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Misuse of Powers by Police in India

Parth Sharma^a

^aS S Jain Subodh Law College, Jaipur, India

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As of now, the population of India is over 139 crore. There has to be an authority to make sure that there's peace and harmony among so many people. The police in India are entrusted with the work of maintaining the law and order in society. Certain powers have been given to the police to carry out this behemoth task. However, there have been a lot of instances where police have overstepped their boundaries and committed acts, the atrocities of which are not humanly comprehensible. The law considers everyone equal in its eyes. Sadly, the police, the flag bearer of law, do not. In India, the poor and marginalized are often illegally detained and subject to torture, some even die in custody. Several reports have been used to analyze the trend of police abusing the powers given to them by the law and the failure of the state in putting a stop to such abuse. Several precedents have been taken into account to determine the stance of the judiciary on the subject of such abuse.

Keywords: *torture, powers, misuse, violence.*

INTRODUCTION

In India, the police department is entrusted with the work of upholding law and order, & preserving the safety of the general public as well. Under the constitution of India, the police being a state subject, each state has its police force. To ensure public peace, the Centre also has its separate police forces. The police force is the centerpiece of public order and ensures that

laws are implemented and followed at the ground level. The rights of the citizens are to be safeguarded by the police force. The police are considered to be the most substantial organization in our country, in the need of the hour when one does not know what to do to protect their rights, the police happen to be their last resort. The police are considered to be the most dynamic and accessible organization for the distressed citizens of this country. All this sounds too good to be true, right? Because it is.

In reality, the Indian police force is infamous for its brutality, overstepping, and abusing the powers given to it by law. The cases of police brutality are increasing at an alarming rate, and the failure of the system to check such abuse is a disaster. Fake encounters, custodial deaths, illegal arrests of law-abiding citizens for political vendetta, and torturing the under trials are some common acts of brutality committed by the police regularly. Indian constitution states that no person shall be deprived of his life or personal liberty¹, often with illegal arrests to extort money and valuable securities; the police shred this right of citizens into pieces. In its 177th report on the law relating to arrest², the Law Commission of India has reported that a large no. of arrests were being made for bailable and non-cognizable offences. The report highlighted the need of regulating the unguided use of powers by the police force.

No person is considered to be above law in this country, but police officers often disregard the law and abuse their powers to threaten people under the shadow of conducting an investigation. Police, the protector of citizens, many a time have acted as the perpetrator of violence and torture. This article focuses on the powers that are given to the police force by different laws and how these laws are subsequently misused by the police force in India. This article sheds a light upon several cases of misuse of powers by the police and shows how police denude the citizens of their basic rights.

¹ Constitution of India 1950, art. 21

² Law Commission of India, *Law Relating to Arrest* (Law Com No 177/2001) pg 24

POWERS OF POLICE REGARDING ARRESTS AND INVESTIGATION

The Code of Criminal Procedure, in Chapter V, provides the rights and obligations of police while arresting a person. These sections empower the police to arrest a person without a warrant³, arrest on refusal to give name and residence⁴, a search of place entered by a person sought to be arrested⁵, pursue offenders into other jurisdictions⁶, power to seize offensive weapons⁷, powers to re-arrest an escaped person from custody⁸. The procedure that shall be followed by the police while making an arrest has also been provided in the Code. The code empowers the police to arrest a person to prevent the commission of a cognizable offence. A police officer is empowered to arrest a person without a warrant issued by the magistrate “if it appears to such officer” that the person in question may commit a cognizable offence.⁹

The police are conferred with such powers to enable them to maintain law and order. However, in reality, the powers of arrest are arbitrarily used by the police force throughout the country. Words such as “reasonable” and “credible” are used in section 41 of the Code, and the phrase “if it appears to the such officer” in section 151 often promotes ambiguity because their usage can be subjective.¹⁰ The police use the vagueness in the language of the code to extort money and valuable securities by making wrongful arrests. Due to the absence of an in-house structure for complaints, this unethical behaviour of the police officers often goes unpunished.

