

Deterioration of Police Legitimacy in India: A Pragmatic Study

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Abstract

Law and order are crucial to the existence of a functional democracy and a civilized society. An efficient, competent, and accountable police administration is one of the most crucial institutions of the state as it serves as the tool for preserving the rule of law. The police are the closest representatives of the State to the general people, and as such, they are the principal enforcers of the law. Naturally, their actions and the way they carry out their responsibilities have a major and immediate impact on people's safety and the state's commitment to democracy. Therefore, it is undeniable that strong democratic administration requires the responsibility and integrity of police officers and the institution of Police. Paradoxically, the institution meant to safeguard the life and liberty of the common citizen and enforce their legal rights has become the most stressed threat to the same due to bad trends in police behaviour and the subsequent implications of the same in society. The police force, with its broad responsibility for maintaining law and order and investigation, has been misusing those powers for decades. The people's saviours have turned into their worst enemies because they are the protectors of the law. People's faith in the promised democratic society grounded on the rule of law has eroded as a result of this general trend toward viewing the police as a force to be scared of rather than a reliable protecting institution. In this research paper, the author discusses the necessity of having a legitimized police with high accountability.

Hypothesis: Accountability for police action is necessary to increase public legitimacy over police.

Keywords: Public legitimacy; accountability; custodial violence; police investigations

Introduction

The former prime minister of India Dr. Manmohan Singh while addressing the Superintendents of Police Conference in 2005 said that “it goes without saying that law and order is fundamental to the existence of a functioning democracy and a civilized society. The rule of law is the bedrock of a modern economy. As the instrument for maintaining the rule of law, an efficient, effective, and accountable police administration is one of the most essential institutions of the state”¹. *Dr. Singh's* words continue to be reminiscent of the promise made by the Preamble of the Constitution of India that of a free state, a

This research is based on the fifth chapter of the author's doctrinal research titled “Police Investigation in India: A critical Analysis” which was submitted to National Law University Odisha’

¹PM's address to Superintendents of Police Conference, September 1 2005, at New Delhi, Also available at <<https://archivepmo.nic.in/drmanmohansingh/speech-details.php?nodeid=176>> Accessed on 25 August 2021.

democratic republic, a society with its roots in the rule of law. His immaculate articulation conveys how our nation depends on its police administration to carry out such a vision. The police are the most visible extension of the State authority and primary enforcer of the law, working in close proximity to the common public. Naturally, their conduct and performance of duties significantly and directly affect the security of individuals and communities on a daily basis, as well as the democratic character of the state itself². Thus undeniably, accountability and credibility of individual police officers as well as the institution of Police are *sine-qua-non* for good democratic governance.

However, unfavorable trends in police behavior and consequent repercussions of the same in society have created a paradox, possibly the greatest irony of the modern age- the institution established to protect the life and liberty of the common citizen and enforce their legal rights has become the most emphasized threat to the same. While the world battled the unprecedented Coronavirus pandemic, police excesses remained rampant worldwide. The uproar that began with the murder of *George Floyd* in broad daylight in *Minnesota, United States*³ echoed across continents and nations and amplified the demand for justice for the father-son duo, *P. Jayaraj* and *J. Benicks* who died in the custody of police in *Tamil Nadu's Tuticorin*⁴ having suffered physical and sexual assault. While many other cases of wrongful use of force and authority by police personnel came forward with the harassment of migrant laborers, and vendors, to other weaker sections through the course of the nationwide lockdown. The gathered notice and collective opposition to such state violence although came to the mainstream forefront only now, such behavior is not new. The institution of police with its wide mandate of law enforcement and consequent legal powers has since decades engaged in misappropriation of such authority.

The protectors of law, and hence the protector of people themselves become their most feared exploiter. This social development of the police being viewed as a force to be terrified of, rather than a dependable protective institution has culminated in the loss of confidence of people in the promised democratic society rooted in the rule of law.

Public Legitimacy over police action

In every civilized society, public trust in the police is imperative and inevitable. The success of a criminal justice system can also be determined on the basis of public faith in police action. The factors that affect people's perceptions of the legitimacy of the police are from two perspectives.

Firstly, *the procedural justice model* emphasizes how the police treat people as antecedents of people's views on police legitimacy; and

secondly, *the outcome model* focuses on the police's capacity to apprehend violators of the law, their effectiveness in combating crime, and the fairness of their distribution of outcomes. The outcome model

²'The Police Roles and Responsibilities in Good Security Sector Governance' Geneva Centre for the DCAF (2015), Democratic Control of Armed Forces (DCAF) SSR Backgrounder. Also available at <https://www.dcaf.ch/sites/default/files/publications/documents/DCAF_BG_7_The%20Police.11.15.pdf> Accessed on 28 August 2021.

³ Available in <<https://www.bbc.com/news/world-us-canada-57618356>> Accessed on 22 August 2021.

