

# LEGALFOXES LAW TIMES

## **THE JOURNEY FROM IDEOLOGIES TO CORRUPTION: POLICE BRUTALITY- COURTS, ACCOUNTABILITY AND MINORITIES.**

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*“It is as much the duty of Government to render prompt Justice against itself in favor of its citizens as it is to administer the same between private individuals.” Abraham Lincoln.<sup>2</sup>*

### **INTRODUCTION**

An Effective Police system is the backbone on which the whole edifice of Constitutionality, maintenance of law and order, efficient process of detention and enforcement process of social legislation rests.

The character of Police in a society can best be described in the following sentences which articulate the duties of law enforcement Police officers as laid down in the Law Enforcement Code of Ethics, as provided by the International Association of Chief of Police:-

As a law enforcement officer my Fundamental duty is to serve mankind, to safeguard lives and property, to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence and disorder, and to respect Constitutional rights of all men to liberty, equality and justice.<sup>3</sup>

However, ironic as it may sound, it is universally true that Police has been condemned and denounced for committing acts which are in contradiction with its very idea of the purpose of its existence.

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<sup>2</sup>CLYDE E. JACOBS, THE ELEVENTH AMENDMENT AND SOVEREIGN IMMUNITY at vii (1972).

<sup>3</sup>John J. Broderick, *Police in a Time of Change* 89 (1977).

Basic reason or cause of such incidents is the exploitation of power, which on the face of it, seems abundant, that was given to them in order to carry out legitimate functions. It is misused to its very core, hence leading to building of mistrust amongst common citizens. It may also lead to extreme cases where the common man, takes charge that creates a direct clash between the law and the public.

### **UNEXPLORED CONTEXTS CONTRIBUTING TO VIOLENCE**

1. The police officers are not accurately trained to deal with violence and challenges to their authority. Their salaries are low, with less perks, which helps grow a culture of corruption.
2. Reported incidents of police firing on civilians rose from 791 in 2004 to 1421 in 2010. The number of civilians killed in these incidents fell, but injuries grew.
3. Indian law grants extraordinary discretionary powers of arrest to police officers.
4. Encounter killing can be assessed as a severe symptom of police malfeasance.
5. The most important reforms for controlling the misuse of force by the police have come from the 1993 National Human Rights Commission.
6. Incidents of excessive use of force by police are unlikely to be addressed until major reforms in the criminal justice system are put in place.
7. Overburdening of police officers also has severe negative impact; State police forces had 24% vacancies (about 5.5 lakh vacancies) in January 2016. Hence, while the sanctioned police strength was 181 police per lakh persons in 2016, the actual strength was 137 police. Note that the United Nations recommended standard is 222 police per lakh persons.<sup>4</sup>
8. Crime per lakh population has increased by 28% over the last decade (2005-2015). However, convictions have been low. In 2015, convictions were secured in 47% of the cases registered under the Indian Penal Code, 1860. The Law Commission has observed that one of the reasons behind this is the poor quality of investigations.<sup>5</sup>

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<sup>4</sup> Police Reforms in India, available at <https://www.prsindia.org/policy/discussion-papers/police-reforms-india> (visited on Aug 20, 2020)

<sup>5</sup>ibid

## **POLICE'S RIGHT TO INVESTIGATE vis-à-vis INVESTIGATING POLICE'S RIGHT**

- “Who will police the police? Police methodology with sinister potential to human liberty deserves strong disapproval and constitutional counteraction by this court,” the Supreme Court observed in a landmark case.<sup>6</sup>
- The three-judge bench headed by Chief Justice VN Khare, the Supreme Court asserted that "the highest office in our democracy is the office of citizens; this is not only a platitude, it must translate into reality". In a democracy, it is also the duty of the State to provide peace, prosperity and justice to this metaphorical highest office — the people. To ensure this duty, the State operates on a rule of law which is put into place by the law enforcement agencies.<sup>7</sup>
- Members of the police force are asked to regard themselves as servants and guardians of the general public and treat all law-abiding citizens, irrespective of their position, with unflinching patience, courtesy and tact.<sup>8</sup>

