
RIGHTS OF POLICE: CAN LAW ENFORCERS BECOME LAWBREAKERS?

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Introduction

The role of police in India is extremely controversial and tricky. The paucity of general awareness regarding the general objective of the police is problematic as it results in the absence of trust in the police department. Without public trust in the police, 'policing with consent' becomes difficult and threatens public safety.¹ It is nearly impossible to build trust when the inexcusable responsibilities of the department are constantly ignored by them. The victims in such cases are arrested on the grounds of public disorder offences, sometimes on mere suspicion and subjected to gruesome torture to extract a confession.² One such example of such torture can be traced back to the Bhagalpur Blinding incident where the policemen punctured the eyeballs of the suspects using acid and instruments.³ Yet another incident is the CAA protests in Delhi where multiple activists were arrested and detained illegally. They were badly beaten and bullied. One such inmate was a pregnant woman who was denied bail⁴. Custodial violence in the name of crime control has been normalized in the society and has become acceptable routine in the police interrogation process. The uproar of public hues merely leads to the suspension of the guilty officers for a brief period of time, only to be reinstated to higher positions afterward.⁵

In a democracy the sovereign power vests with the people and everyone is ought to be governed by the rule of law and not the whims and arbitrariness of persons in authority⁶. On the basis of this premise, this paper *firstly* analysis the genealogy of service-oriented police in the state. *Secondly*, it highlights the failure in the implementation of the propositions made with reference to case laws. And *thirdly*, it analysis the legitimacy of the claim of defense of national

¹ Goldsmith, Andrew. Police Reform and the Problem of Trust. Theoretical Criminology 9, no. 4 (2005)

² M. Kodanda Rama Reddy, Custodial Violence in India, Social Scientist, 21 (7/8), 104-105 (1993).

³ Saini, R. Custodial Torture in Law and Practice with reference to India 36(2) Journal of Indian Law Institute. 166-192. (1994).

⁴ Pregnant plea, "Pregnant Safoora Zargar denied bail again as judge finds 'no merit' in plea", 2020

⁵ M.Kodanda Rama Reddy, supra,105.

⁶ Remington F. The Role of Police in a Democratic Society. The Journal of Criminal Law, Criminology, and Police Science, 56 (3), 361-365

security. This paper concludes by suggesting the need for reform in the complete gamut of the criminal justice system through the actual implementation of the guidelines laid down, which will reorient development of the system of police as social servers so they can instill confidence in the public they serve.

I. GENEALOGY OF POLICE REFORMS

The post-colonial era urged for immediate reforms in the role, functions, and accountability of the police department in India. The police were expected to engage in a continuing process of evaluation of the law and practices to ensure that they are both effective and responsive to the democratic requirements.⁷ As early as 1960, the Generals of Police laid down clauses which stated that the police must bear faithful allegiance to the Constitution of India and that under no circumstances shall the police punish the guilty as it is a function limited to the judiciary.⁸ Though a mere perusal of the Section 151 of the Code of Criminal Procedure (further, CrPC) seems to vest robust powers in the hands of the police to arrest without warrant, *Ahmed Noormohmed*⁹ laid down that the said section may only be invoked in cases of cognizable offences where the police officer feels that the offence cannot be prevented through any other alternate measure.

Further, committees including the National Police Commission released reports attempting to reform the functions of the police to establish institutional arrangements to prevent the misuse of power by the police. Report II, defined the police function to be service-oriented, aiding the citizens in distress, and the eighth and the final report stated the importance of impartial service by the police.¹⁰ In addition to this, the case of *D.K Basu*¹¹ laid down eleven principles which were arrestee oriented. The requirements laid down was derived from Article 21 and 22 (1) of the Indian Constitution and acted as addition to the statutory safeguard to protect the life and dignity of the convicts.

In pursuance of Supreme Court's directions, The Ribeiro Committee (1998) worked on the practicality of the recommendations put forth by the NPC reports. The committee suggested among other things, (i) the formulation of the Police Establishment Board to monitor inter alia

⁷ Remington F. supra. p. 364

⁸ Saini, R. supra, 172.

