

## ARE LAW ENFORCEMENT AGENCIES ENFORCING THE LAW OR ENFORCING DEADLY FORCE IN CUSTODY OR OUT

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### INTRODUCTION

Dhaneshwar Bahera, a resident of Odisha's village called Satagochhia, has become a most recent victim of blow of the blatant force inflicted by the enforcement agencies of India. He has become a victim of one of the many custodial deaths happening in the vicinity of enforcement agencies in India. When we talk about enforcement authorities, it generally refers to any person, council of persons, or body having the authority to enforce or take any action under the relevance of legal necessity. Sometimes, while enforcing the law or taking any action they do go beyond their sanctioned power, laid down by statutes, regulations, acts, or laws. There are a lot of agencies that come under the periphery of Law Enforcement Agencies in India. Broadly talking about Law Enforcement Agencies, the first agency which came into our minds is State Police. Except for state police, there are the Railway Protection Force, National Security Guards, Intelligence Bureau, Central Bureau of Investigation, etc.

Cases of blatant use of sanctioned force are mostly observed in the Police Forces. Use of deadly forces for the most part inflicted on the common citizens or individuals. So, when a law enforcement agency does work in the perimeter of the common individuals, the chances of reasonable or unreasonable interference by law enforcement authorities become far up.

### TYPES OF LAW ENFORCEMENT AGENCIES AND THEIR WORKINGS

Broadly Law Enforcement Agencies are classified into two types on the basis of their operating jurisdictions in India:

**Central Law Enforcement Authority:** These are the agencies that are controlled and managed by the Government of India. Most paramilitary forces i.e. Border Security Force, National Security Guard, Central Reserve Police Force, etc. are having power under the central government. The Directorate of Enforcement (ED), Central Bureau of Investigation (CBI), Directorate of Revenue Intelligence (DRI), and Narcotics Control Bureau (NCB) are some of

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the major Central Law Enforcement Authorities. These agencies are a part of the Ministry of Home Affairs and supervised by the same. Central agencies also extend their support in financial, intelligence, workforce, and prowess to the state police forces.

**State Police Forces:** ‘Police’ and ‘Public Order’ are mentioned under the state list of the 7<sup>th</sup> schedule of the constitution of India. States have the primary duty of maintaining law and order, investigating, and preventing crimes. They are supplemented by central law enforcement agencies in doing so. The Police Act, of 1861 provides the definition for the establishment of police forces and read as ‘The entire police- establishment under a State Government shall; for the purposes of this Act, be deemed to be one police force, and shall be formally enrolled and shall consist of such number of officers and men, and shall be constituted in such manner, as shall from time to time be ordered by the State Government. Subject to the provisions of this Act the pay and all other conditions of service of members of the subordinate ranks of any police force shall be such as may be determined by the State Government’<sup>1</sup>

## **ETHICAL OR UNETHICAL USAGES OF LAW AND RULES BY THE AUTHORITIES**

As defined in The Code of Criminal Procedure, 1973, A Cognizable Offence is ‘an offense for which a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.’<sup>2</sup> At some point, it is an applaudable act but it also augmented lots of arbitrary power in the hand of enforcement authorities. It has been used so many times indiscriminately when there are no supervising authorities or sometimes even after supervising authorities.

It is also very worrisome when someone doesn’t have familiarity with his/her legal rights like, it has been provided that any time before the onset of the trial or inquiry or during the progress of an investigation, there should be no confession or any statement affecting the quantum of the trail has to be recorded.<sup>3</sup> Notwithstanding the section in many instances, there has been observed misuse of the section against an individual merely because he does not know about his legal rights. Furthermore, ‘The Magistrate shall, before recording any such confession,

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<sup>1</sup> The Police Act 1861, s 2 < <https://indiankanoon.org/doc/1612841/> > accessed on February 12,2023

<sup>2</sup> The Code of Criminal Procedure 1973, s 2(c) < <https://indiankanoon.org/doc/445276/> > accessed on February 12,2023

<sup>3</sup> The Code Of Criminal Procedure 1973, s 164(1) < <https://indiankanoon.org/doc/497457/> > accessed on February 12, 2023

explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.<sup>4</sup> Therein are many instances noted when the authorities have their statements recorded without the prior explanation of the said term. In addition, actual or considered intimidation and coercion of the accused person by the police authorities laid to make a false or involuntary confession. Furthermore, the use of force over the accused person and elongated custody under enforcement authorities persuade the person to make an involuntary confession.

