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POLICE ACCOUNTABILITY AS A PILLAR OF FAIR INVESTIGATION: A STUDY OF INDIAN CRIMINAL PROCEDURE REFORMS

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ABSTRACT

The Indian criminal justice system, anchored in the adversarial model, places the investigation conducted by the police at its foundational core. The fairness, impartiality, and integrity of this investigative process are decisive determinants of the eventual outcome of a trial. This article posits that robust police accountability is not merely an administrative or disciplinary concern but an indispensable constitutional and jurisprudential pillar for ensuring a fair investigation. It argues that the historical and structural insulation of the police from meaningful accountability has been a primary cause of investigative malfeasance, including torture, fabricated evidence, partisan inquiry, and custodial violence, thereby eroding the rights of the accused, victims, and society at large.

Through a doctrinal and critical analysis of post-Independence reforms, particularly those catalyzed by judicial activism and legislative responses, this study examines the evolving jurisprudence of police accountability in India. It meticulously analyses key amendments to the Code of Criminal Procedure, 1973 (CrPC) landmark Supreme Court judgments, and reform proposals like the Model Police Act, 2006. The article explores three primary accountability mechanisms: judicial oversight (through provisions like Sections 41, 41A, 156(3), and 173 CrPC), internal disciplinary control, and external independent oversight (like Police Complaints Authorities). It concludes that while significant jurisprudential strides have been made, particularly in reading accountability into procedure, the translation of these legal principles into ground-level policing culture remains deeply fraught. The final recommendation advocates for a synergistic framework combining strong independent oversight, legislative enactment of a rights-based Police Act, technological transparency, and a fundamental reorientation of police training towards a human rights-based service ethos.

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❖ **INTRODUCTION: The Nexus Between Accountability and Fair Investigation**

1. Background and Problem Statement:

The police, as the primary agency of the state's coercive power, wield immense authority during criminal investigation, the power to arrest, detain, interrogate, search, and seize. In India, this authority is largely derived from the Code of Criminal Procedure, 1973 (CrPC) and the Indian Evidence Act, 1872. However, the architecture of the Indian Police Act, 1861, a colonial legislation designed for subjugation rather than service, created a force accountable only to its hierarchical superiors and the executive government, insulating it from the community and the rule of law.

This accountability deficit has had a direct and corrosive impact on the fairness of investigations. A "fair investigation" is now recognized as a fundamental right under Article 21 of the Constitution (Right to Life and Personal Liberty), as established in *Ramachandran v. CBI*. It entails impartiality, thoroughness, respect for legal procedures, and the protection of the rights of both the victim and the accused. The absence of accountability mechanisms breeds:

- **Custodial torture and deaths:** To extract confessions, violating the right against self-incrimination (Article 20(3)).
- **Fabrication and planting of evidence:** To secure convictions, undermining the right to a fair trial.
- **Malicious and biased investigations:** Influenced by political pressure, corruption, or prejudices of caste, class, and community.
- **Failure to investigate crimes,** especially against marginalized groups, denies victims access to justice.
- **Over-reliance on confession-based evidence:** Neglecting scientific and forensic methods.

Thus, the central problem this article addresses is: How has the Indian legal framework sought to institutionalize police accountability to ensure fair investigations, and to what extent have these procedural and judicial reforms been effective in transforming police practice?

2. The Colonial Legacy and the Genesis of the Accountability Deficit:

The Indian police system was formally codified under the Indian Police Act, 1861, in the aftermath of the 1857 rebellion. Its primary objective was not to serve the citizenry but to protect the interests of the British colonial regime. This legacy bequeathed three fatal flaws regarding accountability:

