

## **REVIEWING THE INDIAN POLICE SYSTEM: CHALLENGES FACED BY THE POLICE IN INDIA**

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### **Abstract**

*Right from the inception of the Police laws during the 19<sup>th</sup> century, the rights and liabilities of the Police have been questioned on various grounds. To what extent the Police can encroach upon the rights of the public and to what extent the right of the Police needs to be safeguarded, have raised concerns. Police are not just human agency, they are human beings too whose rights need to be protected. Several judgements have imposed checks upon the Police atrocities neglecting the rights of the Police, leading to challenges faced in implementation of the duty. Changes have been made to the Criminal Laws as we have ushered in the new BNS, BNSS and BSA 2023. Several legislations like The Company Act 2013, The Hindu Succession Act 1956, The Government of India Act 1935, have also undergone amendments to update itself. However, The Police Act 1861 seems to have been overlooked in this context. It raises concern when one reviews the Police laws in India. There are plethora of legislations passed for the criminal, civil, mercantile, corporate and the banking laws but when it comes to the Police laws, there is only one respite - The Police Act 1861 and that too is in need of update presently. This directly embarks upon the significance of the Police laws, rather the Police agency and strikes a question at the independence of the Police System in India. So, it becomes essential to throw light in this area as Police represents the Executive or the Law-Enforcement wing of the Government. The stature of the Police in USA is of much significance. In UK, the police are allowed to function without any fear or favour. This article also makes an attempt to compare the position of the Police outside India trying to analyse what the Policing System in India needs. An independent Police System has now become the need of the hour. Thus, as a student of law, it will be a humble attempt to draw the contours of the present Police laws in India, highlighting the challenges faced, with a few suggestions so as to strive towards a more effective Police System in India.*

**Keywords:** CRIMINAL JUSTICE SYSTEM, POLICE LAWS, LAW ENFORCEMENT, LAW ENFORCEMENT, JUSTICE

**1.1 Introduction:** The word Police means to search and inspect which itself suggests the primary function of the Police. The word Police has nowhere been defined. Though **Section 1 of The Police Act 1861** defines a police as ‘a person enrolled under this act’ i.e. The Police Act 1861. However, as a norm of prudence, it is believed that when the Legislature fails, the Judiciary steps in. In **Raja Ram Jaiswal V. State of Bihar 1964**<sup>1</sup>, for the first time, the Court made an attempt to define who is a police officer. In this case the Court held that **a person is considered to be a Police Officer if he has the power of investigation and file a chargesheet**. Until then, it was difficult for the Judiciary to give a meaning to the word Police though the Police System existed since the ancient times. The case of **Rajkumar V. Union of India 1991**<sup>2</sup>, took a step forward in this regard and held that ‘to determine who is a police officer, nomenclature is not important. The quantum of power exercisable is the determining factor’. However, not all the law enforcing agency is considered a Police Officer. For instance, the case of **Balakrishna V. The State of Maharastra 1980**<sup>3</sup> held that a Railway Protection Force (RPF) is not a Police Officer. In **Surajit Singh Chabra V. Union of India 1997**<sup>4</sup>, the Court held that the purpose of the Railway Protection Force is to protect the property of the Railway. Thus, RPF does not come within the purview of Police.

In the context of NDPS Act, the case of **Ram Singh V. CBI 2020**<sup>5</sup> held that a person authorized under the NDPS Act is not a Police Officer. The case of **Abdul Rashid V. The State of Bihar 2001**<sup>6</sup>, held that a person entrusted under The Excise Act, with the power of investigation, is a police officer within the purview of The Excise Act. Therefore, we find that though the Legislature has not defined the word Police, the Judiciary has correctly interpreted the word Police and laid down who is a police officer. **However, the irony lies in the fact that till date, there is no concrete definition of Police in India.**

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<sup>1</sup> AIR [1964] SC 828 and 2 SCR 752.

<sup>2</sup> AIR [1991] SC 45 and 1990 SCR (2) 63.

<sup>3</sup> [1981] AIR 379, 1981 SCR (1) 175.

<sup>4</sup> [1997] (89) ELT 646 (SC).

<sup>5</sup> [2011] 11 SCC 347.

<sup>6</sup> AIR [2001] SC2422, 2001(2)ALD(CRI)164.

**1.2 History and Development:** The Revolt of 1857 that marked a revolution in the history of Independence in India, influenced the legal infrastructure as well. The Sepoy Mutiny and the pulsating movements called for a strict code of conduct for the Law enforcement agency. Though policing System in India is not a new concept as it existed in the ancient times as ‘sthanikas’ and ‘gopas’, the police System at that time, functioned merely as search and seizure agency. However after The Revolt of 1857, a need was felt by The Crown to develop a set of codified Law for the Police whose rights were nowhere mentioned until then. Just after drafting The Indian Penal Code 1860 by Lord Macaulay, the Crown developed **The Police Act 1861**, which was a comprehensive framework of rules for the Police working under The Crown. This essentially highlights the hierarchy and certain norms to be abided by the Police.

