



ABUSE OF CRIMINAL LAWS BY POLICE IN BHARAT: A CRITICAL STUDY

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Abstract

There is always some kind of chatter going on about the Police excesses, custodial violence, dishonest investigation etc. around in the society. Many people know about these issues, fewer understand them and even fewer are able to make others understand and carve out solutions for the same- even if only in theory. This research paper is an attempt at assisting all the aforementioned categories, as it discusses the issues, brings out both the historical and contemporary scenarios to the fore. The jurisprudential perspective perceived to have been missed or conveniently sidelined by the legislature and then by the delegate of legislative powers, with respect to the laws touched upon, has also been discussed below by the author. A list of feasible corrective measures has also been provided in the end. It is a firmly grounded research about the deep rooted institutional menace chewing at the socio-political fabric of Bharat and provides genuine and implementable countermeasures against the same.

Keywords: Public servants, good faith, mistake of law, police reforms, separate classification, bureaucratic autonomy.

Introduction

Bharat has been a civilisation for more than 4000 years. As the term ‘civilisation’ suggests we have always had an administrative setup of one kind or the other for the citizens’ comfort, security etc. Every ruler of this land had his/her own ideas of how to run the empire and one of the most common of all their ideas was an armed force to serve the dual purpose of security as well as control of the citizens. This was the beginning of the domestic, or should we say local security forces that we all know today as Police. There were local laws in all the provinces and Princely states even in the times of the Mughals.

It was after the advent of British rule in Bharat that we saw the first statute to cover more or less whole of Bharat, and it was called **Police Act, 1861**. It was introduced to have uniform set of



rules across the nation for the convenience of the ruler. It contained little to no provisions for complaining against the abuse of Police or to seek redress against the same.

Ironically enough, the aforementioned Act is still in force, along with several provisions of penal and procedural laws that acquiesce to – if not embolden the Police personnel to commit- legally questionable and on many occasions blatantly wrong actions. This research work reflects upon such laws as well as on the questionable -if not outright malafide- intentions of the law makers in our Union and State governments.

Hypothesis

Whether the Police abuse the penal as well as procedural laws unwarrantedly and at their whim?

Law at the Assistance of Public Servants Sec. 37 Bharatiya Nyaya Sanhita 2023ⁱ:

Under this section (Sec. 99 IPC, 1860ⁱⁱ) a person is deprived of his right to private defence against an act not causing the apprehension of death or grievous hurt, if it's committed by or on direction of a public servant acting in good faith under colour of his office; and such act may also not be strictly justified by law.

For better understanding, the term **public servant** is defined inclusively under Sec. 2(28) BNS, 2023 (Sec. 21 IPC, 1860) and includes police officer by implication under Sec. 2(28), (f, g) BNS, 2023. It means that a public servant may inflict any harm illegally to mind, body, reputation or property- i.e. **injury** [Sec. 2(14) BNS, 2023 and Sec. 44 IPC, 1860] - upon a person resulting in two implications:

- The victim cannot exercise his right to private defence against the aforementioned unlawful act, provided to him under **Sec. 39 BNS, 2023**(Sec. 101 IPC, 1860).
- The public servant gets away with his unlawful act in absence of eye witness and evidence; which is usually unavailable against them due to fear in the minds of public regarding vendetta action by the administration and abuse of investigation/ inquiry procedure by another public servant in charge of it, consequently in the favour of the former public servant.



However, the layman may find some solace in the precedents laid down by the judiciary. One such decision came in the case of *Deoman Shamji Patil vs. State 1959*ⁱⁱⁱ where it was held that “it is obviously the duty of police officers to acquaint themselves with at least the general scope of their powers. Where the action of a police officer is altogether outside the scope of his powers, he cannot be said to have acted with due care and attention and thus in ‘good faith’.

