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An Analysis of Racial Profiling Vis-À-Vis Police Bias

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While all types of police misbehaviour or corruption are unpleasant, racial profiling stands out among them because it involves a number of specific difficulties that are difficult to address through traditional police accountability procedures. In order to carry out their daily responsibilities, society bestows law enforcement officials a wide breadth of discretion.¹ While the need for speed in law enforcement demands discretion, if left unchecked, wide discretionary powers can lead to police personnel abusing their positions and participating in misbehaviour ranging from violent excessive use of force to fabricating evidence and racial profiling. Many kinds of police misconduct and corruption provide visible evidence, allowing law enforcement officials to take action to remedy the problem. Racial profiling, on the other hand, is a subtle technique that can easily go unnoticed. The writer in the research paper has made an attempt to re-evaluate the laws and problems concerned and on the same note cherishing the various issues involved with the help of relevant judicial pronouncements and interpretations.

Keywords: racial profiling, duties, falsifying evidence, authorities, police misbehaviour.

INTRODUCTION

Racial profiling is a discriminatory practice in which law enforcement officials target people suspected of committing crimes based on their race, ethnicity, religion, or national origin. The

¹ The dissenters in Terry v. Ohio and its offshoots warned that giving police latitude in performing their responsibilities can nearly invariably be portrayed as police misbehaviour

utilisation of a collection of traits that detectives believe are connected to criminal conduct is known as criminal profiling. Many members of racial minority groups believe that police officers target them unfairly because of their race or ethnicity. Many people, particularly minorities, think that cops use race as a "proxy" for criminal behaviour. Law enforcement personnel are often believed to engage in racial profiling by racial minorities. Racial profiling is still one of the most troublesome issues in the criminal justice system for a multitude of reasons. To begin with, established criteria make proving racial profiling allegations extremely difficult. Second, racial profiling poses unique challenges since, regardless of whether authorities can "prove" racial profiling accusations using standard legal methods, many minorities logically believe they are being treated unfairly.

Our law enforcement officials, who are entrusted with maintaining and implementing the law in an unbiased manner and preserving the lives, liberty, property, human rights, and dignity of members of the public, have failed to do so and have discriminated against people based on their religion and ethnicity. Labelling someone a criminal, lawbreaker, or terrorist purely based on their ethnicity, race, or skin colour is a year-long activity that takes place all over the world. In many nations across the world, slavery of black people, discrimination against the Muslim minority at airport checkpoints, denial of visas to particular ethnic groups, mistrust of a few ethnic groups or nationalities, and so on are all quite common. Even in India, people are classified based on their ethnicity or race.

This article will discuss who is more prone to prejudice, the causes that contribute to racial profiling and police bias, the impact of racial profiling, and how it violates both the Constitution and Human Rights Law. Finally, the author offers recommendations and suggestions that will aid in the reduction and elimination of such unethical behaviour.

ROOT CAUSE OF RACIAL PROFILING

Racial profiling is the outcome of one group of society's unconscious ideas, biases, and prejudices toward other groups. Others who are in the majority in a given location at a given moment, exert lordship over those who are less numerous. As a consequence of socioeconomic

and demographic characteristics such as age, occupation, and leisure activities, minorities are frequently exposed to disproportionate monitoring and fining techniques. Furthermore, because there is no legislation against anti-racism, the person who commits the act is unafraid of being prosecuted. There are also a number of variables that contribute to police officers developing a prejudice against the vulnerable population.

REASONS FOR POLICE BIAS

Despite the fact that the Indian police force was founded in 1843, it is currently dealing with the country's class, caste, gender, and religious differences. As a result, the vulnerable group is subjected to racial profiling. This might be due to a lack of proper training, enough sensitization, and/or inherent personal prejudices, according to the Status of Policing in India Report 2018².

