

Evaluating the role of modern Indian police organisation as a justice delivery institution

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Abstract

Indian police organisation is a complex and diverse justice delivery institution. Indian police system has developed from the time of kinship, Moghul rule, colonial era and post-independence period. Police organisation of any country has a prime role in tackling and apprehending the criminal, as it stands firstly in acknowledgement of crime as a part of justice delivery mechanism. Firstly, police takes note of the crime scene, investigates the offence, collects evidence and thereafter arrests the alleged criminal. Thereafter, the trial begins in the concerned court and if the criminal is convicted, then offender is sent to prison. Henceforth, police is having the prime responsibility in maintaining a balance between human rights of the alleged accused and in providing justice to the aggrieved individual for maintenance of law and order in the society. Besides that, Indian police has been accorded with different functions of law and order maintenance, providing of VIP security, an investigative agency and tackling of insurgency in border areas. It is well evident that modern Indian police institution is not well refined, trained and expanded enough to cope up with the tremendous pressure regarding tackling of crime in a complex framework of modern day industrialised society. Hereby, as a result of it, human rights of alleged criminals and citizens are often violated by the unregulated police machinery. Legislature and judiciary have consistently highlighted and given directions to the concerned departments regarding refinement in modus operandi of police organisation in accordance with human rights jurisprudence. Moreover, modification of age old colonial era concept of police being an agency of state for suppression of general public still needs pin pointed time-bound approach.

Keywords: Police, organisation, human rights, crime, Indian, colonial, society, criminal, institution, society, jurisprudence

Introduction

Indian Police Administration: Historical Resume

Police as functional institution according to orthodox approach has been outlined by Ernest Fround as an “organisation for promoting „public welfare“ by restraining and regulating the use of property and liberty of persons”^[1]. The historical aspect in context to Indian police administration could be traced back to the medieval period. According to inscriptions, officers related to the police department were referred to as „Chorodharanikas (exterminators of thieves)“ and as delineated from Pala and Paramara records, police officers were designated as „Dandapasikas (carriers of nooses to catch thieves)“^[2]. During the reign of different rulers and Moghul rule, the condition of police administration did not have a proper constitutional framework. Afterwards, during the advent of British rule and transition of Indian administration from East India Company to British Monarchy, Indian Police was conceptualised, thereby, giving it a constitutional framework under the Indian Police Act (Act V of 1861)^[3]. Hereby, the police system created under the British Colonial government was basically designed to suppress native revolt and to tackle freedom fighters and political challenges faced by the colonial government after the Indian mutiny of 1857^[4]. The Indian police methodology of functioning according to the herein mentioned Indian Police Act had three basic focus points. Firstly, “decentralisation of the police force for controlling vast and diverse Indian territory, secondly, horizontal stratification of police force to establish top to bottom line of control, likewise military organisation and lastly, vertical division of police force in every state into armed and unarmed branches.”^[5] Thereafter, in 1905, Indian police administration was slightly increased in its scope and sphere, as a result of Police Commission Recommendation.

Besides that, the government increased the humane resource allocation, strength and armed police battalions for achievement of colonial motives and using policing as an instrument of state control, rather than citizen friendly police for public welfare. Furthermore, in 1924, “Viscount Lee Commission” suggested a uniform police service mechanism all over India and induction of more police staff, as per requirements according to the passage of time^[6]. British administration was so satisfied by the colonial era Indian police machinery, that the British press described it regressive power as, “no force in the British Empire stands higher than the Indian Police”. Along with that, J.C. Curry defines Indian police as “one of the greatest organisations achieved under British regime”^[7].

Moreover, with the Indian independence, there was no comprehensive change in the methodology of police organisation. “Maharashtra Police Commission” in 1964 specified the basic functional objective of police force in any state as “the first and foremost duty of the police in welfare state is the maintenance of law and order. All the other roles are subsidiary.

It is not desirable to fritter away the energies of the police force, already over exhausted, by asking them to shoulder responsibilities, that do not fall within the above category”. Besides that, for the modernisation of colonial era Indian police force, National Police commission was framed. Accordingly, eight reports to modernise the police institution were put forth in timeframe of 1979 to 1981^[8]. Maintaining of balance between different functions of police, increasing the police manpower and addressing gender inequality was also streamlined. However, the condition of Indian police department practically remained the same^[9]. Initially, the functions of police were specifically to a smaller extent. However, with the

advancement in progressive ideology of reforming the criminals, the functions of police covers different aspects, such as tackling of juvenile delinquency, reformation of children in conflict with law and tackling of recidivism. Along with that, police must have a cooperative attitude toward parole and probation, as specifically probation has a close link to appointment "Police Court Missionary in Bombay" in 1918, as suggested by then Chief Presidency Magistrate of Bombay^[10]. Besides that, in 2006, guidelines were put forth by SC in *Prakash Singh v. UOI*^[11], as a result of PIL filed by the two right thinking police officials regarding modernisation of the age old Indian Police organisation. However, Police being a state subject under the Indian Constitution, guidelines forwarded by the apex court in the above mentioned case, were not effectively implemented by the successive state governments. Henceforth, it is elucidated that since the Indian independence judiciary and legislature have taken substantive steps to modernise the colonial era police organisation, still Indian police organisation is working as an instrument of state control, as in democratic country of USA, rather than citizen friendly police organisation, as in constitutional monarchy of UK^[12].

