

Law Enforcement Agencies as Portals to Access Legal Justice: A Critical Analysis

Jaideep Singh Lalli¹&KunwarBir Singh²

Abstract

The three organ dichotomy of the democratic system is what incontrovertibly represents the ethos of democracy. In that respect, it is imperative to acknowledge that in spite of theoretical notions of strict separation of powers among these organs, commingling of purpose and its implementation (with regard to law enforcement) remains one of the most important functions of the whole system, without functional extrications based on organ divisions. Law enforcement agencies as integral parts of one these organs are constitutionally imbued with the task of implementation of the law prevailing at the time.

Considering this, it must be noted that the deplorable state of Indian law enforcement agencies in terms of aggrandizing rates of human rights violations and increasing institutional tempests has inexorably had egregious effects on the ability of the country's legal justice system to dispense justice efficaciously. The thorny embrace of law enforcement agencies like the police perturbs the democratic calculus on a regular basis by poorly conducting social intercourse with the common citizenry. In an age marred by crony capitalism, genuflection to the politically powerful, police obscurantism and disproportionate amount of judicial appointees in relation to the population numbers, it becomes increasingly crucial to study contemporary trends of the structural working of law enforcement agencies and also to analyze the future potential of such institutions for enhancing their relevance as gateways to access justice. The current paper aims at achieving this very research objective by drawing linkages between accessible statistics regarding the performance of Indian law enforcement agencies and ideal notions of how they ought to work, so as to identify a middle ground that may be workable in the present system to transmogrify debilitated government institutions into relevant bodies for dispensing justice. The paper's contribution rests in the unique picture it provides to the reader about both contemporary verities of law enforcement and about the myriad ways that agencies handling the task can better contribute to embodying values of institutional cooperation in becoming 'real' and not 'figurative' portals to access legal justice.

¹Student, University Institute of Legal Studies, Panjab University, Chandigarh

² Student, University Institute of Legal Studies, Panjab University, Chandigarh

Introduction

Justice and democracy are inextricable and it is primarily because of this universally accepted ideal that practices upsetting this inseparable conglomeration of justice and democracy are taken very seriously. In every legal system, regardless of political influences, the nature of 'justice' is divided on the basis of the subject matter that it deals with, i.e., economic justice, social justice, criminal justice et al. This is true even for a democracy like India. In that regard, it is crucial to acknowledge the immensely significant role played by the 'law' and its enforcement agencies in ensuring 'justice' of varied kinds. Although, challenging the veracity of the statement that the contemporary state of Indian Law enforcement agencies is highly deplorable is difficult, but, that doesn't prevent the acknowledgement of the principle that attitudinal pessimism doesn't yield any ameliorative result. Thus, the aim should be to progress away from research pessimism to a solution focused analysis. For this, the foremost task is to elaborate on the concept of 'criminal justice' in an expansive manner, which most imperatively is not limited just to delivery of justice to the victim of an alleged crime, but it extends to ensuring procedural justice to the accused while in custody, or otherwise. Such a concept of 'criminal justice' inexorably requires specific attention to the legal responsibility of law enforcement agencies both towards governmental institutions and the common citizenry that such institutions represent. However, any explication of the legal responsibility of law enforcement agencies would be fundamentally incomplete if it's sequestered from the statistical state of actual performance or fulfilment of such a responsibility. In relation to such a legal responsibility, acceptance of the potential of law enforcement agencies in becoming portals to access justice is noteworthy, as, it is the personnel of these agencies that deal directly with the public at the ground level. 'How' they deal with the public is immaterial as the purpose is to suggest changes to the calamitous reality of performance of Indian law enforcement agencies, by acknowledging that problems exist.

