



POLICE REFORMS IN INDIA

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ABSTRACT

The Indian Judicial System frequently uses the phrase "Denial of 'timely justice' leads to a denial of 'justice' itself," as we have seen. Could it, though, be used to justify extralegal killings? This is the primary inquiry that our study will try to answer. Encounter killings are a typical term for this "immediate form of justice and retribution" weapon. In Shamshabad, close to Hyderabad, we recently observed a horrifying rape case involving a 26-year-old veterinarian. It's interesting to note that a police shootout a few days later resulted in the deaths of all four suspects. Even if there was a general appreciation for the police, individuals began to doubt the authority of the authorities' actions at the same time. The mindset and goals of the police, victims, and especially the law with regard to the practise of extrajudicial murders in India must therefore be understood and acknowledged. Additionally, we just saw the police encounter with a man named Vikas Dubey, who was reportedly accused of killing 8 police officers. There have been numerous occasions where the police authorities have provided justifications under Section 46 (2) of the CrPC. In order to prevent the abuse of the authority entrusted to the police, this article will analyse various portions of the CrPC and discuss the necessity for police reforms.

1. INTRODUCTION

Many people believe that the police's primary responsibility is to prevent crime, which includes conducting investigations, conducting searches, and upholding social order in addition to apprehending offenders. State police laws and the Code of Criminal Procedure in India strengthen the police's authority. For instance, section 161 of the Criminal Procedure Code (CrPC)¹ allows a police officer (of the rank as specified by the state's police code) to question someone who is thought to be familiar with the facts and circumstances of the inquiry.

India's police force is frequently criticised for lacking professionalism and accountability. For the majority of our 73 years as an independent country, we have seen numerous instances of police violence, extrajudicial killings, improper behaviour during investigations, corruption, and other legal infractions. The Indian policing system, in the opinion of many lawyers and legal activists, has to go through a thorough reform process. The idea that analysing and modifying

¹ The Code of Criminal Procedure, 1973, S 161.

statutory law would be useless is also widely held. India follows common law, therefore precedence is given greater weight than any potentially new legislation. Having said that, there is an unquestionable need to modernise the Indian policing system, boost officer accountability, and reform the country's criminal justice system.

Over the years, numerous commissions have been established with the aim of making recommendations for changes to India's policing system. These commissions include the Padmanabhaiah Committee on Police Reforms (2000), the Group of Ministers on National Security (2000-2001), the Gore Committee on Police Training (1971–1973), the Ribeiro Committee on Police Reforms (1998), the Gore Committee on Police Training (1971–1973), and the Malimath Committee on Reforms of Criminal Justice System (1998–1993). (2001-03).² The creation of these commissions has not resulted in any notable changes. Political pressure placed on such commissions is their biggest obstacle. The implementation of these measures would require the state government's approval because, according to the seventh schedule of the constitution³, public order and law enforcement are state subjects. Justice J. S. Verma advised the "states to comply with all six Supreme Court instructions in order to address systemic flaws in policing" in a report on changes to criminal legislation he presented in 2012.⁴

This essay will examine many facets of the country's policing system improvements.

2. NEED REFORMS

Arrest:

According to several reports, the police have abused their ability to make arrests. According to the National Police Commission, widespread instances of misconduct and corruption have been brought on by the police's discretionary right to make an arrest. As a result, it is now required that an arrest only take place when it is in the public interest or when it is actually necessary for the inquiry.⁵ Despite the legal necessity to make an arrest in cognizable offences, it is typically observed that police only make arrests when under pressure from the public and to demonstrate their effectiveness. The police must behave impartially and not in a way that would help the state's political agenda. We recently saw how the encounter with the rape suspect led to acclaim for the Telangana Police Department from citizens around the nation.⁶

Third degree refers to the use of unethical techniques to get confessions and evidence from an arrested person. Particularly in high-profile instances like dacoity, gang rape, and terrorism, a police officer will strive to collect false

² Drishti, A Cop Out, March 28, 2019, available at: <https://www.drishtias.com/daily-updates/daily-newseditorials/a-cop-out> (last visited October 30, 2022).

³ The Constitution of India, 1950, Schedule VII, List II, State List, Item 2(Police).

⁴ The Logical Indian, 11 Years After Famous SC Judgment On Police Reforms, Know What The Judgment Was & Where Do We Stand, April 14, 2017, available at: <https://thelogicalindian.com/story-feed/awareness/scjudgement-police-reforms/> <https://thelogicalindian.com/story-feed/awareness/sc-judgement-police-reforms/> (last visited October 30, 2022).

