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Policing Reforms in India

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ABSTRACT

We have witnessed, in many occasions, the Indian Judicial System quoting “Denial of ‘timely justice’ amounts to a denial of ‘justice’ itself” however, could it justify extra-judicial killings? This is the fundamental question our research will aspire to cover. This tool of “instant form of justice and punishment” is commonly referred to as “encounter” killings. Not so long ago, we witnessed a heinous rape case against a 26-year-old veterinary doctor in Shamshabad, near Hyderabad. Interestingly, all the four suspects were shot dead a few days later in a police encounter. Although there was a widespread appreciation of the police; however, at the same time, people started questioning the legitimacy of this act by the authorities. It is therefore essential to understand and acknowledge the mindset and the intentions of the police, victims and especially law in regards to the practice of extra-judicial killings in India. We have also witnessed very recently the Police Encounter of one Vikas Dubey, who was charged with the killing of 8 police officers recently. Using Section 46 (2) of the CrPC, there have been many instances of justifications given by the police authorities. This paper would be focusing on the need for police reforms and an analysis of various sections in the CrPC, which could be amended to prevent the misuse of powers as granted to the police.

I. INTRODUCTION

The role of the police is widely considered as preventing crimes which entail not only apprehending criminals, investigations and search and maintain order in the society. In India, these powers of the police are enriched in state police laws and the Code of Criminal Procedure. For example, section 161 of CrPC,² empowers a police officer (of the ranking as prescribed by the police code of the state), to examine a person who is considered to be acquainted with the facts and circumstances of the investigation.

Policing in India is often referred to as an organisation with a lack of accountability and professionalism. We have been witnessing many cases of police brutality, extrajudicial killings, unprofessional behaviour during investigations, corruption and other statutory violations for a better part of 73 years of being independent. Many jurist and legal activists

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² The Code of Criminal Procedure, 1973, §161.

believe that the policing system of India needs to undergo a rigorous reform procedure. At the same time, it is an omnipresent opinion that analysing and reforming the statutory law would be futile. Considering India is a common law country, precedent is given more priority than what might be the newly drafted law. Having said that, there is an unambiguous need for reforming the policing system in India, to increase the accountability of the officers and to modernise the Indian policing system.

There have been many commissions constituted over the years which were purposed to suggest reforms in the policing system of India. These commissions include the Gore Committee on Police Training (1971-73), the Ribeiro Committee on Police Reforms (1998), the Padmanabhaiah Committee on Police Reforms (2000), the Group of Ministers on National Security (2000-01), and the Malimath Committee on Reforms of Criminal Justice System (2001-03).³ Despite the formation of these commissions, there have not been any significant changes. The major challenge faced by such commissions is the political pressure exerted on them. Considering, police and public order are a part of state subject, under the seventh schedule of the constitution,⁴ the implementation of these reforms would entail the state government's consent. In 2012, Justice J S Verma, submitted a report on amendments to criminal law urged the "states to comply with all six Supreme Court's directives in order to tackle systemic problems in policing".⁵

This paper would analyse various aspects of reforms in the policing system of this country.

II. NEED FOR REFORMS

Arrest:

The police on various accounts, have seen to exploit the power to arrest. The National Police Commission reported that the discretionary power provided to the police to make an arrest has led to widespread cases of malpractice and corruption. Therefore, it was made mandatory that the arrest can now happen only if its in public interest or if it serves the actual requirement of the investigation. ⁶ Despite the legal requirement to make an arrest in cognisable offences, the police is usually found to arrest while under the pressure of public opinion and to put a show of their effectiveness merely. The police must act in an unbiased

³ Drishti, *A Cop Out*, March 28, 2019, available at: <https://www.drishtias.com/daily-updates/daily-news-editorials/a-cop-out> (last visited September 30, 2020).

⁴ The Constitution of India, 1950, Schedule VII, List II, *State List*, Item 2(Police).

⁵ The Logical Indian, *11 Years After Famous SC Judgement On Police Reforms, Know What The Judgement Was & Where Do We Stand*, April 14, 2017, available at: <https://thelogicalindian.com/story-feed/awareness/sc-judgement-police-reforms/> (last visited September 30, 2020).

