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AN ANALYTICAL STUDY OF THE ROLE OF THE POLICE IN THE MAINTENANCE OF LAW AND ORDER IN THE SOCIETY¹

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INTRODUCTION:

Maintaining social order is always the fundamental police function, and social order is so fundamental to the realization of the “Human Rights” which can be seen as a prime police function. The most specific ways in which police protect human rights give further support if it was necessary for the safeguard of human right is a police function. Perhaps it is always argued that protection and preservation of human rights should always stand along with the preclusion and revealing of crime and this preservation of social order and provision for the assistance and shield of human rights in crises as one of the main tasks of policing. In addition, upkeep of law and order has also considered as one of the chief tasks of the police but apart from this, police are also required to respect the human rights. It simply means that when police are exercising their powers and functions, they must obey the laws designed to secure human rights.

“Protection, as well as respect for Human Rights and maintenance of law and order, are so integral part to policing that the removal of any element would create tension as well as conflict between policing and human beings relationship that exists in real practice, the creation as well as innovation of human rights culture within police agencies, is one of the most pressing and difficult tasks presently faced by police leaders.”²

This atmosphere of such cultures can perhaps be promoted by recognising the need and entitlement of police to human rights. This kind of recognition should be beyond the entitlement of police to all human rights as associates of the family, to the recognition that police have special needs as far as Human Rights are concerned. The first and the foremost part of the police is to utilize as a law implementation assistance and to render impartial and independent service to law as well as to all humanity without any heed and greed to wishes or requirements articulated by the government which either comes in engagement with the provision contained in the Constitution or any other laws for the time being in force. This kind of recognition must be incorporated in the Police Act. The police should be duly recognised about their duties and services concerned with the part in providing aid to the people in suffering circumstances. They should be skilled and shall be made capable to do the facility oriented tasks. The police in emerging countries like India have to do a difficult task,

² David H Bayley, *Police and Political Order in India*, 4 Asia Survey 485 (1983).

particularly in view of upholding law and order circumstances, communal riots, chaos, political and economic turmoil, terrorist activities and student unrest activities and to control the cumulative amount of underworld, armed mobs and criminals.

The concept of police as the 'limb of law' in a society, wedded to the 'Rule of Law' expects this arm of the government to be depoliticized. "Conversely, the police organization cannot be left to its own also, because the job of policing requires political direction and discretionary interpretations, subject to the overall control of the judiciary of the country."³

“Engaged in performing this very unpleasant task which is equally sensitive, the policeman has an onerous responsibility of maintaining equilibrium. His loyalty to law, lawmakers and the guardians of the legal procedures are inbuilt in the game of policing.”⁴ In a universal and wider sense, the word ‘Police’ were used to connote the management of the internal economy, security and the enforcement of government regulations of a particular country. India is a pluralistic society and a country of religions. It is inhabited by the people of numerous beliefs. It is the second greatest inhabited country in the world. The Indian Constitution, taking its inspiration from history and the free democracies of the world, envisages a representative legislature, a responsible executive and an independent judiciary which is the grundnorm of the parliamentary system of government. The police organization essentially constitutes the core administrative bureaucracy, is quite centrally or organically linked with the three organs of the democratic setup. The police forces being responsible for all the three organs in a government set up which would be having regular contacts with them. The police have to operate in different situations, therefore the working and its implications vary from time to time. The police violence becomes manifest in three different categories.⁵ First category deals with terrorism and other forms of ideological violence. While the second category deals with aggressive dissent. The third category deals with the counter-

³ VERINDER GROVER, POLITICAL PROCESS, GOVERNMENT STRUCTURE AND ADMINISTRATION 677 (1st ed. 1997).

⁴ *The President's Commission on Law Enforcement and Administration of Justice*, 4 CRIMINOLOGY (WILEY ONLINE LIBRARY), 48-59 (1966).

⁵ VENUGOPAL RAO S., POLICE ADMINISTRATION, INDIAN INSTITUTE OF PUBLIC ADMINISTRATION (1982).

violence that is regulated as per the law of land. To deal with such situations, a balanced approach is needed to meet the ends of justice.⁶

LOCATING POLICE- DEFINING THE CONTEXT

The term 'Police' refers to a body of Civil servants which primarily has to perform duties such as maintaining law and order, prevention and detection of crimes and enforcement of the law in a particular state. In India, the great ancient lawgiver Manu emphasised the need of Police force for the regulation of law and order in a state. He suggested that Police functions could be entrusted to only those who were well acquainted with the local people and were dedicated to the cause of protection of society against law violators. Though it can be traced that in India Police prevailed in the reigns of Hindu rulers and in Mughal rulers but the British Government enacted the codified Police Law and as a result of the Police Act, 1861 for India. This act had been prevailed for the whole of India as Bible for Police organisation until the State Police Acts were prepared after the Honourable Supreme Court of India gave directives in *Prakash Singh and others v. Union of India and others*⁷ case in the year 2006 and the central government's Model Police Act (2006).