⁴ Available in <<https://www.thehindu.com/news/national/tamil-nadu/sattankulam-custodial-deaths-police-tortured-jayaraj-and-benicks-knowing-it-will-result-in-death-says-cbi-charge-sheet/article32958821.ece>> Accessed in 22 August 2021.

is based on three different assessments of the police: (1) their capacity to apprehend lawbreakers, (2) their effectiveness in combating crime, and (3) the fairness of their outcome distribution⁵.

The procedural justice model places more emphasis on how the police treat people as antecedents of people's perceptions of the legitimacy of the police than it does on how effective or fair the outcomes are for people. According to research, people's perceptions about the fairness of the processes the police employ to exercise their authority influence how they respond to their own interactions with the police. This means that the relationship between citizens and legal authorities in the field of policing will revolve around procedural fairness.

Over an instrumental approach, the procedural justice-based model of legitimacy has many benefits, including the intrinsic motives engaged by legitimacy, which encourages community members to take a self-regulatory posture. People are more inclined to voluntarily defer to police action and are less likely to object to it when they perceive the police as legitimate. Additionally, when the public has faith in the goals behind intrusive police methods, they are more likely to accept them.

The safety of law enforcement personnel and neighbourhood inhabitants may both be improved by a procedural approach to citizen contact. Instrumental methods foster competitive engagement, although the most recent social science research refutes this assertion. Dominance-based conflicts frequently devolve into illogical battles that quickly get out of hand. A procedural justice-based policing policy does not preclude the use of force by the police in response to a hostile person. It simply means that the police, the institution of policing, and society at large will all profit enormously to the extent that the police can obtain compliance without using force.

The police may concentrate on reducing crime without alienating the public when they use a procedural justice-based strategy to policing. Many studies say that people judge the police more on how they treat people than on how well they do their jobs. People's opinion of police will gradually improve when they adopt a fair and respectful attitude instead of a command-and-control approach to dealing with the people. The police do not have to choose between effectively reducing crime and upholding favorable public perceptions. In fact, when the police execute their authority fairly, they may reduce crime and win over the population.

A. Reasons for the deterioration of legitimacy

The common man has a blanket perception of the police force which has remained very publicly known and acknowledged- that of distrust, fear, and terror. The procedure justice model allows the police to use reasonable force to ensure law and order in society. However, there are innumerable examples of unlawful and malafide actions on the part of police personnel throughout the country that have resulted in such misconduct being accepted as the norm. The Supreme Court's discontent and disappointment in this matter was reflected in its explicit judgment in 2011 with reference to *D.K. Basu v. State of West Bengal*⁶ stating amongst other things, "policemen must learn how to behave as public servants in a democratic country and not as oppressors of the people". Policemen are not seen as protectors of law, but rather as inflictors of violence and arbitrary abuses of state power. The plethora of supreme court rulings and comments, along with campaigns of civil society and never-ending cases of victims of police

⁵ Jason Sunshine and Tom R Tyler, "The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing" (2003) 37 Law.

⁶(1997) 1 SCC 416).

violence brought forth before the state and National Human Rights Commissions are proof of the menace that is further spreading through the society in the form of police brutality.

While public perception towards such violent acts inflicted on the general public, which includes them, is obviously unapproving, certain unlawful acts such as extra-judicial killings and encounters are cheered and revered by the public. The factum of such public support is founded in the failure of the criminal justice system to bring justice to victims. Low conviction rates and long-drawn procedures for a brink of justice to be visible have resulted in social approval of such vigilante behavior of acting outside of the bounds of law and delivering justice as deemed fit, without due process of law. The actions taken in such cases are seen as the only effective solution to overcome the inadequacies and loopholes in the system. This public perception is also time and again depicted in popular and mainstream media in the form of movies and novels in the genre of cop-drama, portraying a 'self-righteous' or 'vigilante' cop who has to 'take things in his own hands' for the film to end with the desired climax for the audience. Policemen, on and off screen, are often times referred to as "encounter specialists". As poetic as this justice may seem to the common public, it is part of the problem. Extra-judicial killings are as morally and legally wrongful as other forms of police excesses. Some of the instances of police atrocities that deteriorate the public legitimacy are hereunder.

1. Use of Illegal Means and Third-Degree Methods: As discussed above, unlawful behavior on the part of the enforcers of law has been accepted as the normal standard in society. It is also one of the most broadly discussed and studied aspects within academic research on policing. The use of illegal methods to concoct evidence and coerce confessions is commonly known as the "third-degree" method of investigation. A usual counter-response to the use of such unlawful means is the high standards of evidence demanded by courts of law. However, such arguments are only defending bypassing legal procedures and requirements. In *Inder Singh v State*⁷, the Supreme Court opined "While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect... Why fake up?... We are satisfied that the broad features of the case, the general trend of the testimony, and the convincing array of facts which are indisputable, converge to the only conclusion that may be reasonably drawn, namely, that the accused are guilty"⁸.