- **The Executive Subservience Model:** The Act placed the police under the direct and unquestioned control of the district collector and the executive government. While this ensured administrative control, it politicized the force. Loyalty to the ruling party, rather than fidelity to the law, became the de facto operational guideline, a malaise that has persisted post-Independence. The police were conceived as an instrument of state control, not as an agency for justice delivery.
- **Absence of Community Accountability:** The police were deliberately isolated from the community they policed. There was no mechanism for citizens to seek redress for police misconduct. The "master-servant" relationship replaced any notion of the police being "servants of the law" or the public. This created a deep-seated culture of opacity and impunity, where public trust was considered irrelevant to police functioning.
- **Internal Accountability as Disciplinary Fiat:** Internal accountability was (and remains) a top-down, punitive disciplinary process under the 1861 Act and various state regulations. It is often opaque, used to enforce hierarchy rather than integrity, and ineffective in addressing core issues like bias or abuse of power during investigation. The focus was on maintaining internal discipline for efficient command, not on ensuring constitutional compliance or investigative ethics.
- This framework created a police force structurally predisposed to unaccountable power, where investigative fairness was routinely sacrificed for expediency, confession, and colonial control, a culture that independent India inherited largely intact. The post-colonial state retained the architecture of control, failing to re-engineer it for a democratic republic founded on the rule of law.

3. Fair Investigation as a Constitutional Imperative:

The Supreme Court, through transformative constitutionalism, has read the requirement of a fair investigation into Article 21. This chapter explores this jurisprudential foundation.

- i. **Evolution of the Doctrine:** The journey began with interventions against custodial violence. In *D.K. Basu v. State of West Bengal* The Court laid down exhaustive

guidelines to prevent custodial torture, linking custodial violence directly to the unfairness of the investigative process. This was a pivotal moment where the procedure was constitutionalized. The doctrine crystallized in *Ramachandran v. CBI*, where it was explicitly held that a fair investigation is a "human right" and a "sacred duty" of the police, integral to the guarantee of a fair trial. The Court stated, "the investigation must be fair, transparent and judicious, as it is the minimum requirement of the rule of law."

ii. **Components of a Fair Investigation:**

- a. **Impartiality:** The Investigation must be conducted without fear or favour. In *State of West Bengal v. Committee for Protection of Democratic Rights*, the Court emphasized that justice must not only be done but must appear to be done from the earliest stage of investigation. Any perception of bias, whether due to political influence or personal prejudice, vitiates the investigation.
- b. **Thoroughness and Scientific Rigor:** The Court in *Mohan Lal v. State of Punjab* underscored the importance of scientific evidence and expressed grave concern over shoddy, lackadaisical investigations that rely on superficial evidence. A fair investigation demands due diligence, exploration of all plausible leads, and the use of modern forensic tools.
- c. **Respect for Procedural Safeguards:** Compliance with arrest procedures (Sections 41, 41A CrPC), the right to legal aid (Article 22(1)), and mandatory medical examination (Section 54 CrPC) are not mere technicalities but integral to fairness. They are designed to check arbitrariness and protect the accused from coercion.
- d. **Non-Discrimination:** Investigations must be free from biases based on caste, religion, gender, or political affiliation. Judgments like *Prasann Parihar v. State of U.P.* and observations in cases like *Kalikhoo Pulu* highlight the judiciary's anxiety over politically weaponized investigative agencies.

- iii. **Accountability as the Guarantor:** The Court has consistently held that a violation of procedural safeguards, leading to an unfair investigation, must attract consequences. This creates a necessary link between accountability (consequences for breach) and fairness (the substantive standard to be upheld). Without enforceable accountability, the right to a fair investigation remains a parchment promise.

4. Judicial Oversight as an Accountability Mechanism under the Cr.P.C., 1973

The CrPC embeds several provisions that enable the judiciary to supervise police investigations, thereby creating a system of checks and balances. This constitutes the most traditional and legally entrenched form of accountability.