OVERVIEW

Envision of Sardar Vallabhai Patel on the role of Police in Independent India speaks, "*You have served the previous regime under different conditions. The people then had a different attitude to you, but the reasons for that attitude have now vanished. Now the time has come when you can secure the affection and regard of the people.*"⁸

The Constitution of the State is a core document having a legal sanctity which sets out the core and the principal functions and objects of the organs of the government of the state and declares the principle governing the operations of these organs essential for a particular state. Constitution is the foremost law of the country and all the laws of the country are formed and enacted under the Constitution and this Constitution in its seventh schedule placed Police in the Entry 2 of List II state list. Police as a complete subject matter of the State must be

⁶ *Police Reforms: India: Police Structure and Organisation*, COMMONWEALTH HUMAN RIGHTS INITIATIVE (Jul. 08, 2018, 10:00 AM),

<http://www.humanrightsinitiative.org/programs/aj/police/india/history/default.htm>.

⁷ 2006 S.C.C. 1 (India).

⁸ ARINDAM CHAUDHURI, COUNT YOUR CHICKENS BEFORE THEY HATCH 33 (1st ed. 2001).

governed under the State Police Acts and Rules. This act has established the dual control and dual polity at the district level as described by G.P Joshi in the following word;

“The same law introduced a system of dual control and dual polity at the district level. It put police forces under the direct control and command of the district superintendents of police but subject to the “general control and direction” of district magistrates.”⁹

It does not mean that there were no police forces before 1861. Police was present during the ancient period and medieval period but systematic police was not in existence in the earlier period.¹⁰ Hence according to Section 4 of Police Act 1861, Police fall under the control of not only the superior but also of the executive. This was created with the intent to maintain the British supremacy in the districts in India.

The police system was planned in such a way as to a strict hierarchal and military structure which is based upon the foreign suspicion of the subordinate positions. The final decision-making authority lies in the hands of some police officials placed in the higher ranks, while the police officers just monitor the orders of their superior. After independence, many efforts were made to change the political system but the police administration remains the same. But the modern administration of the police falls under the Indian Police Act, Indian Penal Code, Indian Evidence Act and Code of Criminal Procedure. Together they form the current, but out-dated and obsolete police system in India. There have been many efforts taken to reform the Police administration in India but the efforts have all been based on the earlier Indian Police Act of 1861 leaving the colonial legacy and philosophy still alive in these acts. According to the Article 246 of the Indian Constitution of 1950 as well as section 3 of the Indian Police Act of 1861, the police force has always been considered a state subject. Every state government has the responsibility to draw the guidelines, rules and regulations for their respective police forces. A state is divided into a number of administrative Police Units.

⁹ Joshi, G.P., *Police Accountability in India: Policing Contaminated by Politics*, 5 Human Rights Solidarity (2005).

¹⁰ APARNA SRIVASTAVA, *ROLE OF POLICE IN A CHANGING SOCIETY* 9 (1st ed. 1999).

HUMAN RIGHTS VIOLATIONS UNDER NORMAL CONDITIONS

“In our world, prison cells are still considered as the laboratories of torture, inhumanity and warehouses in which human bodies are sadistically kept and where a range of inmates vary from juveniles to heroic dissenters”-Justice V. R Krishna Iyer

The human rights violations or the offences by the police in discharging its normal duties can be categorized as follows¹¹:

- ✚ Illegal detention, arrest and wrongful confinement
- ✚ Neglect of duty
- ✚ Manipulations of records and perjury
- ✚ Violence
- ✚ Corruption¹²

• **ILLEGAL ARREST AND WRONGFUL DETENTION**

The worst type of violation of humanity occurs in the police custody itself. S. Subramanian, IPS, has rightly stated that arrest by police in certain situations of grave areas involves the deprivation of the liberty of an individual by the legal authorities. The time a person is arrested and placed behind the bars and if not released on the bail, he or she is under the custody of police. Any use of threat, force or any mental or psychological pressure etc. against the person during in the custody of the police or by the authorities is termed as custodial violence.¹³ With regard to the prevention of crime, detection and investigation of the cases related to the violations of basic human rights, the police are charged with inaction, over action, excesses and misuse of the rights. Despite the statutes, laws and institutional checks, the torture and ill-treatment of humanity trapped behind the bars still continue under the police custody which denies “Human Dignity and Human Rights” to the individuals. Moreover, the police high handedness gets the support of the people.¹⁴

