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## MALPRACTICE IN THE POLICE FORCE

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### ABSTRACT

“An effective police system is the substratum on which the whole edifice of constitutional wills maintenance of law and order, detection of crime, and enforcement process of social legislation.”<sup>1</sup> Police, the largest and the most important law enforcing agency, has, no doubt, a special responsibility for the protection of human rights. But its role as a protector of human rights takes a beating, when the protectors themselves are accused of violating them. It cannot be denied that the police in India do often function in an illegal manner.

Due to the low salary of the low ranking police officers, corruption is there among low ranking officers. The Indian government also has yet to recognize the immediate need to improve the working and living conditions of low-ranking police. Political interference is also one of the reasons of police malicious acts... In 2006, the Supreme Court handed down a landmark decision, **Prakash Singh and Others v. Union of India and Others**<sup>2</sup>, that directed the central and state governments to enact new police laws to reduce political interference. Unfortunately, the central government and most state governments have either significantly or completely failed to implement the Court’s order.

In this paper, the author explores the option of whether a judicial remedy in the form of a cause of action against police officers in their individual capacity for violations of constitutional rights might enhance oversight conducted by the Police Complaint Authorities. The paper also ascertain whether there have been acts of omission and commission which have resulted in improper or defective investigation and whether such default and acts were deliberate, unintentional or resulted from unavoidable circumstances of a given case. The author through this paper also brings the cases in light where police have intentionally misused its powers to save the accused.

**KEYWORDS:** Police, officers, corruption, investigation, malpractice.

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<sup>1</sup> Arora, N. (1999). CUSTODIAL TORTURE IN POLICE STATIONS IN INDIA: A RADICAL ASSESSMENT. *Journal of the Indian Law Institute*, 41(3/4), 513-529. Retrieved March 23, 2020, from [www.jstor.org/stable/43953348](http://www.jstor.org/stable/43953348)

<sup>2</sup> Prakash Singh and Others v. Union of India and Others, 2006

## CHAPTER I

### INTRODUCTION

Police play a crucial role within the Criminal Justice System and its failures may result into breaking down of the same. Police official's reluctance to lodge proper FIR, apathetic attitude towards the victim, unscientific, non-adherence to law and faulty investigations done by them are some of the reasons culprits never get caught. In most of the criminal cases, to get the accused face the trial, he has to be first arrested by the police on certain grounds after the investigation but due to the manipulation of the evidence, bribery, false witness, delaying tactics, shoddy investigation, accusation against innocent persons and threatening the real witnesses to keep them away from the case, the accused never faces the trial and never gets punished for the crime. **The First Police Commission of free India (1977-1981)** headed by late Dharma Vira also found rampant corruption in the police and commented "in the perception of the people, the egregious features of the police are politically oriented partisan performance of duties, partiality, corruption and inefficiency, degrees of which vary from place to place and person to person ... What the Police Commission said in 1903 appears more or less equally applicable to the conditions obtaining in the police today". More than two decades had passed since the submission of the report by the Police Commission, but not much appears to have been done in combating corruption or other maladies in police.

Political interference is also one of the reasons of police malicious acts. There have been statements by the police officials that they fear reprimand or punishment if they act against a person with political connections while doing their duty. In 2006, the Supreme Court handed down a landmark decision, *Prakash Singh and Others v. Union of India and Others*, that directed the central and state governments to enact new police laws to reduce political interference. Unfortunately, the central government and most state governments have either significantly or completely failed to implement the Court's order.

Due to the low salary of the low ranking police officers, corruption is there among low ranking officers. The Indian government also has yet to recognize the immediate need to improve the working and living conditions of low-ranking police which. While those conditions in no way justify the human rights violations committed by police, addressing them is critical to changing a working environment that facilitates, condones, and encourages such violations.

**CHAPTERISATION:**

Chapter 1 is Introduction. It sheds light on the malpractices by the Indian Police and reasons for such misconducts. Chapter 2 is Police Investigations; it tries to cover the instances where police have done corrupted investigations due to certain reasons. Chapter 3 is Political Interference; it makes the reader understand to what extent the presence of political interference reduces the malpractice in the police force. Chapter 4 is Case Laws, it covers cases where police has done a faulty investigation or any judgement related to that. Chapter 5 is Recommendation and Chapter 6 is Conclusion.