Meaning & Scope of 'Criminal Justice'

Criminal justice in simple terms is serving justice to those who have committed crimes, which is done by inflicting different forms and degrees of punishments on such convicts, irrespective of whether the judicial aim is reformative or retributive. In conceptual terms, 'criminal justice' is not a term that should be understood only through the prism of identifying and catching law-breakers and punishing them, i.e., 'justice to the criminal or justice for the crime's victim', instead, the interpretation of the term is to be widened to 'justice of a criminal nature', which *inter alia* is inclusive of ideals of ensuring procedural

justice to the accused, custodial security to the accused, police cooperation with the alleged victim and prevention of corrupt practices in law enforcement agencies dealing directly with the parties involved in a criminal/civil matter, thereby emphasizing legal justice of varied kinds. While discussing ‘criminal justice’, it is important to note that the conception of justice involved is defined by ‘law’, which is generally nothing but consensus of a particular society (not customs) at a particular point of time which prescribes acceptable standards of conduct, is administered by the courts and enforced by the law enforcement agencies. The center of focus here is on the law enforcement agencies, their actual performance and trends of incoherence with their legal responsibilities in providing access to legal justice to the general populace. Therefore, there is a direct relation between the state of criminal justice administration of a legal system and the performance of that legal system’s law enforcement agencies, as such agencies form the cornerstone of the process of evidence cataloguing, identification of alleged criminals and other crucial aspects of the operations involved in dispensing legal justice, thereby making ‘law enforcement agencies’ a significant part of the scope of study of ‘criminal justice’. Thus, it can be said that the object of ‘criminal justice’ is not just to ensure that ‘no innocent person is convicted and no guilty person is acquitted’, but it extends also to procedural and police behavioral unjust practices that emasculate the law enforcement system, thereby undermining access to legal justice at the very preliminary level, i.e., at the level where a person approaches a law enforcement agency for protection of his/her rights in light of an imminent or recent violation.

Legal Responsibility of Law Enforcement Agencies

The UN Code of Conduct for Law Enforcement Officials defines ‘law enforcement officials’ as all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. Before moving on to an elaboration of the legal responsibility of Indian Law enforcement agencies, a specific question must be answered: Which bodies encompass the corpus of law enforcement agencies in India? Following the practice of many federal nations, the nature of the Constitution of India (specifically Article 246 read with the Seventh Schedule) mandates law and order (relevantly police, public order, courts, prisons, reformatories and other allied institutions) as a subject of the states, therefore the bulk of the policing lies with the respective states and territories of India. At the union/center level, there are various agencies like the Border Security Force (BSF), Central Industrial Security Force (CISF), Central Reserve Police Force (CRPF) etc., that are constantly involved in supporting the states in their law & order based duties and which form

a part of the Union Ministry of Home Affairs. The composition of the law enforcement system of India is thus, crystal clear.

In terms of the legal responsibility of such law enforcement agencies, it is to be acknowledged at the very outset that since most bodies in the congregation of law enforcement agencies have disparate natures of functions, the context of the statutes regulating their legal responsibilities in relation to the performance of such functions are also different. Examples include the Punjab Police Act for the Punjab Police, CRPF Act, 1949 and the CRPF Rules, 1955 for the CRPF, BSF Rules, 1969 for the BSF, Cr. PC provisions dealing with the investigation process for the police etc. For ease of analysis and relevance to the subject matter, legal responsibilities as specified in the Cr. PC, Prevention of Corruption Act, 1988, Model Police Act, 2006 and relevant judicial pronouncements laying down general principles of police conduct, are to be mentioned. Chapter V of Cr. PC elaborates on regulations regarding the arrest of persons which creates an implicit legal responsibility for the police personnel conducting the arrest to follow the provisions contained therein. The same is true for Chapter XII of Cr. PC (which talks about powers to investigate, which places the law enforcer under a legal responsibility of not exceeding the power limits prescribed thereby) and other relevant sections of this statute. Model Police Act, 2006 specifies role, functions and duties of police in general (vide Section 57) and social responsibilities of police (vide Section 58) et. al. With regards to legal responsibility in cases of defective investigation, in *Nirmal Singh Kahlonv. State of Punjab & Ors*³ it was held that an accused is entitled to fair investigation. Fair investigation and fair trial are concomitant to preservation of fundamental rights of an accused under Article 21 of the Constitution of India. A victim of a crime is equally entitled to a fair investigation.⁴ This emphasizes on the responsibility of the police personnel to conduct the investigation in a fair manner. Specifically, in *State of Bihar v. P.P. Sharma*⁵ it was held that “investigation is a delicate, painstaking and dexterous process. Ethical conduct is absolutely essential for investigative professionalism. The investigator must be alive to the mandate of Article 21 and is not empowered to trample upon the personal liberty arbitrarily...An investigating officer who is not sensitive to the constitutional mandates may be prone to trample upon the personal liberty of a person when he is actuated by mala fides”; high responsibility therefore, lies upon the investigating agency not to conduct an investigation in a tainted and unfair manner. Similarly, in *Babubhaiv. State of*

