

International Journal of Criminal, Common and Statutory Law



E-ISSN: 2789-9500
P-ISSN: 2789-9497
IJCCSL 2022; 2(2): 08-10
© 2022 IJCCSL

www.criminallawjournal.org

Received: 26-04-2022
Accepted: 17-06-2022

Dr. Mukesh Kumar Malviya
Assistant Professor, Law School,
BHU, Varanasi, Uttar Pradesh,
India

The criminal justice system in India

Dr. Mukesh Kumar Malviya

Abstract

This paper involves the flaws in the Indian Police Act 1861. The goal is to provide measures how to resolve the ambiguities and misuse of provisions provided in the Act. This paper is compiled by analysing data by various agencies, landmark and other cases and taking a survey of incidents that have taken place with common people. This research will provide valuable information regarding the inefficiency, ill-equipment and harassment that police officials cause to the general public on various occasions and how this can be fought back with the help of enacting provisions mentioned in this paper. Research methodology opted is doctrinal as I have consulted various books and articles.

Keywords: police reform, offences, police accountability, arrest and detention, politicians, police act.

Introduction

It is a widely accepted view that police reform in India needs a complete revision. The current police structure is a complete legacy of the British law which has become entirely obsolete in today's era. The Indian Police Act, enacted in 1861 is the central law governing the police in India even today. According to this act, the police will work directly under the control of the state government who have the power to appoint, promote and transfer the police officials. Every state is entitled to have its own police act which is different to that of the central act. States like Gujarat and Maharashtra have the laws of their own dealing with recruitment, regulation and powers of the police. Committees like National Police Commission, draft model police bill and even a Supreme Court judgement has focussed upon the urgent need of the police reform. Also, these reports have not dealt with issues like police bias against the women, 'dalits' and minorities, and accountability to communities. Police is nowhere an independent entity or an autonomous institution whether they are governed by the state law or a central law.

Research Questions

- 1) Why is there a need for the reform of police act 1861?
- 2) Is the Indian police act, an affair of despair?
- 3) How is police violating human resource?

Relative Importance

The police shall be made independent from the political issues, so that it works autonomous more so in controversial and sensitive situations. As per the debates we see that the police is ineffective and untrustworthy because of the subordination of the political class. The problem is much bigger than the political interference. It is the only entity that has the power to arrest, detain, because death of the citizens and it is the only power that can legally carry arms and curtail the liberty of citizens.

Objective

The aim is to find the loopholes of the Police Act, 1861 and suggest new ways how to cater with them. Also, the powers that are granted to these police officials are highly misused by them and their indecisive control over the lower strata of society breeds corruption. This paper highlights the *lacuna* of the police act 1861 and addresses proposals in NPC model.

Discussion

A) Why is there a need for the reform of the police act 1861

Democratic principles to govern police legislation:

Corresponding Author:
Dr. Mukesh Kumar Malviya
Assistant Professor, Law School,
BHU, Varanasi, Uttar Pradesh,
India

Isolation from the illegitimate political interference

The police should have functional autonomy combined with high performance and strong mechanisms of autonomy. The problem is too much unfettered discretion over appointments and transfers of political parties. Currently the Head of police (director general/inspector general) enjoys his/her tenure at the behest of the chief minister because according to the police act 1861, the superintendence is vested directly in the hands of the state government ^[1]. The outcome being, situation where the police officers are functioning with a greater willingness to obey the unwritten and informal orders of subvert legitimate democratic processes for personal gain and political patronage ^[2]. This affects those who are opposed to party in power. The political interference hinders the rule of law because often the officers are pressured to use their investigating powers to shield those who are enjoying the patronage of the politicians. The registration and non-registration of cases to favour or harm or to manipulate crime statistics for political expediency creates a sense of immense discrimination and uncertainty ^[3].

The Accountability of the Police

People are losing confidence in system due to the misconduct and failure of the police to effectively respond to the situations. T When we have a proper system of courts and internal disciplinary procedures, why do we need an additional accountability mechanism? Section 132 and 197 of Code of Criminal Procedure prevent courts from taking cases of alleged offences in the discharge of official duty for various categories of public servants, without the sanction of the government ^[4].

B) Is The Indian Police: A Dangerous State of Despair

1. The police is tasked with combating the crime, irregular activities and mishaps resulting in disturbance in law and order, but it is shameful to say that due to lack of political commitment and investment by state the police is overstretched and ill-equipped. July 13 blast that killed 26 persons is a perfect example of inefficient police personnel. Both unsolved blasts have left the police groping in the dark and citizens wounded. Here is what police will do when confronted with a bomb emergency: dial the Chhatrapati Shivaji International Airport to bring in their TCV. It will take them at least two hours to drive this five-tonne equipment to south Mumbai through traffic ^[5]. In the case of *TT Anthony v State of Kerala* ^[6], the Deputy Superintendent of Police and the executive magistrate were held to be responsible for the deaths of five persons when it fired in order to control activists belonging to the opposition, protesting the visit of UDF coalition.

