

POLICE POWERS AND DUTIES IN INDIA AND WHY IT NEEDS REFORM

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ABSTRACT

In this paper the topic that has been discussed is police reforms in India. From being governed by a colonial law to suffering from various deteriorating issues, we delve right into depths in order to understand the problems being faced by the police forces of the country. We also look into the other primary issues affecting the world at large, like encounters, custodial torture, and political subordination. We also try to understand why previous reforms haven't worked and what steps should be taken in order to address the issues.

INTRODUCTION

The Indian Councils Act was introduced by the British Government in 1861. This act formed the base for a contemporary and professional police system in the country. It established a new and improved batch of police, namely the Super Police Services, which later came to be known as the Indian Imperial Police.ⁱ In 1902-03, a police commission established by Lord Curzon and Andrew Fraser, intending for police reforms. The commission gave its recommendation, calling for Indians to be appointed for the first time. The recommendation also restricted the appointment only to the ranks of Police Inspector and the senior Non-commissioned officer designation. They were not even included in the Indian Imperial Police.

From 1920, recruitment of Indians was opened for the first time by the Indian Imperial Police and an entrance exam was also conducted for the same both in India and England.ⁱⁱ

An exact date cannot be pinpointed out when the Indian Police came but around the year 1907 in order to be distinguished from the other police officers, police forces supervised by the Secretary of State of India were made to wear letters 'IP' on their epaulettes. In 1948, just a year after the independence of India the Indian Police Service came into existence by replacing the colonial Indian Imperial Police.ⁱⁱⁱ Today's Indian Police Service was established by inserting Article 312(2) in the Indian Constitution, 1950.^{iv}

According to the Indian Constitution, police as a subject fall under the control of the States in accordance to the Schedule 7 and Article 355.^v Each of the 28 states have their respective state police force. The Centre is vested with the power to maintain its own law and order throughout the country and in exercising its power it maintains seven central police forces and several other police forces and police organizations for specialized tasks like intelligence gathering, research, training, investigation, etc.

The responsibilities and duties of the state police is different from the central police. State police forces is mostly involved in local state issues like law-and-order maintenance, investigation. Although they are the first responses in dealing with the internal problems, the Central forces are the ones who are specialized in dealing with situations formed due to conflicts. The police forces under the Union government are responsible and accountable for

the maintenance of law and order in the 8 union territories. And when the need arises, it also provides assistance security wise as well as in furnishing financial assistance.

According to the constitution each and every state is allowed to have its own police act, which can be totally different from the Central Police Act. But in India, not all state governments have separate laws. But states like Maharashtra and Gujarat have their own state specific laws to deal with recruitment, regulation and powers of the police.

There are certain powers and duties entrusted upon the police forces and they work day and night to fulfill those. The primary and the most obvious responsibility of the police is to uphold the laws of the country, investigate crimes and maintain order and safety of the people in the country. They are the first responders in a disaster or any unforeseen event.

In the pandemic situation police forces around the country worked day and night amidst the danger, so that their countrymen could be kept safe from the virus. During the pandemic induced lockdown, the police forces neither had any standard operating procedure, nor any sort of guidelines. They manned barricade points around the country day and night to prevent movement of people, either by advising them or using force when needed.

They sometimes went beyond their duty to supply essential items in containment zones and arranged food for the poor migrant laborers. Although the pandemic has shown us the bright side of the police forces, it has also shown us the dark side with the custodial deaths of a father and his son in Tamil Nadu in a show of police brutality. We also got a glimpse of corruption and excessive brute force by the alleged encounter of Kanpur gangster Vikas Dubey. The pandemic has taught us many things and one of them for sure is the reform of the police force, which still relies on the colonial rule act and suffers from unfulfillment of several other factors.

WHY INDIAN POLICE FORCES REQUIRE REFORMS

The police forces in the country have required reforms since a long time. It still derives its powers and duties from the colonial British Police Act of 1861. According to the National Police Commission in 1979,^{vi} the Act of 1861 was formulated purposely to keep the police forces in subordination to the executive government, in the discharge of its duties. Although the Act was amended several times but implementation of any major change in the police system was not done. Over the years from Independence until now the Indian police system has seen several achievements but has also deteriorated greatly over the years.