The Supreme Court, in the case of *Ahmed Noormohmed Bhatti v State of Gujarat*, has upheld the constitutional validity of section 151 of the Criminal Procedure Code, 1973. The court was of the view that the power of preventive arrest cannot be declared unconstitutional just on the ground that it may be used wrongfully by the concerned authorities. The safeguards against

³ Code of Criminal Procedure 1973, s 41

⁴ Code of Criminal Procedure 1973, s 42

⁵ Code of Criminal Procedure 1973, s 47

⁶ Code of Criminal Procedure 1973, s 48

⁷ Code of Criminal Procedure 1973, s 52

⁸ Code of Criminal Procedure 1973, s 60

⁹ Code of Criminal Procedure 1973, s 151

¹⁰ Shvena Neendoor, ‘Can The Police Arrest You Bfore You Commit An Offense’ (*LawyersClubIndia*, 29 June 2022) <<https://www.lawyersclubindia.com/articles/can-the-police-arrest-you-before-you-commit-an-offense-15008.asp>> accessed 07 December 2022

such acts are laid down in the section itself. The court said that if the criterion given in section 151 is not followed, in such cases, action can be taken against the defaulters.

There have been many instances where police have used preventive arrest with malicious intent. The person arrested under section 151(1) of the Criminal Procedure Code shall not be detained for more than 24 hours. Still, there have been cases reported where the person charged was kept for over a year without having a trial. In some cases, people were arrested because they belonged to a particular caste. The constitution guarantees that every citizen is equal in the eyes of the state¹¹ and that no person shall be deprived of his life and personal liberty¹². The police, by maliciously using the power of preventive arrest have made a mockery of these fundamental rights.

In light of the abuse of section 151, several judgements have been passed by the Supreme Court of India to ensure that compensation is given to the wrongfully arrested person for the infringement of Article 21 of the constitution. In the *Nambi Narayan case*, the court has expounded on the payment of compensation to the person taken in custody for the violation of fundamental rights given in Art. 21. Similarly, in *Delhi Judicial Service Association v State of Gujarat and Ors*¹³, the excessive use of powers by police has been condemned by the court. In such cases, compensation against the state has been described as an effective remedy. However, the amount of compensation is subject to the facts and circumstances of each case¹⁴.

In its 277th report, the Law Commission of India has suggested the insertion of a new chapter in the criminal procedure code, 1973, for compensation to the person wrongfully prosecuted.¹⁵ Even though numerous guidelines have been passed by the Apex court on misuse of the power of preventive arrest, the police force continues to harass citizens. There's a large fraction of the arrested citizens who are negligent of their rights provided to them by the constitution. Due to fear, a lot of people refrain from taking any action against the oppressive acts of the police. A lot

¹¹ Constitution of India 1950, art. 14

¹² Constitution of India 1950, art. 21

¹³ *Delhi Judicial Service Association v State of Gujarat & Ors* (1991) 3 SCR 936

¹⁴ *Sube Singh v State of Haryana & Ors* (2006) 3 SCC 178

¹⁵ Law Commission of India, *Wrongful Prosecution (Miscarriage of Justice): Legal Remedies* (Law Com No 277, 2018)

of people languish in jail for a long time, for which the primary reasons are their lack of awareness and lack of means to seek legal help.

As per section 154 of the CrPC, the information regarding the commission of any cognizable offence shall be reduced to writing by the police officer in charge, and the substance of such information has to be written down in a diary maintained by such officer¹⁶. Generally, this information is known as the First Information. However, the Code of Criminal Procedure, 1973 nowhere mentions the First Information Report in section 154. Often police officers are bribed, even coerced in some cases, to register false FIRs. Political vendetta is one of the biggest reasons for the substantial increase in the registration of false FIRs in our country, which ends up increasing the workload of the judiciary. Justice Mr. J.B. Pardiwala has also lamented over the issue of false FIRs registered to fulfill political vendetta. According to him, after the elections, be it the municipal election or the panchayat election, false FIRs are filed against the defeated opponents to settle the scores.¹⁷

Police officers are rarely reluctant to register FIRs of those who carry political weight. As per the law, a person's political image or financial condition is never the primary consideration for registering an FIR. But the intention of the legislature is often mocked by the practices followed by the system in place. In reality, it's common for the police to refuse to register FIRs in legitimate cases. As per the CrPC, if the police refuse to register an FIR, the aggrieved person can file a written complaint to the superintendent of the police. The last resort is to approach the court with a prayer to direct the police to lodge an FIR for the offence committed against the aggrieved party¹⁸. The lower courts are overburdened with caseloads, and courts usually take months to pass directions to police officials to register an FIR in such cases. William E. Gladstone, the former Prime Minister of the UK, famously said "Justice delayed is justice denied". The current practices followed by the police force in India have done nothing but infamously affirmed this