- i. **Pre-Arrest and Arrest Procedures (Sections 41, 41A, 46):** The 2009 CrPC amendment, post the *Joginder Kumar v. State of U.P.* and *D.K. Basu* judgments, introduced Section 41A (notice for appearance) and refined Section 41 (conditions for arrest). The police are now accountable to the Magistrate for justifying every arrest. The Magistrate must satisfy themselves that the arrest complies with legal requirements, preventing arbitrary deprivation of liberty. The landmark case of *Arnesh Kumar v. State of Bihar* further strengthened this by directing magistrates to scrutinise arrest memos and not authorize detention mechanically.
- ii. **Monitoring of Investigation (Section 156(3) & 173(8)):** A Magistrate, under Section 156(3), can direct the police to register an FIR and investigate, acting as a check on police inaction. Further, under Section 173(8), they can monitor the progress of the investigation and even order further investigation. This is a critical tool for holding the police accountable for a biased, tainted, or lethargic initial investigation, especially in sensitive cases.
- iii. **The Power to Take Cognizance (Section 190) and Discharge (Section 227):** The judiciary acts as a crucial filter. Even if the police submit a charge-sheet, the Magistrate or Sessions Judge can refuse to take cognizance or discharge the accused if the evidence is manifestly inadequate, frivolous, or appears fabricated. This indirect accountability compels the police to build sound, evidence-based cases rather than rely on custodial confessions or fabricated proof.
- iv. **Direct Judicial Inquiry into Police Actions:**
 - a. **Magisterial Inquiry into Custodial Death/Rape (Section 176(1A)):** A mandatory inquiry by a Judicial Magistrate into all cases of custodial death, rape, or disappearance is a direct accountability mechanism. Its independence from the police hierarchy is vital for credible fact-finding.
 - b. **Monitoring by Constitutional Courts:** The Supreme Court and High Courts, under Articles 32 and 226, can directly intervene in ongoing investigations, order CBI/SIT probes (as in the landmark *Vineet Narain v. Union of India*, case that birthed the "continuing mandamus" in the Jain Hawala scandal), or lay down guidelines to ensure fairness. This "judicial

activism" has often filled legislative and executive voids.

- v. **Limitations of Judicial Oversight:** Despite its strengths, judicial intervention is often post facto and reactive. Overburdened courts cannot micro-manage every investigation. The judiciary also heavily relies on the police machinery itself for execution, creating a dependency that can blunt rigorous oversight. Furthermore, judicial remedies are often accessed only by those with resources and persistence, leaving the most vulnerable without recourse.

❖ **Internal Accountability and the Specter of Political Interference**

- i. **The Hierarchical Disciplinary System:** Internal accountability mechanisms under state police manuals are based on departmental inquiries. While theoretically capable of addressing misconduct, in practice, they are ineffective against mala fide investigations ordered by superiors or conducted under external pressure. The "blue wall of silence" and a culture of protecting the force's image often shield errant officers. Disciplinary action is frequently for minor infractions of hierarchy, not for substantive violations of investigative fairness.
- ii. **Political Interference-The Core Obstacle:** The single greatest impediment to fair investigations is the unauthorized influence of the political executive. The police leadership's tenure, postings, and promotions are controlled by politicians, making them vulnerable to directives to register or not register FIRs against political opponents, conduct investigations in a particular manner, or shield allies from investigation. This directly subverts the rule of law and nullifies all other accountability mechanisms. The police, instead of being a law-enforcing agency, often become a tool for political enforcement.
- iii. **The Failed Safeguard: Prosecution Independence:** In India, the prosecution wing is often an adjunct of the police department, especially at the district level. The Public Prosecutor is expected to act as a "minister of justice," but in practice, often becomes a post-facto legitimizer of the police charge-sheet. The lack of an independent prosecuting agency, as recommended by the *Malimath Committee (2003)*, means there is no professional, legally trained check on the quality or integrity of the evidence gathered by the police before it is presented in court. An independent prosecutor could refuse to proceed on a poorly investigated or maliciously framed case, creating a powerful accountability check.

❖ **Models of External Independent Oversight**

Recognizing the failure of internal and purely judicial mechanisms, reform committees have consistently advocated for external civilian oversight bodies.

- i. **The Landmark *Prakash Singh Judgment (2006)*** This case represents the most comprehensive judicial attempt at structural reform. The Supreme Court, drawing from the Model Police Act, 2006 and decades of committee reports, issued seven directives to states to establish:
 - a. **State Security Commissions:** To insulate police from undue political influence and frame broad policy guidelines.
 - b. **Police Establishment Boards:** To decide on transfers, postings, and promotions of officers below the rank of SP, based on merit and tenure security.
 - c. **Police Complaints Authorities (PCAs):** At state and district levels to inquire into allegations of serious misconduct against police personnel, including those about investigations.
 - d. **Separation of Investigation from Law and Order:** To allow specialized wings to focus on investigations without the distractions of routine duties.
- ii. **Analysis of Police Complaints Authorities (PCAs):** PCAs are envisioned as the cornerstone of external accountability. However, their implementation across states has been dilatory and half-hearted. States have either not established them, provided them with insufficient powers (e.g., only recommendatory authority), or stacked them with political appointees, rendering them ineffective. Without statutory teeth, independent investigators, and secure funding, PCAs remain phantom institutions in most states.
- iii. **Human Rights Commissions:** The National and State Human Rights Commissions (NHRC/SHRCs) can investigate police excesses, particularly custodial deaths and torture. However, their recommendations are not binding, their infrastructure is stretched, and they often deal with cases years after the incident, reducing deterrence. They function more as recommendatory bodies than as robust accountability institutions.