Now in India, the police are often perceived as corrupt, ineffective, and brutal, which is mostly due to several systemic, organizational and behavioral challenges. This is why in this paper I would look into the various reasons why the police forces in India require reforms. In this paper I will also look into the reasons why those reforms have not taken place till now and what further steps should be taken for the improvement of the police system in the country.

PRESENT SITUATION

Indian Police today still continues to remain in the shackles of a colonial law formed in 1861 by the British keeping in mind the Indian circumstances during that time.^{vii} There is no justification as to why the police forces of the 21st century continue to be managed by an ancient law formed by our colonizers. The Indian Constitution's 7th Schedule clearly states that police as a subject, which is part of the state list and that is the reason why states have an obligation to provide people of the particular state with the service delivery by the state police. Most states have either adopted the 1861 Act without any visible changes or have drafted their respective laws by taking assistance from the colonial act, which is a matter of concern. These laws do not consider the present circumstances of the country and still operate according to rules formed when independence was still a distant dream.

The need for reforms has been long recognized. There has been over 30 years of discussions and debates over this matter by government formed committees and commissions, but India

still remains saddled with the outdated and non-conforming laws. Report after report have been formed, but they now all lie in bookshelves covered in dust.^{viii}

The Pandemic has taught a lesson that police in India has to appreciate its role as a first responder in disaster-like situations and adopt disaster management as one of its primary functions. Police officers in India suffer from inadequate resources, skills, and aptitude necessary enough to perform their duties effectively. Therefore, building of the ground-level capacity of the police is very critical for the functioning of the police as a first responder.

CHALLENGES FACED BY INDIAN POLICE SYSTEM

Political Subordination

Police forces in India, whether they are governed by Central laws or state laws still continue to be subordinate to government executive and are not an autonomous institution. The police in India are answerable to the respective state government and political class. The police in India succumb to the whims and desires of these masters, and this mostly takes place in important, controversial and sensitive situations. In India, we may have seen several instances of police forces succumbing to the wishes of the political power above them. In sensitive cases which has some kind of political involvement and which requires effective police control, but instead they work according to the commands of a higher authority, who are mostly in the payroll of political power. Recent example of police forces acting according to the wishes of the higher political power was the police control during the Delhi protests against the controversial Constitutional Amendment Act or the beating up of students of Aligarh Muslim University just because of protesting against the political stronghold.

Reforms Required

Large section of the media and society believes that the betterment of the police forces is in the doing away with the level of political interference and making police an independent and autonomous institution as it should be in a democracy like India. The belief and the manner in which the debate is going around in the country regarding removal of political subjugation

gives the impression that it is the only reason deteriorating the police system in the country and making it ineffective and untrustworthy. But this is not the case. The problem is much bigger than political interference. The purpose of policing is to ensure a safe, secure, and crime free environment in the country. In a country where police forces use force against citizens in pursuance of the wishes of political power, it is a non-combatant organization. The political authority has been vested with the control of the police, its working, its betterment and upgradation and also with the sole power to keep police forces degraded, by using them according to their whims and fancies.

When the country is full of deep divisions based on faith, the need for police forces which sticks by the rule of law arises. Police should be made to be accountable to legislative houses of the country and not particular politician or ministry. But just vouching for such a change is not enough, it needs a structural reform of law enforcement. To force it through, a huge support is required and even the Judiciary might have to vouch for it. Otherwise, it would seem like a non-definite dream.

Torture and Custodial Death

Torture and abuse by the Indian police are very much the recognized reality today. It is such a problem in the country that the Indian Evidence Act of 1862 does not accept confessions made to a police officer as an admissible.^{ix} It is a wide reality that the police in India use various torture techniques to extract confession from the accused.

Sometimes this torture and abuse by the police reaches such levels that it sometimes leads to custodial deaths. People in India have got a glimpse of this during the pandemic with the death of father and son in the jails of Tamil Nadu for a mere fault of opening shop few minutes beyond closing time during lockdown. This horror act by the police forces in that state made people again question the limits and authority of the police.^x As against the belief by the police forces in the country, an accused does not lose his/her rights. Fundamental right to life and liberty is one of the most important and highly placed right. The instances of illegal police detention, torture and use of third-degree methods makes people question their belief in the police system.

