi, when asked about India's human rights record in January 1988 on the British television programme, Panorama – "We don't torture anybody. I can be very categorical about that. Wherever we have had complaints of torture, we've had it checked and we've not found it to be true" (Amnesty International, 1992, p.1). Twenty-nine years later, in May 2017, India's then Attorney General Mukul Rohatgi, leading the government's delegation at India's third Universal Periodic Review to report on India's human rights record at the UN Human Rights Council, responded to persistent concerns on torture in India by stating, "India remains

committed to ratify the Convention Against Torture. We believe in peace, non-violence and upholding human dignity. As such, the concept of torture is completely alien to our culture and it has no place in the governance of the nation".¹

In contrast, the Supreme Court of India has recognised the wide extent of police torture. In the 1997 landmark case of *D.K. Basu vs. State of West Bengal*, the court acknowledged "the growing incidence of torture and deaths in police custody":

"Experience shows that worst violations of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resorts to third degree methods including torture and adopts techniques of screening arrest by either not recording the arrest or describing the deprivation of liberty merely as a prolonged interrogation. The increasing incidence of torture and death in custody has assumed such alarming proportions that it is affecting the credibility of the Rule of Law and the administration of criminal justice system".

Notably, the National Human Rights Commission (NHRC), in its Annual Report 2017-2018, acknowledges the frequency of torture saying "custodial violence and torture is so rampant in India that it has become almost routine" (p. 44).

More recently in 2021, former Chief Justice of India, N.V. Ramana, recognised the dangers of custodial violence in police stations in a public lecture, saying that "the threat to human rights and bodily integrity is the highest in police stations" and pointed to the need for greater efforts to combat it (Rajagopal, 8th August 2021).

In analysing the implications of official denial, Nitya Ramakrishnan (2013, p. 5) dubs torture prevailing as a "public secret", a practice condemned publicly but yet held "indispensable to law enforcement" and so allowed to continue. One outcome of persistent denial means India remains, to date, without

¹ The full text of the AG's opening statement is available here: <https://www.pmindiaun.gov.in/pageinfo/MTY1NQ>

a national torture prevention law. While India signed the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in 1997², to date, a domestic law has not been enacted. Torture remains undefined and absent as a criminal offence in Indian law. Nevertheless, some legal safeguards against torture are in place. Jinee Lokaneeta (2011, p. 131) describes the legal framework thus: “In the absence of any national law on torture, a combination of constitutional, statutory, and judicial precedents has collectively created a formal legal regime against the use of torture in India”. The Indian context is locked in the paradox of having strong constitutional and statutory safeguards against torture, while torture remains routine in policing and law enforcement practice.

The constitutional, statutory and judicial safeguards against torture are listed in Appendix 1. It is important to note that the central government implemented new criminal laws which were brought into force on July 1, 2024. The Bharatiya Nyaya Sanhita (BNS, 2023) replaced the Indian Penal Code, 1860; the Bharatiya Nagarik Suraksha Sanhita (BNSS, 2023) replaced the Code of Criminal Procedure, 1973 (CrPC); and the Bharatiya Sakshya Adhiniyam (BSA, 2023) replaced the Indian Evidence Act, 1872.³ Most of the former statutory protections against torture are retained in the new laws, barring some significant changes (see Appendix 1 for further explanation).

1.4 Victims and Uses of Torture

Documentation efforts reflect that victims of torture are most often from India’s most marginalised communities – Dalits and oppressed castes, Muslims, tribal communities, women, children, and the poor.

There is no official government source that provides the demographic details (such as age, gender, caste, or religion) of victims of deaths

and torture in custody. At best, the NHRC publishes select case studies of “important illustrative cases” of custodial deaths and torture in its annual reports which mention the victims’ names and ages in these cases; but it does not annually publish demographic details of all the victims of custodial torture and death that it responded to.

In its 1992 report, Amnesty International found that the “majority of torture victims” were “members of the scheduled castes and scheduled tribes, tribal women in the northeast, migrant workers, landless labourers” (p. 1). Human Rights Watch (2009, p. 71) observes that the specific impact on the poor is they do not have the means to pay bribes for release or dip into political or any connections to intervene on their behalf, making them more vulnerable to “repeated violence”.

The jury of the People’s Tribunal on Torture in the (previously undivided) state of Andhra Pradesh (2008, p.1), part of the National Torture Project by People’s Watch referenced above, articulate how prejudice and inequality lead to the targeting of the most vulnerable:

“Rather, police torture is an entrenched system with strong structural ties to class, caste, and communal dynamics, political power, and patriarchal attitudes that ensure the continued subjugation of women and children. The intersectionality of these factors adversely impacts the most vulnerable sections of the people”.

In their decades-long documentation of custodial deaths in Delhi, the People’s Union for Democratic Rights (PUDR, 1989, p.4) have found that most victims are from poorer sections of society, working as rickshaw pullers, auto drivers, tonga drivers, hawkers and small vendors, casual labourers, and living in slums or resettlement colonies.

In 2019, the National Campaign Against Torture (NCAT, 2019, p. 8) documented 124 cases of deaths in police custody and found that

² A full list of state signatories and parties to the Convention can be found here: <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/iv-9.en.pdf>

³ The new laws can be found here: <https://www.mha.gov.in/en/commoncontent/new-criminal-laws>

60% of the victims came from marginalised communities such as Dalits, Adivasis and Muslims with occupations such as labourers, security guards, rag-pickers, and drivers.

1.4.1 Uses or “contexts” of torture

In 1982, Baxi forewarned that there are a “variety of contexts within and through which torture may be institutionalised”. He usefully pointed out that torture is justified and used by the police (and other security forces) across contexts and for different ends. He summarised what he saw as recurring “contexts” including torture against “revolutionary protest movements”; during national emergencies; as “counter-insurgency” and “counter-terrorist”, in response to situations of communal riots; torture in the course of crime investigation, and lastly torture as reprisal or punishment (Baxi, 1982, pp. 127-28). The literature that followed reveals that torture is certainly used in these variety of contexts, from crime investigation to militarised contexts such as in Kashmir, or during terror investigations. While they do not provide empirical figures, Human Rights Watch, People’s Watch, and NCAT document torture against individuals accused of minor crimes, such as theft. There is extensive documentation of torture perpetrated in internal conflict zones of Punjab in the 1980s, Jammu and Kashmir and the Northeast states. In a seminal study published in 2016 by the National Law University Delhi which examined key aspects of the administration of the death penalty in India, based on interviews with prisoners on death row, of 270 prisoners who recounted their experience in police custody, 216 (80%) said they were subjected to custodial violence (p.30). The report also confirmed that the death penalty is “disproportionately imposed” on persons who are socially and economically vulnerable (NLU, 2016, p.18).

In terms of crime investigations, across the literature, torture is most commonly used to extract information and confessions from suspects (Amnesty International, 1992, p.4 and HRW, 2009, p. 81). In conflict zones, torture is also used to extract confessions and gather intelligence, but it often has an added violent

layer of reprisal, punishment, or control. For instance, in the period of militancy in Punjab particularly in the 1980s, Amnesty International (2003, p. 5) reported that “torture was widespread and used both as a substitute for investigation and as punishment”. For instance, people were often taken into custody simply for being related to, or being from the same village as members of armed militant groups, with prolonged detention facilitated by terror laws such as the (now-repealed) Terrorist and Disruptive Activities (Prevention) Act. Moving to the militarised context of Jammu & Kashmir, an extensive 2019 study of torture by human rights organisations argues that the use of torture can be traced back to a “history of authoritarian state practices and the repression of political struggle” (APDP, 2019, p. 14). The report states that since the beginning of the armed struggle in Kashmir, torture has been used “indiscriminately” against “civilians, militants, political workers, men, women, minors and elderly” as a way to control and subjugate political aspirations of the Kashmiri people (APDP, 2019, p. 84).

NCAT (2019, p.7) records that torture is also “routinely perpetrated” for corruption and to compel bribes from people in custody or their relatives. Notably, the noted civil liberties lawyer, K. Balagopal, has written that it is short-sighted to claim that police torture is used predominantly for instrumental purposes of investigation, but in actuality, the reasons for police torture are much more varied and routine. Balagopal (1986) argues that police commit torture “at best” to ensure the “maintenance of order” and “at worst” to make money or curry favours from politicians or people of influence. He also finds that police hold deep resentment towards anyone they feel is committing a crime or obstructing investigation and this often fuels torture.

Academic scholarship on torture, particularly ethnographic studies, have captured the ways in which torture in the Indian context is used to target, label and/or subjugate entire communities. In cases of Muslim men suspected of terrorism, Lokaneeta (2020, p.157) argues that the tactics of torture (physical and psychological)

inflicted on them, such as stripping and insults to their religion, are done deliberately to hurt their religious identity and masculinity. She states that this targeting of Muslim men “during torture and interrogation” are “thus engaged to humiliate an entire community”. Similarly, Santana Khanikar (2019, pp. 53-54) argues that the police perceive certain communities as inherently “criminal” based on their socio-economic position (such as whether they live in a slum) and construct a “whole mechanism of torture” to interrogate “such people” including torture implements such as “smooth rubber strip whips, wooden sticks, hollow iron pipes, fire-extinguishers, revolvers, etc”. In these ways, torture is rationalised by the police in response to certain communities.

1.5 Methods of Torture

The documentation of methods of torture uncovers similar torture techniques used across contexts, whether everyday policing or heightened internal security, with the interlocked aim to cause both physical and psychological harm, ultimately to dehumanise and “break” victims entirely while reinforcing the dominance of the perpetrator. Following from the observation of the UN Istanbul Protocol (2004, p. 55) that “the distinction between physical and psychological methods is artificial”, methods of torture in India also disclose a melding of physical and psychological methods towards the aim of disempowering victims completely.

Methods include both physical and psychological techniques to inflict pain, ranging from beating, modes of physical torture that lead to injuries and which may cause long-term damage, verbal insults and abuse, and interrogation methods and other treatment that induce severe disorientation and mental distress. Notably, different sources across contexts and time periods hold beatings by lathis (or batons) as the most common form of torture in India (HRW, 2009, p. 68 and APDP, 2019, p. 56). Beatings are usually prolonged, and severe.

Illustrative listings of common methods of torture perpetuated in the Indian context reveal the continuum of physical and psychological techniques to cause harm⁴:

- (a) Beating with lathis, punches, kicking, slapping
- (b) Torture from suspension, stretching limbs apart, prolonged constraint of movement, beating while suspended
- (c) Cigarette burns
- (d) Electric shocks
- (e) Choking
- (f) Rubbing salt, chilli pepper, gasoline, etc. (in wounds or body cavities)
- (g) Sexual violence to genitals, molestation, rape
- (h) Conditions of detention, unhygienic conditions in police lock-up, prolonged solitary confinement, blocked access to toilet facilities, irregular access to food and water, denial of privacy, forced nakedness
- (i) Humiliation, such as verbal abuse, insults to caste/religion/community, performance of humiliating acts
- (j) Threats of death, harm to family, further torture, imprisonment
- (k) Psychological techniques to break down the individual, including threats of imprisonment under harsh laws, denying meetings with family members, ‘hostage taking’ of family members, forced to perform acts against one’s religion
- (l) Forcing the victim to witness torture or atrocities being inflicted on others

The 2019 Kashmir report universalises the practice of torture in stating that “as everywhere, in Jammu and Kashmir no method of torture is used in isolation, but rather in a continuum” (APDP, 2019, p. 55). Across the literature, recounted with details in the 2019 Kashmir report, the long-term and devastating impact of psychological trauma, in addition to any physical injuries, following torture is noted.

⁴ Taken from Human Rights Watch 2009, pages 68-86; and People’s Watch 2008, pages 27-29.

Taken together, it becomes clear that methods of torture are used universally and indiscriminately, across security contexts and against all manner of alleged offenders, furthering the position that torture itself is systemic and rooted in policing practices.

As stated, the combination of physical and psychological methods is deliberately done to maximise the breaking of torture victims in body and mind. However, particular torture techniques such as threats and humiliation of family members; verbal abuse; stripping; pressure positions over prolonged durations; denial of water, food, and toilet facilities; amongst several others, do not leave signs on the body, but have a debilitating impact on the victim. For instance, the “psychological” tactic of threatening and/or detaining family members, used by the police when they need to apprehend suspects (HRW, 2009, p. 79), or to elicit confessions, illustrates the ways in which strong family ties in the Indian context are exploited in the exigency of the practice of torture. Imran Khan, a man arrested in a terrorism case in 2007 and acquitted of all charges (with all the other accused) in 2014, recounts the way in which the police threatened his siblings directly in front of him and the effect this had towards achieving the police’s ultimate aim:

“My younger brother and sister were brought to the police station (PS). They were called to the PS on the pretext that your brother wants to talk to you, so they rushed to the PS. My parents were asked to stand outside the PS. Only my siblings were called inside the PS. They told me that your siblings have been called, and if you don’t accept this, we will slap a case on them as well.

My younger sister and brother called me, they started crying while asking me about my whereabouts. At that time, I gave up. Policemen were saying filthy things about my sister that we will do this and that. I told them, write anything you want, but please leave my brother and sister. I was told they have been detained by the police. I was kept at a place where there was no one to

be seen. I would shout when I was beaten – there was no one to hear me. I didn’t know where I was, as they had brought me here with the black cloth over my face. It was a farmhouse type with a lot of shrubs around. They only used to say, just accept it. I would ask, what should I confess to, tell me. Because there is a limit to these beatings as well. They used to give me capsules, and then they used to beat me and then the same cycle used to continue. Their strategy was to break me using my siblings. I told them that whatever you want to write, I will sign, but please leave my siblings. I was asked to sign on a blank sheet of paper on which nothing was written” (CHRI, 2018, pp. 49-50).

1.5.1 “Scientific interrogation” techniques

In a similar vein, Lokaneeta (2020, p. 18) studies the rise of “scientific” interrogation techniques from the 2000s, in the form of narcoanalysis and poly-graph tests, as “laboratory based” scientific methods ostensibly to prevent physical torture. Characterising them as “truth machines”, Lokaneeta demonstrates that these simply added new approaches in the state’s use of violence, and essentially function not to eliminate torture, but only to prevent custodial deaths that may result from it. Dr. Amar Jesani, in a 2008 lecture organised by PUDR, characterised narcoanalysis as a form of “pharmacological” torture, as it is a method “not only to extract information but also to force confessions”. The larger ramification seems to be that torture can continue to be imposed through psychological tactics of coercion.

This suggests that the continuum of physical and psychological methods as the apparatus for inflicting torture is continually expanding in India, rather than constricting. The pragmatics of masking torture are enabled through combination of the use of methods that do not leave physical wounds or marks. In the absence of ‘legally verifiable evidence’ of torture, the State is able to sustain a formal narrative of denial by conveniently attributing violent incidents of torture to a few “bad apples” rather than admit the systemic causes.

1.6 Subversions of Legal Safeguards

While the commission of torture in itself is wholly illegal, documentation of lived experiences of torture indicate that torture operates in tandem with the violation of constitutional and statutory safeguards that are meant to be guaranteed to people in custody. In the eight states in which peoples' tribunals on torture were conducted, the expert jury panels found that mandatory directions on arrest to be followed by the police, laid down in the Supreme Court judgement, *D.K. Basu vs. State of West Bengal*, were routinely contravened by the police, in their examinations of cases of torture. These are breached even after the Supreme Court envisaged its directions in *D.K. Basu* as safeguards to prevent custodial torture, laying down procedural requirements to make the process of arrest transparent and open to early scrutiny, among others, that arresting officers carry visible and clear name tags with their designations identified; that an arrest memo containing details of the arrest is prepared at the time of arrest; and that a family member or friend of the detained person is to be informed of the place of detention.

Article 22(2) of the Constitution of India enshrines that all arrested persons are to be produced before a magistrate within 24 hours of arrest, and to be able to consult a lawyer of their choice. In ordinary policing contexts, Human Rights Watch (2009, p. 65) found that police "frequently" failed to produce suspects before a judicial magistrate within the stipulated 24 hours from arrest; and did not allow suspects to inform their family/friend or consult a lawyer. The Death Penalty India report (National Law University, Delhi, 2016, p. 32) revealed that of the 258 death row prisoners who did speak about production before a magistrate, 166 said they were not taken before a magistrate within the mandatory 24 hours. The report documents experiences of police custody for up to seven days, and in some cases, extending to several weeks or months. Of the 191 prisoners who could share information regarding their access to a lawyer when they were interrogated, 185 prisoners (97%) shared that they did not have

a lawyer, and many recounted experiencing custodial violence.

These repeated procedural violations strip away safeguards, rendering detention illegal, which paves the way for commission of torture. As noted by the expert juries across eight states as part of the peoples' tribunals, the *D.K. Basu* guidelines applied only to "recorded arrests" while the majority of cases heard were of those involving illegal detention. Ramakrishnan (2013, p. 28) distinguishes lawful custody from the "perennial problem of illegal detention in lock-ups and in undisclosed locations or 'safe houses'". Human Rights Watch (2009, p. 66) observed that "these periods of unregulated and incommunicado detention render suspects vulnerable to police torture and other mistreatment". K.G. Kannabiran (2004, p. 5), the renowned human rights lawyer, described that this difference between "actual" arrest and "legal" arrest gave the police "time to subject the arrested person to violence, including the possibility of execution without reference or recourse to law". Commenting on the continuation of torture in Punjab, post the period of armed conflict in the state, Amnesty International (2003, p. 19) states that "torture occurs even more frequently during unlawful and arbitrary arrests". Due to the police not leaving any paper trail of illegal custody, these cases are denied prompt judicial scrutiny and detainees may be held for days in incommunicado detention. The operation of torture, perhaps obviously so, is contingent on legal subversion by perpetrators, and aimed to extinguish the possibility of accessing the very safeguards against torture that have been enshrined in law.

1.7 Prospects for a Torture Prevention Law

There was a fragmented attempt to pass a torture prevention law more than a decade ago. In May 2010, the Lok Sabha hurriedly passed a Prevention of Torture Bill. Concerned that the Bill was wholly incompliant with the Torture Convention and legal safeguards, Members of Parliament (following discussions with civil society organisations and others) interceded to get the Bill referred to a Select Committee for

further examination (Parsai, 28th August 2010). The Select Committee revised the 2010 Bill in totality and submitted the revised Bill to the Rajya Sabha in December 2010. In the absence of renewed follow-up at Parliament, the 2010 Bill has lapsed. In 2019, the Supreme Court rejected a petition filed by former Law Minister and Chair of the Rajya Sabha Select Committee on the Torture Bill, Dr. Ashwani Kumar, in which he sought the Supreme Court to direct the central government to enact a torture prevention law.

The noted gaps in the 2010 Bill reinforce the challenges implicit in the advocacy with state authorities, for a comprehensive torture prevention law. Commenting on the 2010 Bill while the Select Committee was deliberating,

Ravi Nair wrote that “in its present form the Bill will have little impact on the widespread use of torture and other cruel, inhuman and degrading treatment routinely meted out to suspects and detainees by law enforcement officials in India” (Nair, 2010). He pointed to several lacunae in the Bill, which were voiced by many others, including the limited definition of torture, the unduly limited time period for victims to file complaints, the blocks to prosecution of public servants, and the lack of compensation and rehabilitation provisions. The 2010 experience denotes that lawmaking on torture prevention cannot be a cosmetic exercise to formally fulfil international obligations, but requires a robust and participatory process.

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CHAPTER 02



Law, Order and Society: Police Perceptions and Propensities to Violence

*Police rain lathi blows on student protestors (15th December, 2019, New Delhi).
Credits: Ghulam Hussain Jeelani*

Key Findings

- Police personnel strongly support the use of more preventive arrests of ‘anti-social elements’ (48%) and forming special squads that can detain people indefinitely (43%). Both measures disregard legal standards.
- Twenty-percent of the police personnel feel that it is very important for the police to use tough methods to create fear amongst the public, another 35 percent think it’s somewhat important.
- One in four police personnel strongly justify mob violence in cases of sexual harassment (27%) and child lifting/kidnapping (25%). Across various categories of crime, constabulary and IPS officers are the most likely to justify mob violence, and upper subordinate officers are the least likely to do so. Police personnel from Gujarat showed the highest support, while those from Kerala showed the least support for mob violence.
- Twenty-two percent police personnel feel that the rich and powerful are “naturally prone” to committing crimes to a great extent, and 18 percent feel that Muslims are “naturally prone” to committing crimes to a great extent.

CHAPTER

02

Law, Order and Society: Police Perceptions and Propensities to Violence

2.1 Introduction

As a public institution, the police play a primary role in protecting peace and order in society. All Police Acts (the laws that establish the police) accord top priority to the police's responsibility to maintain law and order and to keep people and property safe. An integral part of this responsibility is the police's approach to, and methods of, maintaining law and order, which may involve the use of force against individuals or in public order situations. A test for policing in this operational realm is maintaining the legitimate use of force, resting on the imperatives that force inflicted is necessary, proportional, and justified.¹

However, the arena of "law and order" throws up patterns of how illegitimate use of force manifests in various forms across situations. These can range from unlawful "moral" policing measures against couples in public (Live Mint, December 2022); or the exercise of "excessive and unlawful" force by the Uttar Pradesh Police (including the use of firearms as well as teargas, water cannons, and lathi charge) in response to people protesting a citizenship law in December 2019, resulting in the deaths

of at least 19 protestors mainly from bullet injuries (International Commission of Jurists, 2020). Even when the police might not directly perpetrate the violence, they might act as facilitators, such as when police refused to help two Manipuri women who were paraded naked and sexually assaulted by a violent mob in 2023, stated in the charge sheet filed by the Central Bureau of Investigation (Mukherjee, 2024).

Considering these different forms of violence, it emerges that the line between legitimate use of force, and strategies or actions that are excessive, moralising, or extra-judicial, is blurry in 'law and order' practices, whether in individual cases or larger public order situations. This is akin to the paradox inherent in the perpetuation of torture - even though torture is deemed unconstitutional, the police continue to use and justify its practice. Considering this running thread, this chapter seeks to explore whether it is possible to draw broad linkages between police attitudes or perceptions of routine crime control with the propensity towards torture or illegal force. For instance, do the police sanction crime control measures that

¹ The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide global standards: <https://www.ohchr.org/sites/default/files/firearms.pdf>

may violate established legal rights? Or do the police justify any form of majoritarian vigilante behaviour? Or do the police view certain communities as “prone” to crime based only on subjective perceptions? Analysing police responses to these kinds of questions may reveal patterns in police perceptions relating to skirting legal standards, approving violent measures, or targeting certain communities - features all seen at the heart of the continuation of torture.

This chapter is divided into four main sections. The first section begins with setting out and analysing the crimes for which the most arrests are made by police personnel in the perceptions of the police themselves. The limited aim is to get a sense of the kinds of crimes (whether minor or serious) the police perceive they carry out arrests for most frequently, and examine this against legal standards on arrest. Following this is a discussion of the perceptions of police personnel on various measures that

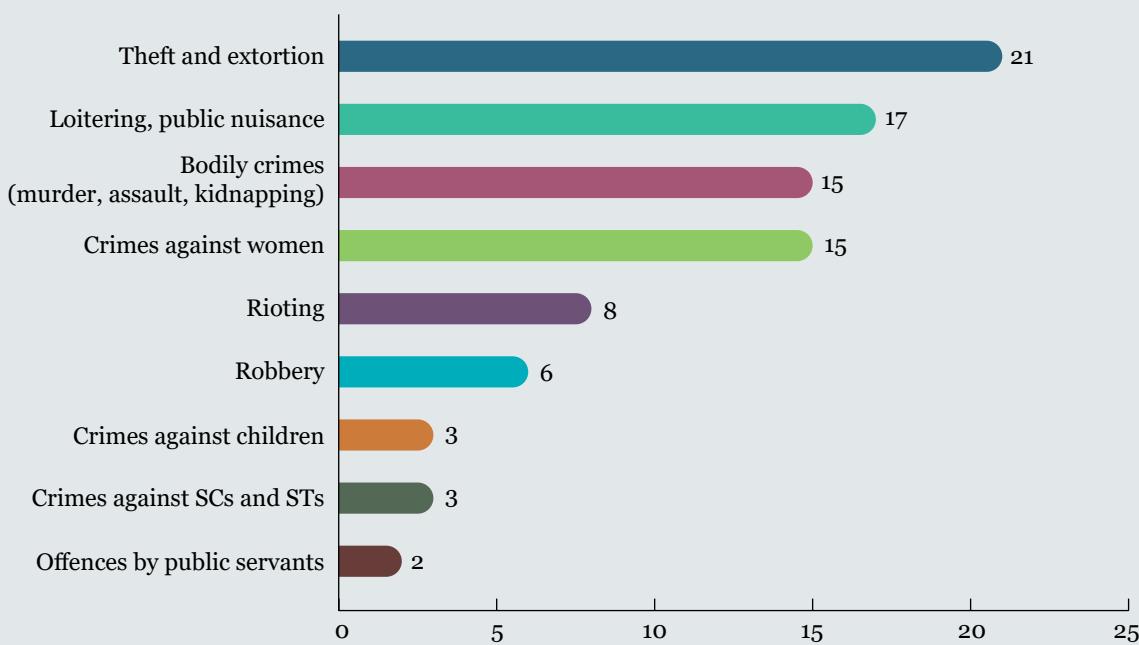
can be taken for crime control. The next section explores the extent to which police view mob violence as “justified”, inferred against alleged crimes for which a mob is exacting ‘justice’. The third section focuses on police personnel’s perspectives on public displays of affection and the action that should be taken by the police in such cases, in their opinion, with the larger aim of examining if notions of moral policing are ingrained. The last section of the chapter collects police views of how they see inclination toward criminality regarding a range of communities, and what the findings may indicate about any preexisting biases against certain communities.

2.2 Police Opinion on Frequent Crimes and Arrests

Police personnel were asked about the crimes for which, in their view, they carried out the most arrests in their area or jurisdiction, among a range of offences from minor to serious. The responses revealed that theft and extortion

Figure 2.1: Police personnel report making arrests most frequently in cases of theft and extortion

Crimes for which most arrests are made according to police personnel (%)



Note: All figures are in percentages. Rest either gave other responses or did not respond.

Question asked: In your experience, what is the crime for which the most arrests are made in your area or jurisdiction, such as murder, assault, kidnapping, theft, robbery, crimes against women, etc. (Open-ended and post-coded)

were the most frequently reported categories of crime for which arrests were made (21%), followed by loitering and public nuisance (17%). Their views converged to establish the finding that 15 percent arrests were seen to be made respectively, for bodily crimes (such as murder, assault and kidnapping), and for crimes against women (**Figure 2.1**). Almost one in every ten arrests pertained to the crimes of rioting and robbery (8% and 6% respectively).

Notably, in Indian law, the gravity of an offence is a major factor that determines whether an arrest is justified or not. The law is clear that police officers should not automatically arrest in offences punishable by seven years or less, and must provide written reasons to a judicial magistrate if they feel an arrest is warranted for such an offence (Section 35, BNSS, 2023 and

Arnesh Kumar vs. State of Bihar, 2014). The responses by the police stating that they carry out the highest number of arrests for relatively minor offences - theft and extortion, loitering and public nuisance (all with punishments less than seven years) – indicates that the law is not being adhered to and excessive arrests are being made.

An analysis of the official data on arrests exposes the same worrying trend. For example, the latest crime and arrest statistics published by the National Crime Records Bureau (NCRB) in 2022 (the latest year for which data is available) shows that at the all-India level, hurt (19.7% - including simple hurt and grievous hurt) is the offence for which the highest proportion of arrests were made. Hurt is punishable by one-year imprisonment, fine, or both (Section 115,

Table 2.1: Forty-six percent of personnel from Odisha reported the most frequent arrests for theft and extortion, while 30 percent from Assam said that arrests were made most frequently in cases of bodily crimes

States	List of major crimes for which most frequent arrests were conducted (%)			
	Theft and extortion	Loitering, public nuisance	Bodily crimes (murder, assault, kidnapping)	Crimes against women
Odisha	46	5	8	2
Nagaland	38	29	3	3
West Bengal	37	7	5	22
Delhi	33	12	12	17
Andhra Pradesh	32	4	10	17
Bihar	19	18	14	10
Gujarat	19	10	28	13
Punjab	18	60	5	6
Uttar Pradesh	17	21	10	25
Assam	16	5	30	18
Madhya Pradesh	15	19	24	22
Rajasthan	15	18	11	20
Karnataka	13	11	20	9
Jharkhand	12	12	26	22
Maharashtra	11	25	26	16
Kerala	9	19	11	15
Tamil Nadu	9	15	18	15

Note: All figures are in percentages. Rest either gave other responses or did not respond. Only the top four response categories of crimes have been analysed across the states.

Question asked: In your experience, what is the crime for which the most arrests are made in your area or jurisdiction, such as murder, assault, kidnapping, theft, robbery, crimes against women, etc.?

BNS, 2023), while voluntarily causing grievous hurt is punishable by imprisonment up to seven years and fine, both falling in the category of offences for which arrest should not routinely be conducted. A little less than 10 percent of the total arrests were made for theft, while extortion and blackmailing together accounted for 0.5 percent of the overall arrests made. Again, these are all minor offences not warranting arrest as per the law. Hence, the official data on arrests made in minor offences corresponds to some extent with the reported proportion of arrests made by the police, as emerging from the survey findings, adding further evidence of excessive arrests.

The survey was conducted across 17 states and UTs. State-level trends mirrored the all-India findings of the highest number of arrests in minor offences, also falling foul of the law. Police personnel in Odisha reported the highest proportion of arrests (46%) for the crimes of theft and extortion, followed by Nagaland (38%) and West Bengal (37%). The data further shows that police respondents from Punjab (60%) reported the most arrests – that is, six in every ten – against the crime of loitering and public nuisance, distantly followed by Nagaland and Maharashtra (29% and 25% respectively) (**Table 2.1**).

The police responses also reveal that the highest proportions of arrests conducted for bodily crimes (such as murder, assault and kidnapping) were reported in Assam (30%), closely followed by Gujarat (28%), Maharashtra (26%) and Jharkhand (26%). Further, as per the survey, police personnel from Uttar Pradesh (UP) reported the highest proportion of arrests (25%) for crimes against women, followed by West Bengal, Jharkhand, and Madhya Pradesh in equal proportions (22% each). In terms of arrests, the official data corresponds with the survey finding that the highest proportion of arrests for crimes against women was made in UP (1,01,754, as per Crime in India 2022).

Further, the survey responses did not reveal any significant variations across the location categories of the capital city, city, district headquarters or small towns in terms of the arrests made for these major categories of crime.

2.3 Police Opinions on Measures for Crime Control

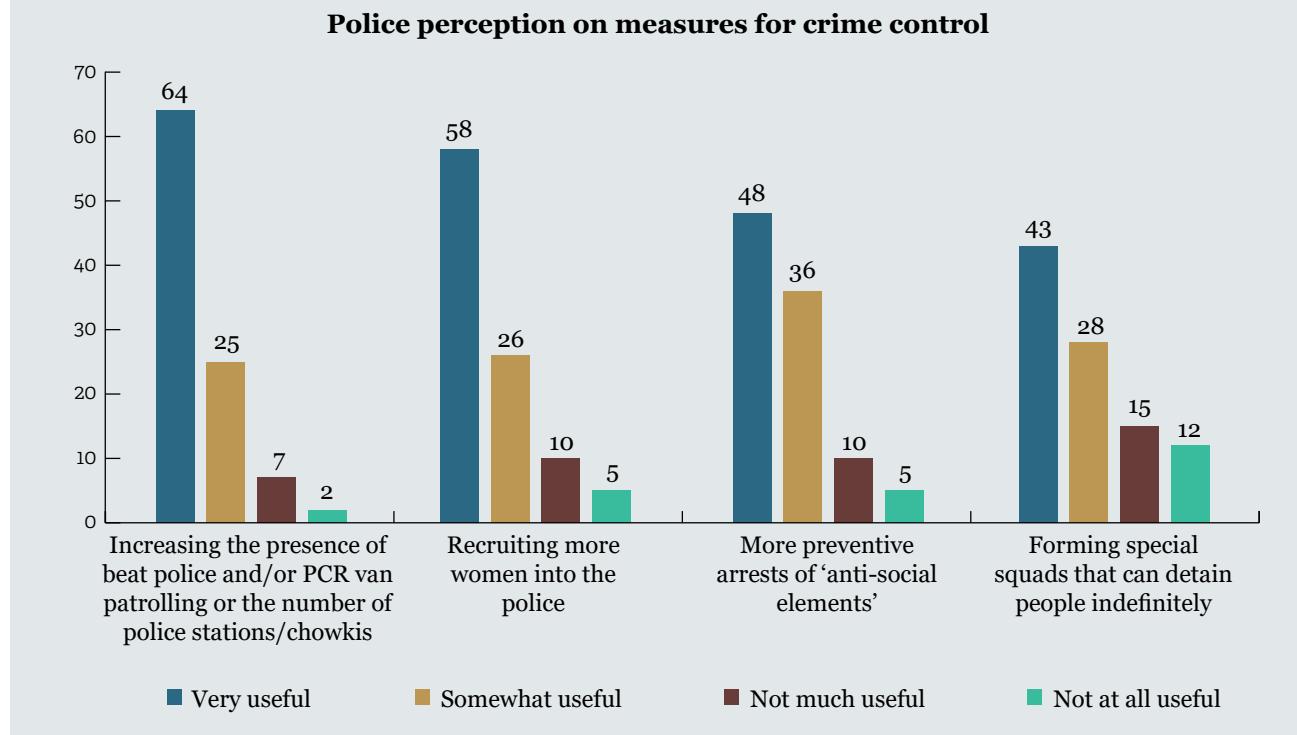
Police personnel were asked their opinions on the usefulness of a variety of measures to reduce crime in their areas. Notably, some of the measures suggested would be clearly violative of legal standards, yet received significant support from the police.

The data indicates that nearly two-thirds (64%) of police personnel held the belief that enhancing police infrastructure, including increasing the number of beat boxes, PCR vans, and police chowkis, can effectively control crime. Importantly, close to three-fifths (58%) of the respondents also felt that increasing the number of female police personnel can be a “very useful” measure of crime control (**Figure 2.2**). On the other hand, nearly half of the police personnel (48%) believed that preventive arrests are a “very useful” measure for crime control in their areas. Further, 43 percent of respondents also supported the formation of special squads with powers of indefinite detention as a useful measure of crime reduction.

It is heartening that the highest proportion of responses prioritised measures that would have the effect of increasing police services (PCR vans, beat boxes) and infrastructure (police chowkis) geared for the public. This reveals that police thinking on crime control is taking public needs, and police responsiveness to those needs, into account.

Yet, it is also worrying that a high proportion of responses support preventive arrests and indefinite detention (through special squads) as crime control measures. Preventive arrests, which allow police to detain individuals, under Section 170 of the BNSS, based solely on suspicion that they *may* commit an offence, are to be used only in very limited circumstances. The law stipulates that a police officer can resort to preventive arrest only if there is no other way to prevent the commission of an offence. Detention under Section 170 cannot exceed 24 hours. Further, *indefinite* detention inherently constitutes a blatant violation of the constitutional rights to life and liberty under Article 21 of the Constitution of India. From

Figure 2.2: Nearly two out of three police personnel feel that increasing the presence of beat police and/or PCR vans will be very useful in controlling crime



Note: All figures are in percentages. Rest did not respond.

Question asked: I am reading a to you some measures to reduce crime. Please tell me how useful the following measures are for reducing crime in your area – very useful, somewhat useful, not much useful, or not at all useful?

their legal nature alone, neither of these can be justified as sound crime control measures. Regarding preventive arrests, the vague undefined term “anti-social elements” is used, and left to the interpretation of the respondents.

These findings ring several alarm bells. One, is that police personnel are not adequately aware of, or understand the implications of preventive arrest or indefinite detention, which may mean they have not been compelled to imbibe limitations on powers of detention. These point to failings in police supervisors and training, as well as in police oversight actors, such as the judiciary. Secondly, both these measures have inherent limitations – preventive arrest is to be used sparingly as a last resort, and indefinite detention is not even legally permissible. If police respondents regard these as “useful” to control crime, this indicates an urgent need to scrutinise police understanding of their powers of arrest and detention, and also their notions of efficient crime control methods.

As seen in **Tables 2.2** and **2.3**, police personnel who strongly support legitimate measures such as improving police infrastructure and increasing police presence are also the most likely to support the use of coercive actions such as increasing preventive arrests (61%) (**Table 2.2**) and forming special squads with powers to detain people indefinitely (58%) (**Table 2.3**). This reveals the inconsistencies in police perceptions on the nature of potential crime control measures, with measures which are legally tenuous being seen as effective, reinforcing the need for improved training on fundamental concepts.

In fact, the survey brought out that a significant number of respondents regard preventive arrest as a reliable action to prevent crime.

They were presented with two statements and asked which statement they agreed with the most – whether preventive arrests should be done regularly to prevent offences from taking place, or if they should be made only in special situations when there is a threat to law and order.

Table 2.2: Police personnel who support increasing police infrastructure are also more likely to support the use of preventive arrests for reducing crime

Support for increasing police infrastructure	“How useful would it be to have more preventive arrests of anti-social elements for reducing crime in your area?” (%)			
	Very useful	Somewhat useful	Not much useful	Not useful at all
Those who think that increasing police infrastructure will be very useful in reducing crime	61	28	6	5
Those who think that increasing police infrastructure will be somewhat useful in reducing crime	30	49	16	4
Those who think that increasing police infrastructure will not be much useful in reducing crime	17	57	19	6
Those who think that increasing police infrastructure will not at all be useful in reducing crime	8	37	21	33

Note: All figures are in percentages. Rest did not respond.

Questions asked: How useful would it be to increase the presence of beat police and/or PCR van patrolling or the number of police stations and chowkis for reducing crime in your area – very useful, somewhat useful, not much useful, or not at all useful?

How useful are more preventive arrests of anti-social elements for reducing crime in your area – very useful, somewhat useful, not much useful, or not at all useful?

Table 2.3: Police personnel who support increasing police infrastructure are also more likely to support forming special squads that can detain people indefinitely for reducing crime

Support for increasing police infrastructure	“How useful would it be to form special squads that can detain people indefinitely for reducing crime in your area?” (%)			
	Very useful	Somewhat useful	Not much useful	Not useful at all
Those who think that increasing police infrastructure will be very useful in reducing crime	58	18	10	13
Those who think that increasing police infrastructure will be somewhat useful in reducing crime	20	49	20	10
Those who think that increasing police infrastructure will not be very useful in reducing crime	6	40	43	10
Those who think that increasing police infrastructure will not at all be useful in reducing crime	3	36	19	40

Note: All figures are in percentages. Rest did not respond.

Questions asked: How useful would it be to increase the presence of beat police and/or PCR van patrolling or the number of police stations and chowkis for reducing crime in your area – very useful, somewhat useful, not much useful, or not at all useful?

How useful is forming special squads that can detain people indefinitely for reducing crime in your area – very useful, somewhat useful, not much useful, or not at all useful?

Figure 2.3: More than one out of three police personnel believe that preventive arrests should be done regularly



Note: All figures are in percentages. Rest did not respond.

Question asked: Now I will read out two statements, please tell me which one you agree with the most.

Statement 1: Preventive arrests should be done regularly to prevent offences from taking place.

Statement 2: Preventive arrests should be done only in special situations when there is a threat to law and order.

In line with the above finding on preventive arrests of ‘anti-social elements’, in response to this question more than one out of three police personnel (36%) hold the opinion that preventive arrests should be made regularly, contradicting the limited use allowed by the law (**Figure 2.3**). On the other hand, almost three in every five respondents (59%) agreed with the second statement, that these arrests should be made only in special situations. Across ranks, there is not much variation in the opinions on this question.

Official statistics reflect that the police actually carry out high numbers of preventive arrests in a single year. As per the latest NCRB figures, 12,31,021 persons were arrested under the preventive arrest provision of Section 151 CrPC (now replaced with Section 170, BNSS, 2023) in the year 2022, while another 46,97,418 were arrested under Section 107 (replaced with Section 126, BNSS, 2023), read with Section

151 or read with Section 116 (replaced with Section 135, BNSS, 2023) of the CrPC. These realities of practice are reflected in the survey findings.

As **Table 2.4** shows, three-fourths (75%) of the police personnel from the state of Gujarat felt that preventive arrests of anti-social elements were “very useful” for crime control in their jurisdictions. Also, more than three in every five police personnel from Nagaland, Assam, and Rajasthan (66%, 63% and 62% respectively) believe that preventive arrests are “very useful” for crime control. On the other hand, police personnel from Jharkhand and Uttar Pradesh were the least likely to believe so (21% and 23% respectively), but even in these states more than one in five feel that such arrests are very useful in crime control (**Table 2.4**).

When asked about the effectiveness of the formation of special squads with powers of

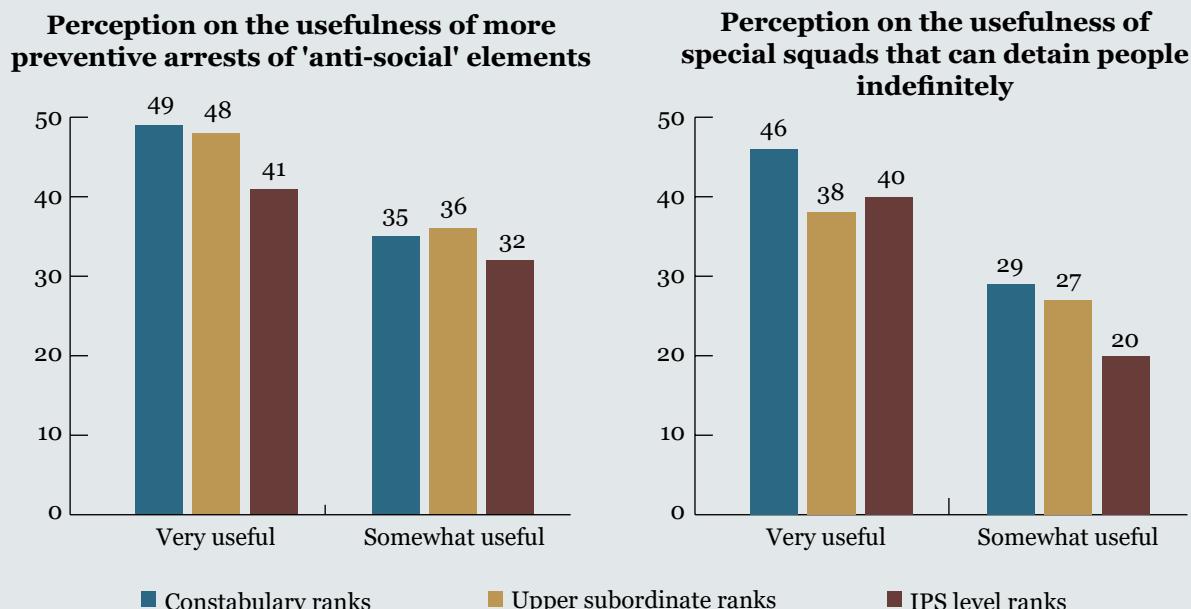
Table 2.4: Three out of four police personnel from Gujarat feel that preventive arrests of "anti-social elements" are very useful for reducing crime

States	Police opinion on the usefulness of preventive arrests for crime control (%)			
	Very useful	Somewhat useful	Not much useful	Not at all useful
Gujarat	75	21	3	1
Nagaland	66	26	4	2
Assam	63	35	2	0
Rajasthan	62	30	7	1
Andhra Pradesh	58	32	5	4
Tamil Nadu	57	37	4	2
Punjab	55	38	5	1
Kerala	52	33	12	2
Maharashtra	49	38	5	3
Bihar	48	41	7	4
Odisha	47	39	10	4
Karnataka	46	42	9	3
Madhya Pradesh	39	36	10	14
West Bengal	32	34	16	14
Delhi	30	44	22	5
Uttar Pradesh	23	39	15	20
Jharkhand	21	39	30	8

Note: All figures are in percentages. Rest did not respond.

Question asked: How useful are more preventive arrests of anti-social elements for reducing crime in your area – very useful, somewhat useful, not much useful, or not at all useful?

Figure 2.4: Senior police officers are a little less likely to believe that preventive arrests of 'anti-social elements' or forming special squads with powers of indefinite arrest are useful in reducing crime



Note: All figures are in percentages. Rest either reported "not much useful" or "not at all useful" or did not respond.

Question asked: I am reading to you some measures to reduce crime. Please tell me how useful the following measures are for reducing crime in your area – very useful, somewhat useful, not much useful, or not at all useful?

Table 2.5: More than three out of four police personnel from Rajasthan believe that special squads with the powers of indefinite detention will be very useful in reducing crime

States	Police opinion on the usefulness of indefinite detention for crime control (%)			
	Very useful	Somewhat useful	Not much useful	Not at all useful
Rajasthan	77	13	7	1
Nagaland	68	26	4	2
Tamil Nadu	67	20	5	8
Gujarat	61	20	7	11
Punjab	53	25	16	3
West Bengal	47	38	12	0
Delhi	41	29	14	14
Uttar Pradesh	41	31	12	14
Bihar	39	38	14	7
Madhya Pradesh	38	34	15	12
Assam	37	26	26	9
Odisha	37	26	17	20
Andhra Pradesh	33	26	9	30
Karnataka	29	35	28	8
Jharkhand	28	39	25	6
Maharashtra	25	33	17	16
Kerala	12	16	23	45

Note: All figures are in percentages. Rest did not respond.

Question asked: How useful are forming special squads that can detain people indefinitely for reducing crime in your area – very useful, somewhat useful, not much useful, or not at all useful?

indefinite detention in crime control, more than three-fourths of the police respondents from Rajasthan (77%) felt this would be “very useful” as a measure of crime control, followed by Nagaland (68%), Tamil Nadu (67%) and Gujarat (61%) (**Table 2.5**).

When the data is further dissected along the ranks of the respondents within the police service, it is observed that the support for the effectiveness of measures, such as preventive arrests of ‘anti-social elements’ and indefinite detention by special squads, slightly decreases as the rank of police personnel goes up. While 49 percent of the constabulary rank personnel (comprising of constables and head constables) find preventive arrests “very useful” for reducing crime in their areas, the figure comes down to 41 percent in the case of IPS officers (**Figure 2.4**). Similarly, on the support for indefinite

detention by special squads as a measure of crime control, 46 percent of the constabulary rank personnel find it “very useful”, and the proportion decreases slightly (to 40%) in the case of IPS officers and 38 percent among upper subordinate ranks. Even with these differences across ranks, it is noteworthy that there is still significant support across the board in favour of preventive and indefinite detentions as useful measures of crime control. This trend indicates that there is a proclivity towards excessive use of powers that are meant to be used only in exceptional circumstances, as well as impermissible detention violative of fundamental rights, among police personnel of all ranks.

Another measure about crime reduction on which the study sought police personnel’s opinions was the usefulness of recruiting more

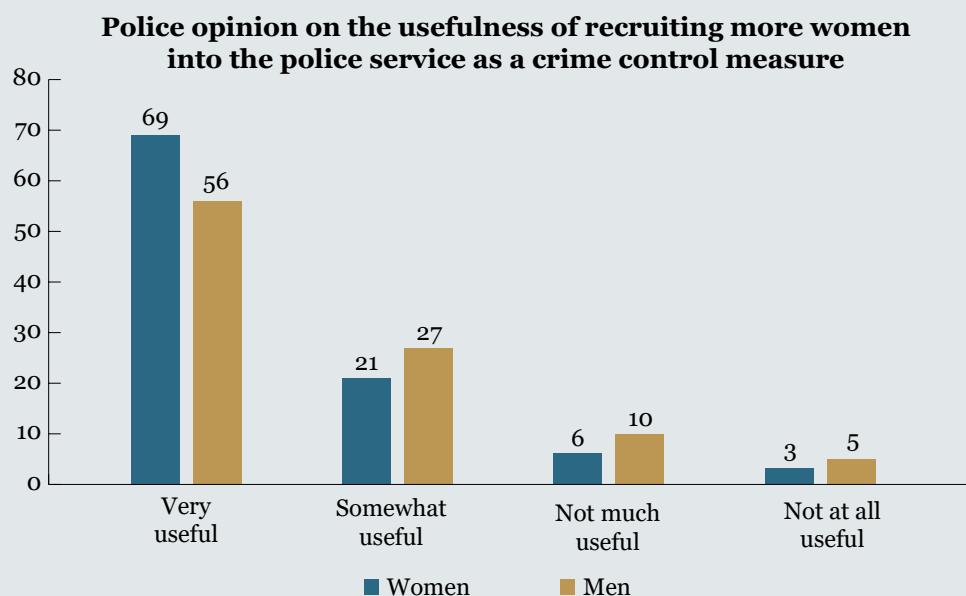
women into the police service. More than eight in every ten respondents (84%) expressed that they either found it “very useful” or “somewhat useful” (**Figure 2.2**). When these responses of the police personnel are further disaggregated by the gender of the respondent, we find that women police personnel (69%) are more likely to believe that it can be a very useful measure, compared to male police personnel (56%). Overall, however, there is significant support for this measure among both male and female respondents (**Figure 2.5**).

To further examine police views on methods to maintain public order, police personnel were asked their opinion on the use of “tough methods to create fear among the public”. The vague undefined term “tough methods” is used, and left to the interpretation of the respondents. More than half (55%) of the personnel believe that it is important for the police to use tough methods to create fear amongst the public, with 20 percent regarding it as “very important” and 35 percent “somewhat important” (**Figure 2.6**). On the other hand, 30 percent believed that there is no need to instil fear and the police should be a friendly force.

Further, upon disaggregating these responses across the ranks of the respondents, it was found that rank does not make much difference in police support for the use of tough methods (**Figure 2.7**). However, those belonging to the upper subordinate ranks were more likely (38%), in comparison to constabulary (25%) and IPS level (29%) ranks, to feel that there is no need to instil any such fear and that police should be a friendly force.

About one fifth of police respondents endorsed the use of “tough” methods to create fear among the public—saying that it was “very important”. This trend in responses is worrying not only because of support for “tough” methods, but even more, because of support for the aim to “create fear” among the public. This reveals that the respondents view the police’s role as one of embedding fear, similar to police justifications for torture. In these responses, the aim to create fear is considered important outside the context of investigation, or having to extract information. It is alarming that police respondents in a democratic polity regard public fear of police - rather than public trust in the police - as efficient and necessary.

Figure 2.5: Women police officers are more likely to believe that recruiting more women in the police can be a very useful measure for reducing crime

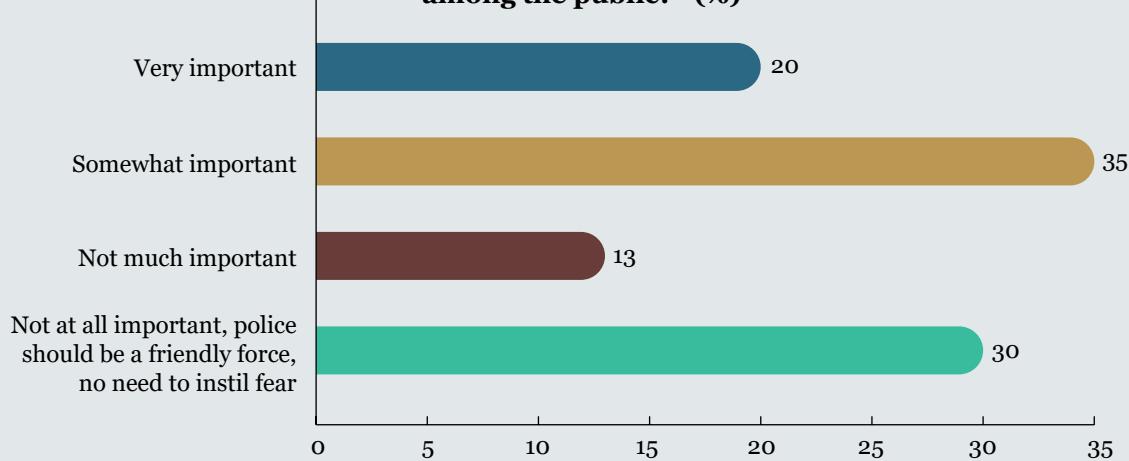


Note: All figures are in percentages. Rest did not respond.

Question asked: How useful is recruiting more women into the police for reducing crime in your area – very useful, somewhat useful, not much useful, or not at all useful?

Figure 2.6: More than half of the police personnel believe that it is important for the police to use tough methods to create fear amongst the public

“How important is it for the police to use tough methods to create fear among the public?” (%)

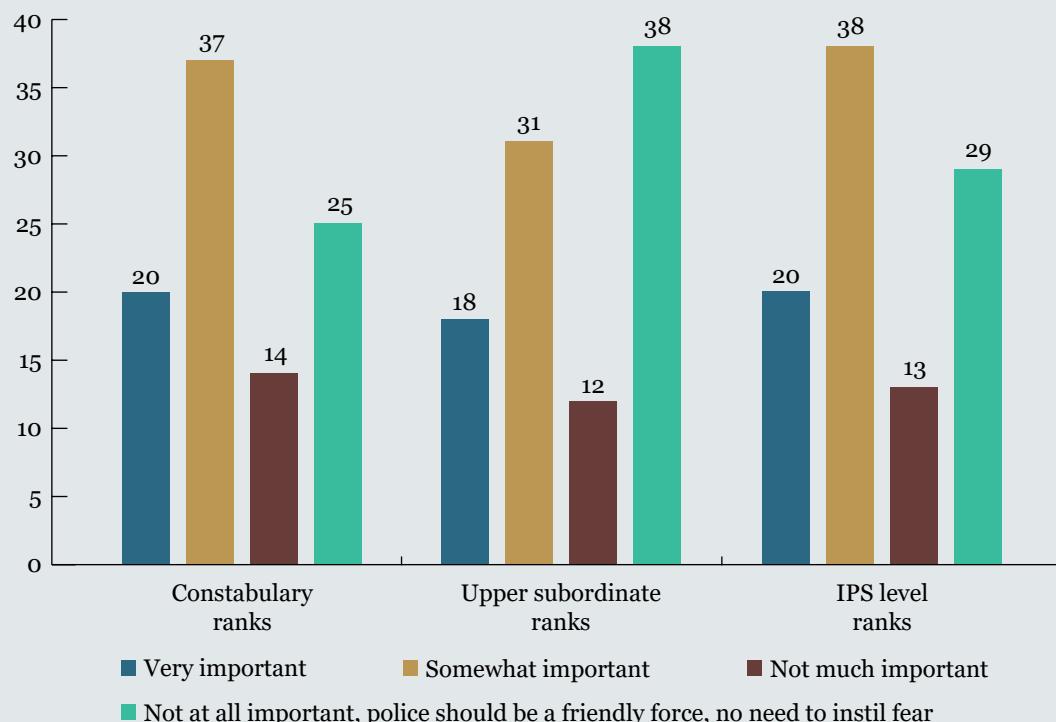


Note: All figures are in percentages. Rest did not respond.

Question asked: In your opinion, how important is it for the police to use tough methods to create fear among the public – very important, somewhat important, not much important, or not at all important?

Figure 2.7: Similar views across ranks on the use of tough methods

“How important is it for the police to use tough methods to create fear among the public?”



Note: All figures are in percentages. Rest did not respond.

Question asked: In your opinion, how important is it for the police to use tough methods to create fear among the public – very important, somewhat important, not much important, or not at all important?

2.4 Police Perceptions Regarding Mob Violence

Mob violence has emerged as a critical law and order issue in India, piercing social cohesion and communal harmony. In recent years, incidents of mob violence have surged across various regions of the country, be it the 2023 ethnic conflicts in Manipur (Al Jazeera, 9th August 2023), or the ever-increasing instances of cow vigilantism and mob lynching targeting members of minority communities, particularly Muslims (Marlow, 2019 and Human Rights Watch, 2019). These incidents not only result in the loss of life and property but have also demonstrated police complicity. In this section, we look at the extent to which the police support and justify mob violence by the public, against different kinds of alleged crimes.

The police personnel were asked their opinions on the justifiability of a mob punishing suspects with violence in different kinds of cases. Almost half of the police respondents believed that mob violence was justified to either “a great extent” or “some extent” in the cases of sexual harassment and assault (49%), child lifting or kidnapping (47%) and petty theft like pick-pocketing or chain-snatching (46%) (**Table 2.6**). Close to two in every five respondents (38%) also believed

that violent punishment by mobs to the suspects of cow slaughter was justified to either “great” or “some” extent. This is similar to the finding from a previous survey of police personnel published in the Status of Policing in India Report 2019 where a similar question was asked about their support for mob violence in cases of cow slaughter—35 percent of police personnel justified such mob violence (15% “to a large extent” and 20% “to some extent”) (SPIR, 2019).

Mob violence involves targeted acts of violence perpetrated by a large group of individuals who perceive that they are administering punishment to a suspected wrongdoer, bypassing the rule of law entirely. It is very alarming that such a significant proportion of police personnel justify mob violence. For law enforcement officers to support open violence which entails suspension of the law itself, as a means of delivering so-called punishment to a person, is an absolute negation of the constitutional oath they swear to uphold. Similar to the support shown by police respondents to impermissible measures towards crime control, this significant support for mob violence signals police propensities towards violence and unbridled power. Incidents of the police not only overlooking such violence, but their active complicity have been reported on multiple occasions.²

Table 2.6: More than a quarter of the police personnel justify mob violence to a “great extent” in cases of sexual harassment and of assault and kidnapping of children

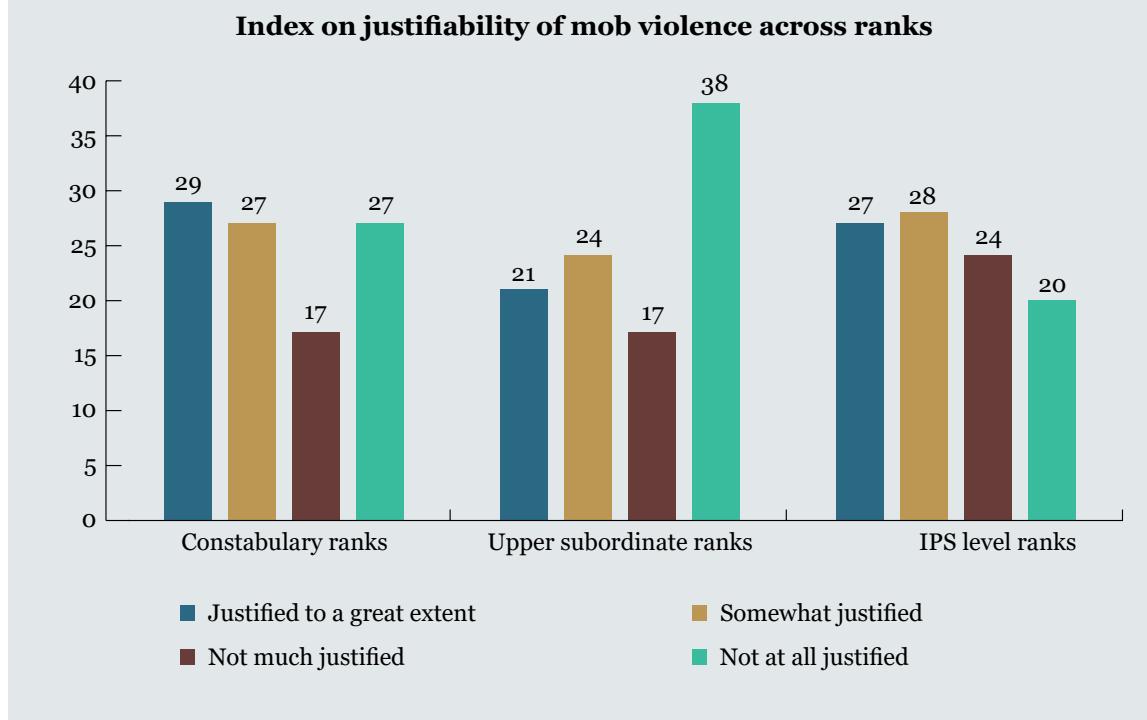
“To what extent is it justified for the mob to punish suspects in the following cases?” (%)				
	To a great extent	To some extent	Not much justified	Not at all justified
When there is a case of sexual harassment and assault	27	22	15	34
In the case of child lifting/kidnapping	25	22	16	36
In cases of petty thefts like pick-pocketing or chain-snatching	16	30	15	38
When there is a case of cow-slaughter	16	22	16	43

Note: All figures are in percentages. Rest did not respond.

Question asked: Sometimes there are instances when mobs punish crime suspects with violence. In your opinion, to what extent is it justified for a mob to punish suspects in the following cases - justified to a great extent, justified to some extent, not much justified, or not at all justified?

² See civil society reports on mob lynching that document police apathy and complicity in cases (Citizens Against Hate, 2018 and Human Rights Watch, 2019).

Figure 2.8: More than a quarter of the police personnel from IPS-level ranks support mob violence to a great degree



Note: All figures are in percentages. Please refer to Appendix 5 to see how this index has been created.

Question asked: Sometimes there are instances when mobs punish crime suspects with violence. In your opinion, to what extent is it justified for a mob to punish suspects in the following cases - justified to a great extent, justified to some extent, not much justified, or not at all justified?