Majority of the people strongly believes that the police cannot render effective services and justice if it does not use strong arms method against the hardened criminals and anti-social elements of the society. And the people mentioned above who believes in this notion includes

¹¹ Y.S. JAJA, HUMAN RIGHTS AND SECURITY FORCES 110-11 (2000).

¹² S.L.GHOSH, LAW AND ORDER: FROM THE POLICE POINT OF VIEW 86 (1972).

¹³ DEEPA SINGH, HUMAN RIGHTS AND POLICE PREDICAMENT 85 (2002).

¹⁴ JOGINDER SINGH, INSIDE INDIAN POLICE 327 (2002).

India's Political class, Bureaucracy and large section belongs to the upper and middle class. Human rights violations in police custody are not occasional phenomena but are widespread and deep-rooted in the system. Justice Krishna Iyer¹⁵ rightly observed that "these institutions including the prison cells and not the inmates are the criminals." The use of torture and ill-treatment only serves to perpetuate violence and lawlessness rather than combating it. The police sometimes go beyond that it misuses the legal provisions for legalizing the custody which is illegal. In the grab of combating criminality, the police take the 'justice' into their own hands and systematically violate the basic rights of the citizen under the shade of that law. According to V.M Tarkunde¹⁶ a human rights activist has explained the police abuse mentioned in the code of criminal procedure under section 151 which enables that every police officer "knowing of a design to commit a cognizable offence" may arrest any person without orders from a magistrate and without a warrant. Many innocent people have been arrested under the shade of this section either for ulterior motives or under political pressure.

• **CUSTODIAL DEATH AND PRISON**

Regarding the custodial violence, the National Commission for Human Rights has observed that it is naked violations of Human rights and human dignity and it is a kind of degradation which destroys, to large measures, the individual personality. The number of deaths in Judicial Custody reveals the poor conditions of our prison. Such is the fear of confinement in the prison that it was reflected in the autobiography of Jawaharlal Nehru, the confinement according to him, "even for a short period, is a most painful affair, for it is to be prolonged for years is a terrible thing. It is the killing of the spirit by the degrees and slow vivisection of the soul. Even if a man survives it, he becomes abnormal and an absolute misfit in the world."¹⁷ The prison regime of an incarnated person should be utilized for the upliftment of the moral, mental, psychological, sociological and vocational faculties of the prisoners, so that the prisoner may gainfully utilize their experiences on their return to their society.

This is why the old notion that the prison was a "house of Captives" has been changed to the "Correctional Homes" or "Sudhar Ghar" where a prisoner get an opportunity to reform themselves.

¹⁵ S.P. SRIVASTAVA, HUMAN RIGHTS AND ADMINISTRATION OF CRIMINAL JUSTICE IN INDIA 141 (2002).

¹⁶ V.M.TARKUNDE, CUSTODIAL CRIMES AND WAYS TO CURB THEM 192 (1996).

¹⁷ P.N.BHAGWATI, HUMAN RIGHTS IN CRIMINAL JUSTICE SYSTEM 35 (2000).

But still, the conditions have not changed after having lots of report on prison reforms and police administration in India. Prison administration has been off on the subject of the criticism in the press, Parliament and Judiciary. Overcrowding in prison, prolonged detentions of under trial prisoners, unsatisfactory living conditions, lack of treatment programmes and allegations of indifferent and even inhuman approach of prison staff have repeatedly attracted the attention of the critics over the year.¹⁸

*“Justice P.N Bhagwati has categorised three types of violations of humanity in police custody. Firstly through presumed innocence, they are subjected to the mental, psychological and physical privations of jail life. Secondly, a pre-trial detention always affects and disrupts their family life and in most of the cases is economically disastrous for the family. Thirdly, it prevents them from contributing to the preparation of the defence.”*¹⁹

• NEGLECT OF DUTY

Neglect of the duty by the police personnel in the normal times can also lead to the violations of the rights of the general public. According to B Rattanakara Rao, “the police are the major contributor to neglecting the duty abides by the constitution and marinating the concept of rule of law to the extent of “danger”.²⁰ As per the Police Commission Report, the malpractice of the non-registration case is the first type of violation of the rights of the general public. This is done to escape from the burden of investigation and prove the efficiency through the official statistics about the crimes committed in the working of the police.