Major reasons for such bias include:

1. The Lack of representation from minority communities:

For law enforcement organisations to be effective, they must have equity, diversity, and inclusion of individuals from many ethnic groups. To embrace diversity, police forces of nations such as Australia and the United States have adopted policies such as the Diversity and Inclusion Strategy 2016–2026 and the United States Capitol Police's Office of Inclusion, Diversity, Equity, and Action (IDEA). Scheduled castes, scheduled tribes, and other backward classes, designated as particular ethnic groups in the Indian Constitution, account for 66.2 percent of the entire population in India, but only 36.21 percent of the police force. Because these groups are underrepresented in law enforcement, their rights are frequently neglected. Furthermore, they become victims of oppression, violence, and profiling at the hand of the police.

² The Tata Trusts are supporting the first study of its type in India, A Study of Performance and Perceptions. The examination of policing performance and perception in 22 states is organised largely by best and worst performing states

2. Lack of training and sensitization:

The Supreme Court issued directions to the police and the Central Government in the *Tehseen Poonawala v. Union of India*³. Official sensitization was also included in these recommendations. However, the fact is that Indian police officers do not receive adequate training in human rights, caste sensitization, or crime control methods. Only 6.4 percent of the police force has received in-service training in the previous five years, according to the study. Senior police officers may receive in-service training from time to time, but those at the constabulary level do not.

3. Paucity of Technology:

Because they lack access to electronic gadgets, police sometimes turn a deaf ear to cases of mob lynching or racial prejudice perpetrated by the majority over disadvantaged groups. As a result, they neglect to report the event to the police station and lack manpower to handle the unrest. 70 police stations do not have access to wireless devices, 224 police stations do not have access to telephones, and 24 police stations do not have access to both wireless and telephones, according to the study, which was compiled across 22 states. 240 police stations in those 22 states do not have access to cars.

4. Pressure from Political Parties:

The police are merely a mute spectator of the crime commission due to the obstruction produced by political parties in the inquiry. Despite the fact that group police are not actively engaged in certain incidents of religious and ethnic minorities' oppression, their reluctance to intervene makes them the trigger for violent racial profiling by those in positions of power. It was argued in *Prakash Singh v. Union of India* that those with clout can get away with flagrant violations of the law, resulting in direct violations of the rights of citizens belonging to minority ethnic groups and those who are economically disadvantaged in the form of unauthorised detentions, torture, harassment, and evidence fabrication.

³ *Tehseen Poonawala v Union of India* (2018) 9 SCC 501

THE IMPACT OF RACIAL PROFILING

Although there is little evidence on the impact of racial profiling, numerous studies have found that it can have detrimental consequences on the attitudes and well-being of the people and groups targeted.

- **Mistrust of Institutions** - Every democratic nation's citizens put their faith in institutions and procedures like the criminal justice system, law enforcement, and education, and this faith is the foundation of democracy, order, and peaceful society. All of these organisations require citizens to work constructively and cooperatively with them in order to maximise their effectiveness in accomplishing their goals. However, because the police are the most visible element in the legal system, treating a group of individuals as criminals only on suspicion instills distrust in institutions and the criminal justice system. This also weakens their trust in the government, causing people to feel that it only works for a privileged few. This scepticism stems not just from personal experience with racial profiling, but also from the widespread assumption that it occurs. The government's casual attitude toward addressing and eradicating this problem adds fuel to the flames.
- **Alienation**- When a minority group is exposed to racial profiling, they lose their sense of belonging to their country. They lose their feeling of citizenship as a result of humiliation and harsh treatment. After being rejected by mainstream culture, they either relocate or succumb to the problem.
- **A Blockage of opportunities**- The erroneous classification of any group or individual as suspicious prevents them from taking advantage of opportunities. Despite their innocence, they are associated with a stigma. This makes it difficult for individuals to reintegrate into society and continue to support themselves.
- **Physical Effects on Victims**- Racial profiling has a physical impact on victims as well as a mental one. The rise in mob lynching is a result of this type of racial profiling. Mob lynching is a hate crime in which a mob of violent individuals assault and lynch a person or a group of people based on religious beliefs. Because the police do not take

action against them, the people take the law into their own hands. Furthermore, police officers engage in racial profiling and harassment of minorities. As a result, this sets a bad example in society. As a result, racial and ethnic minorities are vulnerable to physical violence from both the police and the general public.