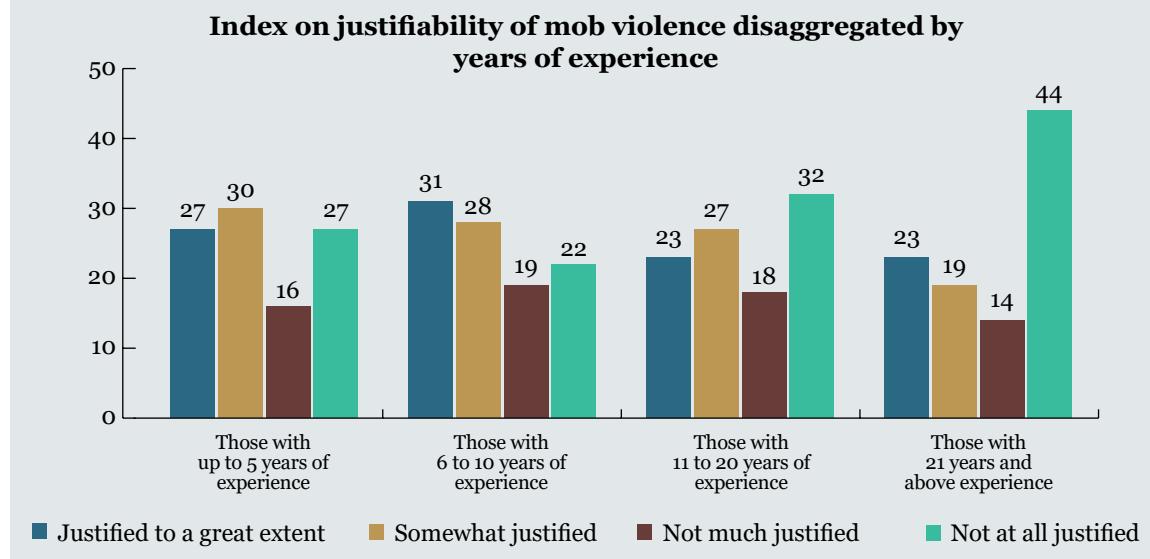
Upon disaggregating the responses by the ranks of the police personnel, it was observed that those at upper subordinate ranks are less likely to justify mob violence, compared to the constabulary rank officials. While more than a quarter (29%) of the constabulary rank respondents “highly” justified the occurrence of mob violence in the four listed kinds of cases, 21 percent of the upper subordinate rank officers justified such violence to a great extent (Figure 2.8). IPS rank officers displayed almost as high support as constabulary rank respondents to mob violence, with 27 percent IPS personnel responding that it is “justified to a great extent”. This stands in contrast to 38 percent of the upper subordinate rank officials stating that such acts are “not at all justified” in comparison to 27 percent of the constabulary rank officials. To note, a definite inference cannot be drawn due to the extremely small representation of respondents from IPS level ranks in comparison to the constabulary ranks. With this caveat, taking into account the exposure to training

and other resources enjoyed by the IPS, as well as the expectations of the IPS as representing police leadership, it is cause for great concern that police leaders are displaying support for mob violence.

Further disaggregating the responses by the respondents’ years in service, it was found that long-serving police personnel are less likely to justify mob violence. While 57 percent of personnel who had up to five years of experience felt that mob violence was either completely or somewhat justified, the figure came down to 42 percent among those who had been in service for more than 20 years (Figure 2.9). While this is still worryingly high support, it is perhaps encouraging that years of service and experience in policing have some effect on reducing the propensity to justify violence and summary punishment.

Looking at the state-wise data on the extent to which police personnel justify mob violence, it emerges that personnel from Gujarat were most

Figure 2.9: More experienced police personnel are less likely to support mob violence



Note: All figures are in percentages. Please refer to Appendix 5 to see how this index has been created.

Question asked: Sometimes there are instances when mobs punish crime suspects with violence. In your opinion, to what extent is it justified for a mob to punish suspects in the following cases - justified to a great extent, justified to some extent, not much justified, or not at all justified?

Table 2.7: Police personnel from Gujarat are most likely to justify mob violence to a great extent, those from Kerala are least likely to do so

States	Index on justifiability of mob violence			
	Justified to a great extent	Somewhat justified	Not much justified	Not at all justified
Gujarat	57	18	11	14
Andhra Pradesh	51	32	11	7
Maharashtra	50	35	8	7
Tamil Nadu	46	32	7	14
Odisha	42	35	12	11
Assam	40	34	2	24
Rajasthan	40	24	11	24
Karnataka	27	39	23	11
Bihar	26	42	21	12
Jharkhand	21	26	24	29
Madhya Pradesh	15	25	20	39
Delhi	10	30	31	30
Uttar Pradesh	4	7	25	64
Punjab	3	19	16	62
West Bengal	2	24	34	40
Nagaland	2	19	31	49
Kerala	0	2	8	91

Note: All figures are in percentages. Please refer to Appendix 5 to see how this index has been created.

Question asked: Sometimes there are instances when mobs punish crime suspects with violence. In your opinion, to what extent is it justified for a mob to punish suspects in the following cases - justified to a great extent, justified to some extent, not much justified, or not at all justified?

Table 2.8: More than half of the police personnel from Gujarat feel that mob violence is completely justified in cases of cow slaughter

States	“To what extent is it justified for the mob to punish suspects when there is a case of cow slaughter?” (%)			
	Justified to a great extent	Somewhat justified	Not much justified	Not at all justified
Gujarat	51	20	9	20
Odisha	32	27	14	25
Rajasthan	31	23	11	34
Maharashtra	29	33	16	15
Tamil Nadu	25	43	13	17
Bihar	19	30	24	22
Assam	18	32	20	29
Andhra Pradesh	17	51	16	15
Karnataka	17	24	25	33
Jharkhand	15	20	18	46
Delhi	10	15	13	62
Madhya Pradesh	7	26	18	49
Uttar Pradesh	2	2	10	83
Nagaland	1	6	16	56
Kerala	0	0	2	91
Punjab	0	4	12	80
West Bengal	0	13	31	52

Note: All figures are in percentages. Rest did not respond.

Question asked: In your opinion, to what extent is it justified for a mob to punish suspects when there is a case of cow-slaughter?

likely to justify mob violence to a great extent, with close to six in every ten respondents (57%) reporting the same (**Table 2.7**). Almost half of the proportion of police respondents in the states of Andhra Pradesh (51%), Maharashtra (50%) and Tamil Nadu (46%) also felt that mob violence was justified to a great extent in the cases of petty theft (like pick-pocketing or chain-snatching), child lifting or kidnapping, cow-slaughter as well as sexual harassment and assault. On the other hand, Kerala (91%), distantly followed by Uttar Pradesh (64%) and Punjab (62%), were the states that reported the lowest support for mob violence in all of the above-mentioned cases.

On delving deeper into this state-wise analysis, Gujarat again featured on the top of the list with about one in every two police personnel (51%) justifying the incidences of mob violence to a “great extent” in cases of cow slaughter (**Table 2.8**). Gujarat was followed by the states of Odisha (32%), Rajasthan (31%) and Maharashtra (29%) in terms of their high support to mobs punishing alleged suspects

in cases of cow slaughter. In contrast, Kerala (91%), Uttar Pradesh (83%) and Punjab (80%) were among the states whose police respondents did not justify the mob violence at all in response to suspicions of cow slaughter. State-wise trends were slightly different in the Status of Policing in India Report 2019, in which police respondents of Madhya Pradesh, followed by Chhattisgarh, Gujarat and Uttar Pradesh believed it “very much” natural for a mob to ‘punish’ in cases of cow slaughter (SPIR, 2019).

Many, not all, states impose either a partial or complete legal prohibition on cow slaughter. A report by Human Rights Watch found that at least 44 people (36 of them Muslims) were killed across 12 states between May 2015 and December 2018 in mob lynchings, perpetrated by so-called cow protection groups openly affiliated with Hindu right-wing organisations, often with police complicity (Human Rights Watch, 2019). Notably, it has been found that states with harsher laws against cow slaughter have had higher incidents of lynching (The

Figure 2.10: Nearly one in five police personnel feel that no action should be taken against perpetrators of mob violence



Note: All figures are in percentages. Rest did not respond.

Question asked: In such a situation, if the suspect gets injured, should any action be taken against the people who beat him or not?

Wire, 2017). Police respondents in Gujarat, Odisha, Rajasthan, and Maharashtra expressed high support for mob punishment for cow slaughter. These are all states with harsh laws in place, and where lynching cases have occurred. The lack of police support for mob violence for cow slaughter from Uttar Pradesh is a sharp turnaround from responses in the 2019 SPIR on the same question, and from a state which has seen several cases of lynching relating to allegations of cow slaughter.

In the follow-up to the question of whether mob violence is justified, police personnel were further asked if any (lawful) action should be taken against the people involved in mob violence in case the alleged suspect gets injured. Three-fourths of the police respondents (74%) responded in affirmative to this question,

while 18 percent felt that no action should be taken against the perpetrators of mob violence (Figure 2.10).

2.5 Police Inclination towards Moral Policing

Moral policing refers to arbitrary monitoring by the police, vigilante groups, or politically motivated non-state actors who position themselves as guardians of a culture, claiming to combat perceived foreign influences that allegedly undermine the traditional values of society (Ahmed & Ahmed, 2022). Moral policing is widespread in contemporary Indian society and is on the rise, posing a significant concern as it undermines individual freedom (Sampath, 2014). It becomes important to study the police's attitude towards public displays of affection and their perceived response to try to gauge if impulses towards moral policing show up in police perceptions. As cited research in other parts of this report demonstrates, one way the police often justify torture is through a moral imperative to 'safeguard' society against perceived criminal elements. It is interesting to explore whether police responses to the softer issue of public displays of affection may reveal a similar moralising impulse or justification for unwarranted, high-handed or excessive police action.

When the police respondents were asked about the kind of action that they would take when they see a couple engaging in public displays of affection, three in every five of them (59%) said

Table 2.9: One in 10 police personnel believes that couples displaying affection in public places should be detained

Action that should be taken by the police in cases of couples displaying affection in public places	(%)
Giving them a verbal warning	59
Shouting at them loudly in public to teach them a lesson	10
Detaining them at the police station for a while to teach them a lesson	10
No action / I will ignore	9
Beating with baton/lathi or slapping them to get them to stop	4
Arresting them	2

Note: All figures are in percentages. Rest either gave other responses or did not respond.

Question asked: If you see a couple kissing or expressing physical affection in public places like parks or in public transport (metro, autos), what kind of action should be taken?

that they will issue a verbal warning to the couple (**Table 2.9**). Additionally, one in every ten also reported that they will either loudly shout at the couple in public or even briefly detain them at the police station to teach them a lesson. On the contrary, one-tenth of the police respondents also said that they would just ignore the couple and would not take any action as such (9%).

The tendencies towards punitive action mirror actual practices. Journalists examining “anti-Romeo” squads in Uttar Pradesh collected data from UP Police that showed that from 2017 (the year the squads were formed) to April 2024, “30,496 people were arrested, 22,559 cases were registered, and 1.26 crore people were issued warnings” (Tewari and Butani, 2024).

It is noteworthy that the respondents who said they were involved in conducting arrests either “often” or “sometimes” were slightly more likely to feel that such couples should be detained at the police station for a while to teach them a lesson - 10 percent and 13 percent respectively - against those who either “rarely” or “never” conducted arrests (6% and 4% respectively) (**Table 2.10**). On the other hand, those who are “rarely” or “never” involved in conducting arrests were much more likely to ignore such incidents and take no action (15% and 22% respectively), compared to those who “often” or “sometimes” conducted arrests (5% and 8%

respectively). This reveals that police personnel with the power to arrest are more inclined to use these powers to detain couples displaying affection publicly. This is a serious finding as there is no lawful justification that allows the police to detain a couple simply showing affection, such as kissing and hugging, in public. It is only nudity or explicit sexual behaviour in public that may warrant some action, depending on the circumstances (Singh, December 2022).

2.6 Police Perceptions of Proclivities towards Criminality across Communities

In acknowledging that the majority of victims of torture come from marginalised communities targeted by the police, as cited throughout this report, this section attempts to gain a fuller empirical understanding of these underlying attitudes, particularly to discern whether preexisting biases or stereotypes are at play in police attitudes. We asked the police personnel to what extent they view people from various religions, castes, economic backgrounds, and occupational profiles as “naturally prone to committing crimes.”

The data indicates mixed patterns in police perceptions of different groups and communities. The largest number of police

Table 2.10: Police personnel who frequently conduct arrests are more likely to feel that persons displaying affection in public should be detained at the police station

Frequency of conducting arrests	"What kind of action should be taken against a couple kissing or expressing physical affection in public spaces?" (%)	
	Detaining them at the police station for a while to teach them a lesson	No action/ I will ignore
Those who often conduct arrests	10	5
Those who sometimes conduct arrests	13	8
Those who rarely conduct arrests	6	15
Those who never conduct arrests	4	22

Note: All figures are in percentages. Rest either gave other responses or did not respond. Figures in the brackets represent the frequency of the arrests conducted by the police personnel as reported by them.

Question asked: If you see a couple kissing or expressing physical affection in public places like parks or in public transport (metro, autos), what kind of action should be taken?

Question asked: How frequently do you conduct arrests - often, sometimes, rarely, or never?

Table 2.11: According to the police, who are more likely to be ‘naturally prone’ to committing crimes?

“To what extent are these people naturally prone to committing crimes?” (%)				
	To a great extent	To some extent	Not much	Not at all
Rich and powerful people	22	35	19	15
Muslims	18	32	22	18
Slum dwellers	14	32	25	19
Migrants	11	28	29	21
Nat /Saperas /banjara (NTs/ DNTs)	9	28	27	22
Sex workers	8	27	30	23
Hijras/transgenders	8	30	32	21
Adivasis	7	27	29	25
Dalits	7	29	30	23
Christians	7	21	31	26
Poor people	6	27	32	25

Note: All figures are in percentages. Rest did not respond.

Question asked: In your opinion, to what extent are these people naturally prone to commit crime – to a great extent, to some extent, not much, or not at all?

personnel say that rich and powerful people are naturally prone to a “great extent” to committing crimes (22%), followed by Muslims (18%). Notably, for many marginalised groups, the proportion of police saying that they are not at all naturally prone to committing crime balances, or even outnumbers, those who think otherwise (**Table 2.11**).

The data on views towards Muslims corresponds with the previous findings of SPIR 2019 in which a similar question was asked, and 50 percent of the police respondents (“very much” and “somewhat” combined) had thought that Muslims are “naturally prone towards committing crimes” (SPIR, 2019).

Significant proportions of police personnel held similar opinions regarding slum dwellers (14% to a great extent and 32% to some extent) and migrants (11% to a great extent and 28% to some extent) being “naturally prone to committing crimes” (**Table 2.11**).

Close to two in every five police personnel believed that sex workers (35% - “great extent” and “some extent” combined) were naturally prone to committing crimes while 38 percent (“great extent” and “some extent” combined) felt the same about hijras/transgenders.

When one looks at the police opinions regarding various caste groups, it is observed that, cumulatively, 37 percent of the police personnel think that those belonging to Nomadic Tribes (NTs) or De-Notified Tribes (DNTs)³ are “naturally prone to committing crimes” (**Table 2.11**). More than a third of the police respondents also held this opinion about people from Dalit and Adivasi communities (36% and 34% respectively). But it should be noted that as in the case of Muslims, negative bias is balanced by views that these groups are not naturally prone to committing crimes. In sum, police views are rather divided.

³ De-notified tribes were, in pre-Independence India, listed as “criminal tribes” and were treated as such. While the Criminal Tribes Act 1924 was repealed by the independent Indian government in 1949, there is continued persecution and harassment of these communities by the police under ‘Habitual Offenders’ regimes across states (Sonavane and Bokil, 2020).

Table 2.12: Hindu police personnel are most likely to believe that Muslims are “naturally inclined towards committing crimes”, Sikh police personnel are least likely to believe so

Religion of respondents	“To what extent are the following naturally prone to commit crime?” (%)			
	Muslims		Christians	
	To a great extent	To some extent	To a great extent	To some extent
Hindu police personnel	19	34	7	23
Muslim police personnel	18	22	9	21
Christian police personnel	10	20	5	15
Sikh police personnel	5	14	1	11
Other police personnel*	25	27	10	14

Note: All figures are in percentages. Rest either reported ‘not much’ or ‘not at all’ or did not respond.

Question asked: In your opinion, to what extent are these people naturally prone to commit crime – to a great extent, to some extent, not much, or not at all?

* Includes: Buddhist/Neo-Buddhist (n=68), Jain (n=15), Parsi (n=5), other religions (n=93), no religion (n=155)

When the responses are disaggregated by the religious background of the respondents, it emerges that Hindu police personnel are only a little more likely to believe that Muslims are naturally prone to committing crimes, with more than half of the Hindu respondents holding this opinion. One in every five (19%) among the Hindu police personnel feel that to a “great extent”, Muslims are naturally prone to commit crimes, while one-thirds (34%) feel the same to “some extent”, while Sikh police officers were least likely to hold this opinion (Table 2.12). Surprisingly, two in every five Muslim police respondents also felt that Muslims are either “greatly” (18%) or “somewhat” (22%) naturally prone to commit crimes.

Out of the surveyed states, more than two-thirds of the police personnel in the states of Rajasthan (70%), Maharashtra (68%), Madhya Pradesh (68%), West Bengal (68%), Gujarat (67%) and Jharkhand (66%) held the opinion that the Muslim community is likely to be naturally inclined to committing crime to either a “great” or “some” extent (Table 2.13). Police personnel from Delhi (39%) were most likely to believe that Muslims are naturally prone to committing crimes “to a great extent”, followed closely by Rajasthan (35%), Maharashtra (34%) and Gujarat (34%).

Police personnel from Gujarat have the highest proportion (68%) of those who believe that Dalits are “naturally prone towards committing crimes” (17% believe so “to a great extent” while 51% believe so “to some extent”) (Table 2.14). More than half of the police personnel from the states of Maharashtra (52%) and Madhya Pradesh (51%) also believe that Dalits are “naturally prone to committing crimes” (“to a great extent” and “to some extent” combined).

Furthermore, police personnel from Gujarat (56%), followed by Odisha (51%) comprised the highest proportion of those who believe that Adivasis have a natural inclination towards committing crimes (“great extent” and “some extent” combined) (Table 2.15). About one in every two police respondents in Madhya Pradesh (48%), Assam (46%) and Rajasthan (46%) also held similar opinions.

As for the attitude of the police towards migrants, two in every five police respondents (39%) believed migrants to be “naturally prone to committing crimes” (“great” or “some” extent combined) (Table 2.11). A state-wise analysis of this attitude reveals that Gujarat and Rajasthan had the highest proportion of police personnel – three in every five (“great extent” and “some extent” combined) – who perceived

Table 2.13: Police personnel from Delhi most likely to believe that Muslims are “naturally prone towards committing crimes” to a great extent, those from Kerala least likely to believe so

States	“Are Muslims naturally prone to commit crimes?” (%)			
	To a great extent	To some extent	Not much	Not at all
Delhi	39	23	18	14
Rajasthan	35	35	14	7
Maharashtra	34	34	21	7
Gujarat	34	33	17	11
Jharkhand	29	37	21	5
Madhya Pradesh	27	41	19	10
Assam	26	28	14	30
Bihar	17	29	30	20
Karnataka	17	44	32	7
Tamil Nadu	14	29	21	25
West Bengal	13	55	14	11
Odisha	12	52	19	18
Uttar Pradesh	8	35	21	7
Nagaland	7	19	26	20
Andhra Pradesh	3	22	36	33
Punjab	2	15	33	46
Kerala	1	6	15	33

Note: All figures are in percentages. Rest did not respond.

Question asked: In your opinion, to what extent are to what extent are Muslims naturally prone to commit crime – to a great extent, to some extent, not much, or not at all?

Table 2.14: More than two out of three police personnel from Gujarat believe that Dalits are “naturally prone to committing crimes”

States	“Are Dalits naturally prone to committing crimes?” (%)			
	To a great extent	To some extent	Not much	Not at all
Gujarat	17	51	19	6
Assam	16	22	28	32
Rajasthan	12	20	29	28
Tamil Nadu	12	32	20	23
Karnataka	10	36	42	11
Delhi	10	33	25	28
Madhya Pradesh	9	42	32	12
Maharashtra	8	44	30	10
Bihar	7	22	40	29
Jharkhand	6	34	40	14
Andhra Pradesh	4	18	30	41
Punjab	3	22	28	43
West Bengal	3	36	17	33
Uttar Pradesh	2	24	33	10
Odisha	1	43	34	19
Nagaland	1	12	37	21
Kerala	0	4	17	36

Note: All figures are in percentages. Rest did not respond.

Question asked: In your opinion, to what extent are Dalits naturally prone to commit crime – to a great extent, to some extent, not much, or not at all?

the migrant population to be naturally inclined to commit crimes (**Table 2.16**).

When the police respondents were further asked if they thought that hijras, transgenders or homosexual people have a bad influence on society and thus the police need to deal with them strictly, close to three in five of them (57% - combining “always” and “sometimes”) responded in the affirmative (**Figure 2.11**). These perceptions align with actual and rampant police violence against transgenders and others of varying sexual and gender orientations (Bhattacharjee, 2022). Conversely, however, more than a third (36%) expressed their belief that hijras, transgenders or homosexual people do not influence society badly. Notably, the responses of male and female police personnel were more or less similar.

Broadly taken together, this section illustrates that police personnel carry ambivalent opinions of marginalised communities, across groups and across states. Even as this question cannot

be the sole indicator of inherent biases amongst the police, overall, the responses suggest some biases against the rich and powerful and Muslims. On the other hand, when it comes to groups such as the poor, Christians, Dalits and Adivasis, the respondents were much more likely to oppose the existence of any ‘inherent criminality’. Across the board, Andhra Pradesh and Punjab have notable proportions of respondents strongly disagreeing with the statements on whether there is an inherent criminality amongst groups including Dalits, Adivasis, Muslims, and migrants.

2.7 Conclusion

Many findings that have emerged in this chapter are indicative of some preexisting stereotypes and support for questionable policing practises, which might open the gateway to the use of illegitimate force by the police. Police perceptions, alone, of the kinds of offences for which they believe they make the highest

Table 2.15: Police personnel from Gujarat, Assam, and Rajasthan most likely to believe that Adivasis are “naturally prone to committing crimes”

States	“Are Adivasis naturally prone to committing crimes?” (%)			
	To a great extent	To some extent	Not much	Not at all
Assam	14	32	23	29
Rajasthan	14	32	27	16
Gujarat	14	42	25	13
Madhya Pradesh	12	36	38	9
Delhi	11	22	34	29
Tamil Nadu	10	33	17	25
Bihar	9	28	32	27
Karnataka	9	32	37	21
Jharkhand	9	27	42	15
Andhra Pradesh	5	16	28	44
Maharashtra	3	25	48	15
West Bengal	3	35	20	30
Uttar Pradesh	2	23	32	10
Odisha	2	49	26	22
Nagaland	1	18	31	21
Kerala	0	3	15	37
Punjab	0	4	23	59

Note: All figures are in percentages. Rest did not respond.

Question asked: In your opinion, to what extent are Adivasis naturally prone to commit a crime – to a great extent, to some extent, not much, or not at all?

Table 2.16: More than one in three police personnel from Rajasthan and Gujarat believe that migrants are “naturally prone to committing crimes” to a great extent

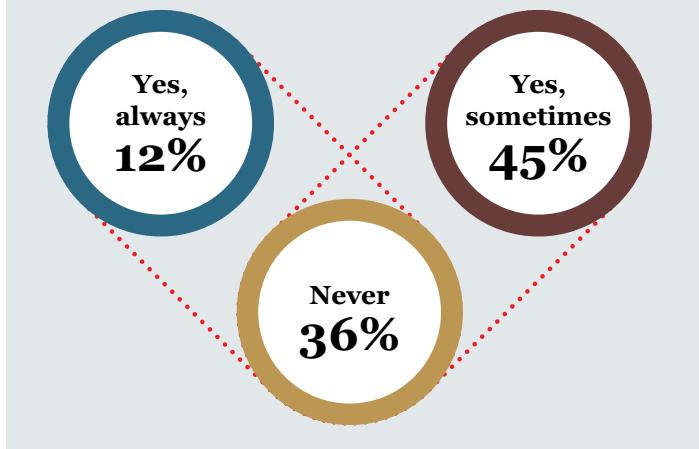
States	“Are Migrants naturally prone to committing crimes?” (%)			
	To a great extent	To some extent	Not much	Not at all
Rajasthan	38	22	12	17
Gujarat	32	29	17	8
Assam	25	28	16	30
Karnataka	20	36	35	9
Tamil Nadu	14	33	22	20
Delhi	10	25	36	24
Jharkhand	10	37	33	15
Maharashtra	8	39	35	11
Bihar	7	23	42	26
Andhra Pradesh	5	26	32	32
Madhya Pradesh	5	35	42	13
Kerala	3	14	18	32
Punjab	3	21	32	40
Uttar Pradesh	2	14	44	9
West Bengal	2	35	16	36
Odisha	2	40	33	23
Nagaland	2	25	31	13

Note: All figures are in percentages. Rest did not respond.

Question asked: In your opinion, to what extent are Migrants naturally prone to commit crime – to a great extent, to some extent, not much, or not at all?

Figure 2.11: More than half of the police personnel believe that hijras/transgenders/homosexual people are a bad influence on society and the police need to deal with them strictly

“Do you think that hijras/transgenders/homosexual people have a bad influence on society and the police need to deal with them strictly?”



Note: All figures are in percentages. Rest did not respond.

Question asked: Do you think that hijras/transgenders/homosexual people have a bad influence on the society and the police needs to deal with them strictly - yes always, yes sometimes or never?

number of arrests, indicate that excessive arrests are probably occurring, for offences which legally do not warrant arrests except with specific reasons. Statistics of recorded arrests mirror this in actual practice. This is the first set of concerns – that the police are not following the law on arrest and are taking people into custody on the basis of unwarranted arrests.

The findings indicate that at least three-fourths of the police personnel believed preventive arrests of “anti-social elements” and the formation of special squads with the powers of indefinite detention, are useful measures of crime control. As said above, these attitudes reflect a punitive utility of detention for these police respondents, particularly the perceived usefulness of the power to detain, without checks and limitations.

The findings also bring forth the police support for mob violence. Almost half of the police personnel contacted justified mob violence in varying degrees. Here again, the propensity towards violence and extreme, unchecked actions, is preferred over lawful actions.

The survey findings further confirm the existence of preexisting biases amongst the police towards particular marginalised groups. The interplay of these biases held by police personnel with justifications for torture, as seen in subsequent chapters, put these communities at the greatest risk of incarceration and harm in custody, as has been documented by various studies. Independent analysis of data reported in the Prison Statistics India reports by the National Crime Records Bureau (NCRB) points to the over-incarceration of Muslims, Adivasis and Dalits (Gurmat, 2022). The National

Campaign Against Torture's Annual Report on Torture in India, 2019 finds that at least 60 percent of custodial death victims belong to poor and marginalised communities.

The findings of this chapter suggest that police are not free of societal biases. Thus, there is an urgent need not only to ensure better training, but also in-job reorientation and increased oversight of police personnel, to ensure that they remain free of biases, while also abiding by legal standards in imparting their duties.

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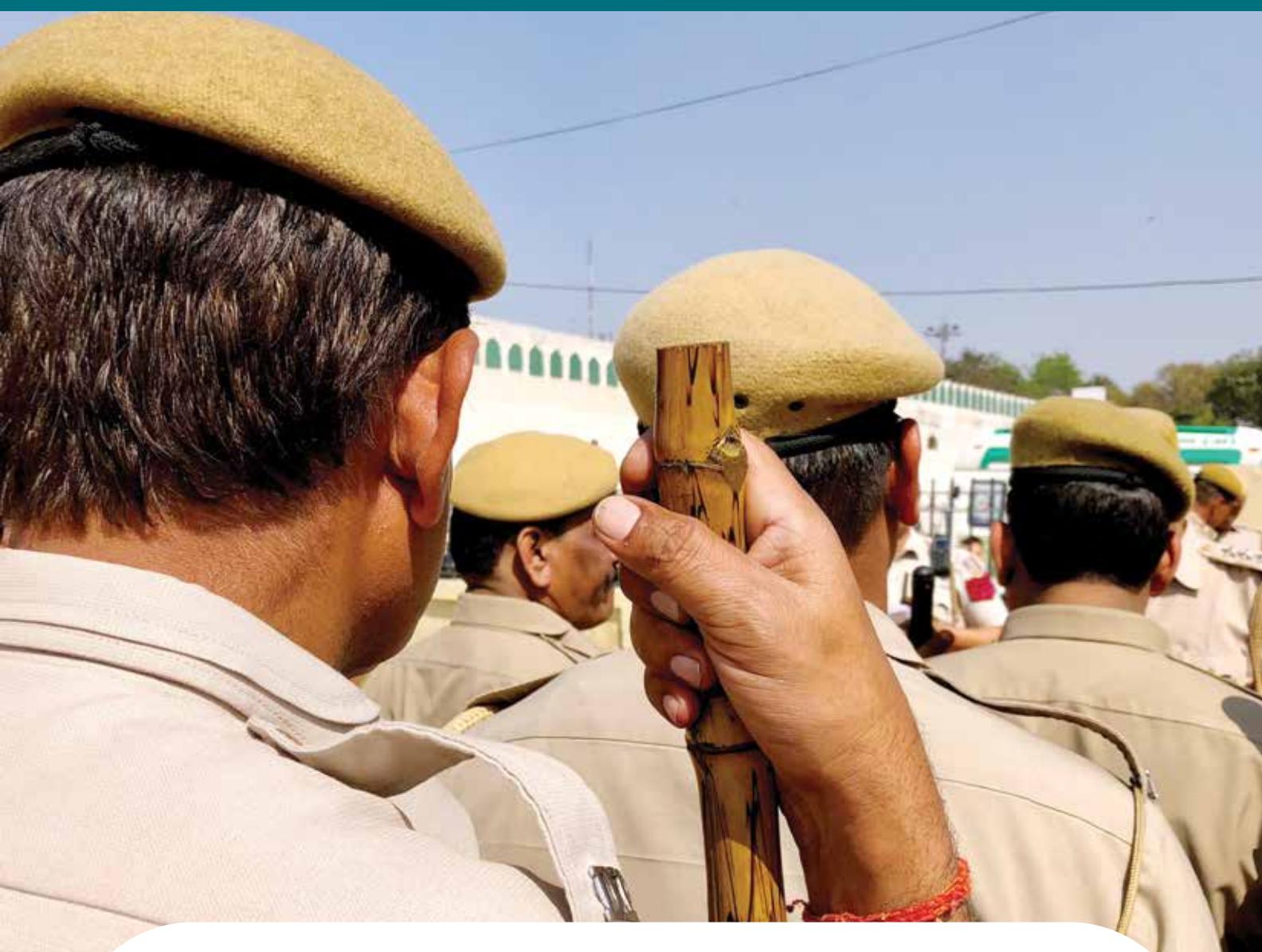
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CHAPTER 03



Police Perceptions of the Criminal Justice System

Key Findings

- More than a quarter of the police personnel (28%) feel that the criminal justice system is too weak and slow to address crimes. On the other hand, 66 percent believe that it has its problems but it still works to address crimes.
- Nearly two out of five police personnel (38%) feel that for minor offences, it is better for the police to give a minor punishment to the criminal, instead of following a legal trial. Constabulary (41%) and the IPS officers (40%) are the most likely to believe so, while upper subordinate officers (35%) are the least likely to agree.
- Twenty-two percent police personnel believe that killing ‘dangerous criminals’ is better than giving them a legal trial. More experienced and upper subordinate officers are relatively less likely to agree with the statement.
- Police personnel overwhelmingly believe that in order to properly fulfil their responsibilities, police should be allowed to use force without any fear of punishment—26 percent strongly agree and 45 percent somewhat agree.

CHAPTER 03

Police Perceptions of the Criminal Justice System

3.1 Introduction

The use of torture and illegal violence has no place in the Indian criminal justice system strictly mandated to function within a constitutional framework. Undoubtedly, the system is plagued by structural deficiencies ranging from procedural delays (Krishnan & Kumar, 2011) to institutional inadequacies (Aithala, Sudheer and Sengupta, 2021), often used to justify torture. Ultimately, at the heart of the continuation of torture is the duality that despite it being deemed illegal and unconstitutional, torture remains “an acceptable operational practice” (Ramakrishnan, 2013).

The literature on the subject suggests that the police’s perceptions of the criminal justice system (particularly the courts) as being weak and ineffectual, in a way justifies the use of torture and illegal violence. It is well-established that the Indian judiciary, burdened by the sheer volume of cases, struggles to dispense timely justice (Krishnan & Kumar, 2011). As a result, many cases languish in the courts for years, if not decades, denying victims and their families timely redressal and closure. Police officers hold a dim view of the courts’ ability to impart ‘justice’ which drives them to go beyond established legal procedures and deliver ‘justice’ and punish the ‘criminals’ (Wahl, 2017). These practices, in turn, can have grave consequences not only for

the basic human and legal rights of the alleged ‘criminals’, but also for the legitimacy and authority of policing (and the larger criminal justice system itself), with illegal methods systematically replacing constitutional legal processes (Khanikar, 2018). Police torture and encounter killings are not just tolerated and overlooked in society, but are actively expected and even celebrated, seen as a form of instant justice in a system that is broken (Surendranath & Vishwanath, 2020). In this context, it becomes important to study the police’s own perceptions of the functioning of the criminal justice system.

Tied to perceptions of the justice system, the continuation and justification of torture by the police is contingent on their perceptions of ‘justice’ and specifically how it applies to certain communities (Khanikar, 2018). How the police interact with vulnerable communities bears on public trust in law enforcement and the broader criminal justice framework.

Against this backdrop, the present chapter delves into how the police perceive the criminal justice system, and particularly their role within its checks and balances. It also builds on the findings of Chapter 2 that the police personnel hold prejudices against certain communities and further examines their perceptions of

how people from different communities and backgrounds interact with the justice system.

3.2 Police Perceptions of the Functioning of the Criminal Justice System

To understand the police perceptions of the overall working of the justice system, the respondents were asked to choose a statement they most agreed with between two contradicting statements—the first, that the criminal justice system is too weak and slow to address crimes, and the second that the system has its problems but it still addresses crimes. The study found that two in every three police personnel (66%) supported the latter statement. However, notably, more than a quarter of the respondents (28%) felt that the system is too weak and slow to address crimes (**Figure 3.1**), indicating their lack of faith in the criminal justice system.

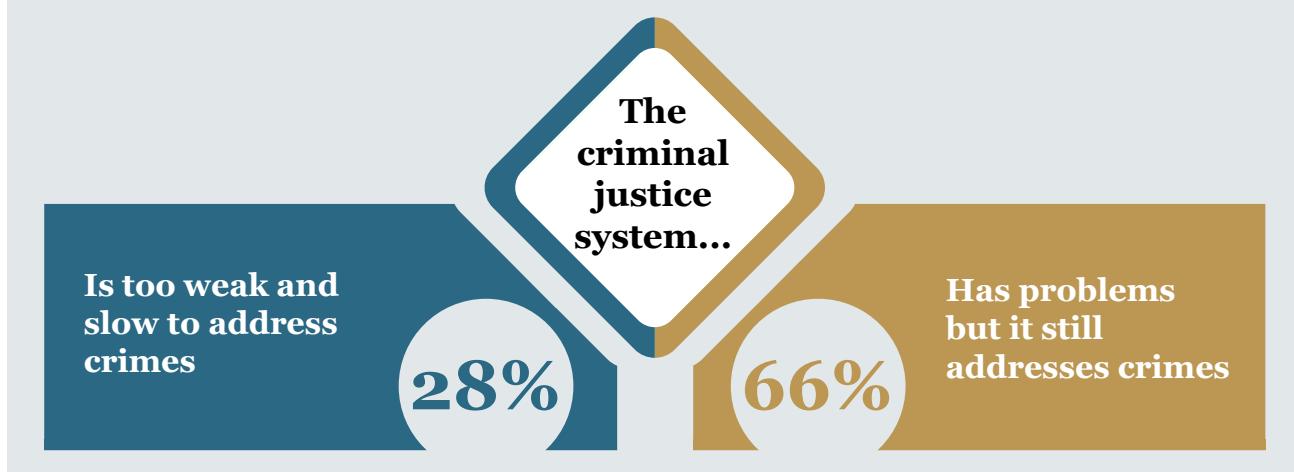
On further dissecting the data by states, some interesting patterns emerged. Police personnel from Bihar (53%), Andhra Pradesh (48%), Karnataka (41%) and Rajasthan (41%) were significantly more likely to feel that the system

is flawed, while contrastingly, an overwhelming majority of the respondents from West Bengal (85%), Uttar Pradesh (83%) and Delhi (79%) exhibited more faith in the criminal justice system (**Table 3.1**).

The survey reveals that police respondents in Uttar Pradesh and West Bengal exhibit the highest levels of optimism regarding the functionality of the criminal justice system. The finding contrasts with the findings of the 2022 India Justice Report which uses official data published by government sources to compare and analyse states' capacity to deliver justice. It indicated that Uttar Pradesh has the lowest score of 3.78 out of 10 in overall rankings, and West Bengal closely followed suit with 3.88 (India Justice Report, 2022). Thus, even though analysis of the official data of these states suggests extremely poor capacity to deliver justice, the survey findings on the other hand point to significantly positive perceptions of the criminal justice system amongst the police personnel of these two states, with more than 80 percent having faith that the criminal justice system has some problems but it still addresses crimes.

Across ranks, upper subordinate rank officials (70%), i.e., personnel from the ranks of Assistant

Figure 3.1: More than a quarter of police personnel believe that the criminal justice system is too weak and slow to address crimes



Note: All figures are in percentages. Rest did not respond.

Question asked: Now I want to know your views on the functioning of the criminal justice system as a whole. I will read out two statements that people often make about their experiences with the criminal justice system. Please tell me which statement you agree with the most.

Statement 1: "The criminal justice system is too weak and slow to address crimes."

Statement 2: "The criminal justice system has problems but it still works to address crimes."

Table 3.1: More than half of the respondents from Bihar feel that the criminal justice system is too weak and slow to address crimes

States	"The criminal justice system..." (%)	
	Is too weak and slow to address crimes	Has problems but it still addresses crimes
Bihar	53	46
Andhra Pradesh	48	50
Karnataka	41	57
Rajasthan	41	58
Jharkhand	33	65
Gujarat	32	63
Madhya Pradesh	31	69
Odisha	29	65
Assam	28	67
Tamil Nadu	28	71
Punjab	22	73
Maharashtra	20	66
Delhi	19	79
Nagaland	18	67
Kerala	9	69
West Bengal	9	85
Uttar Pradesh	4	83

Note: All figures are in percentages. Rest did not respond.

Question asked: Now I want to know your views on the functioning of the criminal justice system as a whole. I will read out two statements that people often make about their experiences with the criminal justice system. Please tell me which statement you agree with the most.

Statement 1: "The criminal justice system is too weak and slow to address crimes."

Statement 2: "The criminal justice system has problems but it still works to address crimes."

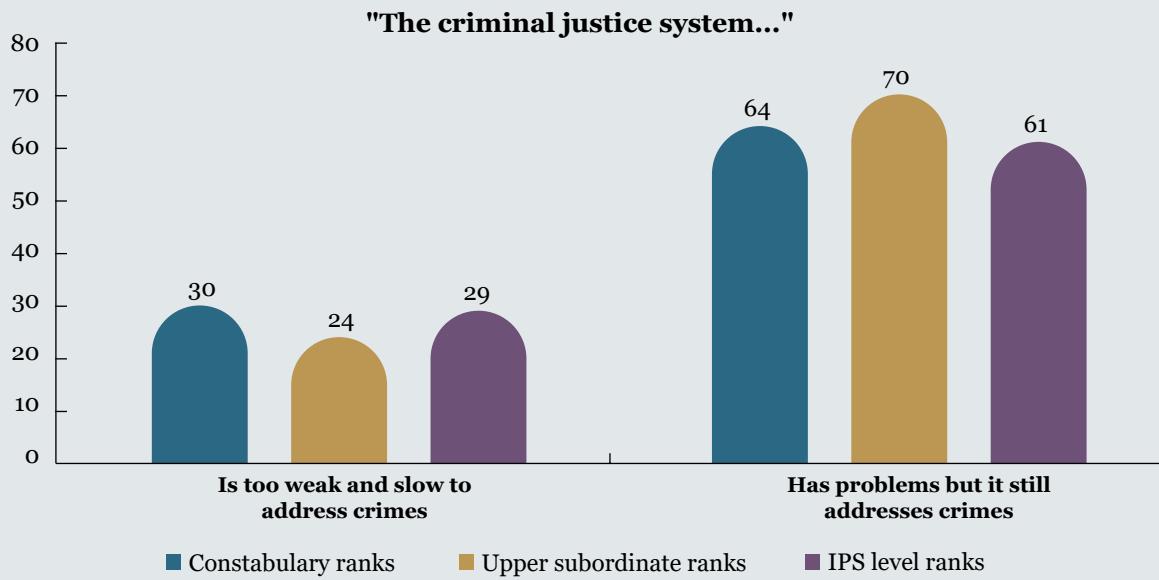
Sub-Inspector (ASI) to Deputy Superintendent of Police (DySP) reported the highest optimism towards the criminal justice system, whereas, the constabulary rank respondents (30%) were the most likely to report that the criminal justice system is too weak to address crimes, followed closely by the IPS (29%) (**Figure 3.2**).

3.3 Police Perceptions: Summary Justice or Legal Trials?

The criminal justice system runs on the basic precept that the police investigate allegations of crime and gather evidence, while the courts determine guilt or innocence through fair trial. These foundational principles, assigning specific roles to justice actors within checks and balances, are the bedrock of criminal justice systems in democracies the world over.

In the context of these checks and balances and to gain an understanding of police attitudes towards their role, police personnel were asked whether they believe in following a complete legal trial or administering minor punishments in dealing with minor offences. The objective is to examine the police's belief in established legal procedure, and also their perception of their role in the criminal justice system. Particularly if they believe their role is limited to investigation and evidence-gathering, or if it extends to imparting 'justice' supplanting the judicial system. The survey revealed that three in every five police personnel (60%) were in favour of legal trials. However, close to two in every five police personnel (38%) expressed the opinion that minor punishment by the police is preferable to legal trials (**Figure 3.3**). It is concerning that a significant proportion of police personnel, 38 percent, report their

Figure 3.2: Three out of ten IPS officers and constabulary police personnel believe that the criminal justice system is too weak and slow to address crimes



Note: All figures are in percentages. Rest did not respond.

Question asked: Now I want to know your views on the functioning of the criminal justice system as a whole. I will read out two statements that people often make about their experiences with the criminal justice system. Please tell me which statement you agree with the most.

Statement 1: "The criminal justice system is too weak and slow to address crimes."

Statement 2: "The criminal justice system has problems but it still works to address crimes."

Figure 3.3: Nearly two out of five police personnel prefer giving a minor punishment instead of a legal trial for minor offences



Note: All figures are in percentages. Rest did not respond.

Question asked: I will read out two statements, please tell me which statement you agree with the most?

Statement 1: "For small/minor offences, police should follow a complete legal trial."

Statement 2: "In case of small/minor crimes, it is better for the police to give minor punishment to the criminal instead of following a legal trial."

preference for extra-judicial resolutions rather than following due process.

Expectedly, the police's opinion on this issue remains largely unchanged over four years. The responses of the current survey are very similar to the responses in a previous survey

of police personnel in SPIR 2019 on a similar question. While in SPIR 2019 (pp. 143-144), 37 percent of police personnel supported the use of punishment by police and 61 percent preferred a legal trial, in the current survey 38 percent are in support of punishment by the police and 60 percent prefer a legal trial.

Table 3.2: More than half the police personnel from Jharkhand, Andhra Pradesh and Karnataka feel that the police giving a minor punishment is better than a legal trial

States	"For minor crimes, police personnel should..." (%)	
	Follow a complete legal trial	Give a minor punishment instead of a legal trial
Jharkhand	44	55
Andhra Pradesh	49	51
Karnataka	48	51
Bihar	50	49
Madhya Pradesh	54	45
Nagaland	54	45
Tamil Nadu	53	44
Uttar Pradesh	53	42
Delhi	57	42
Gujarat	61	38
West Bengal	61	37
Maharashtra	62	32
Punjab	71	29
Kerala	72	26
Assam	70	25
Rajasthan	77	22
Odisha	82	17

Note: All figures are in percentages. Rest did not respond.

Question asked: I will read out two statements, please tell me which statement you agree with the most?

Statement 1: "For small/minor offences, police should follow a complete legal trial."

Statement 2: "In case of small/minor crimes, it is better for the police to give minor punishment to the criminal instead of following a legal trial."

When the police responses were further analysed across the sampled states, it was found that Odisha (82%), Rajasthan (77%) and Kerala (72%) are the top three states where the police personnel reported greater preference for adherence to due process, whereas in Jharkhand (55%), Andhra Pradesh (51%) and Karnataka (51%), they are more likely to support the route of giving minor punishment to 'criminals' in small/minor offences rather than following a legal trial (**Table 3.2**).

Moreover, police personnel posted in urban areas (40%) are more likely to prefer giving a minor punishment rather than a legal trial in cases of minor offences, compared to 32 percent of the police personnel in the rural areas who agreed with this statement (**Figure 3.4**).

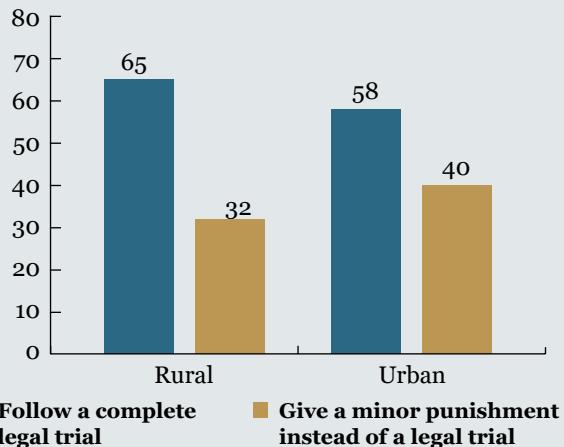
In terms of levels of education, slight deviations were observed. By and large, police personnel

with higher education levels are more likely to support legal trial over resolution through extrajudicial punishment. Those with matriculation are more likely to support minor punishment (46%) whereas the most educated (graduate and above) are least likely to support it (36%). However, more than one-third of those with graduate degrees (36%) were also in favour of giving minor punishment to the criminals of small/minor offences rather than following a legal trial (**Figure 3.5**).

Moreover, in terms of rank, upper subordinate rank officials (64%) were most likely to support legal trial, whereas, constabulary ranks (41%) were relatively in favour of minor punishment (**Table 3.3**). But perhaps more disconcertingly, two in five IPS level officers (40%) also subscribed to the idea of police giving minor punishment.

Figure 3.4: Police personnel in rural areas are more likely to prefer a complete legal trial over a minor punishment given by the police in cases of minor offences

"For minor crimes, police personnel should..."



Note: All figures are in percentages. Rest did not respond.

Question asked: I will read out two statements, please tell me which statement you agree with the most?

Statement 1: "For small/minor offences, police should follow a complete legal trial."

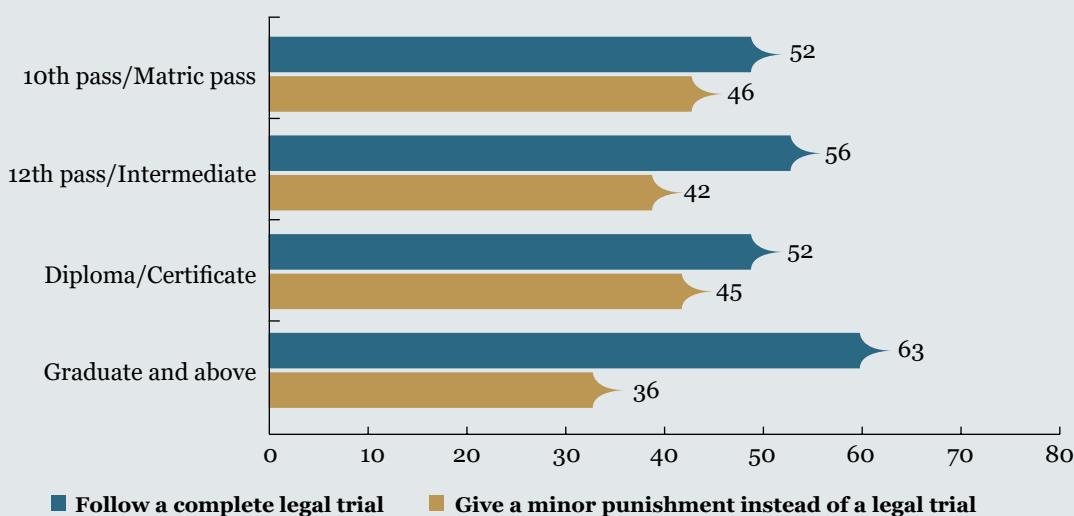
Statement 2: "In case of small/minor crimes, it is better for the police to give minor punishment to the criminal instead of following a legal trial."

Police approval of minor punishments handed out by the police in minor offences point to the respondents' preference towards extrajudicial actions that supplant the justice system. Another related and significant issue in this regard is that of police "encounter" killings. Police "encounters", as they are called in police and popular discourse, are described as the police "use of deadly force", which are "portrayed as spontaneous shootouts between the police and 'hardened' criminals" (Belur, 2013). Almost always the "criminals" are killed with the police surviving with minimal injuries. The police and the political executive often justify these killings as a form of 'justice' necessary in the face of an ineffective criminal justice system (Belur, 2010). Independent accounts often find killings in "encounters" to be extrajudicial killings (Youth for Human Rights Documentation and others, 2021). In examining police views of the criminal justice system, it is vital to gather police's responses to killing in "encounters" set against going through the justice system.

This survey sought responses on killing 'dangerous criminals' for the "greater good

Figure 3.5: Police personnel with higher levels of education are more likely to prefer legal procedures for dealing with minor offences

"For minor crimes, police personnel should..."



Note: All figures are in percentages. Rest did not respond.

Question asked: I will read out two statements, please tell me which statement you agree with the most?

Statement 1: "For small/minor offences, police should follow a complete legal trial."

Statement 2: "In case of small/minor crimes, it is better for the police to give minor punishment to the criminal instead of following a legal trial."

Table 3.3: Across ranks, IPS officers least likely to be in support of following a complete legal trial in minor offences

Rank	"For minor crimes, police personnel should..." (%)	
	Follow a complete legal trial	Give a minor punishment instead of a legal trial
Constabulary ranks	57	41
Upper subordinate ranks	64	35
IPS level ranks	55	40

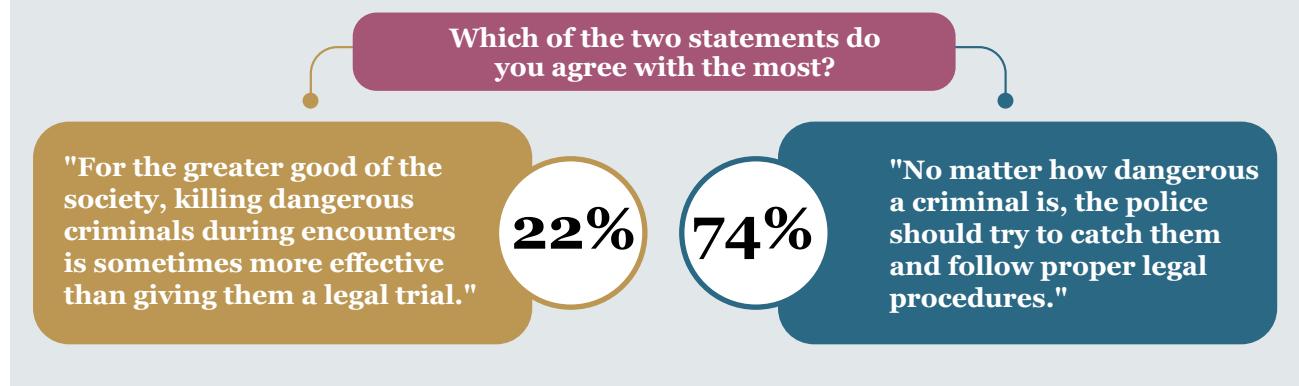
Note: All figures are in percentages. Rest did not respond.

Question asked: I will read out two statements, please tell me which statement you agree with the most?

Statement 1: "For small/minor offences, police should follow a complete legal trial."

Statement 2: "In case of small/minor crimes, it is better for the police to give minor punishment to the criminal instead of following a legal trial."

Figure 3.6: Twenty-two percent police personnel feel that killing 'dangerous criminals' is better than following proper legal procedures



Note: All figures are in percentages. Rest did not respond.

Question asked: I will read out two statements, please tell me which statement you agree with the most?

Statement 1: "For the greater good of the society, killing dangerous criminals during encounters is sometimes more effective than giving them a legal trial."

Statement 2: "No matter how dangerous a criminal is, the police should try to catch them and follow proper legal procedures."

of society" vis-à-vis adherence to established legal procedures. The data revealed that three-quarters of the police respondents (74%) concurred that following a legal trial is imperative, regardless of how precarious a situation is. Contrastingly, 22 percent of the police personnel were in favour of killing 'dangerous criminals' (Figure 3.6).

Since 2019, police's level of support for encounter killings over following legal procedures in cases of 'dangerous criminals' has slightly increased. While in SPIR 2019, 19 percent of police personnel agreed that for the greater good of society, killing dangerous criminals during encounters is better than a legal trial, this proportion has gone up to 22

percent in the current survey. In contrast, while 78 percent of police personnel supported following legal procedures even in cases of dangerous criminals in 2019, the corresponding figure in the current survey is 74 percent.

The data from the current survey was further analysed state-wise, and it was revealed that police personnel in Bihar (41%), Rajasthan (35%) and Andhra Pradesh (34%) are more supportive of encounter killings; whereas personnel from Kerala (94%), Uttar Pradesh (90%) and Nagaland (86%) are more likely to support following legal procedures (Table 3.4). Data from Uttar Pradesh stands out in particular, with six percent of police personnel showing a preference for encounter killings,

Table 3.4: Police personnel from Bihar are most likely to support encounter killings, while those from Kerala least likely to support them

States	"Dangerous criminals should be..." (%)	
	Killed during encounters	Caught while following all legal procedures
Bihar	41	57
Rajasthan	35	64
Andhra Pradesh	34	62
Jharkhand	31	64
Punjab	30	67
Assam	27	65
Karnataka	27	69
Odisha	27	71
Maharashtra	21	71
Madhya Pradesh	16	83
Tamil Nadu	16	82
Gujarat	16	79
Nagaland	14	86
Delhi	13	85
West Bengal	12	66
Uttar Pradesh	6	90
Kerala	5	94

Note: All figures are in percentages. Rest did not respond.

Question asked: I will read out two statements, please tell me which statement you agree with the most?

Statement 1: "For the greater good of the society, killing dangerous criminals during encounters is sometimes more effective than giving them a legal trial."

Statement 2: "No matter how dangerous a criminal is, the police should try to catch them and follow proper legal procedures."

Table 3.5: More educated police personnel less likely to support encounter killings

Level of Education	"Dangerous criminals should be..." (%)	
	Killed during encounters	Caught while following all legal procedures
10th pass/Matric pass	29	69
12th pass/Intermediate	23	72
Diploma/Certificate	26	70
Graduate and above	21	75

Note: All figures are in percentages. Rest did not respond.

Question asked: I will read out two statements, please tell me which statement you agree with the most?

Statement 1: "For the greater good of the society, killing dangerous criminals during encounters is sometimes more effective than giving them a legal trial."

Statement 2: "No matter how dangerous a criminal is, the police should try to catch them and follow proper legal procedures."

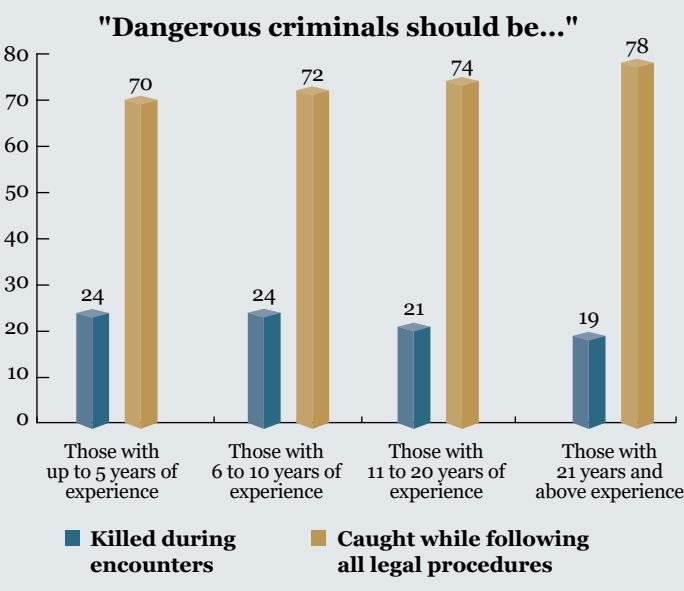
despite the fact that encounter killings in the state have been on the rise, going up by four times under the current state government since 2017, compared to the previous government (Rashid, 2023).

Across educational levels, respondents with the least formal education (29%) were relatively

more likely to support encounter killings of 'dangerous criminals' than the most educated (21%) (**Table 3.5**).

When the responses of police personnel were analysed across the number of years in service, it was revealed that police personnel who have been in service longer displayed more support

Figure 3.7: More experienced police personnel are least likely to support encounter killings



Note: All figures are in percentages. Rest did not respond.

Question asked: I will read out two statements, please tell me which statement you agree with the most?

Statement 1: "For the greater good of the society, killing dangerous criminals during encounters is sometimes more effective than giving them a legal trial."

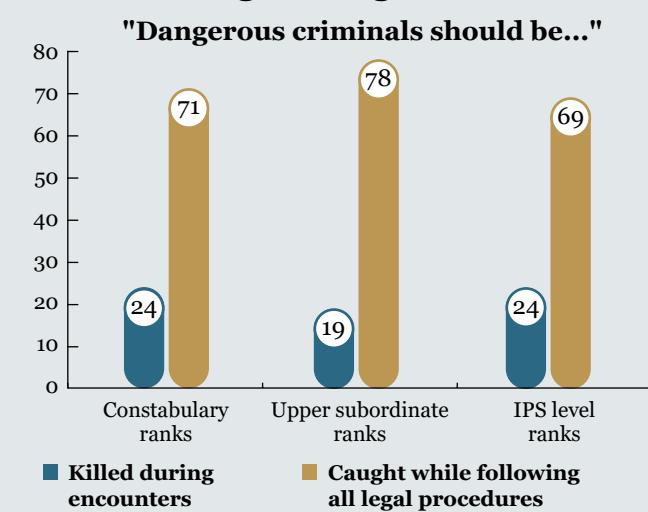
Statement 2: "No matter how dangerous a criminal is, the police should try to catch them and follow proper legal procedures."

for following legal procedures over extrajudicial killings. Notably, more experienced police personnel responded with the highest levels of support for legal procedures. The findings indicate that while 70 percent of those who have been in service for up to five years support following legal procedures, the proportion rises to 78 percent when it comes to police personnel who have served for 21 years or above (Figure 3.7). Conversely, police respondents with less than five years of experience (24%) were more in favour of killing 'dangerous criminals' during encounters than giving them a legal trial, in comparison to the most experienced respondents (19%). However, it must also be noted that despite the variation, a significant proportion of all respondents, regardless of the number of years in service, reported being in favour of encounter killings. This reveals a shared acceptance of extrajudicial violence seen as useful among all police officers.

Across ranks, upper subordinate rank officials (78%), are most likely to support following legal procedures over encounter killings, while the IPS officers as well as constabulary (24% each) are more likely to support encounter killings (Figure 3.8). It is important to note that the upper subordinate rank officers are the most likely to be directly dealing with crime and investigation of cases, including identifying and apprehending suspects. They are the police personnel who can be held directly responsible for allegations of procedural violations or custodial violence. Constabulary-level police personnel will play supporting or assisting roles, while IPS officers will have overall supervision and decision-making. These different levels of engagement may be a factor in the variations between the middle ranks while the most junior – constabulary-level police personnel, and the most senior – IPS officers, exhibit a higher level of support for encounter killings.

The police are further inclined to support the continued use of violent methods without any repercussions or accountability. On being asked whether the police should be allowed to use force without any fear of punishment, a significant majority, 71 percent, stated that to properly fulfil their responsibilities, the

Figure 3.8: Nearly one out of four constabulary-level and IPS-level police officers support encounter killings of 'dangerous criminals'



Note: All figures are in percentages. Rest did not respond.

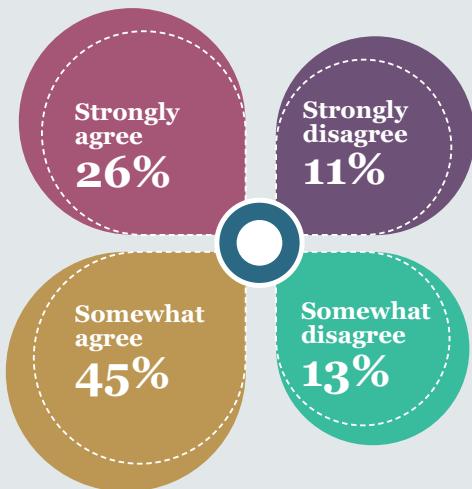
Question asked: I will read out two statements, please tell me which statement you agree with the most?

Statement 1: "For the greater good of the society, killing dangerous criminals during encounters is sometimes more effective than giving them a legal trial."

Statement 2: "No matter how dangerous a criminal is, the police should try to catch them and follow proper legal procedures."

Figure 3.9: More than 70 percent of the police personnel believe that police should be allowed to use force without any fear of punishment

“To properly fulfil their responsibilities, police should be allowed to use force without any fear of punishment.”



Note: All figures are in percentages. Rest did not respond.

