

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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Unfettered Powers Of The Police **Under The Crpc – An Analysis**

Authored by - Meghana Vincent

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Introduction

Despite the passage of two years since the horrifying tragedy, George Floyd is still a name that stands out in people's thoughts. Although there are many regrettable instances of police brutality in the US, India is not far away. According to Article 21 of the Indian Constitution¹, an individual's right to life and liberty is his or her most important and indisputable natural right. In order to guarantee that this fundamental right of the individual is preserved and that there is a legal route to justice in the event, that those rights are violated, laws and codes like the Indian Penal Code and the Code of Criminal Procedure (hereafter CrPC) were passed. The Criminal Procedure Code entrusts the responsibility of ensuring the safety and enforcing the laws to maintain order at ground level to the police. To put it bluntly, they are supposed to be the guardians of the laymen and the first people that the people should feel free to reach out to, in case there is a violation of their rights.

But is that actually the case? Do the people of our country feel safe enough to approach the police when problems arise? The answer is a simple no. This is mainly due to the growing lack of trust in the police, especially in the recent few decades. The rising cases of custodial deaths, extra-judicial killings, police brutality and insensitivity to the general public are some of the major reasons. Why is this the case? Has the CrPC, in its goal to ensure just proceedings granted excess powers to the police? So much that there is enough scope to misuse it and still claim it as legal? Have the lawmakers failed in their goal to ensure the safety and security of the people [especially the underprivileged]? What can be the possible solutions which can be put into force in order to better this situation? This paper is an attempt to answer all such questions and provide some clarity.

Objective

This paper shall primarily focus on the powers bestowed on police under the CrPC² and its excessive misuse. It shall also analyse and discuss about the present state of affairs and the laws which have been used to justify those actions. The paper shall be divided into 2 parts with each part delving into detail about a particular research question.

¹ Article 21, The Constitution of India, 1950

² Code of Criminal Procedure, 1973

Research Questions

The following are the research questions for this paper:

1. Misuse of powers of arrest given to the police under CrPC with a special emphasis on Section 46.
2. Are the police violating their given powers of investigation? Is custodial torture seen as a means of an end?

Discussion and analysis

1. Misuse of powers of arrest given to the police under CrPC with a special emphasis on Section 46.

One term which plays a very significant role in obtaining a justice. A word which is very dear to the police – arrest. In layman's terms, arrest basically refers to the act of bringing someone into custody when there is a suspicion that they have committed a crime or other offence³. It is carried out when someone is detained for acting unlawfully. It is to be noted that there has been no attempt to define arrest in either the Indian Penal Code⁴ (hereinafter IPC) nor the CrPC. Though there is no definition per se, an entire chapter – Chapter 5⁵ (containing Sections 41 – 60A) of CrPC is dedicated to the arrest of persons. It deals with the powers and obligations that the police have, when it comes to making arrests, who can be arrested and how the arrest should be made.

Basically, arrest can be classified into two types – arrest with a warrant and arrest without a warrant. Section 41(2) of CrPC⁶ states that, '*subject to the condition in Section 42, ⁷a person cannot be arrested without a warrant and an order of the magistrate in case of non-cognizable offence and where a complaint is made*'.⁸ In order to arrest a person in non-

³ Shruti Singh, Arrest of persons under CrPC 1973, December 12, 2019 available at <https://blog.iplayers.in/arrest-of-a-person/>

⁴ Indian Penal Code, 1860

⁵ *supra* note 1, ch 5

⁶ *supra* note 1, § 41(2)

⁷ *supra* note 1, § 42

⁸ Shruti Singh, Arrest of persons under CrPC 1973, December 12, 2019 available at <https://blog.iplayers.in/arrest-of-a-person/>

cognizable and bailable offences, it is mandatory for the police to get a warrant from the Magistrate. Only after that, can he proceed with the arrest. This is a considerably just provision which protects the rights of the arrestee / the accused. However, when it comes to misuse of police powers, the main sections to be concerned with, are Sections 41 and 46. Section 41 of the CrPC deals with the powers of the police to arrest a person without warrant. Section 41(1)⁹ of CrPC lays down the various grounds under which a person can be arrested by police's own discretion without requiring a warrant. It is usually done in case of a cognizable offence, when a reasonable complaint is made or when a piece of credible information has been received.¹⁰ This section also gives excess powers to the police due to the vagueness of its terms. Section 41(1)(b)(i), states that, '*the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence*¹¹'. This is followed by Section 41(1)(b)(ii) which says '*the police officer is satisfied that such arrest is necessary....*'.¹² One thing which can be inferred from this is that, there is no fixed definition for terms like "**reasonable suspicion**" and "**upto the police's discretion**". Hence, their meanings are very subjective in nature and end up depending on the whims and fancies of the police officers. There are also cases where even though there is no formal complaint by the victims, police end up arresting people just because¹³ they "suspect" them. These 2 are the most frequently used loopholes in this section which lead to the unfettered powers of the police.