In case of *Ramji Lal vs. State of Rajasthan 1990*^{iv} the inference drawn from the words ‘may not be strictly justifiable by law’ was that- it points to cases where there is excess of jurisdiction, as distinct from a complete absence of jurisdiction. If a public servant acts without jurisdiction, it can neither be said to have been done in good faith, nor can his act be protected under Sec. 99 IPC, 1860 even if it is not strictly justifiable by law. The law does not protect illegal acts and acts committed by a public servant without jurisdiction. When a Police party went to village to recover a lady to restore her to her father, the villagers had the right of private defence against such act which was illegal and without jurisdiction.

Protection To Public Servants Under BNS, 2023 & BNSS, 2023:

Sec. 121, 132, 223, 224 BNS, 2023 are sterling examples of protection provided to public servants against: hurt, grievous hurt, assault or criminal force, disobedience to order duly promulgated by public servant and threat of injury to public servant. The punishment awarded under these sections to the convict is exemplary and aggravated as compared to when the same offence was to be committed, wherever applicable, against layman. It shows the intelligence and intent of legislature in putting the public servants into a class of their own. It is done probably because they are the backbone as well as the limbs of the Executive, which must be protected to ensure smooth administration. However, when we look at the flip side of the coin we find “**dual bias**” in favour of the public servants alleged to have acted in contravention of law:

- Chapter XII BNS, 2023 (Of offences by or relating to public servants) though provides punishment for wrong doings by public servants, the quantum of these punishments is much lower in proportion to safeguards provided to them in comparison to the laymen.
- The second bias is a concealed one as it’s hidden under the garb of rules, by laws etc. which have been cleverly laid down by public servants themselves via delegated legislation.



Illustration: A wants to file criminal complaint against B, a police officer. Now under **Bharatiya Nagarik Suraksha Sanhita, 2023^v** A may register FIR u/s 173(1); send a written complaint to Superintendent of Police u/s 173(4); file an application to judicial magistrate first class u/s 210 to order investigation against such officer u/s 175(3). Now, the bias kicks in due to the rules made by Director General of Police for handling of complaints “internally” against officers and by Superintendent of Police for subordinate ranks, by the power granted to them under State Police Acts. And by the virtue of these rules, complaints u/s 173(1, 4) BNSS, 2023 shall be first investigated and inquired upon within the Police department and by the Police personnel only, leaving a boatload of space for malpractices in favour of the accused.

Moreover, there are good chances that he may walk away with comparatively lesser punishments laid down under by-laws and rules like deduction of salary, punishment postings, demotion, written apology etc. as a result of these “departmental inquiries”, than those provided under penal laws. All these are the implications of the bureaucratic autonomy, prevailing throughout the system in the guise of delegated legislation.

Mistake Of Law:

Sec. 14 and Sec. 17 of BNS, 2023 (Sec. 76, 79 IPC, 1860) provide for excuse of mistake of fact but mistake of law is punishable under every statute that there is. However there is a hilarious dichotomy when this principle is put in force; but before coming to it a relevant excerpt from the *Mahabharata* must be seen:

A, B, C and D were brought to the King Dhritrashtra’s court for sentencing for murdering X in cold blood. The opinions of the both princes, Duryodhan and Yudhishtir were sought upon the matter. Duryodhan suggested death sentence to all the four convicts as they were guilty of the one and same offence. But Yudhishtir suggested 5 years imprisonment for D as he was an illiterate Shudra with less to no knowledge of far reaching consequences of his action; 10 years imprisonment for C as he was a literate Vaishya and was supposed to know the nature and consequences of his action; life imprisonment for B as he was a Kshatriya who was supposed to protect people and not take their lives; and death sentence only to A who was an educated Brahman and was supposed to handle the circumstances better and never to engage in any crime,



let alone murder someone. The latter's opinion was admired by everyone and was implemented to the letter too.