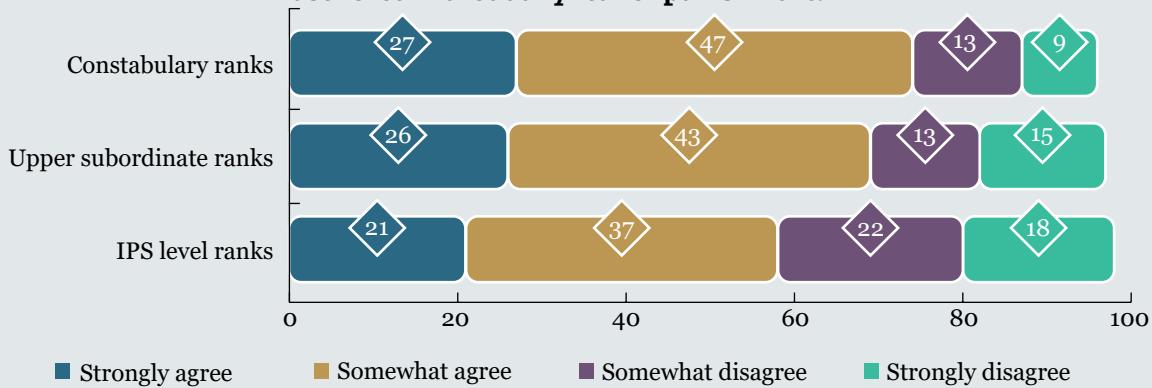
Question asked: “To properly fulfil their responsibilities, police should be allowed to use force without any fear of punishment.” Do you agree or disagree?

police should be allowed to use force without any fear of punishment, with 26 percent strongly agreeing with the statement and 45 percent agreeing moderately (Figure 3.9). The high number of responses for the use of force “without fear of punishment” is a strong indicator of a lesser regard for accountability. These responses suggest that there is little belief among the respondents that the police should be answerable for their use of force if they overwhelmingly endorse that police should be allowed to use force with no modicum of accountability. While Police Manuals and regulations make answerability clear when force – particularly firearms – is used in public order situations¹; the legal gaps and ambiguities when it comes to custodial violence and torture may be reinforcing a sense of impunity in police personnel.

Across ranks, the constabulary and upper subordinate ranks were the most likely to support the use of force by the police without fear of punishment (27% and 26% strongly agreed with the statement respectively) while

Figure 3.10: More than one out of four constabulary and upper subordinate officers strongly feel that the police should be allowed to use force without any fear of punishment

“To properly fulfil their responsibilities, police should be allowed to use force without any fear of punishment.”



Note: All figures are in percentages. Rest did not respond.

Question asked: “To properly fulfil their responsibilities, police should be allowed to use force without any fear of punishment.” Do you agree or disagree?

¹ For examples, see Chapter II, Section IV titled “Dispersal of Mobs and Mob-firing” of the Kerala Police Manual. Manual provisions 243(1) and (3) state that “It is most important that an accurate diary of all reports, incidents, orders and action with the times at which those occurred, should be maintained” and that it is “the duty of every person who resorted to firing to give a report showing the number of rounds fired and the details regarding the firing. The names and address of the dead and wounded should be given as far as possible. The total number of rounds issued to each, the balance of rounds and the number of fired cases should also be shown in the reports”. Similarly, the Uttar Pradesh Police Regulations, in Regulation 70 Part D, state “whenever there is use of firearms the senior most police officer, unless the responsibility for the same is taken by the magistrate, must write a report detailing the incident and reasons that necessitated the use of firearms, the outcome of the firing incident, the description of those dead or hurt and any other details as may be necessary”.

21 percent amongst IPS level ranks strongly agreed with the statement (**Figure 3.10**). Almost paradoxically, while IPS officers are more likely to support killing ‘dangerous criminals’ during encounters rather than a legal trial (**Figure 3.8**) and the police handing out minor punishments instead of a legal trial for small and minor crimes (**Table 3.3**), yet they are least likely to agree that the police should be allowed to use force without any fear of punishment.

3.4 Communities Seeking Justice: Police Perceptions

Chapter 2 recorded findings of preexisting biases in police attitudes towards certain communities, and also reinforced that people from marginalised communities are the most likely to be arrested by the police and incarcerated. This section takes this slightly further in the context of the views of the police personnel on the criminal justice system to understand their perceptions of whether people from vulnerable communities are able to receive justice.

Police personnel were asked to what extent women, Adivasis, Muslims, Christians, Dalits,

transgenders, migrants, poor people, slum dwellers, sex workers, nat/saperas and other NTs/DNTs, receive justice. The understanding of what it means to “receive justice” was entirely left to the subjective interpretation of the survey respondents, with no external prompting or framing. Police personnel believe that women, Muslims, and Christians are the most likely to get justice. Conversely, slum dwellers, sex workers, and poor people emerged as the bottom three categories that are perceived as the least likely to get justice, with about one in every four police personnel saying justice received by them is ‘not much’ or ‘not at all’. Additionally, police perceptions affirmed a view that rich and powerful people are advantaged. The study found that 84 percent of police personnel think that the rich and powerful are likely to receive justice (**Table 3.6**). Notably, across the board, the police responded largely in favour of communities getting justice, with the responses of “to a great extent” higher than 40 percent for all the communities listed.

One significant finding is that while close to one-fifth (18%) of the respondents think Muslims are predisposed to crime to a “great extent” (**Table 2.11, Chapter 2**), they are also among

Table 3.6: More than one out of two police personnel believe that the rich and powerful, women and Muslims are likely to get justice to a great extent

"To what extent do people from these communities get justice?" (%)				
	To a great extent	To some extent	Not much	Not at all
Rich and powerful people	66	18	7	4
Women	54	26	12	4
Muslims	50	30	11	4
Christians	49	25	13	5
Dalits	47	27	15	6
Adivasis	46	26	16	6
Hijras/transgenders	45	28	17	5
Migrants	45	27	17	5
Poor people	44	27	19	6
Slum dwellers	43	29	17	6
Sex workers	44	25	18	6
Nat / saperas / banjara /other NTs/ DNTs	41	27	17	5

Note: All figures are in percentages. Rest did not respond.

Question asked: In your opinion, to what extent do people from these communities get justice – great extent, some extent, not much, or not at all?

the top three communities seen as receiving justice to a “great extent” (50%) (**Table 3.6**). It is important to note here that these are the police’s perceptions of the respective communities’ likelihood of getting justice, while their lived realities of actually getting justice may be very different from the perceptions of the police. As seen in previous reports of the SPIR series, police biases against marginalised communities are embedded. In such a context, the police’s perception of certain communities’ likelihood of getting justice may also be marred by preexisting biases and could be completely contrary to reality. For instance, the literature on torture in India provided in Chapter 1 of this report indicates that the marginalised communities, which the police see as likely to receive justice, are common targets and victims of police torture.

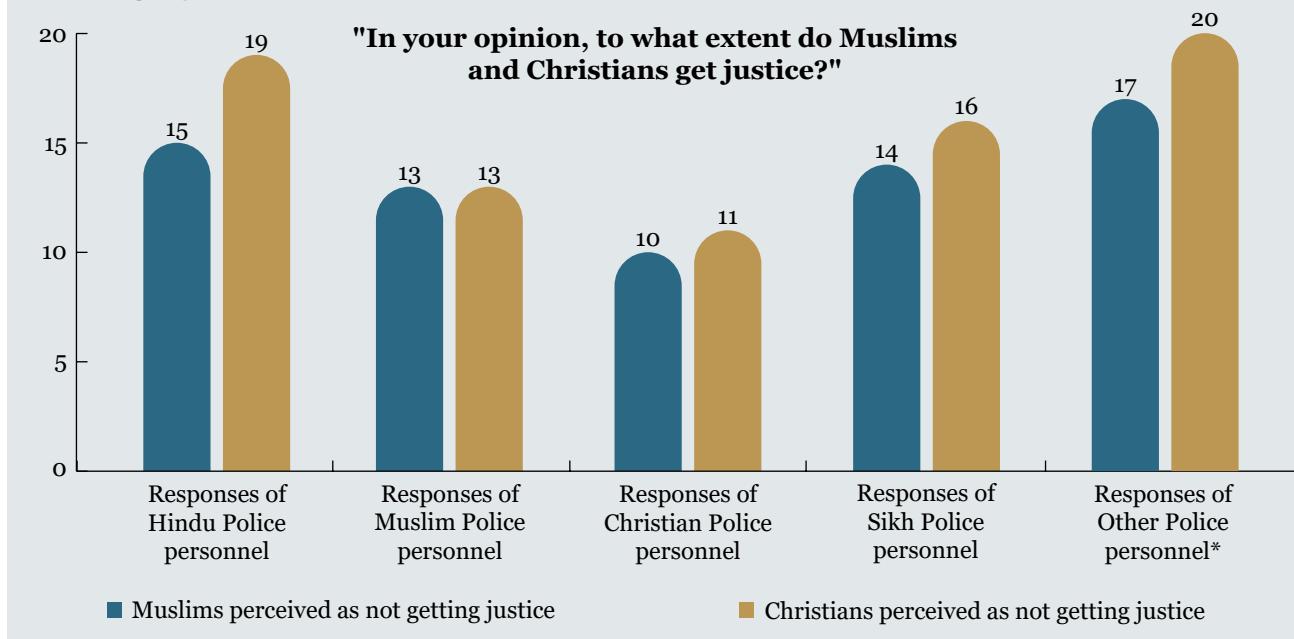
The responses of female police officers are not very different from the male police officers on the question of whether women get justice. While more than half of female police personnel (55%) felt that women get justice to a “great

extent”, an almost similar proportion of male police personnel (54%) also thought the same. However, across caste groups, while one in every four Scheduled Caste (SC) police personnel think that Dalits do not get justice, this figure goes down to 17 percent among the general castes. Similarly, while 18 percent of the general category police personnel believe that Adivasis do not get justice, among Scheduled Tribe (ST) police personnel, 24 percent and amongst the SC police personnel 27 percent also hold this opinion (**Table 3.7**).

Across religious categories, however, a similar trend was not seen. The Hindu respondents were the most likely to believe that Muslims (15%) and Christians (19%) do not get justice (combining ‘not much’ and ‘not at all’ categories), barring those belonging to ‘other’ religions (**Figure 3.11**).

As referenced above, public sentiment and media portrayal significantly impact how justice is administered by the police. For instance, police officers justify their use of torture through their belief that the public regards

Figure 3.11: Hindu police personnel most likely to believe that Muslims and Christians do not get justice



Note: All figures are in percentages. Rest did not respond. The category of “perceived as not getting justice” is created by combining ‘not much’ and ‘not at all’ responses.

Question asked: In your opinion, to what extent do people from these communities get justice – great extent, some extent, not much, or not at all?

* Includes: Buddhist/Neo-Buddhist (n=68), Jain (n=15), Parsi (n=5), other religions (n=93), no religion (n=155)

Table 3.7: SC and ST police personnel are more likely to believe that Dalits and Adivasis do not get justice

Caste group of respondents	Adivasis perceived as not getting justice (%)	Dalits perceived as not getting justice (%)
Responses of Scheduled Caste (SC) Police personnel	27	25
Responses of Scheduled Tribe (ST) Police personnel	24	23
Responses of Other Backward Caste (OBC) Police personnel	20	19
Responses of General/other Police personnel	18	17

Note: All figures are in percentages. Rest did not respond. The category of "perceived as not getting justice" is created by combining 'not much' and 'not at all' responses.

Question asked: In your opinion, to what extent do people from these communities get justice – great extent, some extent, not much, or not at all?

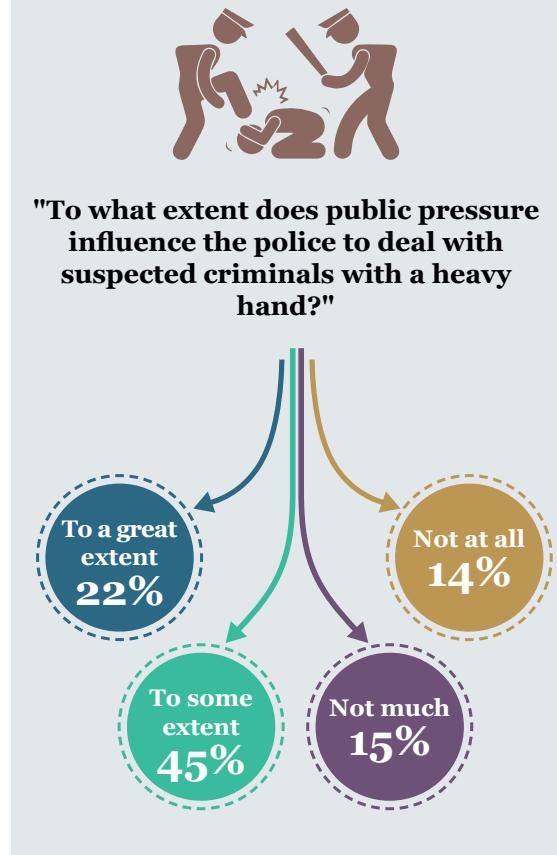
torture as part of policing and expects police to use it (Wahl, 2017). Media sensationalism further exacerbates these sentiments, fuelling public fear and reinforcing the perception of a need for aggressive law enforcement measures (Reiner, 2007).

In response to these perceived societal pressures and public expectations, police leaders may justify illegal and violent tactics, such as extrajudicial killings (Deccan Herald, 2018). Perceptions of public expectations of violence are featured in police attitudes. The survey of the public in SPIR 2018 recorded findings that the public expects the police to be violent (pages 99-100, SPIR 2018). Research has also found that the police hold the view that the public expects them to be violent (Wahl, 2017) which corroborates, to some extent, this perception amongst the police personnel, though the degree to which this expectation influences actual police behaviour has not been measured.

The police persons were asked for their perception on the extent to which public pressure to deal with suspected criminals with a 'heavy hand' influences the functioning of the police. The findings indicate that two in every three police personnel (67%) agreed that public pressure influenced their functioning, with 22 percent strongly agreeing with the statement. Conversely, a little more than one-fourth (29%) disagreed (**Figure 3.12**).

Across states, the study found that Rajasthan (46%), Tamil Nadu (37%) and Karnataka (36%) are the top three states that are most likely to be

Figure 3.12: More than one out of five police personnel feel that public pressure to deal with suspected criminals with a 'heavy hand' influences police functioning to a great extent



Note: All figures are in percentages. Rest did not respond.

Question asked: Often there is pressure from the public that police deal with suspected criminals with a heavy hand without following procedure. To what extent does such public pressure influence the functioning of the police – great extent, some extent, not much, or not at all?

Table 3.8: Police personnel from Rajasthan are most likely to feel public pressure to deal with suspected criminals with a 'heavy hand', those from Kerala least likely to

States	Public influence on the heavy hand of policing (%)			
	Great extent	Some extent	Not much	Not at all
Rajasthan	46	38	6	7
Tamil Nadu	37	34	16	13
Karnataka	36	56	7	0
Punjab	36	41	13	8
Bihar	31	50	17	2
Assam	29	51	8	10
Madhya Pradesh	26	56	15	2
Maharashtra	21	59	9	3
Andhra Pradesh	20	65	10	3
Delhi	19	42	23	13
Gujarat	18	53	13	8
Odisha	15	43	13	25
Jharkhand	14	47	29	7
West Bengal	7	35	15	27
Uttar Pradesh	6	39	16	36
Kerala	5	11	21	61
Nagaland	2	39	33	20

Note: All figures are in percentages. Rest did not respond.

Question asked: Often there is pressure from the public that police deal with suspected criminals with a heavy hand without following procedure. To what extent does such public pressure influence the functioning of the police – great extent, some extent, not much, or not at all?

influenced by public sentiment, as reported by the police personnel. Conversely, Kerala (61%), Uttar Pradesh (36%) and West Bengal (27%) had the highest proportion reporting that there was no influence of public pressure on police functioning (**Table 3.8**).

3.5 Conclusion

The study indicates that even though the police largely believe in the effectiveness of the criminal justice system, a significant proportion, 28 percent, dismissed the system as too weak and slow to address crimes. Those with higher levels of formal education and residing in metropolitan cities are relatively more likely to be optimistic about the criminal justice system.

Yet, there is a tendency amongst the police to resort to extra-judicial ways of dealing with crimes and suspected criminals. Thirty-eight percent of respondents agree it is better to give minor punishment to 'criminals' in minor crime

cases. Personnel of the constabulary ranks and those with less formal education are more likely to support this statement. Contrastingly, those who have served longer in police departments, and have higher education levels, are more likely to support legal procedures. Further, a large majority of officers reveal that public sentiments influence their law enforcement methods, particularly veering towards heavy-handed tactics while dealing with suspected criminals. Police personnel from Rajasthan, Tamil Nadu and Karnataka, the study indicates, are reportedly the most influenced.

Another worrying finding that emerges is the notable proportion of respondents, 22 percent, who support encounter killings of 'dangerous criminals' over a legal trial. While this proportion in itself is significant and speaks volumes about the propensity of the police to resort to even the most extreme forms of violence, it is even more concerning to see an upward trend of those who agree with this statement—with a slight

increase from 19 percent in SPIR 2019, to 22 percent in the current study.

This chapter also highlights that communities that the police perceive as likely to receive justice have been documented as likely to be targeted for torture.

The police preferences towards skirting the criminal justice system to use violent methods and impose ‘instant justice’ – to the extent of killing in “encounters” – fall in line with practices that prop up the perpetuation of torture.

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CHAPTER 04



Arrest, Interrogation and Investigation: Legality versus Reality

*Student protestors being manhandled by the police (15th December, 2019. New Delhi).
Credits: Ghulam Hussain Jeelani*

Key Findings

- Overall, 41 percent police personnel said that arrest procedures are “always” adhered to, while 24 percent said that they are “rarely or never” adhered to. Kerala reported the highest compliance (94% said “always”). IPS officers (33%) are the least likely to say that these procedures are always complied with, while upper subordinates (49%) are the most likely to say so.
- Anyone arrested for a bailable offence has a legal right to be released on bail and not kept in custody. Only 62 percent police respondents said that the arrested person is “always” released on bail immediately at the police station in bailable offences, while 19 percent said they are “sometimes” immediately released.
- While the law allows a lawyer to be present, 30 percent of the police personnel believe that lawyers should never be present during interrogation. Those who never conduct interrogations are more inclined to believe this, compared to those who often conduct interrogations.
- Just a little over half the respondents (56%) said that it is always feasible/practical for the police to produce a person before a magistrate within 24 hours of arrest. Eleven percent said that it is rarely or never feasible. IPS officers (39%) were the least likely to agree that it is always feasible/practical to do so, while upper subordinate ranks were the most likely to agree (61%).
- More than a third of the respondents (35%) strongly feel that confessions before the police should be admissible as evidence in courts, while 44 percent somewhat agree.

CHAPTER



Arrest, Interrogation and Investigation: Legality versus Reality

4.1 Introduction

Torture by police has been documented as occurring, most often, in the earliest stages of suspects being brought into custody, immediately at and following arrest (Human Rights Watch, 2009 and 2016). Coercing confessions out of suspects has long been identified as a major cause for, and site of torture (Kannabiran, 2004).

While India lacks a specific torture prevention law, there is an extensive framework of legal safeguards and procedures designed to prevent custodial torture. At arrest, the police are legally required to uphold various procedures, many of which serve as rights and safeguards of arrested persons, as well as attest to the legality of every arrest made.

The Constitution of India extends fundamental rights to arrested persons that are meant to act as shields against torture. Article 20(3) safeguards the right against self-incrimination during police interrogations, Article 21 provides a guarantee against torture, and Article 22 establishes multiple rights to prevent custodial violence and unlawful detention, namely the right to be produced before a judicial magistrate within 24 hours of the arrest, the right to be informed of the grounds of arrest, and the right to consult, and be represented by, a legal practitioner of his/her choice.

In its landmark judgement in *D.K. Basu*, the Supreme Court of India laid down a series of procedural requirements to be followed by the police at arrest, which the court referred to as “flowing” from Articles 21 and 22(1) of the Constitution. These include, among others, arresting officers having to identify themselves clearly when making an arrest; preparing a memo of arrest to be signed by an independent witness and countersigned by the arrested person; and facilitating the arrested person to inform their next of kin of the arrest and place of detention. In fact, it is the police’s actions to uphold these procedures – informing next of kin, preparing a complete arrest memo, etc. – that realise the rights of arrested persons embedded within them.

India’s legal framework contains crucial safeguards obligating the police to ensure that arrested persons have access to key actors/authorities outside the police soon after arrest – a lawyer, doctor, and a judicial magistrate. In turn, these actors/authorities have duties to check that arrested persons are not being subject to violence, torture, or ill-treatment in custody. Arrested persons are to be medically examined by the doctor mandated to document any “injuries or marks of violence”, and the “approximate time when such injuries or marks may have been inflicted”, on the arrested persons, with the report to be given to the

arrested person (Section 53, clauses 2 and 3, BNSS, 2023). At “first production”, or the first time after arrest that the judiciary comes in contact with arrested persons, a judicial magistrate is expected to safeguard the rights of arrested persons, scrutinise police decisions and actions, and importantly check against violence or torture.¹ Beyond arrest, confessions made to police are not admissible as evidence in India based on the very principle that police officers may obtain confessions through torture, coercion, or inducement.

The reality of the continuation of torture in custody reinforces the persistent finding that all of these protections are not able to eradicate custodial torture, particularly in the early stages of custody when torture is most acute. This chapter attempts to shed light on the role of police personnel by gathering their views on police compliance with legal procedures and safeguards. The chapter examines survey findings on police beliefs on the extent to which police comply with legal safeguards, such as an arrested persons’ access to a lawyer, doctor, and judicial magistrate. Lastly, the chapter examines police views relating to reliance on confessions and police custody, particularly durations of custody. The larger aim is to understand if the upholding of safeguards is seen as important, or confessions continue to be viewed as indispensable.

4.2 Compliance with Arrest Procedures

The police respondents were asked how often, in their experience, various arrest procedures are adhered to when a person is being arrested. To note, the responses of police personnel who may not directly conduct arrests have been included. The responses need to be seen as police perceptions of the extent of compliance with arrest procedures, and not actual measures of compliance.

While it is a lawful and necessary power of the police, the power to arrest also represents the

state’s power to curtail liberty. As Supreme Court jurisprudence unequivocally lays down, arrest must be exercised within the bounds of the law (*Joginder Kumar, 1994* and *D.K. Basu, 1997*). The legality of any arrest is dependent on *full* compliance with *all* of these procedures. The responses must be assessed on this high threshold. On this basis, even slight deviations should be treated as serious illegalities and violations of rights in constitutional/legal terms.

As per this threshold, compliance is poor. Ten percent said that the arrest memo with all the required signatures is rarely or never completed at the time of arrest, while 71 percent said that it is always completed (**Table 4.1**). Eleven percent said that the family members are rarely or never informed about the arrest (17 percent said sometimes, 70 percent said always). Twelve percent said that the arrestee is rarely or never taken to the doctor for a medical examination, while 70 percent said they are “always” taken. Nine percent police personnel said that the inspection memo is rarely or never completed, against 72 percent who said that it always happens. In a similar vein, nine percent of the police respondents said that arrestees are either rarely or never informed of the reasons for their arrest, against 72 percent who said that it always happens. Just 65 percent of the respondents said that they always identify themselves as police officers with name tags visible at the time of arrest. Across each of these crucial components of legal arrest, bona fide compliance (i.e. “always” done) is not reported higher than 70-72 percent. Rates of non-compliance (rarely or never) are mostly higher than 10 percent.

Four in every five police personnel (80%) reported that there is “always” a female police officer present at the time of arrest of a woman, while 11 percent said that it happens sometimes, and nine percent said that it rarely or never happens (**Table 4.1**).

The lowest adherence was reported in the procedural mandate of informing the arrestees

¹ For comprehensive descriptions of the judicial magistrate’s duties at first production, see Commonwealth Human Rights Initiative, “Judicial Scrutiny at First Production of Arrested Persons: A Handbook on the Role of Judicial Magistrates”, 2020: <https://www.humanrightsinitiative.org/download/1625748730Judicial%20Scrutiny%20at%20First%20Production%20of%20Arrested%20Persons.pdf>

Table 4.1: Police personnel reported they “always” follow statutory arrest procedures in less than three-fourth cases

“In your experience, how often are these procedures followed when a person is being arrested?” (%)				
	Always	Sometimes	Rarely	Never
Have a female police personnel present at the time of a woman’s arrest	80	11	6	3
Inform the arrestee of the reasons for their arrest	72	18	7	2
Complete an inspection memo	72	17	7	2
Complete an arrest memo with all the required signatures	71	17	6	4
Inform their family members about the arrest	70	17	7	4
Take the arrestee to a doctor for a medical examination	70	16	8	4
Identify yourself as a police officer with your name tag visible	65	19	9	3
Inform the arrestee that they can contact a lawyer	59	20	11	5

Note: All figures are in percentages. Rest either did not respond or were not aware.

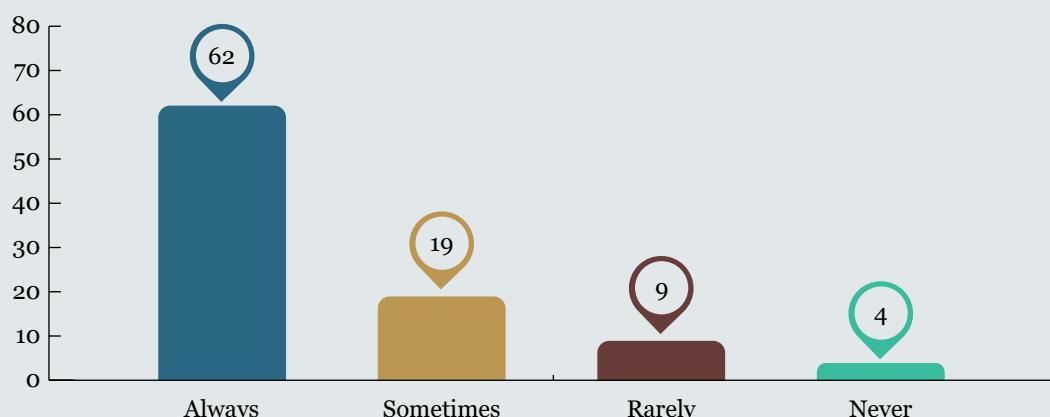
Question asked: In your experience, how often are these procedures followed when a person is being arrested – always, sometimes, rarely, or never?

of their right to legal counsel, with only three in every five police respondents (59%) saying that the arrestees are “always” informed about their right to contact a lawyer, while a significant 36 percent said that they are informed either “sometimes” (20%), “rarely” (11%) and even “never” (5%). Bearing in mind that an arrested person’s right to consult and be defended by a lawyer (of their choice) is a fundamental right guaranteed by the Constitution, this is a dismal rate of compliance. Like many of the

other rights on arrest, the upholding of the right to a lawyer is dependent on the police facilitating first contact and access to a lawyer for an arrested person. It is a basic fair trial right that a person can call upon a lawyer of their choosing and be defended by them at all stages of criminal proceedings (See the United Nations Basic Principles on the Role of Lawyers). Without the police’s facilitation – which is revealed here – the right cannot be realised in practice.

Figure 4.1: Only three out of five police personnel say that arrested persons are always released on bail at the police station in bailable offences

“In your experience, how often are people released on bail immediately at the police station in bailable offences?”

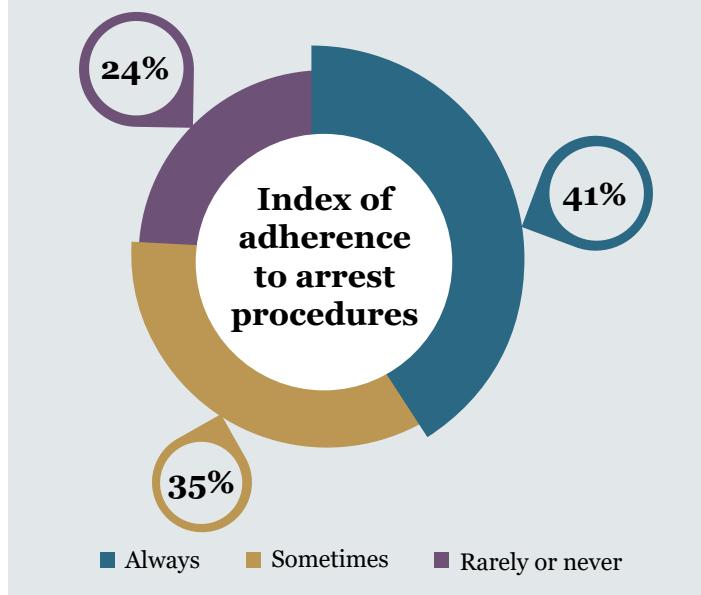


Note: All figures are in percentages. Rest either did not respond or were not aware.

Question asked: In your experience, how often are these procedures followed when a person is being arrested – always, sometimes, rarely, or never?

It is settled in law that accused persons have a statutory right to be released on bail in bailable offences on fulfilling bail conditions (Section 478, BNSS, 2023). They should be offered bail by the Investigating Officer (IO) at the police station and not kept in custody. However, only 62 percent police respondents said that the arrested person is “always” released on bail immediately at the police station in bailable offences, while 19 percent said they are “sometimes” released, nine percent said “rarely” and four percent said “never” (**Figure 4.1**). Against the clarity of the law, anyone arrested for a bailable offence who is kept in police custody is being illegally detained. Clubbing together the responses of “sometimes”, “rarely” and “never”, the numbers suggest that there may be a high incidence of persons accused of bailable offences being illegally detained.

Figure 4.2: Only two out of five police personnel reported the arrest procedures always being adhered to when a person is being arrested



Note: All figures are in percentages. The categories of “rarely” and “never” were merged while creating the index. Please refer to Appendix 5 to see how the index was created.

Question asked: In your experience, how often are these procedures followed when a person is being arrested – always, sometimes, rarely, or never? : Inform them of the reasons for the arrest; Complete an arrest memo with all the required signatures; Identify yourself as a police officer with your name tag visible; Inform their family members about the arrest; Inform them that they can contact a lawyer; Complete an inspection memo; Take the arrestee to a doctor for a medical examination; Have a female police personnel present at the time of a woman’s arrest; Release the person on bail immediately at the police station in bailable offences.

In the context of compliance with procedures on arrest, even as the majority of respondents reported that procedures are “always” adhered to, the extent of non-compliance or irregular compliance present a troubling state of affairs. This is particularly so because the police are legally bound to comply with these procedures at the time of arrest, and it is these police actions (informing the next of kin, drafting a correct arrest memo, etc.) which facilitate the realisation of these rights. An arrested person is entirely under the control of the police in custody. These procedures are not only part of police duties, they also constitute safeguards against brutality and misconduct in custody. As has been amply documented, police’s lack of adherence to these procedures leads to grave excesses such as illegal arrests, police violence and torture. It is crucial that there is strict compliance with these procedures in *all* cases. The judgement in *D.K. Basu* laid down that the failure to comply with the guidelines will render the concerned official liable for departmental action and for contempt of court. Most of the court’s guidelines have been passed into law and are statutory provisions, making non-compliance not just a breach of judicial guidelines but also a violation of statute.

An index was created to cumulatively measure the rates of compliance with the various arrest procedures mentioned above. Overall, only two out of five police personnel (41%) reported that arrest procedures are “always” followed, while 35 percent reported that they are “sometimes” adhered to (**Figure 4.2**). Worryingly, close to a quarter of the respondents (24%) said that the arrest procedures are “rarely” or “never” followed. When a reporting rate of 90 percent compliance would have fallen short, not even 50 percent reported “always” following the arrest procedures. These findings reinforce poor adherence to mandated arrest procedures by the police in India, in clear violation of constitutional and legal guarantees. Police failure to comply undermines the systemic safeguards in place against illegal arrests and police violence in custody and keeps arrested persons immensely vulnerable to ill-treatment and torture in custody.

Table 4.2 provides a state-wise breakdown of compliance with arrest procedures, revealing notable disparities across states. In Kerala, more than nine in every ten respondents (94%) reported that procedures are “always” followed, while six percent said that they are followed sometimes (**Table 4.2**). None of the respondents from Kerala said that the arrest procedures are rarely or never followed. In contrast, states like Jharkhand and Karnataka exhibit significantly lower compliance, with only eight percent and 13 percent of the respondents, respectively, saying that these procedures are “always” followed. In Karnataka, 70 percent said that these provisions are rarely or never complied with. This was followed by Bihar, with 51 percent saying that these provisions are rarely or never adhered to. This suggests varying

compliance with the arrest procedures across the states, with all but one state reporting near-complete adherence, as is mandated by the law. While the figures across the board warrant urgent attention in general, the variation across states underscores the uneven implementation of procedural protocols and highlights the need for targeted interventions to standardise practices.

Figure 4.3 categorises the adherence to arrest procedures by the rank of police personnel. Amongst the ranks of police personnel who are most likely to be conducting arrests — the upper subordinate ranks — a little less than half (49%) reported that these procedures are “always” complied with, while 21 percent said that these procedures are rarely or never followed (**Figure 4.3**). On the other hand, among the

Table 4.2: Police in Kerala most likely to follow arrest procedures, those in Karnataka least likely to do so

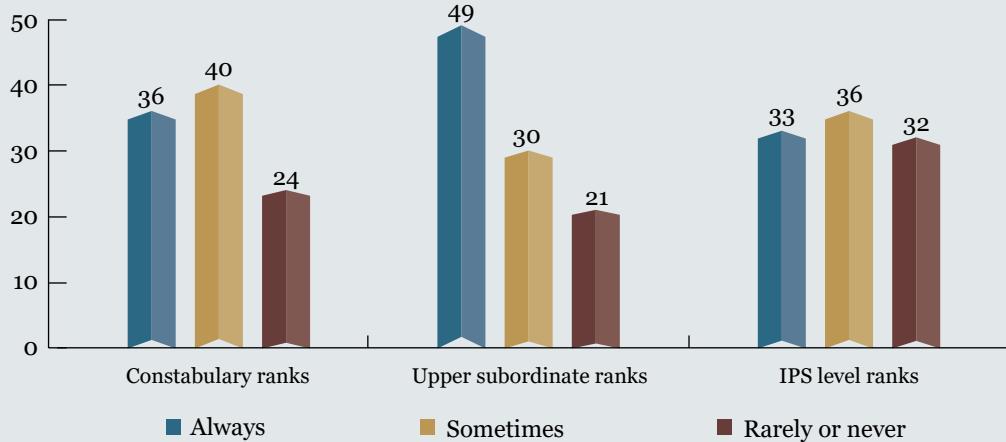
States	Likelihood of the arrest procedures being followed		
	Always	Sometimes	Rarely or never
Kerala	94	6	0
Andhra Pradesh	57	25	18
Uttar Pradesh	56	41	3
Odisha	52	26	22
Punjab	50	40	10
Assam	49	34	17
Gujarat	43	43	14
Rajasthan	43	41	16
Madhya Pradesh	42	33	25
Delhi	41	40	19
West Bengal	40	37	23
Tamil Nadu	35	50	15
Maharashtra	27	39	34
Nagaland	26	67	7
Bihar	25	24	51
Karnataka	13	17	70
Jharkhand	8	49	43

Note: All figures are in percentages. The categories of “rarely” and “never” were merged while creating the index. Please refer to Appendix 5 to see how the index was created.

Question asked: In your experience, how often are these procedures followed when a person is being arrested – always, sometimes, rarely, or never? : Inform them of the reasons for the arrest; Complete an arrest memo with all the required signatures; Identify yourself as a police officer with your name tag visible; Inform their family members about the arrest; Inform them that they can contact a lawyer; Complete an inspection memo; Take the arrestee to a doctor for a medical examination; Have a female police personnel present at the time of a woman’s arrest; Release the person on bail immediately at the police station in bailable offences.

Figure 4.3: One out of three IPS-level police officers reported rarely or never adhering to arrest procedures

Likelihood of the arrest procedures being followed (Rank-wise)

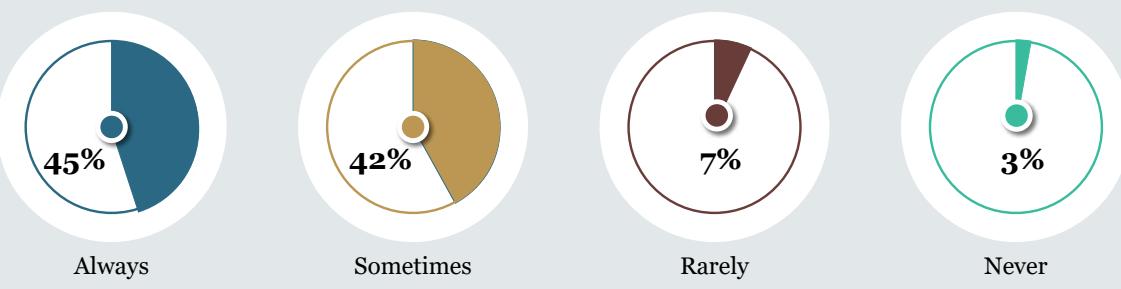


Note: All figures are in percentages. The categories of “rarely” and “never” were merged while creating the index. Please refer to Appendix 5 to see how the index was created.

Question asked: In your experience, how often are these procedures followed when a person is being arrested – always, sometimes, rarely, or never? : Inform them of the reasons for the arrest; Complete an arrest memo with all the required signatures; Identify yourself as a police officer with your name tag visible; Inform their family members about the arrest; Inform them that they can contact a lawyer; Complete an inspection memo; Take the arrestee to a doctor for a medical examination; Have a female police personnel present at the time of a woman's arrest; Release the person on bail immediately at the police station in bailable offences.

Figure 4.4: Less than half of the police personnel believe that all the arrest procedures can be followed at every arrest

“Can all arrest procedures be followed at every arrest?”



Note: All figures are in percentages. Rest did not respond.

Question asked: Often, police personnel say that it is difficult to comply with all the arrest procedures. In your experience, can all arrest procedures be followed at every arrest – always, sometimes, rarely, or never?

constabulary ranks, who in some states are permitted to investigate minor offences and may be carrying out arrests in these cases, about one-third (36%) said that the arrest procedures are always followed, while nearly a quarter (24%) said that they are either rarely or never followed. Surprisingly, those who comprise the highest ranks in the police hierarchy – IPS-level

officials – were the least likely to believe that arrest procedures are always followed (33%), and the most likely to report that they are either rarely or never followed (32%).

To gather responses on police views on the feasibility of actually following all the arrest procedures at every arrest, the respondents

were asked their opinions on the extent to which it is possible to comply with all the procedures at every arrest. Only two in every five of them (45%) said that it is “always” possible, while a similar proportion (42%) said that all the arrest procedures can only “sometimes” be followed (**Figure 4.4**). Cumulatively, one in every ten respondents also reported that it is either “rarely” (7%) or “never” (3%) possible to follow all the arrest procedures at every arrest. Despite a relatively small proportion of police personnel holding the opinion that it is rarely or never possible to follow arrest procedures, notably, the reported rates of compliance with specific arrest procedures are in fact much poorer, as seen in **Table 4.1** and **Figure 4.1** above. This shows a disjunct in responses on what is viewed as compliance and what is seen as feasible. Presumably, the actual non-compliance could be much higher in reality, since the social desirability bias in the survey is likely to inflate the reported level of compliance with established legal procedures.

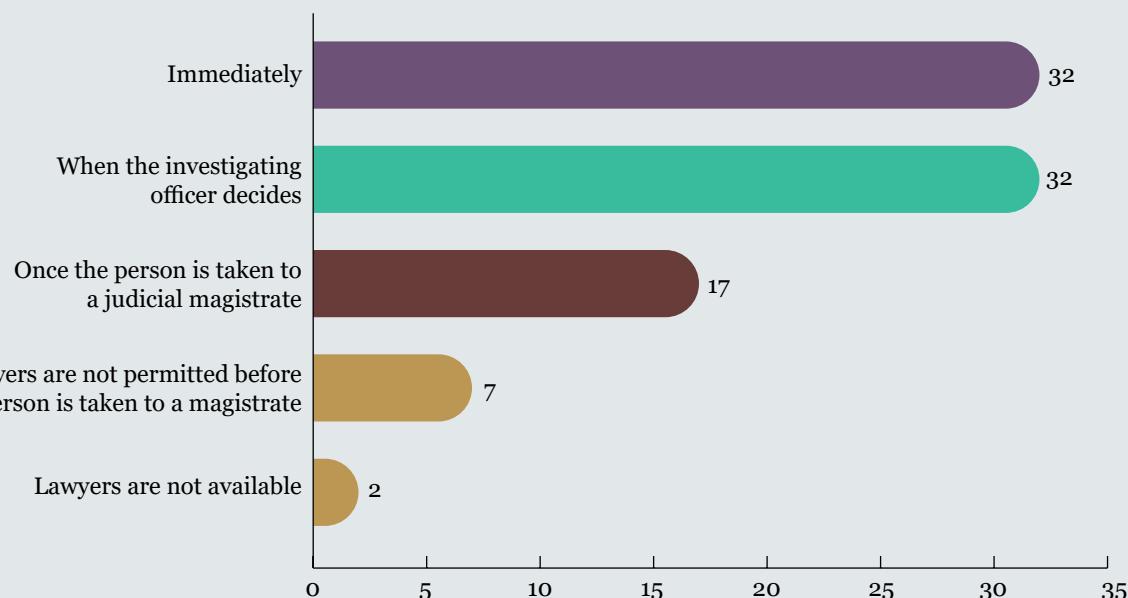
4.3 Access to External Safeguards: Lawyers, Doctors, and Judicial Magistrates

4.3.1 Right to a lawyer

Flowing from the constitutional right to consult and be defended by a lawyer, Section 38 of the BNSS, 2023 states that an arrested person can meet an advocate of their choice during interrogation, though not throughout the interrogation. On being asked how soon after an arrest, the arrested person is generally allowed to meet their lawyer, one-third of police personnel (32%) expressed the view that it is decided by the investigating officer in the case (**Figure 4.5**). Another 32 percent said that arrested persons are allowed to see a lawyer “immediately”. Seventeen percent said that it is generally allowed only once the arrested person is taken to the judicial magistrate. Seven percent said that lawyers are not permitted before the person is produced before the magistrate.

Figure 4.5: One-third of the police personnel believe that an arrested person should be allowed to see a lawyer only when the investigating officer decides

"When is an arrested person allowed to see a lawyer?" (%)



Note: All figures are in percentages. Rest either did not respond or gave other responses.

Question asked: If an arrested person asks for a lawyer, how soon after the arrest does the police generally allow the person to see a lawyer?

It is important to analyse these findings within the backdrop of what have been inconsistent legal developments. While the right to a lawyer is an established fundamental right, the important aspects of “when and how” this right is to be exercised in reality remain murky (Commonwealth Human Rights Initiative, 2020). The important and very practical issue of when exactly – at which point after arrest – the right to legal representation arises, has been interpreted differently in Supreme Court jurisprudence. Some judgements have held that the right to a lawyer kicks in only at first production; while another has said immediately at arrest; *D.K. Basu* indicates at interrogation (which could begin any time after arrest), and the landmark judgement in *Nandini Satpathy vs. P.L. Dani (1978)* gave the earliest interpretation that a lawyer can be accessed even before arrest, at the stage of questioning.² To date, there is no conclusive judicial opinion that holds the field on when exactly the right

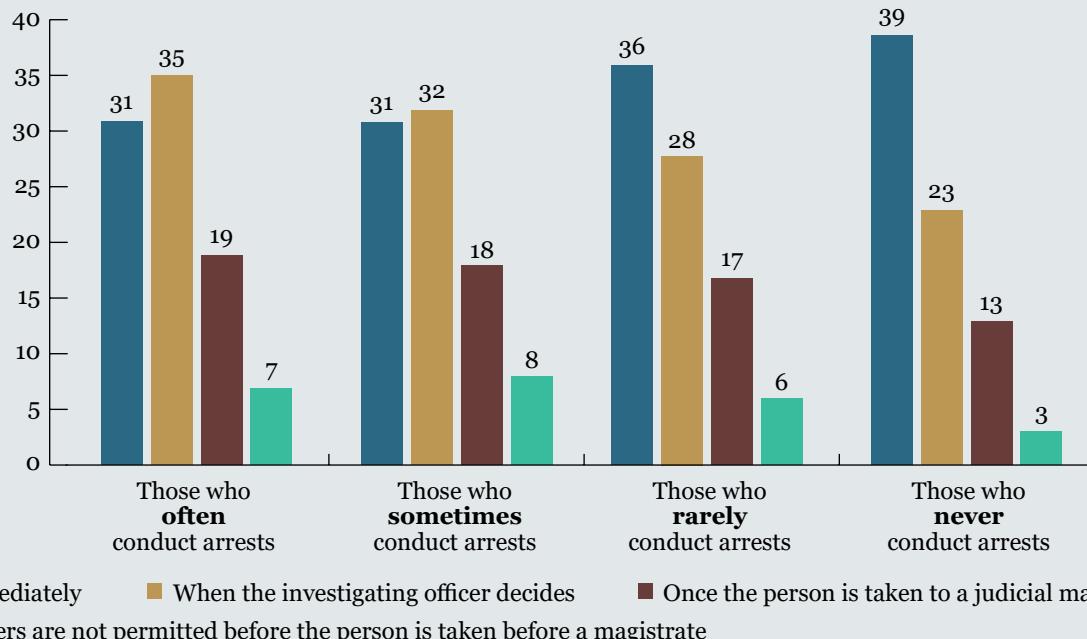
to a lawyer kicks in for an arrested person in custody.

Returning to the findings, it is somewhat heartening that one-third of respondents (32%) said that the right to a lawyer arises “immediately” after arrest. In the absence of clarity, at least one-third of the respondents opted for the earliest access to a lawyer for an arrested person. Another one-third saying this is “decided by the Investigating Officer” is perhaps a reflection of what actually happens due to the absence of a legal standard. Similarly, 17 percent of responses that it is ‘generally’ allowed only once the arrested person is taken to the judicial magistrate may just be signalling what is done on the ground. Those (7%) who said lawyers are *not* permitted before the person is produced before the magistrate hold views that contravene a constitutional requirement.

We specifically examined the responses of police personnel who routinely conduct arrests. This

Figure 4.6: Those who often conduct arrests are the least likely to report that an arrested person is generally allowed to consult a lawyer immediately after arrest

“How soon after arrest does the police generally allow the person to see a lawyer?”



Note: All figures are in percentages. Rest either did not respond or gave other responses.

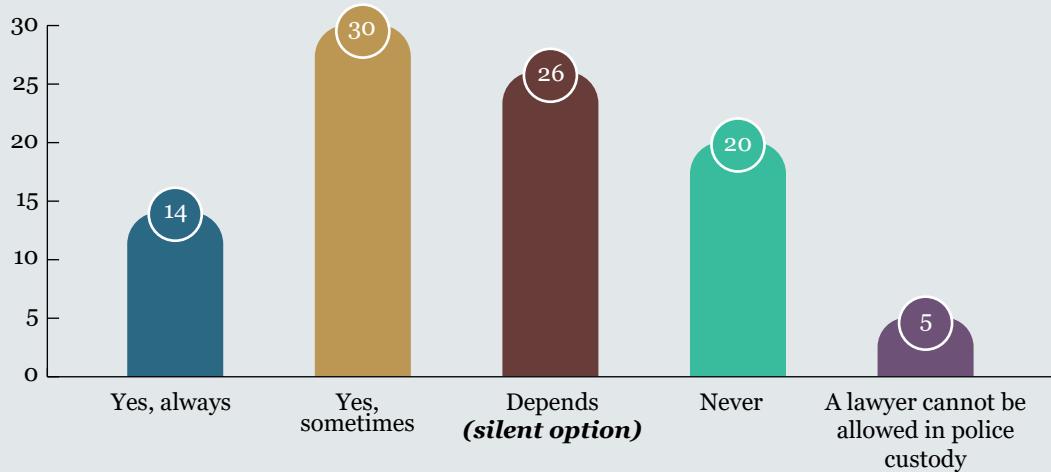
Question asked: If an arrested person asks for a lawyer, how soon after the arrest does the police generally allow the person to see a lawyer?

Question asked: How frequently do you conduct arrests – often, sometimes, rarely, or never?

² For a comprehensive recap of the jurisprudence on the right to legal representation, please see “Handbook Of Landmark Judgements on Human Rights and Policing in India”, Commonwealth Human Rights Initiative, 2020, pages 20-22: <https://www.humanrightsinitiative.org/publication/handbook-of-landmark-judgments-on-human-rights-and-policing-in-india>

Figure 4.7: One out of five police personnel believe that an accused person in police custody should never be allowed to talk to a lawyer in private

"Should an arrested person in police custody be allowed to talk to a lawyer in private?" (%)



Note: All figures are in percentages. Rest did not respond.

Question asked: If a lawyer talks to an arrested person in police custody, should this conversation be allowed to take place in private or not?

cohort is most likely to report that an arrested person is generally allowed to consult a lawyer at the discretion of the IO (35%) followed by those who conduct arrests sometimes (32%) (**Figure 4.6**). Also, those who often or sometimes conduct arrests are the least likely to say that the arrested person is "immediately" allowed to see a lawyer (31% each).

To get a sense of police views on the level of privacy that can be allowed to a lawyer and their client in custody, the respondents were probed about whether an arrested person should be allowed to talk to their lawyer in private. Merely 14 percent of the respondents said "always", while three out of ten (30%) said that it can "sometimes" be allowed (**Figure 4.7**). Further, a notable 20 percent said that it should "never" be allowed. Five percent went so far as to say that a lawyer cannot be allowed to a person in police custody, in complete violation of the right enshrined in the Constitution and law.

The police respondents were also asked if they think that lawyers should be allowed to be present during interrogation. Only a little more than one-tenth of them (12%) said that lawyers should "always" be allowed to be present during interrogation, while only one-third of them (34%) said that lawyers can "sometimes" be

allowed (**Figure 4.8**). Cumulatively, almost half of the police respondents believed that lawyers should "rarely" (19%) or "never" (30%) be allowed during interrogation. Strikingly, a significant proportion of the respondents, 30 percent, thought that lawyers should "never" be allowed to be present during interrogation, in complete violation of the law. When these responses are disaggregated against those who often interrogated suspects, it emerges that merely 14 percent of them said that lawyers should always be allowed to be present during interrogation, while more than a third (35%) said that lawyers should be allowed only sometimes (**Table 4.3**). It is noteworthy that nearly half of those officers who often conduct arrests also said that lawyers should rarely (16%) or never (31%) be allowed to be present during interrogation.

As with the issue of when exactly the right to a lawyer kicks in, the issue of the extent to which a lawyer can be present and participate during interrogation also remains unclear. The statute in Section 38, BNSS, is clear that a lawyer can be present during interrogation, "but not throughout" which casts ambiguity on when and for how long, a lawyer can be present during interrogation, and importantly, which

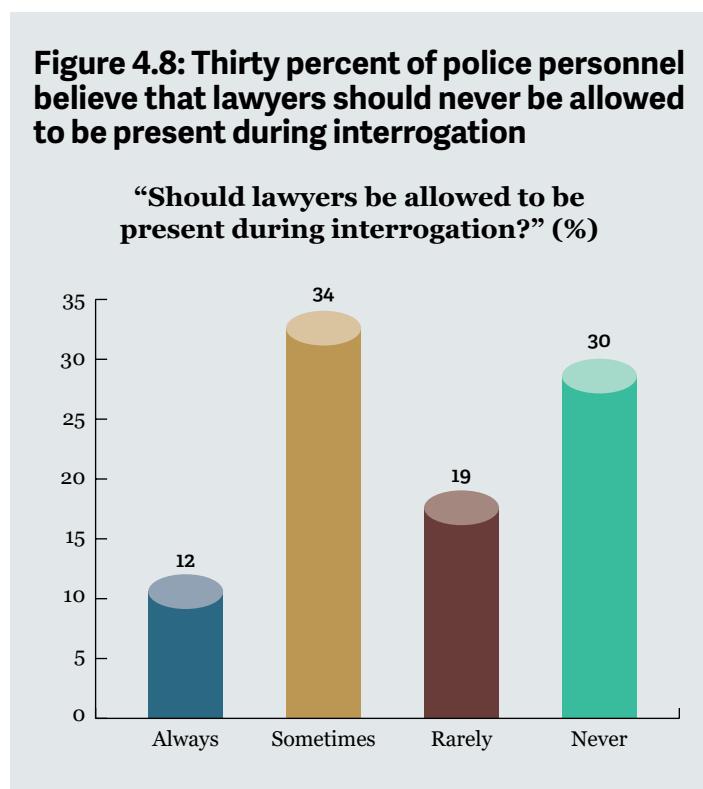
Table 4.3: Nearly half of those who often conduct interrogation of suspects said that lawyers should rarely or never be allowed to be present during interrogation

Frequency of conducting interrogations	"Should lawyers be allowed to be present during interrogation?" (%)			
	Always	Sometimes	Rarely	Never
Those who often conduct interrogations	14	35	16	31
Those who sometimes conduct interrogations	12	34	21	26
Those who rarely conduct interrogations	10	37	21	24
Those who never conduct interrogations	6	23	19	44

Note: All figures are in percentages. Rest did not respond.

Question asked: Should lawyers be allowed to be present during interrogation – always, sometimes, rarely, or never?

Question asked: How frequently do you conduct interrogation of suspects – often, sometimes, rarely, or never?



Note: All figures are in percentages. Rest did not respond.

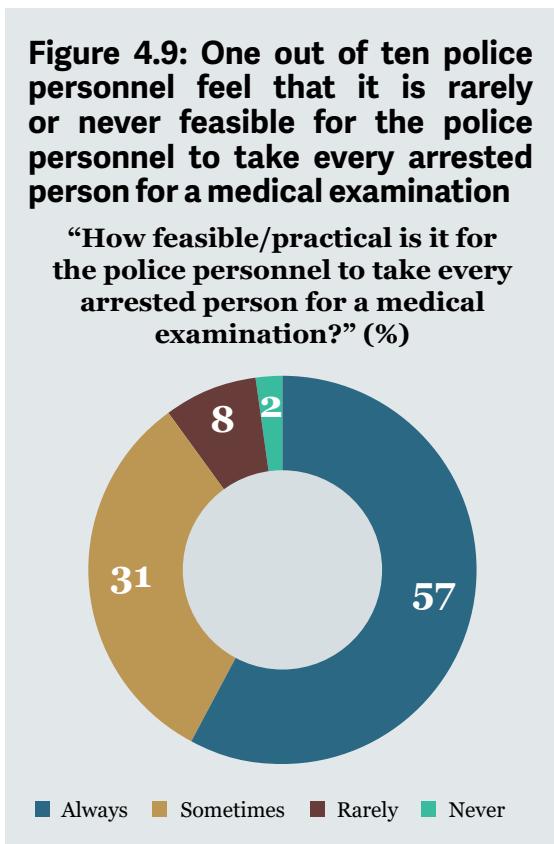
Question asked: Should lawyers be allowed to be present during interrogation – always, sometimes, rarely, or never?

authority decides. In *Nandini Satpathy*, the Supreme Court held an expansive interpretation that the presence of a lawyer is essential during interrogation to safeguard the arrested person's right against self-incrimination [Article 20(3)] and to stop any intimidating tactics by Investigating Officers, while also stating that the lawyer could not supply any answers. Later judgements disagreed that a lawyer could be present during interrogation (Commonwealth Human Rights Initiative, 2020). The extent of

privacy for a lawyer and client in custody is also not conclusively established. A judgement of the Bombay High Court in *Cecilia Fernandes vs. State, 2005* held that an arrested person can consult a lawyer in private and out of earshot of the police.

The responses to the question on a lawyer's presence at interrogation are very concerning. The question simply asked if a lawyer can be allowed to be present during interrogation. It is not asking about duration or participation. If the responses were based on the law's spirit and requirement, they would have been overwhelmingly in favour. Yet, the overwhelming police views went towards disallowing a lawyer's presence at interrogation. Only 12 percent reflected the settled position that lawyers should "always" be allowed to be present during interrogation. It is of grave concern that when taken together, almost half of the police respondents (49%) said that lawyers should either "rarely" (19%) or "never" (30%) be allowed during interrogation. The highest responses at 30 percent that a lawyer should "never" be allowed during interrogation reflect a near-complete ignorance about existing court rulings and spirit of the law. This result into not only a total disregard for the law but also an aversion to enabling crime suspects to exercise their right to a robust legal defence.

Documentation of lived experiences reveals the recurring pattern that arrested persons rarely come into contact with a lawyer in the earliest stages of arrest and interrogation. A 2011 study by the Commonwealth Human Rights Initiative



Note: All figures are in percentages. Rest did not respond.
Question asked: How feasible/practical is it for the police personnel to take every arrested person for a medical examination – always, sometimes, rarely, or never?

(CHRI) of a total of 345 undertrial prisoners in Alwar (Rajasthan) prison found that only five percent of the undertrials had access to a lawyer at the time of arrest. About 31 percent (106 out of 345) first met a lawyer when they were first produced before a magistrate (CHRI, 2011). In a seminal study of the experiences of all prisoners on death row in India, it was reported that of the 191 prisoners who could share information regarding their access to a lawyer when they were interrogated, 185 prisoners (97%) shared that they did not have a lawyer, 82.6 percent of these 185 prisoners recounted that they experienced torture by the police (Death Penalty Research Project, 2016).

4.3.2 Right to medical examination

As mentioned in **Table 4.1** above, as per respondent experiences, arrested persons are “always” taken for a medical examination in only about 70 percent of cases. Going further, the police personnel were asked their opinion on how “feasible or practical” it was to take every

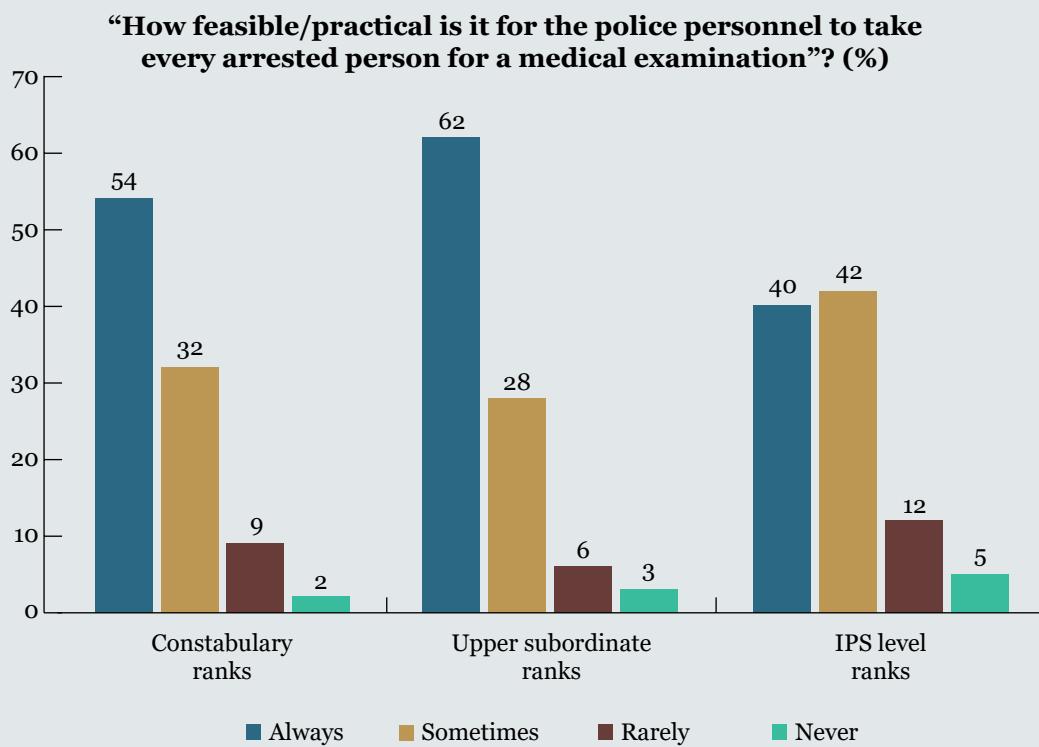
arrested person for a medical examination. The responses of the police respondents revealed that only a little more than half of them (57%) said that it is “always” feasible to take every arrested person for a medical examination, while three in every ten (31%) also said that it is only “sometimes” possible (**Figure 4.9**). Cumulatively, one-tenths of the respondents even reported that it is either “rarely” (8%) or “never” (2%) possible to ensure the medical examination of every arrested person.

When these responses are disaggregated across the ranks of the police respondents, it is found that in the constabulary ranks, only 54 percent thought that it was “always” possible to take every arrestee for a medical examination, while 62 percent belonging to the upper subordinate ranks felt the same (**Figure 4.10**). IPS level rank respondents formed the least proportion (40%) of those who thought that it was “always” practical to take every arrested person for a medical examination.

4.3.3 First production before the magistrate

Arguably, one of the most important safeguards against illegal arrests and torture by the police is the constitutional mandate of producing all arrested persons before a magistrate within 24 hours of arrest. As mentioned, the judicial magistrate has numerous duties at first production geared towards scrutinising the police’s rationale for the arrest and the treatment of the person in custody. In the survey, police personnel were asked about how practical it is to produce an arrested person before a judicial magistrate within 24 hours of arrest. Responses emerged that only a little more than half of the respondents (56%) said that it is “always” feasible to produce the arrested person before a judge/magistrate within 24 hours of their arrest, while 30 percent believed that it is only “sometimes” possible (**Table 4.4**). At least one in every ten respondents also said that it is “rarely” (8%) or “never” (3%) feasible to ensure the production of an arrested person before a magistrate within 24 hours of arrest. These are the low rates of perceived feasibility to uphold a constitutional mandate, from the duty bearers themselves, the police.

Figure 4.10: IPS officers least likely to believe that it is always feasible to take every arrested person for a medical examination



Note: All figures are in percentages. Rest did not respond.

Question asked: How feasible/practical is it for the police personnel to take every arrested person for a medical examination – always, sometimes, rarely, or never?