⁶ NATIONAL POLICE COMMISSION, *Fourth Report of the National Police Commission*, 27 (1980).

way and not what would maybe serve the political purpose of the state. We witnessed recently how the Telangana Police department was praised by people all over the country due to the encounter of the rape accused.⁷

Use of illegal methods to gather evidence and confessions from an arrestee is commonly referred to as third degree. A police officer, to earn recognition, fame and higher ranks, try to obtain fake testimonies by using torturous methods, especially in high profile cases like dacoity, gang rape, terrorism.⁸ Violence is deemed to be one of the most accessible strategies to obtain a guilty confession. In a report of 2013, the National Human Rights Commission reported 555 alleged fake encounters since October 2009 till February 2013.⁹ Fake encounters are considered to be extremely violative of fundamental human rights. The extreme use of handcuffs were also pointed out to be a significant problem in the Supreme Court. Forced handcuffing is violative of Article 14¹⁰, Article 19¹¹ and Article 21¹² of the Constitution of India. In the case of *State of Maharashtra v. Ravikant S. Patil*,¹³ a murder suspect was handcuffed by ropes who later filed a writ petition and was awarded a compensation of Rs. 10,000. Similarly, in *Sunil Gupta v. The State of Madhya Pradesh*,¹⁴ petitioner 1 and 2 were subject to cruelty and public shame while the police forcefully handcuffed them. The Supreme Court, finally in *Prem Shankar Shukla v. Delhi Administration*,¹⁵ issued guidelines for handcuffing. These guidelines were:

- ” 1. Police can only use handcuffs when a person is either accused of a non-bailable offence and is previously convicted of a crime or the accused shows a desperate character i.e if he is being violent, obstructive or is likely to commit suicide or escape.
2. The reason for the handcuffing must be mentioned in the daily diary.
3. if the accused is to be taken to court, the police must take the permission of the court, before handcuffing him to and from the court.
4. The magistrate before whom the arrested person is to produced must seek an explanation

⁷Live 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-opinion-nhrc-orders-probe-11575637339652.html> (last visited September 30, 2020)

⁸NATIONAL POLICE COMMISSION, *Eight Report of the National Police Commission*, 61.3 (1981).

⁹ 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-ruled-states-narendra-modi-gujarat/1/286891.h> (last visited September 30, 2020)

¹⁰ The Constitution of India, 1950, Art. 14.

¹¹ The Constitution of India, 1950, Art. 19.

¹² The Constitution of India, 1950, Art. 21.

¹³ *State of Maharashtra v. Ravikant S. Patil*, (1991) 2 SC.

¹⁴ *Sunil Gupta v. M P*, (1990) 3 SCC 119.

¹⁵ *Prem Shankar Shukla v. Delhi Administration*, (1980) 3 SCC 526.

for the handcuffing of the accused.¹⁶

Custodial Deaths:

Custodial Deaths in India are also a factor to point out the lack of accountability of the Police officials. The NHRC has made it mandatory to have all the cases of death in police custody be reported with them within 24 hours. The number of increased cases of custodial deaths and police torture has subsequently increased the number of Public Intrest litigation filed with the Supreme Court. In *D.K Basu V. The State of West Bengal*¹⁷, the Supreme Court laid down specific guidelines which would be served as the rights of an arrestee. These guidelines were:

“1. The Police Officer who is making the arrest must bear an accurate, visible and precise identifiable badge. The officer’s name and designation must be clear.

2. An official memo of arrest shall be prepared by the police officer at the time of the arrest. At least one witness should attest this memo. This witness could be a family member of the person who is arrested or a locality member from where the arrest has been made.

3. At least one acquaintance of the arrestee must be made aware of the arrest.

4. The arrested must be made aware of his right to have someone informed of his arrest.

5. A diary entry must be made regarding the information of the arrested and the date and time of the arrest.

6. The arrestee must also be examined for any injuries, if there are any present on the body, it must be recorded in the inspection memo.

7. A medical examination must be conducted every 48 hours by a trained doctor approved by the authorities.

8. All the copies of the documents must be sent to the illaqa magistrate.

9. The arrested must be made aware of his right to representation and thus must be allowed consultation during interrogation.

10. The arresting police officer must inform the district and the state control room about the details of the arrest within 12 hours.”¹⁸

This case also pointed out that custodial violence which includes tortures is violative of the Rule of Law i.e. the powers of the executive, is not only derived from the law but is also

¹⁶ Id.

¹⁷ *D.K Basu V. The State of West Bengal*, (1997) 1 SCC 416.

¹⁸ Id.

limited by law. The reforms must also focus on the Model Police Act, 2006,¹⁹ penalties must be issued against any official for not following the procedure, for instance not registering the First Information Report (FIR) as per s.154 CrPC.²⁰ Aspects of providing relief to a person wronged by police officials must also be looked upon. Although there are provisions of providing financial compensation to a person wronged by the police, however, it does not have any deterrent purpose if the police officials are not made personally liable.