In reality, such acts on the part of the police are guided by a sense of power they know they carry. A power that at times is seen as overriding legal requirements and provisions themselves. The police personnel as a group of people are fearful and they are aware of the effect they have on people. Such imposition of authority may also be noted in verbal and physical abuse casually meted out to suspects and indiscriminate use of handcuffing during arrests. The guidelines of the Supreme Court in *Prem Shankar Shukla v. Delhi Administration*⁹ presumably did not bring an end to the frequent resort of the police to handcuffing as a more or less 'normal' procedure, albeit the Supreme Court has noted in multiple judgments that such harassment, violence and mandatory handcuffing is violative of Articles 14, 19 and 21 of the Constitution. This adds to the phenomenon referred to as 'trauma of arrest', leaving the accused individual in an extremely vulnerable position.

⁷(1978) 4 SCC 161.

⁸(1978) 4 SCC 161.

⁹(1980) 3 SCC 526.

2. Custodial Violence and Deaths: The National Police Commission (hereinafter NPC) in its third report propounded that the arrest of a person can only be governed by public interest and the actual requirements of an investigation and not by "mere desire of the police to show off their power". The NPC summarizes that the public's "fear of police essentially stems from the fear of an arrest by the police in some connection or other". As mentioned briefly above, the 'trauma of arrest' that a person undergoes if arrested by the police stems from the understanding of police treatment of suspects, or even innocents, in custody. Legal activists and even supreme court judges have time and again urged to amend legal provisions as required to ensure policemen cannot continue to commit such atrocities on persons in their custody without any repercussions for their unlawful actions. Again in *D.K. Basu v. State of West Bengal*,¹⁰ the Supreme Court raised the point: "Custodial violence, including torture and death in the lockups, strikes a blow at the Rule of Law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law"¹¹.

Multitudes of cases of violence and death of individuals in custody draw attention to the use of police authority in an unlawfully violent manner to gather required evidence in cases. In fact, some cases of such loss of human dignity and life have been reported to not even be related to gathering evidence for criminal cases. In such situations, it is the brute force of police authority that is being displayed by such acts. The violence becomes two-fold for gender minorities, facing the risk of custodial rape and sexual violence in addition to physical torture.

It is interesting to note that most cases of custodial deaths are reported as 'suicide' committed by the accused individuals, but there is no address to the fact as to how they caught hold of the objects they used to commit such an act, say a rope to hang themselves or a sharp object to cut their wrists. Addressing such cases becomes even more difficult due to the ties of brotherhood among police officials who protect each other by way of refusal to investigate or testify against a fellow officer.

3. Tainted investigations: Quality and speedy investigation is a fundamental right under Article 21 of the constitution¹² or in other words, the concept of fair investigation and fair trial is crucial for the preservation of the fundamental rights of the accused under Article 21 of the Constitution of India. A fair investigation is a condition precedent for ensuring a fair trial in criminal cases, and a tainted investigation report can hamper the administration of justice and lead to wrongful acquittals or convictions. Enormous power has been given to the investigating officers to ensure proper investigation thereby strengthening the criminal justice system of the country. It is needless to say the investigating officer has a constitutional obligation to conduct the investigation fairly and properly, and the investigating agency must not conduct it in a tainted or unfair manner. The term "investigation" is defined in Section 2(h) of the Code, which includes all proceedings under the Code for the collection of evidence conducted by a police officer or any person authorized by a magistrate. However, criminal cases are generally investigated by the police only, and the judiciary has limited power to interfere in the investigation process¹³. On numerous occasions, the Supreme Court has expressed concerns about the quality of police investigations in India.

¹⁰(1997) 1 SCC 416.

¹¹Ibid.

¹²Vakil Prasad v. State of Bihar, 2009 Cri.L.J. 1731

¹³The supreme court reiterated on numerous occasions that even the judiciary has no right to interfere in the police investigation except in the violation of fundamental rights.

For Instance, in the *State of Gujarat v. Kishanbhai*¹⁴, the Supreme Court criticized the inefficiency and failure of prosecution agencies in handling crime investigations. The court declared the accused-respondent innocent, but the investigating officials and prosecutors involved in the case failed to serve justice to the victim. In *Rajiv Singh v. State of Bihar*¹⁵, the court acquitted all the accused and highlighted the shoddy, casual, laconical, and insensitive investigation conducted by police. There is another infamous case, *V. Venkatesan v. State of Tamil Nadu*¹⁶, which gives a clear picture of the poor prosecution and police investigation. The appellant-accused was charged under section 376 of IPC and was acquitted on the grounds of the benefit of the doubt since the investigation was completely flawed. The court termed the faulty investigation the root cause of the failure of the prosecution case, stating that the investigation conducted by PW-12 (investigating officer) was the root cause of the collapse of the prosecution case.