With the passage of time, there came several reforms in the Act influenced by erudite Law Commission Report namely, **The Ribeiro Committee 1998**<sup>7</sup> headed by J.F Ribeiro a Retired IPS Officer that introduced **Police Establishment Board** and recommended the set up of dedicated bodies for transfer of Police. It also created a Police Complaint Mechanism where the Police Officer could be complained against. This was followed by the **Padmanabhaiya Committee 2000**<sup>8</sup> headed by K. Padmanabhaiya, in consultation with The Ministry of Home Affairs, that served as disaster management guidelines. The credit for attempting to bring about reform in Police laws goes to **The Mallimath Committee Report 2003**<sup>9</sup>, headed by J. V.S Mallimath that recommended certain rights of a Police Officer. It was this Commission Report that recognised the need to empower the Police in India. **The Police Act Drafting Committee (PADC) 2006**<sup>10</sup> headed by Soli Sorabjee, in collaboration with The Ministry of Home Affairs aimed to build more public friendly force and mandated two year term of the Director General of Police (DGP). It aimed to reform The Police Act 1861 however due to certain political upsurge, this remains an attempt. **The Madhav Menon Committee 2007**<sup>11</sup> though backed by a stronger foundation, that recommended to change the colonial law successfully implemented the new Criminal laws, by virtue of which we experienced a paradigm Shift in the effective criminal justice system which touched the realm of Police laws as well. Recently, **The 282<sup>nd</sup> Law Commission**

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<sup>7</sup> The Ribeiro Committee [1998] Government of India.

<sup>8</sup> The Padmanabhaiya Committee [2000] Government of India.

<sup>9</sup> The Mallimath Committee Report [2003] Government of India.

<sup>10</sup> The PADC [2006] Government of India.

<sup>11</sup> The Madhav Menon Committee [2007] Government of India.

**Report** dated September 27, 2023 is seen to be successful in introducing E-FIR as enunciated in **Sec.174 BNSS 2023**.

**2.1 Statutory framework: What the Legislature has done through the BNSS 2023:** The Police System in India is backed by law which makes the rights of the Police enforceable. Besides **The Police Act 1861**, The former **Code of Criminal Procedure** and **The Bharatiya Nagarik Suraksha Sanhita 2023** also empowers the Police to exercise their rights. Now, we will discuss some of the rights of the Police in India and analyse what the Legislature has done in this regard.

**2.2 Through the lens of The Police Act 1861 and The BNSS 2023:** ‘A Police Officer is always on duty’ -it is said as is enunciated in **sec.22 of The Police Act 1861** that grants a Police Officer the right to investigate beyond the jurisdiction of his Police station he is employed in. **Sec. 24 of The Police Act 1861** empowers the Police to lay information before the Magistrate and issue process before the Magistrate. **Section 30 and 31 of The Police Act 1861** provides that a Police Officer can imposed law and order for the maintenance of peace and Public order. **Sec 34 of The Police Act 1861** empowers the Police to impose punishment for violating Public order. This includes the right to seize sound boxes, stop vehicles and detain the accused for one day in Police custody.

**The Bharatiya Nagarik Suraksha Sanhita 2023** has brought about a reform in the Police powers through several statutory protection. **Section 175 BNSS 2023** provides the right to investigate beyond their jurisdiction without the order of the Magistrate. **Section 35 and Section 41(A)** of BNSS 2023 empowers the Police to arrest without a warrant in certain cases. While **Section 105 and section 185** introduces audio visual mode of investigation by the Police , **Section 173(1)** allows a Police to receive complains by electronic means. This is essentially influenced by the landmark judgement on **Lalita Kamari’s case** that introduced the concept of Zero FIR in India. However the only drawback of this provision is that the complainant has to physically come and sign the same E-FIR within three days to validate that FIR , which defeats the purpose of lodging an E-FIR. **Section 126 and section 170** gives the right to the Police Officer to make preventive arrest and arrest on the ground of non-cooperation with the Police for investigation. This contemplates a situation where a citizen refuses to disclose his identity or furnishes false identity or address when asked by The Police for the process of investigation. Finally **Section 31 of The BNSS 2023** imposes a duty on the citizens to assist the Police with investigation. **Section 187 BNSS 2023** that empowers the Police to take a person into Police custody for 15 days stretched across a period of 60 days (for offenses punishment with imprisonment for 10 years or less) and 90 days (for offenses punishable with imprisonment for more than 10 years), has raised much debate which questions the extent of rights of the Police. Unlike sec

167 Crpc, which mandated police custody for the first 15 days only, made room for the accused to escape Police custody. This further allowed injustice to seep through the gates of malpractices. So, the BNSS 2023 has curbed this malpractices vide **Section 187 BNSS 2023**. However, this has raised questions upon the Police atrocities alleging that the Police are encroaching upon the public interest. What we are unable to understand here is the legislative intent of the statute which aims to curb injustice by empowering the Police. This essentially strengthens the Police and accords them cooperation from the Public.

