

Police Reforms against Custodial Violence in India: Past and Present

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ABSTRACT:

This paper is dealing with the issue of tracing the history of police reform in relation to the custodial violence or other police excess in India. The police reform process is going on since late 1960s till this date without any visible progress in sight, and with this paper it can be highlighted that it's time to start taking actions on the issue of custodial violence. To understand and trace out the history and present status of police reforms, reference was made to several reports of law commission, National police commission and other committees. Based on these reports and supreme court guidelines, it was established that no steps was taken to reform the police which can minimize custodial violence and police atrocities, so it is time to take steps to implement police reforms in accordance with the reports and recommendation of several committees.

I. INTRODUCTION

Police atrocities are widespread in India and the colonial system of police laws is to be blamed. Police reform thus becomes a necessity, but except for certain circumstances, Police reforms have always been a “red herring” for the policymakers.¹ Police Reform means to reform the Police system such that it is in consonance with the democratic set-up of India, is more robust in dealing with crime prevention and maintaining law and order, is more accountable and respected human rights, and is free from unwanted influence (i.e. de-politicised). Police have a vast array of discretionary powers which police often time misuse. The conduct of the police is also not satisfactory with numerous instances of police atrocities. The culture of impunity in the police department is not a coincidence but it's a systematic due to the existing colonial laws which still are in force. There is no accountability fixed for the police and the immunity given under section 197 of CrPC. further corrodes any pretense of accountability by police and there is a requirement of getting sanctions from the government for starting a trial against the police personnel. Accountability means an obligation or willingness to accept responsibility to account for one's actions, and this seems to be missing from the Indian Police System.² The National Human Rights Commission has stated that 60 percent of all the arrests made by the police are either unjustified or unnecessary and that 75 percent of all the complaints of human rights violations received are against the police.³ There was no serious thought given to the police reforms before the imposition of emergency in India by the Congress Government. However, having witnessed the police torture and other

¹Mihir Desai, *Red Herring in Police Reforms*, 44 ECONOMIC AND POLITICAL WEEKLY 8-11 (2009).

² K.S. Subramanian, *Why India Need Police Reform*, Centre for Investigative Journalism, CIJ, [www.cij.co.in/](http://cij.co.in/) (2017), <http://cij.co.in/article.php?pageID=23>.

³*Infra* note 13.

police atrocities first-hand, the next Janta Government established the National in Police Commission (NPC) in 1977 for preparing recommendations to de-politicize the police force and kick-start the process of Police reforms. However, after the defeat of the Janta Government in the subsequent election, the reports and NPC were put on the back-burner.

II. POLICE REFORMS: PAST

The National Police Commission prepared eight reports between 1979 and 1981 and recommended several Police reforms. Every report dealt with a separate issue, however, due to the political climate and lack of political initiative, these recommendations in reports were not acted upon. In the first report, NPC dealt with the issue of “Complaints against the police”.⁴ In this report, NPC recommended that there should be a fair and just arrangement for an inquiry into the complaints against the police and it has to be a balanced approach, for this purpose inquiry should include either departmental inquiry by superiors or inquiry by an independent agency. However, in serious cases like custodial rape, custodial death or grievous hurt or death of two or more person due to police firing then judicial inquiry should be mandatory.

The second report recommended the establishment of the “Criminal Justice Commission” which will monitor the performance of various wings and agencies of the police and make a correction measure. It also talked about the role of police which should be to enforce the law and perform duty with no bias and lawfully, without any heed to wishes, indications or desires expressed by the government which is not in conformity with the law or constitution. The Police Act should also be reformed and the provision inserted that no undue and unlawful influence on police can be exerted by the government. The second report also talked about the political interference with the police led to gross abuse, erosion of rule of law and loss of police credibility in the eyes of the public. To depoliticize police, the commission recommended the establishment of State Security Commission where police can appeal against any “illegal order” or bias in their promotions, a further police officer must be protected from any whimsical order of the government regarding transfers.