The worst sufferer is the victim and whose role is very crucial in the working of the police. The victim reports the case and helps the police in the investigation and further detection of the offenders. The harassment of the victim at this stage by the police is not an uncommon feature. The reason for the neglect of the duty can be many more. One of them is corruption. Many times the victims believe that the police whose has been entrusted with duty for the protection is inefficient and corrupt; sometimes the police demand bribe from the victim to take action and other times, the criminal bribes the police to get free. At the initial, encounter it appears that the victim dissatisfaction is primarily related to an uncaring, routine or hostile

¹⁸ Mullah Committee Report as Cited in *supra* note 14.

¹⁹ MAJA DARUWALA, THE POLICE: POLITICIAN PARADIGM: WHAT DOES POLICE INDEPENDENCE REALLY MEAN? 3-4 (2008).

²⁰ B RATNAKARA RAO, HUMAN RIGHTS AND POLICE 258 (1997).

attitude on the part of police and the police refusal to take actions and to general thoughtless and disregard to obvious victim needs. Thus a number of the victims would not trust the police and would rather bear the loss in silence than report the crime and other wrongs committed against them, to the police.²¹

- **MANIPULATION OF RECORDS AND PERJURY**

As per the report of National Commission of Police in the year 1977, the practice of manipulation of the records is a general practice in the police force. This is done as a cover-up exercise to counter the criticism especially on the behalf of the Human Rights bodies and media. According to Kiran Bedi, a Retd. IPS officer, the police officials mislead the media and the general public by manipulating crime record and stats. In her words, “they never give you the clear picture”. Not even a single police officer and other personnel associated in the police administration have dared to reveal the correct crime graph. According to another Retd. IPS Police officer of Punjab Police K.S Dhillon, “there are two kinds of policemen, the honest and dishonest. The honest policemen always rig the true evidence to convict the man, he knows to be guilty. Whereas the dishonest policemen rig the evidence to convict the man he knows to be innocent. Hence the rigging or manipulation of records is considered as the part of the police operations but it is dishonest rigging to convict an innocent man or to cover up the misdeed which accentuates the violations of the rights of the victim.

- **USE OF VIOLENCE**

In the normal times, the use of violence and the abuse of the violence by the police personnel for their own vested interest or under some pressure is also an exercise which infringes the right of common people. The police are legally empowered to use the force if their duty so demands but it has to be based on the reasonable factors and under restricted limits. But in reality, the ruthless use of violent forces has distorted and blurred the image of the police personnel. There are as many as instances of this abuse of force and it is this violent attitude of police, which made Justice A.N Mulla to make a scathing, an indictment on the Indian police in these words: “I say it with all sense of responsibility that there is even not a single

²¹ BHARAT B. DAS, VICTIMS IN THE CRIMINAL JUSTICE SYSTEM 124 (1997).

lawless group in the whole of the nations whose record of the crime is anywhere near to the record of that organised set up which is known as Indian Police Force”.²²

VIOLATIONS OF RIGHTS IN EXTRAORDINARY CIRCUMSTANCES

The extraordinary situations are a situation ridden by terrorism and insurgency. In India, such situations prevailed in the state of Jammu Kashmir, Punjab, and Bihar, Jharkhand, Andhra Pradesh, Orissa and North Eastern states where the menace of Naxalite or Maoist groups prevail. Terrorism today has become a globalized danger to the humanity; democracy and humanity are one of the toughest tasks which the civil forces like police have to tackle. Dealing with terrorism is more difficult than fighting with the enemy on the border in case of the external aggression. Attacks of the terrorists are always sudden and cannot be judged beforehand. Even the intelligence many times fails to get the sufficient information about the possible attacks and plans of these groups. Members of these groups live and function within the general masses. Hence, they are difficult to identify and check. Therefore in these areas which are ridden with terrorism or insurgency, the police have to highhandedly deal with the people in order to deal with such situations and crisis.