## **ACCOUNTABILITY OF POLICE**

There is a significant increase of police cruelty in India throughout the years. But the statistics show otherwise. The National Crime Records Bureau (NCRB), a Government of India organization, shows that the number of registered cases is as follows<sup>9</sup>-

<b><u>YEAR</u></b>	<b><u>Number Of Cases Registered</u></b>
1997	1,23,523
2003	55,115
2015	54,916

If the common phenomenon between people is that the crimes by police are increasing, why is not the data showing the same?

The reasons can be multifold. The fear of further Police Mistreatment, Societal pressure, financial constrain, lack of awareness, gross misuse of procedural law and corruption, can be few determining factors of lower reporting rates.

<sup>6</sup>*Prem Chand vs. Union of India* (1981)

<sup>7</sup>*Rangnath Mishra vs. Union of India* (2003)

<sup>8</sup>12<sup>th</sup> Chapter, '*Behaviour of police officers while on duty*', Bombay Police Manual (1959)

<sup>9</sup> National Crime Records Bureau, Ministry of Home Affairs, Government of India.

Most Complaint against Police falls into the following categories-

- Corruption
- Partiality/Bias
- Failure to register complaint
- Unfair use of force or Brutality.

Hence, establishing an accountability system is, by far, the need of the hour.

In 1996, a petition was filed before the Supreme Court that raised various cases of abuse of power by the police, and alleged that police personnel perform their duties in a politically influenced manner. The Supreme Court issued its judgement in 2006, ordering the centre and states to set up authorities to lay down guidelines for police functioning, evaluate police performance, decide postings and transfers, and receive complaints of police misconduct. The court also required that minimum tenure of service be guaranteed to key police officers to protect them from arbitrary transfers and postings.<sup>10</sup>

Accountability can be both internal and external in nature. Reporting to senior officers, center-state division of responsibility according to The Police Act of 1861, the state government's Police Acts and in rules lay down in state Police Manuals, act as an internal mechanism.

For external safeguarding, the Human Rights Commission, The Judiciary, Media as well as various NGOs, ensure the smooth functioning of the relationship between people and its protectors- The Police.

### **THE COURT'S VIEW POINT**

Police is a law enforcing body, but when it becomes arbitrary or corrupt, where does one seek refuge? The Judiciary is, no question asked, the last resort for any remedy seeking individual.

The Human Rights safe keeper, the NHRC (National Human Rights Commission), also acts as a Guardian Angel for the weak and needy.

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<sup>10</sup>*Prakash Singh vs Union of India*

The Supreme Court expressed its opinion and concerns towards police mistreatment of citizens in many cases.<sup>11</sup>

In the case of *Kishore Singh v. State of Rajasthan*<sup>12</sup>, the SC held that – The use of 3<sup>rd</sup> Degree method by police is violative of Article 21 of The Constitution, It observed that the state must re-educate the constabulary out of their sadist arts and inculcate a dignity of human person. A police that relies more on fists than on wits or on torture than on culture is not appreciated.

The court was of opinion that nothing is more cowardly and unethical than a person under police charge being harassed and nothing inflicts a deeper injury on our constitutional culture than a state official running haywire regardless of human rights.

However, Indian Courts have been strict on the use of force by the Police. Indeed, some intellectuals may argue that the courts make unrealistic demand upon police:

Should they (the police) happen to use less force, they would be accused of dereliction of duty; should they use lethal force, they could be accused of murder.<sup>13</sup>

### **PREJUDICE AGAINST MINORITY COMMUNITIES**

The Status of Policing in India Report 2019<sup>14</sup> by Common Cause and the Centre for the Study of Developing Societies discloses disturbing trends on police prejudice. It indicates a significant bias against Muslim. More than 50% of the police personnel surveyed reported that Muslims are more likely to be naturally prone to committing violence. This pre-conceived notion leads to mistreatment of Muslims, both in and out of jail.