⁹ *Ahmed Noormohmed Bhatti v. the State of Gujarat* (2005) 3 SCC 647

¹⁰ *Prakash Singh v. Union of India* (2006) 8 SCC 1

¹¹ *Dilip K. Basu v. State of West Bengal* (1997) 6 SCC 642

the punishments and all service related matters officers of and below the Deputy Superintendent of Police¹², and (ii) the formation of a non-statutory District Police Complaint Authority headed by the District Sessions Judge, and (iii) insisted on the separation of police into two departments, i.e. investigation and law and order.¹³ This was done to prevent the abuse of power by police personnel as it would serve as a counteractive measure and to examine the complaints from the public on arbitrary actions of the police.¹⁴

The committee attempted to accentuate the need for service-oriented police personnel, to inculcate confidence in the public about the police department. Following this, The Malimath Committee in clause 4.4 laid down certain constitutional rights of the accused and further elaborated on the obligation of the police officers to follow the procedures laid down by the reports and CrPC while arresting and detaining a person, and the need to communicate the rights of the arrestee in their native tongue.¹⁵ However, the report was critiqued on the ground that the actual evidence regarding custodial violence was neglected, and the report tends to invest greater powers in the hands of the police.¹⁶

One of the most significant common law judgments on police reform in the country was delivered in the case of *Prakash Singh*¹⁷, wherein the judiciary attempted to reinforce policies owing to the failure of the implementation of the previous reports. The judgment was delivered with reference to the case of *Vineet Narain*¹⁸, where the court had already recognized the need for the State Government to pursue police reforms and ensure the prompt implementation of the guidelines. The *Prakash Singh* case re-visited the various committee reports and encouraged inter alia the establishment of the statutory commission in each state for policy guidelines for the functioning of the police and emphasized on the need for dual system as laid down by Ribeiro committee for the more effective delivery of the functions. Therefore, the struggle to establish a convict-sensitive policing system has been a primary objective of the state since the establishment of a professionalized police bureaucracy.

II. REALITY CHECK: CRIMINALS IN UNIFORM?

¹² Ribeiro Committee's report, p 14.

¹³ Ribeiro Committee's report, p 13.

¹⁴ Ribeiro Committee's report, p 12.

¹⁵ Malimath Committee's report, p 59.

¹⁶ Amnesty International India, *The (Malimath) Committee on Reforms of Criminal Justice System, Premises Politics and Implications for Human Rights*. p.63. (2003)

¹⁷ *Prakash Singh v. Union of India* (2006) 8 SCC 1

¹⁸ *Vineet Narain and Ors v. Union of India and Anr* (1997) 1 SCC 226

On the outset, it is important to note that it was construed that “*the police instead of being the protector of law, have become the creator of terror and panic within people.*”¹⁹ The guilty policemen often escape prosecution by either denying the custody or they simply refuse to register complaints against themselves. Such loopholes, tend to deviate the department further from their service-oriented model.²⁰

In *Nilabati Behera*²¹, the arrestee was detained in police custody and was mutilated and murdered by the police. In the judgment, Justice Dr. Anand reinstated the responsibility of the state and its actors to protect the infeasible rights of the citizens. Though he concluded by stating that Article 21 simply cannot be denied to the convicts in custody, subsequent cases continue to violate the principle. In *Medha Patkar*²², though no apprehension of a cognizable offence arose, the protesters were beaten up and wrongly arrested under Section 151, CrPC not adhering to the guidelines laid down in the Ahmed case.

Further, in the case of *Sathi Sundaresh*²³, the petitioners were arrested and detained and held in custody for six days without being offered a chance to be heard. This is in direct violation of Article 22 (2) of Indian Constitution and Section 57 read with 167 of the CrPC which mandates that the accused shall be present in court within a period of twenty-four hours of detention. The Sterlite Protest firing in Tamil Nadu is yet another clear depiction of the arbitrary use of power by the police. The firing conducted was pre-planned and carried out without prior warning leading to the death of eleven protestors.²⁴ In the recent and most shocking case of custodial violence Felix and Jeyaraj²⁵ were picked up for a petty offence and were mutilated and tortured in custody, a coldblooded murder. George Floyd’s inhuman killing is yet another example of abuse of power by the law enforcement authorities. The state is a silent participant considering they never bring in enough reforms to bring accountability to this injustice caused to its vulnerable citizens. Nine times out of ten its always the minorities or oppressed classes that are harassed by the police.

¹⁹ Niranjan Singh v. Prabhakar Rajaram AIR 1980 SC 785.

²⁰ Sharit K. Bowmik. Police and Society. Economic and Political Weekly, 21 (6), 241-243. (1986).

²¹ Nilabati Behera v. the State of Orissa (1993) 2 SCC 746

²² Medha Patkar v. State of M.P & Anr. (2007) SCC MP 591

²³ Sathi Sundaresh and Others v. The State of P.S.I of Moodigere Police Station and Another (2007) SCC KAR 171

²⁴ Kavitha Muralidharan, Sterlite Protest: Speculation Rife that the Police Firing was Pre-Planned, The Wire, May 23, 2018.

²⁵ "Custodial Deaths in India Are a Cold-Blooded Play of Power and Class", 2020

Regardless of the reinstatement of policies, guidelines, and measures to curb the arbitrary actions of the police, in reality, one may ask, how many police officers are actually following the guidelines? Based on the examples mentioned above, there have been innumerable assaults on an individual's rights and liberties in the name of national security or otherwise, justified on the grounds of crime control.