In India, where 77.1% of the total number of prisoners are undertrial<sup>5</sup>, perhaps, they are accused of misconduct or crime, but they have not proven guilty or set free from the charges. Meanwhile, in their undertrial period which expands by a year or more, in some instances observed in the past their undertrial period surpasses the imprisonment period provided by the law or statutes of which they had been charged, they got interrogated, coerced, intimidated by the enforcement authorities which put them into great perils and eventually, some of them either they are innocent or having false charges put on them gave their statements involuntary making their situation grave. According to The Innocence Project's report, about 25% of the accused who had given their confession about their guilt were later found innocent<sup>6</sup>. In cases where major evidence lies in the confession of the accused or with the accused the severity of the interrogating officers rises exponentially.

Severity, brutality, beating, and torture beyond an extent (, generally speaking, the term called 3<sup>rd</sup>-degree torture) are often adopted and inflicted on the accused by the police or the enforcement agencies in criminal cases. Furthermore, in some of these cases, where the situation became graver and intolerable gives rise to custodial deaths and self-execution. There is a landmark case of Nilabati Behera v. State of Odisha<sup>7</sup> to the Supreme Court of India, in which a 22years old man was detained by the police and then consequently caused the death of

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<sup>4</sup> The Code Of Criminal Procedure 1973, s 164(2) < <https://indiankanoon.org/doc/497457/> > accessed on February 12, 2023

<sup>5</sup> < [https://ncrb.gov.in/sites/default/files/PSI-2021/Executive\\_ncrb\\_Summary-2021.pdf&ved=2ahUKEwiWo5u1jJT9AhVaAjQIHXXViAvUQFnoECBMQBg&usq=AOvVaw3koEUoIFXu9MNY2a42XYew](https://ncrb.gov.in/sites/default/files/PSI-2021/Executive_ncrb_Summary-2021.pdf&ved=2ahUKEwiWo5u1jJT9AhVaAjQIHXXViAvUQFnoECBMQBg&usq=AOvVaw3koEUoIFXu9MNY2a42XYew) > accessed on February 14, 2023

<sup>6</sup> 'Involuntary Confessions by Criminal Suspects', ( *justia*, October,2022 ) < <https://www.justia.com/criminal/procedure/miranda-rights/involuntary-confessions/> > accessed on February 14, 2023

<sup>7</sup> Smt. Nilabati Behera Alias Lalit ... vs State Of Orissa And Ors < <https://indiankanoon.org/doc/1628260/> > accessed on February 14, 2023

that person and later his dead body was found on the railway track, the police alleged that the person was fleeing from the police custody and eventually hit by the train at the same time evidence were saying something different. These heinous acts make an unmediated blow to Article 21's 'Right to live with dignified life without discrimination' of the constitution of India.

When there a women inmate got either convicted or in undertrial, the adversities faced by the women inmate are somewhat more serious and concerning. In addition to many situations where custodial rapes have been observed, in and by law enforcement authorities. In furtherance of these acts and the infamous [Mathura rape case](#) which forced the law-making authorities to make an amendment to section 376 of the India Penal Code by inserting Section 356B to 356D<sup>8</sup>. Whereas section 356 deals with the punishment for the rape and section 356B to D deals with the punishments for the rape by a public servant or for custodial rape. Notwithstanding, the constitution of India had led down many guiding principles for empowering and encouraging women. Moreover, the Central and different state government and their legislation are making necessary laws, acts, statutes, and reforms which are favorable for women. These despairing acts are acute blows to the efforts of the constitution, and governments.

## REFORMS AND RECOMMENDATIONS IN THE LAW ENFORCEMENT AGENCIES

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In the past several attempts had been made by the different committees to make reforms in the enforcement agencies and the police forces. Some of the major recommendations by different agencies are added following:

**Gore Committee:** Based on the Committee's recommendations, it appeared that more emphasis should be on increasing the sensitivity and understanding of human behavior in police training rather than just teaching law and order and crime prevention.

