

# **Policing the Police: Enhancing Access to Justice through Structural Reforms in Police Administration**

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## Abstract

Many of the rights and freedoms protected by the Constitution and guaranteed by State do often, and unfortunately, compete for space with the powers and duties conferred on the police. The exercise of police powers is often positioned in confrontation with individual rights and freedoms, as if the two were mutually exclusive universes. The police is the considered to be the first face of State machinery that has a direct nexus with the public affairs and public dealings. The Judicial institutions too are heavily dependent upon the police machinery in all their professional endeavors. Moreover, the State machinery too requires the police infrastructure to enforce the laws, maintain order etc. Therefore it can be conclusively said that police administration has to discharge a heavy burden and has bridge the gap between State and public. In examining the relationship between police powers and individual liberties, it is vital to keep in mind that these interests, while sometimes in tension, should not be treated as mutually exclusive.

This paper is an attempt to highlight the existing practices and procedures of the police administration relating to investigation and inquiry. The paper will analyse the State obligation to provide efficient investigation mechanism in light of Constitution. Keeping in mind the varied role of police under the current legal system it is important to equip the police administration with all requisite infrastructures to ensure an efficient justice administration system right from the grass root level. The paper would establish the gross inadequacy and incompetency of the current policing system in India flowing from the legal and political lacunas. The paper would rely upon the current international standards of efficient police administration and would suggest the paradigm changes required within the police administration as and at the governance level that would enable the police in India to be more efficacious and sensitive towards the justice oriented means and modes of practices and procedures. Strict obedience and compliance to these governance standards would enable

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a justice based police administration that would improve the outreach of justice to affected individuals.

## **Introduction**

The greatest challenge of modern times is the access to justice which has befuddled not only the Government but also the other stakeholders of justice that include lawyers, social activists, judiciary, policy makers and executive. The modern governance becoming more and more justice oriented, it is realized that problem of access to justice has not remained just legal, but as deeply understood has more to do with social and economic dimensions. Access to Justice is therefore a manifest reality, and the problem grows with every passing second, with major contributors such as poverty rate, illiteracy rate, and population rate at an ever increasing progression. The concept of access to justice cannot and must not be treated as an end in itself, rather it is a portentous means to achieve the decorated end of social, economic and political justice. The governance realism made us to believe that justice is open to all but the path to seek justice is open to few. Access to Justice is a continuous commitment and efforts towards realization that the people have a right to have their grievances redressed, and a right to pursue their legal remedies, either in court proceedings, or other informal proceedings. The concept of access to justice is therefore more relevant as it defines the outreach of justice by improving justice inclusion, for inaccessibility of justice is an injustice in itself.

Out of the various facets of ensuring access to justice, one important facet is associated with the role of investigating agencies. These agencies are large in number specially formed to probe into definite aspects and natures of investigations e.g. terrorism, corruption, drug control etc. State Police administration is one such agency that has a heavy burden to discharge with respect to regular investigations into various criminal offences. Police administration also has a direct nexus and interface with the public. Therefore, as investigation bodies it has a very pertinent role in ensuring access to justice in criminal matters. They must be the voice and power of the poor, however it is the lack of voice and power that makes it very difficult for the poor and disadvantaged people to access justice and easy for the state and its agencies like the police to deny them the access. It has been observed that poor people while interacting with police have a common consensus that they are marred by rudeness, humiliation, harassment, stonewalling and corruption.

## **Objective of Research**

The objective of this research is to understand the existing practices of police administration that yield to injustice to people and analyze the reasons and causes of the continuity and

growth of such practices and finally to suggest the possible and viable reforms that would ensure the constitutional goal of justice and enhance the access to justice for all.

### **Research Methodology**

The paper is based on “doctrinal method” of research which includes secondary data such as various Acts, Rules and regulations, Guidelines, Judgments, Articles, Books and Journals. . Analytical, critical and comparative methods are used as major tools of study in support of the arguments. Authors have also tried to imbibe the new concepts by proper study and research of the paper topic.