The case with the custodial death is pretty grim in the country. A recent report by a rights body reveals a disturbing scenario. 1731 people died in custody in 2019, and they mostly belonged to vulnerable communities. This numbers depict the gruesome picture of the practice prevalent around the country.^{xi}

Custodial deaths cannot be and must not be viewed in isolation as law enforcement agencies become perpetrators of violence. It is an obvious case of abuse of authority and discrimination against vulnerable communities, who cannot afford the costs of a lawyer or know their rights properly.

REMEDIES AGAINST CUSTODIAL TORTURE

Constitutional Safeguards

If a person is arrested, it does not mean that rights of the accused disappear. If there is a violation of his rights then he may approach the Supreme Court by the backing of the power vested on every citizen by Article 32 of the Indian Constitution. Other constitutional safeguards are article 20, article 21 and article 22. Article 20 gives the person rights against conviction of offences. Article 21 is Right to life and liberty. These rights act as a surety against torture and assault or any kind of third-degree methods used by the State and its functionaries upon anyone taken into custody. In this case if the liability of the State arises due to use of criminal force over a captive person, then it does not get any form of immunity, for being a sovereign body.^{xii} Also there is Article 22 of the Constitution, which provides for the right to be informed regarding the grounds of arrest, right to consult and be defended by a lawyer of choice, and the right to be produced before the Magistrate within twenty-four hours of detention.

Other Safeguards

Section 7 and 29 of the Act provide for dismissal, penalty, or suspension of police officers who are negligent in discharge of duties. Section 376(1)(b) of Indian Penal Code, 1860 penalizes custodial rape committed by police officers.^{xiii}

Reforms to be Implemented

India should make the move to pass UN Convention Against Torture for ratification, it'll facilitate assessment in a scientific manner of rules, methodology, practices and, arrangements for the custody and also look into the treatment of people in any form of custody.

Police officers need to be trained and educated regarding their position and have to made to understand the issue of deprivation of liberty and how grave the situation is currently. In order to perform these tasks specific guidelines, need to be formed, taking in consideration of ground realities.

Qualified official persons need to be chosen, who will regularly inspect places of detention, and their access should not be restricted in any means. CCTV cameras should be installed in police stations.

To be stricter in nature while acting against custodial torture, there should be visits to places of detention by non-official persons. This should also be a surprise visit, so as to find out the reality of the situations in these places. This has also been suggested within the landmark *DK Basu* case in 2015.^{xiv}

The 273rd report of Law Commission of India recommended criminal prosecution instead of administrative action against those accused of committing custodial torture.

These are some of the several reforms that should be taken in order to prevent or rather reduce the number of custodial tortures taking place in the country.

Police Encounters

Encounter killings or extrajudicial killings by police officers allegedly in self-defense has become quite familiar to the Indian people by the recent events of encounter of Kanpur gangster Vikas Dubey on his way to police custody.^{xv} A similar situation was previously seen in the case of the encounter of the four accused in the rape of Hyderabad veterinarian.^{xvi} In both the cases, one thing was common, public were very much swayed in favor of the extrajudicial killings. Many people supported the killings, viewing them as the appropriate form of justice.

These policemen were showered with petals and were seen as heroes who brought justice by killing these villains of the society.

When people celebrate these extrajudicial killings and shower policemen with love, it gives the police confidence to operate confidently with no regard for due process of law and also with no such effort to cover their tracks in an innovative way.^{xvii}

It is observed that in pretty much every case of encounter killing, the general exception of private defense under Section 100 of the IPC and Section 46(2) of CrPC. Police law enforcement is additionally being employed by politicians as a tool to forward their agendas. Before being allegedly encountered Vikas Dubey was being approached by politicians to facilitate in elections. This shows the nexus that exists between politicians and dreaded criminals in India.

Relevant Reforms

Previously in India police officers who conducted those extrajudicial operations were given gallantry awards, which further incentivized the act. The Supreme Court then decided that enough is enough and put a stop to this in a judgment in 2014. In the judgment it stated that no reward will be awarded until a full independent inquiry into the killings is complete. The apex court also formulated a 16-point procedure that was needed to be followed while investigating deaths caused due to police encounters.^{xviii} Then there have also been appeals from the National Human Rights Commission, but these have not been enough to curb the menace of encounter killings.

