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Police Excesses and a Call for Police Reforms

MANISHA S¹

ABSTRACT

The increasing incidences of police brutality are coming to light especially in this Covid-19 lockdown situation. This has caused a lot of worldwide outrage and protests against such misuse of authority by the police officers. Police Brutality has always existed among us since the rule of British in India. But the legislators are fueling it further by clinging to the age-old Police Act, 1861, drafted and ratified by the Britishers. The police then were used to oppress the people and keep them under control. And to this day, many of them are still doing that as opposed to their expected duty of protecting the citizens and preventing crime. The main reason behind it is the politicians using the police as handmaidens to do their bidding. Both the central and the state Government failing to make any amends to it despite the various recommendations and suggestions made by several committees and even the Supreme Court goes to show how much influence the Ruling Part has over the police.

This paper focuses on the history behind the police detailing and goes on to talk about the various committees and commissions set up and their noteworthy suggestions. It also discusses the various reforms that can be brought out to the police system in order to build a better police-public relation and also to ensure the operational autonomy of the police while also keeping in them in check from misusing their powers.

*Things fall apart; the centre cannot hold;
Mere anarchy is loosed upon the world,
The blood-dimmed tide is loosed, and everywhere
The ceremony of innocence is drowned;
The best lack all conviction, while the worst
Are full of passionate intensity.*

-W.B. Yeats [The Second Coming]

¹Author is a student at The Tamil Nadu Dr. Ambedkar Law University, School Of Excellence In Law, Taramani, India.

I. INTRODUCTION

The year 2020 has been notorious for a lot of things, forest fires, pandemic, locusts' swarms, religious discrimination, etc. It has also been a year where several incidents of police brutality of far-reaching consequences. It is not that Police brutality is on the rise only in the year 2020 but rather that people are becoming increasingly aware of it. Social media has played a major role in this awareness. After the brutal way the police treated the Tuticorin father-son duo, Jeyaraj and Benicks, under police custody, the whole of Indian, cutting across regional lines, rose up against police's abuse of power. The inhumane treatment of the father and son, for the mere neglect of a rule of curfew for closing down shops, leading eventually to the death of the two, is what that made the Indians fight back against such misuse of authority.

Police brutality has long existed amongst us but they were almost always covered up or they didn't have as much media coverage as they have now. It has existed even during the British rule in India. A perfect example to this would be the Jallianwala Bagh massacre where the police had killed atleast 400 and injured over 1500 people. An unrepentant General Dyer went scot-free.

Even post-Independence, it can be seen through several circumstances that the police are still practicing such violent measures. Incidences such as Rampur Tiraha firing that happened on the 1st and 2nd of October in Uttarakhand or the Manjolai Labourers massacre in the year 1999 in Thirunelveli district, Tamil Nadu, are all examples for the insensitive handling of people's right to protest by the police.

Police are also seen taking law into their own hands and punishing the accused persons in a ruthless manner. The perverse treatment of Nalini Murugan (pregnant woman convicted of the assassination of Rajiv Gandhi) was despicable. While they try to justify it as punishing the convict, it only goes to show how truly nightmarish their bloodlust is. The police are not given any powers to use violence to perform their law and order duties unless it is absolutely necessary and only if they are allowed to do so by an Order from the head of State affairs.

“It is axiomatic that convicts, prisoners or under trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions as are permitted by law which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the state to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law while the citizen is in custody. The precious rights guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials or other prisoners in custody except according to procedure established by law” [*Nilabati Behra V.*

State of Orissa (1993) 2 SCC 746]

Thus, it can be said that, even after India has been freed from the British rule, police's control over the weak and powerless part of the society has not changed. While wrongdoers get away with the most horrendous offences, it is almost always the innocent and poor who take the brunt of their inhumane treatment.

