



Police atrocity in India—A critical study

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Abstract

The main objective of establishing police force in a country is detection and prevention of crime. In India there is a growing trend of police atrocities reported daily in one way or other in news paper and other media. Police in India usually adopt practices involving custodial violations and torture as a strategy for the law enforcement. They inflict torture on the accused in the name of investigation, extracting confession. Besides accused, they also torture Bonafede informants, innocent petitioners and bystanders. The human rights violation by them ranges from verbal abuse, assault, threat of death or injury, humiliation, deprivation of food etc., On women, police inflict torture in the form of molestation, rape and sexual harassment. It is anguishing that police in India who are indulging themselves in the human rights violations follow their own code instead of adhering to procedures stated under Criminal Procedure code. In this background this study tries to identify the roles and responsibilities of police against the innocent citizen of India and to find out some concrete solutions against the existing human rights violation by our police.

Keywords: police force, human rights, violations, police brutality, crime, protection

Introduction

The term “police” is derived from the latin word “politia”. It refers to the organisation which is entrusted with the responsibility of protecting people and maintain peace in the society. Even in our ancient Rig vedic period we can find the traces of existence of police force for prevention of crimes and protection of people. In the 19th century Modern police force was established by the british in the background of 1857 revolt. The British government thought it fit to create a force to suppress uprisings against British government. The present police system was formed after independence. The government of India formed various committes for bringing reforms for the sound functioning of police system in our country. However at present, the police force in india are viewed as a force to inflict harm to innocent instead of protecting them.

India has a long history of police excess. The government used police force against various politicians and comman man in the guise of controlling internal disturbance during the period of emergeny in 1970s. On June 19, 2020 at sathankulam in thoothukudi father and son were taken to police station for inquiry for the alleged violation of lockdown rules. It was alleged that they were keeping their mobile accessories shop open beyond the permitted time. They were tortured at the police station while they are in the police custody. They were cruelly beaten which ended up in losing their life. This incident is a recent example of police brutality in India. This incident was connected with the killing of black man by american police. Media in india called the death of father and son as India’s George Floyd moment.

According to National Human Rights commission, since 2019 atleast 194 persons were killed due to police brutality Today in India, the police excess is prevalent and it ranges from use of baton against the peaceful gatherings to custodial violence. The lack of modern investigation techniques and pressures by superiors and politicians are the reasons for the human rights violations like confessions

given under torture. These viloations are done for the quickest investigation of crime at the cost of death of innocent persons. These deaths were not often recorded and hidden by saying it as natural death.

Indian laws sometimes indirectly encourages police violence. Special laws like Armed forces special powers Act gives enormous powers to army, central and state police forces by giving license to kill any individual who violates or suspected to have been violating law, they can arrest anybody without warrant and without consent of people they can carry on searches in their houses and destroy their properties in the pretext of destroying the property that could likely be used by insurgents. Eventhough it is argued that the main objective of these laws are to maintain public order but the sad reality is, it violates Human rights.

Police Act 1861

Police force is a organisation established for prevention and detection of crime. Every state in India have their own police force. The condition of present policing system in India shows that The Police Act 1861 failed to fulfill needs of the twenty first century. It is based on the governing a colonized state rather than welfare srate. The objects like providing a peaceful environment for people where they can feel secured and protection of rights of the people are not reflected in that legislation. This ineffectiveness of the legislations is the main reason for police being percieved as handmaiden of dishonest and corrupt politicians. The preamble of the Act says that the object of the Act is prevention and detection of crime. It has failed to include the object of maintaing peace and security and thereby establishing law and order. The conditions of service of members of police force at subordinate level will be decided by concerned state government. The administration of police force through out the area where local jurisdiction of District magistrate extends, is under the direct control and direction of such magistrtrae and it is vested in the hands of Superintendent of police and Asisstant Superintendent of

police. Section 23 of the said Act provides about the duties of police officers like obeying and executing all orders and warrants issued by competent authority, to prevent commission of offence and to detect and bring offences before justice. Besides these duties section 31 of the Act also states further duties of police like duty to keep order on public roads, streets, places of worship and to prevent obstruction during processions on roads. Thus it is implied from the above section that maintenance of law and order is also an essential object of the enactment even though the preamble of the Act doesn't provide that object directly.

