



# LEGAL ACCOUNTABILITY OF POLICE IN INDIA: AN ANALYSIS

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## ABSTRACT

The Latin term "politia," which itself derives from Ancient Greek, is the source of the Middle French word "police," from which the English word "police" is derived.<sup>3</sup> In general, the term "Police" can be used to refer to a public servant or a group responsible for enforcing the law whose main duty is to maintain the public's legality. The term "police" is also defined in the Police Act of 1861, which states in Section 1 that "the word "police" will encompass all personnel who shall be recruited under this Act."<sup>4</sup>

In recent years, India has witnessed the police force engage in a variety of corrupt activities and wrongdoing. One should not conflate the phrase corrupt practices and misbehavior at this point. Corrupt practices are actions taken by police officers for personal benefit, whereas misbehavior is the use of fatal amounts of physical force by the police. These offenses often include murdering or violently assaulting innocent persons without a warrant from a judge or higher police authority. Police brutality is the phrase used to describe these actions.

Several examples of police abuse include:

- Wrongful detention and wrongful arrest
- Sexual exploitation
- Discrimination based on race
- Inappropriate search and seizure

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<sup>3</sup> Anonymous, *The Development of a Police Force - Victorian Crime and Punishment*, E2BN, (Jul. 15, 2020, 09:00 AM),

<http://vcp.e2bn.org/justice/page11377-the-development-of-a-police-force.html>

<sup>4</sup> THE POLICE ACT 1861, Universal Law Publication, 2016 Ed

Accountability is needed for police at this point. In this paper, we are going to understand the legal accountability of the police in India. We will look at some rules and regulations which hold the police responsible for all the brutal acts it performs. We will understand the scenario in India and then we will look at some of the which might be useful in tackling this situation. In the end, the article will be concluded.

**Keywords:** *Activities, Accountability, Brutal, Corrupt, Force, Police, Responsible.*

## 1. INTRODUCTION

*Several things require fixing. one in particular? Is brutality by police.*

Collin Kaepernick

Legal accountability is the theory used by the law to determine guilt, such as in a crime, or the theory used to get compensation in a civil action. The state in which something happened should be responsible for holding people accountable. Legal responsibility for a crime depends on the suspect's participation in the conduct of the crime, either before or after the fact.<sup>5</sup>

An illustration of a case study on legal responsibility is as follows:

If someone is legally responsible for a crime that was committed due to the actions of another, that person may be found guilty of the offense. Being an accomplice result in legal liability for the actions of another.

Governments continue to allow these moneyed interests to wreak havoc on their public, the people of other countries, and the environment by serving almost solely moneyed interests and corporations rather than their electorate. Without democratic, legal accountability, this pattern will persist to the immense cost to mankind and all life on earth since we cannot expect people who serve these interests to reform themselves.<sup>6</sup>

## 2. STATUS OF LEGAL ACCOUNTABILITY OF POLICE IN INDIA

The police organization is recognized by the Constitution as a quasi-federal entity that is listed under Article 246 and included in the State List of the seventh schedule.

The Indian Police Act of 1861 is the law that governs the Indian police. This law has been either adopted by or modeled after by all other states and UTs. Even though the Act was altered several times both before and after independence, there were still many inconsistencies in how the Indian police operated. To eliminate these inconsistencies, the National Commission of Police issued 8 reports with suggestions between 1978 and 1981, but none of them was put into action.

<sup>5</sup> *Légal accountability and légal définition. Availablē at Légal Accountability Law and Légal Définition | USLēgal, Inc.*

<sup>6</sup> *Légal Accountability and thē rulē of law. Availablē at Légal Accountability and thē Rulē of Law – Dēclaration of Accountability*

**Vineet Narain v. Union of India**<sup>7</sup> is a case in point. The National Commission of Police's earlier reports, which were submitted from 1978 to 1981, was urgently in need of execution, which was acknowledged by the Supreme Court for the first time. Numerous committees were formed to investigate the reliability and effectiveness of the police based on this concern.

