
POLICE DEVIANCE AND SUPERIOR ORDERS AS A DEFENCE: A CRITICAL EXAMINATION OF POLICE ACCOUNTABILITY, OBEDIENCE AND THE BOUNDARIES OF LEGAL RESPONSIBILITY UNDER INDIAN CRIMINAL LAW

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ABSTRACT

The defence of superior orders represents a significant issue in criminal jurisprudence because it raises a fundamental tension between institutional obedience and the individual accountability of public officials. Within policing, subordinate personnel may contend that their conduct resulted from instructions issued by senior officers and may attempt to rely upon such orders in cases involving custodial torture, unlawful arrest, fabricated encounters, or disproportionate use of force. This paper examines the doctrine of superior orders within the Indian legal framework through a doctrinal study of its statutory and judicial evolution. It examines the transition from Section 76 of the Indian Penal Code, 1860, to Section 14 of the Bharatiya Nyaya Sanhita, 2023, while also examining the historical development of the doctrine through the Nuremberg Trials and its subsequent recognition under Article 33 of the Rome Statute of the International Criminal Court. The analysis demonstrates that compliance with a superior's direction does not constitute an unconditional defence under Indian criminal law. Legal protection arises only where the instruction itself is lawful or where the subordinate acted upon a bona fide and reasonable mistake of fact. Judicial decisions, including *State of West Bengal v. Shew Mangal Singh*, *Chaman Lal v. Emperor*, *D.K. Basu v. State of West Bengal* and *Extra Judicial Execution Victim Families Association v. Union of India*, indicate that police personnel cannot rely upon patently unlawful directions to avoid criminal responsibility. The paper further highlights deficiencies in the prevailing framework, particularly the absence of an explicit statutory procedure enabling officers to reject unlawful commands and the possibility of procedural safeguards concerning prior sanction for prosecution being misused. It concludes by recommending institutional reforms capable of preserving necessary police discipline while ensuring meaningful individual accountability for unlawful conduct.

Keywords: Police misconduct; superior directives; Section 76 IPC; Section 14 BNS; custodial abuse; command accountability; police responsibility.

1. Introduction

Law enforcement within a constitutional democracy requires a careful reconciliation between institutional discipline and legal accountability. Although the police operate through a structured hierarchy in which adherence to superior authority is essential, officers are not legally required to comply with directions that violate the law. In India, the colonial Police Act of 1861 continues to influence the organisation and functioning of the police, with obedience to higher-ranking officials remaining an important institutional principle. However, this principle creates a significant legal dilemma when police personnel become involved in custodial deaths, fabricated encounters, disproportionate use of force, or other unlawful conduct and subsequently seek to defend their actions on the ground that they were acting pursuant to instructions issued by their superiors.

The plea of superior orders raises a significant legal issue as to whether a subordinate police officer may avoid criminal liability by contending that the unlawful conduct was carried out pursuant to directions issued by a superior authority. Under Indian law, obedience to a superior does not provide protection where the instruction itself is unlawful. Such a plea may be considered only where the officer acted under an honest and reasonable mistake of fact and exercised due diligence in ascertaining the relevant circumstances. Where the direction is patently unlawful, such as an instruction to subject a detainee to custodial torture or to fabricate an encounter, compliance with that direction does not by itself absolve the subordinate from liability. Depending upon the facts and available evidence, the superior officer responsible for issuing the unlawful direction may likewise incur criminal responsibility.

The significance of examining this issue extends beyond the interpretation of any single legal provision. Acts of police misconduct can have a direct impact on the constitutional guarantees of life and personal liberty protected under Article 21. Moreover, uncertainty regarding the scope of the superior orders defence can create operational and legal difficulties within the police organisation. Where officers assume that reliance on instructions from higher authorities is sufficient to escape legal consequences, such an understanding may facilitate or perpetuate unlawful conduct. Conversely, police personnel require precise legal standards defining the boundaries of their accountability while exercising force in the lawful discharge of their duties. Accordingly, this paper examines the doctrine of superior orders with reference to its statutory foundation, judicial development, and practical application within the institutional framework

of Indian policing.