Coming to the dichotomy in the legal system one shall see A, a normal citizen not well versed at law of the land being punished for a mistake of law. Whereas B, a police officer who is given training and education of relevant penal and procedural laws- at the expense of tax paid by A- commits an act that is in excess of his jurisdiction and gets away with it under the protection of Sec. 37 BNS, 2023 instead of being punished more severely than A - taking cue from the example of the *Mahabharata*.

Separate Classification of Public Servants and Its Jurisprudence

Article 309 of the Constitution of Bharat provides for the appropriate Legislature (Union or State) to regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State.

As stated earlier a skeletal framework is passed as statute by the Legislature and the nitty-gritty, rules etc. for its practical application are delegated to the bureaucracy- the grandest 'pen' of public servants- to handle. At this stage a special classification is born out of the details. One would find the public servants being put on a pedestal above laymen; be it the protection provided to them under penal laws as shown above, or the seemingly unfair leverage in the investigation and inquiry procedures against them as also mentioned earlier.

Here comes to the fore not just the vested interests of the beneficiary bureaucracy of this nation but also the jurisprudential negligence by our lawmakers. To quote here from *The Theory of Jural Relations*^{vi} by *W. N. Hohfeld*, the jural correlatives and opposites- must they exist- must be in a comparable proportion to the corresponding fundamental legal concepts. Taking cue from this, one may say that there must be a healthy balance between 'immunity'^{vii} or 'privileges'^{viii} granted to the public servants and the 'legal disabilities'^{ix} put in their contrast on laymen. But this desired balance is nowhere to be found when a laymen and a public servant are put in same position, as demonstrated by multiple instances above.



legislature which galvanized the Executive's backbone and limbs. It must be brought to notice of the reader here that the Executive in Bharat is practically subservient to the Legislature as we don't have clear separation of power among the Legislature and the Executive; and the President of India is more or less a rubber stamp barring few instances. Furthermore, unlike the debates of constituent assembly over each and every article of the Constitution, one would not find thoroughly vetted grounds for the said laws made for the recruitment, service conditions etc. of the public servants.

So, it may be interpreted from the actions of the Legislature that all these are deliberate attempts to strengthen the great **Steel Cage** of bureaucracy of Bharat which in turn strengthens its political masters, irrespective of the party in power.

Acknowledgement of Issue and Attempts to Reform

The first major step of acknowledging the flaws in the police system and attempts to rectify them was made in 1977 by setting up of *National Police Commission*^x whose major observations are as under:

- Recognised the nexus between Government Executive and the Police.
- Limiting the powers of State government to ensure smooth and efficient performance of Police duty and that too by the law of the land.
- Overhauling the training process of constables.
- Setting up of State Security Commission in each State.
- Minimum assured tenure for the Police chief of a State.
- The internal management of Police force to be entirely within the purview of Police chief.

Next came in the *Ribeiro Commission 1998* which was set up on the directions of the Supreme Court of Bharat and it submitted two reports, emphasising upon:

- Constitution of Police Establishment Board on State level with DGP as its head and 4 senior officials as members to monitor the transfer, promotion, rewards and punishment issues.
- Repealing of Police Act 1861 and introduction of new Police Act.
- State level Independent Police Recruitment Board for non gazetted recruitments.



- Quality training to improve effectiveness of Police.

Next in was the *Soli Sorabjee Commission 2005*^{xi}. It set a benchmark in recommendations as

it drafted and recommended the following:

- *Model Police Act 2006*^{xii} was drafted under this commission.
- State government to be responsible for the superintendence of Police only, without direct interference.
- Setting up of State Security Commission as suggested by NPC 1977-81 under the name of State Police Board.
- All officers to be provided with minimum 2 years tenure.
- Power of transfers to be vested in certain rank or post; no one below it in rank empowered to effect transfers.