⁵ NATIONAL POLICE COMMISSION, Fourth Report of the National Police Commission, 27 (1980).

⁶ Live Mint , Encounter killing of Hyderabad rape suspects splits public opinion, December 7, 2019, available at <https://www.livemint.com/news/india/encounter-of-four-rape-accused-in-hyderabad-divides-public-opinionnhrc-orders-probe-11575637339652.html> (last visited October 30, 2022).

testimonies by utilising cruel methods in order to get recognition, notoriety, and higher ranks.⁷ One of the easiest ways to get a guilty confession is regarded to be through violence. The National Human Rights Commission identified 555 alleged false encounters from October 2009 to February 2013 in a report from that year.⁸ False encounters are regarded as grave violations of basic human rights. The Supreme Court was also made aware of the serious issue with the excessive usage of handcuffs. Forced handcuffing is against Articles 14⁹, 19¹⁰, and 21¹¹ of the Indian Constitution. In the case of *State of Maharashtra v. Ravikant S. Patil*¹², a murder suspect who had been shackled by ropes filed a writ petition and was eventually granted compensation in the amount of Rs. 10,000. Similar to this, petitioners 1 and 2 in *Sunil Gupta v. The State of Madhya Pradesh*¹³ endured cruelty and public humiliation while being handcuffed by the police. In *Prem Shankar Shukla v. Delhi Administration*¹⁴, the Supreme Court finally imposed handcuffing norms.

1. Police can only put handcuffs on someone who is either charged with a non-bailable offence and has already been convicted of a crime or who exhibits signs of desperation, such as when they are violent, obstructive, or who are likely to commit suicide or flee.
2. The daily journal must include the justification for the handcuffing.
3. Before handcuffing an accused person to and from court, the police must first obtain the court's approval.
4. The magistrate to whom the arrested individual is to be brought must inquire as to why the accused was handcuffed.¹⁵

Custodial Deaths:

In India, custodial deaths are another indicator of the police personnel's lack of responsibility. All cases of deaths while under police custody must be submitted to the NHRC within 24 hours, under its mandate. The number of Public Interest lawsuits filed with the Supreme Court has increased as a result of the rise in the number of cases involving fatalities in custody and police brutality. In *D.K. Basu v. The State of West Bengal*¹⁶, the Supreme Court established precise rules that would act as an arrestee's rights. These rules were as follows:

⁷ NATIONAL POLICE COMMISSION, Eight Report of the National Police Commission, 61.3 (1981).

⁸ India Today, NHRC stats show there were more fake encounters in Congress-ruled states than in Narendra Modi's Gujarat, July 4, 2013, available at: <http://indiatoday.intoday.in/story/fake-encounters-congress-ruledstates-narendra-modi-gujarat/1/286891.h> (last visited October 30, 2022).

⁹ The Constitution of India, 1950, Art. 14.

¹⁰ Ibid Art. 19.

¹¹ Ibid Art. 21.

¹² *State of Maharashtra v. Ravikant S. Patil*, (1991) 2 SC.

¹³ *Sunil Gupta v. M P*, (1990) 3 SCC 119.

¹⁴ *Prem Shankar Shukla v. Delhi Administration*, (1980) 3 SCC 526.

¹⁵ Ibid.

¹⁶ *D.K Basu V. The State of West Bengal*, (1997) 1 SCC 416.

1. The police officer making the arrest must wear a precise, readable identification badge. The name and title of the officer must be obvious.
2. The police officer making the arrest is required to write up an official memo of the arrest.
This memo must be attested by at least one witness. This witness can be a member of the detained person's family or a resident of the area where the arrest was made.
3. The arrest must be disclosed to at least one of the arrested person's acquaintances.
4. The detained person must be informed of his or her right to have someone informed of the detention.
5. A journal entry containing the identity of the person arrested as well as the time and date of the arrest is required.
6. In addition, the arrestee must be checked for any injuries; if any are found on the body, they must be noted in the inspection memo.
7. A licenced physician who has been approved by the authorities must do a medical examination every 48 hours.
8. The illaqa magistrate must receive all copies of the paperwork.
9. The detained person must be informed of his right to legal counsel and be given the opportunity to speak with a representative while being questioned.
10. Within 12 hours after the arrest, the arresting police officer must report the specifics to the district and the state control room.¹⁷

This case also demonstrated how torture and other forms of incarceration abuse are against the Rule of Law, as presidential authority is not only drawn from but also constrained by the law. The Model Police Act, 2006, must also be a focus of the reforms, and any official who violates the rules must face sanctions, such as failing to file a First Information Report (FIR) in accordance with section 154 of the Criminal Procedure Code.¹⁸ It's important to consider all the aspects of helping someone who has been wronged by police officers. Although there are provisions for paying out money to someone who has been harmed by the police, if the police officers are not held personally accountable, it serves no deterrent effect.