2. Research Objectives and Methodology

The present paper adopts a doctrinal and analytical approach based on relevant legal materials, including statutory provisions, judicial decisions, and applicable international instruments. In addition, secondary sources such as scholarly books, research articles, commentaries, and other academic writings have been consulted. The study seeks to achieve the following objectives:

- (i) To examine the historical evolution of obedience to superior orders, with particular attention to its development under common law and its recognition in the Nuremberg Charter and the Rome Statute;
- (ii) To analyse the legal basis and scope of the defence in India under Section 76 of the IPC and Section 14 of the BNS, along with its relationship to Section 79 of the IPC and Section 17 of the BNS;
- (iii) To critically examine the manner in which Indian courts have interpreted and applied the defence, particularly in matters involving police misconduct or unlawful conduct; and
- (iv) To identify deficiencies within the existing legal and institutional framework that may facilitate misuse of the defence and to propose appropriate measures for addressing such shortcomings.

3. Policing in India and the Problem of Deviance

In India, police administration falls within the legislative domain of the States under Entry 2 of List II in the Seventh Schedule, read along with Article 246 of the Constitution. The functioning of the police is primarily governed by the Police Act, 1861, which continues to constitute an important statutory foundation for policing. Broadly, the police organisation consists of two major branches: the armed police, which is generally deployed for maintaining public order and responding to law-and-order disturbances, and the civil police, which primarily undertakes crime prevention, registration, investigation, and related duties. In addition, specialised branches perform functions such as traffic regulation, crime detection, and other specific policing responsibilities. Core police activities include investigation, surveillance and patrolling, apprehension of offenders, interrogation, and maintenance of

public peace and security.

Deviance generally refers to conduct that departs from established social rules, legal requirements, or accepted standards. In the policing context, police deviance may therefore be understood as conduct by police personnel that contravenes statutory provisions, departmental regulations, or recognised professional norms. Such misconduct extends beyond conventional forms of corruption and may encompass custodial torture, manipulation or fabrication of evidence, unlawful detention, coercive extraction of confessions, sexual misconduct, and disproportionate application of force. The Supreme Court of India has addressed such forms of police misconduct in several significant judgments. In *Nilabati Behera v. State of Orissa* and *D.K. Basu v. State of West Bengal*, the Court affirmed that the State cannot rely upon sovereign immunity to avoid responsibility for violations arising from custodial violence. The State consequently bears an obligation to safeguard the life, dignity, and personal liberty of individuals placed in its custody.

In this context, the doctrine of superior orders assumes particular legal significance. Situations involving custodial torture, staged encounters, or unlawful detention may give rise to a claim that the concerned police personnel acted pursuant to directions issued by senior officials. Accordingly, an important question under Indian criminal law is whether, and under what circumstances, a subordinate officer may rely upon instructions received from a superior as a legal defence. Equally important is the determination of the point at which such reliance ceases to provide protection and the subordinate officer becomes personally accountable for the unlawful conduct. The issue therefore requires a careful assessment of obedience, individual responsibility, and the legality of the superior's direction.

4. The Plea of Superior Orders: Conceptual Framework

The doctrine of superior orders is founded on the principle that a subordinate officer should not ordinarily incur criminal liability for an unlawful act performed in compliance with a direction issued by a superior authority. The rationale behind this defence is frequently associated with the absence of the necessary intention or awareness on the part of the subordinate to regard the conduct as criminal. A further justification arises from the organisational structure of police and military institutions, where an established hierarchy and effective chain of command are essential for their functioning. Officers are consequently expected to rely upon legitimate instructions from higher authorities rather than independently challenging or scrutinising every

command received in the course of their official duties.

However, this principle does not imply that police personnel are required to execute every instruction issued by a superior without exercising any judgment. Contemporary legal systems generally do not treat unconditional obedience as an absolute ground for excluding criminal responsibility. The applicability of the defence depends primarily upon the lawfulness of the direction and, in appropriate circumstances, whether the subordinate reasonably believed that the instruction was lawful. Consequently, reliance on superior authority ordinarily cannot justify compliance with patently unlawful commands, including directions involving torture, unlawful killing, or the fabrication of evidence. Neither the subordinate's official rank within the institutional hierarchy nor the fact that the conduct was carried out pursuant to an instruction can, by itself, eliminate the officer's personal criminal responsibility for an unlawful act.