Table 4.4: Only 56 percent of police personnel feel that it is always feasible or practical to produce an arrested person before a magistrate within 24 hours of their arrest

“How feasible/practical is it for the police personnel to produce a person before a judge/magistrate within 24 hours of his/her arrest?”	(%)
Always	56
Sometimes	30
Rarely	8
Never	3

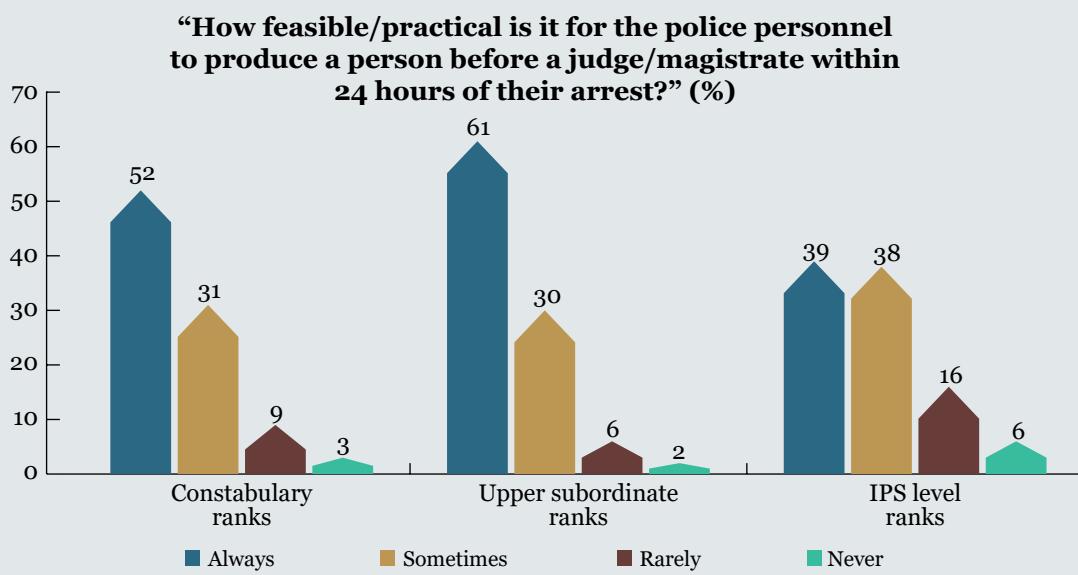
Note: All figures are in percentages. Rest did not respond.

Question asked: How feasible/practical is it for the police personnel to produce a person before a judge/magistrate within 24 hours of their arrest - always, sometimes, rarely, or never?

Unfortunately, these align with documentation of experiences of arrested persons not being produced within 24 hours. CHRI's study of undertrial prisoners in Alwar found that only 35.5 percent said they were produced before a magistrate within 24 hours. The rest were produced days after arrest – 32 percent were produced within 2-4 days and 11 percent were

produced as late as 5-6 days after arrest. The Death Penalty Research Project found that out of 258 prisoners who could speak of production before a magistrate, 166 said they were not taken within the mandatory 24 hours. As Human Rights Watch points out in a report on custodial deaths, if an arrested person is not able to meet a magistrate, they have “no direct

Figure 4.11: IPS officers are the least likely to believe that it is always feasible to produce a person before a magistrate within 24 hours of their arrest



Note: All figures are in percentages. Rest did not respond.

Question asked: How feasible/practical is it for the police personnel to produce a person before a judge/magistrate within 24 hours of their arrest - always, sometimes, rarely, or never?

opportunity to make complaints about torture or other mistreatment” and the magistrate too will not be able to “see” any “physical evidence of mistreatment”. In fact, consequences can be fatal. Independent analysis of official government data consistently finds that most people who die in police custody die before they are produced before a magistrate (Human Rights Watch, 2016); over 60 percent of deaths in police custody which occurred between 2010-19 occurred within 24 hours of arrest (Bagga, 2020).

Like the trend on the feasibility of medical examination of the arrested persons, even on the constitutional mandate of production before the magistrate within 24 hours of arrest, IPS rank officers are least likely to believe that it is always feasible (39%), with more than one in five IPS officers saying that it is rarely or never feasible (16% and 6% respectively) (Figure 4.11). Further, only three in every five of the upper subordinate rank officials (61%) reported that production of an arrestee before a judge/magistrate within 24 hours of arrest is “always” feasible, while the figure dropped by nine percentage points for the constabulary rank respondents (at 52%).

The study attempted to explore the reasons police would cite for delays in producing an arrested person before a magistrate within 24 hours of arrest. Three in every ten police respondents (30%) expressed the view that the most important reason was the need for more time to interrogate the accused (Table 4.5). For one in every four respondents (25%), infrastructural inadequacy of vehicles, fuels, escorts, etc. was the most important reason for such delays, while close to a quarter of the respondents (23%) believed that the time of first 24 hours is insufficient for proper investigation of the arrestee.

The issue of lack of vehicles as well as staff, as cited by the respondents, is consistent with data from previous surveys. In SPIR 2019, a survey of police personnel across 21 Indian states and UTs found that nearly half of the police personnel said that they frequently faced situations where they needed a vehicle but it was not available (20% said “many times” and 26% said “a few times”). Further, 28 percent said that they frequently faced situations where they could not escort the accused to court because of a lack of staff at the police station (SPIR 2019, pp. 67-68).

Table 4.5: Thirty percent of the police personnel cite the need for more time to interrogate the accused as the most important reason for the delay in producing an arrested person before a magistrate within 24 hours of arrest

"Which is the most important reason for delays in producing an arrested person before a magistrate within 24 hours?"	(%)
More time needed for interrogation of the accused	30
Inadequate infrastructure (vehicles, fuels, escorts)	25
The first 24 hours' time is inadequate for proper investigation	23

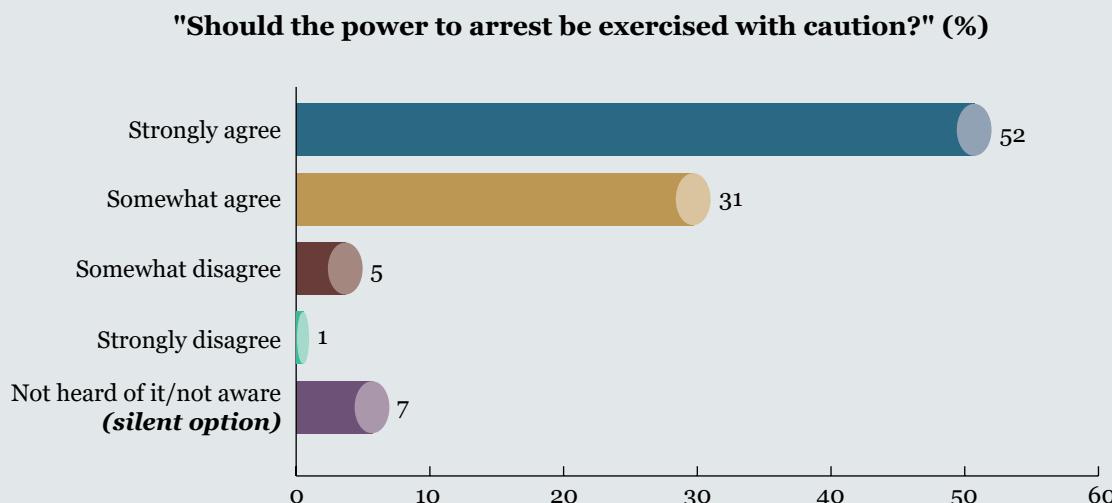
Note: All figures are in percentages. Rest either did not respond or gave other responses.

Question asked: There are different reasons for delays in taking an arrested person before a magistrate within 24 hours. I am going to read out a list. In your opinion, which is the most important reason?

The bulk of responses converge on the police needing more time to interrogate the accused, or more largely for investigation. It is important to note that the statutory duty to produce a person before a magistrate within 24 hours of arrest does not involve only the constitutional right of arrested persons. It is a legal precept, laid down in Section 58, BNSS, 2023, that an arrested person cannot be detained in police custody beyond 24 hours without a magistrate's order. This is a requirement concerning the legality of custody itself, and should not be obfuscated by

excuses around more time for interrogation or investigation. The Supreme Court has cited that this requirement intends to limit police custody and protect accused persons from "methods" of "overzealous or unscrupulous police officers" (*CBI vs. Anupam Kulkarni*, 1992). Further, as police personnel, certainly of the investigating ranks are aware, the law provides a procedure for further time for investigation if it cannot be completed by the police within 24 hours (Section 187, BNSS, 2023). The police have ample scope to apply to seek more time for investigation,

Figure 4.12: Half of the police personnel interviewed strongly believe that the power to arrest must be exercised with caution and police officers must be able to justify the reasons for arrest



Note: All figures are in percentages. Rest did not respond.

*Question asked: In its judgement in *Arnesh Kumar vs. State of Bihar*, the Supreme Court says the power to arrest must be "exercised with caution" and "police officers must be able to justify the reasons" when making arrests. Do you agree or disagree?*

which can include interrogation of suspects in their custody. In line with the legal principle above and the scheme of the law, it is judicial magistrates who decide the duration of custody for the arrested persons while an investigation is ongoing, based on requests by investigating officers. Even if the police view is that 24 hours is not sufficient for investigation, these responses do not correspond with the reality that there is scope for the police to seek more time. Reading between the lines of these responses may reveal a disregard for limits placed on police custody.

4.4 Police Opinions on the Powers of Arrest

The law requires the police to justify every arrest they make, underpinned by the principle that arrests cannot be made on mere suspicion (*Joginder Kumar*, 1994). To gauge the police's opinions on these principles on the power to arrest, respondents were asked if they agreed with the Supreme Court judgement in *Arnesh Kumar vs. State of Bihar*, 2014. In it, the court reinforced the long-standing legal precept that the power to arrest must be "exercised with caution" and "police officers must be able to justify the reasons" when making arrests. Even though the arresting officers are legally mandated to provide their reasons for arrest (Section 35, BNSS, 2023), only a little more than half of the police respondents (52%) said that they "strongly agree" with the statement (**Figure 4.12**). Further, nearly a third (31%) also said that they "somewhat agree" with the

statement, while six percent disagreed with the judgement. It begs the question as to why so many police personnel do not agree with the principle that every arrest must be justified, and in turn, what they believe is sufficient to justify arrest. Good police work necessitating arrest, that can hold up in court, should be based on some verifiable material and investigation that credibly links the accused person to the alleged crime and its commission. It is of major concern that there was not unanimous agreement with this foundational principle of the power to arrest, by those who wield the power to arrest. Despite this being a landmark judgement with clear directives on arrest to the police, passed a decade ago in 2014, as many as seven percent of the respondents reported that they had not heard of or were not aware of the judgement. This underscores the urgent need for better and targeted legal education/awareness among the police on the law on arrest.

When one looks at these responses across the ranks of the police respondents, it is revealed that among those who "strongly agree", upper subordinate rank officials comprise the highest proportion (58%), followed by constabulary rank respondents (48%) and IPS-level personnel (44%) (**Table 4.6**). Worryingly, the IPS-level police officials, who form the senior supervising and decision-making officers within the police, were the least likely to strongly agree (44%) with the judgement that police's powers of arrest must be exercised with caution. This is consistent with the above

Table 4.6: IPS officers least likely to agree with the Supreme Court judgement that the power of arrest should be exercised with caution

Rank	'Should the power of arrest be exercised with caution?' (%)				
	Strongly agree	Somewhat agree	Somewhat disagree	Strongly disagree	Not heard of it/ not aware of it (silent option)
Constabulary ranks	48	32	5	1	9
Upper subordinate ranks	58	28	4	1	5
IPS level ranks	44	31	19	1	2

Note: All figures are in percentages. Rest did not respond.

*Question asked: In its judgement in *Arnesh Kumar vs. State of Bihar*, the Supreme Court says the power to arrest must be "exercised with caution" and "police officers must be able to justify the reasons" when making arrests. Do you agree or disagree?*

trends of the IPS officers being the least likely to support constitutional and legal safeguards of production before the magistrate within 24 hours and medical examination of the arrested persons, to name a few.

4.5 Opinions on the Duration of Police Custody and Reliance on Confessions

With torture occurring mostly in police custody, it was pertinent to gather police opinions on what they regard as sufficient time in police custody of arrested persons (irrespective of the current confusion in the changes in the BNSS, 2023 provisions on police custody). While 36 percent of the police respondents answered that 15 days are sufficient time, one in every five (20%) said that police custody should be extended beyond 15 days for all accused persons (Table 4.7). At least three in every ten (31%) expressed the view that time in police custody should be extended beyond 15 days only for those accused of serious offences. Notably, these findings are fairly mixed with a lesser proportion of respondents seeking more time for police custody. At least one-third (31%) advocating for more time in custody for those accused of serious offences raises a red flag, as it departs from uniform treatment and equality before the law.

Further, the data reveals that police personnel who reported frequently conducting interrogations were more likely to believe that 15 days in police custody was sufficient time,

while those who said that they never conducted interrogations were least likely to believe so. Of the police personnel who said that they often conduct interrogations, 41 percent said that 15 days are sufficient, while amongst those who said that they never conducted interrogations, just 25 percent were of the opinion that the 15 days were sufficient (Table 4.8). On the other hand, those who frequently conducted interrogations were also the least likely to say that the time in police custody should be extended only in serious offences (29%), while those who reported never conducting interrogations were most likely to agree with this statement (42%). This indicates that the personnel with actual experience of interrogation are more inclined to believe that 15 days of police custody is sufficient, while those whose duties do not involve interrogation feel otherwise. Interestingly, eight percent of those who said they often conduct interrogations said that 15 days are too long and should be reduced. This was a silent option, not read out to the respondents when asking the question in the survey.

These are very notable findings of police officers with experience in conducting arrest and interrogation largely advocating for not more than 15 days of police custody and in some small fractions, even seeking that police custody be reduced. Interestingly, while Parliament (through several governments) has endorsed longer police custody under terrorism and other special laws; and the present controversies on the duration of police custody³ under the BNSS,

Table 4.7: One out of five police personnel believe that time in police custody should be extended beyond 15 days for all accused persons

“Which statement do you agree with the most?”	(%)
“15 days is sufficient time for police custody of accused persons”	36
“Time in police custody should be extended beyond 15 days for all accused persons”	20
“Only in serious offences, time in police custody should be extended beyond 15 days”	31
“15 days is too long, should be reduced” (<i>silent option</i>)	7

Note: All figures are in percentages. Rest did not respond.

Question asked: Of the three statements, which statement do you agree with the most?

Statement 1: 15 days is sufficient time for police custody of accused persons.

Statement 2: Time in police custody should be extended beyond 15 days for all accused persons.

Statement 3: Only in serious offences, time in police custody should be extended beyond 15 days.

Silent option: 15 days is too long, should be reduced.

³ For more details, see Summary of Legal Provisions (Appendix 1).

Table 4.8: Police personnel who frequently conduct interrogation of suspects are the most likely to believe that 15 days is sufficient time in custody for all accused

Frequency of conducting interrogations	"Which statement do you agree with the most?" (%)			
	"15 days is sufficient time for police custody of accused persons"	"Time in police custody should be extended beyond 15 days for all accused persons"	"Only in serious offences, time in police custody should be extended beyond 15 days"	"15 days is too long, should be reduced" (silent option)
Those who often conduct interrogations	41	16	29	8
Those who sometimes conduct interrogations	36	23	30	5
Those who rarely conduct interrogations	27	24	34	6
Those who never conduct interrogations	25	19	42	5

Note: All figures are in percentages. Rest did not respond.

Question asked: Of the three statements, which statement do you agree with the most?

Statement 1: 15 days is sufficient time for police custody of accused persons.

Statement 2: Time in police custody should be extended beyond 15 days for all accused persons.

Statement 3: Only in serious offences, time in police custody should be extended beyond 15 days.

Silent option: 15 days is too long, should be reduced.

Question asked: How frequently do you conduct interrogation of suspects – often, sometimes, rarely, or never?

2023 remain unresolved, some experienced police officers are not in favour of extended custody.

The police and criminal justice system's reliance on confessions has been amply documented (Lokaneeta, 2011). The law states unambiguously that confessions before the police are inadmissible in court. The intent is precisely to guard against torture and coercion during interrogations or in the course of investigation, but this report reinforces throughout that this has not prevented the use of torture by the police. In this backdrop, it is not surprising that more than a third of the respondents (35%) strongly felt that confessions before IOs should be admissible as evidence in courts, and another 44 percent somewhat agreed with the statement (**Figure 4.13**). The low rates of disagreement reflect the reliance on confessions for police - just five percent respondents completely disagreed with the statement, while 10 percent somewhat disagreed.

The study also explored the opinion of police personnel regarding the importance of various techniques and practices in the solving of a

Figure 4.13: Four out of five police personnel believe that confessions made to the police should be admissible in court

"Confessions made by accused persons in custody before Investigating Officers of all ranks should be made admissible as evidence" (%)



Note: All figures are in percentages. Rest did not respond.

Question asked: "Confessions made by accused persons in custody before Investigating Officers of all ranks should be made admissible as evidence". Do you agree or disagree with this statement?

case — ranging from more scientific methods such as DNA profiling and fingerprints, to more arbitrary methods such as obtaining information from police informants or *mukhbirs*.

In the survey, when the police personnel were asked how important the items recovered through the confession of an accused person were in cracking a case, more than eight in every ten respondents (83%) said that recovery items like clothes, dead bodies, weapons, etc. (under Section 23 of the BSA, 2023) are “very important” in cracking a case (**Table 4.9**). Across judicial findings as well as independent documentation, recovery evidence has been known to be unreliable and obtained through torture (Project 39A, 2017).

Similar responses were reported for the importance of forensic evidence (such as fingerprints, DNA profiling, etc.) as well as electronic records (like CCTV footage, call details, etc.), where 81 percent of the respondents found these techniques to be “very important” while 13 percent of them found these to be “somewhat important” in the investigation of cases.

The centrality of confessions for the police was again reinforced with the finding that 70 percent of the police personnel responded that confessions made by the accused persons

are “very important” in cracking a case, while 21 percent said that they are “somewhat important” (**Table 4.9**). Cumulatively, at least nine in every ten police personnel (91%) hold the opinion that confessional statements made by the accused play a significant role in the investigation of cases.

Moreover, the study also reveals that two-thirds of the police respondents (66%) reported that information received from police informants (*mukhbirs, khabis, etc.*) — is “very important” in cracking the cases, while one in five (21%) also found it to be “somewhat important”. This suggests a huge reliance on non-legally sanctioned methods of information-gathering by the police.

The data further shows that more than half of the police respondents (57%) reported lie-detector tests and narcoanalysis⁴ to be “very important” while close to one-fourths of them (22%) said that these tests are “somewhat important” (**Table 4.9**). In May 2010, the Supreme Court laid down that the *involuntary* use of tests including narcoanalysis, polygraph and brain scanning was unconstitutional in *Selvi & Ors. vs. State of Karnataka (2010)*. The court specified that these tests could be administered after consent was given and safeguards provided. The court, unfortunately,

Table 4.9: Seventy percent of police personnel feel that a confessional statement of the accused is very important in cracking a case

“How important are these in cracking a case?” (%)				
	Very important	Somewhat important	Not much important	Not at all important
Recovery items like clothes, dead bodies, weapons, etc. under Section 27, Evidence Act	83	11	4	1
Forensic evidence like fingerprints, DNA profiling	81	13	5	2
CCTV footage and/or call details records	81	13	5	1
Confessional statement of the accused	70	21	6	3
Obtaining information from mukhbirs/informants/khabris	66	21	9	3
Tests like lie-detector and narco analysis	57	22	12	5

Note: All figures are in percentages. Rest did not respond.

Question asked: Of the following items, how important are these in cracking a case - very important, somewhat important, not much important, or not at all important?

⁴ For narcoanalysis, forensic specialists administer drugs like sodium pentothal to accused persons as a means to extract information and responses from them.

did not address that the genuineness of consent by accused persons in custody may be difficult to ascertain. In her seminal study of these techniques and their relationship to law, policing, and violence, Jinee Lokaneeta argues that they were projected as preventing physical torture to gain acceptance; while she cites numerous case studies, mainly of men accused of terrorism, in which narcoanalysis acted as an extension of physical torture to coerce confessions (Lokaneeta, 2020). A medical doctor, Dr. Amar Jesani, has characterised narcoanalysis as a form of “pharmacological” torture, “even if it does not spill blood, break bones and is done in sterile, air-conditioned operation theatres” (Jesani, 2008). Lokaneeta’s and Jesani’s arguments shed considerable doubt on the reliability of these techniques as well as signal that they may be facilitating coercion and torture in custody.

4.6 Conclusion

This chapter brings to light the police’s lack of compliance with constitutional and legal safeguards at the time of arrest and interrogation, as reported by police personnel themselves. Notably, the chapter also draws attention to the police’s reliance on confessions. The failure to comply with procedures, as well as dependence on confessions, leaves scope for police to use torture against accused persons. Notably, the chapter throws up mixed findings on the respondents’ notions of time needed for custodial interrogation.

The reported compliance with nearly all legal mandates for arrest is far from acceptable, with just 41 percent saying that they “always” follow all arrest procedures. As many as 24 percent said that arrest procedures are rarely or never complied with, indicating that police violations during arrest are common in practice.

Police upholding of safeguards at arrest - access to a lawyer, doctor, and judicial magistrate - may also be gravely wanting, going by the chapter’s findings. While acknowledging the lack of legal clarity on when exactly the right

to a lawyer can be enforced, the findings show that most of the police respondents do not believe that access to a lawyer should be given immediately after arrest, which would be the earliest access. It is alarming that a small group of respondents said lawyers are not even permitted in the first hours of police custody, before an arrested person is produced before the magistrate. Only a small percentage of respondents believe that private conversations between lawyers and clients in custody should “always” be allowed, while a notable number think they should never be allowed. It emerged that relating to the feasibility of ensuring two crucial safeguards – taking arrested persons for medical examination and producing them before a judicial magistrate within 24 hours of arrest – only a little more than half the respondents believe it is “always” feasible to ensure these. As stated and which cannot be emphasised enough, the police are to act as the mechanism that provides access to these safeguards for arrested persons. This chapter’s findings reveal that police perceptions are not in line with guaranteeing access to safeguards.

With the backdrop of low compliance with arrest procedures and safeguards, the prevailing views that confessions before police should be made admissible as evidence are very concerning. Similar to previous chapters, these signal police propensities towards unbridled powers for coercive actions.

In a slight departure, the findings on police views on time in police custody came out to be mixed, with a lesser proportion of respondents seeking more time for police custody, but also at least one-third advocating for more time in custody for those accused of serious offences. These are very notable findings of police officers with experience in conducting arrest and interrogation largely advocating for not more than 15 days of police custody and in smaller numbers, even seeking that police custody is reduced. It is equally significant that experienced police personnel do not seek greater time in police custody.

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CHAPTER
05



**Justifying Violence and
Torture in Custody**

Key Findings

- Twenty-two percent police personnel fully agree that for the greater good of the society, it is alright for the police to be violent towards suspects of serious offences. Another 41 percent of the respondents somewhat agree.
- Thirty percent police personnel said that ‘third-degree methods’ are justified towards the accused in serious criminal cases. Nine percent said they are justified in petty offences. IPS officers and those respondents who often conduct interrogations are the most likely to justify the use of third-degree methods.
- Eleven percent of the police personnel feel that hitting/slapping family members of the accused is absolutely justified, 30 percent said that it is sometimes justified.
- A quarter of the respondents (25%) justify slapping “uncooperative” witnesses, while nine percent justify the use of third-degree methods against them..
- Thirty percent of the police personnel have a high propensity to justify torture, another 32 percent have a moderate propensity to justify it. IPS officers are the most likely to have a high propensity to justify torture (34%), as are police officers who often conduct interrogations (37%). One out of two police personnel from Jharkhand (50%) and Gujarat (49%) have a high propensity to justify torture, while those from Kerala (1%) are the least likely to justify it.

CHAPTER

05

Justifying Violence and Torture in Custody

5.1 Introduction

A running thread of this report is that excess use of force continues to be justified despite being prohibited by law. Police themselves justify the use of torture and, as ethnographic research has shown, rationalise violating the law to do so. Wahl (2017) finds police justifications rooted in their perceptions of “justice” and of themselves as “heroes”. Police are “heroes” who fight “evil persons” and often have to “break rules to protect the innocent and punish the guilty”. Khanikar (2018) documented police perceptions that not only are the police the “foundation of society”, but society is dependent on the police “and the fear associated with it” for its survival.

In turn, these perceptions are linked to beliefs that torture is justified for certain crimes, and for certain kinds of people. Wahl found the police identified categories of “hardened criminals”, “militants”, and “terrorists” as those who “should be” treated differently from regular criminals, and justify the use of torture on them (Wahl, 2017). Khanikar pointed to the police views of certain communities as “habitual criminals”; each time a crime is committed, so-called known “bad characters” are rounded up for interrogation, often involving slaps and kicks to recover “evidence” (Khanikar, 2018).

These brief accounts reveal that police perceptions of social identities, and levels of assumed (not proven) criminality, shape and

guide the police’s use of torture and excessive violence, particularly during (though not limited to) interrogation/investigation. This is compounded by the reality that India still lacks a holistic torture prevention law that defines, deters, and punishes the use of torture. Since “torture” is not specifically defined in the Constitution or law, the full scope of acts of torture being physical and/or psychological is neither established nor criminalised. It can be argued that the absence of a comprehensive definition of torture has several far-reaching consequences. Firstly, it leaves room for wide and arbitrary interpretations of what is torture, and importantly what is “not torture”, with no coherence or consensus across the justice system and society at large. In turn, this ambiguity, both conceptually and legally, enables the policing system to continue to accommodate, justify, and perpetuate torture, in myriad forms.

Yet, at the same time, it is not that the law is entirely silent. People who may be subject to police custody, and interrogation or questioning, are guaranteed protection against torture in both the letter and spirit of the law. Arrested persons, or suspects, are constitutionally protected through Article 21 which forbids ill-treatment, abuse, or torture in custody. Police officers (“or any other person in authority”) are prohibited

from pressuring, threatening, or influencing arrested persons to make confessions (Section 182, BNSS, 2023 and Section 22, BSA, 2023). Witnesses, as stakeholders who may assist police investigation, are similarly protected.

With this background, this chapter documents survey findings on the extent to which police justify various levels of coercive and violent techniques, extending to torture, for interrogation/investigation. The underlying aim of this chapter is to empirically collate the extent to which police justify the use of a gamut of methods that may constitute torture and/or “cruel, inhuman or degrading treatment”.¹

The chapter poses questions that cover a range of coercive and violent techniques - from verbal threats to slapping to ‘third-degree’, to torture – set against various factors such as the severity of offences, to assess police justifications for the use of such methods. Importantly, the chapter also assesses the extent to which police believe it is justified to use coercive and violent tactics against non-accused persons who may be part

of investigations, namely family members and witnesses. Lastly, the chapter also captures police perceptions of how frequently they believe that Investigating Officers use coercive or violent techniques in practice.

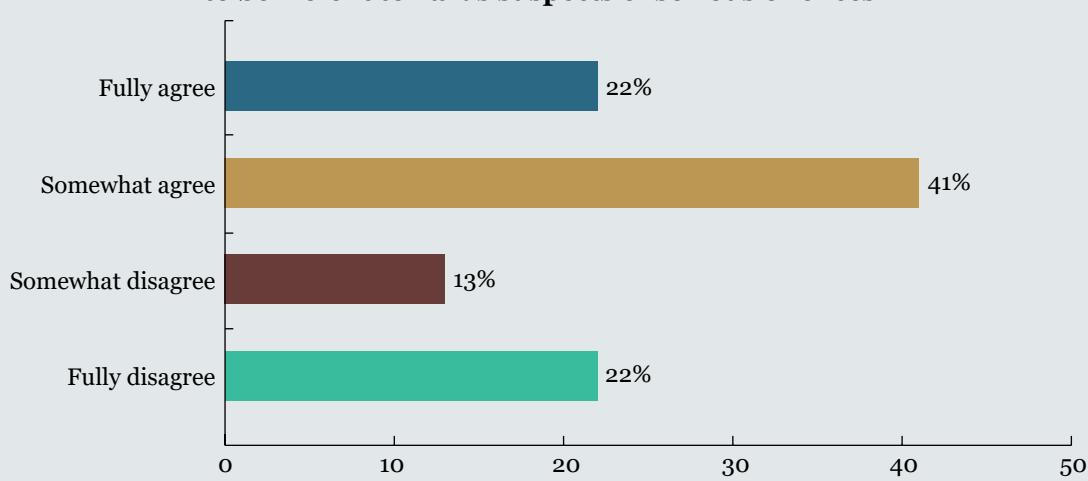
It is important to note that the terms “torture” and “third-degree” were not ascribed any definitions to the respondents while conducting the survey. Their responses are based entirely on their individual, subjective interpretation of what they believe third-degree and torture constitute, and how they understand them.

5.2 Adhering to Legal Procedures or Taking Shortcuts?

This section explores police perceptions of the use of violence compared to the importance of legal procedures during interrogation/investigation to solve cases. Studies and scholarship cited in this report already point to police rationalising violating the law towards

Figure 5.1: Nearly two out of three police personnel feel that it is alright for the police to be violent towards suspects of serious offences for the greater good of the society

“For the greater good of the society, it is alright for the police to be violent towards suspects of serious offences”



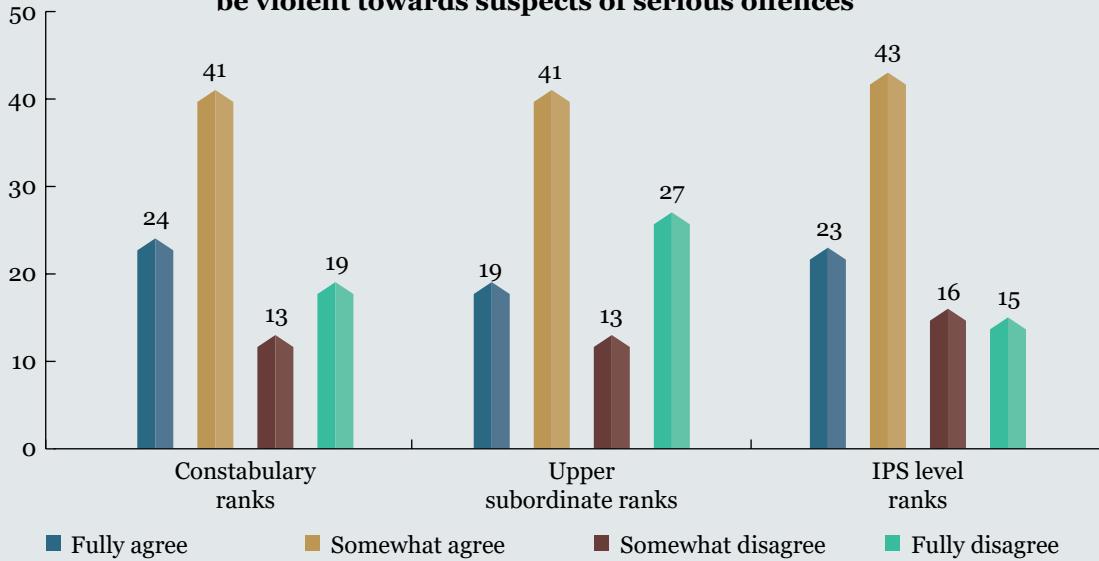
Note: All figures are in percentages. The rest did not respond.

Question asked: Do you agree or disagree with the following statement: “For the greater good of the society, it is alright for the police to be violent towards suspects of serious offences.”

¹ A definitive conceptual base for understanding these terms is the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

Figure 5.2: Constabulary rank and IPS officers most likely to agree that for the greater good of the society, it is alright for the police to be violent towards suspects of serious offences

“For the greater good of the society, it is alright for the police to be violent towards suspects of serious offences”



Note: All figures are in percentages. The rest did not respond.

Question asked: Do you agree or disagree with the following statement: “For the greater good of the society, it is alright for the police to be violent towards suspects of serious offences.”

perceived “results”, linked to police work, and central to the routinisation of torture.

Police personnel were asked their opinions on whether the use of violence against suspects in serious offences was justified for the “greater good of the society”. Nearly two out of three police personnel agreed that for the greater good of the society, it is alright for the police to be violent towards suspects of serious offences – 22 percent agreed strongly while 41 percent agreed moderately (**Figure 5.1**). On the other hand, more than one in five respondents (22%) reported strong disagreement with the statement.

Support for violence against suspected serious offenders remains consistent across ranks. Twenty-four percent of constabulary rank personnel, 23 percent of IPS officers, and 19 percent of upper subordinate personnel strongly agreed with the statement (**Figure 5.2**). On the other hand, more than a quarter of upper subordinate rank personnel (27%) strongly disagreed with the statement that police can be violent towards suspects of serious offences, against 19 percent of constabulary rank and 15

percent of IPS level rank personnel. Notably, across the three levels of ranks, the highest responses to the statement are in the category of “somewhat agree” – 41 percent of constabulary, 41 percent of upper subordinate, and 43 percent of IPS. This shows that the largest number of respondents are choosing to agree – or at best, remain indulgent – indicating an overall consensus towards support for violence against these categories of suspects.

Across states, police support for violence against suspects of serious offences is highest in Rajasthan, with 62 percent police personnel from the state fully agreeing with the statement, followed by Andhra Pradesh (42% fully agreeing). In Bihar, 39 percent fully agree and 43 percent somewhat agree. On the other hand, more than half of the respondents from Kerala (55%) and Tamil Nadu (50%) fully disagreed with the statement (**Table 5.1**).

The police personnel were asked about the importance of following legal procedures, set against solving the case “by any means”, while investigating and interrogating suspected criminals. While 74 percent agree that it

Table 5.1: More than three out of five police personnel from Rajasthan fully agree that for the greater good of the society, it is alright for the police to be violent towards suspects of serious offences

States	“For the greater good of the society, it is alright for the police to be violent towards suspects of serious offences.” (%)			
	Fully agree	Somewhat agree	Somewhat disagree	Fully disagree
Rajasthan	62	22	6	10
Andhra Pradesh	42	35	10	12
Bihar	39	43	7	10
Odisha	36	27	2	35
Jharkhand	23	41	23	13
Tamil Nadu	21	18	7	50
Madhya Pradesh	20	63	8	9
Gujarat	20	47	9	17
West Bengal	19	34	15	23
Karnataka	16	55	21	8
Maharashtra	14	64	13	6
Assam	14	49	13	23
Uttar Pradesh	12	37	11	37
Punjab	10	45	13	31
Nagaland	9	43	30	18
Delhi	9	50	16	25
Kerala	6	19	19	55

Note: All figures are in percentages. The rest did not respond.

Question asked: Do you agree or disagree with the following statement: “For the greater good of the society, it is alright for the police to be violent towards suspects of serious offences.”

is important for the police to follow legal procedures, a significant proportion give credence to solving cases “by any means”. As many as 24 percent of police personnel feel that it is more important to solve a case by any means than being strictly bound by legal procedures (**Figure 5.3**).

Across states, police personnel from Andhra Pradesh, Tamil Nadu and Karnataka expressed the highest levels of disregard for legal procedures, while those from Odisha, Kerala and Nagaland are most likely to value it. Nearly half (46%) of the personnel belonging to Andhra Pradesh consider solving a case to be more important than adhering to legal procedures. Following closely behind, Tamil Nadu (45%) has the second-highest proportion of personnel of this category followed by Karnataka (43%) (**Table 5.2**).

5.3 Nature of Offence and Acceptability of Violent Tactics against Suspects

The survey asked the police respondents how justified certain coercive, violent acts are “towards the accused” in “solving” criminal cases. This set of questions posed a range of acts - verbal abuse or threats, slapping and third-degree methods - to use in interrogating suspects in categories of minor to serious offences.

The data reveals that nearly half (49%) of the personnel feel that verbally abusing or threatening the accused in minor offences such as theft is justified, while nine percent feel that even third-degree methods are justified in such cases (**Table 5.3**). When it comes to serious criminal cases, support for all forms of violent acts increases. Nearly a third of the respondents

Figure 5.3: One-fourth of the police personnel would prefer to solve a case by any means rather than strictly follow legal procedures



Note: All figures are in percentages. The rest did not respond.

Question asked: Now I am going to read out two statements, please tell me which statement you agree with the most?

Statement 1: "While investigating and interrogating suspected criminals, it is always important for the police officer to follow the legal procedures."

Statement 2: "While investigating and interrogating suspected criminals, it is more important for the police officer to solve the case by any means rather than strictly following the legal procedures."

Table 5.2: Police personnel from Andhra Pradesh are most likely to agree with solving a case by any means rather than strictly following legal procedures

States	Which of the following statements do you agree with the most? (%)	
	"While investigating and interrogating suspected criminals, it is always important for the police officer to follow the legal procedures."	"While investigating and interrogating suspected criminals, it is more important for the police officer to solve the case by any means rather than strictly following the legal procedures."
Andhra Pradesh	53	46
Tamil Nadu	53	45
Karnataka	56	43
Madhya Pradesh	66	34
Delhi	66	33
Bihar	68	32
Jharkhand	68	31
Maharashtra	70	24
Punjab	81	19
Gujarat	80	18
Uttar Pradesh	83	16
West Bengal	84	15
Assam	83	14
Rajasthan	86	13
Nagaland	90	9
Kerala	87	8
Odisha	93	7

Note: All figures are in percentages. The rest did not respond.

Question asked: Now I am going to read out two statements, please tell me which statement you agree with the most?

Statement 1: "While investigating and interrogating suspected criminals, it is always important for the police officer to follow the legal procedures."

Statement 2: "While investigating and interrogating suspected criminals, it is more important for the police officer to solve the case by any means rather than strictly following the legal procedures."

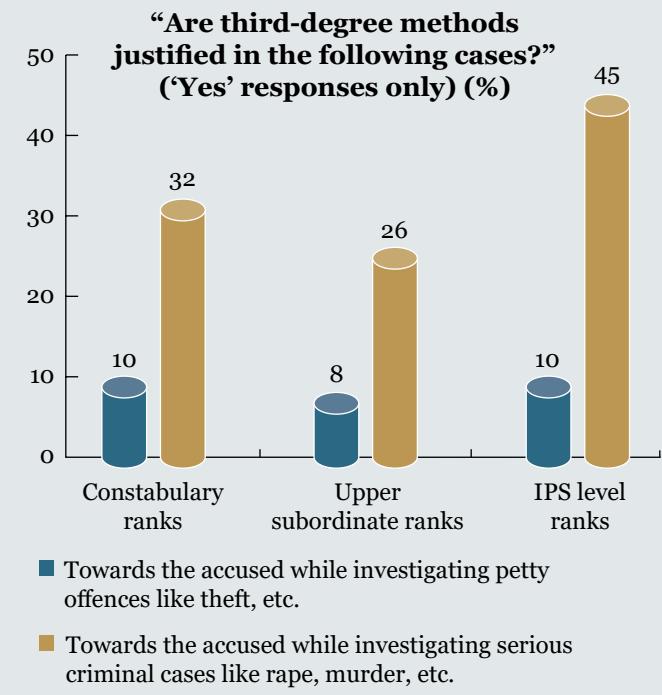
Table 5.3: Thirty percent police personnel justify the use of third-degree methods against the accused in serious criminal cases

Nature of offence	“Are the following methods justified?” (‘Yes’ responses only) (%)		
	Verbal abuse or threats	Actions like slapping, etc.	Third-degree methods
Towards the accused while investigating petty offences like theft, etc.	49	32	9
Towards the accused while investigating serious criminal cases like rape, murder, etc.	55	50	30

Note: All figures are in percentages. The rest either said that the above methods were not justified or did not respond.

Question asked: We often hear that the police use various tactics to solve criminal cases, such as verbal abuse, threats, physical force such as slapping, etc. or third-degree methods. In your opinion, are these practices justified towards the following?

Figure 5.4: IPS officers are the most likely to justify the use of third-degree methods against the accused in petty offences as well as serious criminal cases



Note: All figures are in percentages. The rest either said that third-degree methods were not justified or did not respond.

Question asked: We often hear that the police use various tactics to solve criminal cases, such as verbal abuse, threats, physical force such as slapping, etc. or third-degree methods. In your opinion, are third-degree methods justified towards the accused of petty offences and serious criminal cases?

(30%) feel that third-degree methods against the accused in serious criminal cases such as rapes and murders are justified, half of the respondents (50%) justify actions such as slapping the accused in such cases, and more than half (55%) justify verbal abuse or threats against the accused of serious offences. These

responses, besides manifesting disregard for procedure, also show that there is a propensity to assume guilt of the ‘accused’ or ‘suspects’.

Support for the use of third-degree methods against accused persons across various offences persists across ranks. When the responses are disaggregated by rank, we find that respondents of IPS-level ranks are the most likely to support the use of torture across different categories of cases - 10 percent justify it against an accused in petty offences and 45 percent justify it against an accused in serious criminal cases (Figure 5.4). Constabulary ranks form the second bank of support for such methods. One in ten belonging to the constabulary ranks expressed that third-degree methods are justified while dealing with petty offences, while one-third (32%) justify the use of third-degree methods while investigating serious criminal cases like rape, murder, etc. Officers of upper subordinate ranks are only slightly less likely to support the use of third-degree methods. Eight percent of the personnel of upper subordinate ranks felt that third-degree is justified in petty offences, while a little more than a quarter (26%) felt that it is justified in serious crimes.

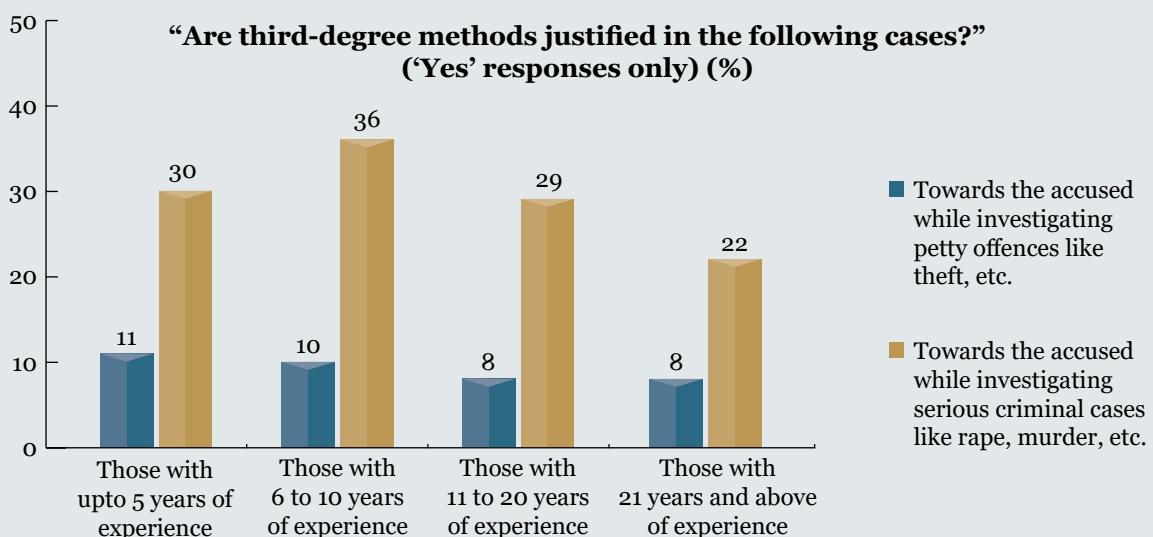
When seen against years of policing experience, the findings emerge that more experienced police personnel reported slightly less support for the use of third-degree methods in both minor offences as well as serious criminal cases. Amongst officers with more than 10 years of experience, eight percent support third-degree in petty offences, against 11 percent amongst those with less than five years of service (Figure 5.5). In serious criminal cases, 22

percent of the officers with more than 20 years of experience said that third-degree methods are justified, against 36 percent of those with six to 10 years of experience.

The trends shown above are reinforced on further analysing the question based on respondents' actual involvement in conducting interrogation. It was found that police officers who frequently conduct interrogations are more likely to justify the use of third-degree methods against the accused in both petty

offences as well as serious criminal cases. Eleven percent of those who "often" conduct interrogations feel that the use of third-degree methods against the accused is justified in petty offences, against six percent of those who never conduct interrogations. Similarly, one-third (33%) of the officers who frequently conduct interrogations justify the use of third-degree methods against the accused in serious criminal cases, against 20 percent of those who reported never conducting interrogations (Table 5.4).

Figure 5.5: More experienced police personnel less likely to support the use of third-degree methods in interrogation



Note: All figures are in percentages. The rest either said that third-degree methods were not justified or did not respond.

Question asked: We often hear that the police use various tactics to solve criminal cases, such as verbal abuse, threats, physical force such as slapping, etc. or third-degree methods. In your opinion, are third-degree methods justified towards the accused of petty offences and serious criminal cases?

Table 5.4: Police officers who frequently conduct interrogation of suspects are the most likely to justify the use of third-degree methods against the accused

Frequency of conducting interrogations	"Are third-degree methods justified in the following cases?" ('Yes' responses only) (%)	
	Towards the accused while investigating petty offences like theft, etc.	Towards the accused while investigating serious criminal cases like rape, murder, etc.
Those who often conduct interrogations	11	33
Those who sometimes conduct interrogations	9	29
Those who rarely conduct interrogations	5	24
Those who never conduct interrogations	6	20

Note: All figures are in percentages. The rest either said that third-degree methods were not justified or did not respond.

Question asked: We often hear that the police use various tactics to solve criminal cases, such as verbal abuse, threats, physical force such as slapping, etc. or third-degree methods. In your opinion, are third-degree methods justified towards the accused of petty offences and serious criminal cases?

Question asked: How frequently do you conduct interrogation of suspects – often, sometimes, rarely, or never?

5.4 Acceptability of Violent Tactics against Family Members and Witnesses

The police's belief in the utility of violence, exerted in practice by violating the law, is strongly reflected in the findings on the acceptability of violent tactics against two groups who are not accused persons – namely, family members of suspects, and witnesses. Ordinarily, these should be seen as stakeholders who can assist police investigation. However, cumulatively, two in five of the police personnel justify "hitting or slapping" the family members of absconding suspects if they do not "cooperate", of which 11 percent said that it is absolutely justified and another 30 percent said that it is sometimes justified (**Figure 5.6**).

This is a worrying finding, considering that documentation of custodial violence indicates that the police is habituated to subjecting family members to violence and illegal detention. "Hostage-taking" of family members is a

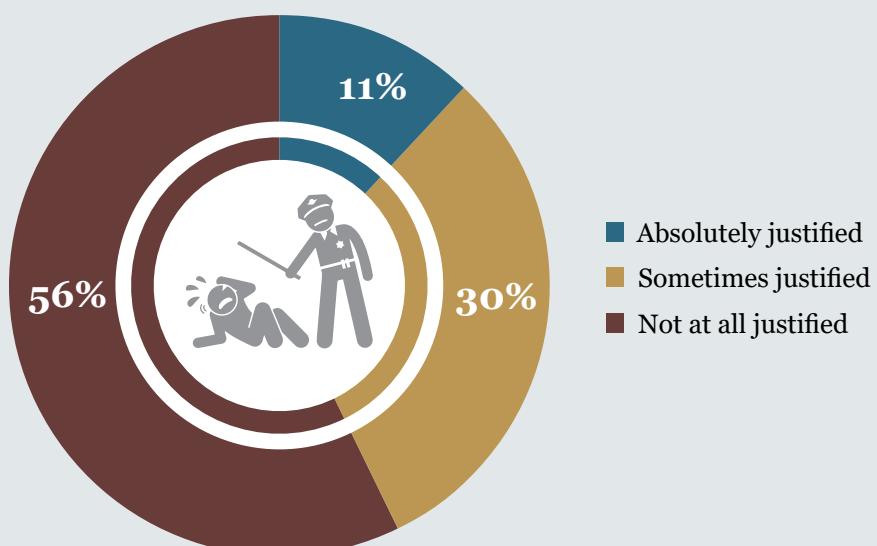
recurrent police strategy to locate or pin down suspects (Human Rights Watch, 2009).

Further, even more alarmingly, the police personnel who frequently conduct interrogations are twice as likely to say that the use of physical force against family members of an accused is absolutely justified, compared to those who never conduct interrogations. While six percent of those who never conduct interrogations said that it is completely justified, among those who often conduct interrogations, the proportion went up to 12 percent (**Table 5.5**). On the other hand, 57 percent of those who often conduct interrogations said that physical force against family members of the accused is never justified. Among those who never conduct interrogations, 64 percent felt so.

Further, nearly one in every ten police personnel (9%) justify the use of third-degree methods against an "uncooperative" witness, a quarter (25%) justify actions such as slapping, etc. and 37 percent justify verbal abuse or threats against them (**Figure 5.7**).

Figure 5.6: Eleven percent of police personnel feel that hitting/slapping the family members of absconding accused is absolutely justified

"How justified would it be to use physical force like hitting/slapping against his/her family members if they do not answer police questions properly?"



Note: All figures are in percentages. The rest did not respond.

Question asked: If an accused in a serious crime is absconding, how justified would it be to use physical force like hitting/slapping against his/her family members if they do not answer police questions properly?

Table 5.5: Police officers who frequently conduct interrogations are more likely to justify the use of physical force against the family members of an accused

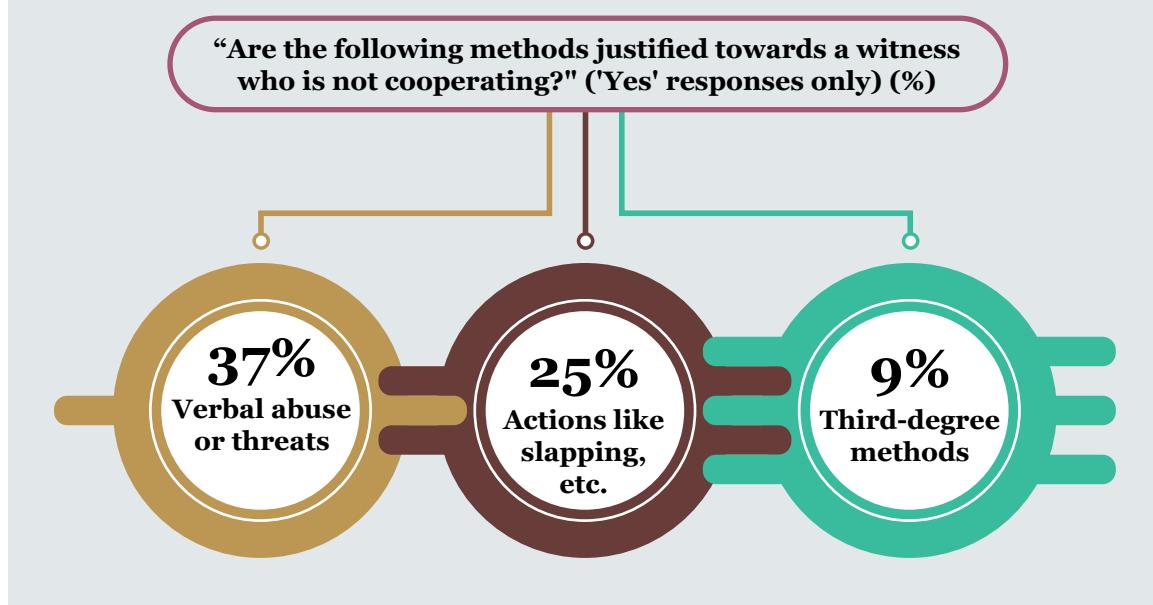
Frequency of conducting interrogations	"How justified would it be to use physical force against family members of an accused if they do not answer police questions properly?" (%)		
	Absolutely justified	Somewhat justified	Not at all justified
Those who often interrogate suspects	12	28	57
Those who sometimes interrogate suspects	12	30	53
Those who rarely interrogate suspects	8	35	54
Those who never interrogate suspects	6	27	64

Note: All figures are in percentages. The rest did not respond.

Question asked: If an accused in a serious crime is absconding, how justified would it be to use physical force like hitting/slapping against his/her family members if they do not answer police questions properly? Yes, absolutely justified; Yes, somewhat justified; Not at all justified.

Question asked: How frequently do you conduct interrogation of suspects?

Figure 5.7: Almost one in every ten police personnel justify the use of third-degree methods against an "uncooperative" witness



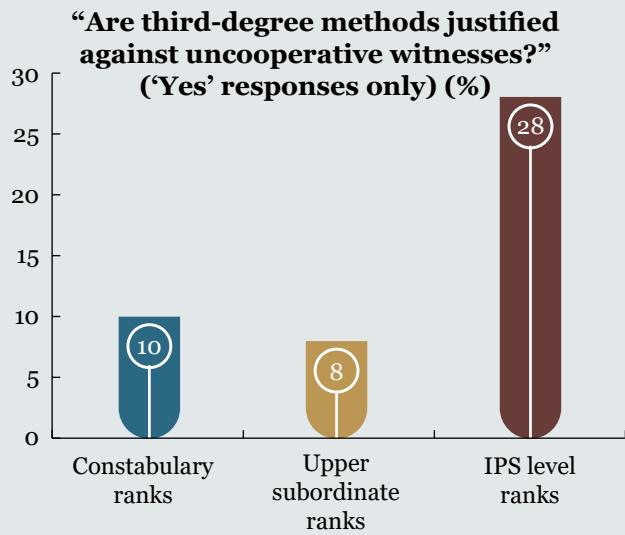
Note: All figures are in percentages. The rest either said that the above methods were not justified or did not respond.

Question asked: We often hear that the police use various tactics to solve criminal cases, such as verbal abuse, threats, physical force such as slapping, etc. or third-degree methods. In your opinion, are these practices justified towards a witness who is not cooperating?

When the responses to the justification of third-degree methods against "uncooperative" witnesses are disaggregated across the ranks of police respondents, it is seen that IPS-level

personnel are the most likely (28%) to justify the use of third-degree methods against witnesses, while the upper subordinate officers (8%) are the least likely to do so (Figure 5.8).

Figure 5.8: IPS officers are the most likely to justify the use of third-degree methods against an "uncooperative" witness



Note: All figures are in percentages. The rest either said that third-degree methods were not justified or did not respond.

Question asked: We often hear that the police use various tactics to solve criminal cases, such as verbal abuse, threats, physical force such as slapping, etc. or third-degree methods. In your opinion, are third-degree methods justified towards a witness who is not cooperating?

The law is designed to protect witnesses against police violence in several ways. Witnesses are to be summoned to a police station for questioning only in writing (Section 179, BNSS, 2023); they cannot be made to sign their statements to the police (Section 181, BNSS, 2023), and the law forbids the police from tampering with or influencing a witness' statement, or from

threatening a witness in any way [Section 182(1), BNSS].

5.5 Police Views on Whether Torture is Necessary and Acceptable

In response to questions focused specifically on "torture" with the deliberate use of the term, a significant proportion of the police personnel responded with strong support for its use in interrogation, across various categories of crimes. While the support was highest in cases of crimes against national security like terrorism cases (42% strongly supported the use of torture in such cases), more than a third (34%) also strongly agreed with torture in cases of rape or sexual assault and in serious violent crimes like murder (**Table 5.6**). Similarly, 28 percent strongly agreed with the use of torture in cases involving history sheeters. While a relatively lower proportion of the police personnel supported the use of torture in cases of theft, even in this category, one out of five police personnel (20%) strongly agreed with it, while another 35 percent somewhat agreed with the use of torture in major theft cases, cumulatively making it more than half of the police personnel who justify the use of torture in theft cases.

The views of the respondents on the use of torture in the five categories of crimes were

Table 5.6: More than two in five police personnel strongly believe that torture is necessary in cases of crimes against national security, one in five strongly support its use in major theft cases

"Is torture necessary and acceptable to gain information in the following kinds of cases?" (%)				
	Strongly agree	Somewhat agree	Somewhat disagree	Strongly disagree
Crimes against national security like terrorism cases	42	26	12	17
Rape or sexual assault cases	34	30	15	20
Serious violent crimes like murder	34	30	13	21
Cases against history-sheeters	28	29	16	22
Major theft cases	20	35	15	27

Note: All figures are in percentages. The rest did not respond.

Question asked: To what extent do you agree that torture is sometimes necessary and acceptable to gain information in the following kinds of cases - strongly agree, somewhat agree, somewhat disagree, or strongly disagree?

Table 5.7: Police personnel from Gujarat are most likely to strongly support torture, those from Kerala least likely to do so

States	“To what extent is torture sometimes necessary and acceptable to gain information?”			
	High support	Moderate support	Low support	Very low support
Gujarat	63	17	9	10
Tamil Nadu	56	35	7	2
Andhra Pradesh	54	31	9	6
Rajasthan	54	36	8	1
Jharkhand	53	32	7	9
Assam	46	36	1	17
Odisha	44	32	10	14
Bihar	40	49	9	2
Karnataka	38	38	19	5
Maharashtra	38	48	9	6
Madhya Pradesh	36	32	25	6
Uttar Pradesh	36	25	18	21
Delhi	35	26	25	15
Punjab	24	28	19	28
Nagaland	20	50	28	2
West Bengal	15	48	20	17
Kerala	3	8	17	72

Note: All figures are in percentages. Please refer to Appendix 5 to see how this index of support for torture across various categories of crimes was created.

Question asked: To what extent do you agree that torture is sometimes necessary and acceptable to gain information in the following kinds of cases - strongly agree, somewhat agree, somewhat disagree, or strongly disagree: major theft cases, rape or sexual assault cases, serious violent crimes like murder, crimes against national security like terrorism cases, and cases against history-sheeters?

merged together to form an index which was disaggregated by states. It was found that the use of torture is most strongly endorsed by police personnel from Gujarat (63% indicated high support) (**Table 5.7**). It is pertinent to note that the highest number of custodial deaths (14) in 2022 were reported in Gujarat (National Crime Records Bureau, 2022). Further, more than half the respondents from Tamil Nadu (56%), Andhra Pradesh (54%), Rajasthan (54%) and Jharkhand (53%) also displayed high levels of support for the use of torture across different categories of crimes. On the other hand, police personnel from Kerala were the least likely to support the use of torture across different categories of crimes, with 72 percent reporting very low support for the use of torture, against just three percent who strongly supported the use of torture.

When presented with a hypothetical scenario where a minor girl has been kidnapped and the suspect is not cooperating, there was considerable support for the use of third-degree methods amongst the police personnel surveyed, with nearly one in five (19%) saying that it would be absolutely justified and another 45 percent saying that it would be somewhat justified (**Figure 5.9**). On the other hand, about one-third (32%) were of the opinion that it would not be justified at all.

Further, more than one in five police personnel (22%), who “often” conduct interrogation of suspects, are likely to strongly justify the use of third-degree methods against an “uncooperative” accused in a case of kidnapping (**Figure 5.10**). This proportion reduces to 14 percent for those who are “never” involved in interrogation.

Figure 5.9: Nearly two-thirds of the police personnel feel that third-degree methods are justified to deal with an uncooperative accused in case of kidnapping

“If a minor girl is kidnapped and the suspect is not cooperating, how justified is it to use third-degree to locate the girl?”



Note: All figures are in percentages. The rest did not respond.

Question asked: Suppose a minor girl has been kidnapped, and the suspect is not cooperating. In such a situation, how justified is it to use third-degree to locate the girl?

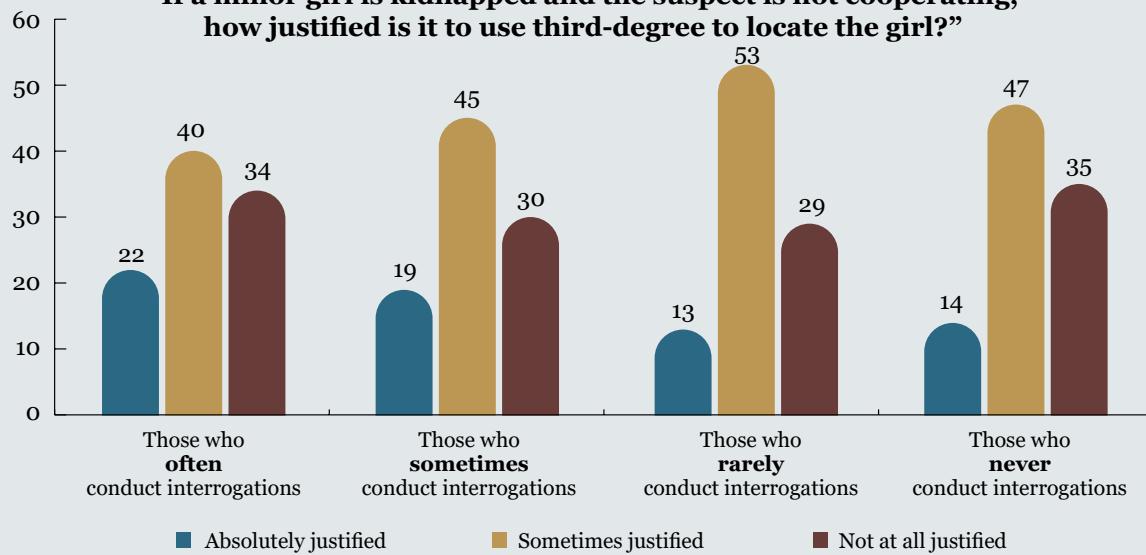
The findings in this sub-section reinforce the troubling trends being found in this chapter. In response to each of these various questions on the necessity of torture, the cumulative responses in support of torture are higher than the responses which reject its use.

5.6 Use of Torture and Coercive Interrogation Techniques by Investigating Officers (IOs)

Police personnel reported their views on how “frequently” IOs use various types of coercive and violent methods to deal with “uncooperative accused”. The methods posed a range, from threats, slapping or using “light force”, sitting in “murga”² position, keeping a person hungry and thirsty, to using third-degree. Three out of five police personnel said that they believe IOs frequently threaten the person — 26 percent said this happens many times, while 34 percent said it happens sometimes (Table 5.8). Further, 18 percent police personnel hold

Figure 5.10: Police officers who frequently conduct interrogations are more likely to justify the use of third-degree methods against a person accused of kidnapping

“If a minor girl is kidnapped and the suspect is not cooperating, how justified is it to use third-degree to locate the girl?”



Note: All figures are in percentages. The rest did not respond.

Question asked: Suppose a minor girl has been kidnapped, and the suspect is not cooperating. In such a situation, how justified is it to use third-degree to locate the girl?

Question asked: How frequently do you conduct interrogation of suspects – often, sometimes, rarely, or never?

² “Murga” is a stress position in which a person is made to squat, loop their arms behind their knees and hold their earlobes. It is a common form of corporal punishment across South Asia.

