

**POLICE REFORMS AND PREVENTIVE POWERS OF POLICE:  
OBSERVATION ON AN UNNOTICED PROBLEM**

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**Abstract**

The relief has to be provided to the citizens across the nation which can be done by doing reforms in the police system which is overdue in all branches of the government for a very long time, as the policing system is also known as the administrative machinery of the government which has to maintain public order. Due to the misconduct of their powers and working for the political executives they have lost their faith in the eyes of the citizens. India is the common law country and after so many reviews and modernization of the reports and the laws of the constitution, the behavior of the police has not changed to the proper extent and officials have been ignoring the rule of law in a very usual way. There are many unnoticed problems in the police system that has become part of the society which are leading to the violation of human rights at a wider extent. The analysis is done on the basis of those problems which are unnoticed and various remedies are present to the individuals if misconduct has been done by the police officials. The data has been interpreted from the national crime records bureau and with the help of various case analysis this paper will be considering various provisions and reforms of police system.

## **Introduction**

The escalation of the crimes in the nation or in the state that have been seen in the present time is speaking for itself and also for the criminal justice system. The system on which the nation is dependent. As we know our justice system works on two facets, the police and the judiciary which are interrelated to each other for maintaining peace and security in the state. The police force is an agency of the state and for social institutions. According to the black law dictionary the police has been defined as the function of the administrative machinery of the government which is charged with the preservation of the public order and tranquility, as they are also charged with the promotion of the safety and moral of the public. There has been a major lacking of the police system in the nation that has been brought up by the various reports, due to the control of the political executives on the police system. This is the main reason for the lacking of the democratic function of the police as they are working according to the political executives. The control and the superintendence of the police are the main and the major debatable issue in India. Due to these problems in the previous time various commissions have made up and various committees' reports that have been published and even the Supreme Court directives were not even complied properly for the reforming of the police system. In India the police functions, prison reformatories and other functions that have been mentioned under the constitution are the state subjects which means every state police have their different functions and procedure. Due to the different functions and laws of every state the Article 355<sup>1</sup> of the Indian constitution prevents the state police from external aggression and internal disturbances. It also imposes the duty upon the Union government to ensure that every police system of the state works according to the constitutional provisions that have been given under the rule of law.

The constitution also plays a crucial role in the division of powers of the police between the Centre and the state as the constitution provides the legislative and executive powers between the both. As we know the state police forces are responsible for the local issues that have been emerging in the state as they are responsible for the investigation, crime prevention and maintaining law and order. The state police also provide the first response to the more intense threat or for the internal disturbances. Whereas the central police force such as CRPF, they are

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<sup>1</sup> Article 355 of Indian constitution: Duty of the Union to protect States against external aggression and internal disturbance.

called during the riots so that large scale crowd have to be dispersed off and there will be least damage to the life and property of the state as compared to the local police. From the legal point of view the police governance works on the basis of the Police act, 1861, IPC and Cr.P.C and also The Indian Evidence act. If we look out in the present scenario then staff at the police stations are not able to work properly due to insufficient gadgets at the police station. Sometimes victim cannot register an FIR because of the non-cooperative nature of the police officers. Mental harassment has been done to the victims if there is high level case. Non registration of FIR even after 24 hrs. of the crime has been seen in many instances. Various guidelines have also been issued to some police officers for non-registration of the FIR and also for misbehavior with the victims at the police station. The credibility of the officers has been affected due to the control of the force by the political executives.

In the present situation there are various vacancies lying vacant and some of them are overburdened with the state and central work for the force. The police training schools are responsible for the credibility and effectiveness of their officers in the field but now these schools are run out of funds to provide proper level of training that could be helpful for society and for the nation. The atmosphere of the training schools are not so good and they are ill-equipped with the equipment's. Among these problems in the system the main problem that has been faced by the various candidates is gender disparity, as it is there in all the training departments. The representation of the women officers in the police organization is low. The NHRC reports have also confirmed that there is an immediate need of police reforms in the Indian system this have to be done at every level, even in training schools, at the police stations, and also at the departmental level. Our system is suffering from the lack of proper intelligence, equipment's and procedures for controlling the crimes at the Centre and the state level. The violation of human rights have been done by the police at the time of pandemic and they have been losing support and sympathy due to the disrespecting behavior towards the citizens. As we know article 21 and 14<sup>2</sup> have been mentioned by the constitution for the people and police don't have to use their arbitrary powers by unfair means and they have to use it by just and fair for the reasonable procedure of law. Even the national commission of police has also recommended to

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<sup>2</sup> Article 21 of Indian constitution: Protection of life and personal liberty.  
Article 14 of Indian constitution: Equality before the law.

the police stations that they have to work in the proper procedure so they can give relief to the distress people.