BEFORE AND AFTER PRAKASH SINGH v. UNION OF INDIA CASE

As the Police Act was enacted in the year 1861, there have been very no clear measures taken up by the government to bring reforms to the police system in India. Several Committees were organised and set up by the government to look and suggest reforms. The most important milestones in this regard were made after the case of Prakash Singh v. Union of India case in the year 2006. Political interference in the work of the police has been considered as disastrous consequences on the rule of law in this country and this was examined by the Police Commission in its second report (August 1979). The commission made the following recommendations to deal with the problem-

A State Police Security Commission should be set up in each and every state to²³ -

1. Lay down broad policy guidelines for the police functioning
2. Evaluate the functioning and performance of the state police

²² *supra* note 20, at 226.

²³ *2nd Report of the National Police Commission*, (Aug. 01, 2018, 11:00 PM), https://humanrightsinitiative.org/old/publications/police/npc_recommendations.pdf.

3. Function as the forum of appeal and to dispose of representations from the general public subjected to illegal orders and regarding their promotions.
4. Review and check the functioning of the police force.

154TH LAW COMMISSION REPORT HIGHLIGHTED THAT²⁴

- Reduction of executive control over police investigation in certain grave offences so that the later would enjoy the shade and protection of the judiciary.
- Better investigating owing to the scrutiny of the court which leads successful prosecutions.
- Reductions in the possibility of unjustified irrelevant and unwarranted prosecutions.
- Speedy investigation for the speedy disposal of the cases.

The advent of the independence changed the political scenario in India, but the police system remained more or less unaltered as it was earlier during the British era. However, the need for the change and reform in the police had been realised widely. Throughout 1960's many state governments sought to take initiative to set up commissions in order to examine the problems of the police and suggest improvements. During 1970's, the government of India after getting requisite from the state government became active and set up the committee on police training in the year 1971.

In 1996, Mr Prakash Singh, a retired police officer, petitioned the Supreme Court under Article 32, urging for the issue of directions to the government of India to frame a new Police Act on the lines of the model act drafted by the commission in order to ensure that the police is made accountable essentially and primarily to the law of the land and the people. Supreme Court in the year 2006 considered that it could not wait for the central government to take necessary steps for the police reforms and had to take appropriate directions for immediate compliance. The Supreme Court through its various interpretations and observations in different cases has referred to the recommendations that have been made by the several committees on police reform and laid down four requisite points of reform.

- (a) Police Security Commission at State Level.

²⁴ Law Commission of India, 154th Report on the Code of Criminal Procedure, 1973, (Aug. 01, 2018, 11:00 PM), <http://lawcommissionofindia.nic.in/101-169/Report154Vol2.pdf>.

- (b) Transparent and fair procedure for the appointment of the police personnel and the desirability of giving him in a minimum fixed tenure.
- (c) Separation of managerial work from law and order.
- (d) New police act should reflect the democratic aspirations and expectation of the people.

On 22nd September 2006, the Supreme Court in its historic Judgement in *Prakash Sing v. Union of India*²⁵ gave necessary directions to the central and state government to comply with the set directives laying down the practical provisions to kick-start the police reform. The Supreme Court required the governments whether at the state or centre level to comply with directives by 31st December 2006. The court granted 3 months extension to comply with all the four directives while stating that the others had to comply with immediately.

CONCLUSION

The crux of this article is to draw the attention towards police reform which is the need of the hour in order to secure the professional independence, integrity for the police so as to function truly and efficiently as an impartial and independent agent of the law of the land and at the same time to enable the state and central government to oversee the police performance to ensure its conformity and consistency to law. Every state has a mechanism known as Criminal Justice Administration which mainly involves three organs for the process of justice delivery system namely, the police, the judiciary and the prison. Thus, the police are merely at the primary and frontier agency of criminal justice administration. The most important aspect which is of great concern for each and every society, in the present time, is “Human Rights Vis- a- Vis Police role in the Criminal Justice System. It is indeed the protection of these rights which become sole objective of the criminal justice system but it is the irony of the situation which is prevailing in India that this very system, many a times has indulged into the violations of human right, thus completely defeating the sole purpose of criminal justice. It not only tends to breach the trust of the general public into the judicial system but it also proves to be a setback to a modern democratic set up of our country. The police have done a great job so as to preserve and maintain law and order and in controlling many illegal activities, but all the good work done by the police is obliterated because of the dismal record as far as the violations of human rights and fundamental rights of the individuals are

²⁵ *supra* note 7.

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concerned. It completely maligns the image of the police which further demoralise the other forces and ultimately leads to inefficient Criminal Justice Delivery system. Therefore, the need of the hour is to have an urgent need to overcome all the problems and discrepancies in the functioning of this system so that the image of the police brighten up just as the rays of sun in the modern Criminal Justice system so that the faith of people in a democracy can be retained.