

Police System in India: A Critical Study

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Abstract: Today crime is on rise on daily basis as per the data published by the National Crime Records Bureau, Ministry of Home Affairs for the year 2016, a total number of 4831515 incidence were committed under IPC and SLL, which is quite alarming than that were committed in the previous years, according to the data published by NCRB a total number of 4710676 criminal incidence were committed in 2015 and a total number of 4571663 crimes were committed in 2014, which shows that there is increase of 2.6% in crime rate IN 2016. According to the theory of welfare state the essential object of the law is to protect society against criminals and law – breakers, and for the same the state act through its machinery Legislature, executive and judiciary are considered as the three main pillars of the same. Legislature enacts, judiciary interprets and executive is responsible for the enforcement of what is enacted and interpreted while doing so the executive act through its other subordinates authorities such as, police, forensic, medical, legal Aid etc. but among all the police has a pivotal role to play as it is not only a force but it is an instrument for the prevention and detection of crime, apprehension of suspected criminals, collection of evidence, for the determination of guilt or innocence of the suspected person for the imposition of suitable punishment thereupon. But the role of criminal justice system in managing, investigation and prosecuting criminals have attracted lively and controversial debate; large sections of the public severely criticized the working of police in the state. The recent example of such public outcry against police system is the, Parduman Murder case where the finding of state police and the CBI varies from each other, earlier the Arushi murder case and the brutal gang rape of a Para medical student in 2012 raise agitation against police System.

Keywords: Police System, India

There are a lot of things that need to change. One specifically? Police brutality

Colin Kapernick

1. Introduction

The Investigative powers and responsibilities of the police of India are laid down in the Code of Criminal Procedure which along with the Indian Penal Code and the Indian Evidence Act forms the bedrock of the criminal justice system of the country. But in India it is subjected to unhealthy pressures and influences from political, executive or other extraneous sources as a result of which police performance consequently falling off the standards required by truth, law and justice. Under the Indian federal structure every state government establishes its own police force which is formally enrolled. The force consists of such numbers of officers and men and is constituted in such a manner as the state government may decide from time to time. The overall administration of police in the entire state is vested in the Director General of Police. The administration of police in every district vests in the district superintendence of police under the general control and direction of district magistrate which is usually the collector of the district.¹

1.1 Offences / Crime committed by the police

As the crime rate is on rise a wide variety of Cognizable and non cognizable offences take place in different circumstances

and social settings. Some of the most prominent ones are sexual assault, rape, adultery, sodomy, fornication, genital mutilation, forced prostitution, trafficking of people for the purpose of sexual exploitation, Murder, dacoity, theft, extortion there is no dearth of cases of this sort, the NCRB data for the shows that there were 16 incidence of custodial rape committed by police. The anti - corruption helpline of Delhi police received over 1.12 lakh calls, text and WhatsApp messages, alleging corruptions, inaction in complaints and rude behavior of police personnel in 2016.² Haryana Police have got the maximum number of criminal cases registered against them as compared to their counterparts in other states and union territories, as per the National Crime Records Bureau (NCRB) report of 2016. It is a known fact that recorded cases are only the tip of the iceberg as not only many cases were remain unreported, but also many of such cases in our country are not registered even if reported.

1.2 Shortcomings of Police

Section 23 of the Police Act, 1861 provides that it shall be the duty of every police officer to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisance; to detect and bring offenders to justice and to apprehend all persons whom

¹ Section 4, The police Act, 1861

² Hindustan Times, e – Paper, 19 April, 2017

he is legally authorized to apprehend, and for whose apprehension sufficient grounds exist.³ According to Clause (h) of section 2 of the Code of Criminal Procedure "Investigation" includes all the proceedings under the code for the collection of evidence conducted by a Police officer or by any person (other than a magistrate) who is authorized by a magistrate.⁴ The Supreme Court of India in *H.N. Rishbud vs. State of Delhi*⁵, has viewed the Investigation of an offence as generally consisting of:-

1. Proceeding to the spot ;
2. Ascertainment of the facts and circumstances of the case.
3. Discovery and arrest of the suspected offender;
4. Collection of evidence relating to the commission of the offence which may consist of :-
 - (a) The examination of various persons (including the accused) and the reduction of their statements into writing, if the officers think fit,
 - (b) The search of places or seizure of things considered necessary for the investigation or to be produced at the trial; and
5. Formation of the opinion as to whether on the material collected there is a case to place the accused before a magistrate for trial, and if so, taking the step necessary for the same by filling of a charge - sheet under section 173.