### **Critical Reports on Police reforms**

In the past various reports have been established by the national police commission between 1979 and 1981. These reports were dealing with the separate issues relating to the police reforms and procedures due to change of political nature of our country these recommendations were not taken up and no one acted upon them. In these reports police commission have mentioned various recommendations such as fair and just arrangement for the inquiry against the police officials and balanced approach has to be taken up, if any complaints have been raised against any official then the inquiry has to be done by the superiors or by any independent agency that is responsible for holding up the inquiry. These reports also mentioned the agenda for establishing the criminal justice commission which will look out the different wings of the police and some measures for correction related to it. It also talked about the role of police for performing their duty with unbiased nature and under lawful guidance, no actions have to be done by police which not in conformity with the Indian constitution.

The role of the political nature has also been explained under this report of the commission that there will be no interference has to be done by the political goons for the functioning of the police as due to the interference of the political nature under the police system, the credibility of the police has been decreased in the eyes of the public. A state commission has to be established where the officials can report the illegal nature of the order or the problems that have been faced by them during their promotions has to be seen. A separate investigation procedure has to be established for the low marginalized people in society. They have also talked about the context of arrest by implementing sections 2(c)<sup>3</sup> of Cr.Pc. So they can remove the emphasis and political influence on arrest in case of non bailable offences. But due to these suggestions no action has done on the reformation part due to the political influencers were getting benefits and they don't want to change the procedures related to it.

After the failure of the Police commission report various committees have been established for the police reformation procedure as they were Ribeiro, Padhmanabhaiah and Malimath

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<sup>3</sup> Section 2(c) of Code criminal procedure 1973: Defines cognizable offence

Committee<sup>4</sup>. In the case of *Vineet Narayan v. Union of India*<sup>5</sup> the Supreme Court observed the urgent need of the police reforms has to be done after the observation Ribeiro committee has filed the report. The Ribeiro committee, 1998 focuses on the establishment of the Police performance and accountability commission, as this commission will monitor the police force and also ensures the senior officials that police are accountable to the law that has been made by the constitution. The committee also suggest the separate investigation wing which will be different from the law and order wing. The reforming of the police organization has been seen in Padhmanabhaiah Committee, 2000 which focuses on the training of the police personnel's and various other functions of the police. The main thing of this committee is to see that proper training should be provided to the police personnel's and whoever does not pass the training exam should be dismissed from the service. The committee also suggest for the separate investigation wing. They also called for the mandatory judicial enquiry in case of the custodial rapes and deaths of the individual. If any complaint has been raised against any police official then the superior has to look into the matter and proper inquiry has to be made against the police officer.

The Malimath committee, 2003 report has suggested various provisions to safeguard the accused and to reduce custodial torture on them by establishing interrogation centers and using modern techniques for interrogation. In such cases the magistrate can also remand the accused to judicial custody for 14 days. The committee also suggested for the replacement of the Police act, 1861 with the new police act and a separate investigation wing that will abide by law and order for the investigation purpose. Based on these committees report the new model police bill was taken and in 2015 it was amended with changes of various rules and regulations for the reforming of police. The new bill suggests various procedures for investigation and it has also taken the establishment of a Police accountability commission for the better purpose. All these reports were seen and combined in the *Prakash Singh*<sup>6</sup> case which was dealing with the three aspects which are autonomy, accountability and the efficiency of the police authorities.

