

The Role Played By Judicial System In Criminal Justice Delivery System In India

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After the first war of Independence in the year 1857, Britisher came to know that the then existing law was not sufficient and up to the walk, to control such time of revolt. By using all the mean they somehow manage to superior the 1857 revolt, but they realized that an urgent need was to bring changes in this society by way of bringing a special police law, so that they can manage any such type of revolt in future. In the year 1861 a new law came into existence which brought the reform in the police system, and which was fenoooser to Britisher, that Act was called by the name, *The Police Act, 1861*.

The aim of the New Police Act which came into existence in the year 1861 were to make police free more 'efficient instrument for the prevention and detection of crime'.¹ By these new police act each state has the force to establish its own police force.² And this is not limited to only establishment of police force but also to course the superintendence of the established police force.³

This power had been used by the Britisher during the tenure till the date they ruled over India. It was envisaged during the time of Independence that as we do away with Britisher rule we would definitely do away with, this draconian law. But this was not the case, even after independence the law was not taken away by the legislation and it continued.

This law has given clout to the politics as well as to the senter official and so they were least interested do away with the law as it gives them unlimited power. This can be illustrated by few incidents which clearly shows the misuse of political power through police: -

- (1) Misuse of Police during Emergency.
- (2) Misuse of Police in Anti-Sikh Rait of 1984

¹ Preamble, The Police Act, 1861.

² See 2, The Police Act, 1861.

³ See 3, The Police Act, 1861

- (3) Misuse of Police in Babri Masjid demolition in the year 1992.
- (4) Hathaway case and many were which could be listed here –

During national emergency which was declared in the year 1975, the biggest misuse of the police force was made, this is evident by the Report submitted by the '**SHAH COMMISSION OF ENQUIRY**' April 1978. It had been clearly stated in the report that now misuse has been done during emergency of police by the politician who were in the power at that time.

In the year 1977, when the emergency was revoked, the election held and as the people had suffered a lot during emergency so there were anti-incumbency and people noted against confren and because of which Janta Government can to power. The very first thing which that government did that it constituted a commission called '**NATIONAL POLICE COMMISSION, 1977**', with the object of review the police working, what are the various flaws in the existing system.⁴ This committee remained in existence till the year 1982 and till that date this commission had submitted 8 comprehensive reports about the police free and its had covered each angle and has reference could be made in the police free.

As per the commission report the major focus were as the following aspects: -

- (1) Setting up of State Secretary Commission in each state.
- (2) Separation of investigation using of the police force from the law-and-order police free.
- (3) A specified procedure of transfer should be made and should be transparent.

Apart from this wrong other suggestion had been made so that a proper reform could be made in the police aensionsion and it was also envisaged that the movement this suggestion had been adopted by the government all the draw back and lauras would be viped off.

After the report of '**national Police Commission**', the other agencies, like '**The National Human Rights Commission**' and the '**134th law Commission Report**' also in their report talked about the various issue reality to the police organization and had those issue could be resolved.

Even before these reports had been publishing the various courts, specifically the high courts and Supreme Court of the country had converted on the ... the investigation are done, how the police

⁴ Joshi, G.P. 'A Requiem for the NPC', Seminal, Nov. 1999, <http://www.india-seminar.com/1997/482/483%20joshi.htm>, Iain visited on Sept. 2020.

power had been ... how there had been political and bureaucratic influence the transfer and promotion of the police officials.

Eventually, when these reports came into existence it was realized that this time the government would definitely take steps in the way of changed into the law and a new set of police law could come into existence, but as we know all this went in Vain and all the suggestion made by these commission seventh mostly unhead by the then government and even by their successors. As when the nation police report was submitted and the confirm government came into power again in the year 1980, they were very reluctant in adopting such reports and their suggestion and three event went to the extent that when the forwarded the recommendations of the police report with a clear-cut direction that the state should not take into consideration the various observations which had been made by the ... police commission.

After such reluctant attitude of the governments, it was realized that governments are not will do take solid and firm step in that director, so there was a need of the judiciary by which, government could be made binding in this direction.

In the year 1996, the two forms, Director Generals of Police and an organization called common cause filed a writ petition before the Supreme Court of India U/A 32 of the Constitution. One of the DGP Mr.. Prakash Singh, who was and also, who were also a removed person and held various respondent post in the police department filled the open said person.