In 2006, the Supreme Court handed down a landmark decision, *Prakash Singh and Others v. Union of India and Others* ^[7], directed the central and state governments to enact new police laws to reduce political interference. Unfortunately, the central government and most state governments have either significantly or completely failed to implement the Court's order. This suggests that key government officials have yet to accept the rule of law or the urgency of undertaking comprehensive police reform, including the need to make police accountable for widespread human rights violations. Refusal to register complaints, arbitrary detention, and torture and killings sometimes

perpetrated by police at the behest of national and state politicians have resulted in an unprecedented level of public distrust and fear of the police.

C) How Is Police Violating Human Resource

In this report, we documented four abuses frequently committed by police in parts of India: failure to investigate crimes, arbitrary arrest and illegal detention, custodial torture, and extrajudicial killings. Police in India frequently fail to register crime complaints, called First Information Reports (FIRs), and to investigate crimes. In the case of *Roopan Deol Bajaj v KPS Gill* ^[8], Roopan, a senior IAS officer whose husband was also an IAS officer of Chandigarh went to a party. Many people including lawyers, bureaucrats, journalists, politicians, etc. KPS, the then DGP, topmost cop of the hay days of terrorism in Punjab, had had few drinks, went to ladies and called her where men were sitting and started behaving indecently. She was advised not to pursue the matter. KPS went to the high court which quashed the proceedings. This was challenged in the Supreme Court. Thus, an IAS officer had to go through so much difficulty therefore it can easily be assumed that what kind of torture will it be for common man to lodge a complaint and get justice. In another case of, *Ruchika Girhotra* where a 14 year old girl was molested by Inspector General of Police in Haryana, after she made a complaint, her family was repeatedly harassed by the police leading to her eventual suicide. After 19 years, 40 adjournments and more than 400 hearings ^[9] he was pronounced guilty under Section 354 of IPC.

- Police officers were reported to be often under pressure from political leaders to show a reduction in crime by registering fewer FIRs. Some said that they face suspension or reprimand if they register too many ^[10].

Results

- Obstacles to Police Accountability- For instance, police deny any involvement in the June 18, 2006, death of Abdul Khalid in Uttar Pradesh state, even though his wife Sakia Begum witnessed his arrest that night. She believes he was later killed in custody and his body was abandoned in a field near her house. Immediately after the arrest, she ran to the police station but found it locked and empty ^[11].
- Corruption- A three year intensive study revealed that an aggregate of 71% of the people did not report crimes because they thought that the police will ask for bribe to register an FIR or would not do anything. Also, 82% of the people said that no police officer ever visits their village.
- Illegal Arrest and Detention, Police Torture and Ill-Treatment- Police often fail to follow procedures mandated by the Supreme Court in *DK Basu v. West Bengal* ^[12], including production of a suspect before a magistrate within 24 hours of arrest. Socially and politically marginalized communities are subject to frequent sexual and physical harassment and street beatings by police. Members of the hijra community in Bangalore sex workers described police beatings and sexual harassment. One woman told in a survey conducted that, "I was standing on the street. It was quite deserted. A policeman came and slapped me and beat me up very badly. I was lying on the ground. When I begged for water, he unzipped his pants and offered his penis ^[13]."

In another case of *Delhi domestic working women's forum v Union of India and others* ^[14], a group of 6 girls belonging to a

tribal community were raped by army men during their journey. The girls registered an FIR but the investigations and the trials dragged for over 6 months. This shows the inefficiency of the police personnel which causes an innate delay in investigation. This shows ill-treatment of the police to the vulnerable sections of the society.

In the case of *Joginder Kumar v State of UP* ^[15], a young lawyer was called by the SSP Ghaziabad in connection to some inquiries and was detained for a period of five days in an undisclosed location. His detention was not recorded in the police diary and he was also not presented before the magistrate.

Conclusion

The Constitution says law and order is a state subject and states zealously guard this turf. They go to the extent of disobeying the Supreme Court which has pushed for police reforms-its landmark 2006 verdict asked states to break away from the outdated Indian Police Act of 1861 and implement a new Model Police Act. The changes in the Indian police act of 1861 include greater autonomy for the police, security from transfer raj and a police commission for merit-based appointments. The police are starved of budgetary support and consequently invest little in training and even basic crime-fighting technology like facial recognition software to create police sketches. Corruption has now become so endemic that the police, the first responders, are seen as unapproachable. The agencies cannot prevent attacks because they are not allowed to conduct FBI-style traps and stakeouts to nab terror suspects.

India's police force is in disarray. Yet as internal security expert Ajai Sahni points out, a manpower surge may not be enough. "Police need to transform their profile through better training, equipment, orientation and deployment."

References

1. S. 7, The Police Act, 1861.
2. Advocacy Police Act, 1861.
3. Ibid.
4. Supra ii.
5. India today, friend or foe, available at <http://indiatoday.intoday.in/story/terror-strikes-ill-equipped-corrupt-police-force-india/1/151582.html>, last seen on 20/08/ 2015.
6. AIR 2001 SC 2637.
7. (2006) 8 SCC 1.
8. AIR 2005 SC 3104.
9. NDTV, Ruchika Case, <http://www.ndtv.com/cities/ruchika-case-lower-court-directed-to-consider-plea-challenging-closure-511860>, last seen 20/08/2015.
10. Ibid.
11. Broken System, Human Right watch, <http://www.hrw.org/es/node/84624/section/5>, last seen 20/08/2015.
12. AIR 1997 SC 610.
13. Supra i.
14. 1995 SCC 14.
15. 1994 SCC 260.