The third report talked about having separate investigation wings for the marginalized sections of the society like the SC/ST. It also provided a guideline to prevent vexatious arrests. The report mentioned that police powers available in case of arrests are very wide and thus it has a scope for harassment and humiliation of any person based on mala-fide intentions, and the arrests happened arbitrarily based on the political influence. The Police Commission recommended that section 2(c) and 2(1) of the CrPC. should be amended in such a way that it removes the emphasis that it currently places on arrests in cases of non-bailable offense. NPC further provides guidelines for arrest which it recommended to be strictly followed which includes that No person

⁴ The National Police Commission: Some Selected Recommendations of the National Police Commission, CHRI, http://humanrightsinitiative.org/old/publications/police/npc_recommendations.pdf. (last visited Aug 23, 2018).

should be handcuffed, who by reason of sex, age, or infirmity if such handcuffing is unnecessary for keeping the person in custody. A person accused of bailable offences shall not be handcuffed, the direction of the court should be obtained to handcuff an accused in case of judicial custody, under trial prisoners shouldn't be chained and handcuffed unless there exist a possibility that the accused might escape or if the under trial is being violent, the facts and reasons for handcuffing must be noted in Sentry Relief Book, any prisoner or accused person shall not be handcuffed or chained if he is bed-ridden in hospital, aged or women, or juvenile, or a civil prisoner.

NPC discussed in the fourth report about providing protection in case of an arrest, where it recommended that Section 50 A should be inserted in CrPC. which require the police to inform the person nominated by the arrestee. NPC dealt with the issue of Third Degree methods by the police and recommended several reforms, to reduce instances of such vile methods. The recommendations are that there should be surprised visits by the superior police officers to police station to find out any instance of illegal custody or ill-treatment, magistrate must ask the accused if he has any complaint against the police and there should be a medical examination if the accused in custody complains against the police, mandatory judicial inquiry in cases of death or grievous hurt in police custody, use of scientific interrogation technique should promote and developed.

NPC pointed out in the fifth report that the reason for the poor public perception of the police in public is because of the police biases, corruption, brutality and police harassment. It also lamented the requirement of police transparency in all activities where it's possible. In the Sixth report, NPC said that there the investigating wing and the law and order wing of the police should be separate.⁵The seventh report dealt with the questions of norms regarding police stations, enacting a Central Law for the armed police force for uniformity and establishment of Central Police Committee which will advise on police reforms, police organization etc. In the eight and the last NPC report, the commission talked about fixing police accountability by developing a system of monitoring and evaluating police performance. However, the most important recommendation of this report was the suggestion regarding the withdrawal of the protection provided to the police under section 132 and 197 of the Cr. P.C. NPC recognized the difficulty in obtaining the sanction from the government to press a complaint against some police personnel. NPC recommended that with the removal of the protection, any civilian will be free to complain and get justice in the court of law. NPC also recommended replacing the colonial police act with a new Model Police Act which reforms the police system in such a way that it promotes the rule of law in the country.

The response to the recommendations of the NPC was lukewarm. For a long time, there was no progress on the police reform as the state governments were not ready to budge. One reason for the lack of any action is

⁵National Police Commission, NPC: Sixth Report Para 48.15 (2018).

because the political actors can exert influence over the police in its current system, and no one wants to withdraw himself from such an advantage.

III. COMMITTEES

After the failure of the NPC, several commissions were established for police reforms. Some of the important ones are the Riberio Committee (1998), Padhmanabhaiah Committee (2000), Malimath Committee (2003) The main crux of all these committees was to make police more accountable and efficient and reforming the system of policing so that political influence over police can be minimized. Riberio committee recommended the establishment of the “Police Performance and Accountability Commission (PPAC)”, which will monitor the police force and ensure that police are accountable to the law of the land. Riberio committee against emphasized on the need to separate the investigation wing from the law and order wing.⁶