However, the honorable Supreme Court held that if an acquittal is based on unmerited evidence, a tailored investigation, an unprincipled prosecutor, a perfunctory trial, or evidence of threatened/terrorized witnesses, it is no acquittal in the eye of the law, and no sanctity or credibility can be attached to or given to the so-called findings. It seems to be nothing but a travesty of truth, fraud in the legal process, and the resultant decisions of the courts¹⁷. There is, therefore, every justification to call for interference in these appeals. In a way, the Supreme Court directs that a tainted investigation will lead to only the quashing of the investigation and not an FIR. Hence, in appropriate cases, the court can order reinvestigation.

B. Delegitimizing Socio-Cultural, Political, and Institutional Forces: These explanations of historical decadence and hyper-empowerment in the form of excessive force, extortion, and the arbitrary and discriminatory exercise of authority are of course key parts of the puzzle of the police force's apparent lack of legitimate authority across contemporary India. That said, such explanations do not fully account for the fact that police in India have long been structurally disempowered by various legal institutional, and cultural-political forces and relations¹⁸.

The Indian social fabric has interacted with its colonial history and its current State of welfare governance to result in the operation of the modern police force in the country. Certain social relations, like kinship ties, which in our society do not remain contained to blood relations, are considered outside the purview of law- belonging entirely to the private realm. Many times familial impositions and community justice are revered as just and police interference is opposed in their 'internal matters' or 'ghar ki baat'. While this should not stop police officials from dispensing their lawful duties and

¹⁴(2014) 5 SCC 108 , Also see *AnnepuPrasad Rao S/o Chittibabu v State of Andhra Pradesh*, 2017 Indlaw HYD 294; *State Government of (NCT of Delhi) v Gurjinder Singh @ Barjinder Singh and another*, 2014 Indlaw DEL 1971.

¹⁵2015(13) SCALE 901; 2015 Indlaw SC 898.

¹⁶2018 Indlaw MAD 13642.

¹⁷*State of Haryana v. Bhajan Lal*, AIR 1992 SC 604.

¹⁸ Beatrice Jauregui, 'Beatings, Beacons, and Big Men: Police Disempowerment and De-legitimation in India' (2013) 38 Law & Social Inquiry (Summer 2013) 643. Also available in <<https://www.jstor.org/stable/pdf/24545738.pdf?refreqid=excelsior%3Aadd64c384c565462211c9ba097fdbdd33>> Accessed on 29 August 2021.

intervening where they need to, this has created an additional barrier for them in the discharge of their functions in our country.

A similar social issue arises due to the class conflict within the police force. While the police rank structure continues to be governed by the 1861 design, the police force still offers little to no upward mobility for junior officers. There are four classes of lateral recruitment, each with its own sub-ranks. The constables hold the lowest-ranking post and yet constitute more than 90 percent of the police force. There is a systemic and social gap between the senior IPS officers and the constables, who generally only come from humble and rural backgrounds. Their authority is the most delegitimized because they do not have the power to do anything without orders from their senior officers, which obstructs them from delivering their duties to the public. Often times they receive no support from their senior officials and are held accountable for mishaps not in their control.

Another obstacle is created by the additional pressure sourcing from the media in today's society. While the media could play a vigilant role, truly become 'people's parliament', and do ethical reporting and coverage, oftentimes, they misuse this position of influence they hold over the general masses. Several instances have occurred where the police have been pressed by public pressure and expectations to make an arrest, merely to create an impression of effectiveness. The information of 'no arrest having been made yet' is oftentimes held against the police by the media and propagated in a way against them.

The most significant and disempowering institution in the Indian context with regard to police has been their political superiors. Leaving their careers highly dependent on political favors and good books, the police force is left at the mercy of political counterparts who continuously use the police personnel for their personal tasks and satisfy their egos with demands of VIP security. Further, politicians and their muscle-men have also time and again insulted and abused the legal authority of the Police. Like ancient times, this class considers itself elite and above the law. Notably, they are also the ones who refuse to enact democratic Police Laws repealing the old colonial ones, clearly as they would rather have the police continue to be their under-hands, carrying out their behests, rather than an empowered institution for enforcing the law of the land. This is also the result of the growing criminalization of politics in our country, which has created a nexus with the police, with or without their will. This leaves the police being seen as yes-men, serving kingly political leaders, leaving the public to fend for itself.

C. Enhanced accountability as a Remedy: The accountability of police has been reiterated by the Supreme Court in many precedents. By virtue of Article 246, the subject 'Police' comes under the State List of the 7th Schedule of the constitution which authorises the state to make law. The matters like 'criminal Law', and 'Criminal Procedure' comes under the Concurrent list as well. Hence, the police laws in India have some federal character in which both the center and the state can regulate the police and the police forces in India, for The Code of Criminal Procedure, 1973, and the Police Act, 1861, central legislation that is applicable to all states subject to state amendments; senior police officers like Indian Police Service (IPS) are controlled by the central government. According to their appointment, police officers appointed under the Indian Police Service are accountable to the central government and other subordinate officers are accountable to the respective state governments since they are appointed by the state government.