5. Historical Evolution and International Recognition

It is not a novelty that a subordinate can be responsible for unlawful action done by him on the order of his superiors. This principle was known in the English common law before the doctrine was developed in more recent times, after the Second World War. The cases in the early nineteenth century confirm that an order from above cannot make an unlawful act lawful. However, the subordination in such cases does not free a person from responsibility for his unlawful action. Even if a subordinate acted in obedience to a manifestly unlawful order, he can be held responsible for his action and punished.

The question assumed greater significance during the Nuremberg Trials of 1945–46, when several Nazi officials sought to distance themselves from responsibility for wartime atrocities by asserting that they had merely acted upon instructions issued by governmental or military superiors. The Nuremberg Charter rejected obedience to superior authority as an absolute defence to individual criminal responsibility. Although compliance with superior commands did not eliminate liability, the circumstances surrounding such obedience could be taken into account while determining the appropriate punishment. This approach subsequently found expression in Nuremberg Principle IV, which affirmed that individuals cannot completely surrender their personal responsibility by transferring blame to superior authorities. The principle therefore recognised that a subordinate retains a degree of personal choice when confronted with an unlawful command.

A more structured formulation of the superior orders defence was subsequently incorporated into Article 33 of the Rome Statute of the International Criminal Court. Under this provision, reliance on the defence is subject to specific requirements. The accused must have been under a legal obligation to comply with the command, must not have been aware of its unlawful nature, and the instruction must not have been manifestly unlawful. Moreover, Article 33(2) expressly removes the defence where the command involves the commission of genocide or crimes against humanity, as such directions are inherently regarded as manifestly unlawful. International criminal law, therefore, does not completely reject the doctrine of superior orders; rather, it permits its application only within narrowly defined circumstances where the subordinate genuinely lacked knowledge regarding the unlawful character of the command. This principle also provides a useful basis for examining its treatment under Indian criminal law

6. The Statutory Framework in India

Indian criminal jurisprudence does not specifically establish “superior orders” as an independent ground of defence. Instead, the underlying principle is accommodated within the wider protection relating to acts performed under a legal obligation, originally provided under Section 76 of the Indian Penal Code, 1860, and subsequently incorporated in Section 14 of the Bharatiya Nyaya Sanhita, 2023. The provision extends protection to a person who performs an act in the belief that the law requires such conduct, or who, due to a mistake of fact rather than a mistake of law, honestly believes that he or she is legally bound to undertake the particular act. The illustrations given are a soldier shooting at a crowd by order of his commander, which was lawfully given, and a court officer wrongly arresting a person after due inquiries. The provision was made to protect people from being prosecuted for acts done in compliance with the orders of law. However, it does not apply to cases where a person complies with orders from a superior.

Certain conditions must be satisfied for this defence to apply. Firstly, the person must, either be legally bound to commit the act or must believe that the law demands it. Secondly, the belief that law requires it, must be due to a mistake of fact and not because of misunderstanding of the law. That is, what is expressed as *ignorantia facti excusat*, *ignorantia legis neminem excusat*. In other words, ignorance of fact may excuse a person but not ignorance of law. Thirdly, such belief must be in good faith. The expression of

good faith is explained in Section 52 IPC (corresponding to Section 2(11) of the BNS). It refers to the level of care and attention required in given circumstances. The defence provided by Section 79 IPC (now Section 17 of the BNS) is similar to that provided by Section 2(11). Here, the accused person must have acted on an honest and careful belief that he was justified by law rather than that he was required by law to act.

This distinction assumes particular significance when the conduct of police officers is examined. For instance, where an officer proceeds with an arrest on the genuine belief that a lawful warrant has been issued, but that belief results from an error concerning the facts, the protection may be available depending upon the circumstances of the case. However, the position is fundamentally different when a superior directs an officer to subject a suspect to torture for the purpose of securing a confession. Such conduct cannot be justified on the basis of a mistake of fact, since custodial torture is inherently unlawful irrespective of the source of the instruction. Accordingly, an officer cannot avoid individual criminal responsibility merely by asserting that the unlawful act was performed pursuant to an order received from a superior authority

The statutory provisions governing the employment of force during public-order disturbances are also significant in this context. Sections 129–131 of the CrPC, now corresponding to Sections 148–150 of the BNSS, authorise the application of necessary force under specified circumstances for the dispersal of unlawful assemblies. Similarly, Section 132 of the CrPC, corresponding to Section 151 of the BNSS, affords limited procedural protection by requiring prior governmental sanction before prosecution for certain acts performed in good faith. Such protection, however, does not extend to conduct that exceeds the scope of lawful authority, including the application of excessive or grossly disproportionate force or non-compliance with mandatory statutory procedures and safeguards.