Reasons for dissatisfaction with functioning of police

The reasons for the dissatisfaction of police include political reasons and caste or community related reasons, personal reasons. The politicians easily interfere with the functioning of police and give pressure on them to drop the investigation of crime committed by accused due to their political connection and these politicians also use police force to close the mouth of opposition and harass them by filing false cases against them. This reduces public confidence on functioning of police.

It is seen that marginalized people are usually the victims of police excess. Police ignore to receive their genuine complaints due to their inability to give bribe or their status in society. These people were also subjected to arbitrary arrest and false cases are registered against them.

At times police also misuse their powers for personal reasons like wrecking vengeance on someone who had done something unfavourable to them at past.

Causes for the police excess

Human Rights watch, an international non-governmental organisation has recently expressed its concern about human rights violation by police in India. It through its research found out various causes for the said violations. The working conditions of police officers in India mainly contribute to their excess. They are required to be available on duty 24 hours a day. Sometimes they stay at police station itself through out a day. They are separated from their families for a long period of time. They use short cuts to manage their workloads and for want of resources. For example they refuse to register the complaints given to them to avoid increasing of number of cases reported daily, hesitation to take steps for collecting forensic evidence and recording statement of witnesses instead torturing innocent persons making them admit the commission of crime which they have no connection. So its high time that state must give police enough resources to discharge their duties efficiently. They should be given proper training both physical and mental, sophisticated equipments and encouragement to act ethically while handling cases reported to them.

Human rights commission and its limitation

Human Rights commissions were established in India pursuant to the enactment of Protection of Human Rights Act 1993. This enactment established National Human Rights Commission at the higher level and State level Human Rights Commissions for the respective states. These commissions play a role in one way or other in holding police accountable for the violation of Human Rights. However these commission has certain limitations due to the law under which it was created – When commission is

expected to function independent but certain provisions in the Human Rights Act compels the commission to depend upon the government for man power and funds for day to day operation. The decision taken by Human Rights commissions cannot be enforced. It can only advise state to take action against police involved in misconduct. There is no provision of law to implement the recommendations of commission. The least thing the commission can do is to approach the constitutional courts for seeking directions against police involved in Human Rights violations.

Mechanisms for accountability of police force

The data of National Human Rights commission shows that number of complaints against police for their human violations are in rise. The complaints against them ranges from illegal custody, custodial death, corruption, ignoring to register complaints reported to them, bias, excessive use of force. Hence it becomes imminent that there should be accountability mechanisms to make them liable for their own actions. These mechanisms can be both internal and external.

The internal mechanisms for accountability of police can be found in Police Act of 1861, Police Acts of respective state governments and police manuals like Police standing Order which is followed by police force in Tamilnadu. The Police Act 1861 empowers superior police officers in the cadre of Inspector-General, Deputy Inspector-General and District Superintendent to dismiss, suspend or reduce the rank of police officer of subordinate rank who they think of deficient in their duty and the superior police officers have power to impose punishments like fine amount not exceeding one month pay, confinement at quarters for fifteen days with or without punishment (drill, extra guard, fatigue), deprivation of good conduct pay, removal from office of any distinction.

Similarly, The police Act 1861 also prescribes penalties for neglect of duty like withdrawal from duty of service without permission, being cowardice in discharge of duty, offering unwarranted personal violence to person in their custody shall be liable on conviction to a penalty of not exceeding three months pay or for imprisonment for the period not exceeding three months with or without hard labour or both.

The rules regulating the functioning of police force which is in effect in various states in India divide punishments in to major punishments and minor punishments. Major punishments include Dismissal, removal from service, reduction in rank. It is only after the departmental inquiry, if the charges are proved, the major punishments can be imposed on delinquent police official. The Minor punishments includes censure and reprimand. These can be imposed on the police official without conducting any departmental inquiry. Giving a major punishment is a result of time consuming process because the departmental inquiry is very elaborate. Even if charge is proved in departmental inquiry, the delinquent police official go to court and ask for a stay against sanctions imposed on him and the case remains pending on the file of the court for years till it gets diluted which ultimately leads to his acquittal. The National Human Rights commission has recommended that departmental inquiry must be conducted also by some independent authority other than police and it suggested that judicial inquiry should be made mandatory in cases like rape of a woman in police custody, death or grievous hurt of accused while in police custody, death resulted out of police

firing in dispersal of unlawful assemblies. So far government has not implemented these recommendations. Public feels that police department sometimes suppress incidents of misconduct by their officials to prevent damage of reputation of their organisation.

