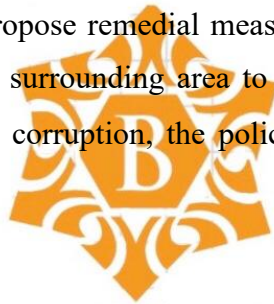


Use of force by Police: Rights of the prisoner and Police accountability

ABSTRACT:

Police are considered to be an important arm of the State rather than an active arm in which the Government exercises its power and authority. A formal and legal police system called Darogah originated in British-India in 1792 (Lord Corn Wallis) in West Bengal province and later expanded to Bombay state (1793). Darogah's plan did not work to achieve the State's expectation at the time as the plan could not control the city police as it suffered from staff shortages. After Independence, the title "Police" has been included in the Seventh Schedule, the State list, of the Constitution. However, the Central Government may from time to time request the State Government to bring about the necessary changes in the Police Administration to meet the expectations of the people. After Independence, the country has seen the formation of various committees and commissions to evaluate various skills related to the Management Policy and to propose remedial measures. From problems with a police organization, infrastructure, and the surrounding area to obsolete weapons and methods of collecting personnel information on corruption, the police force in the country is not in a good shape.



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INTRODUCTION:

Police are one of the most important organizations in the community. Therefore, the police are the most visible Government agents. In an hour of need, danger, hardship, and difficulty, when a citizen does not know what to do and whom to talk to, a police station and a police officer become the most appropriate and accessible unit for him. Police are one of the most accessible, effective, and powerful organization in community. Their roles and responsibilities in society are inherently different from the other; and it is a complex one. Generally, law enforcement officers take care of the law and maintain order. However, the complexity of these two factors is enormous, resulting in the large collection of functions, powers, roles, and responsibilities of the police organization. Vesting of speckled powers in the hands of police, while necessary to perform their duties on the other hand leaves the door open to misuse and hence an infringement of Human Rights as a whole. Both the Second Administrative Reform Commission and the Supreme Court have accepted the need for having an independent complaint authority to inquire into the cases of police misconduct.¹ The police-population ratio, currently 192 policemen per lakh population, is less than what is recommended by the United Nations i.e. 222 policemen per lakh population.² This results in overburdening of work which is another grave challenge for the police force which in turn backfires on the citizens of the nation. Overburdening of work not only reduces the effectiveness and efficiency of the police personnel but also leads to psychological distress which subsidizes various crimes committed by the policemen.

¹ Second Administrative Reform Commission, "Public Order," Report Five, (2007): pp. 113.

² Bureau of Police Record & Development, "Data on Police Organisation," (2017): pp. 37.

DEFINITION OF POLICE:

The word 'police' has neither been defined in the Criminal Procedure Code nor in the Police Act 1881 nor any State Police Acts as all of these Statutes only provide for the structure, organization, and hierarchy of police force in the States, thus we need to look at the authentic dictionary meaning.

Black's law dictionary defines "police" as:

(1) "The governmental department charged with the perversion of public order, the promotion of public safety, and the perversion and detection of crime" And

(2) "The officers or members of this department"³

The police force as an organized body came into actuality in England in the 1820s when Sir Robert Peel recognized London's first municipal force⁴. Before that, policing had either been done by volunteers or by soldiers in the military service as a matter of morality.

The United Nations Code of Conduct for law enforcement officials defines "law enforcement officials". Including all officials whether they are elected or appointed who exercise police powers, especially the powers of arrest or detention.⁵ And also include military personnel who exercise police powers whether they are allotted with police uniform or not.

The term "police" can simply be defined as any person or body of person created by the authority of the state, obligated and empowered to maintain law and order, prevention and investigation of crimes.⁶

History of Brutality

Due to prolonged police brutality and torture during the past two decades, it seems that custodian of law has become the law-breakers. After the eighties the police seem to be more concerned with lathi-wielding attitude and its brutality and use of third-degree methods by it has become the order of the day. The escalating police atrocities and other oppressive measures are the illustrations of violations of human rights.

³ The Black's Law Dictionary, (8thEd. 1999).

⁴ David H. Bayley, Police for the Future (1994).

⁵ The UN Code of Conduct for Law Enforcement officials, Commentary (A) To Art. 1.

⁶ Dr. H. Abdul Azeez, Human Rights and the Police, 6.

I. Police atrocities during an emergency:

During the emergency period in March 1976, a satyagrahi individual was taken into custody by the police, but no case was registered against him. He was kept in illegal confinement for a few days during which he was subjected to various kinds of physical agony and torture.⁷

In Kerala, police atrocities took an ugly turn when all prisoners were stripped off and beaten by a group of constables. No food was provided while in custody. If physical signs of beating are too obvious they were not produced before a magistrate but moved from station to station. In Gwalior district jail, political prisoners were kept along with notorious dacoits and were allowed to be abused by them.⁸

II. Nature of police atrocities-after eighties:

After 1980, police have resorted to more repressive techniques as not to leave any scar of police atrocities on the body of victims. Even minors were not secure at the hands of the police. Young boys were supplied to convicts for their delectation, some tortured in the most horrific ways. Brutal methods were adopted for forcing confessions.⁹

III. Death in police custody:

After the seventies, death in police custody has become very common. These deaths are usually the result of torture to extract information or to teach the person concerned a lesson.