Then what got through was the landmark judgement in the case of *Prakash Singh and Anr. vs. Union of India*^{xiii}. Seven directives were laid down in this case which are as under:

- State Security Commission to be set up to ensure three things i.e. state government does not exercise unwarranted control on Police, laying down of policy guideline and evaluation of performance of State Police periodically.
- Appointment of DGP through transparent process with a minimum tenure of 2 years.
- Ensuring minimum 2 years tenure in one place to officers on operational duties.
- Separation of investigation - law and order functions of Police.
- Set up Police Establishment Board to decide on transfer, posting, promotion of personnel below the rank of Superintendent of Police; and recommend the same for S.P. and the ranks above.
- Set up Police Complaint Authority (PCA) at State level for inquiring public complaints against D.S.P. and the ranks above; and at District level to do the same against the ranks below D.S.P.
- Set up National Security Commission at Union level to prepare a panel for selection and placement of chiefs of Central Police Organisations with a minimum tenure of 2 years.



Some more efforts have also been made like the introduction of *Model Police Bill 2015* as an improvement over Model Police Act 2006 and to replace the Police Act 1861 but there are some institutional and practical issues in implementing all these reforms as discussed below.

Status of Implementation and Handicaps on the Path of Reforms

Most of the reformative measures are stuck at different stages and those which got approval were poorly implemented and were thus, doomed to fail. Given below are its probable causes:

- “Public Order” and “Police” are respectively the first two subjects of the **State List of Schedule 7 of the Constitution of Bharat**. It means the Union government cannot implement a uniform law regarding these two subjects viz Model Police Act of 2006 or of 2015; and the State governments have not been much enthusiastic about Police reforms irrespective of the party in power in State or at the Centre.
- Despite being recognised and targeted in fair wordings in multiple Commissions’ reports quoted above, and Prakash Singh Judgement by the Supreme Court, the government’s influence over the Police is still there and the political masters don’t seem in any hurry to let go of its statutorily recognised and endowed muscle power. An instance of the same came in the case of *Vineet Narain and Ors. Vs. Union of India (1997)^{xiv}* wherein the Central Bureau of Investigation (CBI) was bound by prior permission of Union government to investigate officers above a certain rank. The directive was eventually struck down and the Top Court ended with the infamous line, that’s relevant till date, that “the CBI is a caged parrot which sings only when its masters desire.”
- The mechanisms put in place in certain States like **State Police Complaint Authority** etc. are in lackadaisical shape in some, or worse, non-existent in other States. The reason behind it are some of the classical excuses like scarcity of funds, slow pace of government machinery, etc.; while the actual reason is unwillingness for change of the vested interests with the Executive beckoned by political interests.
- The behavioural culture within the institution of Police is also not updated with the changing times. Police personnel, who naturally come from the society only, are often found to be indifferent to the people they deal with of that very society, indulging in unfair practices to manipulate a case either way and sometimes even indulging in physical altercation with the



laymen. The dearth of behavioural and psychological updating of the Police force is a languid lacuna in the process of transforming it into an approachable and people friendly institution.

Rights Available To Victims of Police Abuse

Despite a bleak show of high handedness in the pages before, the abused still have ways to seek and get justice. But before that, one must get a full picture of the exploitation of laymen at the hands of Police against which the reliefs are sought. Given below is the *National Crime Records Bureau (NCRB) data for 2022^{xv}* of cases against Police and their status:

Deaths in Police Custody / Lockup (Persons Not on Remand) – 2022

State/UT	Deaths Reported	Mag. Enquiries Ordered	Judicial Enquiries Ordered	Cases				Policemen			
				Registered	Charge-Sheeted	Convicted	Acquitted/Discharged	Arrested	Charge-Sheeted	Convicted	Acquitted/Discharged
Total states	40	15	17	11	0	0	0	0	0	0	0
Total UTs	1	1	0	1	0	0	0	0	0	0	0
Total all India	41	16	17	12	0	0	0	0	0	0	0