However, all above is far from the reality as following are the short comings of Police system.

2. Non registration of FIR

According to the section 154 of the Code of Criminal Procedure, the officer in - charge of a police station is mandated to register every information oral or written relating to the commission of a cognizable offence. Non registration of cases is a serious complaint against the police.⁶ The National Police Commission of India in its 4th Report has pointed out that a complaint often heard against the police is that they evade registering cases for taking up investigation when specific complaints are lodged at the police station.⁷ In the study conducted by the Indian Institute of Public Opinion, New Delhi, regarding "Image of the Police in India"⁸ it found that over 50% of the respondents have mentioned "non-registration of complaints", as a common malpractice in police stations. Among the several malpractices it is ranked third, the first two places being taken by:-

- I. Showing partiality towards rich or influential people in cases involving them or reported by them, and
- II. Shielding goondas and other criminal elements concerned in gambling dens, illicit distillation, etc. This malpractice of non-registration arises from several factors, including the extraneous influences and corruption that operate on the system, besides the disinclination of the staff to take on additional load of investigational work in the midst of heavy pressure of several other duties. Among all such factors the most important one which accounts for a substantial volume of crime going unregistered is the anxiety of the political executive in the State Government to keep the recorded crime figures low so as to claim before the State Legislature, the public and the press that crime is well controlled and is even going down as a result of 'efficient' police.

The Report of Committee on Reforms of Criminal Justice System⁹ has also pointed out that There is an increasing tendency amongst the police station officers to advise the informants, who come to give oral complaints, to bring written complaints not only this even in cognizable cases quite often the Police Officers do not entertain the complaint and send the complainant away saying that the offence is not cognizable. A common citizen is not aware of this artificial distinction between cognizable and non-cognizable offences. It is very unreasonable and awkward. Not only this a victim is asked to wait for several hours before an FIR is recorded and while she is waiting in the open several officers become curious and ask her irrelevant questions. Also the norm of filing a zero FIR in cases where there is doubt about jurisdiction is not followed and the victim is shunted from one police station to the other. Even though it is mandatory to record the statement of a child under POCSO at the residence of the victim or at a place where she is comfortable, the police insist that the victim should be brought to police station and is interrogated before a complaint is filed to ensure her credibility. Due to this, often, the victim does not register the complaint and is sent back despite the fact that non - registering of the complaint of sexual violence is a punishable offence under the IPC.¹⁰

2.1 Poor investigation, if FIR is registered

As discussed above that Police official shows partiality towards rich or influential people in cases involving them or reported by them which result in non - registration of the complaint or the FIR of the victim at the 1st instance.¹¹

³ Section 23, The Police Act, 1861

⁴ Section 2(h), Cr.PC, 1973

⁵ AIR 1955 SC 196

⁶ Section 154, Cr.PC, 1973

⁷ The National Police Commission of India, 4th Report, 1980

⁸ Indian Institute of Public Opinion, "Image of the Police in India". (MHA , 1978 , New Delhi)

⁹Government of India, Ministry of Home Affairs, Justice V.S. Malimath Committee Report on, "Reforms of Criminal Justice System", (Vol – 1 , March 2003, New Delhi.)