Case Before Supreme Court

In the year 1996 in the *Prakash Singh vs. Union of India (2006)*⁵ the issue raised where it had been urged to the Supreme Court of India to give direction to the Union Government to from a New Police Act in accordance why the reamendaless and the Model Act which was defect by the National Police Commission. In this petition the issues which her highlighted was the abuse of power and in efficient police functioning.

As this writ petition was filed in the year 1996 the judgement commission in the year 2006 on 22nd of September, it was a three-judge bench of Hon'ble Mr.. Justice Y.K. Sabharwal, Hon'ble Mr.. Justice C.K. Thakker and Hon'ble Mr.. Justice P.K. Balasubramanyan and the judgment was procedure Chief Justice of India and this judgement was unanimous.

⁵ Prakash Singh v. UOI (2006) & SCC1

Now here we will deal with the few points which had been raised by the S.C. and a dealt by it in this judgment and what direction has been given to the states/union governments.

- Apart from the recommendation made by the National Police Commission report Supreme Court has also referee to the reports which had been submitted by the various high-powered committees and commission.⁶
- S.C. had said that these high-power committees had examined the various issues which were related to the police references. These committee are:
 - National Human Rights Commission
 - Law Commission
 - Riberio Commission
 - Padavabhaiah Committee
 - Malinath Committee on References of the criminal justice delivery system.⁷

S.C. has also referred to a committee which had been constituted on 20th Sept. 2005. This committee was called the Sorabjee Committee, as this was headed by the former Attorney General of India. Mr.. Soli Sorabjee and five other members. The main object of this committee was to draft a New Police Act so that it can cope up with the new challenges faced by the society because of the rapid urbanization, terrorism and many more. This committee has finally drafted a new police Act on 9th September 2006 from few days before this judgment.⁸

- S.C. has also referred to the report submitted by the National Human Rights Commission dated 31st May, 2002 which state that:

"Police Reform: -

28(i) The commission drew attention in its April 2002 proceedings to the need to act decisively on the deeper question of Police reform, on which recommendations of the National Police Commission (NPC) and of the National Human Rights Commission have been pending despite effects to have their acted upon."

⁶ Prakash Singh v. UOI

⁷ Ibid

⁸ Ibid.

⁹ National Human Rights Commission Report dated 31st May 2002.

In this case Supreme Court has referred its own judgement in the case of:-

VINEET NARAIN & ORS. Vs. UNION OF INDIAN & ANR. (1998)¹⁰ In this case court has observed that there is an urgent need for the government in the state for setting up a proper mechanism for the prepare of appointment, transfer and tenure of the police official and by this judgment court has directed the central get that if should get into dialogue with states for the purpose of reform in the police organization.

In this *Vineet Narain Case*¹¹, court was under shock to observe that in many states the tenure of S.P. and other services officials is of few months only and the transfers of the officials were made at whim and fancies of the politician and bureaucrat.

The Supreme Court in *Prakash Singh Case*¹² has stated that –

"Article 32 read with Article 142 of the Constitution empowers this court to issue such directions, as may be necessary for doing complete justice in any cause or matter. All authorities are mandated by Article 144 to act in aid of the orders passed by this court. The decision in Vineet Narain's case (supra) notes various decisions of this court where guidelines and directions to be observed were issued in essence of legislation and implemented till legislatures pass appropriate legislation."

In this aforesaid case Supreme Court has taken into consideration the various committee and common separate and finally state a set of 7 directives until the legislature makes a proper law in this direction. These were the following directives which has been given by the Supreme Courts and which have been devised into two different kinds of directives.

- Directives towards functional autonomy.
- Directives towards enhancement of Police Accountability.

¹⁰ Vineet Harain and Ors Vs. UOI (1998) ISCC 226.

¹¹ Ibid.

¹² Prakash Singh v. VOI. 2006

FUNCTIONAL AUTONOMY

The functional autonomy consists of 5 directives which are as follows:

(1). State Security Commission

In this directive the state government is directed to constitute a state security commission for the purpose to establish that there would not be any unreasonable political influence over the police. This also says that there should be a proper guideline to lay down a broad policy. The duty of this commission is to find out the performance of the police personnel.¹³

(2). Director General of Police

In this a clear-cut direction has been issued by the Supreme Court that the appointment of the Director General of police should be made by the state government purely on merit base and the procedure should be transfer and the tenure of the DGP should be a minimum period of two years from the date of appointment.¹⁴

(3). Tenure of the Other Police Personnel should be fixed

Under a clear-cut direction has been given by the Supreme Court that the state should ensure that all those police personnel who are in operational duty should get a minimum tenure of 2 years, and this must include the Superintendent of police in direct level and officer incharge of police station at police station level. All of them should feel secure from such achieving transfer and which will help these personnel in discharging of their function without presume¹⁵ over them.