The external mechanisms for holding police force accountable is enforced through courts where the a common can sue the police official for the abuse of law. The police are held liable under laws like Indian penal code, criminal procedure code. This liability is usually regarded as Criminal Law liability. They can also held liable for their tortious acts, this liability is regarded as Private Law liability and other one called as Public Law liability is derived out of administrative law and constitution of India. The courts in india imposed pecuniary liability on the state as compensation for violation of fundamental rights such as right to life, protection against illegal arrest and protection from discrimination. This public law liability finds its trace to case of Rudul sah v. State of Bihar, wherein three judges bench ordered for payment of compensation for violation of fundamental rights under Article 21 of constitution. In this case the petitioner demanded compensation from government for his illegal detention. Although the petitioner can seek ordinary remedy by approaching a civil court, the Supreme court of India thought it fit to direct state government to pay compensation of Rs.30,000/-. This case was followed as a precedent by supreme court of India in subsequent cases that came before it regarding Illegal detention like Sebastin Hongray v. Union of India, Bhim Singh v. State of Jammu and Kashmir, Saheli v. commissioner of Police, State of Maharashtra v. Ravi Kant Patil. But it is important to note that in Rudalshah case and in subsequent cases which relied on Rudalshah, exemplary costs were awarded to petitioners without assigning any reason. Finally the Supreme court of India in Nilabati Behara v. State of Orissa crystallised the principle by which earlier precedents awarded compensation under Article 32 of the constitution of India for violation of fundamental rights due to police violence, clarifying the principle the court stated that awarding of compensation is available in public law based on strict liability for the contravention of fundamental rights. It stated that principle of sovereign immunity is available only in private law against tortious liability. Such doctrine is inapplicable to contravention of fundamental rights. This decision is followed by supreme court in case of PUCL v, Union of India. Thus, Constitutional courts in India invoke Articles 32, 136, 226 of Constitution of India to award compensation under Public Law. This remedy is in addition to remedy available against tortious acts in torts in Private Law.

Supreme Court of India in case of Sube singh v. State of Haryana exercising its epistolary jurisdiction under Article 32 based on letter received from the petitioner alleging illegal detention. The court followed Nilabati Behara case for asserting a point that the compensation for infringement of fundamental rights is available only if the violation is "established or irrecontrovertible" instead of being "doubtful and not established". Thus court took a neutral stand to enable the police to do their duty fearlessly with full freedom.

So far as criminal liability of accused is concerned, Code of criminal procedure provides protection to the police official from unnecessary or vexatious litigation. Section 132 gives protection to police against prosecution for acts done under

sections 129 that is if the the police officer is able to show that he has attempted to disperse unlawful assembly and on failure to do so, he has used force, then he gets protection under section 132. Similarly section 197 of code of criminal procedure states that any public servant including police officer, if he is accused of any offence alleged to be committed by him while discharging his duty, he cannot be prosecuted in court without previous sanction of the government.

In Unnikrishnan v. Puttiyottill Alikutty, the police officials are accused of keeping the accused in lock up for several days and torturing him. The police officials has taken a defence under section 64 of the Kerala Police Act where in procedural safeguards available to police when he has done a act in discharge of his duty. The supreme court considered that this section is based on the rationale contained in section 197 Code of Criminal Procedure. The Supreme Court while discussing the scope of section 197 stated that "There must be a casual connection between act and discharge of official duty. In another case of Uttarkhan Sangharsh Samiti v State of U.P when the question of requirement of sanction under section 197 came up before the court the division bench of the court stated that "it is not every act done by public servant while on duty falls within the purview of section 197 but only those acts which have nexus to the discharge of his official duty" The court stated that acts like wrongful restraint or detention, framing incorrect records, making fake recoveries by planting weapons, deliberate shooting of unarmed protestors, committing rape or cruelty on person in his custody are not acts done in discharge of official duty. And acts of police violating fundamental rights have never been considered as being done in course of official duty. There is no requirement of getting sanction for doing those acts by police.