**BACKGROUND**

Under Article 246 of the Indian Constitution, 'Police' falls in the State List of the 7th Schedule, therefore it is within the scope of the respective State Governments to make laws to regulate the police in their State. Although there is a strong federal character to police laws, India is largely a quasi-federal nation and so the Central Government is also involved in the regulation of police forces.

In this paper, the author explores the option of whether a judicial remedy in the form of a cause of action against police officers in their individual capacity for violations of constitutional rights might enhance oversight conducted by the Police Complaint Authorities. The paper also ascertain whether there have been acts of omission and commission which have resulted in improper or defective investigation and whether such default and acts were deliberate, unintentional or resulted from unavoidable circumstances of a given case. The author through this paper also brings the cases in light where police have intentionally misused its powers to save the accused.

In approaching this question, the author discusses three broad mechanisms of external police accountability- First, the establishment of independent police oversight boards in accordance with *Prakash Singh v. Union of India*, judgment of Supreme Court of India. Second, it will deal with a judicial remedy in the form of cause of action against police officers for violation of constitutional rights as a means of enhancing police accountability. It will explore the judicially enforceable forms of accountability that flow from existing criminal laws, public laws and private laws. Third, the National and State Human Rights Commission (NHRC/SHRC) as a remedy for police misconduct are also briefly discussed in the document.

## RESEARCH OBJECTIVES

1. To ascertain whether there have instances where due to the corruptive acts of the police officers have led to improper or defective investigation.
2. To understand till what extent political interference reduces the misuse of investigating powers by the police.
3. To find out whether the same instances of corruptive or improper acts by the police officers during investigation had affected the prosecution's case.
4. To use case laws and case studies to explain the malpractice of the Indian Police.

## LITERATURE REVIEW

1. **Title: POLICE INVESTIGATIONS: PRACTICE AND MALPRACTICE**

*Author:* Mike Maguire and Clive Norris

*Citation:* Economic Political Weekly, Vol. 55, Issue No. 3, 18 Jan, 2020

- *Finding:* From this journal article, I figure out that it talks about the police apathetic behaviour towards the victims due to many reasons like corruption, political influence and how the police carry it in our society with such freedom. It also presses on the point whether such default and acts were deliberate, unintentional or resulted from unavoidable circumstances of a given case.

2. **Title: POLICE INVESTIGATION: A REVIEW**

*Author:* R. Deb

*Citation:* *Journal of the Indian Law Institute*, 39(2/4), 260-271. Retrieved February 18, 2020, from [www.jstor.org/stable/43953271](http://www.jstor.org/stable/43953271)

- *Finding:* This article has helped me reach the crux of my topic through learning about how police intentionally mislead the investigation for the accused to not get caught. It talks about several cases as well in which it was proved at the end of investigation that it was police officials who tampered with the evidence, produced false witnesses. The author also sheds some light on Section 173 of CrPC i.e. the submission time of the investigation report.

### 3. *Title:* **CUSTODIAL TORTURE IN POLICE STATIONS IN INDIA: A RADICAL ASSESSMENT**

*Author:* Nirman Arora

*Citation:* *Journal of the Indian Law Institute*, 41(3/4), 513-529. Retrieved February 18, 2020, from [www.jstor.org/stable/43953348](http://www.jstor.org/stable/43953348)

- *Finding:* The author in this article focuses on the custodial torture that accused has to face in the lockups or police stations. This paper also deals with the custodial deaths that occur and demands the police for a reply. This paper has also analysed the case of **D.K.Basu V. State of West Bengal**. This paper mainly deals with the remedies that are available to the victims and how they can avail it. The author in this paper has crucially analysed the remedies and has provided her own recommendations and suggestions.