³(2009) 1 S.C.C. 44.

⁴Johny Goyal, *Defective Investigation and its Remedies*, 11 Law Herald 711, 711 (2018).

⁵A.I.R. 1991 S.C. 1260.

*Gujarat*⁶ it was held that fair investigation is part of constitutional guarantee under Article 20 and 21 of the Constitution and it is the minimum requirement of Rule of Law. It was also emphasized that investigation must be fair, transparent and judicious and free from objectionable features like bias, ulterior motives and other similar infirmities. It is the duty of the Investigating Officer to to avoid mischief and harassment to the accused and also to remain fair & conscious in order to effectively rule out the possibility of fabrication of evidence. Also, in a case dealing with similar subject matter, the Supreme Court in *People's Union for Civil Liberties &Anr. v. State of Maharashtra &Ors.*⁷ issued 16 guidelines to be followed in the matters of investigating police encounters in the cases of death as a standard procedure for thorough, effective and independent investigation. Furthermore, it is to be understood that legal responsibilities don't just stem out of explicit provisions prescribing duties, but also through 'deterrent provisions' of the Indian Penal Code. The criminalization of custodial rape under Section 376 of the I.P.C. is an example of the same.

At this juncture, it is to be realized that an essential part of transforming law enforcement agencies into portals of accessing legal justice is ensuring the fulfilment of such legal responsibilities as the principle on which they are based is ensuring justice, both substantive and procedural. In that respect, it is paramount to provide a bird's eye view of the contemporary situation of the working of law enforcement agencies vis-à-vis their legal responsibilities.

Status Quo of Actual Performance

A discussion of the status of quo of the adherence to legal responsibilities by law enforcing bodies (primarily, the police) must take note of the nature of data available, in terms of the victim of the incongruent act ('incongruent' because the criminal act of the police doesn't match the legal standards of acceptable conduct; 'victim' in the sense of an extrication between 'custodial crimes' by the police and 'general ones', which may also help in drawing a difference between police excesses against the accused in an original case and as against the victim in the original case, e.g., A (accused in the original case) allegedly commits a crime against B (victim in the original case) who reports it to the police; so in such a case, the nature of the offence would differ in a scenario where the police abuses its power against A from a scenario in which the police abuses its power against B; offences by the police against A would mostly be of a custodial nature, whereas those against B would include excesses ranging from refusing to lodge a complaint to threatening people in the position of B to force

⁶(2010) 12 S.C.C. 254.

⁷C.D.J. 2014 S.C. 831.

them to retract the complaint where A is an influential person and also to fabricating evidence against B to lodge a false case to coerce B). Therefore, statistics of police excesses need to be studied in a systematic form by keeping in mind the aforementioned research principle.

