



Police reform and the crucial judicial actor

Context:

- Police violence in Thoothukudi, Tamil Nadu
- The fatal violence by the police is a reminder of the **problem of police violence** and how little reform has happened in the domain of policing.

What are the judicial measures taken?

- The Supreme Court of India through its various judgments has been working towards police reforms in India.
- In cases such as **Joginder Kumar v. State of UP and D.K. Basu v. State of West Bengal**, important guidelines were passed to try and secure two rights in the context of any state action — **a right to life and a right to know**. Through the guidelines, the Court sought to curb the power of arrest, as well as ensure that an accused person is made aware of the grounds of the arrest.
- These judicial guidelines were given **statutory backing through the Code of Criminal Procedure (Amendment) Act, 2008**.
- The Supreme Court, in the **Prakash Singh v. Union of India** case, pushed through new legislation for governing police forces to be passed by States across India. A key component of the new legislation was a robust setup for accountability that contemplated **a grievance redress mechanism**.
- Judicial concern with police violence is also witnessed in the **judicial support for scientific investigations**. The support for techniques such as narcoanalysis, ensuring video recording of investigations, passing orders for installing closed-circuit television cameras inside police stations, is based on the possibility of police employing physical force to obtain evidence. Through technology, the hope is to **gradually delegitimise and dismantle a set of archaic practices reliant upon the use of force as a means to extract evidence**.



What are the major concerns?

Custodial deaths:

- Despite several existing guidelines and laws, there are reports suggesting that across India there are **as many as five custodial deaths a day**.
- This may point towards a **culture of impunity** among the state actors.

Lack of implementation:

- Constitutional courts have tried to change the reality of police brutality for well over two decades. The judiciary's approach of simply passing directions and guidelines has not been very effective.
- Despite criminal laws being struck down as unconstitutional, they continue to be enforced in various parts of the country by local police.

Systemic failure:

- The practice of remanding accused persons to further custody (both the police and judicial), has become the norm instead of being an exception.
- The **overworked magistrate, struggling with an ever-increasing number of cases**, is very often in a rush to get done with the "remand case", rather than treat an arrested person with the care and consideration that he/she deserves and is entitled to.

Lack of police reforms:

- The issue of police reform ranks very low in the scheme of things for governments. There is **continued institutional apathy towards the issue of police reform**. There was inordinate delay in implementing guidelines issued through the Prakash Singh case and still, several States remain in contempt of the Supreme Court's judgment.



Way forward:

Better implementation:

- Rather than limiting itself to passing more guidelines, constitutional courts must seriously contend with the concrete cases that come their way and take a hard stand.
- **Passing compensation claims or ensuring timely prosecutions** in such cases could help break the sense of impunity. The Courts could also consider sanctions at a larger scale and impose monetary penalties at the district level, to drive home the message that the erring actions of one officer must be seen as a failure of the force itself.

Strengthening the magistrate:

- The constitutional courts could reorient their guidelines to try and change the practices of magistrates, over whom they exercise powers of superintendence.
- **The ordinary magistrate is the judicial actor wielding real power to realise a substantial change in police practices.**
- It is the local magistrate before whom all arrested and detained persons must be produced within 24 hours, and thus becomes the point of first contact for a citizen with the constitutional rule of law.