SUBJECTS OF RACIAL PROFILING IN INDIA

- **DALITS** - In India, caste violence and minorities' oppression are not new. In the year 2000, an upper caste mob stormed a Dalit untouchable hamlet in India's Bihar state and killed thirty-four lower-caste men, women, and children when police turned their backs on them. Although the police were not the ones who perpetrated violence, they might have prevented it with appropriate vigilance and action.
- **MUSLIMS** - According to research based on interviews with police officers, half of the officers exhibit substantial bias against Muslims. Due to unjust targeting and false terror allegations, many Indian Muslims are imprisoned in India. Arresting Muslims and imprisoning them is not only the responsibility of the police. Those who sit above police personnel, mainly the government, are likewise in support of their activities. The government has been known to put pressure on police to carry out such arrests and detentions.
- **CHRISTIANS** - A rise in mob lynching is a result of such prejudice, which raises suspicions about minorities, whether Muslim or Christian and leads to hate crimes. Although the police are not participating in this, they will turn a deaf ear if they come across it. Examining the instance of a Christian who was killed by a mob in Jharkhand exemplifies this point. The tragedy may have been caused as much by police collaboration as by the aggressive mob, according to a police investigation. The investigation discovered that after being attacked for more than four hours, victims were left on the street, writhing in anguish, for over an hour and a half by the police.
- **MIGRANTS** - When citizens move state lines in pursuit of a better life or a source of income, they might become victims of racial profiling. They were portrayed as a security threat, and animosity, discrimination, and even violence had broken their trust and

optimism. Migrants have been the target of xenophobia. The beating and murder of a university student from the northeast, as well as the police's casual approach to the inquiry, became a national news story.

HUMAN RIGHTS LAW AND CONSTITUTIONAL PROVISIONS VIOLATION

Racial profiling is a breach of international human rights legislation as well as the Indian constitution. This type of police policy violates the Constitution's guarantee of equality. This method is skewed and disadvantages minorities disproportionately. Furthermore, Article 2 of the Universal Declaration of Human Rights It is illegal to discriminate on the grounds of race, religion, sex, language, nationality, or social position. Article 2 of the International Covenant on Civil and Political Rights, Articles 1, 2, and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, and Article 2 of the International Covenant on Economic, Social, and Cultural Rights, and Article 2 of the International Covenant on Economic, Social, and Cultural Rights. Racial profiling is a sort of discrimination that violates these laws.

Everyone is equal in the eyes of the law, and everyone deserves to be treated fairly. No one should be discriminated against for any reason. Article 7 of the Universal Declaration of Human Rights and Article 26 of the International Covenant on Civil and Political Rights both include the same idea. Racial profiling is a violation of these norms, and the custodian of laws, the police, is responsible for enforcing them. Articles 14, 19, and 21 of the Constitution guarantee the right to privacy. This right is frequently abused as a result of police officers' arbitrary exercise of authority when conducting searches and detentions of suspects. The right to life enshrined in Article 21 of the Indian Constitution⁴, as stated in the *Maneka Gandhi v. Union of India*⁵, is not only a physical right but also encompasses mental health. Those who are subjected to such behaviour describe it as humiliating, embarrassing and even terrifying. Other rights are affected by racial profiling, including the rights to life, liberty, and security; freedom of movement; protection against arbitrary arrest and other intrusions; effective

⁴ No person shall be deprived of his life or personal liberty except according to a procedure established by law

⁵ *Maneka Gandhi v Union of India* (1978) 1 SCC 248

remedy; and protection of the best interests of the child. Racial profiling is not explicitly prohibited by the Indian Constitution or any other legislation. A straightforward interpretation of constitutional provisions, on the other hand, might lead to the conclusion that such behaviour is forbidden by the Constitution. Although racial or ethnic profiling is not expressly mentioned in international human rights treaties, it has been addressed as a violation of international human rights law by a number of international human rights agencies. The Human Rights Council, for example, had a discussion on racial profiling and incitement to hatred, particularly in the context of migration. Such measures demonstrate that racial profiling has no place in the International Regime.