In light of this, it is to be recognized that though recent statistical trends show a rate of decline in custodial police excesses, the state of law enforcement is still in shambles as compared to the prevailing international standards. According to the National Crime Records Bureau, there were a total of 97 custodial deaths in all over India in 2015 alone, as compared to 14 in England & Wales (according to the report of the Independent Police Complaints Commission for 2015-2016) and 21 deaths in police custody in Australia (according to the report of the Australian Institute of Criminology for 2014-15). According to the National Human Rights Commission of India 7,700 cases against police excesses were registered during the month of May 2018 followed by 9,537 cases during June 2018. These statistical verities are paramount to reflecting the execrable reality of dignity of law enforcement and respect for human rights amongst the law enforcement agencies of our country. It is an incontrovertible truth that the Indian law enforcement system is marred by excesses influenced by people holding political, social and/or economic clout which reduces the value of constitutional rights in terms of the actual security that they get. This was recognized by the National Police Commission constituted by the Government of India on 15th November, 1977 as early as 1979 when it submitted its first report. It cannot be denied therefore, that the current state of police performance in terms of law enforcement is in tatters.

Egregious Effects on Efficiency of the Indian Judiciary

As per the 2011 Census, there are approximately 19.66 judges per million people in India. As of 2018, according to the National Judicial Data Grid there is a backlog of 3.3 crore cases for courts all over India. This data is reflective of the institutional strictures that the Indian judiciary faces preventing it from enhancing its efficiency in dispensing legal and criminal justice. However, it is not just internal trammels that have affected the efficaciousness of the Indian judiciary. Police excesses, rampant corruption, evidence tampering by the police, genuflection of the police towards influential sects (politicians, businessmen, senior officers etc.) and issues of targeting of minorities and vulnerable groups by the police have not only increased the case volume load on the judiciary, but have also emaciated the judiciary's ability to dig out veracious information to convict offenders as after all, procedurally, investigation is done by the police itself (and many custodial excesses happen during the investigation process only). This significantly handicaps the Indian judicial system from

delivering meaningful justice both in terms of dispensing it on time and punishing the actual offender, not someone innocent. Even the Supreme Court has expressed immense displeasure at the inefficiency and callousness on the part of the Investigating Officers in *State of Gujarat v. Kishanbhai*⁸ It must also be kept in mind that a democracy doesn't only work on the basis of the volume of cases that have been disposed, but it also encompasses considerations regarding the quantum of 'trust' that the citizenry reposes in law adjudication bodies like the Judiciary. The current state of law enforcement agencies (marred by disrespect for human rights, apathy, corruption and vices of crony capitalism) is a slippery slope, which inevitably results in erosion of trust that people of India have for decades now, reposed in the Indian Judiciary. The effects of faulty law enforcement are thus, egregious, i.e., outstandingly bad, which militate against the functioning of the Indian judicial system in an efficient manner to public satisfaction.

Law Enforcement & Access to Justice: A Necessary Relationship

The relationship between law enforcement and access to justice can be described by explaining aspects attached to four terms: discovery, deterrence, rehabilitation and punishment:

1. Discovery-This aspect involves the procedural manner in which access to justice can be provided by effective law enforcement. One of the primary functions of law enforcement agencies is to 'discover' or identify the actual offender. However, problems ranging from distorting influences to evidence tampering have plagued the veracity of such a discovery. Therefore, discovery of actual offenders by employing fair investigative methods is essential for access to justice for the victim of a crime. The exigency involved can only be satisfied by sequestering 'discovery' or investigation of the actual offender from needless and harmful influences ranging from those of influential men to intrinsic callousness or apathy.
2. Deterrence-this can be dichotomized into these respects: deterrence in terms of deterring fallacious conduct by police officials by taking strict action against defaulting officials; and deterring crimes by ensuring that offenders of law are punished well in time, which can be achieved through speedy investigation. The Supreme Court also has given directions regarding strict action against erring police officers (for errors during investigations) in *State of Gujarat v. Kishanbhai*⁹.

⁸(2014) 5 S.C.C. 108.

⁹(2014) 5 S.C.C. 108.