❖ **Persistent Challenges and the Future Reform Agenda**

Despite jurisprudential advancements, the gap between law and practice remains a chasm. This chapter analyses the impediments and proposes a cohesive reform framework.

- i. **Impediments to Accountability:**
 - a. **Political Will:** The ruling executive has no incentive to create robust oversight bodies that would curtail its own power to use the police for partisan ends.
 - b. **Police Culture:** A deep-seated culture of opacity, resistance to external scrutiny, and the "ends justify the means" approach, inherited from 1861, is resistant to change.
 - c. **Resource Constraints:** Lack of forensic labs, manpower, modern equipment, and training leads to over-reliance on crude, confession-oriented methods.
 - d. **Delayed Justice:** Disciplinary and criminal proceedings against police officers take decades, negating any deterrence value. Colleagues are often reluctant to testify.
 - e. **Federal Complexity:** Police is a State subject under the Constitution, leading to uneven adoption of reform directives and model laws across different states.
- ii. **A Synergistic Reform Framework:** To make police accountability a living reality, a multi-pronged approach is essential:
 - a. **Legislative Action:** Enact a new, rights-based Union and State Police Act as per the **Model Police Act, 2006**, replacing the 1861 Act. This must statutorily establish independent PCAs with powers to summon, investigate, and recommend disciplinary/criminal action. The new criminal laws (Bharatiya Nagarik Suraksha Sanhita, 2023) offer an opportunity, but their focus on procedural timelines must be coupled with explicit accountability clauses.
 - b. **Institutional Strengthening:** Ensure functional independence of PCAs and SHRCs with adequate resources, investigative staff, and a mandate for time-bound resolutions. Create an Independent Directorate of Prosecution at the state level, insulated from police and political control.
 - c. **Technological Transparency:** Mandatory body-worn cameras for all patrol and interrogation officers, comprehensive CCTV coverage in police stations (as directed in *Paramvir Singh Saini v. Baljit Singh, 2020*) with tamper-proof storage, and digitization of case diaries and station records to create an immutable audit trail.

- d. **Training and Performance Metrics:** Fundamentally shift training from a paramilitary to a service-and-rights-based model. Change performance indicators from the number of arrests and "case disposal" to metrics like quality of charge- sheets, forensic evidence collected, public satisfaction surveys, and reduction in custodial complaints.
- e. **Community Policing and Victim-Centricity:** Institutionalize community liaison groups and victim assistance protocols. A police force that sees the community as a partner, rather than a subject, will be more receptive to accountability.

❖ CONCLUSION

This article has established that the principle of police accountability is inextricably woven into the constitutional guarantee of a fair investigation. The journey from a colonial, subjugation- oriented police force to a rights-respecting, service-oriented institution necessitates breaking the chains of unaccountability.

Indian jurisprudence, through progressive judicial interpretation and procedural amendments to the CrPC, has constructed a formidable *de jure* framework for accountability. The judiciary has emerged as a vital, though overburdened, check on police powers. However, *de facto* accountability remains elusive, strangled by political interference, an insular police culture, and poorly implemented oversight structures.

The reforms mandated in *Prakash Singh* are not mere suggestions but the bare minimum required for a functional democracy under the rule of law. Their deliberate non-implementation is a testament to the resistance of the entrenched nexus of politics, executive, and police. The path forward requires a sustained coalition of the judiciary, civil society, media, and a conscious citizenry to demand the enactment of a new governance architecture for the police.

Ultimately, accountability is not about punishing individual officers but about redesigning a system that makes ethical, lawful, and fair investigation the default, and misconduct a costly aberration. Until police accountability is secured as a tangible, operational reality, the promise of a fair investigation and, by extension, a fair trial and justice will remain a

distant ideal, fundamentally undermining the legitimacy of the Indian criminal justice system.

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