The current provisions do not match up to the level when it comes to curb something which is seen as so acceptable and as a part of the system. There is so much overlap in those investigating and those being investigated that impartiality gets compromised.

A short-term fix for this will be the strengthening of legal provisions to investigate these the extrajudicial killings. If it were meant to find a more definite solution, then it requires a large-scale restructuring of the entire criminal justice system of the country. A clogged Judiciary with its years of pending cases and backlog and no plan in sight to improve the situation is what makes people lose trust in the institution and they are least expected to stand up in these

sensitive matters. The discussion also needs to open up about them and the institution of police needs to be made more autonomous. The police forces need to be made to learn to respect the rights of every individual and do away with this illegitimate exercise of power.

VARIOUS OTHER ISSUES FACED BY THE POLICE

1. Police forces in India are very much overburdened. They are understaffed. India has 144 police officers per 100000 people, which is believed to be below UN sanctioned number, i.e., 222 per 100000 people.^{xix}
2. The filling of vacancies is slow, which further aggravates the understaffed situation of the police forces in India.
3. Police infrastructure is very poor due to poor funding and there have been very few efforts to improve them. Between fiscal 2011 and 2015 states spent 4.4% of their budget expenditure. Due to being underpaid and understaffed and also due to inadequate resources, police forces in India continue to suffer.^{xx}
4. Police officers in India are mostly under control of the corrupt politicians and superiors which further deteriorates the system.
5. Police in India are no way citizen friendly. Interactions with the police is considered to be frustrating, time consuming and costly.
6. Police investigations are generally considered weak because of their prioritization of law and order over investigative matters.
7. Policemen like any other Indian hold prejudices, either hidden or not so much. This leads to unfair and uneven performance.
8. Police in India is a state subject and are governed by the rules of every particular state. This leads to non-uniformity. Most of the police forces are constables, who have no growth path other than a single promotion to Head constable. Coupled with this the low salaries pushes them to adopt corrupt methods, thus affecting the credibility of the institution.

REFORMS THAT NEED TO BE UNDERTAKEN

The Model Police Act of 2006 was put into circulation in each and every state and union territory, but many of its fundamental principles that remains unfulfilled. There is a need for state to implement it in letter & spirit (considering the evolved scenario). There is a necessary requirement to keep law and order separate from the investigating agency. There needs to be a presence of a complaint authority, which would independently inquire regarding complaints of police misconduct. To check against maltreatment of force there has to be inward responsibility to senior cops and free police oversight specialists. To increase the funding of Police so as to better their infrastructure which reduces incentives for corruption. Sensitization of Police when dealing with public especially during sensitive issues like rape and dowry. Modernisation of Police Forces is essential in the light of growing cybercrimes. These reforms are not implemented due to lack of political will, which in turn could be linked to the growing criminalization of politics, thus it also requires the decriminalization of politics.

PREVIOUS EFFORTS IN POLICE REFORMS

The police forces have been needing reform for quite a long time, it is not a new thing that has emerged recently, so in the past there had been several efforts to reform the Indian Police system, but quite evidently none of those reform measures have worked and the police forces around the country still continue to drown in the various problems and saddled with old and outdated laws.

NATIONAL POLICE COMMISSION (1971-1981)

The Commission was set up by the then Indian Government. It delivered eight reports, and also incorporated a new Model Police Act.

RIBEIRO COMMITTEE (1998-1999)

It was set up by the then government under the proposals of the Supreme Court of India after two previous senior cops lodged a Public Interest Litigation in the zenith court in 1996. It was

under the authority of J.F. Ribeiro, a previous police boss. The advisory group delivered two reports.

PADMANABHAIAH COMMITTEE (2000)

This was the third committee being set up by the Government for looking into police changes. It was under the authority of previous Union Home Secretary, K. Padmanabhaiah. It distributed only a single report on this matter.

MALIMATH COMMITTEE (2003)

The report distributed by this advisory group had set out the establishment of an organized and reoriented police framework. In the report, it was referenced that the achievement of the Criminal Justice Administration relied entirely upon the investigative part and not the upkeep of lawfulness.