Source: National Crime Records Bureau (NCRB) data for 2022

Deaths in Police Custody / Lockup (Persons in Remand) - 2022

State/UT	Deaths Reported	Mag. Enquiries Ordered	Judicial Enquiries Ordered	Cases				Policemen				Total Deaths (Col.3 + Col.3 of 16A.1)
				Registered	Charge-Sheeted	Convicted	Acquitted/Discharged	Arrested	Charge-Sheeted	Convicted	Acquitted/Discharged	
Total states	33	16	9	18	0	0	0	9	0	0	0	73
Total UTs	1	1	0	1	0	0	0	0	0	0	0	2
Total All India	34	17	9	19	0	0	0	9	0	0	0	75

Source: National Crime Records Bureau (NCRB) data for 2022



Reasons of Custodial Deaths - 2022

State/UT	Suicide	Death due to illness/ Death in Hospitals during treatment	Injuries sustained prior to police custody	Injuries sustained during the police custody due to physical assault by police	While Escaping from Custody	Road Accidents/ Journey Connected with Investigation on	Others	Total
Total states	29	32	1	1	7	0	3	73
Total UTs	2	0	0	0	0	0	0	2
Total all India	31	32	1	1	7	0	3	75

Source: National Crime Records Bureau (NCRB) data for 2022
Cases Registered Against State Police Personnel 2022

State/UT	Number of Cases				Number of Police Personnel					
	Registered	Quashed / Stayed by Courts	Charge - Sheeted	Final Reports Submitted	Arrested	Charge - Sheeted	Cases Withdrawn / Disposed Off	Trials were Completed	Convicted	Acquitted or Discharged
Total states	1877	40	759	307	988	681	114	286	10	276
Total UTs	737	1	84	170	125	102	9	8	2	6
Total all India	2614	41	843	477	1113	783	123	294	12	282

Source: National Crime Records Bureau (NCRB) data for 2022
Escape from Police Custody – 2022

State/UT	Cases Reported	Persons Escaped			Escapees		Cases against Police for Negligence	Action Taken for Negligence		
		From Lockup	Outside Lockup	Total	Re-Arrested	Absconding		Police Personnel Arrested	Police Personnel Charged - Sheeted	Police Personnel Convicted
TOTAL STATE(S)	867	102	827	929	665	261	76	71	70	18
TOTAL UT(S)	47	4	46	50	42	8	4	2	2	0
TOTAL ALL INDIA	914	106	873	979	707	269	80	73	72	18



The data presents an objective picture of ordinary persons being meted out unlawful treatment by Police and the latter yet getting away with it due to various reasons like lack of evidence, manipulation of witnesses, institutional bias, aptly explained above with illustrations and relevant provisions; and resultantly non performing judiciary.

Now some of the measures available to the victims are as under:

- **Sec. 223** BNS, 2023 provides for the magistrate to take cognizance of offence and inquire into it but only after a report from the superior officer of the accused public servant.
- The writ of habeas corpus is an incorrigible tool in the hands of relatives of victim to make the Police produce the person taken away illegally by it.
- The victim may apply and pray to Court to order investigation by an independent authority outside the control of local Police, like CBI etc.

The Way Forward

To tackle the persisting issues one must adopt a multi-polar approach. Only then would such scenarios be mitigated holistically. Some of the feasible approaches are as stated below:

- The first and the foremost requirement is to reform the Police system only. We can do only so much from outside when the issue lies within, and to address that, some steps are suggested:
 - (a) Effective implementation of the recommendations of the various commissions as listed above and this move alone shall transform not just the institution of Police but the whole society as well, over the period of time.
 - (b) Introduction of *psychological orientation* for Police force, to build an amicable and understanding relation with the people they are duty-bound to serve and protect.
 - (c) Recruitment of more personnel to address multiple issues of workload management, respite to Police officials from 24 hours posting, proper coverage of local geography etc.
- A new concept of taking feedback about the performance and behaviour of Investigating Officer from the victim / complainant has been proposed recently by Haryana government, which shall be considered in promotions, postings etc. It is a futuristic step which must be refined and implemented as soon as possible, as it shall serve **dual purpose** of- making the personnel



accountable and empowering the victim against various kinds of exploitation by the Police and even the accused.