### **The Police Administration and the Constitutional Obligation**

Justice in all spheres is the key guiding principle of our Constitution. State has the inalienable obligation to continuously and relentlessly work towards achieving this end. Police administration is the foremost organ through which State acts and therefore Police too is under the continuous obligation to abide by the principle of justice in every act. `Public Order' and `Police' figure as entries 1 and 2 respectively in the State List in the Seventh Schedule of the Constitution. Therefore, Constitutional allocation of power vests with the States and hence exclusive power to legislate in regard to its police system and full administrative control over the police is vested with the States. With regards to the Central Government, this power can be exercised in the Union Territories only. Under entry 80 of the Union List, the Centre has powers to extend the jurisdiction of the members of the police force of one State to another State, but it can be done only with the consent of the latter State. Under entry 2A of the Union List, the Central Government has power to deploy any armed force of the Union or any other force subject to the control of the Union or any unit thereof in any State in aid of civil power. Officers of the Indian Police Service, have recognition and protection of Article 312 of the Constitution. Disciplinary control over IPS officers is shared by the State Government concerned and the Central Government.

The statutory basis for the Indian police is the Police Act of 1861 which put the police squarely under the control of the government. The old Police Act continues to be law without being replaced by any fresh legislation to fit our democracy after Independence. India's police force is divided into two categories: Civil Police that is designated for maintaining law and order, prevention and detection of crime and law enforcement and the Armed Police that is seen during natural disasters or riots/civil unrest. It is with this civil police to which the scope of the study extends. The civil police in India have a well defined and structured administrative hierarchy and a fixed allocation of work at all levels. It is the Indian

experience backed by innumerable authoritative texts, reports, incidents, news and Supreme Court directions that Civil Police administration has failed to deliver on its functions and roles as assigned to it in context of it being the first step towards access to justice. Perpetual delays in investigation, continuous complaints relating to working, misuse and abuse of powers, deep infiltration of corrupt practices, deep nexus with influential elites, and serious lack of work commitment; are some of the common traits of Indian police. In light of these problems the question of access to justice for poor remains an illusionary reality.

### **Police Practices: Perpetuating Injustice and Obstructing Access to Justice**

At this point we have the two main propositions; firstly that State through its Police administration is under a constitutional obligation to provide justice and access to justice to all and secondly that Police administration on various parameters is grossly incompetent and incapable to achieve this goal. Now, in order progressively suggest measures to increase access to justice and materialise the constitutional goal we must firstly understand and analyse the gravity and depth of this denial of justice through various police practices. Below mentioned are the few police practices that frustrate the process of success to justice-

#### **Non-registration of Complaints**

It is the most common, serious and discouraging practice that at its outset gives a big blow to the process of justice. Criminal justice administration begins with registration of complaints and denial of it violates the canons of justice in a two-fold manner. Firstly, it shuts the doors for victims to get justice and secondly it allows the perpetrators of crime to escape from the process of justice and increase the chances of further injustice. The U.P. Police Commission of 1960-61 reported the following malpractices of the police in recording complaints (FIR):

1. “Non-recording of First Information Report i.e. concealment,
2. Distorting facts with a view to lessening the gravity of the offence i.e. minimisation,
3. Introduction of new facts and distortion of facts in order to create evidence against the accused or for implicating innocent persons, and
4. Demand of money or consideration for recording or prompt recording of report.”

In the report of U.P Police Commission of 1970-71, almost all Station Officers and Circle Inspectors resorted to concealment and minimisation of crime; as stated by them and the Commission found “*no reason whatsoever to doubt the truth of their admission.*” In a study

on the “*Image of the Police in India,*” over 50% of the respondents mentioned ‘non registration of complaints’ as a common malpractice in police stations.

Time and again Supreme Court has held in a number of cases that registration of FIR or complaint is mandatory and denial of it is a gross injustice to the victims. Finally, in *Lalita Kumari v. Govt. of UP*,<sup>2</sup> Court came up with guidelines to prevent the abuse of process and ensure registration of complaints.