The Padmanabhaiah Committee, the Malimath Committee, and the Ribeiro Committee all issued reports in 1998 and 1999, 2000, and 2002, respectively, based on the research and analysis. In the **Prakash Singh v. Union of India case**<sup>8</sup>, the Apex Court carefully considered each of these reports that were provided. The Apex Court gave careful consideration to the effectiveness and accountability of police organizations in this historic decision.

Considering the study, The Central and State Legislatures were given specific instructions by the Supreme Court to follow until this issue was addressed by law, but no real changes have been made to date.

There are typically three categories of laws that provide for the accountability of police:

1. Public Law
2. Criminal Law
3. Individual Law

## 2.1 PUBLIC LAW

The Indian Constitution is where public law responsibility for police is found. The courts have frequently found police responsible under public law for violations of basic rights outlined in Part III of the Constitution and have imposed financial obligations on the State as restitution for the harm done. The major problem with this is that the state, rather than the individual Police official, is held vicariously accountable. The examples below demonstrate this.

### **Rudul Shah V. State of Bihar**<sup>9</sup>,

Even after being found not guilty in this instance, the petitioner was wrongfully imprisoned for 14 years. The state must pay compensation in the sum of \$30,000 under writ jurisdiction after the Apex Court ruled that it had violated the basic rights protected by Articles 21 and 22 of the Constitution.

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<sup>7</sup> (1998) 1 SCC 226

<sup>8</sup> (2006) 8 SCC 1

<sup>9</sup> AIR 1983 SC 1086

**Saheli v. Police Commissioner<sup>10</sup>**

In this case, a nine-year-old child died as a result of the police beating. However, the division bench held that the mother of the deceased child, not the police officer, is entitled to Rs. 75,000 in compensation from the Delhi Administration.

**PUDR v. Delhi Police Headquarters and Anr<sup>11</sup>**

A worker was killed by severe beating. In this instance, the court had mandated that the Delhi government pay a compensation of Rs. 50,000.

**State of Maharashtra v. Ravi Kant Patil<sup>12</sup>**

An uncharged prisoner was forced to march through the streets while being handcuffed, bound, and waiting for trial. The State Government was mandated by the Supreme Court to pay the victim Rs 10,000 in restitution. The question of who should pay the compensation—the individual police or the State—was debated by the court in this case. In light of the vicarious responsibility, the court stated that even if the police officer exceeded his authority and that he had behaved in an official capacity, it was unlikely that he could be held personally accountable. **Nilabati Behara v. the State of Orissa<sup>13</sup>**

In this instance, a mother whose son had passed away in custody due to injuries sustained by the police was the one who reported a custodial death. The Supreme Court concluded that the death was brought on by police violence, which was a breach of basic rights, and therefore compensation was granted by Article 32 of the Constitution.

**A.V. Janaki Amma V. UOI<sup>14</sup>**

This is an landmark case, the court found that only when Article 21 is broken are Public Authorities, Officials, and the State required to provide restitution. The Supreme Court added to this rule in the case of Nilabati Behara by stating that compensation would only be given if Article 21 has been broken and the victim's death or torture has been proven beyond a reasonable doubt.

The Sube Singh decision added to the Nilabati Behra decision that compensation would only be given if the infringement is egregious and of a scale that would shock the court's conscience. Thus, it is evident that there

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<sup>10</sup> AIR 1990 SC 513

<sup>11</sup> “(1989) 4 SCC 730 (Division Bench)

<sup>12</sup> AIR 1991 SC 871 (Single Bench)

<sup>13</sup> AIR 1993 SC 1960

<sup>14</sup> 2004 (1) ALD 19

is no established rule that governs how the amount of compensation should be determined at this time; the decision rests entirely with the court . When a state will be held culpable and for what activities the police themselves will be held guilty under public law has not yet been determined specifically, either by the court or by the government. A police officer can only be held personally responsible under criminal culpability, and even then only to a financial amount.

## 2.2 CRIMINAL LAW

The criminal culpability of police officers is personal, as opposed to vicarious liability under public law. To shield government employees from unwarranted accusations, the Code of Criminal Procedure, 1973 (CrPC), which is referenced under Section 197 and more particularly in Section 132 of CrPC, provides procedural protections and sovereign immunity. The police officer must have carried out unlawful conduct on behalf of the State or the Central Authority to qualify for sovereign immunity.