- The system of lodging of E-FIR should be upgraded by assigning a Tracking-ID to all the complaints whether filed online or in person, to track the developments in the case as well as time taken in the investigation too. This would also result in lesser physical contact between the Police and the victim, thus decreasing the possibility of corruption and exploitation while increasing efficiency and accountability of Police.
- On the particular issue of custodial violence the implementation to the letter is required of the Supreme Court judgement in the case of *Paramvir Singh Saini Vs. Baljeet Singh (2020)*^{xvi} which directs CCTV coverage of every nook and corner of the Police station; video recording of interrogation by Police; storage and safekeeping of records for 18 months, and 12 months under all circumstances; Human Rights Courts in every district to try cases of custodial violence.
- The role of judiciary becomes ever important here as it is the only platform capable of sustaining the undue pressure of the Executive and Legislature and even giving it back at them. The approach of “judicial activism”- though it itself is under scanner at many times- should be adopted by the Judiciary to:
 - (a) Lay down guidelines and directives where they are absent or the other two organs of the State are too lethargic to do the same.
 - (b) Hold the higher officials like Secretary, Cabinet Secretary etc.- who are practically the managers of the Executive- in contempt and ensure the implementation of its directives and judgements.
 - (c) Taking up cases of public importance and constitutional importance suo-motu, when not brought before it by the State or the private persons.
- Another approach to systemic improvement is imparting upon the School and College students the knowledge of:
 - (a) Fundamental rights and fundamental duties.
 - (b) Duty towards society as well as Police.
 - (c) Rights against Police in case infringement of rights.
 - (d) Grievance mechanism to report Police excesses.



After going through the facts and data presented above it is safe to concur with the hypothesis of the abuse of penal as well as procedural laws by the Police personnel for various ends like grabbing money from parties to cases, covering up Human Rights abuses committed by them, avoid or at least delay judicial scrutiny and judgement upon their actions, influence the departmental investigations in their favour etc.

However, various mechanisms to tackle the same have also been provided to the reader in this very paper. These are practical and feasible approaches to the issue at hand and don't invite any kind of superficial swing of wand to see to the end of all problems magically. Furthermore it is time for "We the people" to wake up from the slumber of ignorance and timidity, and persuade our elected representatives to enact apt laws to make the institution of Police adhere to its motto i.e. "to serve and protect" and not to act as instrument of oppression of masses and tool of the State to wield power. It is also suggested that the new procedural laws must be amended to accommodate the changes emphasized upon above along with the amended versions of the provisions highlighted and criticized above. It is a golden chance for the Legislature to mend the deliberate excesses and mistakes of their predecessors, which must be taken up for the welfare of the people of Bharat.

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ⁱ Bharatiya Nyaya Sanhita 2023 (Act 45 of 2023)

ⁱⁱ Indian Penal Code (Act 45 of 1860)

ⁱⁱⁱ Bombay High Court 284, 286

^{iv} 1990 Cr LJ 392 Raj.

^v Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023)

^{vi} Fundamental Legal Conceptions As Applied In Judicial Reasoning And Legal Essays, Book By W. N. Hohfeld

^{vii} Theory Of Jural Relations, W. N. Hohfeld

^{viii} *ibid*

^{ix} *ibid*

^x NPC 1977-1981, 8 Reports; Under Ministry of Home Affairs

^{xi} Includes Police Drafting Committee 2005-06

^{xii} *ibid*

^{xiii} AIR 2006 SC

^{xiv} 1997 (7) SCALE 656

^{xv} Crime In India 2022, Statistics Volume III, Chapter 16 A-B; NCRB, Ministry of Home Affairs

^{xvi} AIR Online 2020 SC 871