SOLI SORABJEE COMMITTEE (2005)

It was set up to form a new Police Act of India in place of the colonial 1861 Act. The Committee was headed by former Attorney General, Soli Sorabjee. In the late 2006 a model Act was submitted.

SUPREME COURT (2006)

In 1996, Prakash Singh, previous Assam Police, and Uttar Pradesh Police and Director General of Border Security Force recorded a PIL in the apex court requesting an examination of measures for police reforms. The Supreme Court examined different reports accessible on police changes in the country. In 2006, a seat of Justice Y.K. Sabharwal, Justice C.K. Thakker, and Justice P.K. Balasubramanyan requested state governments to execute a few changes considered significant by them-

- A mid or high ranked police officer must not be transferred within two years.
- State Government is not permitted to hire or choose the Director General of State Police.
- Separate departments for investigation and patrol must be created.^{xxi}

- A State Security Commission must be formed for looking into policies and directions.
- Police Establishment Board for deciding selections, promotions and transfers.
- A Complaint Authority

After being questioned for their non-conformation to the reform measures by the Supreme Court, state governments started paying heed to the need for reforms. Since then, Tamil Nadu Police has been in the forefront in the application of the new measures.

Today the condition of several state police forces show that the measures were not taken up seriously and the police forces continue to wind up in its own web of complications.^{xxii}

WHY REFORMS HAVEN'T BEEN EFFECTIVE?

Reforms should begin base levels, along the lines of understanding their primary role in the society. They need to be trained, in order to take prompt actions in a decent and disciplined manner. Discipline needs to be the key in their attitude and should always avoid abusive behavior and third-degree methods to extract justice. Reform needs to be made in the aspect of attitude towards minorities and women particularly. But the most important factor in successful reforms is the public confidence. People in India do not trust the police, and view them as power abusers. This needs to be resolved by upgrading the service delivery of the police forces and accountability for any kind of misconduct. Effective accountability will not only improve public confidence but also improve police legitimacy.

But still a question lingers, why did the police forces in each and every state improve, even after several reform measures taken up by the Executive on the directions of the Judiciary? The criminal justice delivery system in the country primarily consists of the police forces, which acts as the investigating agency and law and order maintainer. They are accountable to the particular executive head. Then comes the branch of prosecution, which was earlier looked after by the Police department, but now lies with the District magistrate, who is also accountable to the same Executive Head, and also does not pay attention to the supervision of the branch. This has led to fall in conviction rates. They have also become hasty and careless in their approach to investigation. The main reason behind this has been the poor coordination.

The Judiciary, which previously given out several directions on the lines of police reforms, has played its part by constant adjournments and delay in cases, thus affecting people's faith. The attitude of the police has not kept up with the times. It is quite difficult to lodge a case nowadays, and even if the case gets lodged, there is no guarantee of proper investigation or any investigation. Instances of police brutality has painted in a very bad light and are not presently viewed as an effective means justice delivery, especially the marginalized sections, who generally find themselves at the receiving end of the brunt of their brute force.

So, what brings the largest democracy to this situation. The answer can be found with the people most happy with present police system i.e., the political class. They ensure that the police forces continue with their illegal methods and remain accountable to none but them. The political class prefers to stick for the current police system, because they are used by them crush dissenters and put fear among opposition. It has become a means to forward their interests, and any political party who holds the political helm, tries to stick with the system. Thus, the answer to it all lies with the political class, which has been the primary reason behind the unsuccessful reforms of the police forces of India.

CONCLUSION

India as a country cannot progress if it still lacks having an improved and efficient police force. There have been previous efforts but the police force still lack efficiency and continue to suffer from internal problems. It has been more than 14 years since the Supreme Court judgment regarding police reforms but there has been no considerable effort to implement those reforms suggested by the apex court and the monitoring of the court has also not been up to the mark.

If the directions are not followed and reforms are not implemented, then there will be instances wherein FIRs will not be lodged, investigations will be delayed and not effective. No major political party either at the Centre or state level have previously shown inclination to reform the police system. They try to use the police forces in their favor and to advance their political agenda. Improvement of the police forces in the country is directly linked to the advancement of the country. Effective law and order are sine qua non for economic progress. States and

Centre should show determination to implement the necessary reforms and the Supreme Court should play the role of monitoring the implementation process and would make sure the respective governments stick to the task.

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