### **P.P. Unnikrishnan v. Alikutty Puttiyottil** <sup>15</sup>

In this instance, the respondent was taken to Perambra Police Station by the S.L. of Police and the police constable there, where he was wrongfully detained for four days and subjected to severe abuse before being brought before the court. The Supreme Court stated in a decision on appeal regarding the application of “Section 197(1)” that "There must be a reasonable nexus between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable claim, but not a pretended or fanciful claim, that he did it in the course of performing his duty."

### **Uttarakhand Sangharsh Samiti v. State of Uttar Pradesh** <sup>16</sup>

In one instance, the cops are accused of murdering 24 persons as well as assaulting and raping many women. However, the court in this specific case just ordered the wrongdoing authorities to pay monetary damages without laying any charges against them.

In this instance, 10 lakhs were given to those who were slain, 10 lakhs to those who were sexually assaulted, and 5 lakhs to all other female victims. In this case, the division bench ruled that only actions that have a direct connection to the performance of an official task by a police officer while they are on duty are covered by Section 197. It was stated that actions like wrongful detention, setting up weapons to demonstrate fake recoveries, running into unarmed aggressors, altering or tampering with evidence, sexual harassment, rape, and other similar behaviors are neither ordered by the state nor expected to be taken while carrying out official

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<sup>15</sup> AIR 2000 SC 2952

<sup>16</sup> (1996) 1 UPLBEC 461

duties. To prosecute such lawbreakers, no formal decree is necessary. However, even under criminal law, the police are solely responsible for making restitution; even if they go beyond their authority, no criminal charges may be brought against them. This is because of sovereign immunity. Out of the numerous examples of police violence in India that go unreported, a few are due to this impunity.

### 2.3 Private Law

There is no question that a civil lawsuit for damages filed under private law may be utilized to hold the State responsible for the infringement of a basic right brought on by improper police behavior. However, historical precedents imply that public law writ petitions rather than private law have been employed as a remedy.

The Rudel Shah<sup>17</sup><sup>18</sup><sup>19</sup> decision set the precedent for future cases, and it was reiterated in Nilabati Behera v. the State of Orissa<sup>16</sup> that when fundamental rights are violated, the compensation writ jurisdictional remedy is separate from and in addition to the existing ordinary proceedings under a private law remedy. But when it comes to private law remedies, a significant question arises: Can the idea of sovereign immunity be utilized as a defense in civil lawsuits seeking damages for violations of basic rights? A three-judge Supreme Court panel explained in Nilabati Behera v. the State of Orissa<sup>17</sup> that the idea of sovereign immunity is inapplicable and unrelated to the idea of upholding basic rights.

It separated instances of police abuse from a previous ruling by the Supreme Court in Kasturilal **Ralia Ram Jain v. State of Uttar Pradesh**<sup>20</sup>, which affirmed the claim of sovereign immunity for wrongdoing committed by its employees. The statement continued, "The idea of sovereign immunity may be admissible as a defense in private law in an action based on tort, but it is inapplicable not situations that violate basic rights." Thus, the issue of whether the idea of sovereign accountability will be a recognized defense in civil actions seeking damages for police wrongdoing emerges.

The issue initially arose in the judgment of **State of Rajasthan v. Vidyawati**<sup>21</sup>, in which the dependents of a victim of a fatal accident brought a claim for damages due to the carelessness of a government driver. According to the defense, sovereign immunity applies in this case since the driver was acting in the course of his duties. The Supreme Court's five-judge panel ruled that the notion of sovereign immunity is unjustified and that it is founded on antiquated, feudalistic ideas of justice that hold that the king is infallible. The Supreme

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<sup>17</sup> AIR 1983 SC 1086

<sup>18</sup> AIR SC 1960

<sup>19</sup> AIR SC 1960

<sup>20</sup> AIR 1965 SC 1039

<sup>21</sup> AIR 1962 SC 933

Court also ruled that the State was vicariously accountable for the driver's carelessness and that the sovereign immunity defense was inadmissible.