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<sup>4</sup>Mha.gov.in

<sup>5</sup>(1998) 1 SCC 226

<sup>6</sup>2006 8 SCC 1

## **Judicial Scenarios in various aspects of Police reforms**

### **Illegal detention and unlawful arrest**

There are various aspects in which police were held accountable for the misconduct or they have been accused of abuse use of powers. The police officers can be held liable under criminal law, public law or through private law of torts. Under the criminal liability they are held under the criminal procedure code and the Indian penal code. The public law liability is related to the violation of fundamental rights that have been stated under Part III of the constitution such as right to life and liberty, protection has to be given to the individual against arbitrary arrest or illegal detention that has been done by the police authorities. They are also held liable under custodial violence cases which are becoming very common in the present scenario. Under the public law liability the court has imposed pecuniary liability on the state which means compensation has to be provided to the individual for the harm caused. In the case of *Rudul shah vs state of Bihar*<sup>7</sup> the Supreme Court has passed an order for providing compensation to the petitioner as he was unlawfully detained by the authorities for 14 years after the acquittal of the sentence. After finding the detention was illegal he filed the suit for compensation as under illegal detention and Supreme Court passed an order for the sum of 30,000 has to be provided within the stipulated time period. Due to the illegal detention the authorities have also violated article 21<sup>8</sup> and 22<sup>9</sup> of the Indian constitution.

Another case in which the compensation was held by Supreme Court is of *Bhim Singh vs. State of Jammu and Kashmir*<sup>10</sup> in which he was detained illegally for preventing him to attend the session of legislative assembly as the victim is a member of state legislative assembly of Jammu and Kashmir. His wife filed a writ of habeas corpus before the Supreme Court and it was held by the court the victim has been illegally detained by the authorities and they have also violated

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<sup>7</sup> AIR 1983 SC 1086

<sup>8</sup> *Id*

<sup>9</sup> Article 22 of Indian constitution: Protection against arrest and detention in certain cases

<sup>10</sup> AIR 1986 SC 494

articles 21 and 22(2)<sup>11</sup> of the constitution. So the court has summed up Rs. 50,000 as compensation to the victim and it has been left on the state how to pay the amount to the petitioner. There are various instances in which the police authorities have arrested the accused without any information nor have they told any relative, on what grounds they have arrested. In the part III of the constitution it has been the violation of article 21 if the individual has not been told the grounds of arrest. The guidelines were issued in *Joginder Kaur vs. State of Punjab*<sup>12</sup> the court has stated if the individual is deprived of his liberty then he has the right to inform their relatives or friend about the arrest. It is also the duty of the police authorities to tell the individual on which grounds they have arrested the individual and they have to tell to their friend or his family member. The court also mentioned in its statement that a diary should have to be maintained by the authorities' on which all the details of the arrested individual have to be noted. These guidelines were issued so that the court can check the police power on the arrest and they can protect the individual from illegal detention and article 21 and 22 should not be violated. The grounds of arrest are also mentioned under section 50 of the Criminal Procedure Code.

Several issues has been raised by the state that whether it is open to the state to deprive the life and liberty of the individual in accordance with the provisions that have been mentioned by law. If it is open then why the immunity has been granted to the individual on the basis of deprivation of life and liberty or by mentioning violation of constitutional provisions has been done by the authorities when they were exercising according to the provisions or doing their duty. In *PUCJ vs Union of India*<sup>13</sup> the court has mentioned that authorities have to use their power in a limited way that does not harm the individual by any injury whether it is internal or external or which leads to serious violation of fundamental right. By referring to *Nelabati Behra*<sup>14</sup> case in which the individual has died in the police custody which leads to the custodial death during the interrogation and court ruled the monetary compensation in favor of the victim because there was a violation of fundamental rights and public servant is liable for their acts done. The claim for the infringement of rights is based on the principle of strict liability in which defence has no

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<sup>11</sup> Article 22(2) of Indian constitution: Arrested person should be presented before the nearest magistrate within 24 hours of arrest.