Police brutality is not just them beating up protestors or the accused, but it also extends to them harassing common people on the street, harassing women who come to the police station in search of justice, etc. A recent incident in Odisha, where a 13-year-old girl who was roaming near the bus stand unable to get home was picked up by a police patrol car and was taken to the police station. It wasn't to get her safely back home but rather to rape her in the station. The Inspector of that station had returned her back home after raping her and had also called her back to the station several times after that to rape her repeatedly by not only the Inspector but by the other police officials there. When she got pregnant, the police along with the step-father of the victim took her to get an abortion.

The very people who are supposed to do the protecting are the ones from whom people need protection from.

II. HOW AND WHY POLICE CAME TO EXISTENCE: -

Shortly after the Great Mutiny of 1857, the Britishers felt that they needed a set of Indian natives to keep the other natives under control. But to do that there was the need for a trust between the police and the Britishers. First, the Britishers separated some of the natives and transferred them to other villages and communities. This was to isolate them from the people they knew. This made them rely solely on the system. They were also given benefits such as better housing and also powers without limits. They could abuse these powers and no one questioned them. This worked out for colonial interests because this system managed to build a "mutual suspicion between the police and the masses."²

Thus, it could be said that the main reason behind bringing out the police force was to control and oppress the people and not to protect and support the population. This was the birth of police force in India. Violence and suppression were expected out of them. With such expectations or "demands", The Police Act, 1861 was framed in India by the Britishers. They came up with a new cadre of police called the Superior Police Services. This was later called

²UladzimirDzenisevich and Maja Daruwala, *THE POLICE WE HAVE AND WHERE IT CAME FROM: AN ANALYSIS*, Commonwealth Human Rights Initiative, <https://www.humanrightsinitiative.org/blog/the-police-we-have-and-where-it-came-from-an-analysis>

Indian Imperial Police. This was replaced by the present day, Indian Police Services. Ranks appointed on the basis of Civil Service Exams conducted by the Union Public Service Commission (UPSC).

III. NEED FOR MODERNIZATION OF THE POLICE SYSTEM: -

India has been freed from the advent of British rule for over 70 years and yet very little has been done to change or amend the Police Act that was brought out in the year 1861. It has been 159 years since the Act was brought out and it has not been changed since then. It has been obsolete for a long time now. Neither the State nor the Central Government has taken efforts to amend it. Even though the Britishers themselves have changed their laws several times, Indian legislators keep clinging to the archaic laws laid down. This is the reason why it is becoming extremely difficult to keep the people in check and also to keep the police under control and to prevent them from misusing their powers.

The Gore Committee was set up in the year 1972 under the Chairmanship of Professor M. S. Gore. He was a renowned social scientist. This committee recommended that Training should be an important aspect to be considered if the effectiveness and efficiency of the police department was to be improved. It was felt that through training the police could develop the right attitude and develop decision making ability.

National Police Commission was set up in the year 1979-1981 for the purpose of keeping the investigation of the police personnel free from any outside influence and to frame a new Police Act. But it wasn't a success because they made far reaching recommendations of reforms to the police system.

Several other committees came to be after these two, the Vohra Committee, the Ribeiro Committee, etc., making many other useful recommendations but none of which were implemented by State Governments.

Administrative Reforms Commission II (ARC-II) was set up in the year 2005, to produce a blue print in order to renew the public administration system. The 4th chapter of the Fifth Report filed by the ARC concentrates on "Core Principles of Police Reforms". It came up with several remarkable recommendations and the notable one being the recommendation of separating day-to-day law and order activities of the police from the investigative functions of the police. Other such suggestions would be

- 1) Superintendence over the police should be restricted so that they could maintain its operational autonomy

- 2) Establishment of State Accountability Commission consisting of 5 members of government- Home Minister, Chief Secretary and five unbiased eminent citizens

But these recommendations that were put forth by the ARC-II still remain neglected.