Following this comes Section 46 of CrPC which deals with how an arrest is made. Section 46(1) states that '*In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested...*'¹⁴ Section 46(2) adds to it by stating that, '*If such person forcibly resists the endeavour to arrest him, or*

⁹ *supra* note 1, § 41(1)

¹⁰ Shruti Singh, Arrest of persons under CrPC 1973, December 12, 2019 available at <https://blog.ipleaders.in/arrest-of-a-person/>

¹¹ *supra* note 1, § 46(1)(b)(i)

¹² *supra* note 1, § 46(1)(b)(ii)

¹³ Kaushal Jaisalmeria, *Unfettered Powers of Police and Need for Reforms*, August 11, 2020 available at <https://www.legalbites.in/unfettered-powers-of-police/>

¹⁴ *supra* note 1, § 46(1)

attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest'.¹⁵ This clause basically allows the police to use brutal force and potentially injure the person if he/she attempts to escape from arrest. It is followed by clause 3 which is considered as the most arbitrary and abused part of the section. It says that, 'Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.'¹⁶ While this clause was originally enacted to ensure the safety and security of the police when dealing with the armed and absconded arrestees, it has completely lost its nobility these days. Instead of using this provision in the rarest of the rare escape cases, the police indulge in a lot of unnecessary encounters [also known as extra-judicial killings] and justify it under the guise of Section 46(3). Section 46(3) gives the police a deeply unsettling green light to end the life of someone who has just been merely accused of a crime, even before they have been tried and found guilty in court. While some may claim that this complies with Article 21's "process established by law," the debate is far from over. According to the Supreme Court, "process established by law" must¹⁷ be "fair, just, and reasonable" rather than "fanciful, arbitrarily, or oppressively." The impact of the law on fundamental rights should be taken into consideration while evaluating it rather than only its purpose. Section 46(3) violates these constitutional principles by allowing the police to execute a person charged with a crime punishable by death or life in prison before the accused has a chance to be heard and before the court has determined whether or not he is guilty. This usurps the role of "judge, jury, and executioner," even though the police's only responsibility is to look into the crime¹⁸ and help the courts determine guilt of the person charged.

There are 2 recent encounter cases which immediately come to mind while discussing about this topic. They are, the *Hyderabad encounter case* of 2019 and the *Vikas Dubey case* of 2020. These are considered to be two of the most arbitrary encounter cases which happened in the recent years.

¹⁵ *supra note 1*, § 46(2)

¹⁶ *supra note 1*, § 46(3)

¹⁷ Siddhanth Sharma, *The Hyderabad Encounter: Ruling out of the law?* May 5, 2020 available at <https://www.probono-india.in/blog-detail.php?id=93>

¹⁸ Siddhanth Sharma, *The Hyderabad Encounter: Ruling out of the law?* May 5, 2020 available at <https://www.probono-india.in/blog-detail.php?id=93>

On the midnight of November 26-27, 2019, Priyanka Reddy - a 27-year-old veterinarian was gangraped and burnt by 4 people in the Gachibowli area of Hyderabad. The police caught the suspects and the investigation procedure was going on with the 4 suspects yet to be brought before the trial courts. All four suspects were taken to the crime scene for the reconstruction of the crime scene on December 6, 2019, at 3:30 am. According to the narratives of the police officers, this where the 4 accused allegedly tried to escape and harm the police, using the¹⁹ pistols snatched from them. It ended up in a crossfire, where all the four accused were shot dead by the police officers. The self-contradictory, "short and cryptic" police account of the events was questioned by the three-member judicial committee which was set up after this incident, and they came to the conclusion that "the accused were deliberately²⁰ fired upon (by the police) with an aim to cause their death". The commission determined that all 10 police officers were guilty of tampering with evidence and murder committed in support of a shared goal. The investigation also revealed that three of the four deceased suspects were minors, which is a concerning development. It is concerning as it is the wilful violation of certain²¹ juveniles' statutory and constitutional rights as a result of such extrajudicial executions. The final verdict of the Supreme Court in this case is still pending.