Likewise, Section 197 of the CrPC, corresponding to Section 218 of the BNSS, requires prior governmental sanction before a public servant can be prosecuted for an act performed in the course of official duties. Judicial decisions have nevertheless clarified that this procedural safeguard cannot be invoked to shield unlawful conduct such as custodial torture or staged encounters. An act does not acquire the character of an official duty merely because it was performed by a police officer while exercising official authority. Therefore, unlawful conduct cannot be legitimised or protected from criminal proceedings simply on the ground that the

officer acted pursuant to directions issued by a superior authority.

7. Judicial Interpretation and the Limits of the Defence

Indian courts have, as a general principle, declined to treat compliance with directions issued by a superior officer as an absolute exemption from criminal responsibility. Rather, judicial scrutiny has focused on the legality of the command and on whether the subordinate officer had reasonable grounds for relying upon it. In *Chaman Lal v. Emperor*, prison officials who caused the death of inmates by inflicting fatal assaults pursuant to a superior's instructions were held criminally accountable. The Lahore High Court observed that the officials were aware of the unlawful nature of their conduct and, consequently, could not contend that their actions were performed in good faith. Similarly, in *Charan Das Narain Singh v. State*, an officer who discharged his firearm in obedience to a superior's command was held individually liable. The court recognised that a subordinate has a duty to decline an order that is manifestly unjustified or unlawful.

A somewhat different position was adopted by the Supreme Court in *State of West Bengal v. Shew Mangal Singh*. In that matter, the Court found that the direction to use firearms in response to a grave law-and-order situation was lawful and supported by the circumstances. Consequently, the officers who implemented the command were entitled to protection. The judgment indicates that when a direction is clearly within the scope of lawful authority, a subordinate officer who follows it is not necessarily required to provide an independent justification for compliance. However, where the legality of an instruction is uncertain, the surrounding circumstances and the officer's state of belief become relevant. Collectively, these judicial approaches suggest that a clearly lawful command may be followed, a doubtful instruction may attract protection where the officer acted honestly and exercised reasonable care, whereas an obviously unlawful command cannot be justified merely on the ground that it originated from a superior authority.

The foregoing principle is equally applicable to matters concerning custodial violence. In *D.K. Basu v. State of West Bengal*, the Supreme Court prescribed important safeguards governing arrest and detention and treated custodial torture as an infringement of the rights protected under Article 21. Police personnel cannot avoid individual responsibility for such violations merely by asserting that they acted pursuant to directions from senior officials or under institutional pressure. Similarly, in *Extra Judicial Execution Victim Families Association v.*

Union of India, concerning allegations of multiple extra-judicial killings in Manipur, the Supreme Court emphasised that statutory authority and hierarchical command structures do not confer unlimited power upon police or security personnel to deprive individuals of life. The Court called for independent investigation of encounter deaths, particularly in circumstances where allegations indicated that unarmed individuals had been unlawfully killed. These decisions reinforce the position that police officers remain personally accountable for unlawful conduct, notwithstanding the involvement or directions of superior authorities.

8. Structural Challenges in Practice

Although the legal framework concerning superior orders appears relatively well established, certain institutional realities within the police organisation can create difficulties in its practical enforcement. Unlawful directions are not always communicated through formal written instructions. They may instead be conveyed orally or arise through informal departmental practices and expectations. For example, police personnel may face implicit pressure to follow practices associated with an “encounter culture” even in the absence of any documented command from a senior official. Where such instructions remain undocumented, establishing the responsibility of the person who issued them becomes particularly challenging. The subordinate officer who executes the unlawful act may consequently face criminal prosecution, while the superior authority responsible for directing or encouraging the conduct may subsequently deny having issued any such instruction.

Subordinate police personnel may themselves face adverse consequences when they decline to comply with an unlawful instruction. An officer who refuses to execute an improper command may, for instance, be subjected to an involuntary transfer, an unfavourable entry in the service record, or other forms of departmental disciplinary action. At present, the statutory framework does not provide a sufficiently explicit safeguard for officers who reject or formally report unlawful directions issued by superior authorities. The absence of such protection may discourage subordinate personnel from challenging instructions, particularly where questioning the legality of a command could affect their professional position or career prospects. Consequently, officers may remain reluctant to raise objections even when there are reasonable grounds to believe that the directions received are legally improper.