Apart from commissions and committees set up for the police reforms, the courts too began to stress on the necessity of bringing about reformation to the Police Act

Prakash Singh v. Union of India is a landmark case when it comes to police reforms. The Supreme Court had made umpteen number of significant recommendations such as-

- 1) Fixing of tenure of two years for the DGPs
- 2) Establishing the Police Establishment Board for the purpose of deciding and recommending on matters relating to transfers, promotions, postings, etc. of police personnel of the ranks of DSP and below
- 3) Separation of law and order functions and the investigative functions
- 4) Institute a Police Complaints Authority to look into issues raised against the police officials belonging to the ranks of SP or above
- 5) Setting up of a National Security Commission for the purpose of selection and placement of the chiefs of Central Police Organizations.³

These recommendations by the Apex Court were also left unheeded. To this day, no state has followed all the suggestions put forth by the Court.

IV. WHY DID THESE REFORMS FAIL?

Modernization of the Police Force was a scheme brought out in the year 1969-70 by the Parliament to improve police infrastructure by way of building more stations. They even tried to bring more Modern weaponry for their use along with surveillance and communication technologies. But it can also be seen that, the funds that are set aside for the development of police force is hardly ever fully utilized by the State Governments. There are still several police stations that need communication systems set up along with Wi-Fi connections, to digitalize the records, but still the funds set aside are not used to their full capacity. Despite the fact that the “Union Budget for the year 2019-2020 increased the funding for police modernization by 8%, the total utilization of the budget was merely 48% (according to India

³Supreme Court issues slew of directions on police reforms in country, EconomicTimes(Jul 03, 2018, 09.38 PM IST) <https://economictimes.indiatimes.com/news/politics-and-nation/do-not-appoint-police-officer-as-acting-dgp-sc-to-states-uts/articleshow/64837528.cms>

Spend analysis of Government data)".⁴

The major reason behind the failure to implement any of the aforementioned suggestions and recommendations is that the politicians want to keep the police force under their control and use them as handmaidens for their hooliganism. The police and the politicians often have a mutual understanding between each other. The police turn blind to the atrocities of the politician while the politician bolsters the police when they act ultra-virus. In order to maintain this support, the politicians often ignore the recommendations made.

Owing to this political influence, only a few states have brought out their own State laws with regard to Police- Karnataka, Delhi, Maharashtra and Kerala.

Even the Police Complaints Authority that had been set up by some of the states have been found to be understaffed, without proper infrastructure to accommodate the personnel working there and their functioning is often hindered by "lack of investigative staff, resources and the needed training and orientation to maximise their role as independent police oversight bodies."⁵

V. LEGAL RIGHTS OF THE PUBLIC THAT POLICE IGNORES: -

A few examples of common legal rights of the citizens that are violated or abused by the Police officials are-

- 1) Arrest of an accused person is not mandatory unless he is a flight-risk or to prevent further commitments of such crime or if it is felt that custodial interrogation is necessary to get further details regarding the case. (Third Report of National Police Commission, page 32)
- 2) People also have the right against Self Incrimination that is guaranteed by Article 20(3) of the Indian Constitution. This means that the police cannot force a person to say or bring record of documents while may cause for him to incriminate himself.
- 3) Offenders committing offences of non-cognizable nature or bailable offences needn't be detained and submitted before a Magistrate but could be bailed out by the police themselves. (Section 42 of Criminal Procedure Code)
- 4) The police have no locus standi to interference in the civil rights of the public and only the court can determine the case and for the police to play a part in it, is a

⁴Atman Mehta, Why India's police forces lack weapons and communications equipment, Scroll.in (Aug 26, 2019 · 07:30 pm) <https://scroll.in/article/935008/why-indias-police-forces-lack-weapons-and-communications-equipment>

⁵V. Venkatesan, Shivangi Mathew, Police reforms still largely only on paper, FrontLine (August 09, 2019 19:56 IST) <https://frontline.thehindu.com/dispatches/article28960801.ece>

violation of the due process of law and harassing the parties and calling them for enquiry to the police station is a blatant violation of the fundamental rights of the citizens.