The accountability of the police has been fixed by the Supreme Court in *Prakash Singh v. Union of India*¹⁹. The apex court recommended the center and states various reforms in the police system including the establishment of the National Security Commission, State Security Commission, police Establishment Board, police complaint authority, and bifurcation of police, etc. However, even after 16 years both the central and the state government has failed to implement the directions of the Supreme Court fully. In this scenario, the question would be what are the other ways in which the police can be held accountable. In this context, the accountability of the police can be fixed in three ways. *Firstly*, court-based judicial remedy in the case of human rights violations by the police; *second*, National and State Human rights commissions as a remedy for police misconduct and human rights violations; and *thirdly*, Other agencies to which the police can be held liable.

1. Enforcing accountability through judicial recourse: Whenever there is a violation of fundamental rights or human rights, the victim can approach the ordinary court or the constitutional courts for appropriate remedies. The victim can seek remedy either under public law such as Constitutional law and administrative law; under criminal law, i.e. Criminal Procedure Code, 1973, Indian Penal Code, or any other special laws; or under the Law of Torts. The remedy under the law of torts happens very rarely and the normal remedies which the victims usually prefer are public law remedies and criminal law remedies. The public law remedies under constitutional law and administrative law come when there is a violation of fundamental rights such as Violation of fundamental rights, arbitrary arrest, illegal detention, unequal treatment, protection against discrimination, etc. In such cases, the court will award compensation.

In India, the jurisprudence of compensation to the victim as a remedy under criminal law starts from 1983 onwards in *Rudal Shah v. State of Bihar*²⁰. In other words, the concept of ‘victimology’ in India starts from *Rudal Sha’s* case onwards. In this case, the appellant was detained in prison for 14 years after his acquittal. The court ordered Rs. 30000/- as compensation to the victim and also held it is a clear violation of Articles 21 and 22 of the constitution. In *Sebastian Hongray v. Union of India*²¹, the court awarded compensation of Rs. 100000/- each to the petitioners for the mental harassment and agony whose husbands had been missing after they were arrested by the police. The same proposition was invoked by the supreme court in *Bhim Singh v. State of Jammu & Kashmir*²² and held that a compensation of Rs. 50000/- was awarded compensation to the petitioner for the violation of Articles 21 & 22 (2) of the constitution and he has been detained illegally and thereby unable to cast his vote in the election. In another case, *Saheli v. Commissioner of Police*²³, the court directed the Delhi government to pay an amount of Rs. 75000/- to the mother of the deceased child who was beaten to death by the police. Then, there was a series of cases such as *Joginder Kumar v. State of Punjab*²⁴, *State of Rajasthan v. Vidhyawati*²⁵; *PUDR v. Delhi Police Headquarters and Anr*²⁶, *State of Maharashtra v. Ravi Kant Patil*²⁷

¹⁹(2006) 8 SCC 1.

²⁰ AIR 1983 SC 1086.

²¹ AIR 1984 SC 571.

²² AIR 1986 SC 492.

²³ AIR 1990 SC 513.

²⁴ 1969] ACJ 28 at 32

²⁵ [1962] Supp 2 SCR 989 at 1007

²⁶ (1989) 4 SCC 730 (Division Bench).

, *Nilabati Behara v. State of Orissa*²⁸, etc also the honourable apex court ordered for compensation to the victim. In *Ravi Kant Patil's case* the question that came before the court was who has to pay the compensation whether the erring officer or the state government. The court said that since he was on official duty and the said offense was committed while discharging his official duty personally he is not liable but the state is vicariously liable. One notable point in the above case was that whenever there was a violation of fundamental rights by the police the court can grant compensation by applying the doctrine of strict liability.

In the *Nilabati Behara case*, it was observed that “the award of compensation is a remedy available in public law based on strict liability for contravention of fundamental rights. It went on to state that the principle of sovereign immunity is inapplicable in cases that are in contravention to fundamental rights, even though doctrine may be applicable as a defence in private law in an action based on torts”²⁹. In *PUCL vs. Union of India*³⁰, the ratio in the *Nilabati Behara case* has been repeated and held that strict liability is the rule in the case of violation of fundamental rights by the public servant and state immunity is not applicable. In *A.V. Janaki Amma And Ors. vs Union Of India*³¹ the court has observed that “it has been well established that for violation of fundamental rights guaranteed under Article 21 of the Constitution of India, public authorities, officials and the State are liable to pay compensation. Public law courts in India exercising powers under Articles 32, 136, and 226 of the Constitution of India can award compensation in public law. Such remedy is in addition to the remedy in tort in private law”³². In *Sube Singh v. State of Haryana*, held that “compensation as a remedy will be available only if the violation of Article 21 involving custody death or torture is ‘established or is incontrovertible’ as opposed to cases where the violation is ‘doubtful or not established’”.