<sup>12</sup> [1969] ACJ 28

<sup>13</sup> AIR 1997 SC 1203

<sup>14</sup> AIR 1993 SC 1960

immunity the individual must receive the amount of compensation. The writ under article 32<sup>15</sup> was also instituted by the Supreme Court when the court has received the letter from the petitioner alleging illegal detention and harassment that has been done by authorities under *Sube Singh Vs State of Haryana*<sup>16</sup> the Court while referring Nelabati case has said, the compensation will only be provided when there is a violation of Article 21 and there is an instance of custodial torture or death which is inconvertible in nature. In the judgement of Sube Singh the court issued various guidelines relating to compensation to the cases in which there is a violation of the fundamental right and the aspect is inconvertible. The violation that has been done by the authorities should give the grievance shock to the conscience of the court so they will provide compensation otherwise not. In this case court didn't provide any compensation due to lack of clear evidence and the aspect is inconvertible. The medical report of the individual was also not submitted to the court and there was no disability or any sign of injury.

From the above cases it has been cleared that misconduct of police authorities can give rise to public law rather than criminal or tort law. When the violation of fundamental rights has been done the compensation has to be provided by the state not by any individual officer. The court also observed in these cases that proof has to be submitted to the court whenever there has been a misconduct by police. The misconduct that has been interfered by the court, is police brutality, custodial torture, illegal detention or unlawful arrest and forced confessions. It has been also noticed that the doctrine of sovereign immunity cannot be stated as the violation of fundamental right. In the case of *Arun Narayan Tagad and Another vs The State of Maharashtra*<sup>17</sup> the Bombay high court has ordered the state to provide compensation to the individual for the illegal detention that has been done for six days ordered by the magistrate in 2013 without going through any proper provision. In this case the two of the petitioner were charged under section 323,324, 506<sup>18</sup> of IPC. As the petitioners were arrested outside the court and the executive magistrate ordered them to furnish interim bonds of surety but they have stated for the cash security as at that time the surety was not possible. The act of the magistrate was illegal and malafide, the order of the magistrate for presenting interim bonds is illegal when they were producing the cash security which has violated their fundamental rights.

<sup>15</sup> Article 32 of Indian constitution: Remedies for enforcement of rights conferred by this Part.

<sup>16</sup> (2006) 3 SCC 178

<sup>17</sup> 1<sup>st</sup> Dec 2020

<sup>18</sup> Section 506 of Indian Penal code, 1860: Punishment for criminal intimidation



During the farmer protest in the case of *Disha A. Ravi vs. State of Nct Delhi*<sup>19</sup> the climate activist disha was unlawfully arrested from her home in Bengaluru by Delhi police in the toolkit case without mentioning any charge of arrest. Even Delhi police has not mention any transit remand before the local court or not to the local police station. Even at the time of arrest local police of the jurisdiction was not present and no charge was mentioned. The police officials arrest her and on the next day she was presented in the court and the magistrate has ordered five days remand. There has been a violation of article 22<sup>20</sup> of the constitution and in the court no legal counsel was present no proper procedure was followed by the police officials or by magistrate. Section 50<sup>21</sup> and 50A<sup>22</sup> was violated during the arrest as these sections states about the procedure of arrest with or without warrant. She was illegally detained by the officials without any proper authority. The High court stated in the statement that they have taken the immediate suo moto cognizance and immediate release of the individual has to be done as the action of police officials amount to abducting under the presence of the law as they have made a complete failure of the procedure that has been established by the law in making of arrest and have also violated of her right to life and liberty.

### **Custodial Torture**

Relating with the illegal detention of the individuals custodial violence is also becoming very common these days. This is the worst form of a human right violation that has been increasing at an alarming rate in India. This has been taken as a routine by the police authorities and by the bureau on retaining on these methods. Most of the cases of custodial violence have been seen from the economically weaker section of the society as the individuals are from the deprived section of the society. Even the safeguards that have been decided by the courts, they have failed to prevent them from custodial torture and this is resulting into custodial deaths. These instances are leading to the violation of fundamental rights, as the nature of maltreatment towards the individual and violation of his rights has become the habit of the police authorities. The major

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<sup>19</sup>19<sup>th</sup> Feb 2021

<sup>20</sup>*Id*

<sup>21</sup> Section 50 of Code of criminal procedure, 1973: Person arrested to be informed of grounds of arrest and of right to bail.