The very next year, when the whole world was gripping with covid 19, another encounter took place in the state of Uttar Pradesh. **Vikas Dubey** who hailed from Kanpur district, was a gangster who was wanted by the police on several counts. He is facing a long array of criminal allegations, including the 2001 killing of a BJP politician and a minister for the state of Uttar Pradesh inside a police station.²² He was also suspected to have caused the death of 8 policemen when they tried to arrest him on July 3rd 2020. On 9th July 2020, a shopkeeper recognised Vikas Dubey and contacted the police officers stationed on the temple

¹⁹ Siddhanth Sharma, *The Hyderabad Encounter: Ruling out of the law?* May 5, 2020 available at <https://www.probono-india.in/blog-detail.php?id=93>

²⁰ Sushant Khalkho, *Hyderabad encounter killings: How Supreme Court panel punctures hole in police theory*, May 25, 2022 available at <https://www.firstpost.com/opinion/hyderabad-encounter-killings-how-supreme-court-panel-punctures-hole-in-police-theory-10718051.html>

²¹ Sushant Khalkho, *Hyderabad encounter killings: How Supreme Court panel punctures hole in police theory*, May 25, 2022 available at <https://www.firstpost.com/opinion/hyderabad-encounter-killings-how-supreme-court-panel-punctures-hole-in-police-theory-10718051.html>

²² India Today, *Who is Vikas Dubey? All you need to know about Kanpur gangster*, July 9, 2020 available at <https://www.indiatoday.in/india/story/who-is-vikas-dubey-all-you-need-to-know-about-kanpur-gangster-1698602-2020-07-09>

complex in Ujjain, finally leading to his arrest. On the very next day [10 July 2020], the car he was riding in was involved in an accident. Vikas Dubey attempted to flee while snatching a gun from a police officer who was changing a tyre. He was shot dead during the encounter, along with his six other companions. The above narrative was the story/defence given by the police when they were accused of murder by human rights activists. While the police maintain this as the truth, it clearly seems like a scene cut out ²³from a movie. While it is definitely true that Vikas Dubey was a criminal who deserved to be punished, this definitely was not the right way to do it. The fact that these encounters are celebrated by the people especially in the *Disha case* (Hyderabad encounter) shows the lack of trust that the society has in the criminal justice system. This is primarily due to the extreme delay caused by the courts in cases like these. For example, on December 2012, six individuals in a moving bus gangraped and fatally injured Nirbhaya. All four of the convicts received death sentences. But only eight years after the horrifying tragedy, the accused were finally hanged following innumerable²⁴ mercy applications and appeals. Many people, including Nirbhaya's parents, were affected by this and gradually lost hope in the criminal justice system.

Speaking of legality of these encounters, the Supreme Court, in the case of *Public Union for Civil Liberties v. Union of India*²⁵, noted the validity of encounters by reasoning that the decision of when, how, and where to intervene lay with the police force on the scene. This judgement without doubt, gave the police, a green-light to continue their method of approaching crime and invariably held Section 46(3)²⁶ as constitutionally valid. After almost 20 years, the Supreme Court, in the case of *Prakash Kadam v. Ramprasad Vishwanath Gupta*,²⁷ held that false encounters are on par with "cold blooded murders," and those who commit such killings should receive the death penalty, placing them in the category of rarest

²³ Mohd Rameez Raza & Raja Shekhar, *The Vikas Dubey encounter case: Justice Served or justice denied?* August 1, 2020 available at <https://cclnusr1.wordpress.com/2020/08/01/the-vikas-dubey-encounter-case-justice-served-or-justice-denied-mohd-rameez-raza-raj-shekhar/>

²⁴ Prabhash K Dutta, *Why killing of the 4 rape accused by Hyderabad police is no cause for joy*, December 6, 2019 available at <https://www.indiatoday.in/news-analysis/story/why-killing-of-4-rape-accused-by-hyderabad-police-is-no-cause-for-joy-1625755-2019-12-06>

²⁵ *Public Union for Civil Liberties v. Union of India* WRIT PETITION (CRL.) NO. 612 OF 1992 (India).