VI. WHAT CAN BE DONE?

There are various steps that have to be taken to make some changes to the police system. This is because it hasn't been changed in about 159 years and progress is so far behind.

A new Police Act must be brought out. Several drafts had been brought out earlier in the year 2006 and also in the year 2015. But they still remain as drafts and have not been implemented so far.

Police personnel should have operational autonomy, free from the influence of the politicians. Not only is this good for justice to be served but also would go a long way to prevent corruption. Several politicians get away with their under-the-table habits because the ruling party keeps the police its control. This hinders the delivery of justice and prevention of crime.

Also, fearing the politicians' wrath, the police tend to punish the innocent offenders who usually belong to the unprivileged section who do not have a voice in the society. An example to this would be when the police arrested and beat the father of a rape victim, below the age of 18, to death to cover up for the rape committed by a BJP legislator. "The Allahabad High Court ordered the arrest of the accused legislator and also chastised the UP police for filing a false case against the girl's family members."⁶

While police should have autonomy of function, it does not mean that they must go unchecked. In fact, it is the unchecked misuse of authority of the police that has led to a worldwide outrage against a police state being established.

Police must be sensitized to the public. Considering it is the police who deal very closely to the public, it is astounding how neglectful they are of the human rights and legal rights of the people and how insensitive they are towards delicate issues at hand. Rape, Murder, Juvenile crime, Religious radicalization, etc. are all sensitive issues and must be dealt with a hands-on approach. The casual attitude of the police officers while investigating into these offences makes it more difficult for the victims or accused to deal with their own issues.

Police personnel face a lot of stress in their own workplace. Corrupt superiors, poor pay, incomprehensible pressure, dealing with heinous crimes frequently, etc., all owe to them

⁶Urmila Pullat, [The political capture of the police in India](https://www.livemint.com/Opinion/GHQrTiUfvD9RnYLLUPsKyI/The-political-capture-of-the-police-in-India.html), LiveMint (19 Apr 2018, 02:24 AM IST), <https://www.livemint.com/Opinion/GHQrTiUfvD9RnYLLUPsKyI/The-political-capture-of-the-police-in-India.html>

having their own prejudices and also the reason behind most of them losing their humane aspect. Proper psych evaluations should be held on a regular basis for the police personnel especially after they have dealt with heinous offences and/or has been shot or has shot someone. It is steps like these that would be useful for them to keep in touch with their humanity.

The current drill-based training rendered to the police personnel and young trainees does not do much towards actual acquisition of skills necessary for the police work. The training does not focus on the development of scientific or psychological skills that are necessary to do their basic function- investigation. They make up for lack of these skills by resorting to violent third- degree measures in order to milk out information from the accused. Police training should also involve sensitizing them to deal with the people's complaints from a humanitarian point of view.

Educating the police regarding gender issues and religious and caste issues should be a must. Since most of the lower ranked police personnel usually come from rural backgrounds, they tend to have a stigmatized view towards people of different genders, castes or religion. This tends to show especially when they are dealing with rape, honor killing or religious or caste gang-wars. Their own biased outlook on these issues tends to make them justify certain offences in their own minds and thus make the victims pain seem insignificant or tend to make light of the victims' agony.

Promoting the police personnel should be done on the basis of merit and hard work. Most police constables manage to retire as Head Constables irrespective of whether they have worked hard or not. They are promoted on the basis of experience rather than merit. Spending several years in the police force does not necessarily mean that they are efficient enough to be rewarded with a promotion. This experience-based promotion not only makes the old constables to be lax at their jobs because they have the guarantee for a promotion, but it also deters the young constables for their hard work and efficiency because they do not get rewarded for it. This makes their passion for work to stagnate and they get mechanized to doing bare minimum.