## **RESEARCH METHODOLOGY**

The methodology used in this study is doctrinal. It is based on the information and the analytical study from secondary sources. They include research publications, journals, historical information. When a research is concerned with legal problems, issues or questions, it is referred to as doctrinal theoretical or pure legal research. Doctrinal research is a theoretical study where usually secondary sources of data are used to get answers to legal propositions or questions or doctrines. Its scope is limited and there is no such need of field work. This paper is in APA Style (in-text) style of citation. Abiding the guidelines of qualitative research, the researcher has adapted to the use of a method of content analysis for the fulfilment of this study. The research methodology is analytical in nature as the author has drawn close examination of landmark cases in India.

### **Qualitative analysis:**

This research paper is based on a qualitative research. It requires gathering relevant information, reviews and reading books on International Criminal Law and International Humanitarian Law in order to gather information about the malpractice in the police force.

### **Content analysis:**

Abiding the guidelines of qualitative research, the researcher has adapted to the use of a method of content analysis for the fulfillment of this study. The researcher is using a period of 2 months for developing this research paper from January to March 2020. This methodology is commonly used by researchers to arrive to a conclusion by collecting qualitative data from media such as research documents, legal journals, articles, and other scholarly products. Several articles and researches published by renowned writers has been the foundation for the pursuit of this study. Such content obtained has been carefully scrutinized and has been assessed.

## CHAPTER II

### ANALYSIS

#### MALPRACTICES IN POLICE INVESTIGATION

Nothing discolours the image of the police and excites more public fury against them than the training of third degree and manufacture of evidence. These hate lease rehearses which are not kidding offenses under the law can never be supported on any ground at all. Regardless of whether a case is identified by reception of these techniques, they totally estrange the police from the public and individuals fear the police and do all that they can to maintain a strategic distance from any association with them, what to talk about helping out them in the matter of an examination.

As adoption of these unconscionable and illegal methods have already been condemned at length above it is not necessary to deal with them again at this stage except saying that they should be met with exemplary punishment when detected. While deprecating the adoption of coercive methods and custodial deaths Y.V. Chandrachud, former Chief Justice of India, observed:

*"Before we close, we would like to impress upon the Government the need to amend the law appropriately so that policemen who commit atrocities on persons who are in their custody are not allowed to escape by reason of paucity or absence of evidence. Police officers alone, and none else can give evidence, as regards the circumstances in which a person in their custody comes to receive injuries while in their custody. Bound by the ties of a kind of brotherhood, they often prefer to remain silent in such situations and when they choose to speak, they put their own gloss upon facts and pervert the truth. The result is that persons on whom atrocities are perpetrated by the police in the sanctum sanctorum of the police station are left without any evidence to prove who the offenders are. The law as to burden of proof in such cases may be re-examined by the legislature so that handmaids of law and order do not use their authority and opportunities for oppressing the innocent citizens who look to them for protection"*<sup>3</sup>

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<sup>3</sup> State of U.P. v. Ramsagar Jadav, 1986 Cri LJ 836 (SC)

## **Illegal Arrest and Detention, Police Torture and Ill-Treatment**

Police officers sometimes make arrests in retaliation for complaints of police abuse, in return for bribes, or due to political considerations or the influence of powerful local figures. They also admit that they use unlawful coercion, including torture, to elicit confessions to the charges they fabricate. Police often fail to follow procedures mandated by the Supreme Court in ***DK Basu v. West Bengal***<sup>4</sup>, including production of a suspect before a magistrate within 24 hours of arrest.

## **Manipulation in F.I.R**

First Information Report is an important document as it often gives the untutored version of the informant on the first blush of events. There is an unfortunate belief amongst most of our police officers that absence of details like names of the accused, names of the witness, list of stolen properties, etc. will ruin the prosecution case, and accordingly, there is often an attempt to add and interpolate information collected at the stage of the investigation into the body of the F.I.R. Such subsequent additions and interpolations create a doubt about the bona fides of investigation in the mind of the court and oftener than not the prosecution case is rejected *in toto*.