¹⁰Kim Thuy Seelinger, et.al. "The Investigation and Prosecution of Sexual Violence" (HRC, University of California, Berkeley, May 2011)

¹¹ The National Police Commission of India, 4th Report, 1980

However if somehow they took up the complaint or register the FIR then right from the police constable at the entry point in a police station upwards, the IO, the senior officers, and even the constable who accompanies the victim to a hospital, the clerical staff at the reception desk in hospital, to doctors and nurses and the public prosecutor – each one becomes a judge, and interrogates the victim in a derogative manner and doubts her credibility. Sometimes the accused is brought face to face with the victim and he is allowed to intimidate her or dissuade her from lodging the complaint. The accused invariably makes accusations against the victim's character which the police tend to accept and therefore tries an out of court settlement between the accused and victim rather than that of investigating the case. Ms. Sharada Raut, DCP in charge of Crimes against Women Cell, Mumbai while highlighted the fact that in 94% of the cases the accused is known to the victim states that most of these crimes occur within the home or immediate neighbourhoods, where the role of police is minimal.¹² Thus police often resort to short cut methods and exhibit negative traits of police sub - culture, namely, rudeness, use of, defensiveness in face of criticism, lack of innovativeness etc. Not only this in cases where the complaint about the commission of sexual offence against the women is reported by a third party. The investigation team not reaches on time. The 2013 Delhi gang rape titled as "Nirbhaya" is a good example of such an ignorance on the part of investigating agency. It is reported that three hours later, a Police Control Room (PCR) van picked up Nirbhaya's naked body and her injured friend lying under a flyover

2.2 Dual harassment of the victim

Victims turn to the police for assistance and protection. Police cause secondary victimization when they ask victims questions that imply that they are blameworthy or when they explicitly state to victims that their actions contributed to the crime especially in rape cases. This implication includes but is not limited to questions or statements pertaining to a victim's dress, use of alcohol or drugs, the victim's reason for being at a certain location at the time of offence, degree of resistance, prior sexual encounters with the alleged assailant, whether the victim "led on" the alleged assailant, and whether the victim responded sexually to the incident.¹³

2.3 Inadequacy of Officers

A crime investigation is a specialized work where the IOs (Investigating Officers) can perform their duties properly only

when they are properly trained and possess necessary skills and expertise. It has been observed by Justice V.S. Malimath committee that investigations are mostly handled by lower level officers, namely, HC and ASI etc. The senior officers of the police stations, particularly the SHOs generally do not conduct any investigations themselves. This results in deterioration of quality of investigations. Though no hard and fast rule can be laid down as to the rank of the IO for a particular type of case but it is felt that as far as possible, all Sessions triable cases registered in the police stations should be investigated by the senior most police officers posted there, be they SIs or Inspectors.¹⁴ As the investigators usually had no training in taking statements from complainants and there was little effort made to locate evidence which may have had a bearing on proof of the case. The National Police Commission pointed out a tendency among police officers in certain places to launch prosecutions on the conclusion of investigations irrespective of the strength of evidence for a reasonable expectation of conviction in court. There are also instances in which a very large number of accused are included in the charge-sheet irrespective of the strength of evidence against each individual accused.¹⁵ Also sometimes ingredients of the offence are not clearly brought out in the charge sheet or in the supporting documents, due to which the cases results in acquittals. At times the IO is indifferent to the court proceedings summoned to court to give evidence. When the officials come to depose, they are not prepared with the facts of the case and hence fumble, making mistakes which prove detrimental to the case.¹⁶

The Supreme Court of India in *State of U.P vs. Chhoteyal*¹⁷, observed that criminal justice system is not working in our country as it should. The police reforms have not taken place despite directions of this Court in the case of *Prakash Singh & Ors v Union of India & Ors*.¹⁸ We do not intend to say anything more in this regard since matter is being dealt with separately by a 3 - Judge Bench. The investigators hardly have professional orientation; they do not have modern tools. On many occasions impartial investigation suffers because of political interference. The criminal trials are protracted because of non-appearance of official witnesses on time and the non-availability of the facilities for recording evidence by video conferencing.

3. Conclusion

Section 23 of the Police Act, 1861 police is required to:-

¹² Kim Thuy Seelinger, et.al. "The Investigation and Prosecution of Sexual Violence." (HRC, University of California, Berkeley, May 2011)

¹³Secondary Victimization by Police and Court, available at: <http://what-when-how.com/interpersonal-violence/secondary-victimization-by-police-and-courts/> (Last Retrieved on : 20 Sep 2016)

¹⁴ Justice V.S. Malimath, "Insularity and Integrity of The Investigating Agency", (M.H.A, March 2003, New Delhi).