In another case *Nambinarayan v. Siby Mathew and others*³³, the infamous spy case, the supreme court recently ordered to pay compensation of Rs,500000/- for the illegal detention of an ISRO former scientist in connection with an espionage case. Apart from this NHRC also ordered the state government to pay Rs.100000/- as compensation towards the petitioner. However, in *Adambhai Sulemanbhai Ajmeri & Ors v. State of Gujarat*³⁴, the honorable supreme court refused to give compensation to the acquitted victims' for the illegal detention and wrongful arrest. The bench comprising *Justices Dipak Misra and R Banumathi* said that it would set a dangerous precedent if the acquitted persons were allowed to seek

²⁷ AIR 1991 SC 871 (Single Bench).

²⁸ AIR 1993 SC 1960.

²⁹ ‘Legal Accountability of Police in India’ Centre for Law and Policy Research (2014), Available in <<https://clpr.org.in/wp-content/uploads/2018/09/Police-Accountability-CLPR.pdf>> Accessed on 5 September 2021.

³⁰ AIR 1993 SC 1960.

³¹ 2004 (1) ALD 19.

³² Ibid.

³³ Civil Appeal Nos. 6637-6638 of 2018, decided on 14th September 2018.

³⁴ Criminal Appeal No 45 of 2011. Available in <[http://www.supremecourtfindia.nic.in/outtoday/Crl. Ap peal No 2295-2296of201](http://www.supremecourtfindia.nic.in/outtoday/Crl.Ap%20peal%20No%202295-2296of201)> Accessed on 5th September, 2021.

compensation for their “wrongful’ arrest”³⁵. This judgment has been criticized by many writers that the judgment is unfair even though many questioned the fair trial in this case³⁶.

Another notable point in these cases was that the court doesn’t evolve any principle to determine the quantum of punishment to be calculated. Still, it is unknown the parameters for determining compensation especially when there is a fundamental right violation by the police. If we compare with other related cases such as motor accident cases, defamation cases or even family disputes the court considers different parameters such the age, job, income, family status, kind of injury whether permanent or temporary injury, etc. But in the case of human rights violations, the court randomly awards compensation without considering the other factors. Even if we look at the above-discussed cases, the parameters determined for awarding the compensation are still unknown.

However, in short, if we peruse the above cases the court propounded the following principles in order to get compensation under public law. *Firstly*, if there is any fundamental right violation by any public servant including the police the victim can claim compensation under public law apart from criminal law and torts. *Secondly*, Liability under public law lies on the state government and not on the shoulders of individual erring police officers. *Thirdly*, The ‘misconduct’ needs to be proved or established or incontrovertible. *Fourthly*, Sovereign immunity cannot be pleaded as a defence in fundamental right violation cases.

The public servants are privileged persons and in order to prosecute them under criminal law permission from the central or state government is required under section 197 of CrPC. The requirement of this section is that sanction shall be received from the Central or the State Government before any criminal proceeding is instituted against a police officer alleged to have committed a criminal offense “*while acting or purporting to act within the discharge of his official duty*”. Further section 132 of the code also gives the same immunity to the police while discharging the duty of dispersing unlawful assembly. In *P.P. Unnikrishnan v. Puttiyottil Alikutty*³⁷, the police claimed the immunity and procedural safeguard against the initiation of legal proceedings against police officers acting in good faith in pursuance of any duty imposed or authority conferred by the State. While describing the rationale of section 197 held that “there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.” The court goes on to give an example where, if a police officer wrongly confines a person in lock-up for more than twenty-four hours without sanction of the court or assaults a prisoner, such police officer is not only abusing his duty but is acting outside the contours of the duty and therefore would not get the protection under Section 197 CrPC³⁸. In *Uttarakhand Sangharsh Samiti v. State of U.P.*³⁹, held that by relying on Privy Council as well as

³⁵ Nair, Ravi. "Akshardham Judgement – I: The Law at Work." *Economic and Political Weekly* 49, no. 25 (2014): 15-17. Available on <<http://www.jstor.org/stable/24479668>> Accessed September 5, 2021.

³⁶ Saurav Datta, "Akshardham Judgement – II: Between Callousness and Complicity." *Economic and Political Weekly* 49, no. 25 (2014): 17. Available on <<http://www.jstor.org/stable/24479668>> Accessed September 5, 2021

³⁷ AIR 2000 SC 2952.

³⁸ Ibid, Also see ‘Legal Accountability of Police in India’ Centre for Law and Policy Research (2014), Available in <<https://clpr.org.in/wp-content/uploads/2018/09/Police-Accountability-CLPR.pdf>> Accessed on 5 September 2021.