(4) Establishment of Police Board

This is the fourth and one of the most important directives of Supreme Court in the direction of police reform. Under this directive it has been asked to the state government to set up a '*POLICE ESTABLISHMENT BOARD*', the purpose of the board is the *decision making* in transfer, post and promoter of police personnel below in rank of Deputy Superintendent of Police. Another duty which has been assigned to this board is to make *recommendation* for posting and transfer of the police personnel Deputy Superintendent of police and all other alone his rank.¹⁶

¹³ Prakash Singh v. VOI. 2006

¹⁴ Ibid.

¹⁵ Prakash Singh V. Ibid

¹⁶ Ibid.

(5) National Security Commission

Another important directive issued by Supreme Court was setting up of National Security Commission by the Central government. The job of this commission was the of union level they should prepare a panel and that panel should be placed before the appropriate appointing authority for the purpose of selection and placement of chief of the Central Police organization and in this also a minimum tenure of two year should be there.¹⁷

POLICE ACCOUNTABILITY

This police accountability has two different category of direction which are as follows: -

Police Complaint Authority

In this directive Supreme Court has categorically ask the state government to establish at the state level as well as at the district level a police complaint authority, the purpose of which is to lodge complaint against to police officer by general public if there has been any misconduct which is of serious nature by the police or any sort of police torture in the police or you can say a custodial deed or rape in the police custody by police personnel.¹⁸ The object was that there should be fear in the mind of police personnel that if they do anything wrong they may get punished for such set of offence against any purend, this will directly or indirectly reduce the crime committee by the protection of the society.

Separation of Investigative and Law and Order Police

The last directive which had been given by Supreme Court, which you can say this out of all the directives and which was the need of the eternally hour was the separation. The Separation of the police into two different categories:

(a) Investigative Police

In this, the police official are only assigned with the job of investigation of crime and because of the only four the expertise will enhance in the investigation, it also ensure the speedier investigation and the quality of the investigation would be better, which ultimately texts better

¹⁷ Prakash Singh V. UOI (2006)

¹⁸ Ibid.

connection rate in compensation with the pres.... This will eventually lead to confidence building of the proper in the society over the police.¹⁹

(b) Law and Order Police

Another wing would be the law-and-order police, they have the only job to put the control if there is any uncontrolled law and order thereof. There police personnel do not indenter with the investigative police they both do their duty separately. But the coordination is always required among there two wings so that their job do ultimately leads to justice of the society.²⁰

In another writ petition (criminal), which was filed in the year 2012 and finally decided on 08/08/2017 also talks about the brutality and misuse of power by police personnel.

MONICA KUMAR V. STATE OF UTTAR PRADESH²¹

In this matter the petition was filed for the purpose of quashing of proceeding against the partner and also for the harassment by Chairman of Medical College & Police Officials.

In this case police fearfully entered into house of the petition and took him along for th... to with care filled by petition against the chairman, of Medical College, along with these criminal cases has also been lodge against the petitioner which were fake. In this case provision of the constitution were use like Article 21 and 32 which says that it is a clear-cut case of police brutality by way of farming one party and ... other which needs a police reform.

In this case court cleared that there is need of sensitization of police for the lighter of the citizen in a civilized manner. It also suggested that there is a need of proper police trainings in this direction. Sought also suggest that a new program is to be against to make the police personnel understand the humanities The final direction by the court was that there is an urgent need of the sauty that a police reform is requite to put every a\one under rule of law.

Again, in the year 2018 an application was filed before the Supreme Court under the same case of 1996 of *Prakash Singh V. UOI*²², further purpose of modification in the earlier judgment in aforesaid case.

¹⁹Praksh Singh V. UOI

²⁰ Ibid.

²¹ AIR 2017 SC (Supp) 317.