Similar prejudices existed across certain states against Adivasis, Dalits, transgenders and migrants from other states. About two in five of the police personnel surveyed in Bihar, and one

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<sup>11</sup>*Nandini Satpathy v. P.L. Dani*, A.I.R 1978 S.C. 1025; *State of U.P v. Ram Sagar Yadav*, A.I.R 1985 S.C. 416; *Arbinder Singh Bagga v. State of U.P, J.T.* 1994 (6) S.C. 478; *State of Madhya Pradesh v. Shyamsunder Trivedi, J.T.* 1995 (4) S.C. 445, etc

<sup>12</sup>A.I.R 1981 S.C. 625

<sup>13</sup>*Asthana and Nirmal*, 2010

<sup>14</sup>*Status of Policing in India Report*, Common Cause and CSDS 1566973059, (03/08,2020), available at [https://www.csds.in/uploads/custom\\_files/1566973059\\_Status\\_of\\_Policing\\_in\\_India\\_Report\\_2019\\_by\\_Common\\_Cause\\_and\\_CSDS.pdf](https://www.csds.in/uploads/custom_files/1566973059_Status_of_Policing_in_India_Report_2019_by_Common_Cause_and_CSDS.pdf)

in five in six other states, had never received human rights training. These are minimized glimpse of a big heinous picture.

And this is just the tip of the iceberg. There is so much more that is neglected on a regular basis. The sheer disregard of this humongous problem is the origin of the chaos that we are currently dealing with. As soon as we realize that there is a problem, a solution can be sought.

### **CONCLUSION (A Few Solutions)**

- ✓ A sense of safety and grievance redressal are primary expectations from any police officer. Their efficiency, effectiveness, honesty and professionalism are what should be provided to every disgruntled citizen of the society. The fact that such officers are a rarity to be found is only confirming the reports and findings of various committees, the complaint received by the HRCs, the stories showcased by the media and the experience of common masses on the street.
- ✓ The need for police reform is urgent. Especially in protection of minority community, the reforms should be pursued in many directions, contemporaneous.
- ✓ The power of superintendence of the state government over the police force should be limited and not overpowering, as this will eliminate the chances of political misuse and the Rule of law will triumph. This will give them autonomy over their decision, and the 'Vote Bank Politics' or the politics of religion/sect will not limit the decisional power of the police force.
- ✓ Once they are given functional independence, they can be held accountable for their wrongdoings. Constant monitoring of each police officer and of a department, as a whole, can be easily conducted after that.
- ✓ Special grievance redressal cells can be formed by NGOs or by the government, in order to cater to complaints more specifically, dividing them on basis of religion, caste, creed, etc. This will ensure protection of citizens who are unaware of their rights that are generally grossly misused by the police department.
- ✓ The other direction is to think in terms of doing all that can be done to strengthen and improve the policing under the existing set up. Besides upgrading the recruitment, training and leadership standards, the working and living conditions of lower police

personnel need vast improvement- an exercise that should start with raising the status of constabulary.

- ✓ They also need to be trained in order to make them sensitive enough to matters of the minorities and elevation of pre conceived notions through awareness programs, might also help. Most importantly, the diversification of the police force, that means inclusion of more Muslims, SCs STs, Adivasis, etc, will help in eliminating such discriminations and will establish better work culture across the country for officers of all ranks.

Sooner we accept the fact that our country, India, comprises of people of various religion, sect, caste, creed, region etc, sooner we will be able to fight the notion of discrimination. This will also shape all departments of the country, including the Police Department.

*“If we are to have peace on earth... our loyalties must transcend our race, our tribe, our class, and our nation; and this means we must develop a world perspective.” - Martin Luther King, Jr.*



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