³⁹ (1996) 1 UPLBEC 461.

Apex Court judgments⁴⁰ it was stated that “the acts of wrongful restraint and detention, planting weapons to show fake recoveries, deliberate shooting of unarmed agitators, hounding and herding women rallyists in the darkness of night, and thus facilitating situations known to be likely that their modesty may be outraged and they may be victim of other sexual offences ; actual commission of rape and molestation, tampering with and framing incorrect records, dishonouring the dead and disposing of bodies of those dead in a clandestine manner, screening offenders from law, and depriving people of their ornaments and other belongings, even if done, during the performance of a law and order duty, are neither acts done nor purported to be done in the discharge of official duties. No sanction of the Government thus is required in ordering the prosecution of such public officials”⁴¹.

Thus, it is settled that in order to claim the procedural safeguard under section 197 of CrPC, the accused police should establish that firstly, he was on official duty at the time of committing the alleged crime and secondly, the alleged crime is having a close nexus with the duty discharged. If these two conditions are satisfied then the accused police can be exonerated from the criminal liability.

2. NHRC as an external mechanism of police accountability: The National Human Rights Commission (hereinafter NHRC) plays a pivotal role in ensuring police accountability in the case of misconduct, custodial torture, illegal custody, mental agony etc. It has been established under the Protection of Human Rights Act, of 1993 with the aim to protect the citizen from human rights violations, especially by the police. By virtue of the Act, NHRC is empowered to act suo moto or on the basis of petition. It may intervene in any judicial proceedings on human rights, summon or seek the attendance of witnesses, procure documents and evidence, visit prisons and detention centres, and make recommendations to the Government. Every death in police and judicial custody is to be reported to the NHRC for its scrutiny irrespective of whether such death is natural or otherwise⁴². NHRC has many similar advantages and at the same time, it has some weaknesses as well. One of the weaknesses of NHRC is even if it found the guilt of the police it cannot punish the guilty officer but it can only recommend to the government to initiate proceedings against such officer. In fact, this is the biggest limitation as far as the NHRC. The NHRC has to order interim compensation to the victim where there is a prima facie case made out for the human rights violation of the victim. In one case NHRC held that “It is well-settled and hardly requires any elaboration that the pendency of a case either in this criminal or civil court for any other relief is no ground to keep in abeyance the disciplinary proceedings. Even otherwise, the standard of proof required for taking action in any disciplinary proceeding is of ‘greater probabilities’, as against ‘proof beyond reasonable doubt’ in a criminal proceeding. In the present case, the mere fact that the magisterial inquiry has already recorded a finding as above is sufficient for the disciplinary proceedings to continue as well as for this Commission to award ‘immediate interim relief’ under section 18(3) of the Protection of Human Rights Act, 1993, which jurisdiction is attracted the moment a strong prima facie case of violation of human rights is made out”.

⁴⁰ Ibid, H.H.B. Gill v. The King, AIR.1948 Privy Council U.S; Amrik Singh v. State of Pepsu AIR 1955 S. C. 309; Matajog Dubey v. H.C. Bhari, AIR 1956 SC 44 , Balbir Singh v. D. N. Kadian, AIR 1986 SC 345.

⁴¹ Ibid, P.266.

⁴² Report: *Police Complaints Authorities: Reform Resisted* , Commonwealth Human Rights Initiative (2011) 54.

In a good number of instances, NHRC has directed the state government to pay compensation to the victims' during the interim stage or the final adjudication stage. The state can claim the same amount from the erring police officer at a later stage. NHRC requires more power in terms of sentencing the culprit, it also needs more staff, more reforms required to reduce the backlog of cases, etc.

3. Police Complaints Authority: In the *Prakash Singh case* the apex court recommended the establishment of a Police Complaint Authority. The State level Complaints Authority would take cognizance of only allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt, or rape in police custody. The district-level Complaints Authority would, apart from the above case may also inquire into allegations of extortion, land/house grabbing, or any incident involving serious abuse of authority. The recommendations of the Complaints Authority, both at the district and State levels, for any action, departmental or criminal, against a delinquent police officer shall be binding on the concerned authority.

The Prakash Singh verdict came in 2006 and till that time the central and the state governments are reluctant for the establishment of same. A public interest litigation has been filed before the Supreme Court questioning the central & state governments for not implementing the directions of the Supreme Court in *Prakash Singh Case* and this matter is now under the consideration of the court. *The Commonwealth Human Rights Initiative (CHRI)*, in its report on “*Government Compliance with Supreme Court Directives on Police Reforms: An Assessment*”⁴³ which was published in September 2020 reveals that 22 states have constituted State Police Complaints Authority (SPCA) on paper, while 17 states have constituted District Police Complaints Authority (DPCA). The report also says that only four states have partially complied with the directions of the court. Many states have claimed that they already have a system in place to deal with such complaints. The state of Uttar Pradesh claims that it has enough forums to handle complaints which will result in a multiplicity of forums creating confusion in the minds of the public. Himachal Pradesh and Odisha have designated the state Lokayukta to function as the PCA. The Supreme Court suggested establishing PCA and SSC because of the failure of the existing forums and the state governments should understand the necessity of constituting such a full proof mechanism to reform the police.

