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ABUSE OF POWERS BY THE POLICE OFFICERS

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ABSTRACT

The police is the only branch of government which are close to the citizens. Their basic function is to maintain public peace, law and order, prevention and detention of crime. Protection of domestic set up which includes the right to live with human dignity which is one of the fundamental rights guaranteed under article 21 of the constitution.

The National Human Rights Commission (NHRC) has been receiving many complaints relating to abuse of power by the police officers. Like non-registration of FIR, arrest of innocent persons in false cases, false encounters, corruptions etc. The civil society considers it a serious crime against the dignity of human being and a violation of human rights.

In this paper an attempt has been made to discuss the abuse of powers by police officials the main objective of the paper is to discuss statistics of police abuse during past years. In what aspect do they abuse their powers. Some landmark judgements related to police abuse. The sources of the discussion are from newspapers, magazines, police commission reports, books, national human rights websites, and from other sources.

1. INTRODUCTION

The word police is taken from the Latin word 'politia' which originates from ancient Greece. Broadly speaking the word police means a public official who implement laws. The police act, of 1861, defines police as 'the word police will incorporate all peoples who will be selected under this act'.

Police they are always been in the news for some wrong reasons. The Nithari case had shaken the country. Most of them are indulged in crimes like custodial crimes, police brutality like molestation, torture, rape, fake encounters, and death in police prison, corruptions, and by reading all the news police gets an impression that they don't defend the rights of the people, but violates them. These kinds news create notion that the police officers are insensitive, brutal, and corrupt. But we can't ignore the fact that

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there are policemen who give their lives to protect the integrity of the nation and provide valuable services.²

Enforcement of law is more difficult when there is violation is done by the police, when the law enforcer becomes law breaker th³at results to assaults on law even on human dignity. Violations of human rights have a very huge⁴ impact in public confidence. Prosecution in court and the innocent being punished. If human rights are systematically followed by the police and they develop professionalism in preventing crime maintain public order and behave good with ordinary citizens. Then public confidence will build, legal prosecution will be successful and justice will be served to the innocent.

Criminal are considered as an unsocial persons who have to be kept out of society. But that doesn't mean that they are subject to inhuman treatment like abuse, torture etc. Our constitution of India guarantees the right to life, personal liberty, the right to have a legal practitioner and many more provisions, CRPC also provides some basic rights of arrested persons.

2. HISTORICAL BACKGROUND

Police are not a new concept. We can get references of the police in ancient times. In ancient times, Vedas referred names of some officials Jahagribhs in Rig-Veda, and Ugras in the Upanishad. In Kautilya's Arthashastra we can get references of 18 police officers. During the Mughal period, we can reference village police, faujdars, thanadars, kotwals, and subedars who profess police functions.

During the colonial era, in 1861, the police act was passed and the model was based on the model of Ireland i.e. The police of Ireland are not answerable to anyone except the government. One of the brutal incidents of police brutality in India is the Jallianwala bagh massacre on 13 April 1919 where the policemen opened fire on thousands of unarmed people, more than 400 people died and almost 500 people were injured. Police have done many brutal arts in posts and even continued to do so.

Post-independence era, even after post-independence there are many cases of police brutality. CRPC has chapters dealing with securing and peacekeeping of public order, some of the incidences of police brutality are:

² The police act, 1861

² Article 21 of the constitution of India.

³ Article 22(1) of the constitution of India.

⁴ The Hindu

⁵ The Hindu

⁶ The Indian express

2.1 RAM LEELA MAIDAN, 2001

Ram Leela Maidan booked 20 days for Yoga camp and later it became a place for satyagraha. At night when people were sleeping, police entered the ground, used tear gas, and lathis on the people who were sleeping. Strict action has been taken by the court on the policemen who were involved.

2.2 TOOTHENKUDI, TAMIL NADUANTI- STERILE PROTEST, 2018

The Tamil Nadu Pollution Control Board ordered to closing sterile copper smelter plant, due to which many people started protesting which resulted in police firing and injuring almost 13 peoples.

2.3 DURING COVID TIME

The aim of the police was to stop overcrowding. But there are incidents where police brutality was so horrifying. In Madhya Pradesh, the farmer was returning home after watering his field. 6 policemen asked him for a bribe when he refused to pay it they beat him so brutally that he was severely injured, he immediately went to the hospital but later he died because of the wounds and excessive bleeding. Also, as per government guidelines, peoples can move out for essential services but police officers ask them for bribes and if they don't pay they were beaten mercilessly.