¹⁷ Ibid.

¹⁸ The Code of Criminal Procedure, 1973, S 154.

3. PREVIOUS ATTEMPTS TO REFORM:

The Supreme Court:

In *Prakash Singh v. Union of India*¹⁹, the Supreme Court of India emphasised the requirement for modernising Indian policing. The Supreme Court ordered the legislative and executive branches to take the initiative in creating a State Security Commission at the state level, creating a transparent process for the appointment of police chiefs, separating the investigation process from law and order, and creating a new police act that would advance democratic ideals.²⁰ No state complied with the Supreme Court's request that they ratify the rules. The court eventually established a monitoring committee to keep track of all state government initiatives. However, the committee came to the conclusion that the states have been behaving completely disregard for the police reforms.

The Supreme Court ordered all the states to follow the directive in the *Prakash Singh & Ors. V. Union of India & Ors.* judgement in 2012. However, all of the central states obstructed the Supreme Court's intervention in 2013 by asserting that the executive retains sole authority over the police.

National Police Commission 1977:

Over the years, a number of commissions have been established to assume responsibility for formulating reform recommendations for the nation's policing system. After 30 years of independence, the country saw the urgent need to change and modify the way the police carry out their duties. In 1977, the national government established the National Police Commission. A wide-ranging mandate was assigned to this group to make reform recommendations. Eight thorough papers with reform recommendations were provided by the NPC, one of which was a well-written bill to replace the British Police Act of 1861. The panel struggled to approve the proposals, thus a PIL was submitted to the Supreme Court.²¹

The union government created the Riberio Committee in response to the Supreme Court's directives.

Various Commissions

The Supreme Court gave the union government instructions on how to construct the Riberio Committee, which was primarily charged with improving the accountability of the Police Authorities.

However, the committee produced two reports that were delivered to the union administration. The Padmanabhaiah Committee was then given the responsibility of evaluating the recommendations that had previously been made by other committees.

¹⁹ *Prakash Singh & Ors. v. Union of India & Ors*, MANU/SCOR/23958/2020.

²⁰ *Ibid.*

²¹ *Ibid.*

The Police Act Drafting Committee, often known as the Soli Sorabjee Committee, was established by the Ministry of Home Affairs. A Model Police Act was drafted by the group.²² The reforms outlined in the Model Police Act were to be implemented by all states, according to instructions.

4. CRPC POLICE'S PREVENTIVE AUTHORITIES

According to many legal experts, upholding public order is the primary purpose of the majority of the police's powers as outlined in the CrPC. This statute was written primarily to decide all criminal cases by establishing the prosecution and punishment processes. It also emphasises the police's ability to prevent crime. However, it is believed that the primary reason why the police violate fundamental rights is because of their enhanced preventive powers and duties under the CrPC. It is necessary to define the police's obligations and authority. The following are a few of the CrPC provisions that highlight the tasks and power of police.

I. Dispersal of assemblies under Section 129

According to S.129²³, police officers have the authority to disperse any illegal gathering of more than five people that is likely to produce a disturbance in a public area. It should be noted that the Constitution's Article 19(1)(b)²⁴ is broken by this clause alone. The constitutionally guaranteed fundamental rights of citizens are not to be taken as unqualifiedly guaranteed. Some logical limitations are put in place against the rights guaranteed by the constitution. Always read this section in conjunction with Section 141 of the IPC²⁵, which outlines the legal justifications for an unlawful assembly. Under article 2 of this act, the police may take appropriate action if the assembly is not dispersed freely.²⁶ The determination of whether an assembly violates Section 141 of the IPC is purely legal and does not give the police any discretion.

If the alleged unlawful assembly does not disperse freely after being warned or when the alleged unlawful assembly manifests a lack of purpose to disperse, the police are authorised under Section 129(2) to use force to disperse the alleged unlawful assembly. The constitution and the citizens' fundamental rights are under risk because of how subjective this clause is.

This clause could be abused by the government to support the use of force against a peaceful assembly or protest. Because of this, a clause should be included that allows for the use of force with a warrant that would be issued by a magistrate, citing the justifications and a witness that the crowd had been warned in advance to disperse peacefully.

²² The Model Police Act, 2006.

²³ The Code of Criminal Procedure, 1973, S129.

²⁴ The Constitution of India, 1950, Art. 19(1)(b).

²⁵ Indian Penal Code, 1860, S141.

²⁶ The Code of Criminal Procedure, 1973, S129(2).