Conclusion

Police brutality has been a major issue in India, where it is just as serious of an issue as it is in the US. The COVID-19 pandemic has made the situation worse, and the Indian government's early pandemic approach mainly relied on lockdowns. Community policing and improved training are two key areas that must be prioritized in India if police accountability is to be rethought. Since the National Police Commission (NPC) was established in 1977, political pressure and the ineffectiveness of accountability systems have been major problems in India. The effectiveness of these initiatives hinges on the police's operational independence and resistance to political pressure. However, improving politics-police interactions alone won't make police more responsible. Since the country's independence, top-down

⁴³The Commonwealth Human Rights Initiative (CHRI), in its report on “*Government Compliance with Supreme Court Directives on Police Reforms : An Assessment*” Available on <https://www.humanrightsinitiative.org/download/1600588492Police%20Compliance%20Note%202020.pdf>.

reforms have been needed, but they have neglected the parallel need for bottom-up strategies that emphasize police empowerment. Community policing and improved training are two key areas that must be prioritized in India if police accountability is to be rethought.

In India, internal and external controls are used to a large extent to accomplish official accountability systems. All three committees—*NPC*, *Ribeiro*, and *Padmanabhaiah*—have advocated for an effective internal accountability structure that includes supervisory monitoring and opportunities for cross-departmental inquiries. Due to the time and process-oriented complexity, these methods do not successfully hold officers accountable. Accountability to government agencies, non-profit organizations, and unaffiliated organizations is part of the external system. They are supposed to be the complete opposite of internal systems, but their efficiency is in doubt. Under the protection of the Human Rights Act, the National Human Rights Commission (NHRC) was founded as a significant external accountability entity. However, the NHRC's authority is limited to issuing recommendations, which the government is not required to implement.

The Second Administrative Reforms (SAR) and the Supreme Court's decision in *Prakash Singh v. Union of India*⁴⁴ which led to the creation of the Model Police Act, 2006 were the biggest pushes for independent accountability systems. When accusations are made against police personnel with the rank of SP and higher, the state-level PCA is authorized to investigate claims of rape, grave injury, and death in custody. The adoption of PCAs, however, has two gaps: one in terms of their makeup and the independent panel that chooses the PCA. A similar narrative may be found in the inadequate application of *D K Basu v State of West Bengal*⁴⁵, which established an accountability structure. The ruling outlined eleven procedural safeguards against escalating human rights violations while in custody, including documenting the officer who made the arrest clearly, creating a memorandum of arrest with the date and time, granting the detainee the right to inform a family member, relative, or friend of their arrest, receiving a medical check-up every 48 hours from an on-site doctor, and documenting both serious and minor injuries prior to detention. The *Paramvir Singh Saini v. Baljit Singh*⁴⁶ historic decision by the Supreme Court in December 2020 mandated that CCTV cameras should be installed in every police station and office of investigating agencies. Further, it was held that it is a precious right of the accused under Article 21 of the constitution. This gesture from the apex court is a good step towards putting these reforms into practice.

In order to improve accountability, rethinking police accountability entails putting evidence-based ideas into practice from a bottom-up, preventive perspective that emphasizes police empowerment through training and police-community partnerships. Despite being conducted in separate areas, these initiatives require a national push akin to the more extensive accountability changes. To analyse police use of force, social interaction training must be the main focus. According to the "authority maintenance theory," the objective of police officers in their interactions with the public is to uphold their authority so they may keep control. However, depending on whether the objectives of the contact are met, the dynamic interaction between the police and the public might result in escalation or de-escalation.

As seen in Kerala, community policing emphasizes police officers' interpersonal communication abilities with the public. The effectiveness of investigations can be directly impacted by training in scientific investigation and interrogation procedures, which can also lessen the reliance on "third-

⁴⁴(2006) 8 SCC 1

⁴⁵(1997) 1 SCC 416

⁴⁶(2021) 1 SCC 184.

degree" approaches. In order to lessen the use of force by police officers, Section 27 of the Indian Evidence Act permits the admission of evidence that was discovered as a result of a confession as well as a portion of the confession that caused its finding. This is primarily done in India through community policing. In order to ensure safety, it entails a positive working relationship between the police and the populace. One such program is the *Janamaithri Suraksha Project*. Its main goal is to foster solid interpersonal ties between households and beat police officers. According to a study conducted in Kerala, community policing has increased respondents' feelings of safety and improved their perceptions of police, who are generally seen as helpful and pleasant.