¹⁶ Code of Criminal Procedure, 1973, s 154

¹⁷ *Dhiren Prafulbhai Shah v State of Gujarat* (2016) CrilJ 2217

¹⁸ Code of Criminal Procedure, 1973, s 156(3)

statement. Another reason for the non-registration of FIRs is the political pressure from local leaders to show a decrease in the crime rates of their respective constituencies.¹⁹

As per section 155, in the event of the commission of a non-cognizable offence, the police cannot commence their investigation without an order from the competent magistrate. After receiving the order to investigate, the police cannot arrest a person without a warrant, even though the police officers may exercise the same powers in respect of the investigation as they may exercise in the investigation of a cognizable offence.²⁰ Section 156 empowers police officers to investigate without the prior permission of a magistrate. Subsection 3 of section 156 empowers the magistrate to order an investigation in the commission of a cognizable offence.²¹

As per the code, a witness acquainted with the facts of the case can be examined by a police officer, and the statements made by him during such examination may be reduced in writing. Often the officers conducting an investigation offer some inducements to the witness and even coerce or threaten the witness to make a particular statement²². These practices are strictly prohibited by section 163 of the code. The witnesses are made to sign such statements, which is prohibited under section 162 of the code. However, the statements made by a witness are inadmissible evidence and do not hold evidentiary value in front of the courts.²³

TORTURE AND CUSTODIAL VIOLENCE

Lord Acton - 'Power tends to corrupt; absolute power corrupts absolutely.'

The blatant misuse of powers possessed by police officers has often led them to evade the moral and legal consequences of the gruesome illegal acts perpetrated by them. With time, several reports have emerged showing the acts of brutality committed by police officers in India.

¹⁹ Advocate Lalit Ajmani & Tanya Mayal 'All You Need to Know about Registration of an FIR' (*iPleaders*, 26 March 2001) <[https://blog.iplayers.in/need-know-registration-fir/#:~:text=FIR%20allows%20the%20police%20to,accused%20person\(s\)%20accordingly](https://blog.iplayers.in/need-know-registration-fir/#:~:text=FIR%20allows%20the%20police%20to,accused%20person(s)%20accordingly)> accessed 07 December 2022

²⁰ Code of Criminal Procedure, 1973, se 155

²¹ Code of Criminal Procedure, 1973, s 156

²² Code of Criminal Procedure, 1973, s 161

²³ *Rajeev Kourav v Baisahab* (2020) 3 SCC 317

Despite the safeguards provided in the Indian Penal Code against custodial torture, inhumane techniques are used by police officers to torture the people in their custody. A lot of such cases fail to garner the attention of the public, and the primary of that is the fear of speaking against the police. Muscle power is used by the police to harass the people who try to raise their voices against their perpetrators. The distrust of citizens in the police as an institution has been cemented because of such instances.²⁴

As per National Crime Bureau, between 2001 and 2018, 1727 people lost their lives in police custody. Most of these deaths were labelled as suicides and only 26 policemen were convicted for their inhumane torture.²⁵ In the year 2018, 70 deaths were reported to have occurred in police custody, out of which 4% were credited to have happened because of the injuries sustained in the remand of the police. In the same year, 5479 cases were registered against police personnel. Only 41 were convicted and sentenced for their crimes. In 2019, 1731 people lost their lives in police custody. In 2021, reported deaths of persons in remand stood at 32, for which 5 policemen were arrested. No convictions were made. Similarly, 16 state police personnel were arrested for human rights violations and none of them was convicted.