Padhmanabhaiah Committee on police reform focused more on reforming the police organization. It recommended that the existing constabulary should be retrained and a right attitude towards work should be embedded in them, and anyone failing training should be dismissed from the service. Just like Riberio committee⁷, this committee also suggested that the investigation and law and order work should be separated. The committee also called for the mandatory judicial inquiry in cases of custodial rapes or custodial deaths, and also the replacement of the Police act 1861 with a new police act. However, on the question of complaints against police personnel, the stand of the committee was disappointing as it said that such complaints originate from the nature of police job and not the manner in which that job is done. Further, it said that police officers are vulnerable to vexatious complain hence complaints against a police officer should be heard by the superior police officer and the senior officer/senior hierarchy in the department will decide if the complaints must be resolved informally or there should be a formal investigation against the police personnel. If the complainant is not happy with the verdict then he can approach the “Non-Statutory District Police Complaints Authority (PCA)”. However, the problem is in the composition of the Police Complaints Authority provided by the Padhmanabhaiah committee where out of the four members, two are from the police department which makes it hard for the civilian to approach the PCA to file a complaint against.⁸ Police cannot be the judge of their own actions, and such a set-up provides no confidence that justice will be served.

In the comprehensive report for the reform in the entire criminal justice system by the Malimath Committee, there are provisions provided to safeguard accused and reduce custodial torture like the establishment of

⁶Summary of Ribeiro Committee's Recommendations, CHRI,

https://humanrightsinitiative.org/old/publications/police/recommendations_ribeiro.pdf. (last visited on 22nd Aug 2018).

⁷ Summary of Recommendations made by the Padmanabhaiah Committee on Police Reforms, CHRI, http://humanrightsinitiative.org/programs/aj/police/india/initiatives/summary_padmanabhaiah.pdf. (last visited on 22nd Aug 2018).

⁸The Padhmanabhaiah Committee On Police Reforms, Lexpress, <https://lexpress.in/criminal-justice/the-padmanabhaiah-committee-on-police-reforms>. (last visited on 22nd July 2018).

interrogation centers and the use of scientific modern techniques for investigation. “If tortured, an accused should have the freedom to appraise the Magistrate of the incident, when produced before him. In such cases, the magistrate can remand him to judicial custody. This should be true of any violence or sexual offense perpetrated against an accused person in custody. In all such cases, there must be a detailed inquiry. Like the previous committees, Malimath committee also favored the separation of investigation and law and order wings of the police and replacing the Police act 1861 with a new police act.⁹Based on the recommendations of committees and NPC, a new Model police bill was developed which intended to incorporate the suggestions provided by the committees. However, ever since the first Model police bill was prepared in 2004, there is no progress except that the model police bill keeps getting developed but it is not transformed into an Act yet. The updated “The model Police Bill, 2015” incorporated several suggestions like providing functional autonomy to police, making it more accountable and promoted the use of scientific methods of investigation. It also mentions the establishment of Police Accountability Commission.¹⁰

IV. LAW COMMISSION REPORTS

After the case of BrijLal, Law Commission in its 113th report recommended that a new section 114B should be inserted in the Indian Evidence Act, 1872.¹¹ Section 114B contains that during the prosecution of the police officer for an alleged injury to a person in custody, and if there is evidence that such an injury was caused during the period of the injury then it will be presumed by the court that such an injury was caused by the police officer having custody. Commission in this report also mentions that the problem of the custodial violence as several aspects and it will be convenient if the CrPC can be revised. Commission also recommended that the medical examination of the accused should be done when arrested by the police.

Law Commission in its report number 152nd on Custodial Crimes made several recommendations to reduce the custodial violence. It took into consideration the provisions of the Indian Penal Code, 1860 particularly sections 166 & 167 (disobeying directions of law by public officers), 220 (confining a person for corrupt and malicious reasons), 330 & 331 (illegal restraint and causing harm to body) sections 340-348 (wrongful restraint and wrongful confinement), sections 376(2) (aggravated form of rape committed by police officers etc.), 376B to 376D (Custodial sexual offences) and sections 503 and 506 (criminal intimidation). The Commission also considered the provisions of CrPC, particularly section 41 (arrest), section 49 (restraints), section 50 (grounds of

⁹Shankar Gopalakrishnan, *Recommendations Of The Malimath Committee On Reforms Of Criminal Justice System*, PEOPLE'S UNION FOR CIVIL LIBERTIES, Pucl.Org, 2018, <http://www.pucl.org/Topics/Law/2003/malimath-recommendations.htm>. (Last visited on 22 July 2018).

