

LEGALFOXES LAW TIMES

ABUSE OF POWER BY POLICE OFFICERS

By Rohit Arya

Introduction

India is a unification of 28 states and 8 union territories. The Police are a State subject, under the Constitution of India.¹Which means that Police are the responsibility of the respective State governments. The organisation and functioning of the police forces are governed by rules and regulations laid down by the state governments. Each union territory/state has its separate police force. Adding to this, there are central police organizations set up by the central government for specialized work. The functions of the police authorities include investigating crimes, maintaining law & order, and to making sure the safekeeping of the citizens of the country. In terms of personnel, arms, scientific, communication and conveyance provisions, Police forces should be well-prepared, to perform their role efficiently & effectively in a country like India, where they are required to serve an enormous population. They must also have some freedom to perform their functions in qualified and acceptable at work environment (e.g., structured working hours and promotion of opportunities), instead of being responsible for poor performance or abuse/misuse of power.

This paper shall discuss the issue of accountability, limitations in their organizations and some reforms in Police authority.

Different committees formed for reform in the policing system in India

Various commissions and committees have examined the issues with police organisation and functioning over the last few decades. Its chronology as follows-

- National Police commission 1977-81.
- Ribeiro Committee 1998.
- Padmanabhaiah committee 2000.
- Malimath committee 2002-03.
- Police Act drafting committee 2005.
- Directions given by the Hon'ble S.C. in Prakash Singh v/s Union of India.

¹The Constitution of India, 1950, Schedule 7(Article 355)

- Second ARC in 2007.
- Police Act drafting committee-II 2015.

Human Rights Violations by Police Officials

1. Failure to Record Complaints and Inspect Crime

Question: Can a Police Officer refuse to file/ register a complaint?

Answer: Yes and no.

If the case is of a trivial matter or there is a lack of jurisdiction, a police official can deny registering your complaint. Generally, crimes are of two kinds “cognizable” and “non-cognizable”. Only for cases belonging to the “Cognizable” categories, FIR can be filed, and a complaint has to be made to a Magistrate who further directs the police to inquire into the matter, for cases belonging to “Non-cognizable” categories.

A “cognizable” offence is an offence where the punishment is more than seven years of imprisonment, for instance, (rape, dacoity, murder, etc.) in these cases an arrest can be made, where a warrant is not necessary. A “non-cognizable” offence is an offence where the punishment is less than seven years of imprisonment, for instance, (bigamy, fraud, cheat, etc.) in these cases an arrest cannot be made, where a warrant is necessary.

Available remedies in Law

● **Approach to a Superintendent of the Police**

A Police officer assigned to register FIR denies to file the primary information regarding an offence which is cognizable in nature that comes in his territorial jurisdiction u/s [154\(3\) of the Cr.P.C, 1973](#), such an informer should go to any superior authority in police or the S.P., etc. through a complaint in writing. On reviewing the written complaint if it satisfies the Police Official that the complaint herein reveals a cognizable offence, he can either himself or can order an officer below him to register the First Information Report and proceed with an enquiry into such matter.

● **A Complaint made to a Judicial Magistrate**

Even after a complaint in written has been submitted to a Superior Police officer, and no First Information Report is registered. The informer is eligible to make a complaint to a Magistrate (Judicial, or Metropolitan) u/s 156(3) of the Code of Criminal Procedure, 1973,² r/w Section 190

²Any Magistrate empowered under section 190 may order such an investigation as above- mentioned.

of the Cr.P.C.³Hence,ensure that the First Information Report has been registered by the police authority and proceed with the inquiry of the same.

The Hon'ble S.C. in Lalita Kumari case,⁴ decided that the Police Officials are bound to lodge First Information Report in the cases of a cognizable offence. If the Police Official refuses to lodge the First Information Report on grounds of jurisdiction, can be imprisoned for not less than one year. Even a Petition can be moved to either judge, or [CJI](#) requesting them to contemplate a Su Moto Cognizance. Also, the xerox of the same complaint can be sent to the Police authority. Therefore, an RTI can also be filed to enquire about the status of such a letter.

Alternative Remedy that can be availed

For seeking damages/compensation, a writ petition could also be moved in the Hon'ble Supreme Court, if there is no action by the Police on the complaint/non-registration of First Information Report which causes hindrance to —life and freedom of an individual, defined in, [The Constitution of India under Article 21](#).

2. Arrest, Detention, Cruelty by Police and Maltreatment

The term “Arrest” simply means an individual who has been taken into custody by the lawful authority and causes a denial of liberty. Hence, an individual's freedom, afterwards arrest, is with the person who has detained him (i.e. either the Police or an individual). As stated within the legal code, in order to produce a suspect before the court and to forestall him from running away, arrest plays the key role.