Most of these deaths were the result of alleged torture and foul play. These people were arrested for committing petty crimes such as gambling, selling illegal liquor, etc. It further shows that if someone belongs to a poor and marginalized community, they are most likely to be a victim of the brutality of the police. Torture is usually used by the police to extract confessions, which as stated earlier, do not have an evidentiary value in front of courts. Some common methods of torture are hammering iron nails on the body, forceful oral sex, urinating, rubbing of chilli powder on the private parts, hitting on the womb of the pregnant women, etc.²⁶ The reality is so

²⁴ Sudipti Saxena, 'The Tuticorin Custodial Deaths And A Long History Of Police Brutality' (*Bar&Bench*, 28 June 2020) <<https://www.barandbench.com/columns/police-brutality-a-long-legal-history>> accessed 07 December 2022

²⁵ Vignesh Radhakrishnan & Naresh Singaravelu, 'Data | Five states including Tamil Nadu recorded over 100 custodial deaths but zero police convictions between 2001-18' (*The Hindu*, 30 June 2022) <<https://www.thehindu.com/data/five-states-including-tamil-nadu-recorded-over-100-custodial-deaths-but-zero-police-convictions-between-2001-18/article31949326.ece>> accessed 07 December 2022

²⁶ Maktoob, 'In 2019, India registered average 5 custodial deaths daily' (*National Campaign Against Torture*, 29 June 2020) <<http://www.uncat.org/in-media/in-2019-india-registered-average-five-custodial-deaths-daily-maktoob/>> accessed 07 December 2022

worrisome that on average at least 5 custodial deaths are happening every day in India. Several cases of police brutality and custodial torture have been dealt with by courts all over India. The common man has become numb and ignorant to such instances unless they are predominantly atrocious.

In the case of *Joginder Kumar v State of U.P.*,²⁷ the abuse of the powers of arrest has been highlighted as the police unlawfully detained a young lawyer on the pretext of making general queries. The detention lasted for 5 days. The Apex Court condemned the blatant abuse of the powers by the police and pronounced that the constitutional rights mandate that a person cannot be arrested on mere allegations of committing an offence, unless a proper investigation has been conducted and, therefore, a reasonable satisfaction has been derived for making the arrest. *Tukaram and Another v State of Maharashtra*,²⁸ also known as the Mathura rape case, is an example of crimes against women that are committed on the pretext of custody. In this case, an underage girl was raped by two officers on duty, while her family waited for her outside the police station. In *D.K. Basu v State of West Bengal*,²⁹ several guidelines were passed by the Supreme Court to curb violence and illegal detentions. The guidelines direct the police officers to not use third-degree torture in the course of interrogation, a memo has to be made by the arresting officers and at least one family member of the arrestee must be present at the time of arrest, awareness of human and fundamental rights must be created by training the officers.

However, despite various directions and guidelines that have been passed by the Supreme Court, cases of brutality have continued to emerge. In the case of Jayaraj and Fenix, a father and his son ran a shop that was open beyond 15 minutes of the curfew time as per covid lockdown norms. The duo was arrested on exaggerated counts of charges under the Indian Penal Code. The lodged FIR also accounted for some discrepancies. In custody, they were brutally beaten

²⁷ *Joginder Kumar v State of U P* (1994) 4 SCC 260

²⁸ *Tukaram and Another v State of Maharashtra* (1979) 1 SCR 810

²⁹ *D.K. Basu v State of West Bengal* (1997) 2 SCC 416

up, and as per some eyewitnesses, they were sodomised as well. Both Jayaraj and Fenix have succumbed to their injuries. The accused officers are now in jail and are facing murder charges.³⁰

The torture in Indian jails is not limited to the undertrial prisoner. The convicted prisoners often face the wrath of the jail officials. Sunil Gupta, in his book *Black Warrant*, wrote about the atrocities and torture faced by the prisoners in Tihar Jail. As per the book, a prisoner named Prem Chand was brutally assaulted by a Warder named Magger Singh. Upon refusal of payment of bribe for allowing visitors by Prem Chand, Magger inserted an iron rod inside Prem Chand, which resulted in anal rupture. The jail officials tried to suppress the truth but eventually, the truth emerged.³¹

STATE & ITS ULTERIOR MOTIVES

If the government becomes the lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy. - Justice Louis D. Brandeis, U.S Supreme Court.