²⁶ *supra* note 1, § 46(3)

²⁷ *Prakash Kadam v. Ramprasad Vishwanath Gupta*, CRIMINAL APPEAL NO. 1174-1178 OF 2011(India).

of the rare.²⁸ It can be inferred from the 26th paragraph of the judgement which states – “Trigger happy policemen who think they can kill people in the name of ‘encounter’ and get away with it should know that the gallows await them”²⁹. Later in the case of People’s Union for Civil Liberties v. State of Maharashtra³⁰, CJI RM Lodha and Justice Fali Nariman constituted a two-judge bench formulated a 16-pointer guideline to be followed by the police in case of encounters.³¹ Fake encounters by the police, in the name of justice is unwelcome and will never serve as a replacement for the punishment that will ultimately result from a fair trial conducted in accordance with the law. The severity of the accused’s crimes cannot be used as a justification for such interactions, and the police should always be held legally accountable for their actions. Another potential solution would be to provide sensitization to the police during their training days and also be taught to handle such situations without resorting to murder. Not only this, the legislative should consider amending the clauses given under Section 46 of the CrPC. Instead of generalising and vaguely defining³² the terms, the amendment should clearly clarify the meanings of “reasonable suspicion,” “reasonable judgement” of the police officer. The terms should be more objective in nature, so as to bring the police to the book in case there is violation. To sum it up in the words of Mahatma Gandhi, “Be the change you wish to see in the world.”

2. Are the police violating their given powers of investigation? Is custodial torture seen as a means of an end?

An investigation is the act or process of investigating; a careful search or examination in order to discover facts, etc³³ according to Collins Dictionary. In CrPC, investigation has

²⁸ Mohd Rameez Raza & Raja Shekhar, *The Vikas Dubey encounter case: Justice Served or justice denied?* August 1, 2020 available at <https://cclnusr.wordpress.com/2020/08/01/the-vikas-dubey-encounter-case-justice-served-or-justice-denied-mohd-rameez-raza-raj-shekhar/>

²⁹ Prakash Kadam v. Ramprasad Vishwanath Gupta, CRIMINAL APPEAL NO. 1174-1178 OF 2011(India) ¶26

³⁰ People’s Union for Civil Liberties v. State of Maharashtra (2014) 10 SCC 635.

³¹ Vidhi Chouradai, Extra-judicial execution: In light of Vikas Dubey incident, International Journal of Law Management & Humanities, vol 3 issue 4 (2020) available at <https://www.ijlmh.com/wp-content/uploads/Extra-Judicial-Execution-In-Light-of-Vikas-Dubey-Incident.pdf>

³² Vidhi Chouradai, Extra-judicial execution: In light of Vikas Dubey incident, International Journal of Law Management & Humanities, vol 3 issue 4 (2020) available at <https://www.ijlmh.com/wp-content/uploads/Extra-Judicial-Execution-In-Light-of-Vikas-Dubey-Incident.pdf>

³³ Collins Dictionary, Investigation (last seen October 29, 2022) available at <https://www.collinsdictionary.com/dictionary/english/investigation>

been defined in Section 2(h).³⁴ It states that, " *investigation*" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf".³⁵ Investigation of cognizable cases is dealt with in Chapter XII of CrPC. While Section 154 of CrPC deals with the filing of an FIR³⁶, Section 156 of CrPC is all about the police officer's power to investigate cognizable cases. Section 156(1) states that, "Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII." ³⁷ This is followed by Section 156 (2) states that, "No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate." On literal interpretation, these two clauses basically empower the police to carry out investigation in serious or cognizable cases without waiting for an order from the Magistrate. Section 156 (2) not only eliminates the problem of jurisdiction, it also empowers the police to use all methods of inquiry given in Chapter XIII (including Section 157). Section 157 is all about the procedure of investigation. Section 157(1) states that, ".....may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender".³⁸

This is where the concept of police custody comes in. While judicial custody usually implies that the accused is detained in a jail and is in the care of the Magistrate, police custody refers to the accused being kept in the lock-up of a police station or in the custody of an investigating agency that is looking into the crime in hand.³⁹ Police custody is usually for a period of 15 days unlike judicial custody (which is for 90 days). During this period, the

³⁴ *supra* note 1, § 2{h}

³⁵ *supra* note 1, § 2{h}

³⁶ *supra* note 1, § 154

³⁷ *supra* note 1, § 156 (1)

³⁸ *supra* note 1, § 157(1)

³⁹ Vanya Verma, *Difference between Police custody and judicial custody under CrPC*, April 30, 2020 available at <https://blog.iplayers.in/differene-police-custody-judicial-custody-crpc/#Introduction>

police are empowered under Section 156 and 157, to carry out investigation as they see fit. This is exactly where the concept of custodial torture comes into play.