Thus we see that **The Police Act 1861** and **The Bharatiya Nagarik Suraksha Sanhita 2023** has been instrumental in protecting the rights of the Police. However, what the present legal infrastructure lacks is proper implementation of these provisions. With the advent of the Digital Evidence in BSA 2023, the Police is facing challenges in discharging their duty. The duties of the Police Officer are well codified however, the Legislature still needs to implement proper reforms for the rights of the Police especially to accord them social security.

**3.1 Landmark Judgement: What the Judiciary has done:** There are plethora of cases dealing with Police atrocities, when the Police encroached upon the rights of the Public. Here we will deal with a few case laws that highlighted the Rights and duties of the Police in India. In **Kasturi Lal V. The State of Uttar Pradesh 1964**<sup>12</sup>, the Court highlighted the duty of the Police to discharge his sovereign duty. Consecutively, in **Ram Gulam V. Union of India 1965**<sup>13</sup>, the Court held that where the Police fails to discharge his sovereign duty, the Government becomes liable for his action. Though this is a Tort case, this case highlights the significance of the role of a Police, the other way round. **Shyamal Baran Saha V. The State of West Bengal 1998**<sup>14</sup>, that primarily dealt with law and order problem in riots, highlighted the need to perform sovereign duty with sensitivity so as to protect the public interest. The case of **State of Madhya Pradesh V. Shanti Bai 2003**<sup>15</sup>, where the Police had to use tear gas to control a riot, the Police was questioned to have encroached upon the rights of the Public. However, what gets overlooked here, is the helpless condition of the Police at that moment, that compelled them to use force to maintain peace and Public order. Sometimes, the veracity of an unforeseen situation is such that a human being cannot collect the logic to use proper means. So, in this case when after having exhausted all other avenues, the Police used tear gas, and the Police was criticized for having used force. This gave rise to the uproar in **Parakh Singh V. Union of India**

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<sup>12</sup> AIR [1965] SC 1039.

<sup>13</sup> AIR [1950] ALL 206.

<sup>14</sup> AIR [1998] CAL203.

<sup>15</sup> [2006] 1 ACC 405.

2006<sup>16</sup>, that verbosely highlighted the need to introduce Police reforms in India, especially to secure the tenure of a Police, address Police Complaint Mechanism, decision regarding transfer and promotion of the Police, etc. The landmark case of **Lalita Kumari V. State of Uttar Pradesh 2014**<sup>17</sup>, that introduced the concept of Zero FIR, happens to be a torchbearer for the Police to record FIR with utmost sensitivity and empathy towards the Complainant. In the same year, the case of **Arnesh Kumar V. The State of Bihar 2014**<sup>18</sup>, reminded the Police of the arrest procedures to be made in accordance with the Principles of Natural Justice. Recently, in **Vihaan Kumar V. State of Haryana 2025**<sup>19</sup>, the Court reemphasized on the right of the Police to arrest without warrant is subjected to reasonable restrictions by the Magistrate.

Thus, through these cases case laws, the Judiciary has also contributed towards formulating a proper Police laws. However, it is not only incumbent upon the Judiciary and the Legislature but also the Criminal Justice administration as a whole to build a robust mechanism for a better understanding of Police laws in India.

**4.1 Challenges faced: Addressing the elephant in the room:** The Criminal Justice System has developed several reforms for all the stakeholders of Justice. However, the Law enforcement agency i.e. The Police System is what gets overlooked in this regard. With the advent of digital Evidence, the Police faced a significantly challenging situation with regards to discharging their sovereign duty. Some of the identified issues are enlisted herein under:

- Weak Infrastructure: Though the Police Act 1861 and the BNSS 2023 have tried to uplift the conditions of Police in India, the truth is that the country lacks a robust legal infrastructure in this regard. Apart from section 170 and 31 of BNSS, there is no legal sanction imposed on the public for not cooperation with the Police. So, technically the Police are crippled by the logistics of law and merely act as puppets as they lay upon the discretion of the Government as enunciated under Article 311 of the Indian Constitution.
- Lack of Specific Provisions: As discussed earlier in this context, there is no specific provisions in any statute that would bind the Court or the people to abide by the orders of the Police. So, the Police are left with no option but to comply with the orders from the hierarchy above.

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<sup>16</sup> AIR ONLINE [2011] SC 424.

<sup>17</sup> AIR 2014 SUPREME COURT 187.