Courts must be very vigilant when it comes to issues regarding police. They must keep a check on the way the police treat the accused person because there has been and there still is a huge history of police abusing the accused persons and also the persons under trial. Landmark judgements like DK Basu case and that of Joginder Kumar goes to show how much the courts can help to empower the citizens to stand up for their rights. It may be

difficult for the courts to directly pressurize the police to change, not impossible, but difficult. But landmark judgements like these give way for the citizens to do something about their infringed rights.

Unless stern measures are taken against these atrocious acts of the police, the very foundation of the criminal justice system would be shaken and civilization itself would walk down a path of self-extinguishment. [State of Madhya Pradesh v Shyamsunder Trivedi: [1995] 4 SCC 262]

Even academic institutions should be taught their basic human rights and their legal rights. Students should have compulsory legal class. Many Indian citizens are not aware of their rights and thus it becomes easier for the police to take advantage of them or to harass them. Educating young students about their rights would push the police to treat the people in the right manner because otherwise the people who are aware of their rights will start questioning the manner in which they were treated.

VII. CONCLUSION

The fundamental purpose for police force is the prevention of crime, investigating into offences, collecting evidence, filing charge sheet and also to protect the VIPs. But since the police are understaffed these functions often interlope. Using police for bandabost purposes should be separated from the police who are working on investigation, most of the times they are forced to leave their investigation as it is, to attend to the VIPs. Therefore, it also essential that the police provide a xense of security to the people and tend to the grievances of the people. This cannot be done if they abuse every opportunity they get and harass the public and take advantage of the weaker and poorer section of the society and use them as scrape goats for their inability to find the original offender. The recurring incidents of police brutality leaves a scar in the minds of the citizens rendering them feel insecure about their lives and liberty being under constant threat of custodial violence and torture that might lead to even death. The protectors of the people are becoming the perpetrators of brutal acts against the people. [Dalbir Singh v State of UP: AIR 2009 SC 1674]

Police brutality and Police reforms is like a cycle. Youngsters aren't willing to enter the police force because they face harassment and tend to distrust the police and their habits. Their unwillingness to enter into the force causes understaffing. UN prescribes a recommended ratio of 222 for every 1,00,000 persons but India has a mere 144 making it one among the weakest police force in the world. This is the reason behind them failing at helping deliever justice to the people thereby causing them to lose their faith in the police. This also

causes immense stress and work pressure to the police officers.

There is still a long way to go before we can achieve the modernization of police force, but doing nothing about it, is only going to further deteriorate the state of affairs. A good start would be a written legislation that is up to date which would set the expectations and the goals for the reforms. “The performance of the police as an organization and the behaviour of police personnel as individuals both need constant monitoring.”⁷

Rebuilding the faith in the police is of utmost importance especially considering that it, at present, hangs by a thread. The current lockdown situation owing to Covid-19 is making India an increasingly police state which is doing more damage to the fragile state of communication and trust between the people and the police.

Sticking to the age-old methods of beating up the accused to get a confession or harassing people for no reason will not stand to do any good in the present-day India. It only contributes to added strain to the police-public relationship. The relationship hangs by a thread as it is. The Japanese police are the friendliest and they enjoy the trust of the people. This goes to show that the violent measures used by the Indian police is not doing anything for delivering of justice but is a tool used to kill those who might be innocent without giving them an opportunity of being heard.

Along with changes made to the training, selection, educating them, etc., the living conditions of the police should also be changed. Their pay must be raised and their benefits should be better too. Considering the way, the police are being over-worked, betterment of their living standards would go a long way to ease their outlook on their work.

These are the most vital reforms to be effected in the Police System that prevails today. The recent excesses on the part of the police brook no delay. Unless these things are sooner done, the peoples of the world’s largest democracy would suffer all the more.

⁷https://www.humanrightsinitiative.org/programs/aj/police/papers/gpj/police_accountability_in_india.pdf