III. NATIONAL SECURITY: A LEGITIMATE JUSTIFICATION?

Brutal police behavior is justified in the light of the crime control owing to the slow procedures of law. However, this common notion of normalcy in the usage of arbitrary power when dealing with hardened criminals can be challenged on the basis of the infeasible rights inherited by the accused under the Constitution. Though in the case of *Gopalan*²⁶, the court held that the prisoners were non-persons and therefore could not avail the constitutional rights, subsequent cases including the case of *Prabhakar*²⁷ and *DBM Patnaik*²⁸ shed light on such arbitrary rulings. They went on to state that mere arrest of a convict cannot be extended to the detention of certain fundamental rights. Further, the 44th Amendment Act²⁹, provided for the immunity of Article 20 and 21 of the Constitution under all circumstances, even under the state of national emergency. The intention behind the said amendment was to make such rights non-derogable. The court, in *Francis Corlie*³⁰, went further to state that 'life' stated under Article 21 cannot be restricted to mere animal existence, rather it is inclusive of a life with human dignity. This interpretation was continued to be upheld in subsequent cases.³¹ Further, custodial torture is a punishable offence under Section 29 of the Police Act 1861.³² The inference from the above legislations clarifies that the police does not have a right to inflict any degree of brutality or torture on a convict under custody neglecting the law of the land, which is inclusive of any act which may prima facie infringe upon Article 21 of the Constitution.

Being an important agent of the executive government in a democratic country, the police is accountable to every person in the state.³³ Though the state has the inherent right of self-defense, this right may only be exercised in situations which may threaten its very existence

²⁶ A.K. Gopalan v. the State of Madras, A.I.R. 1950

²⁷ Prabhakar v. State of Maharashtra AIR 1966 SC 424

²⁸ DBM Patnaik v. State of A.P AIR 1971 SC 2092

²⁹ Indian Const. amend. 44.

³⁰ Francis Corlie Mullin v. The Administrative Union Territory of Delhi A.I.R 1981 S.C 1259

³¹ People's Union for Democratic Rights v Union of India. AIR 1982 SC 1773

³² R.B Sethi, The Police Acts 83 (1959)

³³ Saini, R. supra. p.168.

and function. This right of derogation of the state by deviating from the normal obligations to protect the human rights is acknowledged under many international instruments of human rights.³⁴

But considering the continuation of arbitrariness there seems to exist a tendency of the government to regard any challenge to their authority as a threat 'to the life of the nation'. Owing to such malicious tendencies, certain basic rights including the right to life and freedom from torture remains immune to national emergencies and finds a rightful place in the international human rights.³⁵

IV. CONCLUSION

The police shall therefore no longer remain as the oppressive arm of the executive government nor shall custodial violence be looked at in isolation. National security or crime control should not become a justification for the denial of basic rights of even the citizens in custody, because once this law breaking is excused and condoned it renders the formation of a vicious cycle wherein the authorities will continue practice at higher degrees to continue such derogation in the name of national security and welfare of the state.³⁶ If such grave injustice to human rights continues to progress the criminal justice system will loop back to the pre-colonial crime control approach.

Any mode of a threat to an individual's right to life and liberty while in custody is a direct violation of the constitutional guarantees under Article 21. Therefore, as stated in the Law Commission Report, all injuries caused by a person during the tenure of custody should be strictly presumed to be caused by the police officer present in order to take undertake stringent actions in accordance with the Criminal Justice System of the country.³⁷

Further, the state must take heed of the critical suggestions laid down in the orders of DK Basu³⁸ with reference to police reforms. *Firstly*, appropriate machinery for the contemporaneous recording and notification of all cases of detention must be established to bring in more transparency and accountability in the working of the police. *Secondly*, a crime suspect may be interrogated only in the manner and procedures laid down by law. The convict's

³⁴ International Commission of Jurists. State of Emergency: Their Impact on Human Rights. (1983).

³⁵ A.H Robertson, Human Rights in the World 202-4 Manchester, (1972)

³⁶ Saini, R. supra. p. 185

³⁷ See 113th Report of Law Commission Of India, Injuries in Police Custody, (1985), p. 10.

³⁸ Dilip K. Basu v. State of West Bengal (1997) 6 SCC 642

constitutional rights cannot be abridged or ignored, and he cannot be subject to third-degree methods with the view of extracting information. Having said that, the present scenario summons for the need to develop methods for constructive cooperation between courts and police in the discharge of their common objective, a system of criminal justice administration which is fair yet effective³⁹.

³⁹ Remington F, *supra*. p. 363.