It has been 75 years since India attained its independence from colonial Britain; sadly, we have failed to discard the legacy of the colonizers. The police were used by the British to suppress the local population and the sole purpose of their creation was to strengthen the agenda of the Raj. The Raj has left the country; however, the tendency of the rulers to use the police force for the furtherance of their political agenda is still embedded in the system. Political leaders constantly interfere in matters about the transfer and postings of police personnel. In a lot of cases, heavy political pressure is put upon police officers to make an arrest. Succumbing to such pressure, police often charge innocent people just for the sake of showing progress in investigations. The police are often used by politicians to trump up charges against political opponents. Several

³⁰ Akshaya Nath, 'Bloodied clothes, tortured, discrepancies in FIR: Outcry over Tamil Nadu custodial deaths of father-son duo' (*India Today*, 27 June 2020) <<https://www.indiatoday.in/india/story/tamil-nadu-custodial-deaths-justice-for-jayaraj-fenix-tuticorin-protest-all-you-need-to-know-1693158-2020-06-26>> accessed 07 December 2022

³¹ Sunil Gupta & Sunetra Choudhary, *Black Warrant* (Lotus Collection 2019) 103

excuses can be made for such behaviour on the part of the police, there's a risk of being transferred if you don't comply with the orders of the leaders.³²

The police in the course of abusing their powers have forgotten that they are answerable to the constitution of India, not the state. The use of police by the state for its vested interest does not leave a scope for stripping the police of its draconian powers. If any attempt is made to weaken the police force, the direct impact of it will be felt by the state itself. The figures show the number of cases registered for the offences of sedition and promoting enmity on accounts of religion has been larger after the independence than in the colonial era.³³

To tackle the political influence over the police in India, the Apex court, in the case of *Prakash Singh v Union of India*,³⁴ pronounced its judgement ordering the formation of authorities to lay down guidelines for better functioning of the police force. The authorities were entrusted with evaluating the performance of police; managing the posting & transfers, to look into the complaints received for public misconduct of officers. The court also stressed giving a minimum service tenure to the officers to tackle arbitrary transfers and postings.³⁵

The judgement was passed for confining the political establishments to a democratic oversight over the police, and to limit their interference in operational police matters. Technically the judgement has been compiled by many states, but they managed to subvert the order. The powers and the composition of the police establishment boards and the state security board were inconsistent with the order of the Supreme Court.³⁶ The reason for such behaviour is loud

³² Shreehari Paliath, 'Police Officers Turned Rogue Are More Dangerous Than Criminals They Pursue' (*India Spend*, 17 Jan 2022) <<https://www.indiaspend.com/indiaspend-interviews/police-officers-turned-rogue-are-more-dangerous-than-criminals-they-pursue-798226>> accessed 07 December 2022

³³ N.C. Asthana, 'Police Abuse the Laws Because the Laws Are Designed to be Abused' (*The Wire*, 20 Oct 2021) <<https://thewire.in/government/police-abuse-the-laws-because-the-laws-are-designed-to-be-abused>> accessed 07 December 2022

³⁴ *Prakash Singh v Union of India* (2006) 8 SCC 1

³⁵ Anviti Chaturvedi, 'Police Reforms in India' (*PRS India*, June 2017) <https://prsindia.org/files/policy/policy_analytical_reports/Police%20Reforms%20in%20India.pdf> accessed 07 December 2022

³⁶ *Ibid*

and clear, no state wants to surrender its privilege and power to meddle with the affairs of police functioning.

The politics of bulldozers is trending, properties in the name of “illegal encroachment” are razed down by the police without following the due process of law. People accused of being trespassers are constantly targeted by the government. The govt. uses bulldozer politics to punish the protestors or those accused of being a rioter. In the case of *Olga Tellis v Bombay Municipal Corporation*³⁷, the apex court has said that the Right to life holds housing as an essential part of it. The court observed that a fair hearing has been given to the affected person; demolition is to be used as a last resort. The right to shelter has been defined by the Supreme Court as an essential part of the Right to life under Article 21 of the constitution.