Custodial violence or torture usually refers to torture and violence committed while an individual is in the custody of law enforcement personnel typically falls under the definition of "custodial torture."⁴⁰ According to the Supreme Court, torture in detention is a flagrant violation of human dignity and degrading, and it substantially damages human personality.⁴¹ The Sathankulam custodial death case is one of the most recent example of custodial torture and death. In 2020, during covid lockdown, the Tamil Nādu Government passed a rule specifying the time until which the shops can remain open. Jayraj and Felix, a father-son duo owned a mobile accessories shop in Sathankulam town in the Thootukudi district of Tamil Nadu. 19th June 2020 – the fateful night, the aftermath which shook the country⁴². At around 7:45pm, the police went to the shop and made the duo go to the police station for inquiry. They were then brutally assaulted and tortured, and parts of their bodies were mutilated. All this, merely because the pair kept their shop open than the allotted hour, the police took such harsh measures, leading to their deaths⁴³. The reasons offered by the police was the crowd gathered around the shop after the specified time. But the eyewitness and video evidence recovered from the scene give an entirely different account, illuminating the strategies they employed to hide their wrongdoings. Although their store was open, no customers could be seen outside. The two were brutally beaten up by the police at Sathankulam Police Station after they were taken into custody for breaking laws and disregarding public norms. Additionally, witnesses said they were visibly bleeding heavily from their private areas.⁴⁴ On

⁴⁰ Legal Service India, *Custodial torture and reforms in police administration*, (last seen October 29, 2022) available at <https://www.legalserviceindia.com/legal/article-3120-custodial-torture-and-reforms-in-police-administration.html#:~:text=Custodial%20torture%20a%20form%20of,very%20large%20extent%20human%20personality>.

⁴¹ Legal Service India, *Custodial torture and reforms in police administration*, (last seen October 29, 2022) available at <https://www.legalserviceindia.com/legal/article-3120-custodial-torture-and-reforms-in-police-administration.html#:~:text=Custodial%20torture%20a%20form%20of,very%20large%20extent%20human%20personality>.

⁴² Abhinav Ashok, *The abuse of police power and police brutality*, July 18, 2020 available at <https://www.legalbites.in/abuse-of-police-power-police-brutality>

⁴³ Abhinav Ashok, *The abuse of police power and police brutality*, July 18, 2020 available at <https://www.legalbites.in/abuse-of-police-power-police-brutality>

⁴⁴ Abhinav Ashok, *The abuse of police power and police brutality*, July 18, 2020 available at <https://www.legalbites.in/abuse-of-police-power-police-brutality>

the High Court's instructions, the CB-CID was initially in charge of the Jeyaraj and Bennix custodial killings case. Ten or so police officers were booked and taken into custody on murder charges under Section 302 of the Indian Penal Code.⁴⁵ The CBI then took up the investigation, which they are still doing. This shows the poor state of law and order in the police department. The department which is supposed to enforce the law, has itself violated it. This is despite the Supreme Court's stance, in the case of *DK Basu v. State of West Bengal*⁴⁶, where it formulated a set of guidelines to be followed by the police when carrying out the procedure of arrest and detention (includes police custody). The concerned police officer will be convicted of contempt of court and will also be responsible for departmental punishment⁴⁷ if these requirements are not followed.

Conclusion

Police brutality is without doubt, a very terrible act on its own and an utter disrespect towards the nobility of the profession and the statutes which have bestowed powers on it. The privileges and powers given to the police under CrPC were given so, with an intention to ensure their safety and the belief that these privileges would be used with caution. But now is the right time to bring about reforms in the police system as well in the statutes. One potential amendment which can be made in the CrPC is to Section 197. At present, Section 197 reads that, “*when a public servant is accused of committing an offence alleged to have been committed while acting or purporting to act in the discharge of his official duty, no court shall take cognisance of such an offence except with the previous sanction of the Centre.*”⁴⁸ In its eighth report, the national police commission suggested removing this defence of police misconduct committed in the course of official duties. Officers who abuse their authority

⁴⁵ The News Minute, *Sathankulam Custodial deaths: Accused inspector Sridhar claims threat to life*, May 5, 2022 available at <https://www.thenewsminute.com/article/sathankulam-custodial-deaths-accused-inspector-sridhar-claims-threat-life-163615>

⁴⁶ *DK Basu v. State of West Bengal* (1997) 1 SCC 416 (India)

⁴⁷ Randeep Dahiya, *The use and misuse of power of police to arrest – an in-depth study in the light of Supreme Court decisions*, (last seen October 29, 2022) available at <https://www.legalserviceindia.com/legal/article-1355-the-use-and-misuse-of-power-of-police-to-arrest-an-in-depth-study-in-the-light-of-supreme-court-decisions-and-law-commission-reports.html>

⁴⁸ *supra* note 1, § 197

should be punished rather than protected.⁴⁹ Another viable solution would be to conduct awareness programs and sensitize the police officers regarding these incidents and their after affects. With these solutions put into play, the possibility of police brutality and violence in the future can be reduced to a great extent.

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