IV. Torture:

It is a common and accepted fact that police brutality and torture have long been prevalent throughout India. Such methods are commonly used when people suspected of ordinary criminal offenses are grilled by the police. To extract confessions or for purpose of intimidations, the police use an extreme type of physical harm to the suspected persons. Torture is reported to have taken place in police stations although a few cases of beating in prisons have also been reported.¹⁰

⁷ Katar Singh v. State of Punjab (1994) 3 SCC 569. A. R. Desai, Violation of Democratic Rights in India, Vol. 1.

⁸ Extracted from 'Human Rights in India', Hearing before the Sub-Committee on International Organisation of the Committee on International Relations, U.S. House of Representatives, 1976.

⁹ B. P. Sehgal, Human Rights in India, Problems and Perspectives, 226-7.

¹⁰ "Black Laws 1984- 85", People's Union for Civil Liberties, 69- 70, New Delhi

V. Atrocities against women:

The Mathura rape case was an episode of custodial rape in India on 26 March 1972, wherein Mathura, a young tribal girl, was raped by two policemen on the compound of Desai Ganj Police Station in Chandrapur district of Maharashtra. The Supreme Court ruled in *Tukaram vs. State of Maharashtra*¹¹ that there were no injuries on the person of the girl, which meant that she did not put up resistance and that the incidence was a "peaceful affair". After the Supreme Court acquitted the accused, there was public outcry and protests, which eventually led to amendments in the Indian rape laws via The Criminal Law (Second Amendment) Act 1983.

CONSTITUTIONAL RIGHTS:

The Constitution has guaranteed and laid down certain rights to the arrested and detained persons such as: i) The right to be informed of the ground of arrest as soon as possible, ii) The right to consult a lawyer and to be defended by a lawyer of his choice, iii) The right to be produced before a magistrate within twenty-four hours and iv) The right to be released from custody beyond a period of twenty hours if not produced before a magistrate.

I. Right to know the grounds of arrest:

The detainee needs to know the basics of limiting his freedom in detention so that he can check whether or not the arrest is right, and he can prepare his defense. Article 22 provides that arresting officers must issue immediate arrest grounds of the detainee. In *Re Madhu Limaye* the Supreme Court held that the first Article 22 requirement was designed to give the arrested the opportunity to remove any mistake or misunderstanding made by the arresting officers. He gets the opportunity to prepare himself and collaborate with his defense lawyer before a court of law. Therefore, Article 22 (1) incorporates the protection mechanisms of the arrested person.

II. Right to consult a lawyer:

The right to consult with an attorney is a constitutional right guaranteed by the Constitution under Article 22. The Supreme Court in *D.K. Basu's case* provided instructions that if arrested, the arrestee could ask the police to allow him to contact his lawyer.

III. Right to be produced before a magistrate:

¹¹ *Tukaram vs. State of Maharashtra* AIR 1979 SC 185; (1979) 2 SCC 143.

If the mandates of requirements of Article 22(2) are not met, which makes it necessary for the accused to be presented before a Magistrate, will attract the police officer liable under section 340 of the Indian Penal Code for wrongful detention. In the case of *Khatri v. State of Bihar*¹² the Supreme Court observed that the State and its police authorities must see that these constitutional and legal requirements to produce an arrested person before a judicial magistrate within 24 hours of the arrest must be scrupulously observed. The Court further observed that the provision inhibiting detention without remand is a very healthy provision that enables the magistrate to keep a check over the police investigation and the magistrate must try to enforce this requirement and where it is found to be disobeyed come down heavily upon the police.

Thus, the right to be produced before the magistrate is a protection available to the arrested person under Article 22(2) even if the investigation cannot be completed within 24 hours. It is illegal for the police to keep a person in custody beyond the period of twenty-four hours without producing before a magistrate. Though the constitutional mandate is like this in reality, there is always uproar of illegal arrest and detention by the police.

Apart from the constitutional provisions that prohibit police torture, there are international standards as well which condemns such a practice anywhere in the world as it is completely against the whole aspect of human rights. According to the Human Rights Standards and Practice for the Police¹³ it is clearly stated that any sort of torture towards the people in custody is not admissible. Thus, goes on to show that along with violation of the Indian Constitution it is also against the principles accepted by the world community.