3. ABUSE OF POWERS

3.1. NON REGISTRATION OF FIR

One of the most serious and common injustices by the police is non registration of FIR. The most famous Nithari case, 2006 this is not a only case of non-registration of FIR. Most of the time, they were not willing to do their job. There are many reasons why they don't register the FIR. And the most common reason is political. The political leaders in the state government keep records of crime figures low before the state legislature. Power and money corrupts all the process of law. And secondly there are much political interference when some influential peoples are involved in the case. They don't register the cases or they make victims the accused. In most of the station, they think that registration of FIR is a favour and not an obligation. Even they charge money for registering FIR. And the victims who can't afford that charge their FIR are not registered.

Under section 154 CRPC, states the officer in charge has to register the FIR as soon as a complaint of the offence is registered. Article 14 of the Constitution guarantees equality before law and equal protection before law.

3.2. ARREST AND DETENTION

The law gives powers to the police and also empowers them to use reasonable force to them. But police don't use this power sensibly. The arrest for minor offences is 43.2% of the expenditure of the prison . They arrest those persons who need not to be arrested at all. There are no. Of arrests for very small offences⁵ and most of them were not able to get bail.

According to the National Human Rights website, a man was arrested by the police in theft and called for questioning on 13th June 2011 then released. On 14th June he was again called. And he consumed poison there. Police take him to the hospital but are not able to save him. After investigation it was revealed that he was in illegal custody from 8th – 13th June and was tortured mercilessly

Another report of NHRC is that a man was in illegal custody for 13 days and there he was tortured mercilessly which resulted in a fracture of his neck and bones of the leg.

3.2.1. ACCORDING TO ARTICLE 22 OF THE CONSTITUTION

Protection against arrest and detention in certain cases

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate

(3) Nothing in clauses (1) and (2) shall apply (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose

(7) Parliament may by law prescribe

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub clause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub clause (a) of clause (4)

Right against Exploitation

3.3. ACCORDING TO CRPC

Section 50. Person arrested to be informed of grounds of arrest and of right to bail.—(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest. (2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf. 2 [50A. Obligation of person making arrest to inform about the arrest, etc., to a nominated person.—(1) Every police officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be disclosed or nominated by the arrested person for the

purpose of giving such information. (2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station. (3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as may be prescribed in this behalf by the State Government. (4) It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person.]

Section 51. Search of arrested person.—(1) Whenever a person is arrested by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail, the officer making the arrest or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing-apparel, found upon him and where any article is seized from the arrested person, a receipt showing the articles taken in possession by the police officer shall be given to such person. (2) Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.

Section 56. Person arrested to be taken before Magistrate or officer in charge of police station.—A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

Section 57. Person arrested not to be detained more than twenty-four hours.—No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

4. VIOLENCE AGAINST WOMEN

Lifetime Physical and/or Sexual Intimate Partner Violence: 29.3 % .Physical and/or Sexual Intimate Partner Violence in the last 12 months: 24 %. Lifetime Non-Partner Sexual Violence: Official National Statistics Not Available. Child Marriage: 27.3 % Violence against women is violence against their dignity. The violence against women is generally multi dimensional like rape, domestic violence, and marital rape. And police don't interfere in personal matters. And most of the time they are influenced by the societal

trends they particularly do this in cases of rape and domestic violence. Another reason why don't respond in these cases is because of corrupt practices like bribery, influential connections etc.

5. CASES OF POLICE ABUSE

5.1. RUDUL SAH V. STATE OF BIHAR, 1983 AIR 1086

The Apex Court ruled that the state must pay compensation in the amount of \$30,000 under writ jurisdiction for violating the fundamental rights protected by Articles 21 and 22 of the Constitution in this case, where the petitioner was wrongfully imprisoned for 14 years even after being found not guilty.

5.2. SAHELI V. COMMISSIONER OF POLICE, 1990 AIR-513

In this instance, a nine-year-old child had died as a result of the harsh beating by the police. However, the division bench ruled that the mother of the deceased kid, not the police officer, is entitled to compensation from the Delhi Administration in the amount of Rs. 75,000.

5.3. IN STATE OF MAHARASHTRA VS. RAVI KANT PATIL, 19 MARCH, 1991

An uncharged prisoner was forced to march through the streets while being handcuffed, bound, and waiting for trial.