Under the Criminal Procedure Code, 1973, ‘arrest’ can be found between sections 41 to 61. But, the term has not been defined as such.

The authority to arrest

Similar to the police department, the Judicial Magistrate, or any human being, the Administrative authorities, have the power to arrest of any human being under limited provisions mentioned in Cr.P.C. Under Code of Criminal Procedure., no Army Official can be arrested or detained in lieu of any criminal act administered by them till the time they are not discharged of their duties unless the government consents for the same.

An individual can arrest a human being, where a warrant is not necessary, under the situations where the person is acknowledged to be a proclaimed offender u/s [82 Criminal Procedure Code, 1973](#), or that a cognizable or non-bailable offence has been committed in front of them.

³Cognizance of offences by Magistrates.

⁴ Lalita Kumari v. Govt. Of U.P. & Others, W.P. (Criminal) No. 68 Of 2008

Under [Section 72 and 73 of Cr.P.C.](#), an individual has a warrant, or the permission of police authority, or in cases where the Judicial Magistrate has given the direction to arrest u/s [37 and 44 of Cr.P.C.](#)

Detention

'Detention' means retaining an individual, or possessions, and to restrict the movement of the same. But, 'unlawful detention' means unlawfully or without any reason restraining of liberty or right to movement of a person by the way of arrest for either a prohibited cause or misgiving, together with impeding the movement of such person when put into custody. One has to comprehend the distinction between 'Arrests' and 'Detention' mentioned in Cr.P.C, where the arrest is made for a graver offence; There is a longer period of time in arrest, and hence, requires more Burden in proving. A private person can be detained by a police authority if there are rational uncertainty or doubt that a criminal offense has been or is going to be committed, or if he firmly believes that the person has some facts for the same, the police authority can then freely detain the person for brief time-period, hence, investigate the problem. When a person is detained, the authorities can:-

- Thorough examine the person for any Arms or ammunition,
- Enquire for the information regarding the crime, i.e., supposed to have taken place.

Note: An individual could be held in custody for up to twenty-four hours or more, in case of arrest, but in case of detention, he could roughly be held for up to twenty minutes, based on the situation of cases.

India's law & order is of stern nature even after several guidelines, and orders issued by the Hon'ble Supreme Court of India, and NHRC respectively; to not to use torment, and to make sure of accountability in the cases concerned with violations. Perhaps, the police officials misapply their powers and torment the accused to collect info or to obtain coercive admissions of guilt. S.C. has repetitively taken note of the inclination in custodial crimes, but gathering evidence to counter such police officials is extremely challenging. In both of the places in jails, and in the custody of police the accused is not only frightened but are also disinclined to a complaint of ill-treatment due to act of vengeance. Also, the victim's family who choose to a complaint of such ill-treatment, which finally led to the death in custody, frequently goes through cruelties.

Torment and ill-treatment by police authorities are not the only cause of such unlawful custodial death.

[National Crime Record Bureau](#) statistics show the deaths in prison in 2015 to be around 1,584.⁵

[Delhi-based NGO Commonwealth Human Rights Initiative](#) reported in 2006 that out of One thousand three hundred eighty-seven jails from corner to corner in India, only five jails were legally supervised.⁶

[Universal Periodic Review](#) at the [UNHRC](#), Thirty-five countries raised up the subject concerning the amount of torment practiced in Indian Police Custody in May 2017. No doubt, India has already signed up the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1997 but has not ratified this Convention.⁷

But according to [Article 7 – Freedom from torture](#),⁸ The ICCPR recognizes the inherent dignity of each individual and undertakes to promote conditions within the states to allow the enjoyment of civil and political rights. A country such as India has ratified the Covenant are obligated “to protect and preserve basic human rights. Which it clearly violates by torturing the individuals and ill-treating them in prison.

Concerned Area

- 1. Accountability of Police Authorities:** They have the power to the application of force in order to maintain law & order in a state. However, this power might be abused in numerous methods. Various countries have adopted safeguards to double-check such abuse of power, such as internal accountability to senior police officers, answerability of police officials to the executive, and independent police oversight authorities.
- 2. Investigation of Crime:** Police authorities are in charge for a certain but, a great number of individuals, given the fact that India's less police force per lac inhabitants does not match with the standards set internationally. Permissible strength at which police officers per lac in India's shall be appointed is 18.1. However post adjustment for vacancies, the actual police officers strength is at 137, which is of a smaller amount.
- 3. Underreporting and Investigation of crime in India:** In 2015, the rate of conviction for crimes under the [IPC, 1860 was 47%](#). The sole cause behind such inclination is due to carelessness and pitiable standards of investigation.⁹
- 4. Pitiful Infrastructure of Police Officials:** To tackle the provided situations, fresh policing should have durable communicating devices, state-of-art, or up-to-date methods to tackle the

⁵ncrb.gov.in

⁶humanrightsinitiative.org

⁷ohchr.org

⁸International Covenant on Civil and Political Rights (ICCPR)

⁹The Law Commission of India.

given situation and a high degree of mobility. The Comptroller and Auditor General (C.A.G.) has noted limitations on some of these fronts.