Table 5.8: More than a quarter of the police personnel said that IOs frequently use third-degree methods to obtain information in serious offences

"In your opinion, how frequently do Investigating Officers have to use the following techniques to deal with an uncooperative accused?" (%)				
	Many times	Sometimes	Once or twice	Never
Threatening the person	26	34	14	25
Slapping/using light force against the person (pushing, etc.)	18	28	19	33
Using third-degree to obtain information in serious offences (beating on soles, applying red chilli powder to the body parts, suspension of the body)	11	16	14	52
Making the person sit in <i>murga</i> position	9	24	18	46
Keeping a person hungry and thirsty for some time	7	16	14	59

Note: All figures are in percentages. The rest did not respond.

Question asked: In your opinion, how frequently do Investigating Officers have to use the following techniques to deal with an uncooperative accused – many times, sometimes, once or twice, or never?

the view that IOs often slap and use light force such as pushing etc., while more than a quarter (28%) said this happens sometimes. It is even more concerning that respondents believe “third-degree methods” are frequently used to obtain information in serious offences. Eleven percent of the personnel said that such extreme forms of violence are inflicted many times while 16 percent said sometimes. Further, one in three respondents said that IOs frequently make an “uncooperative accused” sit in “*murga*” position – nine percent said many times, while nearly a quarter (24%) said sometimes. Nearly one in every four of the respondents (7% “many times” and 16% “sometimes”) believe IOs frequently keep an “uncooperative accused”

hungry or thirsty, in complete violation of legal rights and police rules across states, as well as the United Nations Convention Against Torture with regard to cruel, inhuman and degrading treatment.

The responses were further analysed after disaggregating them based on how frequently respondents reported conducting interrogations. Police personnel who frequently conduct interrogations are five times more likely to say that IOs use third-degree methods “many times” to obtain information in serious offences, compared to those who never conduct interrogations (**Figure 5.11**). Amongst those who said they conduct interrogations often, 15

Table 5.9: Police officers who frequently conduct interrogations are more likely to say that IOs have to slap or use light force against an uncooperative accused, compared to those who never conduct interrogations

Frequency of conducting interrogations	"How frequently do IOs have to slap or use light force against the person (pushing, etc.) to deal with an uncooperative accused?" (%)			
	Many times	Sometimes	Once or twice	Never
Those who often conduct interrogations	23	24	15	37
Those who sometimes conduct interrogations	16	35	19	28
Those who rarely conduct interrogations	12	27	29	29
Those who never conduct interrogations	9	25	26	37

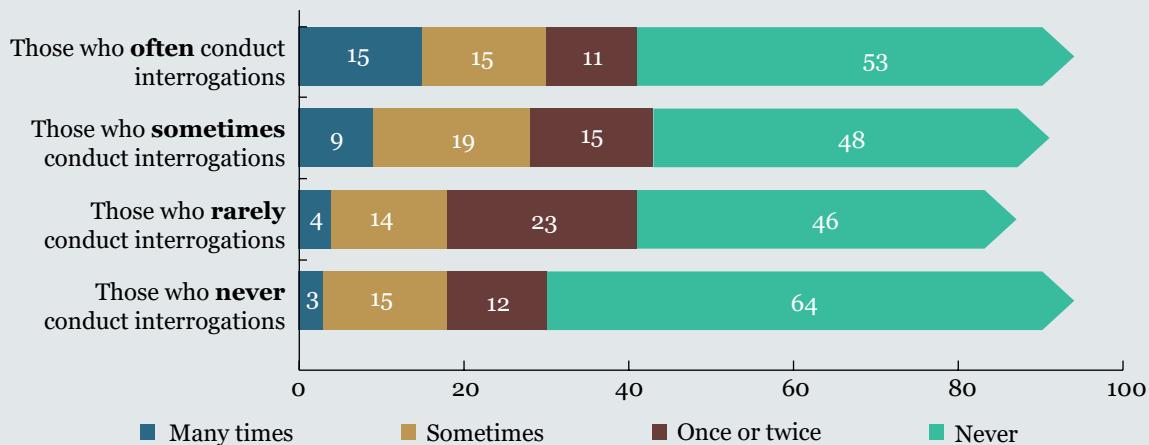
Note: All figures are in percentages. The rest did not respond.

Question asked: In your opinion, how frequently do Investigating Officers have to use the following techniques to deal with an uncooperative accused- Slapping/using light force against the person (pushing, etc.) – many times, sometimes, once or twice, or never?

Question asked: How frequently do you conduct interrogation of suspects – often, sometimes, rarely, or never?

Figure 5.11: Police officers who frequently conduct interrogations are five times more likely to say that third-degree methods are used many times

“How frequently do IOs have to use third-degree to obtain information in serious offences (beating on soles, applying red chilli powder to the body parts, suspension of the body)?”



Note: All figures are in percentages. The rest did not respond.

Question asked: In your opinion, how frequently do Investigating Officers have to use the following techniques to deal with an uncooperative accused-Using third-degree to obtain information in serious offences (beating on soles, applying red chilli powder to the body parts, suspension of the body) – many times, sometimes, once or twice, or never?

Question asked: How frequently do you conduct interrogation of suspects – often, sometimes, rarely, or never?

percent said that IOs use third-degree methods “many times” to obtain information in serious offences, while another 15 percent said they use them “sometimes”. On the other hand, just three percent of those who never conduct interrogations said third-degree methods are used “many times” to obtain information in serious cases (Figure 5.11).

Similarly, police officers who frequently conduct interrogations are more likely to believe that IOs regularly use light force against an accused. Twenty-three percent of those who often conduct interrogations said that it happens “many times”; while nine percent of those who never conduct interrogations said that IOs have to slap or use light force against an accused “many times” (Table 5.9).

5.7 Index on Police’s Propensity to Justify Torture

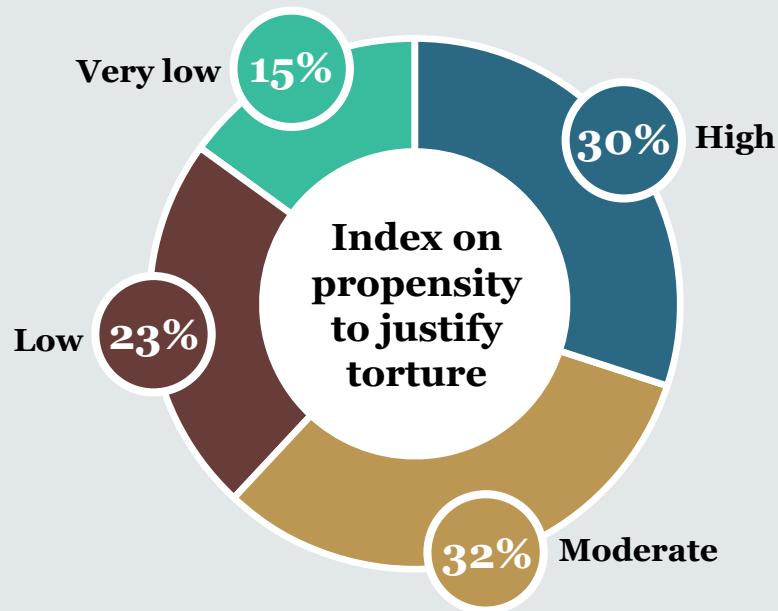
To assess the overall propensity of the police to use torture, an index was created by combining various questions on the use of torture and third-degree, which revealed that thirty percent of the police respondents have high propensity

to justify torture, while one in three (32%) moderately justify the use of torture (Figure 5.12). Nearly a quarter of the personnel (23%) have low propensity to justify torture, and 15 percent have very low inclination towards justifying torture.

Upon disaggregating these responses by rank, the findings reveal that IPS-level rank officials have the highest propensity to justify torture (34%), followed by constabulary rank personnel (32%) and lastly upper subordinate rank personnel (26%) (Figure 5.13). While the upper subordinate respondents are relatively the least likely to justify torture, even so, more than one-fourth of them reported a high propensity to justify torture. Despite the fact that IPS officers receive the most training on all aspects of policing, including on torture prohibition, they are the most likely to support using torture. Being the senior-most in the hierarchy, it is worrying that their opinions may influence and feed into the culture of policing at the local level.

Consistent with trends among findings in this chapter, police officers who often interrogate

Figure 5.12: Thirty percent police personnel have a high propensity to justify torture



Note: All figures are in percentages. Please refer to Appendix 5 to see how the index was created.

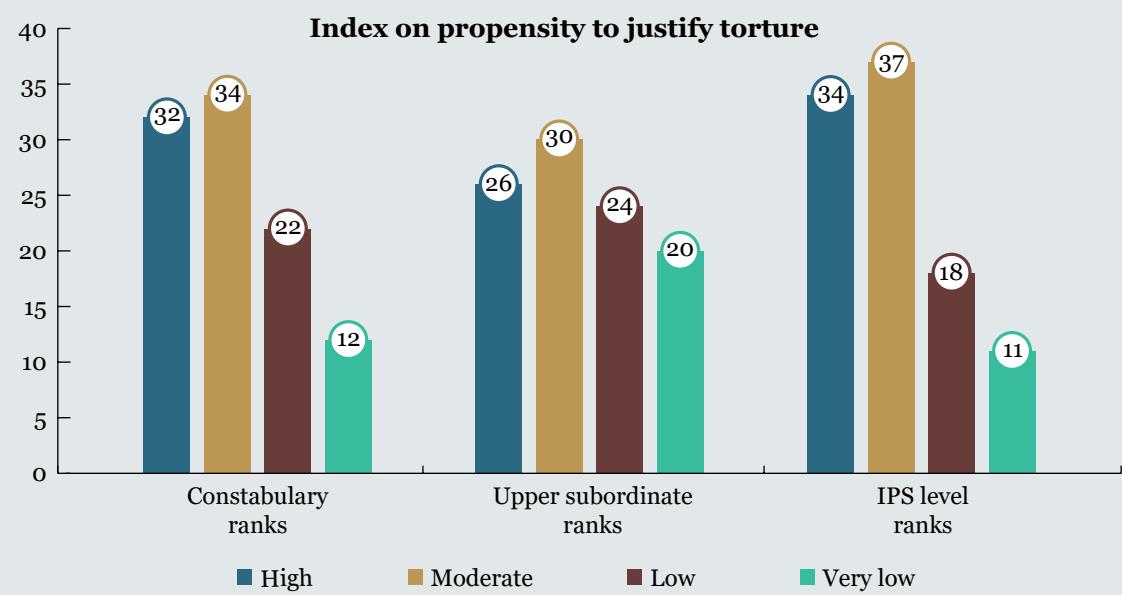
Question asked: We often hear that the police use various tactics to solve criminal cases. In your opinion, are third-degree methods justified – a) towards the accused while investigating petty offences like theft, etc. b) towards the accused while investigating serious criminal cases like rape, murder, etc. c) towards a witness who is not cooperating?

Question asked: To what extent do you agree that torture is sometimes necessary and acceptable to gain information in the following kinds of cases - strongly agree, somewhat agree, somewhat disagree, or strongly disagree: major theft cases, rape or sexual assault cases, serious violent crimes like murder, crimes against national security like terrorism cases, and cases against history-sheeters?

Question asked: Suppose a minor girl has been kidnapped, and the suspect is not cooperating. In such a situation, how justified is it to use third-degree to locate the girl?

Question asked: In your opinion, how frequently do Investigating Officers have to use third-degree to obtain information in serious offences to deal with an uncooperative accused – many times, sometimes, once or twice, or never?

Figure 5.13: One-third IPS officers have a high propensity to justify torture



Note: All figures are in percentages. Please refer to Appendix 5 to see how the index was created.

Table 5.10: Thirty seven percent of the police officers who often conduct interrogations have a high propensity to justify using torture

Frequency of conducting interrogations	Index on propensity to justify torture			
	High	Moderate	Low	Very low
Those who often conduct interrogations	37	26	19	18
Those who sometimes conduct interrogations	28	35	24	13
Those who rarely conduct interrogations	19	40	28	13
Those who never conduct interrogations	16	40	28	16

Note: All figures are in percentages. Please refer to Appendix 5 to see how the index was created.

Table 5.11: Police personnel from Jharkhand and Gujarat have the highest propensity to justify torture, and those from Kerala have the least

States	Index on propensity to justify torture			
	High	Moderate	Low	Very low
Jharkhand	50	32	9	9
Gujarat	49	25	15	11
Rajasthan	45	37	16	2
Andhra Pradesh	44	37	13	6
Assam	40	25	18	17
Bihar	40	46	12	2
Madhya Pradesh	37	32	26	5
Tamil Nadu	35	39	22	4
Odisha	35	36	16	13
Karnataka	34	43	18	5
Uttar Pradesh	22	22	34	22
Maharashtra	20	46	25	9
Delhi	18	39	25	18
Punjab	15	25	30	30
West Bengal	13	16	47	24
Nagaland	8	44	41	7
Kerala	1	6	20	73

Note: All figures are in percentages. Please refer to the Appendix 5 to see how the index was created.

suspects are significantly more inclined towards the justification of torture and third-degree, compared to those who never conduct interrogations. Among those who never conduct interrogations of suspects, 16 percent have a high propensity to justify torture, but this figure goes up to 37 percent when it comes to those who often interrogate suspects (**Table 5.10**). Among those who sometimes conduct interrogations, a notable 28 percent have a high propensity to justify torture.

On analysing the responses across states, it emerged that half of the police personnel from Jharkhand (50%) and Gujarat (49%) exhibited a high propensity towards the justification of torture, followed closely by Rajasthan (45%) and Andhra Pradesh (44%). In contrast, just one and eight percent respondents from Kerala and Nagaland respectively had a high tendency to justify torture. In Kerala, nearly three-quarters of the respondents (73%) reported very low propensity to use or justify torture,

which stands out in sharp contrast to all other states (**Table 5.11**).

5.8 Conclusion

Overall, this chapter presents alarming findings. It provides empirical evidence, across each subsection, that the police respondents support the use of violence and torture in many ways. The chapter finds that thirty percent of police respondents have a high propensity to justify torture, while one in three (32%) are moderately inclined towards torture. It also shows that the top police leadership of IPS officers in almost all states have a high propensity towards justifying the use of torture. The findings also shine a spotlight on Kerala and Nagaland as showing the least support for torture, while Gujarat, Jharkhand and Tamil Nadu come out the most problematic. Police personnel from Kerala particularly were the least likely to support the use of torture across different categories of crimes, and also reported very low propensity to justify torture in sharp contrast to all other states.

In justifying violence and torture against accused persons in both minor and serious cases, the respondents reveal that they are not inclined to limit, or be restrained, in their use. Suspects of serious offences are most vulnerable

with nearly two out of three police personnel agreeing that for the greater good of society, police can, or needs to be violent towards them.

The chapter finds that the police respondents justify violent acts such as hitting and slapping family members and witnesses, two stakeholders who are not even crime accused and are meant to be seen as assisting police investigation. Nine percent justify the use of third-degree methods against an “uncooperative” witness.

With only a few exceptions, this chapter also shows the trend that police officers who often conduct interrogation of suspects are significantly more inclined towards the use of torture and third-degree. This is consistent with the reality of how torture and violence in custody are perpetrated.

These findings provide empirical evidence that police justify and unreservedly support the use of torture. This in turn reinforces how distant the legal prohibition of torture is from actual policing inclinations and practices. These findings draw attention to the lack of sensitisation of the constabulary and upper middle ranks, but equally it draws attention to the role played by IPS level officers who too do not seem to be conscientious in following legal procedures and constitutional safeguards.

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CHAPTER
06



Accountability for Torture: Practices, Challenges and Possibilities

Police use lathi charge against civilians (3rd January, 1993. New Delhi).
Credits: Hindustan Times

Key Findings

- Police overwhelmingly believe that they should be allowed to arrest and detain suspects without court investigation – 28 percent strongly agree and 41 percent somewhat agree. Those who often conduct arrests are the most likely to hold this opinion.
- Forty-two percent police personnel said that there is nothing to celebrate about encounter killings, while 20 percent feel that celebrating encounter killings is a good boost to the morale of the police force.
- Upper subordinate rank personnel (42%) are most likely to say that it should always be mandatory for a police official witnessing custodial torture to report it, followed by constabulary rank personnel (36%), while IPS officers (23%) are the least likely to agree that it should be mandatory.
- Four out of five police personnel (44% “always” and 36% “sometimes”) said that junior police personnel would feel comfortable complaining against their seniors for the use of violence if they have legal protection.
- Nearly three out of four police personnel feel that India needs a separate law against torture. Thirty-four percent strongly agree while 38 percent somewhat agree.
- An overwhelming majority of the police personnel believe that training on human rights (79%), prevention of torture (71%) and evidence-based interrogation techniques (79%) is very important. Among the respondents with a high propensity to justify torture, 70 percent feel that training on prevention of torture is very important.

CHAPTER 06

Accountability for Torture: Practices, Challenges and Possibilities

6.1 Introduction

The routine occurrence of torture by the police goes hand in hand with their lack of accountability. While this phenomenon is not unique to India, the findings of this report indicate a strong resistance to upholding systemic safeguards and restricting the powers of the police. Speaking to the United Nations (UN) General Assembly in October 2021 to present a report on accountability for torture and ill-treatment, the former UN Special Rapporteur on Torture, Nils Melzer, pointed to a “persistent accountability gap for torture and ill-treatment worldwide, caused by normative, institutional and procedural shortcomings, as well as by systematic denial, deliberate obstruction and purposeful evasion” (Melzer, 2021). As much as the absence of accountability betrays victims of torture, it allows policing to remain mired in illegality and brutality - evidenced by police beliefs and data cited in previous chapters.

Best practices indicate that robust accountability for torture necessitates independent investigation, redress and rehabilitation. It also requires continuous preventive and corrective measures such as reforming police practices (Report of the UN Special Rapporteur on Torture, 2021). Victims and witnesses who complain of torture must be ensured compensation, rehabilitation,

and protection from reprisal. Alongside legal necessities, meaningful accountability requires an institutional shift towards a policing culture that does not valorise violent and illegal methods, and genuinely abides by systemic checks and balances. This would require, aside from a specific torture prevention law, revising police organisational standards, processes, and training to be firmly grounded in an anti-torture framework.

The UN Convention Against Torture provides practical measures towards this. Article 10 asks States to ensure that “education” on torture prohibition is “fully included” in the training of police and other public authorities involved in detention. Article 11 calls for “systematic review” of “interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons” towards preventing torture. Considering the empirical findings in this report of police beliefs in the use of violence and torture, there appears to be a strong need to redesign training content and other measures to align police practices with constitutional imperatives and removal of prejudices.

There are several mechanisms to hold police personnel accountable for torture in India. In addition to the courts, there are oversight

and complaints mechanisms, both internal and external. This report has highlighted the multilayered role of the judicial magistrate as a crucial accountability actor over the police. At arrest and detention, the judicial magistrate is the first check, mandated by the Constitution, over the police's grounds for arrest and treatment of the arrested person. The law requires every death in police custody to be mandatorily investigated by a judicial magistrate.

The National Human Rights Commission (NHRC) and Police Complaint Authorities (PCAs) are two external complaints bodies referred to as "quasi-judicial bodies". The NHRC can receive and inquire into complaints against police officers, including those of custodial torture. It extends further oversight in cases of deaths caused by police or in the course of policing, mandating that every custodial death is reported to it within 24 hours; and every death in police action is reported to it within 48 hours. PCAs are meant to be independent police complaints bodies, at both state and district levels, to look exclusively at complaints against the police including those of illegal arrests and torture. Distinct from criminal or constitutional courts, oversight bodies such as the NHRC and PCAs inquire into complaints with a few powers similar to civil courts, and can make recommendations based on the findings of their inquiry. India offers multiple channels for complaints against the police and the expectation of accountability, at least on paper.

While accountability is a running thread throughout this report, this chapter examines police attitudes towards aspects of police accountability. The chapter gathers opinions of police personnel on judicial scrutiny over their actions, namely arrests and custodial deaths. It looks at police views on whether accountability is a necessary response to killings in police "encounters". Similarly, it discusses police attitudes toward complaints of misconduct against them, as well as the nature of the complaints mechanisms. Lastly, the chapter covers their views on the need for reforms linked to torture prevention, such as legal reform and training. Overall, the chapter seeks

to assess police readiness to be accountable for torture.

6.2 Police Views on Judicial Scrutiny of Arrests and Custodial Deaths

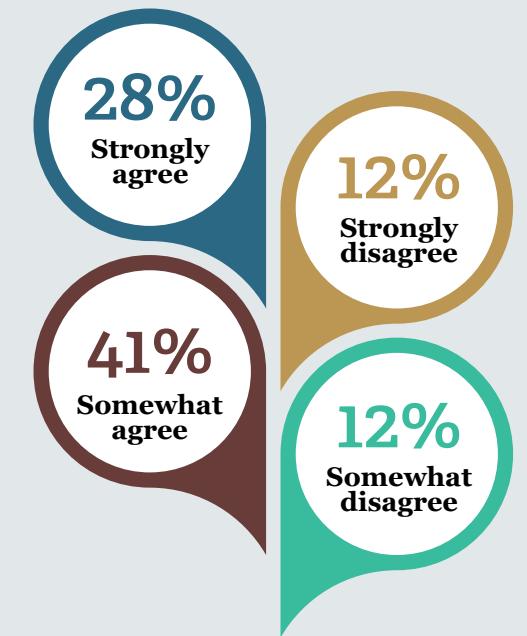
This report highlights that judicial scrutiny over police actions is a major element of police accountability. Police respondents were asked about judicial scrutiny over arrests, and about the judicial inquiry to be held after every custodial death.

6.2.1 Discounting judicial review over police power to arrest

When asked about their views on whether the police should be allowed to arrest and detain suspected criminals *without* any court

Figure 6.1: More than two out of three police personnel believe that police should be allowed to arrest and detain suspected criminals without any court investigation

"Should the police be allowed to arrest and detain suspects without court investigation?"



Note: All figures are in percentages. Rest did not respond.
Question asked: "The police should be allowed to arrest and detain suspected criminals without any court investigation". Do you agree or disagree with this statement?"

investigation, a large majority of 69 percent (more than two out of three) agreed either 'strongly' or 'somewhat'. Taken together, these responses indicate a high degree of disregard for separation of police and judicial powers, disregard for principle of checks and balances and the idea of independent judicial scrutiny. While more than one-fourth of the police respondents (28%) reported a strong agreement with the statement, two in every five (41%) somewhat agreed (Figure 6.1). On the other hand, only a little more than one-tenth of the police respondents (12%) strongly disagreed with the statement.

Further, even more alarmingly, police officers who frequently conduct arrests are significantly more likely to believe that police should be allowed to detain suspected criminals without any court investigation, than those who rarely or never conduct arrests. Amongst those who often

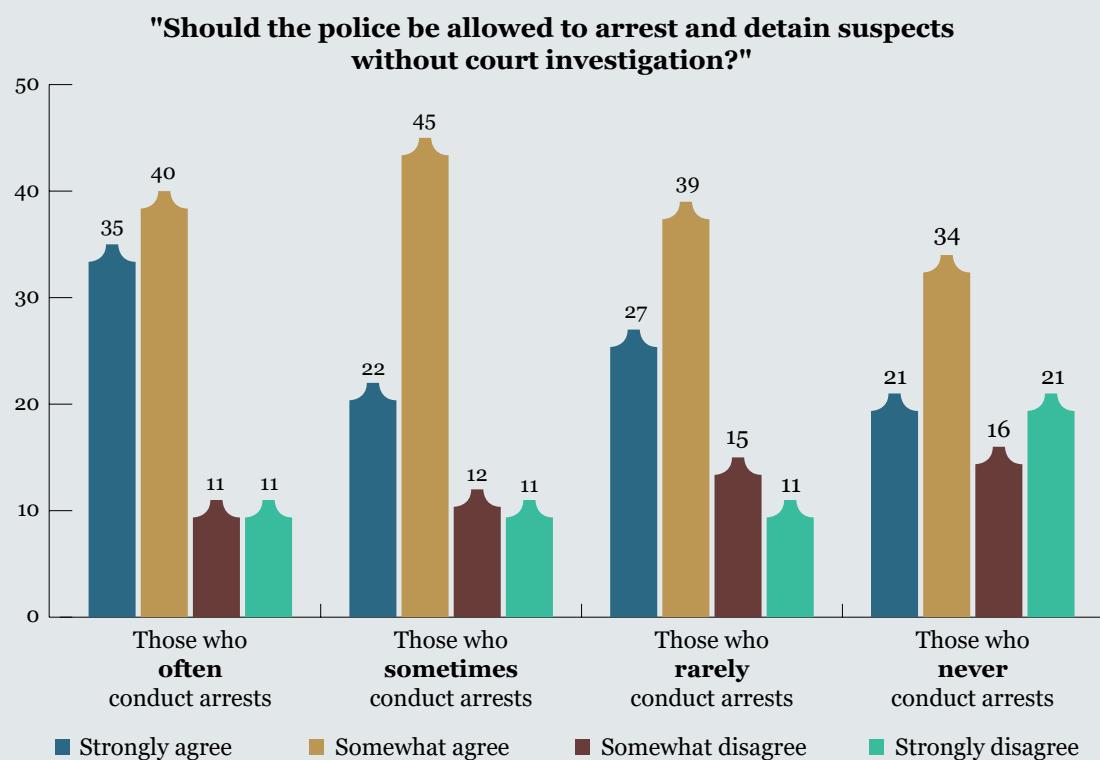
conduct arrests, 35 percent strongly agreed with the statement, while just 11 percent strongly disagreed with the statement. In contrast, amongst those who never conduct arrests, 21 percent strongly agreed that police should be allowed to detain suspects without court investigation, while another 21 percent strongly disagreed with the statement (Figure 6.2).

6.2.2 Disregard for mandatory judicial inquiry into custodial deaths

In the survey, the police personnel were asked whether, in their opinion, judicial inquiry is a "necessary measure" in all cases of custodial deaths. The law requires every death in police custody to be inquired into by a judicial magistrate.

Only a little more than half of the respondents (52%) strongly agreed with the statement, while 31 percent said they somewhat agreed

Figure 6.2: Police officers who often conduct arrests are more likely to believe that police should be allowed to detain suspected criminals without any court investigation



Note: All figures are in percentages. Rest did not respond.

Question asked: "The police should be allowed to arrest and detain suspected criminals without any court investigation". Do you agree or disagree with this statement?

Question asked: How frequently do you conduct arrest – often, sometimes, rarely, or never?

(Table 6.1). A cumulative 12 percent disagreed with the statement (“strongly disagree” – 3% and “somewhat disagree” – 9%). It is particularly alarming that these responses, largely in opposition to the legal requirement, were given when judicial inquiry was mandatory by law. Based on following the law alone, the response rate should have been 100 percent in agreement of the legal necessity. Like the responses above, this is

another finding of police disdain for judicial scrutiny, and for the letter of the law.

A state-wise analysis reveals that while nearly three quarter of the police respondents from Odisha (75%), Nagaland (74%) and Kerala (72%) strongly agreed that judicial inquiries are necessary into all cases of deaths in police custody, the police personnel from Jharkhand (23%) and Karnataka (30%) were the least likely to agree (**Table 6.2**).

Table 6.1: A little more than half of the police personnel strongly agree that judicial inquiry into every death in police custody is necessary

"A judicial inquiry into every death in police custody is a necessary measure"		(%)
Strongly agree		52
Somewhat agree		31
Somewhat disagree		9
Strongly disagree		3

Note: All figures are in percentages. Rest did not respond.

Question asked: Do you agree or disagree with the following statement – “A judicial inquiry into every death in police custody is a necessary measure”.

Table 6.2: Police personnel from Odisha, Nagaland and Kerala are most likely to agree to the necessity of judicial inquiry into all cases of deaths in police custody

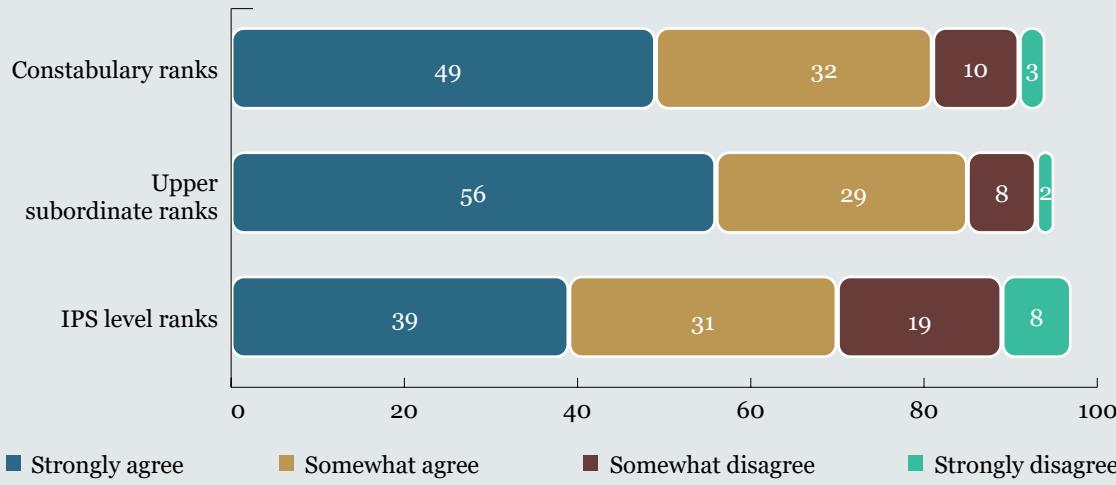
States	"A judicial inquiry into every death in police custody is a necessary measure" (%)			
	Strongly agree	Somewhat agree	Somewhat disagree	Strongly disagree
Odisha	75	20	3	0
Nagaland	74	20	2	0
Kerala	72	15	6	3
Punjab	65	20	4	1
Delhi	60	26	9	2
Uttar Pradesh	60	22	7	5
Rajasthan	59	32	5	1
Andhra Pradesh	54	29	9	3
Tamil Nadu	52	27	12	5
Gujarat	51	33	8	2
Assam	49	42	7	0
West Bengal	47	19	4	1
Bihar	40	38	19	3
Madhya Pradesh	39	43	14	2
Maharashtra	38	39	11	3
Karnataka	30	46	17	7
Jharkhand	23	46	19	6

Note: All figures are in percentages. Rest did not respond.

Question asked: Do you agree or disagree with the following statement – “A judicial inquiry into every death in police custody is a necessary measure”.

Figure 6.3: Upper subordinate officers are most likely to agree to the necessity of judicial inquiry into all cases of deaths in police custody, IPS officers least likely to

“A judicial inquiry into every death in police custody is a necessary measure”



Note: All figures are in percentages. Rest did not respond.

Question asked: Do you agree or disagree with the following statement – “A judicial inquiry into every death in police custody is a necessary measure”.

Looking at the rank-wise responses, one finds that those belonging to the upper subordinate ranks, comprised the highest share of those who strongly felt that a judicial inquiry into every death in police custody is a necessary measure (56%) while the figure drops to 39 percent for those at the IPS level ranks (**Figure 6.3**). Nearly half of the constabulary rank respondents (49%) reported a strong agreement.

6.3 Accountability for Killings in "Encounters"

In 2014, the Supreme Court of India issued a set of guidelines in *Peoples Union for Civil Liberties (PUCL) vs. State of Maharashtra* laying down procedures to investigate killings in police encounters. Guideline 15 states that “no out-of-turn promotions or instant gallantry awards shall be bestowed on the concerned officers soon after the occurrence” and goes on to require that any “rewards” are given only when “gallantry of the concerned officers is established without doubt”. This particular guideline may be aimed to dent the recurring practice of police officers involved in killings being feted (often publicly) *immediately* after

the killing (Deol, 2019), before an investigation has found whether the deadly force by police was justified or not. While this is a measure towards instilling a culture of police accountability, its results remain inconsistent.

The survey data reveals that a little more than four in every ten police respondents (42%) are of the view that there is nothing to celebrate about encounter killings. On the other hand, a quarter of the respondents feel that celebration can come after proper evidence that an encounter was unavoidable (**Table 6.3**). Twenty percent believe that such celebrations boost the morale of the police force.

While the highest number of police personnel chose not to glorify killings in their responses to this survey question, they responded with more endorsement of encounter killings in a survey question reported in Chapter 3. Through **Figure 3.6**, it was found that police’s endorsement for killing ‘dangerous criminals’ in encounters, over giving them a legal trial, had slightly increased in this survey to 22 percent from 19 percent in SPIR 2019. Research on police officers’ perceptions of police encounters has shown that while they recognised the illegality involved, they still justified encounter

Table 6.3: One in every five police personnel believe that celebrating encounter killings is a good boost to the morale of the police

Police views on public celebration of encounter killings	(%)
"This is a good boost to the morale of the police force"	20
"Celebration can come after proper evidence that the encounter was unavoidable"	25
"Killings might happen in the course of policing, there is nothing to celebrate about them"	42

Note: All figures are in percentages. Rest did not respond.

Question asked: After encounter killings, we often see the police officers involved being garlanded and appreciated. Which of the three statements do you agree with the most in this regard?

Statement 1: "This is a good boost to the morale of police force."

Statement 2: "Celebration can come after proper evidence that encounter was unavoidable."

Statement 3: "Killings might happen in the course of policing, there is nothing to celebrate about them."

killings believing they are done for the good of society (Belur, 2013).

Analysing the state-wise trends, we find that Odisha gives the highest endorsement to celebrating encounter killings. Close to half of the police respondents from Odisha (47%)

believe that celebration of the police officers boosts the morale of the police force (**Table 6.4**). Bihar, with 37 percent, and Punjab, with 36 percent, follow this sentiment strongly. Conversely, Nagaland and Kerala stand out with only two and three percent (respectively) police

Table 6.4: Nearly half of the police respondents from Odisha feel that celebrating encounter killings is a good boost to the morale of the police

States	Police views on public celebration of encounter killings (%)		
	"This is a good boost to the morale of the police force"	"Celebration can come after proper evidence that encounter was unavoidable"	"Killings might happen in the course of policing, there is nothing to celebrate about them"
Odisha	47	11	31
Bihar	37	41	19
Punjab	36	6	51
Maharashtra	32	38	16
Rajasthan	28	20	45
Jharkhand	27	32	31
Karnataka	25	40	32
Madhya Pradesh	22	39	39
Andhra Pradesh	19	21	46
Gujarat	17	34	29
Delhi	15	36	41
Assam	14	33	46
Uttar Pradesh	11	16	48
Tamil Nadu	6	22	62
West Bengal	4	18	41
Kerala	3	10	63
Nagaland	2	8	77

Note: All figures are in percentages. Rest did not respond.

Question asked: After encounter killings, we often see the police officers involved being garlanded and appreciated. Which of the three statements do you agree with the most in this regard?

Statement 1: "This is a good boost to the morale of police force."

Statement 2: "Celebration can come after proper evidence that encounter was unavoidable."

Statement 3: "Killings might happen in the course of policing, there is nothing to celebrate about them."

respondents agreeing with this statement, emerging as the two states with the lowest support for celebrating killings. In fact, more than three quarters of the police personnel from Nagaland (77%) and close to two-thirds from Kerala (63%) felt that there is nothing to celebrate about encounter killings.

6.4 Accountability to the Public: Complaints against the Police

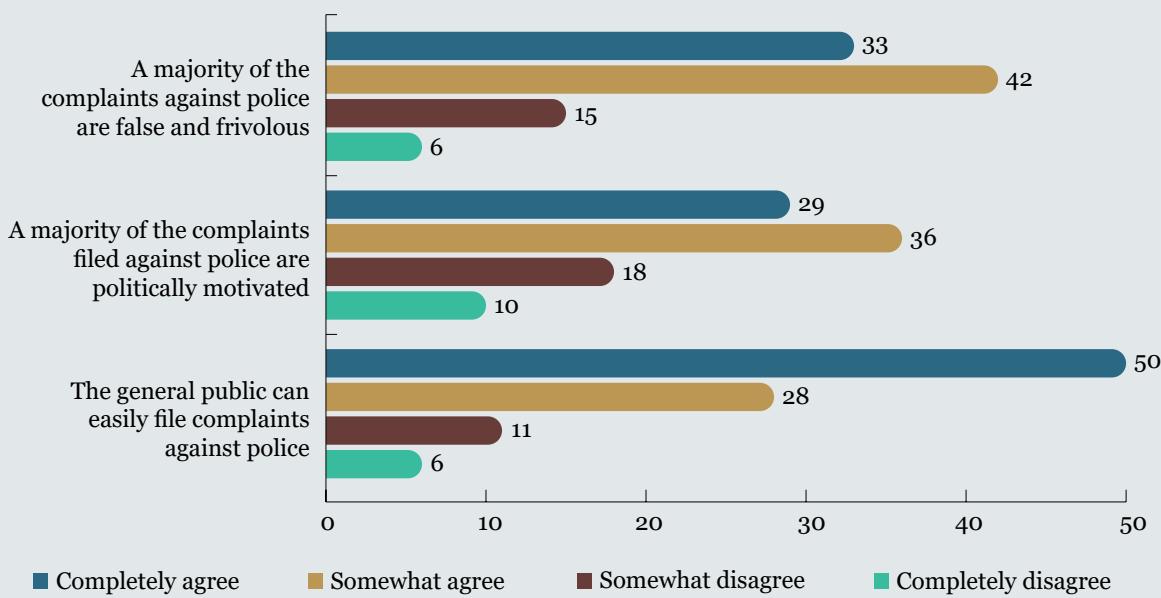
An important part of police accountability is the availability of multiple channels for the public to file complaints against police personnel for misconduct or graver allegations. In recommendations on police reform, the Second Administrative Reforms Commission and the Supreme Court (in *Prakash Singh vs. Union of India, 2006*) have said there is need for an independent body for complaints against the police. Jurisdictions like Northern Ireland and South Africa that have gone through

comprehensive police reform have established external, civilian-led police complaints bodies that exert independent oversight over the police, and particularly are mandated to look into the most serious complaints of police misconduct such as custodial deaths.¹ In India, complaining against the police is an arduous, opaque process for members of the public. In this backdrop, how do police persons themselves look at this issue?

6.4.1 Police views on complaints by the public

This survey probed police's perceptions on the veracity of complaints against the police. One-third of the police personnel strongly believe that complaints against the police are false and frivolous, while another 42 percent somewhat agree with the statement (Figure 6.4). That the majority of police respondents regard public complaints against police to be "false and frivolous" indicates a resistance to accountability.

Figure 6.4: Three out of four police personnel believe that a majority of the complaints against the police are false and frivolous



Note: All figures are in percentages. Rest did not respond.

Question asked: To what extent do you agree with the following statements – completely agree, somewhat agree, somewhat disagree, or completely disagree?

¹ See Independent Police Investigative Directorate (South Africa): <https://www.ipid.gov.za/> and The Police Ombudsman, Northern Ireland: <https://www.policeombudsman.org/>

Table 6.5: Four in ten police personnel favour internal inquiries to investigate complaints of serious police misconduct

Preferred system of inquiry to investigate complaints of serious police misconduct	(%)
Inquiry within the police department	42
An external inquiry but with some representation from the police	30
An independent body with no police personnel (<i>silent option</i>)	20

Note: All figures are in percentages. Rest did not respond.

Question asked: What kind of system of inquiry should be in place to investigate complaints of serious police misconduct?

1. *Inquiry within the police department*
2. *An external inquiry but with some representation from the police*
3. *An independent body with no police personnel (silent category)*

Further, almost three in every ten police personnel (29%) also strongly believe that a majority of the complaints filed against police are politically motivated, while a little more than one-thirds (36%) said they somewhat agree with this. Most strikingly, half of the police personnel strongly felt that it is easy for the general public to file complaints against police, while another 28 percent said that they somewhat agree. In contrast, civil society has documented people being arrested as reprisal for filing complaints of police abuse (Human Rights Watch, 2009).

With regard to the nature of the complaints body, the respondents veered towards preferring internal inquiries into complaints over an independent inquiry. Forty-two percent of the police personnel said that the complaints should be investigated by an internal inquiry within the police department, while 30 percent preferred an external body with some representation from the police (Table 6.5). Notably, 20 percent said that such cases should be investigated by an independent body with no police personnel, which is the highest level of independence for a police complaints body. With police respondents largely preferring an internal system, this signals the efforts required to establish an independent police complaints system that can stand on its own against the police.

6.4.2 Police reporting custodial torture

Owing to the very nature of custodial violence, often the only witness to the act, other than the victim(s), are other police officers. In

recognition of this reality, the Supreme Court in *State of Madhya Pradesh vs. Shyam Sunder Trivedi, 1995* directed that judges of lower courts should not insist on direct evidence and ocular proof in custodial death cases.

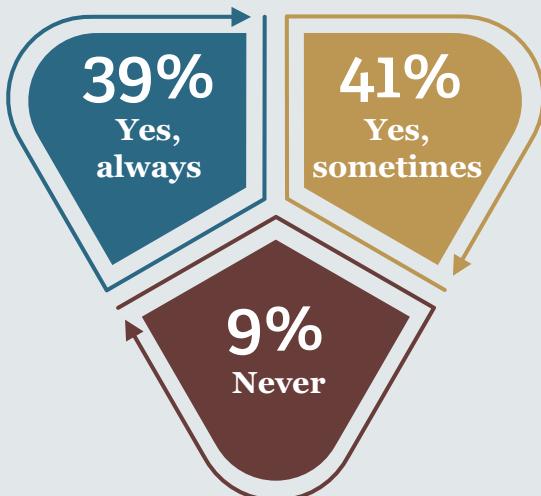
Unprecedented in police legislation in India, Section 96 of the Kerala Police Act, 2011 obliges a police officer to report “any act of physical torture” which they know to be occurring in their presence, to the district police chief. The Act safeguards junior ranking personnel if they have to report against a senior.

Taking from these examples, the survey included a question on whether it should be mandatory for police witnesses to report custodial torture. Thirty-nine percent of the respondents said that it should always be mandatory, while a slightly higher 41 percent said that it should be mandatory sometimes. About one in 10 police personnel (9%) said that it should never be mandatory (Figure 6.5). While the majority of respondents are in favour of mandatory reporting, the highest proportion limited their responses to “sometimes”.

When these responses are analysed according to the ranks of the police respondents, we see that upper subordinate rank officials (42%) are most likely to say that it should always be mandatory for a police official witnessing custodial torture to report it, followed by constabulary rank personnel (36%) (Figure 6.6). On the other hand, IPS officers (23%) are the least likely to agree that it should be mandatory. Thus, police personnel likely to be working at the police station level and also likely to be directly witnessing custodial torture are more in favour

Figure 6.5: Four in every five police personnel feel that it should be mandatory for police officers witnessing custodial torture to report such cases

"Should it be mandatory for the police witnessing torture by other police personnel to report it?"



Note: All figures are in percentages. Rest did not respond.

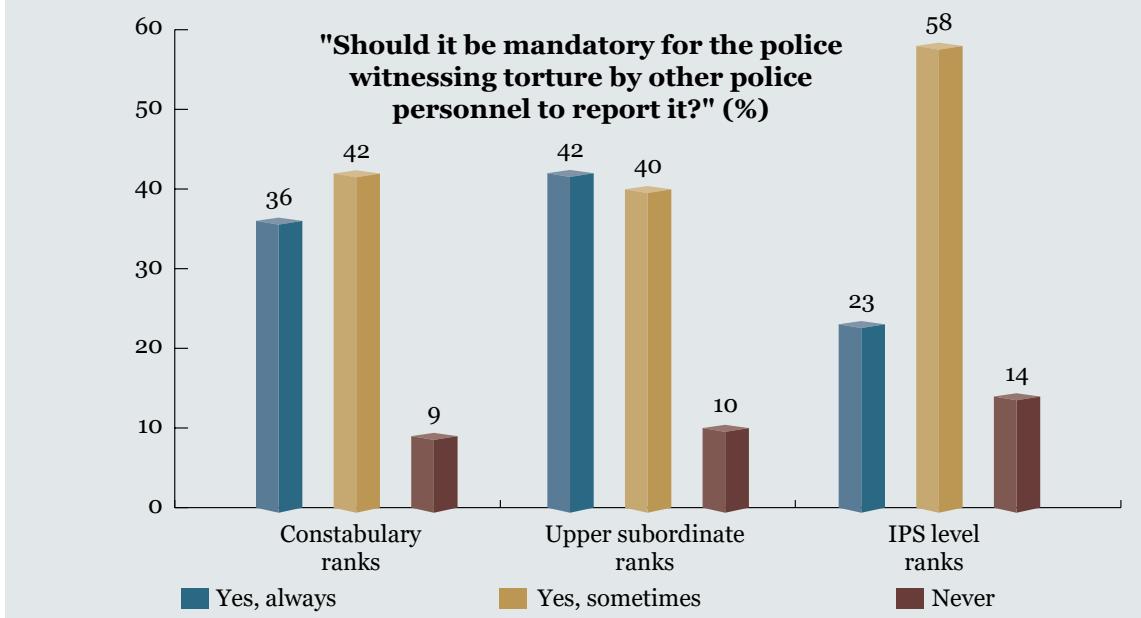
Question asked: Most often, custodial torture is witnessed by other police officers. In your opinion, should it be mandatory for police witnesses to report this type of violence?

of it being mandatory for the police to always report such cases, compared to their seniors. These rank-wise variations reveal the cleavages within police hierarchy on reporting of torture within the police.

When the police respondents were asked if they would feel comfortable filing a complaint against their seniors for use of violence if they have a legal safeguard to ensure their protection, more than two out of five (44%) strongly agreed, while 36 percent expressed a moderate agreement (Figure 6.7). Eight percent, however, said that they would never feel comfortable filing a complaint against seniors for the use of violence, even if they have legal protection.

When these responses are analysed across ranks and years of service of the police respondents, some attention-worthy trends are observed. Half of the upper subordinate rank officials attributed significant importance to legal safeguards and said that having such protection would enable police personnel to report their seniors for the use of violence. In comparison, this view was upheld by 41 percent

Figure 6.6: Upper subordinate rank officials are most likely to agree that police officers should mandatorily report cases of custodial torture, IPS officers least likely to agree



Note: All figures are in percentages. Rest did not respond.

Question asked: Most often, custodial torture is witnessed by other police officers. In your opinion, should it be mandatory for police witnesses to report this type of violence?

Figure 6.7: Four out of five police personnel feel that if legal protection is given to junior police officers, they would feel more comfortable complaining against their seniors for the use of violence

"Would junior police personnel feel comfortable filing a complaint against seniors for the use of violence if they have legal protection?"



Note: All figures are in percentages. Rest did not respond.

Question asked: If junior police personnel have legal protection (guaranteed safeguard) when they complain against seniors, would you feel comfortable filing a complaint against seniors for use of violence?

Table 6.6: One out of two upper subordinate rank officials feel that having legal protection would enable junior police officers to always complain against their seniors for the use of violence

Rank	"If junior police personnel have legal protection when they complain against seniors, would you feel comfortable filing a complaint against seniors for use of violence?" (%)		
	Yes, always	Yes, sometimes	Never
Constabulary ranks	41	36	9
Upper subordinate ranks	50	36	7
IPS level ranks	35	54	5

Note: All figures are in percentages. Rest did not respond.

Question asked: If junior police personnel have legal protection (guaranteed safeguard) when they complain against seniors, would you feel comfortable filing a complaint against seniors for use of violence?

constabulary rank and 35 percent IPS level rank personnel (Table 6.6).

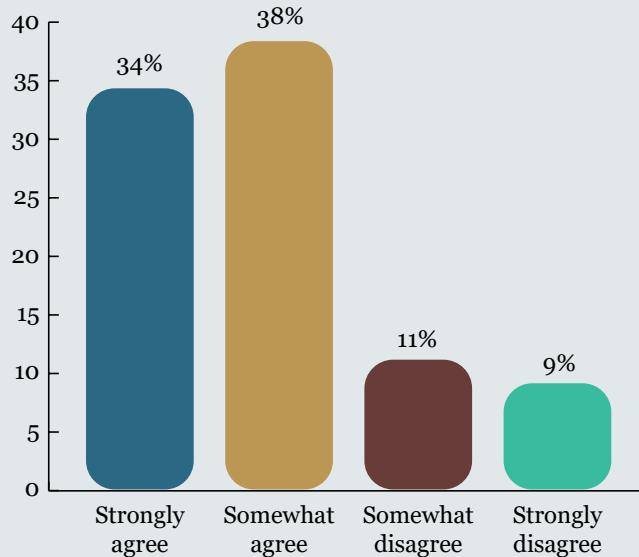
6.5 Police Views on the Need for a Law against Torture

As this report highlights, India still does not have a separate law against torture. Against

this backdrop, when the police personnel were asked if they think that India needs a separate law against torture, one in every three (34%) reported a strong agreement, while 38 percent somewhat agreed (Figure 6.8). Cumulatively, one in every five showed a partial (11%) or complete (9%) disagreement.

Figure 6.8: Nearly three out of four police personnel feel that India needs a separate law against torture

"Does India need a separate law against torture?"



Note: All figures are in percentages. Rest did not respond.

Question asked: Many countries have separate laws against torture. Do you agree or disagree that India also needs such a separate law?

6.6 Opinions on Police Training

The study also attempted to tap into the views of the police regarding the importance of training on human rights, prevention of torture and evidence-based interrogation techniques.

Human rights training is incorporated in some states' police training curricula but modules on torture prevention remain rare. The responses

were overwhelmingly in favour of training on all three issues. Nearly four out of five respondents (79%) believe that training on human rights and evidence-based interrogation techniques is very important, while a slightly smaller proportion, 71 percent, hold the same opinion for training on torture prevention (**Table 6.7**).

When these responses are examined rank-wise, it appears that upper subordinate rank officials most strongly favour training in these areas. More than four in every five (82%) upper subordinate rank officials find human rights training to be "very important", while nearly three in every four of constabulary rank (76%) and IPS level rank (73%) officials find it "very important" (**Figure 6.9**). Similar trends are observed for the support of police training towards evidence-based interrogation techniques. Notably, the levels of support for training on prevention of torture are low across all ranks, compared to the support for training on human rights and evidence-based interrogation techniques.

Paradoxically, even amongst the police personnel who have a high propensity to justify torture, 70 percent believe that training on prevention of torture is very important (**Table 6.8**). On the other hand, among the police personnel who exhibited very low propensity to justify torture, a slightly lesser 66 percent said that training on prevention of torture is very important. In other words, police personnel who express a high inclination towards torture also express the opinion that training on torture prevention is very important.

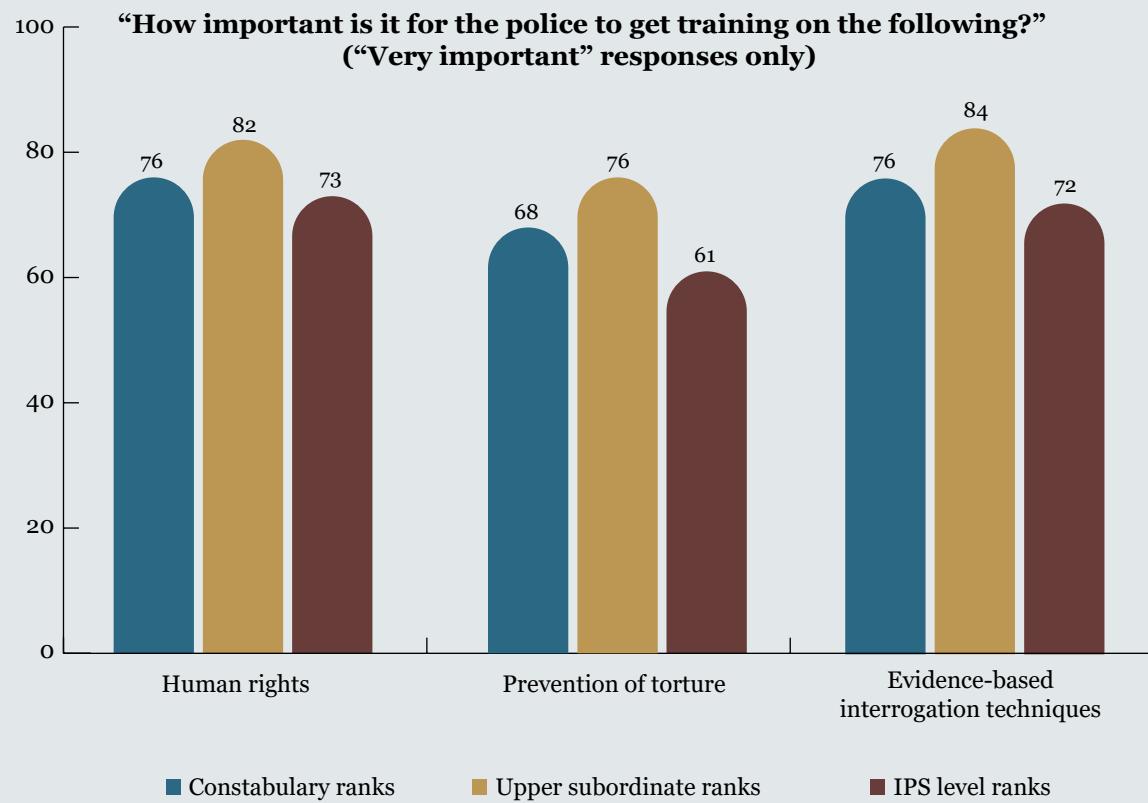
Table 6.7: Nearly four out of five police personnel believe that training on human rights and evidence-based interrogation techniques is very important

"How important is it for the police to get training on the following?" (%)				
	Very important	Somewhat important	Not much important	Not at all important
Human rights	79	15	3	1
Prevention of torture	71	16	7	3
Evidence-based interrogation techniques	79	13	5	1

Note: All figures are in percentages. Rest did not respond.

Question asked: In your opinion, how important is it for the police to get training on the following - very important, somewhat important, not much important, or not at all important?

Figure 6.9: Upper subordinate rank officials most strongly feel that training on human rights, prevention of torture and evidence-based interrogation techniques is very important



Note: All figures are in percentages. Rest either said 'somewhat important' or 'not much important' or 'not at all important' or did not respond.

Question asked: In your opinion, how important is it for the police to get training on the following - very important, somewhat important, not much important, or not at all important?

Table 6.8: Seventy percent of police personnel who have a high propensity to justify torture also believe that training on the prevention of torture is very important

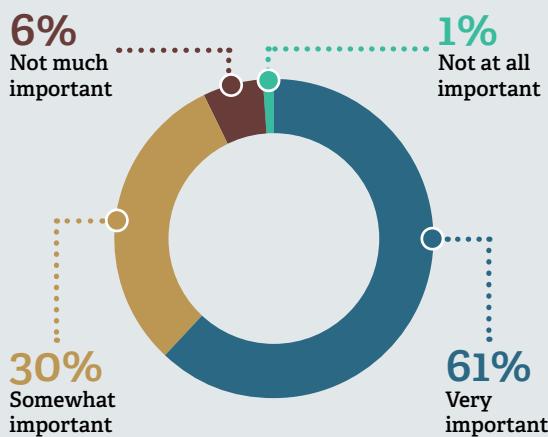
Index on propensity to justify torture	"How important is it for the police to get training on the prevention of torture?" (%)			
	Very important	Somewhat important	Not much important	Not at all important
High propensity to justify torture	70	22	5	3
Moderate propensity to justify torture	65	18	11	4
Low propensity to justify torture	81	10	5	3
Very low propensity to justify torture	66	18	2	2

Note: All figures are in percentages. Please refer to Appendix 5 to see how the index was created.

Question asked: In your opinion, how important is it for the police to get training on the prevention of torture - very important, somewhat important, not much important, or not at all important? The rest did not respond.

Figure 6.10: More than nine out of ten police personnel feel that training on investigation methods that give alternatives to the use of force is important

“How important is it to train the police on crime investigation methods that give alternatives to using force against accused persons?” (%)



Note: All figures are in percentages. Rest did not respond.

Question asked: In your opinion, how important is it to train the police on crime investigation methods that give alternatives to using force against accused persons – very important, somewhat important, not much important, or not at all important?

This study also tried to explore police perceptions regarding training on crime investigation methods that give alternatives to the use of force. Similar to the responses to the above question, a majority of the police personnel believe that training on alternative methods is important. While three in every five police respondents (61%) considered it to be very important, three in ten (30%) found it to be somewhat important (Figure 6.10).

Further dissecting these responses across the ranks of the respondents, it appears that those belonging to the upper subordinate ranks hold the most favourable view (64%) of the importance of police training on crime investigation methods that give alternatives to the use of force against accused persons. This is in significant contrast to those who occupy the highest positions within the police hierarchy, that is, the IPS level rank officials, only 44 percent of whom find such training to be very important (Table 6.9).

It also emerged that those officers who often conduct or assist in investigation are the most likely to feel that training on alternatives to use force against the accused persons is very important (69%), while those who rarely conduct investigations are the least likely to believe so (46%). Notably, a significant proportion, 61 percent, of those respondents who never conduct investigations also feel that training on alternatives to the use of force is very important (Table 6.10).

As above, it is important to be circumspect with these findings when seen against findings in previous chapters. For instance, Chapter 5 revealed that police officers who often conduct interrogation of suspects are significantly more inclined towards the use of torture and third-degree. While it is beyond this report’s remit to attempt analysis of the reasons for these contradictions cropping up, it is necessary to acknowledge them. Also, Rachel Wahl’s examination of Indian police officers’ engagement with human rights (including anti-

Table 6.9: Upper subordinates are the most likely to believe that training on investigation methods that give alternatives to the use of force is very important

Rank	"How important is it to train the police on crime investigation methods that give alternatives to use of force?" (%)			
	Very important	Somewhat important	Not much important	Not at all important
Constabulary ranks	58	32	6	2
Upper subordinate ranks	64	28	5	1
IPS level ranks	44	39	15	2

Note: All figures are in percentages. Rest did not respond.

Question asked: In your opinion, how important is it to train the police on crime investigation methods that give alternatives to using force against accused persons – very important, somewhat important, not much important, or not at all important?

Table 6.10: Police personnel who often conduct investigation are most likely to feel that training on alternatives to using force against accused persons is very important

Frequency of conducting/assisting in investigations	"How important is it to train the police on crime investigation methods that give alternatives to using force against accused persons?" (%)			
	Very important	Somewhat important	Not much important	Not at all important
Those who often conduct/assist in investigation	69	25	4	1
Those who sometimes conduct/assist in investigation	53	36	7	1
Those who rarely conduct/assist in investigation	46	43	8	2
Those who never conduct/assist in investigation	61	23	12	3

Note: All figures are in percentages. Rest did not respond.

Question asked: In your opinion, how important is it to train the police on crime investigation methods that give alternatives to using force against accused persons – very important, somewhat important, not much important, or not at all important?

Question asked: How frequently do you conduct/assist in investigation – often, sometimes, rarely, or never?

torture) education provides helpful context. Wahl writes that “torture is an especially hard case for human rights education” since “such violence is entrenched in officers’ beliefs about what is right” (Wahl, 2017). She found that police officers draw distinctions between “legitimate and illegitimate torture” rationalising that not everyone should be tortured, but the people they torture “are guilty” and require it (Wahl, 2017). In this light, police are negotiating torture ‘prohibition’ based on their sense of morality and utility. It would help to consider these nuances when it comes to police acceptance of training on rights and torture prevention.

6.5 Conclusion

This chapter is aimed to assess police readiness to be accountable, particularly with regard to torture. Unfortunately, many of its findings do not bode well in this regard.

Given a choice, police respondents largely rejected judicial oversight, pertaining to police actions at arrest and detention, and into custodial deaths. This reinforces the police

proclivity towards unchecked powers and denial of facing any consequences for their actions.

On complaints against police, the majority of respondents disbelieve the veracity of public complaints against police officers. They also expressed their preference for an internal system of inquiry over an independent one. Here too the resistance to accountability shows strongly. On a legal requirement for mandatory reporting of torture by police witnesses, it is encouraging that a majority of respondents are in favour of mandatory reporting. An immense challenge for enforcing accountability is the finding that the IPS officers are least likely to support mandatory reporting of torture.

The findings on training present a paradoxical picture. While training towards alternatives to use of force and torture prevention are endorsed, findings in other chapters indicate that violent practices and torture methods are supported in practice.

In sum, this chapter indicates that in police perceptions, the utility and need for torture far surpass the demands for police accountability.

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CHAPTER
07



**Police Accountability and Safeguards
against Torture: Perspectives of
Lawyers, Judges, Doctors**

Key Findings

- Interviewees said that the victims of torture are mainly people from poor and marginalised communities. A lawyer described it as “all the faceless and voiceless” are targeted. The following groups are common targets of torture: Muslims, Dalits, Adivasis, people who cannot read and write, and slum dwellers.
- Most interviewees, especially lawyers, said police do not facilitate arrested persons’ access to lawyers. Some lawyers recounted being regularly stopped by the police from even entering the police station to assist an arrested person.
- Ten interviewees said they find it is “very rare” to see magistrates interacting with arrested persons. A lawyer described magistrates as “silent spectators” who “do not record anything or ask [arrested persons] where and when they were arrested”.
- Eight interviewees believe the judicial magistrate has the most important role in preventing torture in custody.
- Doctors pointed out that medical examinations of arrested persons are often done by doctors without expertise in forensic medicine, who are less able to recognise signs of torture. Examinations are conducted by whichever doctor is available, even if they are an “eye specialist or anaesthesiologist”. Another pointed out that there are no forensic doctors in district and *taluk* hospitals.
- Lawyers and judges pointed out that torture victims rarely make complaints of torture while in custody, due to fear of the police and systemic impediments. There was consensus among judges and lawyers that the NHRC is not effective in dealing with cases of torture.
- There was consensus among lawyers and judges that confessions to police should never be made admissible. A retired judicial magistrate said that it would be “very dangerous to the life of accused persons”.

CHAPTER

07

Police Accountability and Safeguards against Torture: Perspectives of Lawyers, Judges, Doctors

7.1 Introduction

This report highlights the importance of effective and early access for arrested/detained persons to three crucial safeguards against torture and ill-treatment in custody – a lawyer, a judicial magistrate, and a doctor. It also points to the survey findings that largely indicate police disregard of these safeguards, as well as documentation on torture that illustrates how access to them is routinely impeded in practice.