²² Supra

SO, *In Prakash Singh & Other V. UOI & Other*²³ in the year 2018 a list of new direction has been issued by the Hon'ble Supreme Court because of the malpractice done by various states and not following the earlier directions by way. In this case another seven directions have been issued which were as follows: -

- (1) In this case a clear-cut direction has been issued that all the state are required to send the list at least 3 months before the retirement of the DGP to UPSC so that the new DGP could be appointed in him.
- (2) Another direction was to the UPSC that they should prepare the panel as per the direction given by this court in *Prakash Singh Case*²⁴ and inform to the states about the panel.
- (3) The third direction was directly to the States that no state shall appoint and DGP as the acting basis as this was not envisage in the Prakash Singh case.²⁵
- (4) Another direction was to the state that they should immediately appoint a person as DGP who has been paneled by UPSC.
- (5) Another important direction which was issued that the person who shall be appointed as DGP should remain for at least for a tenure of 2 year irrespective of his super an action, but the period over super ... should be reaccuse. As it has been brought to the court here that DGP has been appointed near their date of Supernation and may counter till age of 62 which is not acceptable.
- (6) Court has also said the person who would be appointed a DGP should be from the panel prepared by UPSC and he should have clear cut two year of secure.
- (7) Court has also directed that any law/ruler made by state or central government whereas is contrary to the direction of this courts shall remain in abeyance to the extent to which they are contrary to the direction given by this court in this judgement or in Prakash Singh Case²⁶direction.

²³ 3 July 2018.

²⁴ Supra

²⁵ Supra

²⁶ Supra.

Another application has been filed by him in the year 1996. By application in ***Prakash Singh & Other V. UOI & Other***²⁷ a judgment has been given by CJI *Ranjan Gogoi* on March 13, 2019.

In this case petitioner has raised the concern that the judgment given by this court on July 3, 2018, in which court has asked the UPSC to take into consideration those Police officials for the post of DGP who have clear two years of service. But it has observed that many state governments is misusing this direction and completely ignoring the merits and seniority because of their class and UPSC is also not deeply those officials who have less than two years of service left because of their direction the post of DGP are being denied the promotion who are really competent and honest.

So, finally court has clarified its 2018 order on police reform in which two year of clear science is required to be control for the post of DGP by state, court in this case has said these officials who have a minimum six-month service left they could also be taken into consideration for the post of Director General of Police (DGP). Court also said that the recommendation for the post of UPSC should be only on the basis of merit and nothing else.

CASES BEFORE VARIOUS HIGH COURTS IN INDIA

Apart from the directions, Judgements and order by the Supreme Court of India in Relation to Police reforms, many High Courts of the Country also dealt with the various issues dealing with the police reforms, which we as follows: -

(1) Resurgence India V. State of Punjab & Others²⁸

The main issue raised in the case was that the non-availability of the police officials at their office because of other assigned duties like V.I.P. duty, court proceedings, meeting and other sort of duty which make them increasable for the general public to lodge FIR and other competent. The other issue which was raised in the case was non-availability of proper public generous redressal from at the dished and State level.

In this court look the note of all the suggestion and directed, National human light commission and other committees like Sorabjee Committee to look into the matter and assist the court with a proper suggestion.

²⁷Supre, 13th March 2019

²⁸ 30 Jan, 2009 P&H H.C.

The court finally said that it will not look into the matter against as it fears that by easing any writ in the save matter which has already been later into consideration by the court (S.C.) as it may lead to conflict of which S.C. has taken for longer public states.

(2) Chottey Lal Gaur V. State of U.P. Through Principal Society²⁹

In this petition the issue raised by the petitioner was about the order which has been passed by the 'board' which was constitutes after this S.C. direction under Prakash Singh Case.³⁰

In this a division bench of Allahabad High Court came to the conclusion that as this required by the Prakash Singh Case³¹ to constitute a '*Police Establishment Board*' which is the very essential and goes to this root of entire police reform as has been envisaged by S.C., and if a board has been established but not in the letter and spirit of S.C. direction then any order passed by such board are not justified.

(3) Deraver Singh V. State of Rajasthan & Others³²

In this cas the Rajasthan High Court has categorically stated their it cannot take any its sights from the falling .. of the police personnel who has been appointed on duty and also the failure on the part of this authorities who have the power and duty to bring a police reform even after a clear-cut direction has been issued by the Apex Court of the land. It has also said that the apex court could not wait further for the government to take appropriate steps towards public reform. In the interest of large public interest, a direction is to be issued.

The court has also stated that the judgements given b y the Apex Court is Vineet Narayan Case.³³ Taken note of the various decisions of this court and the various direction and guideline which is to be implemented till the legislature passes and law in this regard.

The court has also directed that there shall be a police Establishment Board in each State which would take care of all posting promotion, transfer and other matter relating to police personnel below the rank of Deputy Superintendent of Police.

²⁹ 8 July 2010

³⁰ Supra

³¹ Supra

³² 2 July, 2014 Rajasthan High Court.

³³ (1998) 1 SCC 226