¹⁵ The National Police Commission of India, 4th Report, 1980

¹⁶ Ujwala Pawar, " Challenges Faced by Prosecutors" (RAHAT, 12th Sep 2013 , Mumbai)

¹⁷ (2011) 2 SCC 550

¹⁸ (2006) 8 SCC 1

- i) prevent the commission of offences and public nuisances ;
- ii) detect and bring offenders to justice ;
- iii) apprehend all persons whom the police are legally authorized to apprehend ;
- iv) collect and communicate intelligence affecting the public peace ;
- v) obey and execute all orders and warrants lawfully issued to them by any competent authority ;
- vi) take charge of unclaimed property and furnish an inventory thereof to the Magistrate of the District, and be guided by his orders regarding their disposal ;keep order on the public roads, thoroughfares, ghats, landing places and at all other places of public resort ; and
- vii) Prevent obstructions on the occasions of assemblies and processions on the public roads.

In theory all is good, but in reality things go haywire. As the complexity and nature of crime is changing There is need to develop and sharpen Investigative skills of the officers and training facilities in emerging disciplines such as forensic accounting and information technology etc need to be developed and imparted to the I.Os. However as per Justice Verma Committee report of 2013, there is no doubt if the existing laws, and procedure provided for investigation of crimes if faithfully and efficiently implemented by law enforcement agencies, then it will be at ease to maintain law and order and to protect the safety and dignity of the people, particularly women, and to punish any offenders who commit any crime. This is not to say that the necessary improvements in the law, keeping in mind modern times, should not be enacted at the earliest. In *State of U.P vs. Chhoteyal*¹⁹ the Supreme Court observed as under: -

“We are constrained to observe that criminal justice system is not working in our country as it should. The police reforms have not taken place despite directions of this Court in the case of *Prakash Singh & Ors vs Union of India & Ors*.²⁰ We do not intend to say anything more in this regard since matter is being dealt with separately by a 3 - Judge Bench. The investigators hardly have professional orientation; they do not have modern tools. On many occasions impartial investigation suffers because of political interference. The criminal trials are protracted because of non-appearance of official witnesses on time and the non-availability of the facilities for recording evidence by video conferencing. The public prosecutors have their limitations”.

Out of the directives in the above noted case the Court ordered all state governments and union territories to establish Police Complaints Authorities (PCAs) at the state and district levels, with immediate effect. The intention behind setting up police complaints authorities was to ensure that a local mechanism specialized in handling a wide ambit of complaints against the police, including the most serious, was readily available to the

public at large. The long-term goal was to create a change in policing culture by drawing attention to and ensuring accountability for police abuses. The Court envisioned that state-level Authorities would look into complaints against officers of the rank of Superintendent of Police and above and look into only allegations of “serious misconduct” which includes but is not limited to death, grievous hurt, and rape in custody. At the district level, Authorities would inquire into complaints against police officers of and up to the rank of Deputy Superintendent of Police.

However, till date, only six states - Assam, Goa, Haryana, Kerala, Tripura and Uttarakhand and five union territories - Chandigarh, Dadra & Nagar Haveli, Daman & Diu, Andaman & Nicobar, and Delhi - have Authorities which are actually operational at the ground level. Kerala is the only state which has Authorities functioning at both the state and district levels. And the data provided by the National Crime Records Bureau states that Out of 34,651 total rape cases registered in the country, 95 cases were registered as custodial rapes during the year 2015. Highest number of custodial rape cases were reported in Uttar Pradesh (91 cases consisting of 4 cases of gang rape and 87 cases of other custodial rapes) followed by Uttarakhand (2 cases of custodial rape other than gang rape), one case each in Andhra Pradesh and West Bengal of custodial rape other than gang rape were also registered in 2015. As already mention the NCRB crime data report for the year 2016 shows that a total no of 16 cases were committed in form of custodial crime. And it is fact these data’s were a only the tip of the iceberg as not only many cases were remain unreported. Though police reforms are necessarily need to be implemented but beside these reform it required to centralize the police system so that police be free from pressure upon them from state politics.

¹⁹ (2011) 2 SCC 550

²⁰ (2006) 8 SCC 1