¹⁰Sony Kunjappan, *A Review on “The Model Police Bill 2015”- Proposed to the Parliament of India*, Forensic Research & Criminology International Journal (2016). <http://medcraveonline.com/FRCIJ/FRCIJ-03-100091.pdf> (last visited on 22nd Aug 2018).

¹¹Law Commission, *Law Commission Of India One Hundred And Thirteenth Report On Injuries In Police Custody*, Report Number 113th (1985).

arrest), section 53 (medical examination of the accused), section 54 (medical examination at the request of the arrested person), sections 56-58 (action after arrest), sections 75-76 (arrest under warrant), section 154 (information in cognizable cases), section 163 (provision of inducements) section 164 (confession before magistrate), section 313 (examination of the accused in court), section 357 (compensation).¹² The core recommendation of the commission amending of section 41(1A) so that reasons of arrest must be recorded and also insert section 50A where police must inform the relatives about the arrest of a person. Law commission also touched upon section 197 of CrPC. where it noted that protection under section 197 is being abused the police officials. Law commission also stated that the present position of the law is that sanction is required in an act committed by a public official was in discharge of the duty or related in some manner with the discharge of the official duty. The court cases point out that in cases of torture, the prior sanction is not required. However, there still exists misuse of section 197 and for that Law Commission said that its already very hard for the prosecuting a public servant and on top of that section 197 prevents the trial of case related to custodial crimes, thus there is a need for clarification. Law Commission recommended the insertion of an explanation under section 197(1) which reads as;

“Explanation—for the avoidance of doubts, it is hereby declared that the provisions of this sections do not apply to any offence committed by a judge or public servant, being an offence against the human body committed in respect of a person in his custody, nor to any other offence constituting an abuse of authority.”

Law commission prepared several reports where it tried to suggest ways to reduce police atrocities, like in its 177th report¹³, it suggested an amendment to section 55A of CrPC, by adding a provision which protects the health and safety of the arrested person. Similarly, in its 268th report, commission suggested insertion of section 41(1A) and amendment of 41B of CrPC where police officer must inform the rights of the arrested person, and easy process of getting a bail.

In 217th report¹⁴, Law Commission recommended that the definition of the torture should be wide enough and it should include “inflicting injury, either intentionally or involuntarily, or even an attempt to cause such an injury, which will include physical, mental or psychological injury.” It recommended that the United Nations Convention against Torture must be ratified. Other suggestions include amendment in CrPC so that compensation can be provided in case of certain police atrocities, there should be stringed punishment in case of torture, there should be an effective mechanism which protects the victims and complainants, and law commission also said that the concept of “sovereign immunity” cannot override the constitutional rights. Law

¹²Law Commission, Implementation of ‘United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment through Legislation, Report Number 273th (2017).

¹³Law Commission, Law Relating to Arrest, Report No. 177 (2001).

¹⁴*Supra* note 10.

Commission also recommended that the “Prevention of Torture Bill” should be passed as an act based on the law commission report.