Considering that the survey data is derived from the opinions of police personnel, we felt it was necessary to include the perspectives of police accountability actors to frame a fuller understanding of the complex reasons for torture and disregard for safeguards in India. To deepen our research, we conducted in-depth interviews with doctors, lawyers, and judges. This chapter presents the perspectives of these accountability actors, who are envisioned within the criminal justice system to play specific roles to act against custodial torture.

7.2 Methodology

We invited lawyers, judicial magistrates, and doctors for interviews, keeping geographical spread in mind. We began with the idea of interviewing 12 each of the three actors and approached several times more possible candidates. We used purposive sampling to reach out to doctors, lawyers and judges who had interaction with the police and people in custody. However, we faced challenges of access to doctors and judges particularly. Many candidates we approached, especially doctors and judges, declined to be interviewed on their role as a safeguard against police torture, even with the assurance of anonymity. While we were finally able to secure only a small number of interviewees, the discussions with them were extensive and insightful. We interviewed a total of 28 such actors, comprising seven doctors, 12 lawyers (including one Public Prosecutor), and nine judges. We began with the intent to interview only judicial magistrates (retired or serving), but due to limitations of access, we

widened our scope to judicial officers across the hierarchy. We spoke to five retired High Court judges, two retired district court judges, one retired judicial magistrate, and one serving district judge. The interviews were conducted on the condition of anonymity, and in line with this, the identities of all interviewees are kept confidential.

The interviews were conducted one-on-one, mostly online via the Zoom platform, from December to March 2024. Each interview was recorded with the consent of the interviewee. One interview was conducted in person without being recorded on the interviewee's request, and two interviewees gave their responses in writing. Interview guides devised for each actor were the basis of the interviews (these are included in Appendix 4). The questions were framed around common themes including the frequency of torture in everyday policing, access to safeguards for persons in custody, and the impact of select legal provisions. Select questions were asked drawing on the specific expertise of each set of actors, to better understand their lived experiences in the course of their work, professional roles, and in acting against torture. For instance, doctors were asked specific questions about medical examinations of persons in custody and the conduct of post-mortems following custodial deaths, and lawyers were asked about access to arrested persons during police interrogation. The interviews were kept conversational, allowing for follow-up questions, fostering deeper insights and engagement. Following the interviews, the research team transcribed the recordings.

After several rounds of cleaning and quality assurance checks, the interview transcripts were imported into ATLAS.ti, a qualitative data analysis software tool. The transcripts were organised by respondent category. ATLAS.ti enabled coding of interviewees' responses. The coding process consisted of identifying and assigning specific codes to categorise responses and effectively break down the extensive material in a structured manner. The data analysis features of ATLAS.ti assisted the team to identify patterns across the

interviewees' observations and insights, as well as choose, categorise, and record statements and examples from their transcripts accurately. The coding and systematic categorising of the material facilitated the team's analysis to frame findings. Throughout the analysis, the team was able to constantly review and cross-check the codes against the original transcripts to ensure consistency. Notable examples, anecdotes, or outlier opinions were listed separately for further analysis. This systematic approach facilitated a comprehensive and nuanced understanding of the data while maintaining the integrity of the respondents' narratives. Names of states are not mentioned in the findings due to the small number of interviewees.

7.3 Nature of Torture in India: Victims and Purposes

Many interviewees consider torture to be frequent, emphasising that the victims of torture are mainly people from poor and marginalised communities. A lawyer described it as "all the faceless and voiceless" are targeted. Interviewees talked about the following groups as common targets of torture: Muslims, Dalits, Adivasis, people who cannot read and write, and slum dwellers. Lawyers highlighted how poverty and marginalisation shape the police's targeting of vulnerable communities. One lawyer candidly described it thus:

"The police know nobody is going to stand up for them. They do not have lawyers. Suppose a rich person is going to get arrested, he will immediately go with a lawyer. The same kind of legal service is not available to that poor person. At some level, the police know even if we do something to him, he is not going to take it to court nor is (he) in a position to complain to anybody. It becomes easier for them to do".

In some states, lawyers shared that members of the political Opposition and human rights defenders are among those likely to be targets of torture.

Interviewees said that the main causes of torture are to extract information from suspects,

and also, often to mete out “punishment”. Echoing much of the literature on torture, interviewees said police use force and violence to get information from suspects in custody. About this, two judges asked how the police are expected to get information without resorting to some force or “pressure”, while in contrast, a lawyer pointed out the police have little knowledge of non-coercive interrogation techniques. Such a wide range of reactions indicates that there are differing levels of acceptance of forceful techniques even among accountability actors. Another major cause repeatedly brought up was the police justifying torture as a means to “punish” the “deserving” crime suspects who they feel are often let off by “lenient” courts. A lawyer working in a conflict zone added a perspective from these contexts that police beat up people to “establish dominance over the areas”.

Reflecting on the occurrence of torture, two retired High Court judges and two doctors pointed to society’s acceptance of torture, which affirms the police’s reliance on it. A doctor tellingly said, “The idea that all humans have rights and torture is not acceptable, I don’t think society sees it that way”, while another said, “many people believe torture is the only way”. Another doctor shared her view that many doctors support the use of torture saying “A lot of doctors feel those who are classified as criminals deserve to be beaten, or tortured, or killed. I think that is the larger culture even among healthcare providers”.

Notably, in addition to discussions on the known physical methods of torture, several lawyers pointed to the use of psychological methods of torture. A lawyer remarked that “torture does not mean only beating”. Lawyers recounted tactics such as depriving persons in custody of food and water, or not allowing them to communicate with family members or anyone. A judge narrated her “first experience” of torture was the case of a 15-year-old minor in custody. When he did not confess in a case of theft, the police made him lie down, draped a towel over his face and poured water through it. This describes the method of torture known as waterboarding (Milzer, 2017), which may

or may not leave physical marks, but certainly induces physical and psychological harm.

7.4 Access to Safeguards

Interviewees were asked their views on the extent that the police facilitate access for arrested persons to the three systemic safeguards – lawyer, doctor, and judicial magistrate – which should occur soon after arrest.

7.4.1 Access to a lawyer

Interviewees were asked firstly, if lawyers are allowed to be present when police interrogate an arrested person, and if so, whether they are permitted to intervene or assist. As mentioned earlier, it is a constitutional right of every arrested/detained person to consult a lawyer of their choice, or through the legal aid system if they cannot afford a lawyer. Section 38 of the BNSS, 2023 provides that a lawyer can be present “during but not throughout” interrogation.

The majority of interviewees, particularly the lawyers, revealed that the police do not easily facilitate access. Their responses elicited a range of different experiences and practical challenges. Many prefaced their responses by saying that most people, and the poor and marginalised in particular, do not know they are entitled to a lawyer during interrogation and the police do not inform them of this right. Consequently, lawyers are often not present at interrogation which takes place early after arrest, with the effect in the words of a lawyer that “many things happen even before lawyers reach” with arrested persons “left vulnerable to the police”. A retired High Court judge said police “prefer not to have a lawyer in the police station which violates the right of an accused to have access to counsel”. Speaking of the contexts in their states, some lawyers said that lawyers themselves are not aware that they can be present to assist arrested persons during interrogation.

Lawyers from some states said they have to put in an application at the magistrate’s court for access during interrogation, and such orders are not granted as a “matter of right”. If they

are, they usually grant access for a prescribed time. Two lawyers said in their locations they may be allowed to be in seeing range, but not in earshot range of the police's interrogation, preventing them from intervening while it is ongoing.

Two lawyers spoke of their experiences of being regularly stopped by the police from even entering the police station to assist an arrested person. Police do not allow them "to step into the police station or at least see" the arrestee, which only happens after their persistence. In another context, a lawyer said that even lawyers avoid going to the police station because they feel "humiliated" by the police, and they prefer to be present only in court. A lawyer shared that the police are known to threaten arrested persons, in his words "common citizens or common people accused of offences", who may know they have a right to a lawyer. They scare them by saying that they will be kept in the lock-up if they called a lawyer, so they "try to manage somehow with the police" and desist from contacting a lawyer. In the same vein, he mentioned that activists who are arrested are generally able to call lawyers as they know their rights and can hold their ground with the police.

Beyond these practical realities and constraints, interviewees talked about the consequences when lawyers are not present. There was consensus that the possibility of coercion or torture by police increases without a lawyer. A retired High Court judge said the absence of a lawyer gives the police "a free hand, they become like unbridled horses". A lawyer shared that even if severe acts such as beating do not always occur, acts such as slapping or applying some force during interrogation are "normalised" in the absence of a lawyer.

Talking about the impact of the presence of a lawyer at interrogation, a lawyer identified several important points. While a lawyer's presence reassures the arrested person, particularly as the lawyer asks about their well-being in custody, it simultaneously imposes a "monitoring" of the police. They are aware that the lawyer can help the arrested person to

file a complaint of any torture or ill-treatment. Importantly, he pointed out that especially if there is a court order permitting the lawyer to be present, this in itself "becomes a kind of pressure on the police" to restrain from torture or undue actions. Conversely, another lawyer recounted an incident in which he met a man (accused of a minor crime) in court after he had been in police custody and "mercilessly" beaten according to his family members. When the lawyer asked him if he had been tortured and that he could complain before the judicial magistrate, the man declined saying the police had threatened him. The lawyer regretted that he had not met the man in the early hours of custody. These differing realities reinforce the stark observation of a lawyer that in the absence of a lawyer, an arrested person "will never complain to the magistrate. It is only when a lawyer is representing them, that they get the courage to complain that they have been tortured". Notably, it was pointed out that a lawyer's presence can also improve the tenor of interrogation by the police, as they are somewhat deterred from asking incriminating or irrelevant questions.

7.4.2 Legal aid lawyers

Interviewees expressed mixed views on the availability of legal aid lawyers. A retired district judge said he believes "almost all courts are covered" in his state, with legal aid lawyers readily accessible. A lawyer shared her experience that she has "never seen a legal aid lawyer" in the magistrates' courts she frequents. Another lawyer remarked that the legal aid system is failing and functions "like a mafia" in magistrates' courts, "making every crime an opportunity for their existence". She illustrated by describing the race by lawyers to increase the number of bail applications they file without following up with real efforts to secure bail, a gap she often bridges for arrested persons who reach out to her despite a legal aid lawyer initially taking their case. These variations indicate the inconsistency of the legal aid system across states. While talking about the quality of legal aid lawyers, a lawyer said while he has come across good legal aid

lawyers, he believes that "good legal aid lawyers are still less in number than what is needed".

7.4.3 First production before a judicial magistrate

A key constitutional safeguard against illegal detention and torture is the requirement of Article 22(2) that every arrested/detained person shall be produced before the nearest judicial magistrate within twenty-four hours of their arrest. As stated earlier, it falls on the police to produce the person with the law stipulating that the first production must be physical. The discussions focused on interviewees' opinions of the quality of interaction between the magistrate and arrested persons. As with the responses on lawyers, a range of experiences and views came forth.

Notably, eight interviewees unequivocally said the judicial magistrate plays the most important role in preventing torture in custody. Interviewees described what they regard as the magistrate's duties at first production. Lawyers described the magistrate as the "first check and balance" and "first responder in cases of torture". Several interviewees (lawyers and former judges) outlined questions the magistrates should ask the person produced before them. These include whether the person is being properly treated, whether they have been injured or tortured by the police, whether they have seen a doctor, whether they have a lawyer, and if they cannot afford one, to facilitate a legal aid lawyer for them. It was also pointed out that the magistrate should call for and examine certain documents relating to each arrest, such as the First Information Report (FIR) and case diary, among others. Several interviewees, including judges, pointed to the magistrate as the first forum for an arrested person to complain against torture along with the magistrate's duty to act on complaints and not "turn a deaf ear". In fact, a retired district judge said, "The first thing the magistrate has to ask is have you been beaten up by the police?".

Lived experiences as recounted by interviewees contrast with what they described as the duties of the magistrate. Ten interviewees said they find it is "very rare" to see magistrates

interacting with arrested persons. A lawyer described magistrates as "silent spectators" who "do not record anything or ask [arrested persons] where and when they were arrested. They just routinely record whatever is produced by the police". A retired High Court judge said that magistrates only check that the person is alive. Two interviewees described judicial magistrates as perceived to be an "extension of the investigating agency" in "mechanically" allowing police custody. A retired district judge said, "Magistrates are expected to be independent of the police and they should not have any close relationship with the police because they are expected to protect the liberty of the citizen".

Lawyers described a range of concerning situations specific to their states/locations. In one, a lawyer said the police tend to produce arrested persons after court hours, which happens at the home of the duty magistrate. Magistrates sit at a desk inside their home, arrested persons are not taken inside but shown to the magistrate through a window. The lawyer said magistrates do not ask questions and it is often doubtful whether they can even see the person properly. In another state, a lawyer shared the regular practice that the police transport arrested persons to the magistrate's court, but do not take them inside. The magistrate does not see them. The accompanying police officers interact with the court reader who fills out particular forms with dates and other details dictated by the police. The police bring the arrested person(s) before the reader, they sign or give their thumb impressions on the forms, which the reader takes back for signing by the magistrate later – "This is how production happens".

In a location where a lawyer narrated his experience that while magistrates do routinely ask arrested persons if they have a complaint against the police, "about 99 per cent" of arrested persons reply saying they have no complaint. Even if magistrates see "visible marks of torture or physical discomfort of the person", they will not probe further. Several lawyers talked about the impediment of the police officers being present when people are produced before the magistrate.

Two retired district judges shared their differing views that judicial officers ask questions and set processes in motion if there is any indication of mistreatment or torture by the police, when arrested persons are produced. They said judicial magistrates ask arrested persons, “What happened, is there any complaint against the police, is there any torture”. If there are any injuries visible, the arrested person is sent for medical examination. They both stated that doctors will record the injuries. One judge said that if there is enough *prima facie* indication of offences by the police, a case can be registered against them. He said, “We have not given the police any authority to beat up a person even if he is a criminal, using third-degree methods is barred by the Constitution”. The other judge described different steps to proceed. He said the arrested person is brought back before the magistrate after being medically examined and if they are willing, the magistrate can record their statement and forward this to the police for action. If the police do not act, the magistrate advises the arrested person to approach legal aid.

Notably, while both interviewees provided concrete steps that magistrates can take, they differ in their descriptions of whether a case against the implicated police can be launched and if so, by whom. Also, neither made specific reference to the authority given to magistrates to take cognisance of offences on receipt of a complaint, or a police report, or on information received that such offence has been committed, under Section 210, BNSS, 2023.

Several interviewees called attention to systemic problems which affect the magistrate’s envisioned role. A lawyer pointed out that the high number of productions in a day makes it virtually “impossible” for the court to individually interact with every arrested person. He described it vividly as “people are produced in a huddle, no one asks any questions, no one gives any answers, orders are passed as a matter of course, so the check and balance does not work”. A retired district judge who served as a magistrate for several years shared that dealing with the “large number” of productions, while also presiding over trial

proceedings, makes it difficult for magistrates to give adequate time, or apply judicial attention, to productions. Such opinions reveal that there is a crucial need to address the heavy workload of judicial magistrates to ensure they can fulfil a vigilant judicial role at first production and all subsequent productions.

7.4.4 Medical examination and recording of injuries

Another key safeguard against torture in the law is the requirement that an arrested person is to be medically examined “soon after the arrest is made” with the specific mandate that “any injuries or marks of violence” on the arrested person are to be recorded in the medical examination report. As with other safeguards and due to the conditions of custody, it is the police’s duty to take the arrested person for the medical examination. Talking to doctors revealed a range of difficulties and constraints.

As mentioned, Section 53 of the BNSS, 2023 stipulates that an arrested person should be examined by a government medical officer, if the government officer is not available, then by a registered medical practitioner. Doctors said police usually take arrested persons to government/civil hospitals, and in some places, they can also be taken to medical colleges that provide health services. A key pattern that emerged is that medical examinations of arrested persons are done by doctors without expertise in forensic medicine. This in turn has implications for the quality of medical examination and recording of injuries in checking for torture. A doctor said the routine examinations of arrested persons are “mostly” done by doctors who “do not have any special degree or knowledge about forensic medicine”.

Doctors told us that police often take arrested persons to the casualty ward, where usually only the casualty doctor is available. Or examinations are conducted by whichever doctor is available, even if they are an “eye specialist or anaesthesiologist”. Another pointed out that there are no forensic doctors in district and *taluk* hospitals. Two doctors in different states from medical colleges with departments of forensic medicine shared contrasting practices.

One said the police take arrested persons to the casualty, not to the forensic medicine department, while the other said the police do bring arrested persons to the forensic team. Another doctor shared that the police would habitually bring arrested persons for medical examination late at night when only the night duty doctor was around. He said doctors at his institution came together to advocate that this cannot be the routine police practice. Examinations must take place as far as possible during daytime hours when specialists and experienced doctors are more readily available.

The doctors explained that the recording of injuries consists of the following “essential elements” – the nature of the injury, a description of the injury, the approximate time of the injury, and possible causes. Many of the doctors expressed concern that a lack of forensic awareness prevents doctors from properly recognising and recording certain kinds of injuries and inferring links to potential acts of torture. For instance, wounds inflicted on certain parts of the body can be concealed, or the shape of marks of injuries can be indicative of several causes. In just one example, a doctor described that “curvy marks” could be indicative of whipping or beating by a cane. A doctor examining a person’s body on the lookout for torture needs particular knowledge and prior experience to be aware of all possibilities, and not neglect or exclude anything. A senior doctor lamented that these kinds of examinations can be “tough” on young doctors - “you have to apply your mind, where do the injuries come from and where do we look, and you don’t have anyone to ask”. The accounts of varying and inadequate practices reinforce a systemic procedural gap, pointed out by a doctor who revealed that no protocol stipulates that medical examination of arrested persons must be done by doctors with seniority and forensic expertise.

An abiding concern expressed was the absence of “history-taking” while conducting medical examinations of arrested persons. A doctor described that the doctor should be seen as a “trustful aid, for the person to open up” which is especially important for a person in custody to

feel the trust to disclose if torture has taken place. Several of the doctors we spoke to said there is very little history-taking. Doctors see and treat injuries, but will not ask about circumstances or what may have happened. A doctor said she sees such examinations happen in the OPD or in spaces “in front of everybody and you cannot reach that level of making a connect with the person brought for examination”.

Another repeated constraint is that the accompanying police remain present during medical examinations, which one doctor described as putting the examining doctor “under scrutiny” and preventing doctors from actively engaging with the arrested person. With the police present, doctors often “just give a painkiller or do basic treatment and send that person off”. A doctor from a medical college says her setting allows her “enough space to tell the police to step out, I want to speak to this person”. She added that in the presence of the police, arrested persons who may have been subject to beatings “think I am going to go back and get more thrashings, I better say nothing”. She added that the optimum situation is to get a thorough history and ensure further examination if or as needed. Another doctor pointed out that the report of medical examinations “end up in the police’s hands and it is not automatic that the arrested person [or someone on their behalf] will get it”.

Notably, there were differing opinions among the doctors we spoke to on the extent to which the report of the medical examination and recording of injuries can point to the occurrence of torture. Most believe the doctor’s findings in this regard are limited. Two doctors explained that doctors can write whether they think injuries were caused by “blunt force or trauma”, or by a “hard or sharp object”, or can reliably estimate how many days-old the injury may be, but doctors are unable to “connect the injuries with torture specifically”. As one said, “a lot is left to speculation”. One expressed his slightly differing opinion that if there is a high probability of injuries caused by objects/weapons such as a rod or lathi, “we don’t use the term ‘may’, such things we usually write straight to the police or the concerned judge”.

These differing views indicate that there appears to be a gap in uniform, informed protocols for recording injuries and findings in the context of torture prevention for doctors.

Some doctors expressed the view that doctors cannot conclusively establish the commission of torture, this can happen only through the legal process. One said, “Ultimately the doctor is not the investigating agency, a doctor gives his opinion and on that basis, the concerned magistrate or the investigating agency may file a case”, and the other expressed that “there is no way a doctor can directly go and launch a complaint with the magistrate”.

Lastly, it emerged that there is no routine protocol or practice in place that makes it compulsory for healthcare workers to photograph or sketch the injuries found on a person, and such documentation also depends on policies that may or may not be present in each medical institution. Two doctors from forensic medicine departments in medical colleges pointed to good practices. In one, it is the department’s policy that all injuries found on a person, even if they appear to be older, are to be documented. They also photograph injuries only with the person’s consent. In another medical college, they have trained their technician to be a photographer. The doctor said they felt the need for an in-house photographer as professional photographers hesitate to get involved with cases of arrested persons to avoid attending court to give evidence.

7.4.5 Partisanship and collusion

Interviewees talked about partisan relationships, including through informal social networks, and active collusion of police with lawyers, judicial magistrates, and doctors, and the impact on police accountability.

Several doctors said there is collusion between the healthcare system and the police, and described how it plays out in different ways. Firstly, the police bring arrested persons to doctors with whom they have “a good rapport”. These doctors will not write “implicating reports” or will neglect to record injuries. A forensic doctor shared his experience that if he

or his team recorded injuries or made written remarks of signs of torture, “Police (would) avoid our certificate and go for fresh examination to a doctor with whom they have good rapport”. Another doctor described the lack of support to doctors in rural or peripheral settings, where “the police have long arms”. Larger police-politician nexuses can be used to intimidate doctors who may want to give genuine reports. She said it is risky to give factual reports with these networks “putting pressure on you not to write certain things and people yearn to remain safe”. A doctor described the larger scenario as “the police and health system are more allied than the health system with the victim”.

Interviewees spoke about judges’ proximities and reliance on the police, particularly at the level of the magistracy. A retired judicial magistrate candidly shared that “judicial officers in every station, they want to get some service of the police officers for their safety and well-being”. He went on to say that judicial officers “accommodate” police officers to receive these services.

Several interviewees observed that members of the police, civil administration, and magistrates, particularly in non-urban areas, may live in shared residential colonies and socialise. These familiar, friendly relations impact judicial magistrates’ oversight of the police. A serving district judge described it as “in many places, the police, public prosecutor, and magistrate are friends and socialise together. They do not hold the police in check. The role of accountability gets lost”. A retired High Court judge recommended that any “undesirable alliance between the magistracy and the police should be curbed with an iron hand by the High Courts concerned”.

Lawyers described active collusion between defence lawyers and police where certain lawyers hang around police stations “morning, evening, and night” and the police will “give them cases”. A lawyer said that in her state, the mutually reinforcing relationships between police officers and defence lawyers lead to friendships and joint travels of which they freely post photos on Facebook, making “their nexus evident”.

7.5 Additional Safeguards

Interviewees provided their views on additional processes and mechanisms, with mandates to look into questions of responsibility and police accountability in cases of torture and custodial deaths. Distinct from the immediate safeguards discussed above, which are meant to protect in the early hours of custody towards preventing torture or death from occurring, the processes and mechanisms discussed here are among those that come into effect once custodial torture or death has occurred. A key process discussed below is the conduct of postmortem (or autopsy) reports following custodial deaths. Interviewees' views of the response of the National Human Rights Commission (NHRC) to torture are also laid down.

7.5.1 Postmortem reports

In a letter dated August 10, 1995, the then Chairperson of the NHRC, Justice Ranganath Misra, wrote to all state Chief Ministers seeking that "all postmortem examinations done in respect of deaths in police custody and in jails should be video-filmed and cassettes be sent to the Commission along with the postmortem report" (NHRC guidelines on custodial deaths/rapes, 1995). The NHRC felt compelled to add this procedure to its 1993 guidelines on procedures to be followed after custodial deaths/rapes after observing that postmortems were not being done properly. The Chair wrote that "the Commission has formed an impression that a systematic attempt is being made to suppress the truth and the report is merely the police version of the incident" (NHRC guidelines on custodial deaths/rapes, 1995). Justice Misra reiterated that the postmortem report "was intended to be the most valuable record" to be able to draw conclusions about each death. In March 1997, the NHRC further expanded the guidelines with the addition of a Model Autopsy Form circulated nationwide.

This background is particularly important in light of a doctor pointing out that before the NHRC guidelines, "many of the cases were not even autopsied". Cause of death would be provided "arbitrarily without even opening the body". She highlights that it is only when the

NHRC required the postmortem proceedings to be filmed is when postmortems themselves began to be done regularly, in custodial death cases.

Two doctors said they have observed that postmortems in custodial death cases are conducted by "untrained staff", such as attendants, and sometimes even sweepers. A doctor explained that due to "caste dimensions" particularly the refusal to touch dead bodies, "very often doctors do not even do the postmortem". She described that the doctor stands at a distance and the cuts and taking of swabs are done by someone else, most often, a cleaner or attendant. The repercussions are that doctors "do not examine the body properly, and if they are also influenced by the police, then very often the report is not factual". She articulated that an impartial or accountability-seeking approach to postmortems can be influenced by caste identity and prejudice among doctors:

"They don't look at the body as someone who has died because of some injustice and that you contribute to providing justice to that person. They will not tie up the injuries and say these may point to a potentially fatal assault on the person. The injuries are made to appear as standalone and isolated".

In contrast, two other doctors shared their experiences that doctors conduct the postmortems, and judicial magistrates do the inquiry into custodial deaths. They both felt that the participation of the judicial magistrate in the proceedings prevent the police from interfering. One doctor said that in her state, postmortems of custodial deaths are done by a panel of two to three doctors who "meticulously go step by step" and it is fully video-recorded as per the NHRC guidelines.

A lawyer recounted that in her experience, postmortem reports are frequently "manipulated", in that injuries on the body are not recorded, and the "underlying cause of death" is not reported. She explained that reports will state, for instance, that a person died of organ failure, but will not identify the causes of the organ failure. As she put it, "the underlying

cause of death is actually what is linked to the injuries and torture but those are not reported in postmortem reports”.

The divergent views expressed indicate that there is a concerning lack of consistency in the conduct of postmortems across the country, and also that accountability actors in different states hold varying levels of trust in the accuracy and independence of postmortem reports.

7.5.2 Acting on torture by the National Human Rights Commission (NHRC)

The NHRC is India’s apex national human rights institution, and in this light, an important accountability actor. A core mandate of the NHRC and State Human Rights Commissions is to receive and inquire into complaints of human rights violations. Section 12 of the Protection of Human Rights Act, 1993 provides that complaints alleging “violations of human rights, and/or aiding in a human rights violation by a public servant” and also “failing to prevent a human rights violation by a public servant” can be filed at the NHRC. Police officers are included in the definition of “public servant” in Section 2(28) of the BNS, 2023.

In the context of torture complaints, the NHRC is the premier non-court mechanism (often referred to as a “quasi-judicial” body) available to people to complain against torture. International best practices on police accountability refer to national human rights institutions, ombudsmen, or police complaints commissions as “civilian or independent oversight” bodies among national police accountability mechanisms, whose “prime concern is the quality and non-arbitrariness of policing” (United Nations Office on Drugs and Crime, 2011).

There was consensus among judges and lawyers that the NHRC is not effective in dealing with cases of torture. Three retired High Court judges reiterated this, with one describing the NHRC as a “paper tiger without any teeth”. Several lawyers expressed their grievance that “the NHRC does nothing more than award compensation” and never recommends punitive action against implicated police officials. One lawyer shared that “we need

more” than only compensation. In limiting itself to this, the NHRC does not push for, or propel, measures to stop practices of human rights violations, including torture. Two lawyers similarly commented that the NHRC conducts few proactive, independent inquiries, but largely “depends on police reports” to give their findings.

Two lawyers emphatically said they advise their clients to avoid filing complaints with the NHRC altogether. They both spoke of the waste of time, energy, and resources of the chance for relief or remedy from the NHRC, compared to courts. One lawyer highlighted that the NHRC “should work faster than the High Court, otherwise what is the use of a human rights commission?” They both echoed experiences of filing complaints with the NHRC, waiting for at least a year just to get a report from the district police, which is only the first step in the inquiry process. One of them said at his state High Court, a writ petition usually gets listed within two to three months and the High Court can make a variety of interventions, while the NHRC “will not do anything”. The other summed it up by saying, “I advise my clients to put their resources into fighting in court where there might be some chance”.

One lawyer observed that the NHRC’s various guidelines (on custodial deaths/rapes, and on arrests for instance) have “made some difference” because they are used as “legitimate tools” in litigation, to point to police violating the guidelines. He also highlighted that in some cases of torture or custodial death, “the courts have allowed the NHRC to visit and make reports”, which exerts some external pressure on the police.

7.6 Systemic Hurdles that Obstruct Complaints of Torture

Interviewees described numerous systemic hurdles that impede affected persons from filing complaints of torture and taking them forward.

Lawyers and judges consistently pointed out the stark reality that complaints of torture

are simply not made. A serving district judge summed it up like this:

"Torture complaints never reach court. If such complaints would reach court, action cannot be avoided. Nobody complains. Arrested persons do not disclose any misconduct or torture (beating, threats) by the police in custody. When I see an arrested person, I ask them if they were beaten or manhandled. Investigating Officers and other police personnel are always there when I ask them about it".

Interviewees commonly pointed to several challenges that prevent people in custody from even filing complaints of torture, many of which are documented in literature on torture. These include, prominently, the fear of reprisal or retaliation from the police, which can range from verbal threats to physical attacks. In a particularly violent scenario, a lawyer described that in his state, the police inflict torture and additionally shoot people in their legs to maim them. He says most of them and their families "refuse to come to court or even file petitions before the magistrate. They are apprehensive that tomorrow they may be killed in an encounter". He said "it is very challenging for a lawyer that people are not willing to proceed against the police even after being subjected to torture". A retired High Court judge said that torture victims are "silenced" by the "perpetrators" from complaining to "persons in authority including the magistrates".

Another deterrent repeatedly brought up is the reality that torture complaints will be investigated by the police itself and people doubt these investigations will proceed fairly. A lawyer articulated the inherent challenge of torture cases distinct from other crimes when he said, "We are trying to tell a police officer that another police officer tortured me or assaulted me". He described the first hurdle for ordinary people is to get the police to register

complaints, and many give up at this first stage itself. He outlined that "if at all you get to file a complaint, then there is the whole question of sanction¹ from the government, and this is one of the biggest hurdles where torture cases get stuck as the government does not grant sanction to prosecute police officers". The lack of any independent witnesses, or the lack of willingness of witnesses to depose in court against police officers, was also stated. A retired magistrate spoke about lack of witnesses as a major hurdle. He recounted when he directed some cases to be registered against police officers after recording complaints of arrested persons, who were produced before him with visible injuries and were willing to complain of torture. The magistrate sent the victims for recording of injuries and the doctor provided an injury report. He said the cases were stymied due to the lack of witnesses in each of them. A retired High Court judge sees the existing systems of witness and victim protection as "not effective enough to empower victims of police brutalities, a fear of retaliation by the police will always be there".

Beyond these practical constraints in navigating the system, a retired High Court judge reinforced the impact of the normalisation of torture in preventing accountability. As he put it, "Most victims of police torture are not making any complaint to the competent authorities or even to courts, as torture during investigation has become an accepted phenomenon in most of our country".

Judicial disbelief and apathy to torture complaints was also a recurrent factor in restraining complaints. Several lawyers gave various examples of the ways these regularly play out. While describing the constraints on a person in the "setting of a court" to say they have been subjected to torture, including the "fear of retaliation from the police once you are back in custody", one lawyer emphasised that "magistrates do not provide a free environment

¹ Section 218 of the BNSS, 2023 requires that government sanction must be obtained before a court can take cognisance of an offence by a public servant, which includes police officers. A proviso to Section 218 mandates that sanction must be given within a period of 120 days barring which sanction shall be "deemed to have been accorded" by the government. This proviso has been in force only since July 2024, when India's new criminal laws took effect.

in the courtroom space to come out and talk about torture experiences and report it”.

Lawyers from different states expressed disappointment with elements of judicial apathy. Several mentioned that they have experienced that magistrates are hesitant in passing orders concerning allegations of torture, even towards trying to determine facts and circumstances. A lawyer illustrated this by describing that even “small things” like applications to get CCTV footage of a police station or any place, in his experience, are declined by magistrates. Another lawyer said magistrates are “not interested in giving any written orders”. He says if allegations are brought forth, they “will just write one sentence – the Station House Officer or the Superintendent of Police should make an inquiry into this”. He concluded with “that inquiry will never come, the report will never come. And the magistrate will not follow up”. In some situations where persons may voice that they have been tortured, a lawyer said magistrates mostly “do not write the person has been tortured even when they speak about it”. If they do, they “write only one or two sentences even if the victim says more”. A lawyer practising in a district spoke about trying to send complaints of torture to the Chief Judicial Magistrate (CJM), as he sees CJMs as receptive and relatively easy to approach, accepting lawyers in chambers if it is an urgent matter. But his experience has been that CJMs are “very lenient towards applications” and they do not follow up or seek progress reports from the police. A retired High Court judge remarked that courts are inclined to side with the police as “the courts take it that whatever is being done by a police officer is in his official capacity, so there is almost an armour around the police officer”.

Several lawyers said they regard the best chances of getting some relief in torture cases from the constitutional courts – High Courts and the Supreme Court – rather than from the magistrates or district courts. A retired High Court judge expressed his view that the number of torture complaints before the higher judiciary is “not very high”, which “need not mean that custodial torture does not take

place, as it requires unrelenting determination to take action against the police for their atrocities”.

Another important dimension that arose is that of legal strategy that lawyers choose to adopt for their clients in custody, with implications for filing and pursuing torture complaints. One lawyer shared that he has seen many lawyers discourage their clients from complaining against torture or mistreatment as soon as it happens, ostensibly to not muddy the waters towards getting out of custody through bail or otherwise. He described it as, “many times, we see lawyers saying that ‘Oh, *itna toh hota rehta he*’ [this much usually happens] when police will slap you or hit you with a cane, most of the first reactions of lawyers is to say, ‘it’s okay. Don’t react. Don’t make it a big issue. Our focus should be to take you out of this thing’”. He concluded by saying he feels “lawyers need to be more proactive whenever there is torture, to take it up with the magistrate, take it up with the courts, and bring it on record every time it happens”.

Another lawyer described that in terms of case strategy, lawyers often use torture complaints “as a tool to get medical attention for the accused”, but she was critical that they then do not take these complaints to their “final conclusion”, namely that they do not pursue prosecution of the police officers or seek compensation. Another lawyer candidly shared that in some cases when torture is occurring, the dominant need is to get the person out of custody and this may mean not pursuing a torture case. She described the dilemma thus, “we are reduced to just making sure he gets out, we can’t do anything about the torture, we have to make these decisions about how much to pursue”. While there are differences in these approaches, they all indicate that a lawyer’s calculations regarding the interests of a person in custody may not always be in pursuing a torture case.

7.7 Confessions to Police

This report cites documentation on torture that inducing confessions from arrested persons is

a prime site of police torture in India, despite the law providing that no confession by an accused person to a police officer is admissible as evidence against him/her. Considering the centrality of the issue of confessions within the discourse on torture, interviewees were asked to share their opinions on the admissibility of confessions to police.

There was consensus among lawyers and judges that confessions to police should never be made admissible. Interviewees pointed to inherent dangers if confessions were made admissible. A retired judicial magistrate said that it would be “very dangerous to the life of accused persons”. Lawyers commonly said that this would go against the basic tenets of criminal jurisprudence, against fair trial principles, and particularly against the right against self-incrimination. A lawyer described the realities of being in custody, saying, “The accused, when in the control or the custody of the police, will never be in a position of autonomy to decide. In fact, the probability of him [or her] being coerced into something is limitless”. Several interviewees warned that making confessions admissible would effectively provide legal sanction to torture and coercion by police. In the words of a lawyer, “Torture happens in the country while confessions are not admissible, imagine how it will just explode the moment confessions are made admissible”.

7.8 Need for a Separate Anti-torture Law

With India continuing to evade the enactment of a separate anti-torture law, as many as 11 interviewees emphatically supported the need for one. Lawyers and judges offered insights into what are necessary components that can be brought in through a separate law. A retired High Court judge said that it is important to “create a law which clearly spells out what constitutes police violence, what are the specific acts that will be tantamount to criminal offences and their punishments”. A lawyer reiterated that it is important to define acts of torture and their punishments and ensure that all officials “proved to be involved in torturing” are held liable. A lawyer highlighted a larger point

relating to such a law’s purpose. She said, “Law is not merely for punishment and for action after the incident. It is a code of conduct. You should not do this thing. The law must also have the intention to stop the violence and torture”.

7.9 Conclusion and Key Recommendations

The findings of this chapter, gathered from lived experiences and insights from accountability actors themselves, sharply highlight that existing safeguards against torture are failing to prevent, protect effectively, or ensure redress for torture. These grave shortcomings are failing to dent the wide use of torture. Torture is used by the police to target the poor and marginalised, ranging from extracting or coercing information from crime suspects to being expended as a means of control and punishment.

Constitutional protections against torture are ineffective in practice. The findings indicate that the fundamental right of every arrested/detained person to consult a lawyer is either not realised or not facilitated as a matter of right. Lived everyday realities range from police stopping lawyers from entering police stations to lawyers having to seek access to arrested persons through court orders. In turn, arrested persons are deprived of legal counsel in the earliest hours of custody and in initial, if not further, interrogation. Judges and lawyers agreed that this greatly increases the chances of coercion and torture and in the absence of a lawyer, arrested persons are deterred from filing complaints.

In the same vein, while interviewees pointed to the judicial magistrate’s role as the “first responder” against torture, many described the total lack of interaction between the magistrate and the arrested person during first production. Some shared practices that arrested persons are not even seen by the magistrate. Two judges shared their perspective that magistrates do interact and ask questions. The police are always present next to the arrested person in every scenario. Magistrates are overwhelmed by the sheer number of productions daily. The extreme inconsistencies and gaps in the

practice of first production indicate that it is not providing a safeguard to every arrested person.

The legal right of every arrested person to be medically examined and have any injuries recorded by a doctor is also unrealised. Doctors themselves recounted that examinations and recording of injuries are largely done by doctors without the expertise or experience. There is a systemic lack of protocols in place for the conduct of medical examination and recording of injuries in the context of medical recognition and documentation of torture. Notably, doctors in medical college settings referred to some good practices, indicating a need for cross-sharing of practices. The accountability actors themselves spoke of the impact of partisan relationships and active collusion as obstructing police accountability by lawyers, judges, and doctors.

Additional safeguards are also regarded as ineffectual. Postmortems of custodial deaths are not even necessarily conducted by trained doctors and the NHRC is not trusted by lawyers and judges familiar with the exigencies of handling a torture case. Moreover, persons in custody are deterred and intimidated from filing torture complaints which are not reaching courts, which, in the context of these findings, are presently considered the sole institution with some capacity to act on them, though patchy at best.

Ultimately, these findings reinforce that persons in custody have only minimal access to safeguards against torture, and this too is dependent on location and circumstances. The legal system is failing to provide constitutional protections against torture, and other institutional processes and mechanisms are also failing to limit or eradicate torture by the police.

The following are select key recommendations provided by the interviewees.

7.9.1 Actions by judicial magistrates

Lawyers and judges gave detailed suggestions on tangible actions that can be taken by magistrates to both prevent and respond to allegations of torture:

1. Interact with arrested persons at first production

A repeated recommendation was the necessity for judicial magistrates to actively engage and interact with arrested persons at first production and every time they are produced before them on remand. A serving district judge laid out three essential questions to ask at first production. These are:

- (a) Always ask if they were beaten/subject to torture and ill treatment by the police,
- (b) Ask them when they were arrested and “confront the police if the date and time do not match the date and time given by the police”, and
- (c) Ask when the police informed their family members and compare the date with those from the police.

Linked to interacting with arrested persons, several interviewees recommended judicial magistrates devise protocols to speak to arrested persons one-on-one, in chambers or in private somehow, without the police being present.

2. Order arrested persons to be medically examined throughout the duration of police custody

Several judges recommended that magistrates should ensure that arrested persons are medically examined at the time of granting police remand, and once the remand period is over, there should be another medical examination. These medical examination reports should be submitted to the court.

3. Pathways for action on allegations of torture

Recognising that ordinarily a judge is constrained from acting based on external information, a retired High Court judge suggested an innovative practice. If a judicial magistrate hears reports of torture on an arrested person, “an advocate who is an officer of the court or another magistrate or both can be deputed to make an inquiry and submit a report on the basis of which appropriate action can be taken”. If the report confirms that torture is taking place, prosecution of the

implicated police officers can be launched, as well as departmental inquiries and “suing them for damages”.

This judge also suggested concrete action in cases where arrested persons reveal they are being subject to torture if asked by the judicial magistrate. If so, the judicial magistrate should immediately get a written complaint from the person, take cognisance of the offences through the magistrate’s authority under Section 210, BNSS, 2023 and proceed for inquiry and trial; or make it over to another magistrate for inquiry and trial.

4. Conduct surprise inspections of police lock-ups

A retired High Court judge recommended that CJMs or the area judicial magistrate conduct surprise inspections of police stations in their jurisdiction. A lawyer suggested these are done by people selected through a designated process in plain clothes, and as often as possible at night “just to see what is happening”. Both interviewees felt such inspections could reduce torture greatly.

7.9.2 Mechanism for an independent investigation into torture

Several interviewees recommended that investigation into torture complaints should not be done by the same police department whose personnel are implicated, and offered a variety of conceptual ideas on possible processes or mechanisms. A retired judge suggested that a different investigation agency, along the lines of a Special Task Force, could be considered. A lawyer articulated that there is a need to establish a “specialised body” which will require a unique institutional framework, unlike any provisions or mechanisms presently in place. Another lawyer highlighted that persons with “qualifications in law and human rights” can constitute an independent body which should

be wholly insulated from police involvement. A doctor suggested that there is a need for such mechanisms at the district level and that torture and custodial deaths “cannot be investigated properly without the help of a doctor, under the scrutiny of the judiciary in every district”.

7.9.3 Select legal reforms and training

Interviewees gave some targeted suggestions on aspects of legal reforms and improving training.

1. There is a need for more teaching and instruction on responding to torture in medical training which several doctors said is a “very small part” of medical education. Doctors need awareness and education on the legal, moral, and ethical aspects relating to the continuation of torture, and importantly, practical guidance on how to recognise torture. Additionally, there is an urgent need to introduce training that equips doctors to give evidence in courts in torture cases.
2. Many interviewees reiterated the strong need for improved police training on interrogation techniques and on “modern scientific evidence analysis”.
3. A lawyer recommends that the provision for lawyers to be present at interrogation must be expanded to ensure that a lawyer can be present “throughout the interrogation”. Another lawyer also gave a similar suggestion that there must be a “compulsory provision that police personnel cannot interrogate a person alone”.
4. A doctor recommends that there is a need for a law on medico-legal examination of “live persons including torture victims”, which would fix a liability on doctors to mandatorily report signs of torture and for streamlining autopsy procedures in cases of custodial deaths.

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CHAPTER 08



Police Torture and Violence in Official Records: Trends and Gaps

Police security line-up (5th July, 2019).

Credits: Governance Now

Key Findings

- There are discrepancies in the reporting of custodial deaths across various data sources. For instance, in the year 2020, NCRB reports 76 cases, NHRC reports 90 cases, and NCAT, a civil society compilation, reports 111 cases of custodial deaths in the year.
- As per NCAT data, nearly half (51 out of 111, i.e., 46%) of the cases of deaths in police custody during 2020 were allegedly caused due to torture. On the other hand, for the same year, NCRB data shows that of the 76 custodial deaths that it reports, only one death was due to injuries sustained during police custody due to physical assault.
- A majority of the deaths in police custody occur within 24 hours of arrest. In 2022, 55 percent of the deaths in police custody reported by NCRB were of persons not on remand, i.e., those in police custody in the first 24 hours of arrest. In Gujarat, 96 percent of the deaths in police custody that took place between 2018-22 were within 24 hours of arrest.
- In 2022, judicial inquiries were ordered in only 35 percent of the cases of deaths in police custody.
- Between 2018-22, cases were registered against police personnel in just 10 percent of the reported deaths in police custody. Of the cases registered, chargesheets were filed in just 12 percent cases. As per NCRB data, there were zero convictions for deaths in police custody during this period.

CHAPTER 18

Police Torture and Violence in Official Records: Trends and Gaps

8.1 Introduction

In India, official data on police torture and other forms of police violence is sparse. Without codified definitions of the array of acts that constitute torture, and other forms of police violence, official data is bound to be both limited and inconsistent. This compounds the existing inadequacies of official data¹ on policing relating to the important areas of police torture and violence. The landscape of official data on custodial violence and custodial deaths is largely limited to reports from two official sources - the annual *Crime in India* report by the National Crime Records Bureau (NCRB), and the annual report and statistics provided by the National Human Rights Commission (NHRC).

This chapter analyses specific data points on police torture and other forms of police violence in reports of the NCRB, NHRC and an independent civil society source, to discern trends and point out gaps. Our lens of analysis is twofold – it seeks to draw out trends and gaps in regard to issues around the data itself as well as point to larger findings on the occurrence

of torture and custodial violence that can be gleaned from the data. An analysis of even the sparse official data reveals both noteworthy trends and glaring deficiencies. We filed applications under the Right to Information Act, 2005 to collect data points that are unavailable in the official sources².

In the first section, we will first look at the data on custodial deaths, including the state-wise trends, reasons for custodial deaths, encounter killings and time of custodial deaths. In the next section, we will look at the investigation of custodial deaths, including the number of judicial and magisterial inquiries, cases registered against the police for custodial deaths and investigation of custodial deaths by the NHRC. In the following section, we will analyse the data on cases of police violence and excesses registered at the NHRC and their disposal, as well as the disposal by the police and courts of cases against police personnel for human rights violations. The last section will discuss the gaps and inconsistencies apparent in data.

¹ The information on the same data point often varies by the agency publishing that information, indicating inaccuracies in data. For instance, until 2013, the data on total police strength was given by both the National Crime Records Bureau (NCRB) as well as the Bureau of Police Research and Development (BPR&D). However, while NCRB gave the actual number of civil police, including District Armed Police in the year 2013 as 13,48,984 personnel, the corresponding figure published in the BPR&D report was 12,99,968.

² All of the RTI questions and the original responses can be accessed on the RTI section of the Common Cause website: <https://commoncause.in/spir-rti.php>

8.2 Navigating the Official Data on Police Torture and Excesses

This chapter discusses the following data points from their respective sources: (a) data on custodial violence published by the NCRB, (b) data on custodial deaths published in the annual reports of the NHRC, (c) data on police violence and excesses retrieved from the NHRC through RTI applications and (d) data on custodial deaths compiled and published by a civil society organisation, National Campaign Against Torture (NCAT).

The *Crime in India* reports are the central government's annual reports on crime statistics for the country, providing data on total crimes registered under numerous crime categories and types. Chapter 16A of the reports are entitled "Custodial Crimes & Complaints Against Police Personnel", essentially giving data on custodial offences and human rights violations by police personnel. Data points we rely on come from this chapter, including deaths reported in police custody/lockup (persons not on remand and persons on remand), magisterial and judicial inquiries ordered into deaths in police custody/lockup, police personnel arrested for deaths in police custody and the chargesheeting and conviction rates in cases of deaths in police custody. The chapter contains a table on reasons for custodial deaths (Table 16A.3), which includes a column on "injuries sustained during the police custody due to physical assault by the police", which has been analysed and presented in this chapter. The chapter also includes a table on the number of cases registered against state police personnel for human rights violations. The categories of human rights violations included in the table are encounter killings, deaths in custody, illegal detention, torture/causing hurt/injury, extortion and "other". This is the only place in the report where the term "torture" is being used, but neither this term nor the other terms under the category of "human rights violation" are explained or defined anywhere in the report.

The other source of official data are the NHRC's Annual Reports. These contain state-wise statistics on the cases registered by the NHRC

and their disposal. This chapter's analysis focuses on Annexures 1 and 5 of the annual reports, using the data on the intimations received about custodial deaths and rapes in police custody, intimations received about encounter deaths (both from Annexure 1) and the details of cases pending compliance of NHRC's recommendations (Annexure 5). While the annual NHRC report includes information received by it on deaths and rapes (both have been clubbed together) in police and judicial custody, and about encounter killings, segregated information is not provided on the number of complaints of police torture or excesses and the disposal of such cases.

Recognising the data gaps in these official sources, the Common Cause research team filed RTI applications to get the number of cases registered against the police at the NHRC for various categories of police excesses and violence, and the disposal of these cases by the NHRC. We received state-wise data on the number of cases registered, disposed and pending before the NHRC for the years 2020-23 for the following categories of cases: unlawful detention, custodial violence, rape or sexual harassment in police custody, deaths in police action, death in police custody, false implications, illegal arrest and "other police excesses". We also received details on the disposal of cases by the NHRC on deaths in police custody, rapes in police custody, death in police encounter, illegal arrests and unlawful detention.

However, neither NHRC's annual reports nor the RTI data provide an explanation of the terms used for categorising complaints against the police, nor is there any clarity on the terminology used for the various categories of disposal of cases (discussed later in the chapter). It's also worth noting that even though the NHRC has several categories of complaints against the police, it does not specify the reasons for custodial deaths, unlike the NCRB report. There is also inconsistency in the use of certain terminology within the same institution.

Two points merit attention at the outset. First, the term "torture" appears only briefly in one of the tables in the *Crime in India* report by

the NCRB, where the reported figures are negligible. The official data both by the NCRB and the NHRC provide more tangible data points on deaths in custody. Due to the dearth of data on torture on its own, to provide a fuller frame of analysis, this chapter analyses available data on deaths in custody, encounter killings, illegal detention, custodial violence, and related incidents.

Secondly, there is significant ambiguity and inconsistency regarding the definition and usage of terms, both within and across organisations. For example, the NHRC reports use the terms “encounter deaths” and “deaths in police action” interchangeably, while the NCRB report refers to them as “encounter killings.” Similarly, although the NHRC documents cases of “custodial violence,” this term is entirely absent in the NCRB reports.

8.3 Data on Custodial Deaths

8.3.1 Number of deaths in police custody

While there are clear legal mandates regarding the protocols to be followed in case of custodial deaths (see Summary of Legal Provisions in Appendix 1 for more details), yet, there continues to be significant under-reporting of such deaths by the government and the police. For instance, NHRC, which is mandated to receive intimations from district Superintendents of Police (SPs) or district magistrates of all custodial deaths within 24 hours (NHRC guideline dated 14th December 1993), has repeatedly issued notices to several state governments and police departments for under-reporting cases of custodial deaths. Recently, in July 2024, one such notice was issued to the Uttar Pradesh government regarding an alleged case of illegal detention and custodial death due to torture in which the police failed to inform the NHRC. The NHRC took suo moto cognisance of a media report and observed that going by the contents of the report, it appears that the “policemen abused their power” (PTI, 19th July 2024).

Non-government sources provide additional repositories of data that can further reveal the official under-reporting. For instance, the National Campaign Against Torture (NCAT), a platform of NGOs, compiled a list of alleged cases of torture and custodial deaths in India and the numbers vary significantly from the data from both official sources — NHRC and NCRB. NCAT reports are available for only two years, 2019 and 2020. For the year 2020, NCRB records 76 cases of custodial deaths (from January-December 2020, as per *Crime in India*, 2020), NHRC records 90 such deaths (data accessed through RTI), while NCAT chronicles 111 cases of custodial deaths. These notable variations on the same data point are typical of the discrepancies in the data and to some extent the possibility of under-reporting.

We have analysed the data for the year 2020 in **Table 8.1** below, comparing the numbers from all three sources.

The table brings out clearly the lack of an authoritative source on custodial deaths in India. As is evident, there are a lot of variations across states as well. Notably, however, the state that figures at the top of all three lists on deaths in police custody is Gujarat, with reportedly 15 cases being recorded in the state by NCRB, 17 by NHRC, and a slightly lesser number of 11 cases by NCAT. On the other hand, some states such as UP, West Bengal and MP show highly contrasting data across the sources. In UP, for instance, while 11 cases of deaths in police custody have been noted by NCAT, the NCRB figure suggests just one case in the year 2020, while NHRC records three such cases. In West Bengal, on the other hand, 11 cases of deaths in police custody have been recorded by NHRC, against nine cases in NCAT and just two cases as per NCRB.

8.3.2 State-wise trends of custodial deaths

With all the above caveats regarding official data, it is important to look through the existing data sets to understand the larger patterns of custodial violence and deaths. We have analysed data from NHRC annual reports for the period of 1994-2022 on the cases registered based on

Table 8.1: Seventy-six cases of deaths in police custody reported by NCRB, 90 cases reported by NHRC and 111 cases reported by the National Campaign Against Torture in 2020

Deaths in police custody during 2020 (1st January-31st December 2020): Figures according to various sources			
States	National Crime Records Bureau (<i>Crime in India, 2020</i>)	National Human Rights Commission (data accessed through RTI)	National Campaign Against Torture (<i>India: Annual Report on Torture - 2020</i>)
All India	76	90	111
Andhra Pradesh	8	3	4
Arunachal Pradesh	0	1	2
Assam	1	1	2
Bihar	1	3	5
Chhattisgarh	2	3	3
Goa	0	0	0
Gujarat	15	17	11
Haryana	3	1	3
Himachal Pradesh	1	1	1
Jharkhand	2	3	4
Karnataka	5	4	3
Kerala	5	1	1
Madhya Pradesh	6	8	10
Maharashtra	5	8	4
Manipur	1	1	1
Meghalaya	0	1	0
Mizoram	0	0	1
Nagaland	0	0	0
Odisha	2	4	6
Punjab	2	1	6
Rajasthan	6	1	6
Sikkim	0	0	0
Tamil Nadu	6	4	8
Telangana	1	1	1
Tripura	1	1	1
Uttar Pradesh	1	3	11
Uttarakhand	0	1	2
West Bengal	2	11	9
Andaman & Nicobar	0	0	0
Chandigarh	0	0	0
Dadar & Nagar Haveli	0	0	0
Daman and Diu	0	0	0
Delhi	0	6	3
Jammu & Kashmir	0	1	3
Ladakh	0	0	0
Lakshadweep	0	0	0
Puducherry	0	0	0

Sources:

1. *Crime in India Report 2020, NCRB*;
2. *RTI reply from NHRC dated 27th March 2024*;
3. *India: Annual Report on Torture - 2020 by the National Campaign Against Torture*

intimations received³ by the NHRC on the cases of deaths/rapes in police custody.

Figure 8.1 shows the year-wise number of cases of deaths/rapes in police custody registered in NHRC from 1994-95 to 2021-22. While there is no clear linear trend over the period of nearly three decades, certain years show a sharp increase in the numbers. The latest data for the year 2021-22 shows the highest number of registered cases of deaths in police custody since 2008.

Across states, there are wide variations, with some states showing a significantly higher number of cases of deaths/rapes in police custody registered in NHRC compared to others. Notable among these are Maharashtra, with an average of 21 cases per year from 1996-2021, UP with 14 cases, Gujarat with 13 cases and Andhra Pradesh with 10 cases (**Figure 8.2**). Together, these four states account for nearly 40 percent of the overall caseload during this period.

Since the NHRC annual reports do not provide disaggregated data on the number of deaths in

police custody (it is combined with the number of custodial rapes), we filed RTIs to get that information for the period from 2020 to 2023⁴.

As seen in **Table 8.2**, the number of deaths in police custody in the period 2020-2023, increased overall, with a total of 90 deaths in 2020, 164 deaths in 2021, 178 deaths in 2022 and a slight decline in 2023 with 151 reported cases of deaths in police custody. One reason for the comparatively low numbers in 2020 could be the national lockdown during the Covid-19 pandemic.

The cumulative data for this period shows that only two states, Maharashtra, with 81 deaths from 2020-23 (14% of the overall deaths) and Gujarat, with 74 deaths (13% of the overall deaths), together make up more than a quarter (27%) of the total number of deaths in police custody in India (**Figure 8.3**). Aside from 2020, Maharashtra has been consistently reporting the highest numbers, followed closely by Gujarat. Other notable states are Bihar (49 deaths), West Bengal (38 deaths), MP (35 deaths) and UP (33 deaths).

Figure 8.1: One hundred and seventy-five cases of deaths/rapes in police custody were registered in NHRC in 2021-22, the highest since 2008

Total number of cases registered in NHRC based on intimations received on cases of deaths/rapes in police custody from 1994-95 to 2021-22



Source: NHRC Annual Reports 1994-95 to 2021-22

³ In the NHRC Annual Report, the Annexure under which this information is provided is titled 'State-wise number of cases registered', under which one column is on the intimations received about custodial deaths and rapes, which is being presented here. Thus, the data presented is only of those cases where intimations were received by the NHRC on deaths/rapes in police custody and the cases were registered. However, the total number of "complaints" and "suo moto cognizance" (also provided in the same table) would also include some cases of deaths/rapes in police custody, but that segregation has not been made available. Thus, because of the lack of clarity in data, only the information on intimations received by the NHRC has been presented, while the overall number of cases of custodial deaths/rapes registered in NHRC might be higher.

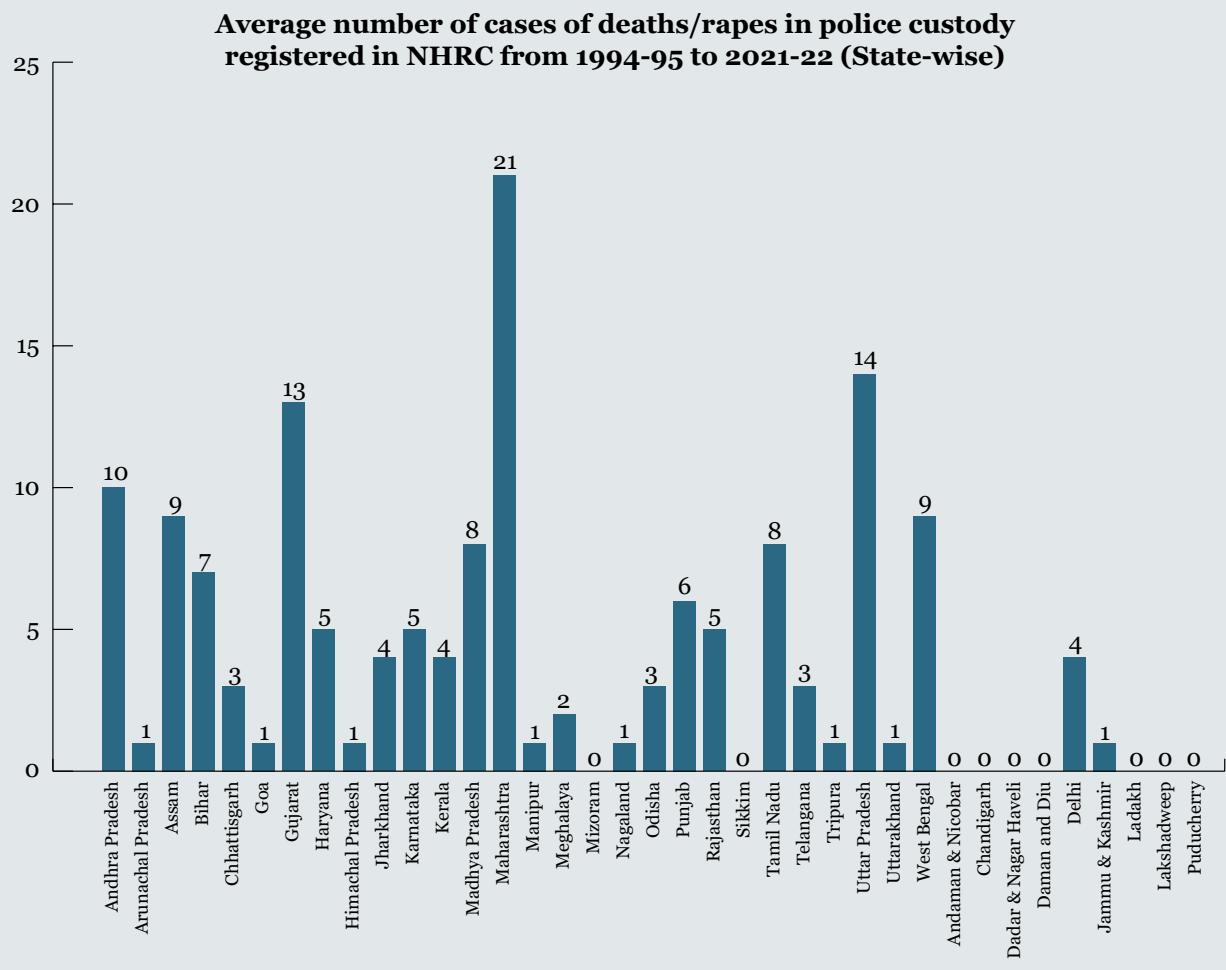
⁴ Note: While the NHRC annual reports provide data for the Financial Year (e.g., 1st April 2019 - 31st March 2020), the data received through the RTIs pertains to the calendar year (e.g., 1st January - 31st December 2020).