Case Laws of Abuse of power by Police Authorities

The Hon'ble Supreme Court in Rudul Shah v. State of Bihar,¹⁰ gave direction to the state, to grant compensation to the victim for violating Article 21 and Article 22 of the Indian Constitution.¹¹ Here, the petitioner was imprisoned unlawfully in for Fourteen years even though his exoneration. Acknowledging that fact his confinement was absolutely unjust, and compensation for ill-legal detention was claimed. No doubt, an ordinary remedy could be availed by the petitioner, but the S.C. was of the view that in order to do justice, the State Government shall pay a compensation amount of rupees thirty thousand within 14 days of the order.

The Hon'ble Supreme Court in Sebastian Hongray v. UOI,¹² for torment, suffering and torture of two women whose husbands were nowhere to be found when taken to Army Campground by Army personnel in Manipur; granted recompense. Thus, exemplary costs were granted in this case.

For unlawfully arresting the plaintiff by the police authority, the S.C. granted compensation, in Bhim Singh v. State of Jammu and Kashmir.¹³

The Hon'ble Supreme Court of India guidelines in

Prakash Singh v. Union of India,¹⁴

Facts of the case: An appeal was presented before the Hon'ble Supreme Court of India which raised the issue of abuse & misapply of powers by the police authority. The allegation was that the police authority does not enforce and if enforce, then discriminate in application of laws against the individuals who possess some power, or influence. Also, alleged that there are instances where practicing torture, detaining unlawfully, harassment against the common individuals. Thus, the petitioner seeks the advice of S.C. and to make a committee of experts and issue directions respectively.

Directions by Court: The Hon'ble S.C. delivered numerous guiding principles to the Government in September 2006:-

- For evaluating police performance, police functioning, and in order to make sure the governments of state does not practice any unjustified effect on the police authorities. A State Security Commission in every state that will constitute some policies.

¹⁰(1983) 4 SCC 141, S.C.

¹¹**Article 21:** protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law. **Article 22:**

Protection against arrest and detention in certain cases

¹²1984 AIR 1026, 1984 SCR (3) 544, S.C.

¹³AIR 1986 SC 494, 1986 CriLJ 192, 1985 (2) SCALE 1117, (1985) 4 SCC 677, 1986 (1) UJ 458 SC

¹⁴ Writ Petition (civil) 310 of 1996

- A Police Establishment Board in each state shall be constituted to come up with a decision on postings, transfers and promotions for police officers who are ranked below the DSP and give some guidance to government of the state for officers at a higher rank.
- In order to enquire the accusations of grave delinquency and misuse of power by police officials, A Police Grievances Cell at the state and district levels shall be established.
- To make available at least a tenure of 24 months for the Director-General of Police and other main police authorities (e.g., officers responsible in a police headquarters and district) in the interior of the state.
- The Director-General of Police is to be appointed amongst the 3 superior-most officials who have been enrolled for promotion based on decent record, length of service by [UPSC](#).
- To make sure of prompt inquiry, the police officials who are investigating a case shall be distinguished from the police officials who maintain law and order.

Why police reform is necessary?

Police is an exclusive subject under the State List of the Indian Constitution. States are empowered to enact the laws on the subject of police authority. But the problem is most of the states are still following the old Indian Police Act 1861 with a few amendments. Also, the police force have become the 'subjects' of Parliamentarians and legislators – with a high degree of politicization and allegiance towards ruling party. We still follow the Police Act, 1861, enacted by the British, largely intending to crush dissent. The particular Act was a reaction to the sepoy uprising of 1857.

Key Recommendations

A two-track reform should be committed by responsible Union & State authorities and by Police Officers.

- 1) Increase accountability for abusive police officers, and
- 2) Change the police structure and working conditions that contribute to abusive patterns of behaviour.

Conclusion

The transformational modifications in the Indian Police System is the need of the hour and would only be probable with suitable improvements in proficiency and change in attitude, taking into account, the challenging circumstances under which our police authorities operates.

The demand of reforms in the Police system is not a new thing but now no more delay should be done. They are required to perform a very important duty in the society and failure of this system could result in a situation which will not be possible to handle. In some areas they do require more power to act upon whereas in some areas their power should be curtailed. They must be

held accountable for every action by them and misuse of powers should be termed as a serious offence.

The current image of the police force in public also requires certain changes. The police-public relationship will only improve when the police authorities will be able to work in such a way that people will feel that they are working only to help us.



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