In *Kasturilal Ram Jain v. the State of UP*<sup>22</sup>, where a lawsuit was made against the State of U.P. seeking compensation for the missing gold jewels that the police had lost owing to their incompetence, the issue of sovereign immunity was raised once more before a five-judge Supreme Court panel. In this instance, however, the Supreme Court used the doctrine of sovereign immunity and determined that police officer are entitled to sovereign immunity since the incident occurred while they were doing their duties as government employees.

To distinguish itself from the *State of Rajasthan v. Vidyawati*, it was decided that while a policeman's job is an exercise of sovereign authority, a government driver's duty is not, and as a result, is exempt from tort responsibility. Although the Kasturilal judgment hasn't been overturned yet, it has received a lot of criticism from authorities, and the Supreme Court's following rulings have seriously diminished its weight. All of the precedents discussed in this memorandum, including the Rudul Shah decision and, more specifically, “*Saheli v. Commissioner of Police*”, *Delhi* and “*Nilabati Behara v. the State of Orissa*”<sup>23</sup>, draw their precedent from the *State of Rajasthan v. Vidyawati* and set themselves apart from *Kasturilal Ram Jain v. the State of U.P.*, do not take the defense of sovereign immunity into account in situations where there has been misconduct by the police.

### 3. Available Remedies

Denying fundamental rights to those who are detained is a proven assault on human dignity and has the power to smother a person's personality. By using a broad construction of life and personal liberty, Indian courts have demonstrated their vigilance against the violation of the human rights of people who are in custody. To preserve citizens' rights, obtaining a strong recourse for complaints against the police is essential. The National Crime Bureau reports that out of the approximately 54,916 complaints that were filed in 2015, only 16,308 were investigated. Only 1122 police officers were subsequently charged with crimes, and only 25 of them have been found guilty. There doesn't appear to be any logical justification for the dismal conviction rates for police officers.<sup>24</sup>

### 4. POLICE COMPLAINT AUTHORITY

In the historic ruling in *Prakash Singh v. Union of India*, the Supreme Court ordered, among other things, the establishment of a Police Complaint Authority (PCA) in every state by the enactment of suitable legislation

<sup>22</sup> AIR 1990 SC 513, 1989 SCR 488

<sup>23</sup> *ibid*

<sup>24</sup> *Accountability of policē. Availablē at accountability of policē (vidhikarya.com) (last accēssēd 6<sup>th</sup> sēpt 2022)*



after carefully examining previous precedents, cases alleging the abuse of authority by the police, and reports of numerous Commissions established to give recommendations for greater accountability of police in India. So, to replace the Police Act of 1861, the Ministry of Home Affairs established the Soli Sorabjee Committee in October 2006. The committee's task was to develop a model policy bill that would be integrated by all states into their state-specific laws. A comprehensive provision creating and governing authorities handling complaints against the police is laid out in the Model Bill.

The Court had established the fundamental minimum requirements for police supervision that the Bill had to provide. The Bill establishes a PCA with a chairperson who must be a High Court judge in retirement and five other state-level members. At the district level, a commission is also set up for improved management and efficient resolution of complaints against the police. The PCA is authorized to look into complaints alleging any type of misconduct against any police officer who holds the rank of Superintendent of Police or higher, as well as into complaints alleging misconduct against police officers who hold ranks lower than Superintendent of Police, including allegations of death, grievous injury, rape or attempted rape of a woman while she is in custody, extortion, taking of land and/or a house, severe abuse of authority, and any other misconduct that the St. According to the Code of Civil Procedure, 1908, the Authority will have the same authority as a civil court about subjects that the PCA is investigating. The Commission may also formally acknowledge the alleged mistreatment.

## 5. Liability under law

The constitutional and administrative laws that protect people's fundamental rights serve as the foundation for this obligation. A police officer who violates a person's right to life, liberty, protection from discrimination, freedom from arbitrary detention, and the right to move freely throughout the territory of India, among other rights, may be held legally responsible under the Constitution and may be ordered to compensate the victim for his harm or injury.