FAKE ENCOUNTERS

The Indian laws are not silent on the subject of encounter killings. The Code of Criminal Procedure, 1973 strictly prohibits the killing of a person who is not accused of an offence punishable with death or life imprisonment.³⁸ However, the police justify the encounters by stating the right of private defence given under the Indian Penal Code. Nevertheless, it has been expressly stated that no harm more than necessary should be done to exercise the right of private defence. The force used should be in proportion to the danger of harm. In the case of *Extra Judicial Execution Victim Families Association (EEVFAM) v Union of India*³⁹, the apex court has expressly stated, the right to private defence and the use of excessive force does not fall under one category. The use of excessive force by police is an act of aggression and is punishable by law. The Apex Court, similarly, in the case of *Darshan Singh v State of Punjab & Anr*⁴⁰, has observed that the right of private defence should not be used as a tool for taking revenge. The right is for self-defence, not for retaliation. Despite several judgements that have been passed on

³⁷ *Olga Tellis v Bombay Municipal Corporation* (1985) 2 SCR Supl. 51

³⁸ Code of Criminal Procedure, 1973, s 46(3)

³⁹ *Extra Judicial Execution Victim Families Association (EEVFAM) v Union of India* (2013) 2 SCC 493

⁴⁰ *Darshan Singh v State of Punjab & Anr* (2010) 2 SCC 333

the subject, encounter killings in India are rising. As per National Human Rights Commission, at least 1727 fake encounters were registered between the years 2000 and 2017.⁴¹

It is also believed that certain encounters happen under political pressure. According to former DGP of UP and Assam, IPS officer Prakash Singh, the state home minister of UP had prepared a list of people who were to be “bumped off”. Politicians often come up with unrealistic deadlines for officers to nab the accused. Police, in such cases, get caught in a dilemma. As per Singh, blaming encounters upon the police is easy; however, the whole system is rotten. The over-centralization of powers has reduced the independence of the police. Often the top political bosses openly encourage encounter killings; due process of law cannot be expected to be followed when the leaders themselves glorify such killing.⁴²

CONCLUSION AND SUGGESTIONS

In this article, several instances of misuse of powers by police have been discussed. Illegal detentions, torture, fake encounters, and custodial deaths echo the violation of fundamental rights of the largely unheard voices. On average, in India, at least 5 custodial deaths occur every day. The police overlook the safeguards that are mentioned in the Criminal Procedure Code, 1973, and the Constitution of India. The common practice of arbitrary arrests by police is the bane of the criminal justice system of our country. Even though several judicial precedents have been passed on this subject, the police still do not shy away from misusing their powers. This largely happens because most of these cases fail to appear in the light of the judiciary or media. The marginalized faction of society silently suffers this injustice due to the fear of the police.

Several reforms are needed in the system to check the abuse of power. There’s a need to create awareness of the rights guaranteed by the law. Every person must be aware of his basic human rights. The training methodology of the police personnel needs to be improved. The force must

⁴¹ Phalguni Rao, ‘NHRC registered 1,782 fake encounter cases between 2000-2017; Uttar Pradesh alone accounts for 44.55%’ (*FirstPost*, 2 February 2018) <<https://www.firstpost.com/india/nhrc-registered-1782-fake-encounter-cases-between-2000-2017-uttar-pradesh-alone-accounts-for-44-55-4332125.html>> accessed 07 December 2022

⁴² Peerzada Muzamil, ‘Fake Encounters In India: Laws, Flaws & Fear’ (*Outlook*, 12 Aug 2022) <<https://www.outlookindia.com/national/fake-encounters-in-india-laws-flaws-fear-magazine-213923>> accessed 07 December 2022

be instilled with human and constitutional values. Along with physical tests, mental health check-ups must be done. Separate divisions in the force must be created, with one focusing on maintaining law and order and the other on the investigation of cases. This will result in reducing the workload of the police. The system needs to be more transparent. A mechanism must be created for real-time mentioning of the arrests that have taken place. The practice of third-degree torture must be checked. India, even though being a signatory of the United Nations Convention Against Torture, still has not ratified it. The laws must be changed to make them even with the convention. It is high time the legislature passed the Prevention of Torture bill. Even the slightest discrepancies in the procedure of arrest by the police must be dealt with punitively by the judiciary. Contempt proceedings must be initiated against the officers for failing to comply with several guidelines given by the Apex Court. Interrogation techniques used by the officers must be within limits prescribed by the law. Monetary compensation must be provided to people against whom interrogations are done in contravention of sections 220 and 330 of the Indian Penal Code. To summarize it all, the watchdogs must be watched.