III. PREVIOUS ATTEMPTS TO REFORM:

The Supreme Court:

The Supreme Court of India in *Prakash Singh v. Union of India*²¹ pointed out the need for modernisation of policing in India. The Supreme Court asked the legislature and the executive to take the lead on formulating a State Security Commission at a state level, developing a transparent procedure for appointment of the police chiefs, separate the investigation procedure from law and order and to draft a new police act which would enrich the democratic ideals.²² The Supreme Court asked a; the state governments to ratify the guidelines, but no state complied. The court later formulated a monitoring committee to foresee all the developments of the state governments. However, it was concluded by the committee that the states have been acting with total indifference towards the police reforms. In 2012, the Supreme Court asked all the states to comply with the direction as stated in the judgement of *Prakash Singh & Ors. V. Union of India & Ors.* However, in 2013 all the central states blocked the interference by the Supreme Court stating that the jurisdiction of the police exclusively stays with the executive.

National Police Commission, 1977

Various commissions have set up over the years to take over the charge of suggesting reforms for the policing system of this country. The dire need for the country to amend and reform the way police execute their work was realised 30 years after independence. The central government formulated the National Police Commission in 1977. This commission was given a comprehensive mandate to suggest reforms. The NPC submitted eight comprehensive reports suggesting reforms, including a well-drafted bill to replace the British Police Act, 1861.²³ However, the commission faced a hard time to ratify the recommendations; as a

¹⁹ THE MODEL POLICE ACT, 2006.

²⁰ The Code of Criminal Procedure, 1973, §154.

²¹ *Prakash Singh & Ors. v. Union of India & Ors*, MANU/SCOR/23958/2020.

²² *Id.*

²³ The British Police Act, 1861.

result, a PIL was filed with the Supreme Court.²⁴ The Supreme Court issued guidelines, which led the union government to formulate the Riberio Committee.

Other Commissions

The Riberio Committee, as formulated by the union government under the directions of the Supreme Court, mainly focused on increasing accountability of the Police Authorities. Nonetheless, the committee drafted two reports which were submitted to the union government. Subsequently, The Padmanabhaiah Committee was vested with the duty to evaluate the suggestions as previously drafted by other committees.

The Ministry of Home Affairs formulated the Police Act Drafting Committee which came to be known as the Soli Sorabjee Committee. The committee prepared a draft of a Model Police Act.²⁵ All the states were given the direction to incorporate the changes as stated in the Model Police Act.

IV. PREVENTIVE POWERS OF THE POLICE UNDER CRPC

Many jurists believe the most of the powers of the police as stated in the CrPC is dedicated to maintaining public order. This statute was drafted mainly to adjudicate all the criminal matters, defining the procedure to prosecution and punishments. At the same time, it focuses on preventive powers of the police. However, the fact that the preventive powers of the police along with their duties as enriched in the CrPC is considered to be the root cause for the police to violate fundamental rights. A clear distinction between the duties and powers of the police must be drafted. The following are some of the sections under the CrPC which showcase the powers as well as the duties of police.

1. Section 129: Dispersal of assemblies

S.129²⁶ specifies the powers of the police officers to disperse any unlawful assembly of more than five people which is likely to cause nuisance at a public place. It can be pointed out that this section itself violates Article 19(1)(b)²⁷ of the Constitution. However, the fundamental rights as granted to the citizens under the constitution are not to be considered absolute. There are some reasonable restrictions which are imposed against the rights granted by the constitution. This section is always to be read with Section 141 of the IPC,²⁸ which lays down the grounds of an unlawful assembly. If the assembly is not dispersed voluntarily, dispersed,

²⁴Supra note 22.

²⁵ The Model Police Act,2006.

²⁶ The Code of Criminal Procedure,1973, §129.

²⁷ The Constitution of India, 1950, Art. 19(1)(b).

²⁸ Indian Penal Code,1860, §141.

the police have the power to take appropriate action under clause 2 of this act.²⁹The question of whether an assembly is unlawful under Sec. 141 IPC does not open discretionary power to the police but is a strictly legal question.

Sec. 129(2) provides power to the police to disperse the so- unlawful assembly by the use of force, if the assembly does not disperse voluntarily after a warning, or when the assembly showcases themselves of having no intention to disperse. The amount of subjectivity in this section is dangerous to the constitution and the fundamental rights provided to the citizens. The authorities could easily misuse this section and justify their use of force on an assembly or a peaceful protest. Therefore, a provision should be made either to use force with a warrant as to be issued by a magistrate, mentioning the reasons and a witness that the assembly was given a prior warning to disperse voluntarily.