A further concern arises in relation to Section 197 of the CrPC, presently corresponding to Section 218 of the BNSS, which requires prior sanction before initiating prosecution against a

public servant in specified circumstances. In certain cases, authorities may treat conduct associated with custodial deaths as having occurred during the performance of official functions and consequently invoke the sanction requirement. Such an approach may delay criminal proceedings or, in some circumstances, create an additional procedural barrier to prosecution, thereby extending protection to officials accused of unlawful conduct. The provision must therefore be interpreted and applied carefully to ensure that the sanction mechanism does not operate as a protective barrier for officers whose actions have exceeded the legitimate boundaries of their official responsibilities.

9. Policy Recommendations

The concerns identified above may be addressed through targeted institutional measures without altering the fundamental legal principles governing the defence, which are comparatively well established. As a first step, significant operational directions relating to the use of lethal force, arrests, search operations, and firing during public-order disturbances should be formally documented and maintained through a secure digital record system. Such documentation would reduce reliance on oral instructions and create a verifiable record of the authority responsible for issuing the particular command. This mechanism would also strengthen accountability by enabling subsequent scrutiny of both the instruction and the official who authorised it.

Second, the legal framework should expressly acknowledge the authority of police personnel to decline commands that are clearly and fundamentally unlawful. Officers who exercise this right should be safeguarded against retaliatory measures, including arbitrary transfers, unfavourable service treatment, or other forms of departmental victimisation. Providing such protection would address the difficult situation encountered by subordinate personnel, who may otherwise be compelled to choose between complying with an illegal directive and suffering adverse professional consequences for refusing to execute it. Clear statutory safeguards would therefore strengthen individual accountability while encouraging lawful decision-making within the police hierarchy.

Third, Section 197 of the CrPC, corresponding to Section 218 of the BNSS, should be suitably clarified or revised to expressly place grave forms of misconduct, including custodial torture, extrajudicial killings, and sexual violence, outside the ambit of “official duty.” Such an amendment would prevent the prior-sanction requirement from being invoked as a procedural

mechanism for postponing, restricting, or frustrating criminal prosecution in cases involving serious infringements of fundamental individual rights. It would thereby ensure that procedural safeguards intended for genuine official acts are not misused to shield unlawful conduct committed by public officials.

Fourth, the directives issued by the Supreme Court in *Prakash Singh v. Union of India* should be implemented comprehensively, with particular emphasis on establishing and ensuring the effective operation of State Security Commissions and Police Complaints Authorities. Strengthening independent mechanisms of supervision can help minimise undue political influence over police administration and promote greater institutional accountability. Such oversight may also discourage the issuance of unlawful instructions by senior authorities and reduce the likelihood that subordinate personnel will be compelled to execute directions that contravene legal standards.

10. Conclusion

The doctrine of superior orders reflects a continuing tension between the need for discipline within a hierarchical police organisation and the principle of individual criminal accountability imposed upon public officials by constitutional law. Consistent with the principles emerging from Nuremberg and the Rome Statute, Indian law seeks to reconcile these competing considerations by extending protection where an officer complies with a lawful command or acts under a genuine and reasonable mistake concerning its legality. Such protection, however, does not extend to instructions that are manifestly unlawful. This distinction has been reflected with considerable consistency in judicial decisions, including *Chaman Lal*, *Charan Das Narain Singh*, *Shew Mangal Singh*, *D.K. Basu*, and the Supreme Court's decision concerning the Manipur encounter cases.

The remaining concerns are primarily institutional in nature rather than related to the underlying legal doctrine. These include the absence of reliable documentation for informal or oral directions, inadequate safeguards for officers who decline to comply with unlawful commands, and the possible misuse of sanction requirements to shield officials from proper investigation. Addressing these shortcomings does not necessarily require the creation of an entirely new legal standard. Instead, greater emphasis should be placed on developing the institutional mechanisms necessary to ensure effective application of the existing principles. Proper documentation of commands, protection against retaliation for refusing unlawful

directions, and genuinely independent oversight can strengthen accountability. In this manner, the principle of equality before the law can be reinforced while ensuring that individual officers are not unfairly subjected to liability merely for acting within the boundaries of lawful authority.

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