II. Section 144: Authority to issue an injunction in circumstances of immediate nuisance or suspected risk

Although the police are not specifically given any authority under this clause, there have been several instances where they have abused it severely. This clause must only be used in exceptional situations where there is a serious risk to human life or property. A person's basic rights could be readily violated by this section. For instance, in the case *Ramlila Maidan Incident v. Home Secretary, Union of India*²⁷, police enforced Section 144 of the CrPC and conducted a raid at the location while violently assaulting protesters who were fast asleep. The phrase "urgent cases of nuisance or serious risk" was used by the court.²⁸

Given that the attack took place on a group of peaceful protesters who were asleep, the situation was neither urgent nor hazardous. If left in its current form, this section could be used by the authorities to assault a peaceful gathering, a peaceful protest, any potentially offensive slogans, or any minor annoyances like loudspeakers.

III. Section 149: Police must prevent crimes that are punishable by law

A police officer is obligated by Section 149²⁹ to stop any potential crime from being committed. A police officer could be able to abuse this section's broad authority by making unwarranted arrests or using excessive force. Therefore, section 149 could be interpreted as a section that police officers could use to take whatever action they deem necessary to prevent a cognisable offence or perhaps just a simple duty that must be performed within the bounds of the powers granted and the fundamental rights granted to citizens of this country.³⁰ If Section 149 is viewed as a duty of a police officer rather than a section that grants them authority, the idea of Rule of Law—where citizens and authorities are to ensure that any act conducted within the bounds of the powers as granted by any statutory law does not violate any fundamental rights of the citizens—is upheld. Further, the rule of law mandates that the scope of the police's authority be expressly and solely set forth in statutory law, so that both citizens and the police can determine from the written law if the police are granted such powers. However, Section 149 does not even come close to meeting this crucial criteria. This could be done in more general terms, such as "public order," if such a concept is understood and its bounds and meaning are well-established by jurisprudence.

IV. Section 151: Arrests made to stop the conduct of crimes that are punishable by law

The title of this section³¹ provides a clear explanation. Anyone may be detained by the police at their discretion in an effort to stop any recognised crime. However, this clause does not provide the police the authority to detain a person. If there is an urgency and a person has a plausible possibility of committing a cognisable offence, police officers are authorised to make an arrest under this clause. When this section is compared to Section 149,³² it becomes clear that

²⁷ *Ramlila Maidan Incident v. Home Secretary, Union of India*, (2012) 5 SCC 1.

²⁸ *Ibid.*

²⁹ The Code of Criminal Procedure, 1973, §149.

³⁰ HENRY THOBY PRINCEP, THE CODE OF CRIMINAL PROCEDURE 593 (1973).

³¹ The Code of Criminal Procedure, 1973, S151.

³² *Ibid* S 149.

Section 149 only gives the police the obligation to prevent crimes, and does not provide them any further powers or duties, such as the power to make an arrest. Unlike section 151, which expressly gives police the authority to make an arrest if all the conditions are met.

V. Section 152: Protecting public property

The purpose of Section 152³³ is to stop damage to public property. A "police officer may, of his authority, interpose to prevent any attempted injury to any public property, whether movable or immovable, or the removal or injury of any public landmark, buoy, or other mark used for navigation," states this clause.³⁴ In contrast to Section 151,³⁵ this section permits police action whether or not the offence is cognizable. In order to distinguish between sections 151 and 152, an arrest for a violation of section 152 can only be undertaken in accordance with section 151, which also establishes that section 149 does not give police authorities any authority. However, it should only be seen as mentioning an officer's responsibilities.

5. CONCLUSION

Accountability, modernization, and professionalism are frequently the topics of conversation while discussing policing in India. Many people think that giving the police a set of statutory powers that are "automatically" followed by even greater police powers would "automatically" result in the above-mentioned changes to the nation's policing system. Any update and modernization of the police's statutory authorities, such as those found in the CrPC and Police Acts, entails the possibility of an increase of police authority that is harmful to fundamental rights. The history of police laws also influences policing reforms in India. Taking into account that the majority of the current laws that grant the police its authority are based on the original police acts These actions are in no way consistent with how the highest court will view basic rights in 2020.

If the Indian police were given a clear mandate that departmentalized their authority and responsibilities, they might uphold the Rule of Law, act more professionally, maintain a contemporary workplace, earn acceptable wages, and have access to various benefits enjoyed by police in western nations. To carry out the reform process, it would be necessary for the union and state governments to collaborate with one another at the state level.

³³ Ibid S 152.

³⁴ Ibid.

³⁵ Ibid S 151.