Table 8.2: One hundred and fifty-one cases of deaths in police custody were registered in NHRC in 2023, up from 90 cases in 2020

States	Numbers of deaths in police custody registered in NHRC			
	2020	2021	2022	2023
Andhra Pradesh	3	0	5	4
Arunachal Pradesh	1	0	3	3
Assam	1	7	13	7
Bihar	3	18	16	12
Chhattisgarh	3	3	1	1
Goa	0	0	3	1
Gujarat	17	23	17	17
Haryana	1	5	4	6
Himachal Pradesh	1	0	0	1
Jharkhand	3	5	6	3
Karnataka	4	8	6	9
Kerala	1	5	4	2
Madhya Pradesh	8	11	6	10
Maharashtra	8	30	21	22
Manipur	1	1	2	1
Meghalaya	1	3	2	1
Mizoram	0	1	0	0
Nagaland	0	0	2	1
Odisha	4	2	1	3
Punjab	1	6	11	8
Rajasthan	1	8	11	7
Sikkim	0	1	0	0
Tamil Nadu	4	4	8	3
Telangana	1	4	1	1
Tripura	1	1	1	0
Uttar Pradesh	3	11	10	9
Uttarakhand	1	1	4	1
West Bengal	11	4	14	9
Andaman & Nicobar	0	0	0	0
Chandigarh	0	0	0	0
Dadar & Nagar Haveli	0	0	0	0
Daman and Diu	0	0	0	0
Delhi	6	0	5	6
Jammu & Kashmir	1	2	1	3
Ladakh	0	0	0	0
Lakshadweep	0	0	0	0
Puducherry	0	0	0	0
All Over India	0	0	0	0
Foreign Countries	0	0	0	0
Total	90	164	178	151

Source: RTI reply from NHRC dated 27th and 28th March 2024

Figure 8.2: Maharashtra has the highest number of cases of deaths/rapes in police custody registered in NHRC, with an average of 21 cases per year from 1994-2022



Source: NHRC Annual Reports 1994-95 to 2021-22

8.3.3 Reasons for custodial deaths

As per NCAT data, nearly half (51 out of 111, i.e., 46%) of the cases of deaths in police custody during 2020 were allegedly caused by torture. On the other hand, for the same year, NCRB data suggests that of the 76 custodial deaths that it reports, only one death was due to injuries sustained during police custody by physical assault. Thus, evidently, not only is the number of custodial deaths reported by the police significantly lower than those recorded by other agencies, they also rarely attribute torture as the cause of death in police custody, making these numbers even more unreliable. According to NCRB figures, over the last five years for which data is available (2018-22), a total of 13 deaths were due to physical assault

by the police, which makes up just about three percent of the overall deaths in police custody.

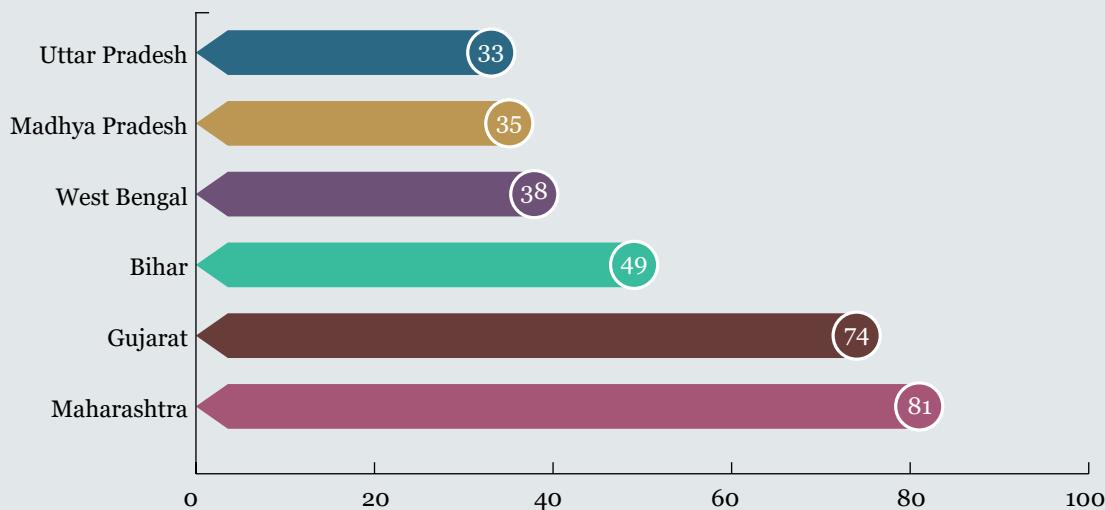
Unfortunately, comparable data from other sources is also scarce. While the NCAT reports provide information pertaining to just two years—2019 and 2020, the NHRC does not give a breakdown of the reasons for deaths in police custody.

8.3.4 Encounter killings

Similar to custodial deaths, encounter killings are another site of civilians losing their lives amidst police actions or operations. As seen in SPIR 2019, one in five police personnel feels that killing “dangerous criminals” during encounters is better than a legal trial, a sentiment that is repeated in this survey (see Chapter 3 of this report).

Figure 8.3: A total of 81 cases of deaths in police custody in Maharashtra from 2020-23 were registered in NHRC

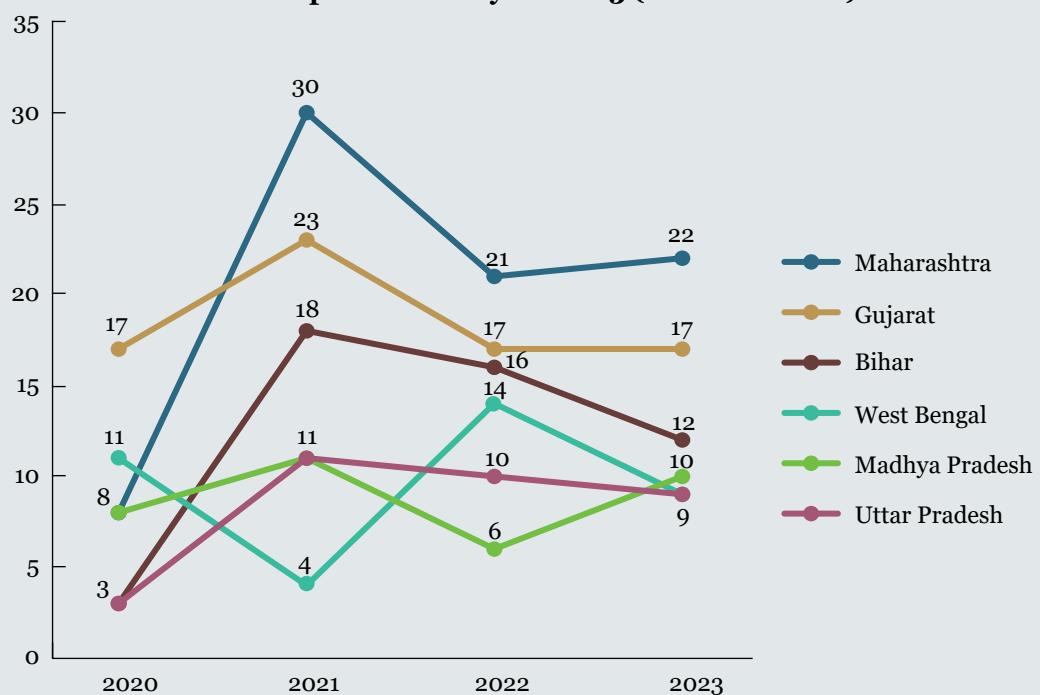
Total deaths in police custody from 2020-23 (Selected states)



Source: RTI reply from NHRC dated 27th and 28th March 2024

Figure 8.4: Number of deaths in police custody in Maharashtra increased nearly three times from 2020 to 2023

Deaths in police custody 2020-23 (Selected states)



Source: RTI reply from NHRC dated 27th and 28th March 2024

In this vein, it is important to look at the trends of encounter killings as reported in the official data. While NCRB does not report the number of ‘encounter’ deaths, it provides data on the number of cases registered against the police for ‘encounter’ killings, which is reported in a later section of this chapter.

The data published by NHRC for the period of 2020-22, records 459 cases of “deaths in police action”. This can be understood to include encounter deaths, as becomes clear on a reading of guidelines issued by the NHRC on procedures to be followed in cases of deaths caused by police action (NHRC, 2010).⁵ The latest available data on deaths in police action, available through RTI for the year 2023, shows 114 such cases registered with NHRC from across the country, with the highest reported cases coming from the states of UP (20 cases),

Chhattisgarh (18 cases) and Assam (15 cases) (**Table 8.3**).

8.3.5 Time of death of persons in police custody

In a time-series analysis of NCRB data from 2010-19 on deaths in police custody, Bagga (2020a) notes that 63 percent of the deaths in police custody occur within the first 24 hours of arrest. Article 22 of the Constitution of India and Section 57 of the Criminal Procedure Code, 1973 (which was in effect at the time of Bagga’s analysis, and has now been replaced with Section 58 of the BNSS, 2023) require that all arrested persons be produced before a magistrate within 24 hours of arrest. Those who have not been produced are classified as “persons not remanded” in the *Crime in India* report of the NCRB.

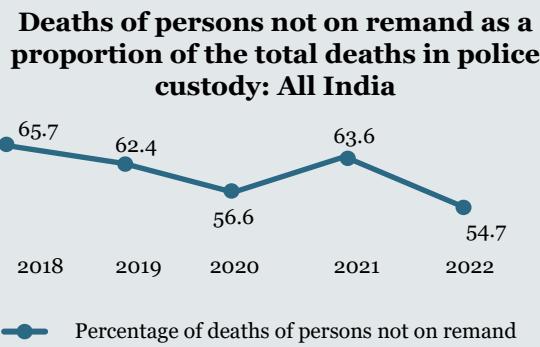
Table 8.3: Twenty cases of deaths in police action, or encounter killings, from UP, were registered at NHRC in 2023

Number of deaths in police action registered at NHRC in 2023 (State-wise)		
Andhra Pradesh	0	
Arunachal Pradesh	0	
Assam	15	
Bihar	9	
Chhattisgarh	18	
Goa	0	
Gujarat	0	
Haryana	0	
Himachal Pradesh	0	
Jharkhand	8	
Karnataka	2	
Kerala	0	
Madhya Pradesh	4	
Maharashtra	3	
Manipur	1	
Meghalaya	1	
Mizoram	0	
Nagaland	0	
Odisha	2	
Punjab	5	
Rajasthan	5	
Sikkim	0	
Tamil Nadu	3	
Telangana	3	
Tripura	0	
Uttar Pradesh	20	
Uttarakhand	0	
West Bengal	7	
Andaman & Nicobar	0	
Chandigarh	0	
Dadar & Nagar Haveli	0	
Daman and Diu	0	
Delhi	0	
Jammu & Kashmir	7	
Ladakh	0	
Lakshadweep	0	
Puducherry	0	
All Over India	1	
Foreign Countries	0	
Total	114	

Source: RTI reply from NHRC dated 28th March 2024

⁵ While the term “encounter deaths” has been used in the NHRC annual reports, the RTI replies term it as “deaths in police action”.

Figure 8.5: More than half of the deaths in police custody occur within 24 hours of arrest



Note: Figures are in percentages.

Source: Crime in India Reports, 2018-2022, NCRB

The analysis found that a total of 633 persons died in police custody before they were produced before a judicial magistrate. The figures were especially high in the states of Gujarat, UP, Tamil Nadu, Punjab and Maharashtra, where more than three out of four cases of deaths in police custody were those of persons not on

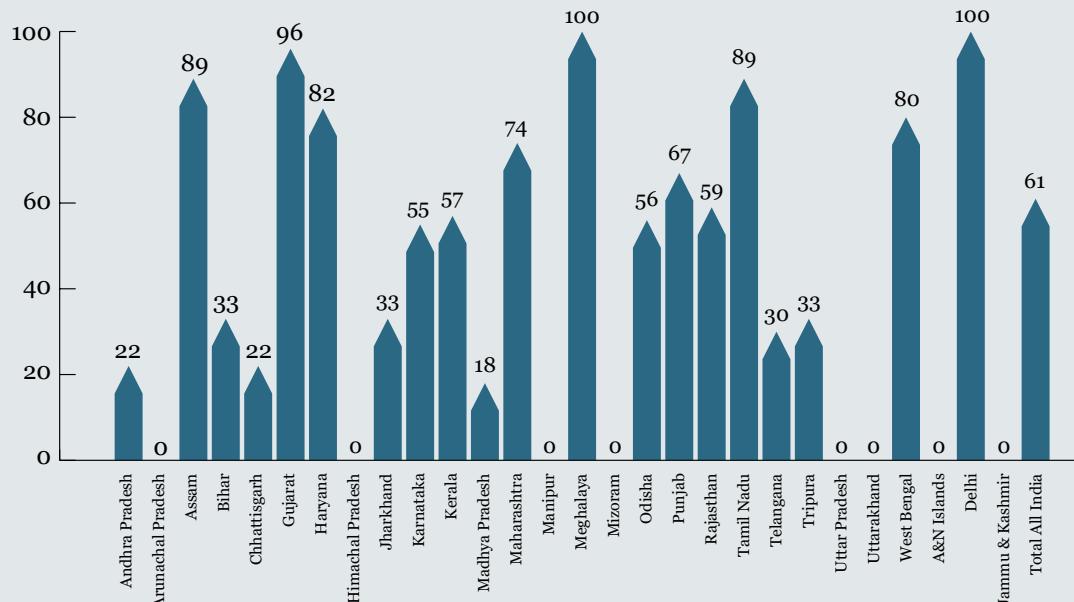
remand, i.e., within 24 hours of arrest. Notably, some of these states are the ones recording the highest number of deaths in police custody over the years, as seen above, particularly the states of Gujarat, Maharashtra and UP.

An analysis of the more recent data of the last five years (2018-22) reveals similar trends. There was a slight decline in 2022, with 55 percent of the deaths in police custody occurring within the first 24 hours, against 66 percent in 2018 (Figure 8.5).

When the cumulative numbers for the five-year period from 2018-22 are analysed across states, it emerges that in Meghalaya and Delhi, where the total number of deaths in police custody during this period was one and two respectively, all the deaths occurred within the first 24 hours of arrest (Figure 8.6). Among the states with a significantly higher number of deaths in police custody, Gujarat, Tamil Nadu and Assam had the highest proportions of deaths within the first 24 hours of arrest, with nearly 90 percent

Figure 8.6: Ninety-six percent of the deaths in police custody in Gujarat from 2018-22 were within 24 hours of arrest

Persons not on remand as a proportion of total deaths in police custody (2018-22 total)



Note: Figures are in percentages.

Source: Crime in India Reports, 2018-2022, NCRB

or more of the deaths being reported of persons who have not been remanded or produced before the magistrate's court. Gujarat, most troublingly, reported that of the total 76 deaths in police custody that occurred during this five-year period, 73 persons, or 96 percent of the cases were of persons not remanded.

Other notable states with an overall high number of custodial death cases were Haryana, with 82 percent deaths within 24 hours of arrest, West Bengal at 80 percent, and Maharashtra at 74 percent. At the all-India level looking at the numbers cumulatively for 2018-22, 61 percent of the deaths in police custody took place within 24 hours of arrest.

8.4 Investigation of Custodial Deaths

8.4.1 Judicial and magisterial inquiries

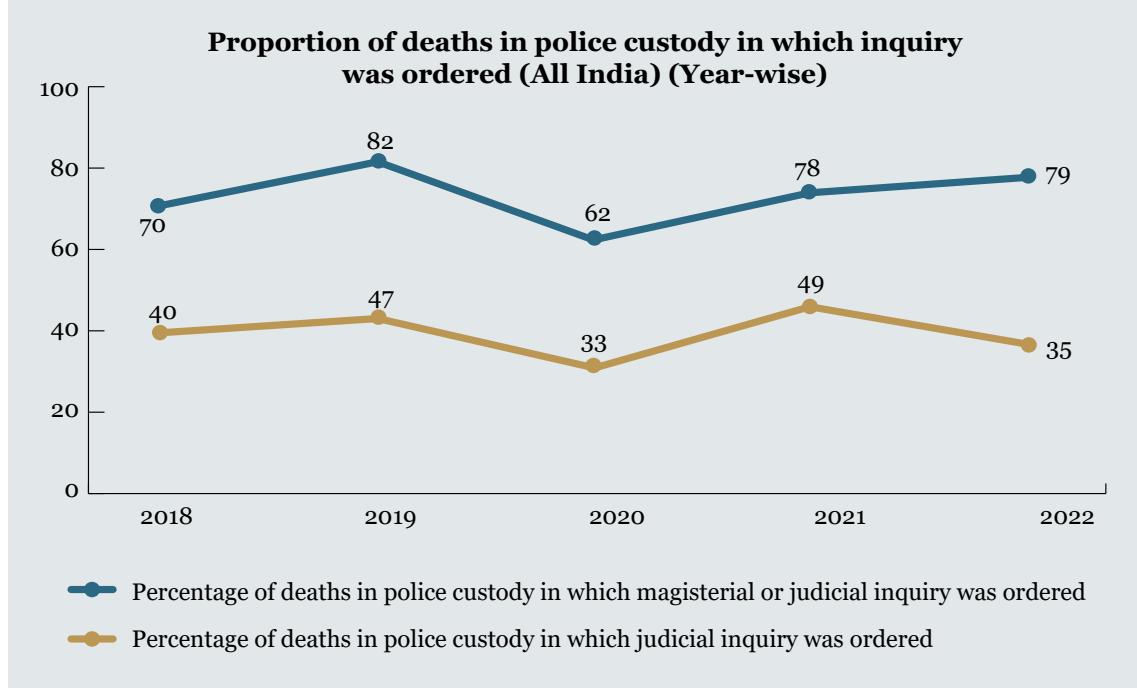
All cases of deaths or rapes in police custody have to be mandatorily inquired into by a judicial magistrate, according to Section 196(2) read with Section 3 of the BNSS, 2023. The

data reveals that the practice is not uniform. In this section, we look at the proportion of cases of deaths in police custody during 2018-22 in which judicial or magisterial inquiries were ordered.

An issue with the reporting of this data, as pointed out by Bagga (2020b), is that NCRB uses the terms inquiries "ordered" and inquiries "conducted" as one category clubbed together from 2010 to 2013. While 2014 onwards, this was replaced with the term "ordered", it remains unclear in how many cases the inquiries were actually conducted, as opposed to those in which the inquiries were only ordered.

Despite the legal mandate of a judicial inquiry into all cases of deaths in police custody, we find that in the five years for which data is available (2018-22), judicial inquiries were ordered in less than half of the cases of deaths in police custody (**Figure 8.7**). In fact, over the five-year period, the percentage of cases in which judicial inquiry was ordered has worryingly declined, from 40 percent in 2018, to 35 percent in 2022. As of 2022, the legal mandate of having

Figure 8.7: Judicial inquiry ordered in less than half of the cases of deaths in police custody from 2018-22



Note: Figures are in percentages.

Source: Crime in India Reports, 2018-2022, NCRB

a judicial inquiry into cases of deaths in police custody was not followed in nearly two-thirds of the cases.

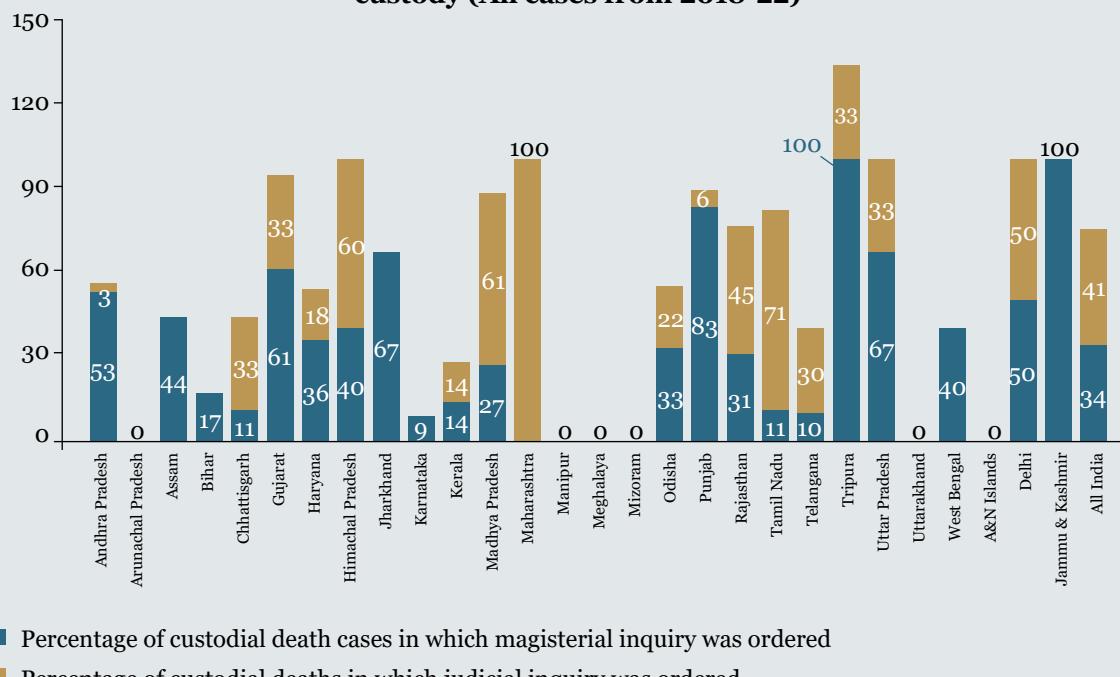
Further, in more than twenty percent of the cases of deaths in police custody, neither judicial nor magisterial inquiries, i.e., no kind of inquiry was held. While in 2018, *any* kind of inquiry (judicial and magisterial inquiry combined) into deaths of persons in police custody was held in 70 percent of the cases, in 2019, this figure went up to 82 percent, down to 62 percent in 2020, 78 percent in 2021 and 79 percent in 2022. It is indeed a matter of concern that inquiries have not been conducted into all cases of deaths in police custody in the last five years for which the data is available.

A caution to be noted here is that there may be some cases in which both judicial as well as magisterial inquiries were ordered, thereby inflating the proportion of cases in which any kind of inquiry was ordered.

Across states, significant variations were seen. When looking at the cumulative data of all the cases in the last five years for which data is available (2018-22), Maharashtra emerged as the only state in which judicial inquiries were ordered in all cases of deaths in police custody (**Figure 8.8**). Other states where a judicial inquiry was ordered in at least half or more of the cases of deaths in police custody were Tamil Nadu at 71 percent, Madhya Pradesh, at 61 percent, Himachal Pradesh, at 60 percent and Delhi at 50 percent. In Gujarat, which has the highest number of cases of deaths in police custody during this period, judicial inquiries were ordered in 33 percent cases, while magisterial inquiries were ordered in 61 percent cases. In the smaller states of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Uttarakhand and A&N Islands, neither judicial nor magisterial inquiries were ordered in any cases of deaths in police custody. On the other hand, in Bihar, out of six cases of custodial

Figure 8.8: Judicial inquiry was ordered in all cases of deaths in police custody from 2018-22 only in Maharashtra

Judicial/Magisterial inquiry ordered in cases of deaths in police custody (All cases from 2018-22)



*Note: The remaining states/UTs reported no cases of deaths in police custody during this period. Figures are in percentages.
Source: Crime in India Reports, 2018 to 2022, NCRB*

deaths, judicial inquiry was ordered only in one case (17%) and magisterial inquiry in no cases, while in Kerala, out of seven cases of custodial deaths, judicial inquiry was ordered in one case (14%) and magisterial inquiry in one case (14%).

At the all-India level, out of 394 cases of deaths in police custody that occurred during this five-year period, judicial inquiries were ordered in 41 percent cases and magisterial inquiries in 34 percent of the cases.

8.4.2 Disposal of custodial deaths and encounter cases by police and courts

We further analysed the data on cases registered against police personnel for custodial deaths reported by NCRB, cumulatively for all the cases between 2018-22. Of the 394 incidents of deaths in police custody, cases were registered in just 41 such incidents, i.e., in 10 percent of the deaths at the all-India level (**Figure 8.9**). Of the 41 cases that were registered, chargesheets were filed in just about 12 percent of the cases. There were zero convictions under this head in

the entire period from 2018 to 2022 across the country.

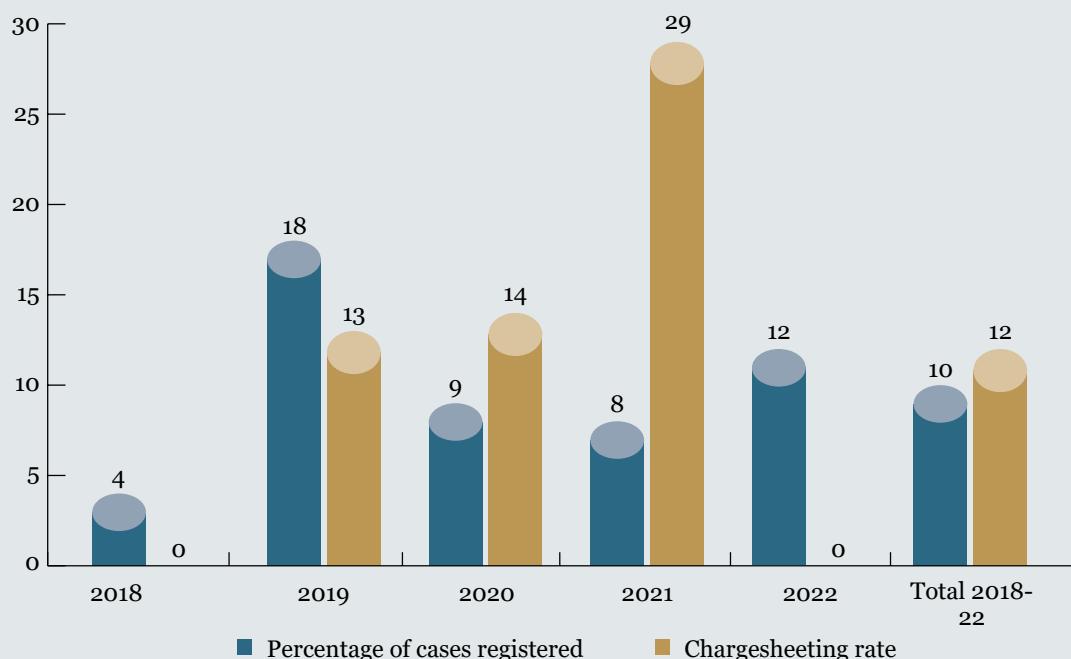
On encounter killings, 29 cases were registered between 2018 and 2022, and chargesheets were filed in just seven percent of the cases while the conviction rate was again zero throughout the five-year period. A total of 19 policemen were reportedly arrested for encounter killings during this period, while 39 policemen were arrested for deaths in police custody from 2018-22.

8.4.3 Investigation of deaths in police custody by NHRC

We accessed information through RTIs on the disposal of all cases of custodial deaths, including new registered cases as well as those pending from previous years, by the NHRC during 2023. It was found that a total of 281 cases were disposed by the NHRC in the year, a majority of which, 58 percent, were “concluded with no further action required” (**Figure 8.10**). Seventeen percent of the cases were

Figure 8.9: Cases registered in only 10 percent of deaths in police custody from 2018-22

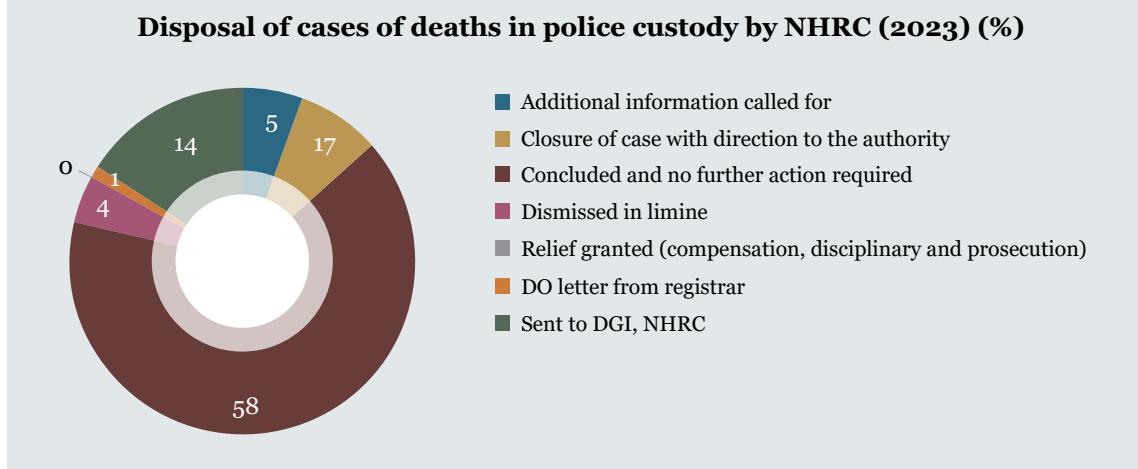
**Registration and charge sheeting of cases of deaths in police custody
(All-India) (2018-22)**



Note: Figures are in percentages.

Source: Crime in India Reports, 2018 to 2022, NCRB

Figure 8.10: 'Relief granted' in only one case of death in police custody by NHRC in 2023



Note: Figures are percentages of the total cases of deaths in police custody disposed by the NHRC in 2023.

Source: RTI reply by NHRC dated 12th June 2024

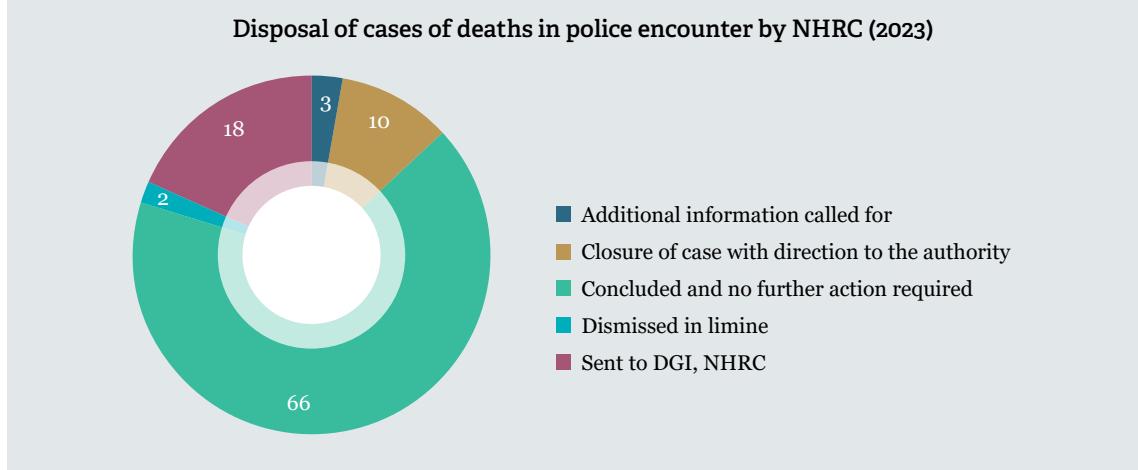
closed after issuing directions to an authority or authorities, while 14 percent were sent to the Director General (Investigation) of the NHRC, who heads the investigation division of the NHRC, presumably for further investigation. On the other hand, four percent of the cases were dismissed in limine, i.e., dismissed at the very outset before examination of the merits of the case. Directions for further action or relief in the form of compensation, disciplinary action and prosecution were only issued in one case out of 281. They did not specify whether

the relief in the case included all three actions (compensation, disciplinary action and prosecution), or any of these. Similarly, the other terminologies for disposal of cases have also not been explained by the NHRC.

8.4.4 Investigation of encounter deaths by NHRC

NHRC also investigated 239 cases of encounter killings by the police in the year 2023. A majority of these cases, 66 percent, were concluded by

Figure 8.11: Ten percent of the cases of encounter deaths closed with directions to authorities by the NHRC in 2023



Note: Figures are in percentages.

Source: RTI reply by NHRC dated 12th June 2024

the NHRC with no further action required, while directions were issued to an authority or authorities in 10 percent of the cases (**Figure 8.11**). Eighteen percent of the cases were sent to the Director General (Investigation), NHRC and two percent were dismissed in limine. A category for “relief granted”, as mentioned in the disposal of cases of deaths in police custody, was not included in the disposal of deaths in police encounter, implying that ‘relief’ was not granted by the NHRC (in the form of compensation, disciplinary action and prosecution) in any of the cases of encounter deaths in 2023.

Troublingly, the terms used by the NHRC for unnamed victims may be indicative of the approach taken by them in the investigation of such cases. Of all the cases of death in police encounters which were investigated by the NHRC in 2023, in 58 cases, the victims were termed as “Naxalites” or “Maoists” by the NHRC, as “terrorists” in six cases, as “miscreant” in one case, as “cattle smugglers” or “poachers” in two cases, as “dacoits” in two cases, and as “smuggler” in one case. While these examples are from the data on deaths in police encounters, similar terms have been used for victims across the various categories of complaints against police violence and excesses. The use of such language for the *victims* of police encounters by an agency instituted to impartially investigate cases of human rights violations seems to be co-opted by the police and speaks volumes of the coloured attitude of the NHRC towards complainants or victims of police violence.

8.5 Custodial Violence and Other Police Excesses

8.5.1 Number of cases of custodial violence and other police excesses registered at NHRC

We used RTI to further get information on the number of cases registered against the police at the NHRC on the following categories of cases they term as “human rights violations” by the police—unlawful detention, custodial violence, rape or sexual harassment in police custody, false implications, illegal arrests and other excesses by the police. It needs to be noted, however, that unlike the cases of deaths in police custody, which are legally mandated to be reported to the NHRC, there is no such provision for other complaints of violence and excesses by the police to be intimidated to the NHRC. Hence, these are only the cases wherein either the complainant approached the NHRC or the NHRC took *suo moto* cognisance, but this data is not indicative of *all* possible cases of police violence and excesses.

The data provided by the NHRC suggests that aside from deaths in police custody and encounter killings (reported by the NHRC as “deaths in police action”), a total of nearly 13,700 cases were registered with the NHRC against the police in the year 2023, while in 2022, more than 18,000 such cases were registered (**Table 8.4**). The highest proportion of the cases are those which are vaguely termed as “other police excesses”, which makes it difficult to determine

Table 8.4: Thirty-three cases of custodial violence registered in NHRC in 2023

Number of cases of police violence and excesses registered in NHRC				
	2020	2021	2022	2023
Unlawful detention	316	431	343	208
Custodial violence	47	34	49	33
Rape or harassment in police custody	13	11	9	12
False implications	1905	2089	2331	NA
Illegal arrests	351	534	584	NA
Other police excesses	11915	13876	15044	13454
Total	14547	16975	18360	13707

Source: RTI reply of NHRC dated 27th and 28th March 2024

Table 8.5: More than half of the cases of unlawful detention registered in NHRC in 2023 are from UP

State	Complaints against the police registered at NHRC (2023)			
	Unlawful detention	Custodial violence	Rape or sexual harassment in police custody	Other police excesses
Andhra Pradesh	10	2	1	459
Arunachal Pradesh	3	0	0	16
Assam	0	0	0	37
Bihar	6	5	0	922
Chhattisgarh	1	0	0	89
Goa	0	0	0	11
Gujarat	4	2	0	231
Haryana	4	0	1	566
Himachal Pradesh	1	0	0	10
Jharkhand	2	1	0	329
Karnataka	6	2	0	152
Kerala	1	0	0	68
Madhya Pradesh	4	0	0	475
Maharashtra	1	0	0	443
Manipur	1	0	0	8
Meghalaya	0	0	0	3
Mizoram	0	0	0	0
Nagaland	0	0	0	0
Odisha	2	1	0	215
Punjab	0	1	1	189
Rajasthan	3	0	0	477
Sikkim	0	0	0	4
Tamil Nadu	4	1	0	553
Telangana	2	1	0	321
Tripura	0	0	0	3
Uttar Pradesh	131	10	6	6005
Uttarakhand	3	0	0	188
West Bengal	2	0	2	481
Andaman & Nicobar	0	0	0	3
Chandigarh	0	0	0	21
Dadar & Nagar Haveli	0	0	0	2
Daman and Diu	0	0	0	1
Delhi	15	6	1	1045
Jammu & Kashmir	0	1	0	42
Ladakh	0	0	0	1
Lakshadweep	0	0	0	0
Puducherry	1	0	0	41
All Over India	0	0	0	39
Foreign Countries	1	0	0	4
Total	208	33	12	13454

Source: RTI reply of NHRC dated 28th March 2024

the exact nature of the complaint. If we leave out this category, the highest number of complaints against the police from 2020 to 2022 (data for 2023 in this category was not available) were for implicating people in false cases. Across the years, nearly 2,000 or more cases of the police falsely implicating people were registered at the NHRC. Further, 208 cases of unlawful detention were registered in NHRC in 2023, down from 343 cases in 2022. The registration of cases of custodial violence and rape or sexual harassment in police custody is significantly lower, with 33 cases of custodial violence and 12 cases of rape/sexual harassment in police custody registered in the year 2023.

If we look at the state-wise pattern of the various categories of complaints against the police registered at NHRC for the year 2023, we find that a majority of the cases of unlawful detention were in UP, with 131 such complaints registered (**Table 8.5**). Similarly, across states, UP also had the highest number of cases registered for custodial violence by the police (10 cases, against the total of 33 cases registered in the year). Half of the total cases of rape or sexual harassment in police custody also come from the state of UP, with six such cases in 2023.

Other notable states were Delhi, with 15 cases of unlawful detention, six cases of custodial violence and one of rape or sexual harassment in police custody; and Andhra Pradesh, with 10 cases of unlawful detention, two of custodial violence and one of rape or sexual harassment

in police custody. Bihar also had five cases of custodial violence registered against the police.

8.5.2 Disposal of cases against state police personnel for human rights violation by the police and the courts

The data on registration and disposal of cases of human rights violations (except cases of deaths in police custody and encounter killings) by the state police personnel is reflective of the minimal action taken by the state authorities against torture and other police excesses. Official data on the numbers of such cases is perceptibly low in the first place, with just one registered case of illegal detention, eight cases of torture, 25 cases of extortion and 110 cases of other human rights violations by the police over the five-year period of 2018-22.

Even worse, however, are the figures on the disposal of these cases by the police and courts. In the five-year period, a total of 70 police personnel were arrested for human rights violations aside from deaths in police custody and encounter killings (**Table 8.6**). In the 144 cases of these human rights violations registered against police personnel, chargesheets were filed in only 32 percent and convictions were ordered in none of these cases.

The charge sheeting and conviction rates here are to be read with a caveat. In other categories of crimes, both charge sheeting and conviction rates are calculated against the total number of cases for investigation—which includes the

Table 8.6: No conviction in any of the cases of human rights violation by the police from 2018-22

Type of human rights violations	Disposal of cases of human rights violations against state police personnel (All cases 2018-22)			
	Number of cases registered	Number of police personnel arrested	Chargesheeting rate (%)	Conviction rate (%)
Illegal detention	1	0	0	0
Torture	8	3	50	0
Extortion	25	16	32	0
Others	110	51	25	0
Total	144	70	32	0

Source: *Crime in India Reports (2018-2022), NCRB*

Table 8.7: More than Rs 64 lakhs recommended by the NHRC as compensation to the next of kin in custodial deaths pending compliance

Details of cases pending compliance of NHRC's recommendations during 2020-21		
Nature of complaint	Number of cases	Amount recommended for victims/next of kins
Alleged custodial deaths in police custody	6	₹ 32,00,000
Alleged custodial rape in police custody	1	₹ 1,00,000
Atrocities on SC/ST (by police)	1	₹ 2,00,000
Custodial death (police)	18	₹ 64,50,000
Custodial torture	12	₹ 41,50,000
Death in police custody	1	₹ 2,00,000
Death in police encounter	8	₹ 58,00,000
Death in police firing	1	₹ 7,00,000
False implications	2	₹ 8,25,000
Non-registration of FIRs	1	₹ 1,00,000
Rape outside police station	3	₹ 10,50,000
Unlawful detention	1	₹ 25,000
Total		₹ 2,28,00,000

Source: NHRC Annual Report 2021-22

pending cases from previous years and the new cases registered in the current year. Here, however, the number of cases pending from the previous year is not given, so both the charge sheeting and conviction rates are likely to be inflated. This means that the actual charge sheeting and conviction rates in cases of human rights violations by the police are likely to be even poorer.

In the disposal of the complaints received by the NHRC, one of the most common reliefs recommended is compensation to the victims or next of kin. The NHRC annual report provides state-wise data on cases in which the NHRC recommended monetary relief and compliance with NHRC recommendations is pending. On clubbing together the data across states, we find that as of March 2022, more than Rs 64 lakhs recommended as compensation by the NHRC for deaths in police custody is pending compliance (**Table 8.7**). Further, a total of Rs 32 lakhs which was recommended by the NHRC in cases of alleged custodial deaths in police custody is also pending compliance, while more than Rs 41 lakhs for custodial torture and Rs 58 lakhs for deaths in police encounter is also

pending compliance. In total, for select cases of complaints against the police, more than Rs 2 crore amount recommended as compensation by the NHRC is pending compliance across states.

8.6 Data Gaps and Inconsistencies

While under-reporting the number of cases of custodial deaths and violence is a clear finding emerging from the available official statistics, another major issue is the complete omission of many important data points. In the data provided by the NHRC annual reports which are in the public domain, only the number of intimations of deaths/rapes in police custody and encounter deaths is given, along with information on the disposal of these cases. However, there is no disaggregation of the number of complaints, or suo moto cases registered, or disposed by the NHRC which have to do with police torture or excesses. The number of cases of illegal arrests, custodial violence, death in police action (or encounter deaths), false implications, unlawful detention, rape/sexual harassment in police custody and other police excesses registered

or disposed by the NHRC had to be accessed through repeated RTI applications. Even the RTI data suffers from some inherent problems, such as the undefined category of “other police excesses” which, as seen above, has the highest share of cases against the police registered in the NHRC. Further, as mentioned above, the annual reports do not even segregate the data on custodial deaths and custodial rapes, providing only the cumulative figures.

The information on the disposal of cases by the NHRC, accessed through RTI, also lacks clarity on the distinction between categories such as “closure of case with direction to authorities” and “concluded and no further action required”. Even with a dashboard dedicated to making the NHRC statistics publicly available, the actual information available to the public is only a fraction of the information available with the NHRC. When more information is sought and accessed through tools such as RTIs, it is still difficult to discern because of the ambiguity in the terminologies used.

Another issue is the failure of these organisations to collect and publish data that can be easily compiled and will help reveal key features of custodial violence, such as, are certain groups or communities emerging as victims more than others? For instance, in the cases registered with the NHRC, there is a column each for caste and religion of the victim. However, out of the 281 cases of custodial deaths that were investigated by the NHRC in 2023⁶, the religion of the victim column is “unknown” in 204 of these cases (nearly 73%). Similarly, the caste of the victim is “unknown” in 257 (92%) of these cases. The NCRB, similarly, does not publish this information either, and there is no clarity on whether this information is even compiled by them.

Bagga (2020b) points out several inadequacies in the data published by the NCRB. One, that on the data on death (in police custody) “due to illness/during hospitalisation”, there is no clarity on whether the hospitalisation was linked

to conditions or circumstances in custody or due to assault by the police, or by some other person in custody. He also points out the increasing proportion of deaths by suicides in police custody over the past decade—from 24 percent of the deaths in police custody by suicide in the period between 2010-2014, increasing to 36 percent during 2015-2019. Bagga reiterates the importance of compiling and publishing information on the demographics of the persons who died in police custody, including age, gender, caste and religion. He also quotes a former IPS officer to suggest segregating the data on police torture and custodial deaths district-wise as well as police station-wise to increase police accountability.

Other important data points that can help make the police accountable for torture and custodial violence are the ranks of police personnel against whom complaints have been registered and the number of police personnel and victims in each case, to name a few.

8.7 Conclusion

While the data on police torture leaves much to be desired, and what has been omitted is arguably more important than what has been provided, certain trends and findings stand out. Some of these provide a bleak picture of the state of custodial violence and the subsequent investigation of these cases.

The first important finding that emerges is that even though deaths in police custody are inaccurately reported in the official data sources, a comparison with non-official data sources suggests major undercounting of the cases. Both the NCRB and the NHRC, which should have the exact number of such cases, provide different figures on deaths in police custody for the same year, which are far below the compilation of such cases by NCAT, a civil society platform. Attributing torture as the reason for custodial deaths is also very rare in official data. While the NCAT data for 2020 points to 46 percent of the deaths in police

⁶ The information pertaining to the cases was accessed through RTI and the research team collected information on the columns of caste and religion of the victims by tracking the case status of the individual cases on the NHRC website.

custody (51 cases) allegedly being due to police torture, the NCRB report for the same year lists just one case as being caused due to physical assault by the police.

The number of intimations of deaths/rapes in police custody against which complaints were registered in the NHRC reveals that the highest number of such cases since 2008 (175), were registered in 2021-22. The states which are consistently reporting the highest number of cases are Maharashtra, Gujarat and UP. While the states are mandated to report each case of custodial death to the NHRC, there continues to be under-reporting by some states, as has been charged by the NHRC. The highest number of deaths in police encounters in 2023 were in UP (20) of a total of 114 cases in that year, according to NHRC.

In a majority of the cases, (61% of all deaths that were reported between 2018-22) the deaths in police custody take place within 24 hours of arrest. Judicial inquiry, mandated in *every* case of custodial death, was ordered in only 35 percent of the cases of deaths in police custody in the year 2022. Maharashtra was the only state where judicial inquiry into all cases of custodial deaths were ordered from 2018-22. After the investigation of deaths in police custody by the NHRC in 2023, relief was granted in only one

such case (of the 281 cases that were disposed of by the NHRC in the year).

Data on custodial violence and other police excesses is even more scant, as well as ambiguous because of the different terminologies used by different agencies, without any clear definitions. In 2023, the NHRC registered 33 cases of custodial violence and 12 cases of rapes or sexual harassment in custody. However, a majority of the cases against the police are registered under the category of “other police excesses”, which is an undefined and ambiguous category. When it comes to the disposal of the cases of human rights violation by the police, of the 144 cases registered against the police during 2018-2022, chargesheets were filed in only 32 percent of the cases and no convictions were made in this five-year period.

An analysis of the official data on police torture—even though sparse, inconsistent and often undercounted—provides an idea of the trends and sociocultural context of the use of torture and violence by the police. What the official data chooses to leave out can sometimes be more significant than what it divulges. While we have discussed some important findings emerging out of this data, we have also tried to deliberate on why the official data on police torture needs to be more robust, consistent, and policy-relevant.

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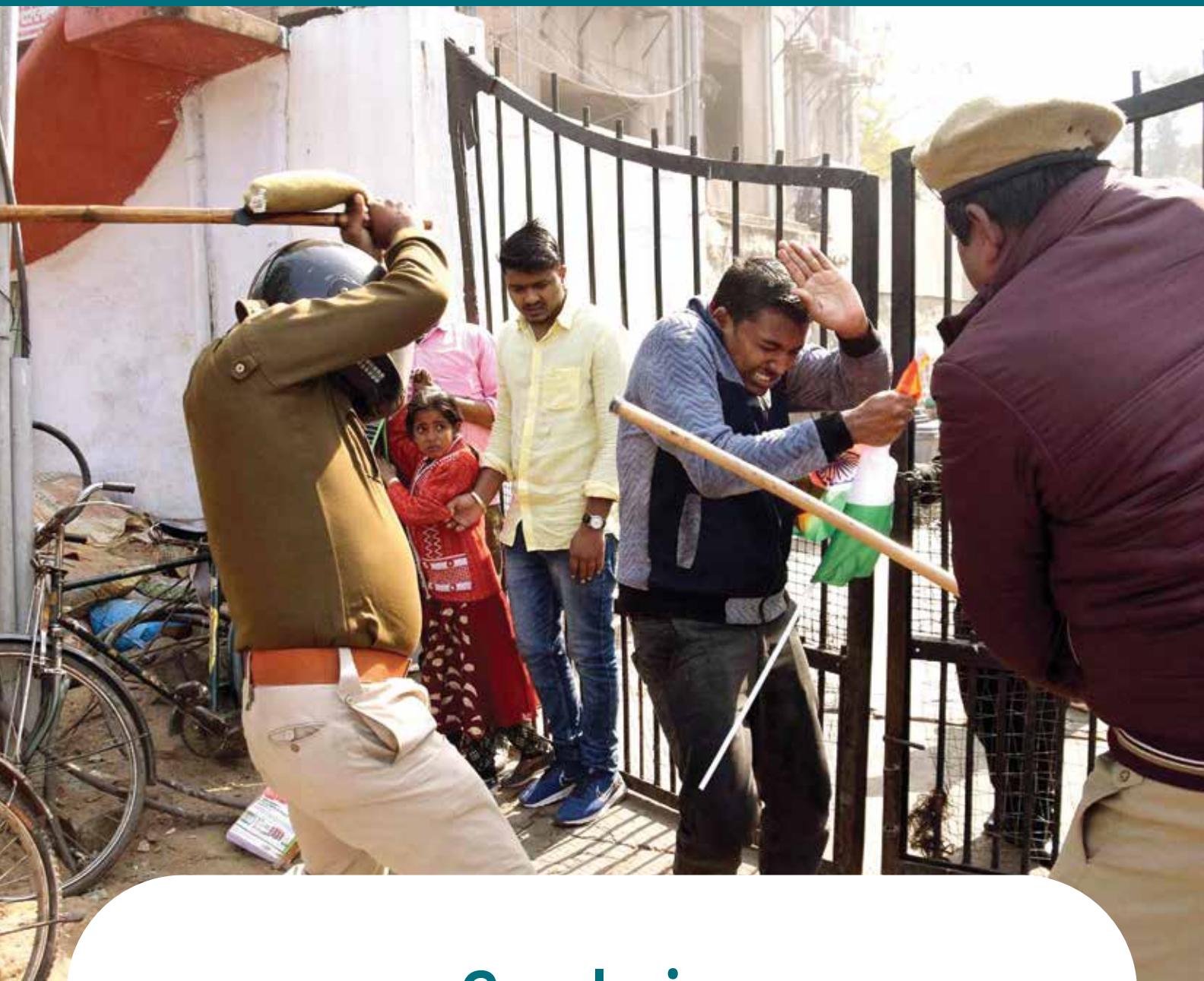
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CHAPTER 09



Conclusion

Police lathi charge protestors (4th February, 2020. Patna, Bihar).

Credits: Santosh Kumar, Hindustan Times

CHAPTER 19

Conclusion

9.1 Value of Data

The fact that torture is both practised and institutionalised in Indian policing is an open secret. While there is documentation of the nature, forms, victims, and purposes of torture in India, some of which is covered in Chapter 1 of this report, empirical data on the prevalence of, and justifications for, torture is lacking in the literature. This report attempts to plug that gap and strives to understand the continuation of torture largely from the perspective of its most common perpetrator - the police.

Predictably, official data on the extent of torture is both sparse and unreliable. While non-official channels, particularly civil society organisations, provide documentation to monitor and expose the extent of torture; their access and resources are severely limited in comparison to state channels. From the lack of witnesses to the act of torture (aside from the victim and the police) to the fear of reprisal that inhibits victims from reporting cases of torture, there are many impediments in any exercise aimed at putting an accurate number to the prevalence of torture in India. The issue is further compounded by the lack of definition of the term 'torture', leading to ambiguity in both the common-sensical as well as institutional understanding of the issue.

This report relies largely on police personnel's responses to issues of torture and violence in custody through a survey. We note the limitations of having police personnel as the primary respondents in a survey on police torture. It is not easy to be able to conduct surveys with police personnel at their workplace given the work pressure and also the peer pressure. Meeting them at their residences is equally difficult in view of their uncertain duty hours. Secondly, interviewing police about issues of torture obviously makes them self-conscious and predictably, there will be some social desirability bias. When asked about their opinions about torture, police respondents are likely to underplay either the frequency or their justifications, of such acts. Despite this limitation, the survey presents a larger picture of the context, trends and extent of the use of torture by police. It is noteworthy that substantial numbers of police persons express their justification of torture and high-handedness relatively frankly.

The survey data examines various themes to situate police views on torture, including the police's perceptions of the criminal justice system and its efficacy, their adherence with legal and procedural safeguards, their perceptions

regarding different communities, the justification and prevalence of ‘torture’ and ‘third-degree methods’ as understood by them, and their views on the accountability measures already in place and those that need to be adopted.

This report also builds on literature that acknowledges that the perpetuation of torture does not rest only with the police, but also due to systemic failings in the exercise of police accountability. In this light, we felt it was important to interview stakeholders who act as safeguards against torture – namely judges, lawyers, and doctors – to gather their views on challenges to their oversight of the police and to acting against torture. Predictably, their opinions reveal differing explanations and causes for torture, bringing further insight from police views. Chapter 8 of this report analyses the existing official data on custodial deaths and torture over years, and across states, to bring out the larger trends emerging from it.

In this concluding chapter, we present some of the most important findings emerging from the report and the larger trends and patterns that surface from a holistic reading of the data.

9.2 Disregard for the Rule of Law

At the outset, the survey data reveals that a significant proportion of the police respondents prefer extrajudicial measures over due process and systemic checks. A notable section of the police see themselves as the primary enforcers of justice while perceiving the courts and legal requirements as impediments. This mindset is reflected in their attitudes towards the efficiency of the criminal justice system, with 28 percent believing it is too weak and slow to address crimes. A notable proportion of the respondents said that police should be allowed to arrest and detain suspected criminals without any judicial oversight.

A concerningly high proportion of police personnel exhibit a clear preference for summary justice imparted by the police, both in minor as well as serious offences. For

instance, nearly two out of five police personnel (38%) believe that minor punishments should be handed out by the police instead of going through a legal trial. On the other hand, for more serious offences, more than one in five police personnel go so far as to justify police killings, with 22 percent agreeing with the statement that for the greater good of the society, killing dangerous criminals is sometimes better than giving them a legal trial.

There is strong resistance to any oversight over police use of force. More than 70 percent of the respondents feel that police should be allowed to use force without any fear of punishment, with 26 percent strongly agreeing with the statement and 45 percent somewhat agreeing.

The survey data also reveals that the police are strongly inclined to justify aggressive policing strategies, even those that exceed legal constraints. Nearly half (48%) of police personnel support increased preventive arrests of ‘anti-social elements’ over other measures, and 43 percent favour forming special squads with the authority to detain individuals *indefinitely*. Further, more than a third of the respondents (36%) believe that preventive arrests should be conducted regularly to prevent crimes from occurring in the first place when the law directs that these are used sparingly.

9.3 Inadequate Compliance with Arrest Procedures and Institutional Safeguards

In conducting arrests, the police are legally required to adhere to various constitutional and statutory provisions, which serve to safeguard arrested persons against police excesses as well as attest to the legality of every arrest made. These provisions¹ are unambiguous in their mandate and the police’s lack of adherence with them can render arrests illegal. In light of the need to comply fully, as reported by the police personnel themselves, compliance with these provisions is poor. The police reported “always” identifying themselves with a visible name tag at the time of arrest, and informing the arrested

¹ More details on these provisions are provided in the Summary of Legal Provisions (Appendix 1) and in Chapter 4.

person of their right to contact a lawyer, in less than 70 percent of cases. Worryingly, police reported “rarely” or “never” completing an inspection memo and an arrest memo with all the required signatures in up to nine and ten percent cases respectively. Eleven percent said family members are “rarely” or “never” informed about an arrest while 70 percent said “always”.

Overall, just 41 percent police personnel said that arrest procedures are always complied with, while 35 percent said that they are sometimes complied with. As many as one in four police personnel (24%) said that these procedures are rarely or never complied with. Further, only 62 percent police personnel said that arrested persons are always released on bail immediately, at the police station, in bailable offences. Anyone arrested for a bailable offence who is kept in police custody is being illegally detained.

The surveyed personnel also exhibit strong resistance to institutional checks that are in place to check against arbitrary police actions and excesses. Only 56 percent of the police personnel believe that it is always feasible to produce an arrested person before a magistrate within 24 hours of arrest, when this is a constitutional mandate. In contrast, reiterating the constitutional frame, many lawyers and judges voiced that the magistrate is the first and most important safeguard against police torture.

The right of arrested persons to legal counsel is also undermined by the police, with 20 percent believing that an arrested person should never be allowed to talk to a lawyer in private, and as many as 30 percent saying that a lawyer should never be allowed to be present during interrogation, running completely contrary to Article 22 of the Constitution and Section 38 of BNSS, 2023. As provisions that are legally and constitutionally mandated and should be followed in every arrest, the reported non-compliance in 30 percent of cases is concerning.

An important safeguard against police brutality in law is the inadmissibility of confessions before the police. Lawyers and judges expressed consensus that confessions before the police should never be made admissible in court, particularly as this would exacerbate the use of

torture by police. Police personnel themselves hold widely divergent opinions on this. More than a third of the police respondents (35%) strongly agree that confessions before Investigating Officers (IOs) should be admissible in court, and another 44 percent somewhat agree with the statement.

9.4 Justification of Torture

The police in India have a strong reliance on a culture of fear and the use of “tough methods”, as is emerging from the survey data findings. More than half of the interviewed police personnel feel that it is important for the police to use tough methods to create fear among the public, with 20 percent strongly agreeing, and 35 percent saying that it is somewhat important. A notable proportion of the respondents even justified extrajudicial killings, as mentioned above. Police personnel are also openly inclined to use violence against suspects of serious offences “for the greater good of the society”, with 22 percent fully justifying the statement, and 41 percent somewhat justifying it.

When asked direct questions on the use of torture and third-degree, both terms left open to the interpretation of the respondent, as many as 30 percent police respondents justify the use of third-degree methods towards accused in serious criminal cases. A smaller proportion of nine percent said that it is justified while investigating petty offences like theft, etc. These figures, even though small at a first glance, are a troubling indication of the extent of routinisation of police torture. With a majority of the arrests being made in non-serious offences, as revealed through both official data as well as this survey, the fact that almost one out of 10 police personnel justify the use of violence such as third-degree in such cases is concerning. Further, twenty percent strongly agree that torture is necessary and acceptable to gain information in theft cases. This figure goes up to 42 percent when it comes to the investigation of crimes against national security. Overall, as many as 30 percent police personnel have a high propensity to justify torture, while another 32 percent have a moderate tendency to justify it.

Another disconcerting trend is police's willingness to use violent techniques against non-accused persons such as witnesses, or family members of arrested persons. Eleven percent of police personnel feel that hitting or slapping family members of an absconding suspect is absolutely justified, while another 30 percent feel that it is somewhat justified. Nine percent of police personnel justify the use of third-degree methods against "uncooperative witnesses", while one in four (25%) justify actions such as slapping, etc. against witnesses. This finding may be linked to an earlier finding of SPIR 2019 revealing police distrust of witnesses and victims, where 71 percent of the police personnel said that witnesses are often unwilling to cooperate, and 58 percent of the police personnel also said that victims are often unwilling to cooperate (SPIR 2019, page 89). Police's attitudes towards actors who are an integral part of the investigation process may be an explanation for people's reluctance to assist police investigation.

9.5 Police Training and Reporting by Police Witnesses

Amongst the report's major findings, two positive trends stand out among the police responses. One, there was overwhelming agreement on the need for more training on various aspects of policing that are aimed at limiting, if not completely abolishing, the use of torture. Seventy-nine percent police personnel felt that training on human rights is very important and the same proportion also said that training on evidence-based interrogation techniques is very important. A slightly lesser but significant majority of 71 percent also said that training on prevention of torture is very important.

On the question of the importance of training on crime investigation methods that give alternatives to using force, 61 percent said that it is very important, while another 30 percent felt that it is somewhat important. Here again, however, the IPS officers were the least likely to agree that it is very important (44%), while the upper subordinate officers were the most likely to agree (64%). Surprisingly, there is high

support for training on the prevention of torture even amongst those police personnel who reported a high propensity to justify torture. Seventy percent of police personnel who have a high propensity to justify torture also believe that training on the prevention of torture is very important.

Secondly, there is similarly high support for the mandatory reporting of torture by police witnesses. Given that police torture is most often witnessed by other police officers, 39 percent respondents said that it should always be mandatory for police witnesses to report torture, while another 41 percent said that it should sometimes be mandatory. Four out of five police personnel also said that if they have legal protection, junior police officers would feel comfortable complaining against their seniors for the use of violence — 44 percent said always, and 36 percent said sometimes.

9.6 State-level Variations

There is significant variation across states in the responses of the police officers, particularly on the questions of compliance with legal procedures and their views on the use of torture. Two states that stand out on polar extremes are Gujarat, where the police are significantly more likely to justify torture and other violent techniques, and on the other end is Kerala, where the police reports both better compliance with legal procedures, as well as much lower inclination to justify torture.

For instance, 63 percent of the police personnel from Gujarat said that torture is necessary and acceptable to gain information across various categories of crimes, against just three percent in Kerala. Again, in the overall propensity to justify torture, nearly half of the police personnel from Gujarat justify it (49%), while just one percent of the police personnel from Kerala justify torture. Personnel from Jharkhand had the highest propensity to justify torture, with one out of two respondents (50%) justifying it, followed closely by Gujarat (49%), Rajasthan (45%) and Andhra Pradesh (44%). In Gujarat, the police also exhibit a high tolerance for the public taking the law into their own hands and resorting to violence, with 57 percent

of respondents from Gujarat saying that mob violence is justified to a great extent, against zero respondents from Kerala. On the other hand, in Kerala, 91 percent of police personnel felt that mob violence is not at all justified. Particularly for mob violence in cases of cows slaughter, personnel from Gujarat exhibited the highest support. Police personnel from Gujarat, as well as Nagaland and Rajasthan also show strong support for other forms of aggressive policing, such as regular use of preventive arrests of “anti-social elements” as well as for forming special squads that can detain people indefinitely.

Kerala stood out in particular from the rest of the states, with responses to many of the questions varying significantly. For instance, on the question of how justified it is to kill “dangerous criminals” for the greater good of the society, just five percent from Kerala (against 22 percent overall and 41 percent from Bihar, which was the highest) felt that it was justified. Police personnel from Kerala also reported the highest compliance with arrest procedures, with as many as 94 percent saying that the listed arrest procedures are “always” complied with (against 41 percent overall).

The problematic opinions emerging from Gujarat are in line with official figures on custodial deaths and custodial violence, which, although highly likely to be under-reported, depict larger trends when seen across years and states. According to both NHRC as well as NCRB data, Gujarat reported the highest number of deaths in police custody in 2020, which is also reflected in the compilation of cases by the National Campaign Against Torture (NCAT) in the same year.

As per the official time-series data, the highest number of cases of deaths/rapes in police custody have been from the states of Maharashtra, Uttar Pradesh, and Gujarat. From 1994-95 to 2021-22, the average number of cases of deaths/rapes in police custody registered at the NHRC was the highest in

Maharashtra, at 21 cases per year on average, followed by UP (14 cases per year) and Gujarat (13 cases per year). An analysis of the NCRB data in fact shows that 96 percent of deaths in police custody in Gujarat from 2018-22 took place before the arrested person was put on remand, that is, within 24 hours. At the national level, the corresponding figure in 2022 was 54.7 percent of the cases of deaths in police custody which took place within 24 hours of arrest.