Streamlining role of Indian Police Organisation in protection of human rights

The functioning of police is diverse, mainly consisting of preventive, detective and investigative purposes^[13]. The difference between police and policing needs to be recognised and set framework of norms regarding police functioning in democratic manner needs to be recognised^[14]. Since the period of Indian independence instances of violation of human rights of ordinary citizens within custody of police have been highlighted time and again by the Indian judiciary and press^[15]. As a result of it there is slight fear in public about the police behaviour towards them. There is considerable evidence of brutal and atrocious behaviour of police. National Human Rights Commission has acknowledged indecent police behavior and custodial torture^[16]. Along with that, it has put forth meaningful suggestions in its Annual Report of 1997-8. However, there was no out of the box change towards citizen friendly police behaviour. A noteworthy aspect is that Commission has set up a twenty four hour mechanism regarding reporting of custodial deaths due to third degree torture or any other means, based on judicial directives formulated by the apex court^[17]. The NHRC has impressed upon more rigorous accountability of police authorities, rather than only reportage hitting the dead end. There is an urgent need for devising means to monitor the aftermath of police atrocities during investigation. Previously, Andhra Pradesh effectively refused to implement the directive that deaths pertaining to encounter were to be investigated by the criminal investigative department of the state, due to substantial resource crunch. Besides that, the Commission insisted that officers of high rank must investigate these cases. Accordingly, reports have been filed by the states, but with some riders in context to scarcity of resource allocation. The Commission has been empowered to duly visit police lock ups according to the provisions of Section 12(c) of POHRA 1993. Thereby, during the timeframe of 1999-2003, three visits were commenced by the Commission with an objective of suggesting recommendations for improving conditions in these lock-ups. It is exhibited that the

Commission's strategy is two pronged. Formerly, to create an internal mechanism and latter one is quasi-external mechanism for monitoring of requisite behaviour of the police. Thereafter, in-house machinery was devised as a result of meeting of Director Generals of Police in states regarding implementation of recommendation for a police cell in the office of DGP of the concerned state. Moreover, on 2 [nd] August 1999, comprehensive guidelines were enunciated and on the basis of various reports received by the Commission, it was delineated that the lacuna between the law and its actual implementation has to be reduced by stating diverse and pin pointed guidelines related to arrest. Accordingly, the suggestion was followed by letters to the chief ministers to instrument and follow the guidelines, thus framed. Along with that, letters were forwards to the High Courts, so that district courts are directed to set up „District Complaint Authorities“. Besides that, suggestions have also been put forth for the video filming of post-mortems and the revision of autopsy forms. The Commission's strategy to make police stations „public friendly“ focuses on measures for provision of a toll free number, for keeping people informed, encouraging public meetings, as in Kerala, by the police station house officers and promoting culture of mutual understanding and police accountability towards the citizens and society. There is a considerable gap in establishing machinery regarding implementation of directions of NHRC by the senior police officials. It is elucidated from a number of instances in which Commission has considered it important to call upon officers at apex level in States/Centre for examining of sensitive sensitive complaints against governmental authorities. The POHRA, 1993, empowers the Commission to utilise the time and resources of such Central and State level agencies. Hereby, it would negate the basic objective of request by Commission to senior officers regarding the benefit of their views, if they delegate further this responsibility to their junior authorities and afterwards, fulfil the formality by forwarding the reports received from their juniors. The Commission urges that in scenario of delegating the function to a junior and asking of an officer of subordinate rank to inquire into the concerned matter, the Commission would evidently be entitled to expect that report is examined by concerned senior officers in an intensive manner and evaluate its veracity prior to recommending it for acceptance by the NHRC. It is evident that the Commission is working in alignment with the ideology and footsteps of former Chairman, Justice Venkatachaliah, whose philosophy was of „not to run headlong into confrontation with the authorities, unless there was no other option“. Accordingly, the Commission cannot take up on administration at each and every level, however, nevertheless, it can help to discipline the different institutions related to justice delivery mechanism^[18]. It could be a game changer in tackling infamous continuous instances of police atrocities and custodial torture that is due to lack of clarity in approach as a result of colonial era institution^[19]. Along with that age old legislations need a total revamp, related to dacoity and related problems in some states, such as "M.P. Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, 1981." Hereby, such legislations are useless in present day scenario and they are resulting into increasing problem of under-trial prisoner population in the jails of concerned state due to expansion of police powers according to such archaic age old laws.

Such laws are often misused by the police authorities and resulting into violation of human rights of marginalised sections of society. Along with that, such legislations were used to tackle infamous dacoits of Chambal. However, as recorded in 2023, there is not any existence of such dacoity incidents and dacoits in the Chambal valley. It is delineated that, age old laws should not exist afterwards the eradication of basic criminal objectives linked to formulation of such acts. Evidently, such laws are resulting into dual problems of increasing the workload on Indian prison institution and violation of human rights by the methodology of colonial era police set up ^[20]. It is exhibited that, police organisation falls at the starting chain in tackling crime and punishing the criminal, followed by judicial trial and process of incarceration in prison system ^[21]. Ironically, prison institution has transformed itself based on progressive ideology of establishment of human rights jurisprudence, however, comparatively institution of police is lacking behind in standards of human rights protection and enforcement ^[22]. Prisons and police have an important role in tackling recidivism and reducing crime in the Indian and global society ^[23].

Conclusion & Suggestions

It is unveiled that, Indian police organisation in modern day organisation is still working according to age old colonial era methodology to a certain extent. Indian police organisation must be moved to concurrent list under the Indian Constitution, so that uniformity and required improvements are implemented in specific timeframe. Along with that age old laws leading to expansion of police powers without any considerable check must be revamped, as such legislations have no use in present scenario. There is need for separation of investigative function and maintenance of law and order function of the police force. Hereby, more focus of the legislature and executive must be on establishment of Indian police as a citizen friendly institution with expertise as an investigative agency. Modern day police organisation is failing in “necessity and proportionality test”. Besides that institution of Police Ombudsman must be created at central level, so that departmental corruption is curbed and issue regarding challenges in human rights is addressed.

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