## **Manipulation in Case Diary**

Case diary and police statements are both very important documents and manipulation or trickery in regard to any of them is bound to affect the credibility of the prosecution case. If there is any delay or gap in the investigation, the investigating officer must give a satisfactory explanation for it in the case diary so that investigation does not look fishy.

Similarly, unnecessary delay in the examination of important witnesses, even when available, under the provisions of section 161, CrPC, creates doubt in the mind of the court and the evidence of such witness may be rejected by it to the detriment of the prosecution case.

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<sup>4</sup> DK Basu v. West Bengal, 1996



## **CHAPTER III**

### **POLITICAL INTERFERENCE**

Politically motivated refusals to register complaints, arbitrary detention, and torture and killings sometimes perpetrated by police at the behest of national and state politicians—have resulted in an unprecedented level of public distrust and fear of the police. In a culture of shifارش or favours, only Indians with powerful connections can be confident they will obtain police assistance. State and local politicians routinely tell police officers to drop investigations against people with political connections, including known criminals, and to harass or file false charges against political opponents. Police at all ranks say that they fear reprimand or punishment if, in the course of doing their jobs, they act against individuals with political connections.

In 2006, the Supreme Court handed down a landmark decision, *Prakash Singh and Others v. Union of India and Others*, that directed the central and state governments to enact new police laws to reduce political interference. Unfortunately, the central government and most state governments have either significantly or completely failed to implement the Court's order. This suggests that key government officials have yet to accept the rule of law or the urgency of undertaking comprehensive police reform, including the need to make police accountable for widespread human rights violations. The Indian government also has yet to recognize the immediate need to improve the working and living conditions of low-ranking police which. While those conditions in no way justify the human rights violations committed by police, addressing them is critical to changing a working environment that facilitates, condones, and encourages such violations.

Political interference at the phase of examination has become a routine illicit relationship to such an extent that, even the Punjab Police Commission (1961-62), the Delhi Police Commission (1968), the Gorey Committee on Police Training (1972), the National Police Commission (1977-80), the M.P. Open Police Relations Committee (1983), all headed by famous judges, educationists or remarkable government workers, have in one voice censured political interference with the working of the police. According to the national Police Commission every single political gathering independent of their political tones, utilize their position in regards to advancements and moves to constrain the power to serve their advantage. Too bad this inclination has alarmingly expanded as of late because of the disintegration in the nature of both the government officials and the individuals from the force. This developing contact between the police and the legislator is an incredible deterrent in the method for

powerful and unprejudiced working of the police, and what is lost during the time spent this unholy partnership is both objectivity and truth should be the point of each police examination. A policeman, deserving at least some respect, should realize that he gets his capacity from the rule that everyone must follow and as a specialist of the law he should sincerely practice his forces given by the law as per the best of his tact and still, small voice and not to satisfy any official authority anyway grandiose. Where the resolution has given an optional capacity to an official, it is he and only he, subject to the supervisory control of his departmental bosses as mulled over (Sections 36 and 158 of CrPC) who should practice that power, and even the clergyman responsible for the police "has no capacity to coordinate the police how they should practice their statutory forces, obligations or discretion".<sup>5</sup> A police official should realize that under Section 23 of the Police Act, 1861 he is will undoubtedly do legal requests and warrants and the principle of "Respondent Superior has no application for submitting an unlawful demonstration at the command of any official expert in super-meeting of the law. Therefore a request like not to lift a gherao (illegal confinement) without first counselling the work/labour minister or to submit or not to present a charge-sheet in opposition to a genuine energy about proof by the researching officer, are for the most part unlawful requests against which an official must have the mental fortitude to call attention to their illicitness to the position providing the request. Significantly under Section 3 of the Police Act 1861, which is of a constrained and supervisory nature, the state government, and thus the political official won't get ward to arrange the police to play out a specific obligation in a specific way conflicting with explicit statutory arrangements. In this way to submit or not to present the charge-sheet is in the caution of the exploring police official under Section 173, CrPC, and even the judge can't organization him to do it in opposition to the lasts

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<sup>5</sup> Kapur Commission as quoted by A.G. Noorani in his feature article entitled. "Minister' s Power and Rule of Law", Indian Express , 12-6-1969

## CHAPTER IV

### CASE LAWS

In 2006, the Supreme Court handed down a landmark decision, **Prakash Singh and Others v. Union of India and Others**<sup>6</sup>, that directed the central and state governments to enact new police laws to reduce political interference. Unfortunately, the central government and most state governments have either significantly or completely failed to implement the Court's order.