V. PRAKASH SINGH CASE: POLICE REFORMS

In the landmark judgment of Prakash Singh vs Union of India,¹⁵ the Supreme Court provided six directives for police reforms. The relevant directive for this article is the directive 4 and directive 6 which talks about the separating function of investigation and law and order and the establishment of the Police Complaints Authority (hereinafter referred as PCA), at State and district level. The purpose of the PCA is to look into the complaints made by the public against the Police officers for serious misconduct including police atrocities. The PCA can then investigate the matters using state machinery and make a recommendation to the appointing authority for any disciplinary action if so required and it can even recommend the registration of an FIR against the police. However, what makes PCA different from others is that its recommendations are binding on the state. The composition of PCA will be different for state and district level. The State PCA will be headed by a retired High Court or Supreme Court judge and the district PCA will be headed by a retired district judge. The jurisdiction of the State PCA will be in matters related to death, grievous hurt or rape in police custody by a police officer of or above the rank of Superintendent of Police. The jurisdiction of the district PCA will be in similar incidents but its authority is limited to the investigation of Police officer only to the rank of Deputy Superintendent of Police and below.

A report prepared by CHRI in 2016 looked into the compliance with the judgment in its report.¹⁶ In the report, it has been found that 23 states have established State PCA and only fifteen have established District PCA, but out of this only 12 states have established PCA at both the levels. Further, it has been found that in only 6 states, the members of PCA are selected through a transparent and independent section process. The most important aspect, which is the power of making a binding recommendation, is also missing and only in 9 states the recommendations made by the PCA is binding on the state government. This shows that the government is still not interested in reforming the police and making the police accountable because even after more than 10 years, from the time when the Prakash Singh’s judgment was delivered, there is almost no progress and initiative by the Governments and there is only a partial compliance which is meaningless.

VI. CONCLUSION AND SUGGESTIONS

There were several suggestions in various reports ranging from National Police Commission which proposed

¹⁵(2011) PL May S-12.

¹⁶Compliance with Supreme Court Directives on Police Reforms, Commonwealth Human Rights Initiative (CHRI), 30th November 2016, <http://www.humanrightsinitiative.org/download/Compliance%20with%20Supreme%20Court%20Directives%20on%20police%20reformsNov%202016.pdf> (last visited on 22nd Aug 2016).

the withdrawal of section 197 of CrPC, to Law Committee reports, which suggested a separate law to punish the use of torture and insertion of an explanation that section 197 will not apply in cases of police atrocities. The problem of police system and why it needs police reforms can be summarised by the observation made in Padhmanabhaiah Committee

“In India, the police are a law unto themselves. The existing system has two major faults. One, it does not allow the entire dirt in the police department to come to the surface. Lack of transparency in the working of the system lets some of the muck remain under the carpet. Two, even where an inquiry into a citizen’s complaint against the police is made, it lacks credibility. The public does not trust the police and feel that the department is incapable of conducting inquiries in public complaints in a fair and effective manner.”

The Police reforms were a failure and government didn’t implement any of the recommendations of these various forums. Similarly, even when the Supreme Court directed the kickstart of the Police reform in the Prakash Singh Case and told state government to establish PCA, only a select few states have complied with the order in a very partial way. Lackluster attitude to reform the police system shows the deeper malice that runs in the system, which is the political influence. All these reports have mentioned that there is no police accountability.

Several steps can be taken for Police Reforms, one of which is to establish Independent Civilian Oversight Body (ICOB) with the jurisdiction over Police force to make a recommendation against them in cases of violation of the law (custodial violence, serious misconduct, corruption etc.), and such a recommendation should be binding on the state. The presiding board of officer should be from the civil society having an independent bent of mind with no biases, so that the state or the police cannot influence its decision-making process. The ICOB, however, is shouldn’t be empowered to punish the serious crimes of Police Atrocities like custodial deaths, encounter killings and custodial rape etc, but only make a recommendation for charge-sheeting or filing an FIR. ICOB body is different from the PCA because there is no interference of the state, and the body is entirely independent. Another function of the ICOB is to establish a task force, comprising of the civil society members, NGOs and judicial officer who should be entrusted with a task of doing a surprise check at police stations in various locations. ICOB should be established in every district of India for an easier access to justice. Other steps can be the promotion of Community Policing, establishing Special Courts or benches to deal with police atrocities, modernization of the police force, and strict abidance to the recommendation and directives made by the Law Commission and Supreme Courts.