SUGGESTIONS

When conflict occurs in society, according to a famous American jurist Roscoe Pound, the law becomes an instrument of social engineering that balances the opposing interests in society. He also believed that in a civilised society, men must have the assurance that other members of the community will not hurt them. Although the Indian Constitution has several measures to protect individuals from acts of violence and interprets racial profiling as a violation of the rule of law⁶, however, the threat persists. To combat this, the government must enact anti-racism legislation as well as legislation prohibiting police racial profiling. States must not abdicate their duty to defend victims of racism and racial prejudice, especially immigration.

A public servant who knowingly disobeys any direction of the law as to how he should conduct himself as a public servant, intending to cause, or knowing it to be likely that he will cause, injury to any person as a result of such disobedience, faces a penalty under Section 166 of the Indian Penal Code, 1860⁷. The police force must be educated about current laws, as well as their responsibilities and role in restoring community confidence. The police must ensure that current provisions protecting people's rights are being followed. Furthermore, people

⁶ In India, Rule of Law is embodied in the Constitution- in ideals enshrined in the Preamble and in Part III. Rule of Law has been held to mean due process and just, fair and non-arbitrary procedure

⁷ Disobedience of the law by a public official with the purpose to injure anyone. — Whoever, as a public servant, knowingly disobeys any direction of the law as to how he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term that may extend upto one year, or with fine, or with both

from minority ethnic and religious groups, who are frequently targets of racial prejudice. This would assist them in airing their complaints and ensuring that the people of their communities are not oppressed.

The fourth pillar of democracy is regarded as the media. As a result, the media should not broadcast fake news or hate speech, as they lead to hatred and chaos in society given special consideration in police services. The issue might be addressed by promoting media literacy and advocating the creation of a code of behaviour. The growth of racial discrimination put human rights, particularly the right to development, under jeopardy. It is imperative that progressive change agents in the police force and progressive change agents in the community come together on one platform to establish a shared understanding of the challenges that people confront in society and to provide solutions to those problems. A community monitoring organisation might be formed to evaluate police actions. Such similar groups have been established in countries like UK and Brazil. Finally, if we want to enhance our democracy, we need to examine our biases and prejudices and put ourselves in other people's shoes to understand how they experience life in our society. It must be evident that the law applies to all citizens equally. This would build public confidence in the institution and the government.

CONCLUSION

Despite the fact that minorities' legal standing has grown and several laws have been established to protect their rights, incidences of racial profiling continue to crush minorities' dignity into dust. Such profiling is against the law and has a detrimental impact on the psyche of vulnerable individuals. This breeds distrust in the institution, as well as a sense of isolation. Not only that, but such behaviour jeopardises people's mental, emotional, and physical well-being. When police utilise racial profiling, the majority group becomes more likely to commit hate crimes against minorities because they are no longer afraid of the law. Racial profiling also compromises national security and human dignity.

Furthermore, such behaviour is incompatible with the Human Rights system. It deprives victims of their dignity, privacy, and equal protection under the law. Discrimination on the basis of race, caste, sex, creed, or colour results from the arbitrary use of authority combined with malpractices. All such violations are in violation of both the Constitution and the Human Rights Principle. Hate crimes inspired by religion have increased in recent years. In the guise of religion, many religious and ethnic groupings are set against one another. In such situations, police racial profiling exacerbates an atmosphere of terror for the victims and those who care about them.

The police are responsible for maintaining peace and order and ensuring that the requirements of the law are followed. Police officers must carry out their duties in a fair and unbiased manner, and they must not discriminate against anyone based on their race or ethnicity. They should not act under the influence of political parties, and they should not engage in behaviour that undermines public confidence in this institution. The police must be dedicated to upholding the law. They must realise that adhering to the rule of law is a responsibility, not simply a formality.