In the famous case of **Aarushi Talwar Double Murder Case**<sup>7</sup>, the murderer of Aarushi is still not behind bars due to the faulty investigation by the police officials at the crime scene. The police officials didn't even give seize the crime scene and let the media reporters, neighbours enter the crime scene which tampered the forensic evidence badly. Due to this, even the forensic experts could not solve the case.

In **Raiinder Pass Gupta v. Central Bureau of Investigation**<sup>8</sup>, a F.I.R. was registered against petitioner - Accused and thereafter investigations were taken up by C.B.I. By virtue of orders passed by Superintendent of Police at the end of F.I.R. which contained all material allegations against the accused. The Delhi High Court held that it cannot be said that the order was passed without considering allegations and material available against accused. No infirmity in order passed under, second proviso to Section 17 and hence investigation not vitiated.

In State of **Karnataka v. B. Naravana Reddy**<sup>9</sup>, the court held that investigation under section 17 of the Prevention of Corruption Act, 1988 entrusted to a lower rank officer namely Inspector of Police without specifying the reasons for such entrustment makes the investigation illegal and accused is discharged. However F.I.R. is not quashed and authorities are at liberty to proceed afresh.

In **Sudhir Kumar v. State**<sup>10</sup> wherein the Calcutta High Court held that the failure to comply with the provisions of Section 5(A) of the 1947, Act, (now Section 17 of the 1988 Act) would not be mere irregularity coming within the saving provision of Section 156(2) of Criminal Procedure Code, 1973 but an illegality vitiating the entire proceedings.

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<sup>6</sup> Prakash Singh and Others v. Union of India and Others, 2006

<sup>7</sup> Dr. (Smt.) Nupur Talwar vs State Of U.P., 2017

<sup>8</sup> Raiinder Pass Gupta v. Central Bureau of Investigation, 2000

<sup>9</sup> Karnataka v. B. Naravana Reddy, 2002

<sup>10</sup> Sudhir Kumar v. State, 1953

The Supreme Court in **C. Rangaswamaiah v. Karnataka Lokavukta**<sup>11</sup> held that police officers on deputation with the Lokayukta could be entrusted with the investigation under Section 17 of the Prevention of Corruption Act, 1988.

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<sup>11</sup> C. Rangaswamaiah v. Karnataka Lokavukta, 1998

## **CHAPTER V**

### **RECOMMENDATIONS**

- The police force must be made more professional through better training and equipment.
- Subjects like Forensic Science and others should be introduced to the National Police Academy syllabus.
- The investigating police officials must be given proper training when it comes to forensic science as it any disturbance with evidence such as fingerprints, hair sample, etc. only leads to faulty and improper investigation.
- The living and working conditions of the police must be improved so that they don't get corrupted.
- We need young police officers and therefore police reforms should be done now as they are overdue.
- Surprise visits to police stations should be made to check for the unauthorised arrests.

## **CHAPTER VI**

### **CONCLUSION**

Laws on the corrupted police officials should be stricter as well punishment for the same should be severe to create fear in the minds of the police officials to not repeat the same. Police reforms are overdue and should be done without any delay in order to recruit young, patriotic, passionate officers to end corruption. Human Rights functionaries must consider the cases of custodial torture by police more effectively and handle the tangled web of facts, circumstances, perceptions and the situations more realistically. On the other hand, the police must do some introspection and try to sort out the solution to improve its tarnishing image. They must also remember that they are also under the law and not above the law. They can also be held liable for any violation of human rights. In fact, what the society needs is well led, well trained and well-disciplined force of police, which help in protecting and promoting the human rights. It is only with the co-operation of both the police and the public that we can become a strong and healthy democracy where the violation of human rights may become the thing of the past.

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