Regarding liability of police under private law, they can be held accountable by making them liable to pay compensation by filing a civil suit by aggrieved victim. Normally victims file writs under public law before constitutional courts for getting remedy but courts have repeatedly held from Rudul shah judgment to Nilabati Behara judgment that remedy under article 32, 226 of Constitution of India are different and they are the remedies in addition to remedy available under private law. In Nilabati Behara case the honourable supreme court has clarified that principle of sovereign immunity is not available when there is the violation of fundamental rights despite the principle may be applicable as defence in private law where a action is against a tort committed against a victim.

Police complaints authority

The Police Complaints authority (PCA) is a mechanism recommended by the Honourable supreme court in the case of Prakash Singh v. Union of India in the year 2006. The PCA is a body to receive complaints against police officers committing any misconduct while discharging their duty. As per recommendations of supreme court, it has to be established both at State and District level. The state level authority will receive complaints against police officials of the cadre Superintendent of police and above. And the district level authority will handle complaints against police officials of cadre Deputy Superintendent of police and below. In state level authority only complaints of serious misconduct would be entertained. Whereas in District level

authority, complaints of any nature against subordinate police officials would be entertained. Some PCA at state level has the powers to make an inquiry in a case suo moto. The authority has all powers exercised by civil court in matters of summoning witness, inquiries, compel registration of First Information Report against delinquent police officers. In Soli Sorabjee report on drafting a new Model Police Act recommended that the PCA must have five members – a Retired High Court Judge, retired police officer, a person with minimum of ten years experience served as a Judicial officer, public prosecutor, advocate, professor of law, at least one member should be a woman and one member should be a retired police officer in the cadre of Director General of Police. Only six states like Uttarakhand, Kerala, Haryana, Tripura, Goa, Assam and four Union Territories have established PCA which are operational. As per the recommendation of Supreme Court the members constituting PCA must be from a panel prepared by Chief Justice of High court, State Human Rights Commission, Lok Ayuktha and State public service commission. But in practice all the members of authority are appointed by the state government. This shows that the object of Supreme Court in creating independent authority is diluted.

Conclusion

Police force is created to protect the life and property of citizens. Once Tamil Nadu police was compared equal with Scotland Yard police in their performance. But the present attitude of police is different they behave like rowdies. The reason behind changing attitude is political support, inefficient supervision, lesser departmental punishments, and protection under the umbrella of section 197 of Criminal Procedure Code, which provides for prior approval of the state government to proceed against the delinquent police officers. Even if anybody files a private complaint against any cops, the police victimize them by filing false FIR like theft, dealing with narcotics etc., and charge them under Goondas Act. The act of personal vengeance by police personnel on innocent people is in an increasing trend. Further the complainants and their relatives are tortured by way of put-up cases, wrongful confinement, kidnapping, harassments which frequently leads to lock-up deaths. The Supreme Court of India directed to establish Police Complaints Authority in all states. Some states have created it but its constitution of members is not as per guidelines of the court. As far as other states are concerned, the direction of the court is only on paper and no action has been taken by these states to establish the authority directed by the Supreme Court. Human Rights Commission is also helpless in this regard since they are the authorities to inquire the incidents involving Human Rights violations and only give reports to the Government concerned. They cannot make any orders or directions like courts.

At this juncture it is inevitable to take a strong decision of bringing police force under one roof. Like Defence, Police force must necessarily be under the control of Union Government as now it is in Union Territories. At least they must be under the direct control of Governors of each state. If this is possible then the police man can be transferred to any state this prevents reduction of chances of committing a misconduct at a particular place for a long period. Thus appropriate amendment in Police Act is the need of the hour.

References

1. Shailendra Misra, *Police Brutality: An Analysis of Police Behaviour*, Vikas Publishing House, New Delhi, (1986).
2. N.K.S. Subramanian, *Police Violence and the Police in India*, Sage Publications Pvt. Ltd., New Delhi, (2007).
3. S.K. Ghosh, *The outcry of police brutality*, Ashish Publishing House, New Delhi, (1983).
4. James Vadachanchery, *Indian police and Miscarriage of justice*, APH Publishing, (1997).
5. Sankar Sen, *Enforcing police accountability through civilian oversight*, Sage Publications Pvt. Ltd., New Delhi (2010).
6. "Police brutality in India: A study of human rights violations by the Tamil Nadu police" by S. Raman, *Economic and Political Weekly*, 2011.
7. "Human rights violations by the police in Tamil Nadu: A review of complaint mechanisms" by K. Raman, *Indian Journal of Public Health Research & Development*, 2015.