<sup>22</sup> Section 50A of Code of criminal procedure, 1973: Obligation of person making arrest to inform about the arrest.

instances have been changed when the women are not safe even in the police custody, even they have faced sexual harassment and torture. The police officials have done misconduct towards women who have been the victim of rape or any torture. The *Mathura rape case*<sup>23</sup> was the worst in the history when women was raped by the police official in the presence of her brother and a fellow laborer. As the women was of Dalit community just went to raise a complaint against some individuals, but she was from the weakest section of the society so she was maltreated by the official and her brother was beaten just not to raise complaint against any individual who harassed the women. After this incident section 376(c)<sup>24</sup> of IPC was amended in which it has been stated, if any woman has been harassed by any public official, the official will be facing 10 years of imprisonment.

Article 21 of the constitution does not provide any provisions against custodial violence of an individual but it states about the personal liberty of the citizen. The right to liberty is the fundamental right of the citizen so the police officials cannot deprive the right of the person by unnecessarily handcuffing him. In *Pram Shanker Shukla v Delhi Administration*<sup>25</sup> the court has stated various guidelines relating to handcuffing the accused. The authorities has to mention the proper reason in the diary for handcuffing the person. The accused will be only handcuffed if he is accused of heinous crime, he is of violent nature or he tries to commit suicide or to flee away from the custody. In the case of *D.K Basu v. State of Bengal*<sup>26</sup> the important issue relating to police misconduct and custodial violence has been taken up and it has been stated by the court, if any kind of inhumane treatment or torture will be done under police custody then it will be the violation of article 21 of the constitution whether the misconduct has been done during the investigation or at any part. If the authorities will not work under the law then there will be contempt of court. The court stated the various measures such as transparency of action have to be taken and the accountability has to be taken in form by the concerned authorities. This is the responsibility of the administration to take a look at the authorities and if there is any violation of rights that will be done against any individual then the administration has to take punitive measures regarding it. After this judgement no official action was taken upon the authorities and the system continues with the same actions by conducting misconduct towards the individual.

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<sup>23</sup>(1979) 2 SCC 143

<sup>24</sup> Section 376(c) of Indian Penal code: Intercourse by superintendent of jail, remand home.

<sup>25</sup>AIR 1980

<sup>26</sup>(1997) 1 SCC 416

The custodial torture was done again on the individual during the investigation process which leads to the custodial death of the individual.

In *Ajab Singh V. State of U.P*<sup>27</sup> the same thing has happened and Supreme Court relying on D.K Basu judgement held that the state is responsible for the death of individual and disciplinary action has to be taken by the proper authorities. In order to maintain the public law accountability the monetary compensation was provided to the family and ordered the state to take actions against the officials who were responsible. After seeing the inhumane treatment in the police custody and continuous violation of human rights has been done by the police officials in name of investigation or under the presence of law. The Supreme Court issued various guidelines in *Prakash Singh vs Union of India*<sup>28</sup> which will affect the police reforms and working functions of officials relating to any matter. The main aim of this judgment is to establish police complaint authority at the state and the district level in which the complaints against the police officials can be made by the individuals who have been targeted by the serious misconduct of the police atrocities. This complaint authority will be looking on the complaints related to custodial torture or rape, grievous hurt and many other things which have been recorded as a misconduct in which human rights were violated. The authority can investigate the matter using the state machinery and they can also recommend the concerned authority if any disciplinary action has to be taken against the official or not. This can even lead to the lodging of FIR against any police officer who has done serious misconduct with any individual. After Prakash Singh case many actions were taken up against the police authorities and enquiries has been made by the police commission against the police officers for misconducting with individuals and also for custodial violence.

But the incident of father son duo *Jayraj and phoenix case*<sup>29</sup> shook the whole nation, as both son and father has been taken to the police custody for violating the lockdown norms at the time of pandemic. As they were just 15 mins late to close their shop and at that time police picked up his father and later arrest his son also under charge of section 353, 506, 188 and 269<sup>30</sup> of IPC, and

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<sup>27</sup>(2000) 3 SCC 521

<sup>28</sup>AIR 2006

<sup>29</sup>19<sup>th</sup> June 2020

<sup>30</sup> Section 353 of Indian penal code: Assault or criminal force to deter public servant from discharge of his duty.

Section 506: Punishment for criminal intimidation.