The State Government was mandated by the Supreme Court to pay the victim Rs 10,000 in restitution.

The question of who should pay the compensation—the individual police or the State—was debated by the court in this case. In light of the vicarious liability, the court stated that even if the police officer exceeded his authority and that he had behaved in an official capacity, it was unlikely that he could be held personally accountable.

5.4. NILABATI BEHARA VS. THE STATE OF ORISSA, AIR 1993, SC 1960

In this instance, a mother whose son had passed away in custody due to injuries sustained by the police was the one who reported a custodial death. The Supreme Court came to the conclusion that the death

was brought on by police brutality, which was a breach of fundamental rights, and so compensation was granted in accordance with Article 32 of the Constitution.

5.5. A.V. JANAKI AMMA. VS UOI, 2004 (1) ALD 19

In this landmark case, the court found that only when Article 21 is broken are Public Authorities, Officials, and the State required to make restitution.

The Supreme Court added to this rule in the case of Nilabati Behara by stating that compensation will only be given if Article 21 has been broken and the victim's death or torture has been proven beyond a reasonable doubt.

The Sube Singh decision added to the Nilabati Behra decision that compensation will only be given if the infringement is egregious and of a scale that would shock the court's conscience. Thus, it is evident that there is no established rule that governs how the amount of compensation should be determined at this time; the decision rests entirely with the court. When a state will be held culpable and for what activities the police themselves will be held guilty under public law has not yet been determined specifically, either by the court or by the government. A police officer can only be held personally responsible under criminal culpability, and even then only to a financial extent.

5.6. P.P. UNNIKRISHNAN V. PUTTIYOTTIL ALIKUTTY, 2003 ALL MR (CRI) 766

In this instance, the respondent was taken to Perambra Police Station by the S.L. of Police and the police constable there, where he was wrongfully detained for four days and subjected to severe abuse before being brought before the court.

The Supreme Court stated in a decision on appeal regarding the application of Section 197(1) that "There must be a reasonable nexus between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable claim, but not a pretended or fanciful claim, that he did it in the course of performing his duty."

5.7. UTTARAKHAND SANGHARSH SAMITI V. THE STATE OF UTTAR PRADESH, 1994

In one instance, the cops are accused of murdering 24 persons as well as assaulting and raping several women. However, the court in this particular case just ordered the wrongdoing authorities to pay monetary damages without laying any charges against them.

In this instance, 10 lakhs were given to those who were killed, 10 lakhs to those who were sexually assaulted, and 5 lakhs to all other women. In this case, the division bench ruled that only actions that have a direct connection to the performance of an official task by a police official while they are on duty are covered by Section 197. It was stated that actions like wrongful detention, setting up weapons to demonstrate fake recoveries, running into unarmed aggressors, altering or tampering with evidence, sexual harassment, rape, and other similar behaviours are neither ordered by the state nor expected to be taken while carrying out official duties. In order to prosecute such lawbreakers, no official decree is necessary. However, even under criminal law, the police are solely responsible for making restitution; even if they go beyond their authority, no criminal charges may be brought against them. This is because of sovereign immunity.

Out of the numerous examples of police brutality in India that go unreported, a few are due to this impunity.

6. CONCLUSION

Maintaining law and order in a country with a population of 140.76 crores with insufficient police stations, and inadequate and insufficient police forces. It is a difficult situation for policemen, with long working hours, and inadequate working conditions. And even they can't form a union to demand their rights. The police system on their side has to make a lot of efforts to remove all these malpractices. The police act drafted by the Soli Sorabjee committee punishes the policeman who fails to register an FIR without any lawful reasons with imprisonment of 3 months or with a fine or both. The police management should take proper action for not maintaining law and order and violating the human rights of the people. The policemen need to change their attitude toward their work. Proper direction from the senior officials can reduce the violation of human rights.

Police are expected to play a sensitive role in cases of violence against women. They should do their duties as it doesn't violate the human rights and dignity of the women. The violence against women is

untold misery it violates their right to life, dignity, privacy, health, and education. They get threats of death, blackmail and many more. Sensible policemen can make sure that the rights of women may not be exploited again. They have to take these kinds of cases seriously and take strict actions in these cases. They should not blame women or label them as personal cases. If the police becomes sensitive they will never misuse the law.

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