<sup>18</sup> [2014] 8 SCC 273.

<sup>19</sup> [2025] INSC 162.

- The menace of VIP Duty: The most important duty of the Police Department is understood to be VIP duty. Though this is not mandated in pen and paper, this can be observed from the practical reality. Even if there is a Law and Order Situation, where there is a VIP or a celebrity, or say anything official from the Ministry comes for a detour of an area, giving safety and security to this official becomes the foremost duty of the Police who are compelled to forsake other crucial duties to comply with the orders for the VIP duty. The menace of this duty is restricting the Police from discharging their sovereign duty i.e. to protect the rights and Liability of the State as well as the Public at large.
- No proper definition: It is shocking to know that our country being dependant upon the Police System, has overlooked the very need to define the word 'Police'. Sadly, in our country the word Police is nowhere defined. This arises ethos in the Police Department and questions the very significance of the Police System that existed much before the advent of the British.
- Humanitarian aspects overlooked: Police are human beings too. Besides their service, they have their own family and children to look after. However the call for their duty which is a noble service towards the State, and that which requires utmost dedication, leaves no room for the Police to spend time with their near and dear ones. The slogging hours spent in field, are detrimental to their physical and mental wellbeing as well. However, this humanitarian aspects about the Police is overlooked.

**5.1 Reforms needed: A few suggestions:** India is in a developing stage, and there are plethora of Reforms needed. However, in this context, here are a few suggestions to combat the challenges faced by the Police in India:

- Implementation of a Stronger Infrastructure: Considering the present situation of the Police System in India, where the Police stand helpless, India needs a stronger Police Laws. The Court has considered Police atrocities and reasoned justifications curtailing the rights of the Police. However, the Court has glanced little upon the rights of the Police required for their social Security. Thus, India needs a robust legal framework for a Stronger Police System in India.
- Amendment of The Police Act 1861: While the other colonial laws- The IPC, Crpc and The Indian Evidence Act 1872 received a renovation by virtue of the new BNS, BNSS and BSA 2023, The Police Act 1861 that was drafted in the same era, remains deprived. So, the need of the hour is to amend this Police Act of 1861 to update the status with the present era.

- Providing specific Definition: The most harrowing drawback of the Criminal Justice System in this regard is that it lacks the definition of 'Police'. So, the most important agency of the Government (after Judiciary), being the Police stands without being defined in any Statute. Therefore, to strengthen and streamline the Police System in India, the need of the hour is to draft a proper definition of Police, so that the status of the Police is secured from unnecessary predicament of law.
- Humanitarian Approach required: It is noteworthy that the service of the Police is a noble service towards the State where discharging sovereign duty is incumbent upon every Police Officer of the state. However, what gets overlooked is that 'Police are human beings too'. They are human beings seasoned with emotions which must be considered as well. So, a humanitarian approach towards the Police is required. **Perceiving the Police not only as a State Official but also as a human being** is essential for the mental and physical well being of the Police who are 24 hours ready for service towards the State.
- Separation of the Law Enforcement wing from the Law Implementation wing: The Police are in charge of both Law enforcement and Law Implementation which is increasing the burden on the Police Department who are juggling to discharge their sovereign duty. Thus, for an effective Police System in India, separation of the Law enforcement wing from the Investigation Department wing is the need of the hour. Reforms are needed to make provision for such legal infrastructure where the Police would have a healthy working condition.

**6. Conclusion:** Police is the edifice on which stands The Judiciary and the Executive. However, in our country, it is the Police whose rights gets overlooked. **Section 23 BSA 2023** provides that confession made to a police officer or in a police custody is not an admissible piece of evidence. The plague of non- admissibility of evidence in the form of confession made before a Police officer or in a police custody ( in the absence of a Magistrate) has made the Position of Police much fragile in the Criminal Justice System. Though it is quite established that sometimes the Police uses threat, inducement and coercion or even third degree torture to divulge the truth from the accused, it is to be noted that this situation is subjected to glorious exception of Police Officers who are utmost dedicated towards their service and discharge their sovereign duty with utmost honesty and sincerity. In **Prem Chand (Paniwala) V. Union of India and Ors. 1980**<sup>20</sup>, a strong need was felt to bring about a reform in the Police System in India, especially to safeguard the rights and liabilities of not only the accused and the victims, but also the Police whose tireless effort keeps the fabric of the Criminal Justice

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<sup>20</sup> AIR [1981] SC 613.



System intact. Right from that time a need has been felt to reform The Police System but little could be materialized, considering the present day situation. In the words of Rabindranath Tagore, “*None has ever crossed the sea merely by standing near it* “. Interpreting these lines in this context would tell us that, India is still in need of a robust legal infrastructure where the Police would find a place too. We can only hope for a future that would bring about reform in the Police System in India to ensure justice in real sense.