9.7 Disaggregation of Responses by Rank

A concerning trend emerging from a cumulative look at the findings of this report is the support for the use of torture and the disregard for established procedures amongst the highest echelons of the police - the IPS officers. On most of the questions around justification for the use of torture, third-degree or violent techniques in general, both the IPS as well as the constabulary ranks exhibited high support, while the upper subordinate ranks (ASI to DySP) were the least likely to express support. The views of IPS officers are particularly unsettling keeping in mind the fact that being the senior-most, they would - to a great extent - influence and determine the culture of policing in a state.

When asked about the feasibility of complying with arrest procedures, the IPS officers were the least likely to say that it is always feasible or practical to produce an arrested person before a magistrate within 24 hours of arrest. On the overall adherence with arrest procedures, IPS officers were the least likely to say that they are “always” complied with, while upper subordinate officers were the most likely to say so. Even in cases of minor offences, IPS officers exhibit the lowest regard for due process and were the least likely to support complete legal trial. They were the least likely to believe that a judicial inquiry into every case of custodial death is a necessary measure (39% IPS officers, against 56% upper subordinate officers).²

² Unfortunately, these attitudes mirror practice on the ground. Every death in police custody has to be mandatorily inquired into by a judicial magistrate. However, as an analysis of official data shows, judicial inquiries are conducted in just a small proportion of the cases of custodial deaths. In 2022, judicial inquiries were ordered in only 35 percent of the cases of deaths in police custody.

Similarly, when it comes to the use of third-degree methods, as understood by the respondents, IPS officers were the most likely to justify it against arrested persons as well as the most likely to justify it against “uncooperative witnesses” (28% IPS officers, compared to 8% upper subordinate officers). On propensities to justify torture, ranks converged largely in consensus - IPS officers showed the highest propensity to justify torture (34%), followed by constabulary (32%), and 26 percent of personnel from the upper subordinate ranks with a high propensity to justify torture.

Another trend emerging is that those police officers who are most frequently directly involved in conducting arrests, investigating cases, or interrogating suspects are also the ones who are most likely to discount legal safeguards and justify the use of torture. For instance, personnel who said that they frequently conduct arrests were the most likely to support the statement that police should be allowed to arrest and detain suspected criminals without any court investigation. Police officers who frequently conduct interrogations are five times more likely to say that IOs frequently use third-degree methods many times (15%), compared to those who never conduct interrogations (3%). Those who frequently conduct interrogations also have the highest propensity to justify the use of torture (37% have a high propensity, against 16 percent among those who never conduct interrogations).

9.8 Way Forward

The report’s major findings all together present a picture that police justify torture, and largely consider its use acceptable in all kinds of cases, including minor offences. It emerges that the most senior ranks and those who are directly involved in investigation and interrogation are the most vociferous in their support for torture. Further, the police respondents reveal their preferences for bypassing legal procedures and rejecting mandated police oversight towards contentious and violent policing methods. These attitudes, combined with the disregard for established legal processes to a notable extent, illustrate major factors that explain

why torture and violence in custody continue to be perpetrated when they are illegal and unconstitutional.

Acknowledging these immense hurdles, we return to findings in the report that outline pathways for a way forward. It is encouraging that police respondents have highlighted the need for better training on torture prevention, alternatives to using force, and evidence-based interrogation techniques. These are specific areas that can expand and improve police training, and in the long term, the quality and nature of police investigative skills. It is hoped police departments across the country consider these for proper design, and adoption, into police training syllabi.

This report strongly reiterates the need for strengthening institutional safeguards. Judges, lawyers, and doctors echoed the need for more involvement and better oversight. A repeated recommendation that emerged from the in-depth interviews with these stakeholders was the necessity for judicial magistrates to actively engage and interact with arrested persons at first production, and every time they are produced. Several judges also underlined the need for the magistrate to ensure medical examination multiple times during a person’s custody. These are practical actions that can be implemented through devising practicable checklists for judicial magistrates, and other doable measures. Improving judicial oversight not only has the potential to act against police torture, and in this way better policing; it also goes towards strengthening the role of the lower judiciary within the criminal justice system.

Taking a larger view of the troubling trends in the police responses, it becomes clear that there is an urgent need for broad public debate on torture, to push against the prevailing unwillingness to better understand, engage with, and advocate against torture. The legal scholar Jinee Lokaneeta (2014) has argued that “active engagement” in torture can mediate against torture as a “public secret”. Considering the level of public discourse at present in the Indian context, it will require a truly democratic and multi-faceted process of public engagement

to openly question and debate the very trends which are highlighted in the police responses in this study – the reliance on violent policing methods, the perceived utility of torture, the skirting of legal procedures and safeguards, and the resistance to police accountability. If such a receptive environment towards eradicating torture could ever flourish, it could lead also to a revised public understanding of police powers, importantly towards a better understanding of what are legitimate powers, what are clearly excessive and illegal, and what are inherent limits that must be placed on police powers. With these necessary multiple conversations, it would not only be the cause of torture eradication that would be amplified but could lead to developing a cross-cutting

social consensus on the public's relationship with the police as an institution, particularly on the legitimacy of police powers, as well as the absolute prohibition of torture. This would serve to deepen our constitutional framework as well as the quality of India's democracy.

Any attempts at addressing the issue of police torture that involve the cooperation and engagement of police as an institution will need to consider how the pervasive culture of condoning, and even endorsing torture, can be dismantled before initiating constructive dialogue around alternative ways of policing. Equally, the eradication of torture must maximise police accountability at its centre, which can only be achieved through energising multiple channels of accountability.

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Appendices

Appendix 1: Summary of Legal Provisions

This brief section provides a summary of the legal provisions referenced in this report to assist readers. It is not exhaustive or analytical. The limited purpose is to summarise the legal provisions and where relevant, briefly highlight how some of them relate to torture prevention and prohibition.

Constitutional protections

Torture is prohibited by the Constitution of India and there is a framework of legal safeguards and procedures towards preventing it. Articles 20(3) and 21 of the Constitution are the primary constitutional provisions that address torture. Article 20(3) establishes a right against self-incrimination or the right for a person not to be “compelled to be witness against himself”. Article 21 lays down that “no person” can be deprived of life and liberty except by following a procedure established by law. While Article 21 does not specifically refer to torture, the Supreme Court has expanded its scope to protect against torture (Ramakrishnan, 2013). In addition, Article 22 guarantees fundamental rights to persons arrested and detained, namely the right to be produced before a judicial magistrate within 24 hours of arrest, the right to be informed of the grounds of arrest, and the right to consult, and be represented by, a legal practitioner of his/her choice.

Legal provisions

Complementing these constitutional protections, there are many legal provisions in statutory provisions and Supreme Court directions designed to prevent torture and protect people from it. In 2024, the central government implemented new criminal laws which were

brought into force on July 1, 2024. The Bharatiya Nyaya Sanhita (BNS, 2023) replaced the Indian Penal Code, 1860; the Bharatiya Nagarik Suraksha Sanhita (BNSS, 2023) replaced the Code of Criminal Procedure, 1973 (CrPC); and the Bharatiya Sakshya Adhiniyam (BSA, 2023) replaced the Indian Evidence Act, 1872.¹

Arrest

The law lays down procedures, and legal rights of arrested persons, that are essential components of conducting arrest. Many are important safeguards against torture. The police are bound to uphold these safeguards and procedures.

- The arresting officer has to communicate to the arrested person the full particulars of the offence for which s/he is arrested or other grounds for such arrest. [Section 47(1), BNSS, 2023].
- Every arrested person has the right to have a relative, or friend, or any other person, informed about the arrest and the place of detention. It is the duty of the arresting officer to inform the arrested person of this right, to inform the relative or friend or other person about the arrest, as well as to inform a designated police officer in the district. This information should be entered in a designated register at the police station. [Sections 36(c) and 48, BNSS, 2023]
- Every arrested person has the right to be released on bail when arrested for a bailable offence.² The police must inform the arrested person of this right and that s/he may arrange for sureties [Section 47(2), BNSS, 2023].

¹ The new laws can be found here: <https://www.mha.gov.in/en/commoncontent/new-criminal-laws>

² Section 480 of the BNSS, 2023 provides that any person accused of a bailable offence arrested by the police without a warrant should be released on bail, and if they are unable to furnish surety, they should be discharged after executing a bond for his appearance.

- Arresting officers must wear accurate, visible and clear name-tags with their rank shown. [Section 36(a), BNSS, 2023]
- Arresting officers must prepare a Memo of Arrest with the arrested person's name, the place, date and time of arrest. This should be signed either by a relative of the arrested person, or a respectable person of the locality (where the arrest is made), as well as the arrested person and the arresting officer. [Section 36(b) and (c), BNSS and *D.K. Basu vs. State of West Bengal*]
- An arresting officer can search an arrestee and place all the articles seized from him/her in safe custody. A receipt of the seized articles must be given to the arrested person. [Section 49, BNSS, 2023] Only a woman can search a woman arrestee with strict regard to decency [Section 49(2), BNSS, 2023].
- Every arrested person is entitled to reasonable care of their health and safety while in custody. [Section 56, BNSS, 2023]

First production before a judicial magistrate

Every arrested person has the right to be produced before the nearest judicial magistrate within 24 hours from the time of arrest, often referred to as 'first production'. The law stipulates that no police officer can detain a person in custody over 24 hours "in the absence of" a judicial Magistrate's order. This period excludes the time taken in the journey to court. [Sections 58 & 78, BNSS, 2023]. The BNSS, 2023 inserts a change from the previous CrPC that an arrestee may be produced before a Judicial Magistrate, even if such Magistrate does not have jurisdiction. Importantly, Section 187(4) requires that for first production, the police must produce every arrested person physically before the Magistrate, without which Magistrates cannot authorise further custody.

Right to legal representation/legal aid

Every arrested person has the right to meet and consult a lawyer of their choice. The arrested person can consult a lawyer during, but not throughout, interrogation. [Section 38, BNSS, 2023]. If the arrested person cannot afford a

lawyer, s/he is entitled to free legal aid [Article 39-A, Constitution of India]. It is the duty of the police to immediately inform the nearest legal aid committee about the arrest of a person seeking legal aid. [*Sheela Barse vs. State of Maharashtra*]

Police to disclose place of detention

Details of every arrest and the location of every arrested person should be given to the district Police Control Room within 12 hours of each arrest. This information should be displayed clearly on the notice board of the Control Room. [*D.K. Basu vs. State of West Bengal*]. The names and addresses of all arrested persons, and nature of offences against them, are to be displayed at every police station (where they are held) and district headquarters. [Section 37, BNSS, 2023]

Medical examination

The BNSS, 2023 provides for medical examination of the arrested person soon after arrest. Section 51 relates to the medical examination of an arrested person for the purposes of investigation at the direction of a police officer. On the other hand, Section 53 establishes medical exam as a safeguard against torture, in that it requires that any "injuries or marks of violence upon the person arrested" and the "approximate time" they may have been caused are to be recorded in the report of the medical examination. The arrested person should be examined by a government medical officer, if the government officer is not available, then by a registered medical practitioner, soon after arrest. A female suspect must be examined by a female medical officer. The arrested person, or a person nominated by him/her, must be given a copy of the report of the medical examination by the doctor, [Section 53, BNSS, 2023]. Additionally, the Supreme Court has laid down in *D.K. Basu vs. State of West Bengal* that if the arrested person requests, any injuries found on his/her body should be recorded in an "Inspection Memo" by the arresting officer. This memo should be signed by the arrested person and the arresting officer, with a copy given to the arrested person. As per *DK Basu*, the arrested person has the right to ask for a medical examination every 48

hours during detention in custody by a qualified and government-approved doctor. A proviso introduced in Section 53, BNSS 2023 appears to be incompatible with this guideline as it is limited to only “one more examination”, rather than multiple examinations while the person is in custody.

Use of handcuffs

The BNSS, 2023 has introduced a statutory power, and greater latitude³, enabling the police to use handcuffs on arrested persons in Section 43(3). Legal scholars have expressed concerns that these new handcuffing powers do not meet “well settled constitutional thresholds” relating to the right to dignity under Article 21 of the Constitution (Project 39A, 2023).

Special procedures for women arrestees

A proviso to Section 43(1) of the BNSS, 2023 requires that only a woman arresting officer can “touch the person of a woman for making her arrest”. Section 43(5) states that except in exceptional circumstances, no women shall be arrested after sunset and before sunrise. If exceptional circumstances exist, a woman police officer making the arrest must get prior permission from the judicial magistrate within whose jurisdiction the arrest is to be made. Women arrestees must be kept in a separate lock-up from men in the police station, and they have to be interrogated in the presence of women police officers (*Sheela Barse vs. State of Maharashtra*)

Special procedures for witnesses

A police officer can call a witness to the police station for questioning only through a written order - women, children below 15 years of age, any person aged above 65 years, a mentally or physically disabled person, or a person seriously ill can be summoned to a police station for questioning only once they consent to go to the police station or they should be questioned at their residence. [Section 179(1), BNSS]. A witness’s signature **cannot** be taken on his/her

statement to the police. [Section 181, BNSS]. While a witness is bound to cooperate with the police and truthfully answer the questions the police ask, a witness may refuse to answer any question which could implicate or expose him/her to a criminal charge. [Section 180(2), BNSS]

Duration of police custody

Following from the requirement that a person cannot be kept in police custody beyond 24 hours without the order of a judicial Magistrate, Section 187 of the BNSS, 2023 lays down the time-limits, and procedure to be followed, when the police are unable to complete investigation within 24 hours and seek further custody of the arrested person. When the police produce an arrested person before a judicial Magistrate, the Magistrate is to inspect the police’s case diary to determine if the arrestee’s further custody is required, and if so, for how long. Custody is characterised as either police custody or judicial custody. Police custody refers to when an arrested person is in the custody of the police, held in the lock-up at police stations, for interrogation and investigation. When an arrestee is in judicial custody, they are considered to be in the custody of a judge and held in a jail or prison.

Section 187 lays down that a Magistrate can authorise detention in police custody for a maximum period of 15 days, and beyond 15 days, judicial custody can be given up to a maximum of 60 or 90 days (depending on the period of punishment of the offences charged). Changes in the language of Section 187, when seen against Section 167 of the Criminal Procedure Code 1973 that it replaced, have ignited concerns of ambiguity of a crucial component in Section 187. Under the previous CrPC, Section 167 was clear that the maximum permissible 15 days police custody could be granted only in the first 15 days, after which an arrestee would have to be remanded to judicial custody if custody was still required. Lawyers and academics have voiced concerns that ambiguous wording

³ The long-established guiding standard on the use of handcuffing is laid down by the Supreme Court of India in *Prem Shankar Shukla vs. Delhi Administration*, which mandated, among other conditions, that the police record their reasons to use handcuffs to show to court.

in Section 187 leaves open the interpretation that 15 days police custody may be staggered over the entire 60/90 days, and is no longer clearly limited to the first 15 days. It has been publicly stated that this ambiguity may have “far-reaching implications” on the possibility of custodial torture (*The Leaflet*, February 27, 2024).

Statements to police and bar on confessions

The BNSS and BSA 2023 provides key safeguards against torture and coercion by police in relation to the recording of confessions. A legal scholar notes that “the entire process of recording confessions is based on the premise that voluntariness can be ensured only if these statutory provisions are followed” (Lokaneeta, 2011). Firstly, and more largely, no statement made by any person to a police officer in the course of investigation is to be signed by the person making it [Section 181, BNSS, 2023]. No confession by an accused person to a police officer is admissible as evidence against him/her [Section 23(1), BSA, 2023]. No confession made by any person in police custody is admissible unless it is made in the immediate presence of a judicial Magistrate [Section 23(2), BSA, 2023]. To record a confession, a Magistrate has to ensure that the confession is being made voluntarily by following a detailed procedure laid down in Section 183, BNSS, 2023.

The police cannot threaten or compel anyone in any way to admit to an offence [Section 182, BNSS 2023 and Section 22, BSA, 2023].

While confessional statements are not admissible, the law provides that if any material object (like a weapon) is discovered by the police emanating from a confession, the object is admissible along with the specific part of the confession that relates to its discovery [Section 23, BSA, 2023].

Judicial inquiry following a custodial death

The BNSS, 2023 has brought in slight changes to the legal provision relating to inquiry by a non-police authority (in addition to the police investigation) following a custodial death or rape, or disappearance in custody. Section 3(1) of the BNSS, 2023 provides that “unless the context otherwise requires, any reference in any law, to a Magistrate without any qualifying words, Magistrate of the first class or a Magistrate of the second class shall, in relation to any area, be construed as a reference to a Judicial Magistrate” of the first or second class, as applicable. Read with Section 3(1), Section 196(2) of the BNSS, 2023 requires that a judicial magistrate must conduct an inquiry when a person dies, disappears, or was alleged to have been raped while in police custody, or in other authorised custody.

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Appendix 2: Technical Details of Study Design and Sample

Lokniti - Centre for the Study of Developing Societies (CSDS), in collaboration with Common Cause, has been preparing a series of baseline documents titled the 'Status of Policing in India Report' (SPIR) since 2018. The idea of the SPIR series is to improve policing through a study of the official data, ground-based surveys, and wide-ranging research conducted in collaboration or cooperation with the academia, civil society, and government agencies; and to also improve public awareness of the issues involved. Five editions of this series have already been published.

Now, sixth in the series - 'Status of Policing in India Report 2025: Police Torture and (Un)Accountability' - is based on a sample survey of 8,276 police personnel across 82 locations in 16 states and 1 Union Territory of India, namely: Andhra Pradesh, Assam, Bihar, Gujarat, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Nagaland, Odisha, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal, and Delhi. The survey was conducted by Lokniti – Programme for Comparative Democracy, Centre for the Study of Developing Societies (CSDS), in the months from November 2023 to January 2024.

I. Sampling details

The primary objective of this study is to understand the nature, causes, and factors that contribute to the perpetration of violence and torture by the police in India. The details of the different stages of sampling for the study are elaborated below:

Stage 1: Sampling of states

For the study, a total of 8,000 interviews of the police personnel were targeted from 17 states (including one UT) in India. These states

were pre-decided based on their population size as per 2011 census of India. Fifteen of these states feature among the most populated states of the country, while the National Capital Territory of Delhi and the state of Nagaland were purposively selected to be included in the sample: Delhi being the capital city of India, and Nagaland being one of the representative states of the north-eastern part of India. These 17 states were further divided into two groups (please refer Table A2.1).

Stage 2: Sampling of locations

The locations in the sampled states were chosen in such a way that would capture the functioning of police across geographical spread, police administrative divisions and socio-cultural diversity of each state. Each of the 12 states from Group A had five locations: 1 capital city, 2 rural areas and 2 urban areas (which included 1 mid-sized city and 1 small town). Similarly, each of the 5 states from Group B had four locations: 1 capital city, 1 rural area and 2 urban areas (1 mid-sized city and 1 small town). A total of 100 interviews were targeted from each location, which meant that each of the Group A states had to conduct at least 500 interviews from all its five locations, and each of the Group B states had to conduct at least 400 interviews from all its four locations. Thus, the size of the targeted sample was 8,000 and a sample of 8,276 police personnel was achieved during the fieldwork of the study. The first level of selection of the locations as per the aforementioned criteria was done on the basis of the 2011 census of India. However, certain locations in some states had to be changed after consultations with the respective state teams. Table A2.1 consists of the list of state-wise locations selected for the study.

Table A2.1: Sample frame

S. No.	States/UT	Capital City	Urban locations (Mid-sized city and small town as per 2011 census)	Rural locations (Districts with the highest rural population as per 2011 census)
Group A				
1.	Andhra Pradesh	1. Vishakhapatnam*	2. Guntur 3. Rajahmundry	4. Srikakulam 5. Prakasam
2.	Assam	1. Dispur, Guwahati	2. Jorhat 3. Tezpur	4. Baksa 5. Udalguri
3.	Bihar	1. Patna	2. Gaya 3. Bhagalpur	4. Samastipur 5. Banka
4.	Karnataka	1. Bangalore	2. Gulbarga 3. Mangalore	4. Kodagu 5. Koppal
5.	Kerala	1. Thiruvananthapuram	2. Kozhikode 3. Kochi	4. Wayanad 5. Idukki
6.	Maharashtra	1. Mumbai	2. Mira Bhayandar 3. Jalgaon	4. Gadchiroli 5. Jalna*
7.	Madhya Pradesh	1. Bhopal	2. Ujjain 3. Dewas	4. Dindori 5. Alirajpur
8.	Punjab	1. Chandigarh, Patiala*	2. Jalandhar 3. Bhatinda	4. Tarn Taran 5. Shahid Bhagat Singh Nagar
9.	Rajasthan	1. Jaipur	2. Ajmer 3. Bhilwara	4. Dungapur 5. Barmer
10.	Tamil Nadu	1. Chennai	2. Salem 3. Ambattur	4. Ariyalur 5. Viluppuram
11.	Uttar Pradesh	1. Lucknow	2. Aligarh 3. Mathura	4. Shrawasti 5. Kushinagar
12.	West Bengal	1. Kolkata	2. Asansol 3. Rajpur/Sonapur	4. Bankura 5. Barasat*
Group B				
13.	Gujarat	1. Gandhi Nagar	2. Bhavnagar 3. Anand	4. Dohad
14.	Jharkhand	1. Ranchi	2. Jamshedpur 3. Bokaro Steel City	4. Godda
15.	Odisha	1. Bhubhaneshwar	2. Cuttack 3. Puri	4. Baudh, Sambalpur*
16.	Nagaland	1. Kohima	2. Dimapur 3. Chumoukedima	4. Wokha
17.	Delhi	1. North Delhi 2. South Delhi 3. East Delhi 4. West Delhi		

*Amaravati which is the capital of Andhra Pradesh, was replaced with Vishakhapatnam which is also the proposed capital of the state. It was because Amaravati falls in the Guntur district which was already one of the sampled locations for the study.

*Sindhudurg in Maharashtra had to be replaced with Jalna, as the police respondents were mostly unavailable due to the Prime Minister's visit to the area during the time of fieldwork for the study.

*Since Chandigarh, apart from being the capital of Punjab, is also a union territory, there were a lot of permission-related challenges that we came across during the fieldwork. Hence, Patiala was added as a substitute location so as to complete the required number of police interviews.

*Koch Bihar in West Bengal had to be replaced with Barasat, due to the permission-related difficulties in Koch Bihar.

*In Odisha, Sambalpur was added as a substitute location to Baudh, since Baudh had only a few police stations available.

Table A2.2: Sampling framework

S. No.	States/UT	Proposed Sample	Achieved Sample
Group A			
1.	Andhra Pradesh	500	517
2.	Assam	500	506
3.	Bihar	500	505
4.	Karnataka	500	606
5.	Kerala	500	509
6.	Maharashtra	500	524
7.	Madhya Pradesh	500	508
8.	Punjab	500	519
9.	Rajasthan	500	504
10.	Tamil Nadu	500	489
11.	Uttar Pradesh	500	515
12.	West Bengal	500	503
Group B			
13.	Gujarat	400	424
14.	Jharkhand	400	420
15.	Odisha	400	405
16.	Nagaland	400	400
17.	Delhi	400	422
Total		8,000	8,276

Stage 3: Sampling of police personnel

The third and final stage of sampling was the selection of the respondents. Convenience sampling method was used to identify and interview the police personnel in the selected locations of each sampled state (listed in Table A2.1). The sampling of locations was done so as to ensure the representation of police respondents from across the geographical spread, such as capital cities, rural districts, mid-sized cities, small towns as well as district headquarters. Majorly, the typical sites of interview at these locations were police lines and police stations.

It was deemed preferable that the sample includes respondents belonging to various ranks of the police administration. While the majority of the police respondents in the study belonged to the constabulary ranks, as these officials were more approachable and available, a serious attempt was also made to identify and interview police personnel above the rank of Assistant Sub-Inspector. Despite the permission-related

challenges that persisted in this endeavour, about two in every five police respondents from the higher (or non-constabulary) ranks could be interviewed.

II. Research instruments

Preparation of the questionnaire: The English questionnaire was designed after a rigorous dialogue in a series of meetings and discussions within the research team comprising of colleagues from Lokniti and Common Cause. The survey was aimed to understand multiple factors behind the continued police perpetuation of torture and to gauge the extent to which police personnel may justify torture and violent methods. All the questions (except one) in the questionnaire were structured, i.e., close-ended. However, there was one question that was kept open-ended in order to find out the respondent's spontaneous feelings about the issue - of torture and third-degree violence - without giving her/him a pre-decided set of options. The questionnaire was also sent to some experts for their comments and feedback.

The suggestions received were incorporated in refining the questionnaire. After getting inputs from the researchers, some of the questions were reframed, omitted and added. This process also gave insights to determine the length of questionnaire, writing instructions for field investigators and adding and omitting some new options in answer categories.

Translation: It would not be justifiable to use a single language questionnaire in a multi-lingual country like India. Therefore, translation was done for each state by the respective regional teams which were familiar with the language of each region before administering the questionnaire in the field. The questionnaire was translated in eleven languages (Assamese, Bangla, Gujarati, Hindi, Kannada, Malayalam, Marathi, Oriya, Punjabi, Tamil and Telugu).

Training workshop: The training workshops were organised in an online mode for all the sampled states, except Delhi, where an in-person workshop was conducted. These training sessions were organized before the survey fieldwork began, in order to train the field investigators (FIs) and supervisors who carry out the fieldwork operations. The trainers conducted an intensive and interactive workshop wherein field investigators underwent an orientation programme and were trained rigorously on survey methods, interviewing techniques and communication with the respondents, as well as the survey app operations. A comprehensive and detailed interviewing guide, designed on the basis of

the questionnaire and survey methodology, was prepared for the interviewers. For a better understanding of the questionnaire, mock interviews were also conducted by the FIs under supervision, followed by improvisory feedback. The online workshops were conducted through platforms like Google Meet and Zoom.

Fieldwork: The fieldwork of the survey took place in the months from November 2023 to January 2024. Field investigators, who were mainly students of social sciences belonging to colleges and universities in different parts of the country, were selected to carry out the field work. They conducted face to face, app-based interviews with the respondents at their place of work using a standardized questionnaire in the language spoken and understood by the respondent. A total of 8,276 interviews of the police personnel could be completed across 17 states (including one UT). There were several permission-related challenges that were handled by reaching out to District Magistrates and Sub-Divisional Magistrates of the sampled districts.

Data checking and analysis: All questionnaires were manually screened for consistency and quality check. The questionnaire had codes (of pre-coded questions) that were used for data punching. A team was constituted for checking the codes and making corrections if there were any mistakes. The checking and the subsequent data entry took place at the Lokniti-CSDS office in Delhi. The analyses presented in this report have been done using Statistical Package for the Social Sciences (SPSS).

Table A2.3: Demographic profile of police respondents in the achieved sample

	(%)
Men	85
Women	15
10th pass/Matric	6
12th pass/Intermediate	31
Diploma/Certificate	5
Graduate and above	58
Scheduled Caste (SC)	18
Scheduled Tribe (ST)	18

	(%)
Other Backward Caste (OBC)	34
General/Other	30
Hindu	80
Muslim	5
Christian	7
Sikh	4
Other religions*	4

Note: All figures are in percentages, and are rounded off.

**Also includes those who reported 'no religion'.*

Table A2.4: Rank of police respondents and years in police service

	(%)
Constabulary rank	59 (n=4900)
Upper subordinate rank	40 (n=3281)
IPS level rank	1 (n=95)
Up to 5 years in police service	16
6 to 10 years in police service	28
11 to 20 years in police service	35
21 years & above in police service	21

Note: All figures are in percentages, and are rounded off.

Table A2.5: Reported frequency of conducting arrests, interrogations and investigations by the respondents

	Often	Sometimes	Rarely	Never
Involved in conducting arrests	42	33	17	8
Involved in conducting interrogation of suspects	48	25	17	10
Involved in conducting/assisting in investigation	53	24	15	8

Note: All figures are in percentages, and are rounded off.

Appendix 3: Survey Questionnaire for Police Personnel

Z1. State: _____

2. Urban

Z2. District HQ/City Name: _____

Z5. Location Category:

Z3. Site of the Interview:

1. Capital city

1. Police lines

2. City

2. Police station

3. District Head Quarter

3. Court

4. Small town

97. Any other (Specify) _____

Z6. Date of Interview: _____

Z4. Rural/Urban:

Z7. Name of Investigator: _____

1. Rural

INVESTIGATOR'S INTRODUCTION AND STATEMENT OF INFORMED CONSENT

My Name is _____ and I am from Lokniti–CSDS: Centre for the Study of Developing Societies (Please mention your university's name here), a research institute based in Delhi. We are doing a survey, in which we are interviewing thousands of police personnel across the country, to gather their perspective towards the criminal justice system. The survey aims to understand the police work related to arrest, investigation and use of force such as third-degree methods by the police. Based on this study, a report on the 'Status of Policing in India' will be produced. This survey is an independent study and it is not linked to any political party or government agency. Your responses and personal information will be kept strictly confidential, and will not be shared with your bosses or any government agency or any news outlet. The findings of the survey will be used for research work. We hope that you will take part in this survey, since your participation is extremely valuable. It usually takes 30–40 minutes to complete this interview. Please spare some time for the interview and help me in completing this survey.

Z8. May I begin the interview now?

1. Respondent agrees to be interviewed.

2. Respondent does not agree to be interviewed.

INTERVIEW BEGINS

Q1. Presently, what is your rank within the police service? (***Do not read out the options***)

1. Constable
2. Head Constable
3. Assistant Sub-Inspector
4. Sub-Inspector
5. Inspector
6. Assistant/Deputy Superintendent of Police
7. Additional Superintendent of Police
8. Superintendent of Police
9. Senior Superintendent of Police
10. Deputy Inspector General
11. Inspector General of Police
12. Additional Director General of Police
13. Director General of Police
14. Commissioner of Police
15. Deputy Commissioner of Police
16. Assistant Commissioner of Police
17. Special Commissioner of Police
18. Joint Commissioner of Police

Q2. How long have you been in service? (Number of years; if less than one year, code oo)

Q3. Where are you currently posted?

1. Police station
2. Police outpost/chowki
3. Special police station/unit (***Specify which***) _____
4. District office
5. Police Head Quarter (PHQ)
97. Any other (***Specify***) _____
98. No response

Q4. How long have you been at your current posting? (Number of years; if less than one year, code oo) _____

Q5. In this posting, what is your **main duty**? (***Do not read out the options***)

1. General duty
2. Patrolling in different areas
3. Investigation of cases
4. Maintaining law and order
5. Maintaining registers / data or record feeding
6. Ensuring safety and security of public
7. Filing FIR, NCR and other complaints

8. Traffic management
9. Dealing with public
10. Any other routine work (within office) not mentioned above
11. Security of VIPs / judges / senior police officers
12. Court duty / taking accused to court
13. Catching criminals
14. Driving police vehicles
15. Training related work
16. Work of a duty officer in a police station
17. Supervision over lock-ups inside police station
18. In charge of check posts
19. Managing a police station
20. Attending to emergency situations
97. Any other (**Specify**) _____
98. No response

Q6. How frequently do you do the following things – often, sometimes, rarely, or never?

	1. Often	2. Sometimes	3. Rarely	4. Never	98. No response
a. Conduct arrest					
b. Conduct interrogation of suspects					
c. Conduct/Assist in investigation					

Crime and arrests in your area

Q7. I am reading to you some measures to reduce crime. Please tell me how useful the following measures are for reducing crime in your area – very useful, somewhat useful, not much useful, or not at all useful?

	1. Very useful	2. Somewhat useful	3. Not much useful	4. Not at all useful	98. No response
a. More preventive arrests of anti-social elements					
b. Increasing the presence of beat police and/or PCR van patrolling or the number of police stations and chowkis					
c. Forming special squads that can detain people indefinitely					
d. Recruiting more women into the police					

Q8a. In your experience, what is the crime for which the most arrests are made in your area or jurisdiction, such as murder, assault, kidnapping, theft, robbery, crimes against women, etc. (Do not read out the options)

1. Crimes against women
2. Crimes against children
3. Crimes against SCs and STs
4. Bodily crimes (murder, assault, kidnapping)

5. Loitering, public nuisance
6. Offences by public servants
7. Rioting
8. Simple theft and extortion
9. Robbery
97. Any other (**Specify**) _____
98. No response

Q8b. And what is the crime for which the second most arrests are made? (Do not read out the options)

1. Crimes against women
2. Crimes against children
3. Crimes against SCs and STs
4. Bodily crimes (murder, assault, kidnapping)
5. Loitering, public nuisance
6. Offences by public servants
7. Rioting
8. Simple theft and extortion
9. Robbery
97. Any other (**Specify**) _____
98. No response

Views on violence, and/or marginalised groups

Q9. Do you agree or disagree with the following statement: "For the greater good of the society, it is alright for the police to be violent towards suspects of serious offences."

(If agree, check 'fully agree' or 'somewhat agree'; if disagree, check 'fully disagree' or 'somewhat disagree')

1. Fully agree
2. Somewhat agree
3. Somewhat disagree
4. Fully disagree
98. No response

Q10. Sometimes there are instances when mobs punish crime suspects with violence. In your opinion, to what extent is it justified for a mob to punish suspects in the following cases - justified to a great extent, justified to some extent, not much justified, or not at all justified?

	1. To a great extent	2. To some extent	3. Not much justified	4. Not at all justified	98. No response
a. In cases of petty thefts like pick-pocketing or chain-snatching					
b. In the case of child lifting/kidnapping					
c. When there is a case of cow-slaughter					
d. When there is a case of sexual harassment and assault					

Q10a. In such a situation, if the suspect gets injured, should any action be taken against the people who beat him or not?

1. Yes
2. No

98. No response

Q11. In your opinion, to what extent are these people naturally prone to commit crime – to a great extent, to some extent, not much, or not at all?

	1. Great extent	2. Some extent	3. Not much	4. Not at all	98. No response
a. Hijras/transgenders					
b. Muslims					
c. Adivasis					
d. Dalits					
e. Christians					
f. Rich and powerful people					
g. Nat/Saperas/Banjara (NTs/DNTs)					
h. Slum dwellers					
i. Migrants					
j. Sex workers					
k. Poor people					

Q12. Now I am going to read out two statements, please tell me which statement you agree with the most? **(Read out both the statements)**

Statement 1: While investigating and interrogating suspected criminals, it is always important for the police officer to follow the legal procedures.

Statement 2: While investigating and interrogating suspected criminals, it is more important for the police officer to solve the case by any means rather than strictly following the legal procedures.

1. Agree with Statement 1
2. Agree with Statement 2

98. No response

Q13. If you see a couple kissing or expressing physical affection in public places like parks or in public transport (metro, autos), what kind of action should be taken?

(Do not read out the options)

1. Shouting at them loudly in public to teach them a lesson
2. Beating with baton/lathi or slapping them to get them to stop
3. Giving them a verbal warning
4. Detaining them at the police station for a while to teach them a lesson
5. Arresting them
6. No action/I will ignore

97. Any other (Specify) _____

98. No response

Q14. Do you think that Hijra/Transgender/Homosexual people have a bad influence on the society and the police needs to deal with them strictly - yes always, yes sometimes or never?

1. Yes, always
2. Yes, sometimes
3. Never
98. No response

Perceptions of the criminal justice system

Q15. Now I want to know your views on the functioning of the criminal justice system as a whole. I will read out two statements that people often make about their experiences with the criminal justice system. Please tell me which statement you agree with the most?

(Read out both the statements)

Statement 1: The criminal justice system is too weak and slow to address crimes.

Statement 2: The criminal justice system has problems but it still works to address crimes.

1. Agree with 1st Statement
2. Agree with 2nd Statement
98. No response

Q16. In your opinion, to what extent do people from these communities get justice – great extent, some extent, not much, or not at all?

	1. Great extent	2. Some extent	3. Not much	4. Not at all	98. No response
a. Hijras/transgenders					
b. Muslims					
c. Adivasis					
d. Dalits					
e. Christians					
f. Rich and powerful people					
g. Nat/Saperas/Banjara (NTs / DNTs)					
h. Slum dwellers					
i. Women					
j. Migrants					
k. Poor people					
l. Sex workers					

Q17. I will read out two statements, please tell me which statement you agree with the most?

(Read out both the statements)

Statement 1: For small/minor offences, police should follow a complete legal trial.

Statement 2: In case of small/minor crimes, it is better for the police to give minor punishment to the criminal instead of following a legal trial.

1. Agree with 1st Statement
2. Agree with 2nd Statement
98. No response

Q18. Now I will read out two statements, please tell me which one you agree with the most?

(Read out both the statements)

Statement 1: For the greater good of the society, killing dangerous criminals during encounters is sometimes more effective than giving them a legal trial.

Statement 2: No matter how dangerous a criminal is, the police should try to catch them and follow proper legal procedures.

1. Agree with 1st Statement
2. Agree with 2nd Statement
98. No response

Q19. Often there is pressure from the public that police deal with suspected criminals with a heavy hand without following procedure. To what extent does such public pressure influence the functioning of the police – great extent, some extent, not much, or not at all?

1. Great extent
2. Some extent
3. Not much
4. Not at all
98. No response

Views on law and procedure (arrest, interrogation, questioning)

Q20. In your experience, how often are these procedures followed when a person is being arrested – always, sometimes, rarely, or never?

	1. Always	2. Sometimes	3. Rarely	4. Never	5. Not aware of this (silent option)	98. No response
a. Inform them of the reasons for the arrest						
b. Complete an arrest memo with all the required signatures						
c. Identify yourself as a police officer with your name tag visible						
d. Inform their family members about the arrest						
e. Inform them that they can contact a lawyer						
f. Complete an inspection memo						
g. Take the arrestee to a doctor for a medical examination						

	1. Always	2. Sometimes	3. Rarely	4. Never	5. Not aware of this (silent option)	98. No response
h. Have a female police personnel present at the time of a woman's arrest						
i. Release the person on bail immediately at the police station in bailable offences						

Q20a. Often, police personnel say that it is difficult to comply with all the arrest procedures. In your experience, can all arrest procedures be followed at every arrest – always, sometimes, rarely, or never?

1. Always
2. Sometimes
3. Rarely
4. Never
98. No response

Q21. In its judgment in Arnesh Kumar v. State of Bihar, the Supreme Court says the power to arrest must be “exercised with caution” and “police officers must be able to justify the reasons” when making arrests. Do you agree or disagree?

(If agree, check ‘strongly agree’ or ‘somewhat agree’; if disagree, check ‘strongly disagree’ or ‘somewhat disagree’)

1. Strongly agree
2. Somewhat agree
3. Somewhat disagree
4. Strongly disagree
5. Not heard of it / not aware about it (silent option)
98. No response

Q22. Now I will read out two statements, please tell me which one you agree with the most?
(Read out both the statements)

Statement 1: Preventive arrests should be done regularly to prevent offences from taking place.

Statement 2: Preventive arrests should be done only in special situations when there is a threat to law and order.

1. Agree with 1st Statement
2. Agree with 2nd Statement
98. No response

Q23. If an arrested person asks for a lawyer, how soon after the arrest does the police generally allow the person to see a lawyer? (Do not read out the options)

1. Immediately
 2. When the investigating officer decides
 3. Once the person is taken to a judicial magistrate
 4. Lawyers are not permitted before the person is taken before a magistrate
 5. Lawyers are not available
 97. Any other (Specify) _____
 98. No response

Q24. If a lawyer talks to an arrested person in police custody, should this conversation be allowed to take place in private or not? (If the respondent says 'yes', then probe how frequently – always or sometimes) **(Do not read out the options)**

1. Yes, always
 2. Yes, sometimes
 3. Depends (silent option)
 4. Never
 5. A lawyer cannot be allowed in police custody
 98. No response

Q25. We often hear that the police use various tactics to solve criminal cases, such as verbal abuse, threats, physical force such as slapping, etc. or third-degree methods. In your opinion, are these practices justified towards the following:

	I. Verbal abuse or threats 1. Yes 2. No 98. No response	II. Actions like slapping, etc. 1. Yes 2. No 98. No response	III. Third-degree methods 1. Yes 2. No 98. No response
a. Towards the accused while investigating petty offences like theft, etc.			
b. Towards the accused while investigating serious criminal cases like rape, murder, etc.			
c. Towards a witness who is not cooperating			

Q26. To what extent do you agree that torture is sometimes necessary and acceptable to gain information in the following kinds of cases - strongly agree, somewhat agree, somewhat disagree, or strongly disagree?

	1. Strongly agree	2. Somewhat agree	3. Somewhat disagree	4. Strongly disagree	98. No response
a. Major theft cases					
b. Rape or sexual assault cases					
c. Serious violent crimes like murder					
d. Crimes against national security like terrorism cases					
e. Against history-sheets					

Q27. Suppose a minor girl has been kidnapped, and the suspect is not cooperating. In such a situation, how justified is it to use third-degree to locate the girl?

1. Yes, absolutely justified
2. Yes, sometimes justified
3. Not at all justified
98. No response

Q28. If an accused in a serious crime is absconding, how justified would it be to use physical force like hitting/slapping against his/her family members if they do not answer police questions properly?

1. Yes, absolutely justified
2. Yes, sometimes justified
3. Not at all justified
98. No response

Q29. Of the following items, how important are these in cracking a case - very important, somewhat important, not much important, or not at all important?

	1. Very important	2. Somewhat important	3. Not much important	4. Not at all important	98. No response
a. Confessional statement of the accused					
b. Forensic evidence like fingerprints, DNA profiling					
c. Recovery items like clothes, dead body, weapons, etc. under Section 27, Evidence Act					
d. CCTV footage and/or call details records					
e. Obtaining information from mukhbirs / informants / khabris					
f. Tests like lie-detector and narco analysis					

Q30. Ajay was arrested on May 3rd. His father comes to the police station asking for a copy of the General Diary entry for that day when the arrest was made. Should the Sub-Inspector present give a copy of the diary entry to him?

1. Yes
2. No
98. No response

Q31. Of the three statements, which statement do you agree with the most?
(Read out all three statements)

Statement 1: 15 days is sufficient time for police custody of accused persons.

Statement 2: Time in police custody should be extended beyond 15 days for all accused persons.

Statement 3: Only in serious offences, time in police custody should be extended beyond 15 days.

- 1. Agree with 1st Statement
- 2. Agree with 2nd Statement
- 3. Agree with 3rd Statement
- 4. 15 days is too long, should be reduced (silent option)
- 98. No response

Q32. How feasible/practical is it for the police personnel to take every arrested person for a medical examination – always, sometimes, rarely, or never?

- 1. Always
- 2. Sometimes
- 3. Rarely
- 4. Never
- 98. No response

Q33. How feasible/practical is it for the police personnel to produce a person before a judge/magistrate within 24 hours of their arrest – always, sometimes, rarely, or never?

- 1. Always
- 2. Sometimes
- 3. Rarely
- 4. Never
- 98. No response

Q34. There are different reasons for delays in taking an arrested person before a magistrate within 24 hours. I am going to read out a list. In your opinion, which is the most important reason?
(Read out options 1, 2 and 3 only)

- 1. Inadequate infrastructure (vehicles, fuels, escorts)
- 2. More time needed for interrogation of the accused
- 3. The first 24 hours' time is inadequate for proper investigation
- 97. Any other (Specify) _____
- 98. No response

Q35. “Confessions made by accused persons in custody before Investigating Officers of all ranks should be made admissible as evidence”. Do you agree or disagree with this statement?
(If agree, check ‘strongly agree’ or ‘somewhat agree’; if disagree, check ‘strongly disagree’ or ‘somewhat disagree’)

- 1. Strongly agree
- 2. Somewhat agree
- 3. Somewhat disagree
- 4. Strongly disagree
- 98. No response

Q36. Should lawyers be allowed to be present during interrogation – always, sometimes, rarely, or never?

- 1. Always
- 2. Sometimes

- 3. Rarely
- 4. Never
- 98. No response

Q37. In your opinion, how frequently do Investigating Officers have to use the following techniques to deal with an uncooperative accused – many times, sometimes, once or twice, or never?

	1. Many times	2. Sometimes	3. Once or twice	4. Never	98. No response
a. Threatening the person					
b. Slapping/using light force against the person (pushing, etc.)					
c. Making the person sit in murga					
d. Keeping a person hungry and thirsty for some time					
e. Using third-degree to obtain information in serious offences (beating on soles, applying red chilli powder to the body parts, suspension of the body)					

Accountability

Q38. “To properly fulfil their responsibilities, police should be allowed to use force without any fear of punishment.” Do you agree or disagree?

(If agree, please ask whether ‘strongly agree’ or ‘somewhat agree’; if disagree, please ask whether ‘strongly disagree’ or ‘somewhat disagree’)

- 1. Strongly agree
- 2. Somewhat agree
- 3. Somewhat disagree
- 4. Strongly disagree
- 98. No response

Q39. After encounter killings, we often see the police officers involved being garlanded and appreciated. Which of the three statements do you agree with the most in this regard?

(Read out all three statements)

Statement 1: This is a good boost to the morale of police force.

Statement 2: Celebration can come after proper evidence that encounter was unavoidable.

Statement 3: Killings might happen in the course of policing, there is nothing to celebrate about them.

- 1. Agree with 1st Statement
- 2. Agree with 2nd Statement
- 3. Agree with 3rd Statement
- 98. No response

Q40. Do you agree or disagree with the following statement – “A judicial inquiry into every death in police custody is a necessary measure”.

(If agree, please ask whether ‘strongly agree’ or ‘somewhat agree’; if disagree, please ask whether ‘strongly disagree’ or ‘somewhat disagree’)

- 1. Strongly agree

- 2. Somewhat agree
- 3. Somewhat disagree
- 4. Strongly disagree
- 98. No response

Q41. What kind of system of inquiry should be in place to investigate complaints of serious police misconduct? (Read out options 1 and 2 only)

- 1. Inquiry within the police department
- 2. An external inquiry but with some representation from the police
- 3. An independent body with no police personnel (silent category)
- 98. No response

Q42. “The police should be allowed to arrest and detain suspected criminals without any court investigation”. Do you agree or disagree with this statement?

(If agree, please ask whether ‘strongly agree’ or ‘somewhat agree’; if disagree, please ask whether ‘strongly disagree’ or ‘somewhat disagree’)

- 1. Strongly agree
- 2. Somewhat agree
- 3. Somewhat disagree
- 4. Strongly disagree
- 98. No response

Q43. To what extent do you agree with the following statements – completely agree, somewhat agree, somewhat disagree, or completely disagree?

	1. Completely agree	2. Somewhat agree	3. Somewhat disagree	4. Completely disagree	98. No response
a. A majority of the complaints against police are false and frivolous					
b. A majority of the complaints filed against police are politically motivated					
c. The general public can easily file complaints against police					

Q44. Considering the sensitivity of police work, should police be exempted or not from providing information under the Right to Information Act?

- 1. Yes
- 2. No
- 98. No response

Q45. Many countries have separate laws against torture. Do you agree or disagree that India also needs such a separate law?

(If agree, please ask whether ‘strongly agree’ or ‘somewhat agree’; if disagree, please ask whether ‘strongly disagree’ or ‘somewhat disagree’)

1. Strongly agree
2. Somewhat agree
3. Somewhat disagree
4. Strongly disagree

98. No response

Q46. In your opinion, how important is it for the police to use tough methods to create fear among the public – very important, somewhat important, not much important, or not at all important? (Do not read out the options)

1. Very important
2. Somewhat important
3. Not much important
4. Not at all important, police should be a friendly force, no need to instil fear

98. No response

Q47. Most often, custodial torture is witnessed by other police officers. In your opinion, should it be mandatory for police witnesses to report this type of violence?

1. Yes, always
2. Yes, sometimes
3. Never

98. No response

Q47a. If junior police personnel have legal protection (guaranteed safeguard) when they complain against seniors, would you feel comfortable filing a complaint against seniors for use of violence?

1. Yes, always
2. Yes, sometimes
3. Never

98. No response

Q48. In your opinion, how important is it for the police to get training on the following - very important, somewhat important, not much important, or not at all important?

	1. Very important	2. Somewhat important	3. Not much important	4. Not at all important	98. No response
a. Human rights					
b. Prevention of torture					
c. Evidence-based interrogation techniques					

Q49. In your opinion, how important is it to train the police on crime investigation methods that give alternatives to using force against accused persons – very important, somewhat important, not much important, or not at all important?

1. Very important
2. Somewhat important
3. Not much important
4. Not at all important

98. No response

Q50. Police knows that it is not good to use torture or third-degree, but sometimes it becomes necessary to use violence and torture/third-degree. What do you think about this? (Write the answer as told, coding will be done later in CSDS) _____

Background Information

B1. What is your age? _____ (In completed years) 98. No response (If more than 95 years, code 95 in that case)

B2. Gender:

1. Male

2. Female

3. Other

B3. Till what level have you studied?

1. 10th pass/Matric pass

2. 12th pass/Intermediate

3. Diploma/Certificate

4. Graduate and above

98.No response

B4. What is your caste group?

1. SC

2. ST

3. OBC

4. General/Other

98.No response

B5. What is your religion?

1. Hindu

2. Muslim

3. Christian

4. Sikh

5. Buddhist/Neo-Buddhist

6. Jain

7. Parsi

8. No religion

9. Other (Specify which) _____

B6. Exact location – GPS: _____

Appendix 4: Interview Guides

The in-depth interviews with the lawyers, judges and doctors were structured and open-ended. The interviews were kept conversational, allowing for follow-up questions.

I. Lawyers

- a. In your experience, how common is torture by the police? Do you consider it a systemic problem?
- b. Are particular groups of people against whom police torture is most prevalent – any caste/religious category, or categories of accused people for certain offences?
- c. Are lawyers commonly allowed to speak/advise/intervene, to assist clients, during interrogation? If not, how does this impact the possibility of coercion or torture by the police?
- d. What is the legal intervention that happens on the ground in most cases of police torture? What are the challenges that you face as a lawyer in cases of custodial torture/death?
- e. How easy or difficult it is to establish an act of torture in court and get any kind of redressal? What are common outcomes in these cases?
- f. How easy or difficult is it for victims or their families to file and pursue cases of torture in the courts?
- g. Do you think there is an indirect sanction to torture through legal provisions such as Section 27, IEA? What is your view on confessions to the police being made admissible in court?
- h. Do you think any statements or evidence obtained by torture, once established it is so, should be excluded as evidence in court?
- i. What, in your opinion, is the role of lawyers in preventing police torture within the Indian CJS framework? What about the role of other important actors such as magistrates?

j. How effective are the existing anti-torture legal provisions? What kind of legal framework is needed to effectively deal with torture?

k. How effective are the National/State Human Rights Commissions in responding to torture?

II. Magistrates

- a. In your experience, how common are cases of police torture? How easy or difficult is it for victims or their families to file and pursue cases of torture in the courts?
- b. How often do you interact with arrested persons produced before you? What questions do you ask them?
- c. How often do arrested persons tell you that they are being tortured/forced by the police to make a confession?
- d. What do you do if you suspect torture may have happened when you are interacting with an arrested person in custody? What actions can you take against police personnel?
- e. What practical constraints do you face when dealing with formal complaints of torture?
- f. What, in your opinion, is the role of magistrates in preventing police torture?
- g. Do you think there is an indirect sanction to torture through legal provisions such as Section 27, IEA? What is your view on confessions made to the police being made admissible in court?
- h. Do you think any statements or evidence obtained by torture, once established it is so, should be excluded as evidence in court?
- i. How effective are the existing anti-torture legal provisions? What kind of legal framework is needed to effectively deal with torture?

III. Retired Sessions and High Court judges

- a. In your experience, how common are cases of police torture?
- b. How often do arrested persons complain about being tortured/forced by the police to make a confession or for any other purpose? In your view, how easy or difficult is it for victims or their families to file and pursue cases of torture in the courts?
- c. What can a (sessions or High Court, say as appropriate) judge do if he/she suspects torture may have happened to an arrested person in custody? What actions can be taken against police personnel?
- d. What practical constraints do judges face when dealing with complaints of torture?
- e. What, in your opinion, is the role of judicial magistrates in preventing police torture?
- f. Do you think there is an indirect sanction to torture through legal provisions such as Section 27, IEA? What is your view on confessions made to the police being made admissible in court?
- g. Do you think any statements or evidence obtained by torture, once established it is so, should be excluded as evidence in court?
- h. How effective are the existing anti-torture legal provisions? What kind of legal framework is needed to effectively deal with torture?

- i. How effective are the National/State Human Rights Commissions in responding to torture?

IV. Doctors

- a. In your state, are arrested persons brought by police for medical examination to government hospitals only, or they can also be brought to private medical institutions?
- b. What do you do if you find injuries on the arrested person? How do you record them? Are the injuries photographed, if yes, by whom?
- c. Are there any guidelines or provisions that give doctors guidance on what to do if they suspect an arrested person may have been tortured in custody? If not, what do you do if you suspect torture?
- d. What challenges do doctors face in treating victims of police torture?
- e. In cases of custodial deaths, is there scope for the police to interfere with the post-mortem and its report? How often does this happen? Is there any way to prevent this interference?
- f. Is there a specific medical training or refresher course that addresses how doctors should deal with cases of torture and bodily harm of persons in custody?
- g. There is a directive by the Supreme Court that every arrested person is to be medically examined once every 48 hours while they are in custody. In your experience, do the police follow this and bring in arrested persons for multiple examinations?

Appendix 5: Details of How the Indices were Constructed

Index (Chapter 2): Support for mob justice

The index was constructed by taking into account all the four sub-questions of Q10, which are:

Q10. Sometimes there are instances when mobs punish crime suspects with violence. In your opinion, to what extent is it justified for a mob to punish suspects in the following cases – justified to a great extent, justified to some extent, not much justified, or not at all justified?

- In cases of petty thefts like pick-pocketing or chain-snatching
- In the case of child lifting / kidnapping
- When there is a case of cow-slaughter
- When there is a case of sexual harassment and assault

In each sub-question, the response options offered to the respondents were 'justified to a great extent', 'justified to some extent', 'not much justified', and 'not at all justified'.

Step 1: An answer that was 'justified to a great extent' was assigned a score of 4. An answer that was 'justified to some extent' was assigned a score of 3. An answer that was 'not much justified' was assigned a score of 2, and an answer that was 'not at all justified' was assigned a score of 1. A 'no response' to the sub-questions was assigned a score of 0.

Step 2: The scores of all 4 sub-questions were summed up. The resulting summated scores ranged from 0 to 16.

Step 3: The summated scores were distributed across four newly created categories that indicated different degrees of police personnel's justification of mob violence in various cases. Summated scores that ranged from 13-16 were

categorized as 'Justified to a great extent'. Summated scores that ranged from 9-12 were categorized as 'Somewhat justified'. Summated scores ranging from 5-8 were categorized as 'Not much justified', and summated scores that totalled 1-4 were categorized as 'Not at all justified'.

Table A5.1: Index of support for mob justice

	Summated Scores	Weighted Distribution (%)
Justified to a great extent	13-16	25.7
Somewhat justified	9-12	26.1
Not much justified	5-8	17.2
Not at all justified	1-4	31.0

Index (Chapter 4): Adherence to arrest procedures

The index was constructed by taking into account all the nine sub-questions of Q20, which are:

Q20. In your experience, how often are these procedures followed when a person is being arrested – always, sometimes, rarely, or never?

- Inform them of the reasons for the arrest
- Complete an arrest memo with all the required signatures
- Identify yourself as a police officer with your name tag visible
- Inform their family members about the arrest
- Inform them that they can contact a lawyer
- Complete an inspection memo

- g. Take the arrestee to a doctor for a medical examination
- h. Have a female police personnel present at the time of a woman's arrest
- i. Release the person on bail immediately at the police station in bailable offences

In each sub-question, the response options offered to the respondents were 'always', 'sometimes', 'rarely', and 'never'. The response option of 'not aware of this' was also given as a silent option.

Step 1: An answer that was 'always' was assigned a score of 3. An answer that was 'sometimes' was assigned a score of 2. An answer that was either 'rarely' or 'never' was assigned a score of 1. Either a 'no response' or 'not aware of this' to the sub-questions was also assigned a score of 0.

Step 2: The scores of all 9 sub-questions were summed up. The resulting summated scores ranged from 0 to 27.

Step 3: The summated scores were distributed across three newly created categories that indicated different degrees of the likelihood of arrest procedures being followed. Summated scores that totalled 27 were categorized as 'Always'. Summated scores that ranged from 20-26 were categorized as 'Sometimes'. Summated scores ranging from 1-19 were categorized as 'Rarely or never'.

Table A5.2: Index of adherence to arrest procedures

	Summated Scores	Weighted Distribution (%)
Always	27	41.3
Sometimes	20-26	35.3
Rarely or never	1-19	23.4

Index (Chapter 5): Propensity to torture to gain information

The index was constructed by taking into account all the five sub-questions of Q26, which are:

Q26. To what extent do you agree that torture is sometimes necessary and acceptable to gain

information in the following kinds of cases - strongly agree, somewhat agree, somewhat disagree, or strongly disagree?

- a. Major theft cases
- b. Rape or sexual assault cases
- c. Serious violent crimes like murder
- d. Crimes against national security like terrorism cases
- e. Against history-sheets

In each sub-question, the response options offered to the respondents were 'strongly agree', 'somewhat agree', 'somewhat disagree', and 'strongly disagree'.

Step 1: An answer that was 'strongly agree' was assigned a score of 4. An answer that was 'somewhat agree' was assigned a score of 3. An answer that was 'somewhat disagree' was assigned a score of 2, and an answer that was 'strongly disagree' was assigned a score of 1. A 'no response' to the sub-questions was assigned a score of 0.

Step 2: The scores of all 5 sub-questions were summed up. The resulting summated scores ranged from 0 to 20.

Step 3: The summated scores were distributed across four newly created categories that indicated different degrees of police personnel's propensity to torture to gain information. Summated scores that ranged from 18-20 were categorized as 'High propensity'. Summated scores that ranged from 12-17 were categorized as 'Moderate propensity'. Summated scores ranging from 6-11 were categorized as 'Low propensity', and summated scores that totalled 1-5 were categorized as 'Very low propensity'.

Table A5.3: Index of propensity to torture to gain information

	Summated Scores	Weighted Distribution (%)
High propensity	18-20	28.6
Moderate propensity	12-17	38.7
Low propensity	6-11	17.6
Very low propensity	1-5	15.1

Index (Chapter 5 and Chapter 6): Propensity to use torture

The index was constructed by taking into account four questions asked during the survey, which are:

Q25iii: We often hear that the police use various tactics to solve criminal cases. In your opinion, are third-degree methods justified – a) towards the accused while investigating petty offences like theft, etc. b) towards the accused while investigating serious criminal cases like rape, murder, etc. c) towards a witness who is not cooperating?

Q26: To what extent do you agree that torture is sometimes necessary and acceptable to gain information in the following kinds of cases - strongly agree, somewhat agree, somewhat disagree, or strongly disagree: major theft cases, rape or sexual assault cases, serious violent crimes like murder, crimes against national security like terrorism cases, and cases against history-sheets?

Q27: Suppose a minor girl has been kidnapped, and the suspect is not cooperating. In such a situation, how justified is it to use third-degree to locate the girl?

Q37e: In your opinion, how frequently do Investigating Officers have to use third-degree to obtain information in serious offences to deal with an uncooperative accused – many times, sometimes, once or twice, or never?

In each question, the response options offered to the respondents were different.

For Q25iii, the possible response options were 'yes' and 'no'.

For Q26, the possible response options were 'strongly agree', 'somewhat agree', 'somewhat disagree', and 'strongly disagree'.

For Q27, the possible response options were 'yes, absolutely justified', 'yes, sometimes justified' and 'not at all justified'.

For Q37e, the possible response options were 'many times', 'sometimes', 'once or twice' and 'never'.

Step 1: For Q25aiii to Q25ciii, an answer that

was 'yes' was assigned a score of 3, and an answer that was 'no' was assigned a score of 1. A 'no response' was assigned a score of 0.

For Q26, an answer that was 'strongly agree' was assigned a score of 3. An answer that was either 'somewhat agree' or 'somewhat disagree' was assigned a score of 2, and an answer that was 'strongly disagree' was assigned a score of 1. A 'no response' was assigned a score of 0.

For Q27, an answer that was 'yes, absolutely justified' was assigned a score of 3. An answer that was 'yes, sometimes justified' was assigned a score of 2, and an answer that was 'not at all justified' was assigned a score of 1. A 'no response' was assigned a score of 0.

For Q37e, an answer that was either 'many times' or 'sometimes' was assigned a score of 3. An answer that was 'once or twice' was assigned a score of 2, and an answer that was 'never' was assigned a score of 1. A 'no response' was assigned a score of 0.

Step 2: The scores of all 4 questions were summed up. The resulting summated scores ranged from 0 to 30.

Step 3: The summated scores were distributed across four newly created categories that indicated different degrees of propensity to torture among the police personnel. Summated scores that ranged from 21-30 were categorized as 'High propensity'. Summated scores that ranged from 16-20 were categorized as 'Moderate propensity'. Summated scores ranging from 11-15 were categorized as 'Low propensity', and summated scores that ranged from 1-10 were categorized as 'Very low propensity'.

Table A5.4: Index of propensity to use torture

	Summated Scores	Weighted Distribution (%)
High propensity	21-30	29.7
Moderate propensity	16-20	32.3
Low propensity	11-15	22.8
Very low propensity	1-10	15.2

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Common Cause is a registered society dedicated to championing public causes, campaign for probity in public life and integrity of institutions. It seeks to promote democracy, good governance and public policy reforms through advocacy, interventions by formal and informal policy engagements. Common Cause is especially known for the difference it has made through a large number of Public Interest Litigations filed in the Courts, such as the recent ones on the setting aside of the Electoral Bonds Scheme; cancellation of the entire telecom spectrum; cancellation of arbitrarily allocated coal blocks; Apex Court's recognition of individuals right to die with dignity and legal validity of living will.

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