The Apex Court awarded compensation to two women who had been tormented, agonized over, and harassed when they attempted to file a missing person report for their husbands in *Sebastian Hongray v. Union of India (1984)*<sup>25</sup>. Army personnel picked up these ladies and brought them to an army camp in Manipur; their missing husbands were never seen. Similar compensation was given for killing a nine-year-old kid in custody in *Saheli v. Commissioner of Police (1990)*.

In *Uttarakhand Sangharsh Samiti v. State of UP (1996)*,<sup>26</sup> it was determined that unlawful restraint and detention, the purposeful shooting of unarmed protesters, the planting of evidence to demonstrate false recoveries, rape, tampering with evidence, and harassing a person cannot be considered acts done or

<sup>25</sup> *ibid*

<sup>26</sup> *ibid*



purportedly done in the discharge of a police officer's official duties. As a result, those who were slain as well as the women who were raped or otherwise harassed by the police received exceptional damages.

## 6. Action by the National Human Rights Commission

Under the principles of the Protection of Human Rights Act of 1993, the National and State Human Rights Commissions are entitled to investigate claims of human rights abuses by anybody, either on their own initiative or in response to a complaint presented to them. The NHRC has the jurisdiction to intervene in any legal actions brought against the police officer by this power and to offer suggestions in this respect. Custodial violence and death, fictitious encounters, police brutality, and situations involving women and children can all be brought to the NHRC for investigation.

The Commission has often emphasized how lawlessness and disdain for the enforcing authority are fostered by the antagonistic behavior of law enforcement organizations. Strict action, including prosecution, against those who commit any type of custodial violence, is one strategy to ensure the decrease of such incidents. Additionally, the Commission has recommended disciplinary action against the corrupt officials and provided financial assistance to the victims or their heirs.

## 7. CONCLUSION

The judiciary, the police complaints authority, and the national and state human rights commissions are the three external police accountability systems covered in this article. The scholar has extensively examined the judiciary, focusing mostly on public law and criminal law, out of the three types of law: private law, criminal law, and public law.

According to the researcher, there are two key causes for the absence of police accountability:

1. The police are granted sovereign immunity under our laws and the legislation regulating them. The scope of the victims is reduced by this immunity, which exempts police officers from practically all obligations or misconducts and spares them from incarceration. This explains why financial penalties are used as the primary form of punishment for infractions by police personnel.
2. Court rulings are another factor in the absence of police accountability since because the majority of cases involve the violation of basic and human rights, only the Supreme Court and the High Courts have the authority to investigate police officers. Even in cases involving criminal behavior, the judiciary has only ever awarded monetary damages to the victims, and in cases involving public laws, it has typically held the state—rather than the police themselves— vicariously accountable for the actions of the police.

In light of the research findings, the researcher would like to submit the following ideas that could aid in removing the inconsistencies in the aforementioned law.

- Even lower courts should have the authority to hear instances involving police abuse and award damages, rather than just the High Court or the Supreme Court. The High Court and Supreme Court's burden will be lifted as a result.
- Compensation for victims of police violence should be given in all circumstances, not just when fundamental rights have been violated.
- The state should not be held vicariously accountable for the actions of police officers who go outside the bounds of state commands in situations of police brutality.
- Since sections 197 and 132 of the CrPC are frequently abused to bar the average person from filing an FIR, the procedural safeguards provided to the police under criminal law must be loosened.
- A separate law or unique IPC provisions should be drafted to specify the scope and responsibility of the criminal acts committed by the police.

Therefore, a comprehensive reevaluation of India's policing culture is urgently required. The moment has come to change the culture of police from one that instills fear in the public to one where public service is prioritized. Justice must be done and should appear to be done. The legislature should thus concentrate on passing laws that uphold justice and are considerate of human rights. The emphasis on rights-respecting policing should be increased, and any erroneous police officers should be immediately prosecuted. Since there is no manual on how to avoid being a victim of police brutality, it would be best if this barbaric kind of policing were abolished.

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