3. Rehabilitation- both of the victim of a crime and of the prisoner. For the crime victim, effective implementation of existing mechanisms (both existing and proposed) of rehabilitation would suffice. Various judicial pronouncements ranging from *Delhi Domestic Working Women's Forum v. Union of India & Ors.*¹⁰(directing the National Commission for Women to evolve a “scheme so as to wipe out the tears of unfortunate victims of rape” which resulted in the commission proposing the setting up of a Criminal Injuries Compensation Board for the payment of compensation to victims of rape) to *Nilabati Beherav. State of Orissa*¹¹(where the Supreme Court reiterated the constitutional right of a victim of custodial crimes to receive compensation) have provided relevant guidelines in that regard. For the prisoners, various innovative rehabilitation programs by prisons across India have achieved success in rehabilitating the prisoners, like offering inmates a chance to spend time with their children and other loved ones without having a glass or wall separating them (as implemented in Taloja Jail, Navi Mumbai), self-employment training programs (like the ones being run at the Poojapura Central Prison, Thiruvananthapuram) and starting small automotive manufacturing units run by prison inmates, which develops the skill set requisite to receive employment opportunities in the future (like the one being run at the Tihar Jail, New Delhi). This ensures post-crime access to justice both for the victim and the convict, delivered to them by the law enforcement agencies themselves.
4. Punishment: punishment for the commission of a crime is the cynosure of criminal law. It is this primary actuation that the work of the law enforcement agencies is based on and therefore, a direct relation exists between dispensing criminal justice and the functions of the law enforcement agencies in that regard.

These are the respects in which law enforcement agencies can acquire importance for the process of ensuring that each one having a direct stake in the working of the legal system (be it the victim, the offender or the officials working in the legal framework) meaningful gets access to justice.

Conclusion & Suggestions

It is true that Indian law enforcement agencies work in a reprehensible manner, however, the improvement in terms of statistics must be appreciated. The overlap between the functions of law enforcement agencies and ideals of criminal and legal justice as explained above

¹⁰(1995) 1 S.C.C. 14.

¹¹(1993) 2 S.C.C. 746.

provides us a much needed prism to view the potential of existing law enforcement agencies in transmogrifying into effective portals of accessing 'real' and not 'sham' justice. The relationship between law enforcement and criminal justice points to the nature of resolution that is needed to ameliorate the status quo, which is a combination of both institutional reforms and active implementation of existing legal responsibilities. Accordingly, the following recommendations in the spirit of institutional reforms are suggested to help alleviate the current distress in the police system of our country:

1. Increased allocation of resources to target female recruits at all levels. Both financial assets (advertising, special wages or perks) and policy measures (reservations, quotas etc.) may be used. This would help in sensitising the institution of police towards issues of vulnerability faced by the women in rural patriarchal setups, thereby, aggrandizing the possibility of preventing offences against women. Access to justice is therefore, implicit.
2. Digitisation and automation of police records. Both archival material and, with priority, novel entries (like FIRs, witness statements etc.). Built-in measures against editing/deleting to be installed e.g. by cloud storage (i.e. pooling records in a central repository) so as to identify if any illegal alterations with malicious motives of ensuring that the offender walks away freely, in the records have been made, as cloud storage keeps a record of every instance of informational editing that is done. This makes it easy for Courts to conclude if evidence has been tampered with or not. This solution has recently been implemented by the Andhra Pradesh Police partly.
3. Assigning of supervisory officers to each detainee at the point of entry into the police system. This counteracts the common strategy of shifting the blame to the invisible intangible "system" which saves the culprits from judicial scrutiny. The said assignment only adds to the administrative duties of the said officer and doesn't provide him with any privileges with respect to treatment of the detainee. Obvious possibilities like transfer of officers or of the detainee to be taken into account during policy formulation. This ensures that culprits within the police fraternity aren't able to skirt the law.
4. Systematising the regulations for permitting visits. Information asymmetry is the primary cause of violations by the police force. The dynamics are heavily against the detainee (due to intricacies of law, built-in arbitrariness in rules, threat of armed violence etc.) and "common knowledge" -- either by the victims' relatives and/or,

preferably, state and non-state actors, like NGO or NHRC representatives can preclude, or at least discourage, such breaches.

Embodying perfection in terms of imbuing values of institutional cooperation in law enforcement agencies and ensuring access to legal justice universally may be impossible given the unachievable nature of perfection itself, but, pursuit of the same certainly has a lot to offer.