Section 188: Disobedience to order duly promulgated by public servant.

has done custodial torture on them. The brutality was so heinous which result into grievous injuries. On the next day they presented before the magistrate as due to lockdown norms magistrate has taken their presence from the roof of his home and does not noticed any injuries that has been caused by brutality of the police officials and order for the custodial remand. The negligence that has been done by the magistrate and by police officials leads to the death of both. The court handed the investigation to CBI and the accused officials responsible for the death of the individuals have taken into remand. There are various details that have been present under the graph which has been recorded by the national crime record bureau for the enquiries that has been taken place by the magistrate or the judicial enquiries in the given time period.

### **Reforms Needed for Police system**

There is an immediate need for the police reforms in three scenarios first modernization and boosting of infrastructure, second the constitution has to revise some laws through legislative and administrative reforms and third is to improve the technological equipment's that has been used by the officials. The boosting of infrastructure and capacity of the police personnel includes the training schools and appointment of official's at the large number and efficient training has to be provided to them. Attention has to be needed on the quality of life of the official. According to section 22<sup>31</sup> of police act which states that police officer is always on duty, this has to be changed as shift system has to be introduced because long hours of shift will leads to less motivation and increase the stress among the officials. The transport and communication facilities have to be improved in both rural and in urban areas as per the need of the area. CCTV has to be installed at every police station so the government can also keep the record of the individual so false accusations cannot be made against any police officials even it has to be installed in the lockups, if any misconduct has taken place then the court will take action on it on the basis of the recording. The accommodation facilities have to be given to all the officials whether it is gazette or non-gazette. Among the infrastructure there is an immediate need for legislative and administrative reforms as according to the legislative reforms organized crimes act has to be enacted which can be done by the central government.

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Section 269: Negligent act likely to spread infection of disease dangerous to life.

<sup>31</sup> Section 22 of Police act 1861: Police- officers always on duty and may be employed in any part of district.

Due to the increasing rate of drug trafficking and money laundering special cells has to be established in every state so crime can be reduced. In the model police act 2015 the state can make their own police laws for the betterment of the system. It has been also mentioned that two or more states can work on the same police act if states will agree. Due to the increase in the inter-state crimes it has been notified by the government if public order will be shifted from the state list to the concurrent list and crimes like money laundering should be considered federal crimes and are handled by NIA or CBI then the crime rate can be reduced. The state has to give authorization to the officials to investigate at larger area by the specialized units. Under the administrative reforms need for separate investigation cells has to be made in every state and district so cybercrime and domestic crimes can be handled by this division. IT cells have to be established in every district so that proper tracking of crimes can be done at an accurate stage. Online portals have to be made for every police station for the registration of FIR and if the FIR has been lodged offline then it has to be updated under 48 hours of lodging so the crime record can be maintained by the state. Women police stations have to be established in each district so women victims will feel safer in lodging complaints. In the technological reforms the criminal network system has to be maintained and well equipped and a common number has to be made active to the control room for registering of complaints. The government has to be updated on National intelligence grid so the data of offenders can be recorded in one place and it has the access to RAW, CIA and other main branches that have been operational across the nation. The data that has been stored in the network contains all the details of the offender such as bank a/c, cards, mobile no. , previous criminal record etc. The police commissioner system has to be established in every city and district so that the senior official can keep the track of the threats and functioning of the officials on the daily basis.

### **Conclusion**

The analysis has focused on the shift of police reforms from the past and the changes that have to be done in the present scenario for an efficient police system. The violation of the human rights and common practices that has been done by the officials has to be controlled and strict actions have to be taken and more enquiries have to be made so that belief of the citizens will not be lost from the police system. The victims have enormous right to protect themselves from police

brutality as they have been protected under public law, private law and criminal law. These laws have been focused on judicial accountability for protecting individuals from misconduct. The main aim of the analysis is to show changes of the police system that has been done till now and the guidelines that have been stated in the Prakash Singh case have been effected or not. After it has evolved in a successful manner but some of the issues have to be resolved that have been unnoticed from a very long time. The directives have to be implemented across the nation which is not done yet and ignorance of the directives has been done by various states. The central government has to look at those states who have ignored the guidelines so efficient police system can be made across the nation. The institutional problems have to be resolved such as some of the states have been complaining of lack of funding so that has to be resolved by the government.



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