### **Illegal Arrests/Detentions**

Arrest and detention is an essential power required by police to perform its duties of investigation and maintaining law and order. The question of injustice arises not in the conferment of this power but its injudicious use. Until Supreme Court came up heavy about these illegal arrests, it was reported that a plethora of the arrests were for very minor offences and 43.2 % of expenditure in the concerned jails was incurred on prisoners who “*need not have been arrested at all.*” Even after case of *DK Basu v. State of West Bengal*,<sup>3</sup> empirical researches showed that the number of preventive arrests and arrests for petty offences were substantially large; the percentage of under trial prisoners was unusually high and most of them were there because they were not able to post bail or furnish sureties. Law Commission has repeatedly emphasised on clearly outlining the arrest laws, as it found that a gross abuse of provisions related to arrest. Law Commission paper on law relating to arrest clearly mentions: “*very often it is the poor people who suffer most at the hands of the police. Their poverty itself makes them suspects.*” Often due to extra-legal considerations, the victims are made to suffer and police resorts to silencing victims by causing unnecessary trouble to victims to save their political and elite masters.

### **Tacit approach towards minorities, women and differently abled sections**

The existence of communal bias in the police has often been seen in the ‘stop and frisk’ practices, and the aggressive as well as ignorant manner they interact with the minority people. Often this attitude is triggered by the political ideology of the ruling government and police administration becomes the key agent to enforce this ideology. The Gujarat Violence of 2002, The Muzaffarnagar outcry in 2014 are two convincing examples where government failed to control the violence and safeguard the lives and liberties of a large number of people, particularly those belonging to minority Muslim community. Secondly, even in day to day affairs minorities have to face wrath and darker side of police. Women too have been and continue to be equal victim of this approach. Now, with so many women beneficial

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<sup>2</sup>Writ Petition (Criminal) 68 of 2008.

<sup>3</sup>AIR 1997 SC 610.

laws being enacted and various procedural safeguards being ensured to women this problems heads towards dilution. The Differently abled section is the worst victim. No laws specially focus the needs and requirements of this section in matters of crimes and victimisation.

### **Failed Police: An Analysis into Reasons and Causes**

The failure of police administration in serving the society has a direct impact upon the issue of access to justice. A failed police cannot render or take the people towards justice. Shifting the blame on police alone is not the solution to the actual state of affairs, rather it is essential to understand why the police is today the way it is today. Only then we can come up with a full proof solution that would eliminate all police failures and enable police to act as justice oriented agencies of State. Broadly, police failure in ensuring justice can be divided into following:

#### **Organisational, Control and Functional Failures**

The organisational balance of the administration has worsened beyond repairs. Police administration is unable to respond to the dynamics of public life. The system is tightly busy in complying with either court directions, following administrative directions of ministry, providing security, ensuring accused attendance in courts etc that a very little time is left to pay attention to the functions of public dealing. As a result people have to wait and wait before the department could hear them. Neither the police have functional responsibility while remaining under the supervision of the political executive nor the control of police by the political executive is conditioned and is not kept within its legitimate bounds. Functionally, the efficiency of police has reduced with respect to its core functions. Every policy is put upon their shoulders for enforcement.

#### **The Manpower, training and capacity failure**

The police force strength in the country is grossly inadequate. The total sanctioned force is 22,63,222 (including both the Civil and Armed Police Forces). Seen from the perspective of the number of citizens per policemen, this sanctioned strength is 182.68 policemen per lakh population. This when appreciated in context of the UN recommended police personnel per lakh population of 222, is 18% less than the recommended figures. To make things worse, on ground, the policemen per lakh citizens are merely 139 (17.2 million in all) which is a mammoth 37% less than the recommended figures. Even out of this inadequate figure, the police personnel do not have police quarters to live. The infrastructure in police station is even more pathetic. There is always a situation of deficit in funding. The modernization and digitalization of police station and systems is still an ongoing phenomenon with a very slow

pace. The worst part is the lack of trained personnel till the rank of Sub-Inspector. Arms and equipment are outdated and there is lack of coordination within the police departments. the long working hours as well as the isolation of police force from the public in the form of separate living quarters should be looked into. Personnel on field duty are ill-informed and lack the technical and professional competence. The special units of crime investigation also face a similar situation whereby there is lack of effective means to collect and analyse the intelligence data.

### **The Attitude and Responsibility issues**

The police attitude is seldom public friendly. There is a perpetual fear of police misconduct as a result people are reluctant to report any issue to police. Police presence brings more insecurity and fear than its absence. The psychological integration of public and police causes a drift in the process of justice administration. Moreover, the police attitude is often found to be casual and indifferent towards their public duties. An external hierarchical pressure is required to make the department work. There is no inner commitment and sense of responsibility to discharge their duties. The root of the problem lies the manner of selection of personnel and the quality of training imparted. The appointing commission must revisit the procedure and induct people with high moral character and integrity into the department.