**National Police Commission:** Compared with other nations, in India, there are many political interventions into the police forces to curb these practices the major recommendation of the report revolves around the problem of relieving the police of illegitimate interference by politicians and bureaucrats.

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<sup>8</sup> The Criminal Law amendment Act 1983, (no. 43)

**Padmanabhaiah Committee:** It was the committee set up for police reforms with the objective of studying, among other things, the recruitment policy in the police force, training, duties and responsibilities of police officers, the behavior of police officers, and police investigations and prosecutions.

**Soli Sorabjee Committee:** Set up by the Ministry of Home Affairs in 2005, to draft a new Model Police Act to replace the anarchic The Police Act of 1861.<sup>9</sup>

**Riberio Committee:** Set up by the direction of the Supreme Court the on the public interest litigation on police reforms.<sup>10</sup>

**Malimath Committee:** Malimath Committee was set up in the year 2000 and submitted its report in 2003 for reforms in the Criminal Justice System of India. Despite, there were 158 recommendations included in the report, none of them were actually implemented in the Criminal Justice System of India. It had also suggested that the current system “ weighted in favour of the accused and did not adequately focus on justice to the victim of crime”<sup>11</sup>

The Supreme Court of India laid down directions for the police reforms in the landmark judgement of Prakash Singh v. Union of India (2006). The court suggested following reforms for the police forces:

‘Constitute a State Security Commission (SSC) to ensure that the state government does not exercise unwarranted influence or pressure on the police. Separate the investigation and law and order functions of the police. Set up a Police Establishment Board (PEB) to decide transfers, postings, promotions and other service related matters of police. Set up a Police Complaints Authority (PCA) at state level to inquire into public complaints against police officers of above the rank of Deputy Superintendent of Police. Set up a National Security Commission (NSC) at the union level to prepare a panel for selection and placement of Chiefs of the Central Police Organizations (CPO) with a minimum tenure of two years.’<sup>12</sup>

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<sup>9</sup> < [https://www.mha.gov.in/sites/default/files/2022-08/Press\\_Brief\\_Oct\\_30\\_2%5B1%5D.pdf](https://www.mha.gov.in/sites/default/files/2022-08/Press_Brief_Oct_30_2%5B1%5D.pdf) > accessed on February 14, 2023

<sup>10</sup> < [https://www.mha.gov.in/sites/default/files/Musaharicommittee\\_08042019.pdf](https://www.mha.gov.in/sites/default/files/Musaharicommittee_08042019.pdf) > accessed on February 14, 2023

<sup>11</sup> ‘A Road Map for Criminal Justice System’, ( *Drishti IAS*, 22 October 2019) < <https://www.drishtias.com/daily-updates/daily-news-editorials/a-road-map-for-criminal-justice-system> > accessed on February 14, 2023

<sup>12</sup> ‘Discuss the need and significance of police reforms in the recent context of rise in crime’ , (*Forum IAS*) < <https://blog.forumias.com/answered-discuss-the-need-and-significance-of-police-reforms-in-the-recent-context-of-rise-in-crime/> > accessed on February 14, 2023



## CONCLUSION

The constitution of India had gave an individual every right as possible as could be. The preamble of our constitution enshrines a word 'Equality'. Right to Equality is interpreted as that 'the government shall not deny to any person in India equality before the law or the equal protection of the law.'<sup>13</sup> On contrary of that law enforcement agencies bolster up such an inequality that cannot be survived by a common individual in the guise of for the maintenance of law and order, internal security, integrity of the jurisdictions. Moreover, it more jeopardizes an individual's fundamental rights and life.

These are not only the result of law enforcement agencies, these are influenced by Political Interferences, Over-burdening agencies, Lack of Accountability and Credibility. States must have to step in to take reforms in the respect of an individual right and without over burdening agencies. There should be more emphasis on complying with recommendations of the reform committees and setting up more reforms committees which would drive the law enforcement agencies through the right way. Making them friendly, assessable and held accountable without any obstruction.

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<sup>13</sup>< <https://ceodelhi.gov.in/eLearningv2/admin/EnglishPDF/chapter%206%20Democratic%20rights.pdf> >  
accessed on February 14, 2023