2. Section 144: Power to issue order in urgent cases of nuisance or apprehended danger

This section does not explicitly grant any powers to the police; however, there have been many cases where the police have widely misused this section. This section has to be limited to extra-ordinary circumstances, where there is an imminent danger to life or property. This section could easily infringe the fundamental rights of an individual. For instance, in the case, *Ramlila Maidan Incident v. Home Secretary, Union of India*,³⁰ police authorities imposed Section 144 of the CrPC and raided the place with a violent attack on sleeping protestors. The court, therefore, used the words “urgent cases of nuisance or apprehend danger.”³¹ Considering, the attack happened on a bunch of sleeping protestors, the situation was neither urgent, nor did it had any potential of becoming dangerous. The police could use this section if as it is, to attack a peaceful meeting, peaceful protest, any slogans which might be provocative, or any small thing which could cause nuisance like loudspeakers.³²

3. Section 149: Prevention of cognisable offences by the police

Section 149³³ provides a police officer with the duty to prevent any possibility of commission of a cognisable offence. This section could enable a police officer to misuse the vast scope of this section, for example, arrests, use of force. Section 149, therefore could be interpreted as a section which could be used by the police officers, to do whatever he believes is essential to prevent a cognisable offence or maybe a mere duty which has to performed within the powers

²⁹ The Code of Criminal Procedure,1973, §129(2).

³⁰ *Ramlila Maidan Incident v. Home Secretary, Union of India*, (2012) 5 SCC 1.

³¹ *Id.*

³² *Id.*

³³ The Code of Criminal Procedure,1973, §149.

vested and the fundamental rights granted to the citizens of this country.³⁴ The idea of Rule of Law where the citizens along with the authorities are to be sure that any act which would be conducted within the powers as granted by any statutory law does not violate any fundamental rights of the citizens is upheld if Section 149, is treated as a duty of a police officer and not a section which provides them power. Even more, the rule of law not only requires that citizens and the police can deduce from the written law whether the police are vested with such powers; also, the extent of such powers should be specified clearly and exclusively by statutory law. This might be done in more generic terms like “public order”, if such notion is understandable and its boundaries and content are well settled by jurisprudence, but Sec. 149 does not even approximate to this essential requirement.

4. Section 151: Arrest to prevent the commission of cognisable offences

This section³⁵ by the title is self-explanatory. The police, by its discretion, could arrest anyone in order to prevent any cognisable offence. This section, however, does not empower the police officers to detain a person. The police officers under this section can arrest a person if a person has a reasonable potential to commit a cognisable offence, and if there is an urgency. This section if compared with section 149,³⁶ points out that Section 149 does not provide the police with powers and duties which do not include arrest, or it only provides the police with the duty to prevent any cognisable offence. Unlike in section 151, where it explicitly provides police with the powers to arrest if all the prerequisites are met.

5. Section 152: Prevention of injury to public property

Section 152³⁷ is aimed at the prevention of injury to public property. According to this provision, a “police officer may of his authority interpose to prevent any injury attempted to be committed in his view to any public property, movable or immovable or the removal or injury of any public landmark or buoy or other mark used for navigation.”³⁸ Unlike Section 151,³⁹ this section allows for police action regardless of whether the offence is cognisable or not. Therefore to distinguish between section 151 and 152, an arrest in regards to section 152 can only be made under section 151, which also goes on to establish that section 149 indeed does not provide any powers to the police officials. However, it to be considered solely to mention the duties of an officer.

³⁴ HENRY THOBY PRINCEP, *THE CODE OF CRIMINAL PROCEDURE* 593 (1973).

³⁵ *The Code of Criminal Procedure*, 1973, §151.

³⁶ *The Code of Criminal Procedure*, 1973, §149.

³⁷ *The Code of Criminal Procedure*, 1973, §152.

³⁸ *Id.*

³⁹ *The Code of Criminal Procedure*, 1973, §151.

V. CONCLUSION

Debates about policing in India are usually focused on accountability, modernisation and professionalism. When we talk about the abovementioned changes needed in the policing system of this country, many believe that granting the police a set of clearly stated but also delimited statutory powers would “automatically” lead to even more powers of the police. Any revision and modernisation of statutory powers of the police, e.g. in Police Acts and the CrPC, implies the risk of an expansion of police powers detrimental to fundamental rights.

Policing reforms in India is also factored by the origin of police laws. Considering most of the existing statutes that provide the police with their powers are based upon the early police acts. These acts cannot possibly correspond with the dynamics of how the supreme court interprets fundamental rights in 2020.

If the police in India are given a fixed mandate which would departmentalise the powers and the duties of the officers, it could lead to the officers following the Rule of Law, be more professional, maintain a modern working environment, receive adequate salaries and all those other features that the police officers of the western countries enjoy. However, it would be essential for the union and the state governments have to cooperate with each other at the state level to execute the reform procedure.

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