### **Police Reforms: Gateway for Access to Justice**

It is well settled fact now that inaccessibility of justice is due to the poor state of police. Until and unless structural reforms are brought about in police, no efforts would bring about any relevant changes in the existing situation. National Police Commission, in its all the eight reports has emphasized upon the urgency of reforms in different branches of police system. Similarly Riberio Commission and Padmanabhaiah Committee have very elaborately and deeply discussed the immediate reforms required to ensure the outreach of justice. In light of all the above texts, few of the recommendations focus specifically and particularly to speed up the access to justice for all. These include-

### **Boosting capacity and infrastructure**

It includes increase in the number of police personnel, improvement in recruitment, training and service conditions including upgradation on one hand and improving the infrastructure, working hours, housing facilities on the other. Various studies on the police force in the country have revealed that while work pressure and complexities in handling law and order and investigating crime have grown at an enormous pace, manpower growth has not been commensurate. Therefore, this would increase the physical strengths of the department and police would be able to devote more and quality services to public.

### **Create a Civic Oversight mechanism**

These include the Civilian Complaint Review Boards of the USA, Independent Complaints Directorate (ICD) of South Africa, the Independent Police Complaints Commission of the UK, the Peoples' Law Enforcement Board of the Philippines etc are some of the examples of this. Though organisationally and functionally they differ but one common element that characterises these bodies all over the world is the civilian participation in the process of handling citizens' complaints against police personnel. These are useful to the citizens as well as to police department as besides ensuring that individual cases of alleged police misconduct are properly investigated, these mechanisms help in becoming an important source of information about police misconduct and thereby to preventively curb police abuse. It also adds to openness and transparency in various other administrative matters.

### **Legal framework for operational responsibility and accountability for police**

Police in India have no such direct and actionable accountability towards their duties. Until and unless there is some serious violation of law resulting in gross injustice, police officers cannot be made liable for commissions or omissions. Their failure to deliver is brings them no such consequence so to enable them to work sincerely and diligently except as to minor issues of court pressure, stay on promotion etc. Many countries are busy in conceptualizing the idea of bringing police under torts and allowing a claim for negligence against police officers. India may also begin to move in this direction and think of possibilities to ensure public accountability of police forces that necessarily discharge public functions.

### **Immediate Administrative reforms**

Various administrative reforms have been suggested and few are repeated and refocused again and again. These include-<sup>4</sup>

1. Setting up of State Security Commission laying down broad policies and directions for police functioning.
2. Police Establishment Board to decide on transfers, postings, promotions, and other service related issues.
3. Police Complaints Authorities at state and district levels as redressal mechanisms for complaints against police.
4. Selection of DGP by the state government from panel of three senior-most officers of the Department who have been empanelled by the UPSC for promotion,
5. Fixed tenure of officers on operational duties

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<sup>4</sup>PrakashBadal v. Union of India, Writ Petition No. 310 (Civil) of 1996.

All this has been suggested to be enforced at the earliest. Beside these there are various other reforms suggested so as to enable police officers to work towards securing justice. However, in this discussion we shall limit ourselves to these four.

### **Conclusion**

At the end of this discussion it can be said that State has to work profusely round the clock for attaining justice for all. The justice inclusion can only be possible when a reformatory and revolutionary approach is adopted that enables people to quickly access the path of justice. We have seen the importance of the role that police has to perform and hence, as an informed citizenry we must now continuously work to create the public pressure so the police administration works through rule of law. The reforms in the police administration are sine qua non for accessing justice. The ignorance and arbitrariness through which police has acted till now, has resulted in diminishing the outreach of justice, multiplied the incidents of injustice and has shaken the trust of people in the police institution. If the reforms discussed herein are considered for incorporation in the police structure and practice, access to justice would quickly follow and citizens would then have the sense of justice in all spheres. Debating and making efforts to ensure access to justice without reforming the police institution that has responsibility to ensure justice, would again be futile effort that shall yield only temporary and nominal results.