ACCOUNTABILITY:

1) The Police Complaints Authority

The Police Complaints Authority ("PCA") is a mechanism that was introduced in the *Prakash Singh v. Union of India*¹⁴ the judgment of the Hon'ble Supreme Court in 2006. As per the Model Act, which incorporates the recommendations of the Supreme Court, the PCA is essentially a body that can receive and hear complaints against officers of all ranks. It is to be established at the State and the District level. The State level authority is supposed to look into allegations of "serious misconduct" against officers of the rank of Superintendent of

¹² *Khatri v. State of Bihar* 1981 SCR (2) 408.

¹³ UNITED NATIONS PUBLICATION Sales No. E.03.XIV.7 ISBN 92-1-154153-0 ISSN 1020-1688 Pg 10.

¹⁴ *Prakash Singh v. Union of India* (2006) 8 SCC 1.

Police and above, while the District level is to look into all complaints against police officers of and up to the rank of Deputy Superintendent. Interestingly, there is a distinction between the types of complaints that can be heard against officers; while for the higher-level officers, only complaints of serious misconduct can be entertained, against the lower-level officers, complaints of any nature can be heard. As per the Supreme Court judgment, the PCA can take cognizance of complaints made either by the victim or the victim's representative. Some State laws allow the PCA to initiate inquiry *suo moto*. The authority is to have the powers of the civil court under the Code of Civil Procedure (CPC), 1908 including the power to summon witnesses, compel appearance, inquiries, compel registration of First Information Report (FIR) against misbehaving officers or initiate departmental inquiries.

2) NHRC as an External Mechanism of Police Accountability:

The National Human Rights Commission ("NHRC") was established on October 12, 1993, under the Protection of Human Rights Act, 1993 ("Act"). Under the Act, the NHRC or the State Human Rights Commissions have the power to enquire *suo motu* or upon petitions filed on matters of human rights violations. It may get involved in any judicial proceedings on human rights, summon or seek the attendance of witnesses, procure documents and evidence, visit prisons and detention centers, make recommendations to the Government. Every death in police and judicial custody is to be reported to the NHRC for its scrutiny irrespective of such death being natural or otherwise.¹⁵ The Commission is constituted largely of retired Supreme Court and High Court judges and two members are chosen from among people with knowledge of or experience with matters involving human rights. The Commission, along with the various State Commissions, has the power under Section 18(c) of the Act to grant compensation in case of human rights violations by the police after an inquiry.¹⁶ As a standard, the NHRC grants recompense as a form of relief in all cases of police misconduct.

Further, the NHRC does not seem to follow any set principle for the calculation of the compensation payable in the various cases. In a case of police torture in Rajasthan in 1994, the NHRC awarded compensation of Rs 50,000 to the dependents of the deceased, even though no external injuries had been noticed in the inquest and the post-mortem report.¹⁷ In another case in 1999-2000, a complainant asked for compensation of Rs 6 lakh for the dependants of a laborer who was beaten brutally by the police during a raid on a gambling

¹⁵ NHRC Guidelines on Procedure to be followed in case of Death during Police Action (12 May 2010); NHRC Booklet/Instructions of Custodial Deaths/Rapes (14 December 1993).

¹⁶ Section 18(c), Protection of Human Rights Act, 1993.

¹⁷ Police torture and death: Rajasthan (Case No. 144/93-94/NHRC).

place. Ultimately, the NHRC granted compensation of Rs 2 lakh to be paid by the State government.¹⁸ Compensation ranging from Rs 10,000 to 1 lakh is granted in most cases of custodial violence and torture¹⁹ while in cases of false implication, the amount of compensation awarded has tended to be on the higher side, ranging between 10,000 rupees to Rs 10 lakhs.²⁰ Compensation has also been awarded for causing mental agony, harassment, and humiliation to the complainant and members of her family.²¹

CONCLUSION:

Protection of fundamental rights of citizens from police excesses has largely been restricted to the High Court or the Supreme Court although even lower courts have jurisdiction to try these matters and pass orders of compensation. The burden of proof is much higher in public law, limited to cases of clear and gross violation of fundamental rights. Further, in all cases of police misconduct, it is the State which has been made vicariously liable to pay compensation and not the individual police officers. Criminal law is also used as a remedy, and compensation is often granted under such cases of police excesses. Police are a part of the state mechanism and they cannot use unnecessary force on the citizens in the name of protection of the country. The fundamental rights given to the citizens have to be equally protected and police atrocities need to come down in the nation. There have been too many cases where there is a situation of police showing their power and misusing it over the citizens and Courts have taken action against the same.

¹⁸ Torture by Kerala Police which led to Death of Hussain (Case No.64/11/1999-2000).

¹⁹ Torture by Tiruchi Police resulting in Death of Shri Mohan, Case No. 4444/95-96/NHRC.

²⁰ Rajiv Rattan (Case No. 9302/95-96); Madhya Pradesh Case No.667/12/98-99-FC; Uttar Pradesh Case No. 13501/24/2000-2001; Case No. 144/93-94/NHRC.

²¹ Sarita Sahu Case (Jharkhand Case No. 974/34/2001-2002).

