Police reform and the crucial judicial actor

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Context

# At my vantage point as someone working in the criminal justice system, the only emotion that the seemingly senseless act of violence inside a police station in Thoothukudi, Tamil Nadu, evokes, is of extreme weariness.

# How many more times must powerless citizens suffer the blows of a lathi or a baton, the kicks of patent leather boots, be violated by the “wooden rollers” around their private areas, not to mention spending hours inside a police lockup, all as a part of an “investigation” by police searching for “truth”?

Judiciary as beacon

# This fatal violence by state actors is a cruel reminder of just how little unshackling has happened in the domain of policing to free this essential public sphere from the demons of its heritage and become an active participant in sustaining a democratic polity and not a colony.

# It becomes natural to look towards the judiciary as the source of hope and action, and it is unsurprising to know that the Madurai Bench of the Madras High Court has taken notice of the Thoothukudi violence on its own and is “closely” monitoring the situation.

# The Madras High Court acted in the best traditions of constitutional courts in India, which have often passed various directions to try and ameliorate the problem of police violence.

# So much so that scholars have called the Supreme Court of India as the only institution working towards police reforms in the Indian state.

# This acclaim largely comes from the top court’s interventions in the 1990s through cases such as Joginder Kumar v. State of UP [AIR 1994 SC 1349] and D.K. Basu v. State of West Bengal [(1997) 1 SCC 416], where 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 all critical information
regarding her arrest and also **convey this to friends and family immediately** in the event of being taken in custody.

# It took a decade, and in the form of amendments, as the **Code of Criminal Procedure (Amendment) Act, 2008** to give statutory backing to these judicial guidelines; it remains part of the law today.

# The Supreme Court went even further, and perhaps too far, in the case, *Prakash Singh v. Union of India [(2006) 8 SCC 1]*, where it 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**.

# That it took reportedly **11 years** for the **State of Tamil Nadu** to actually implement *Prakash Singh* (a law passed in 2013 but only given effect in 2017), and that **several States remain in contempt** of the **Supreme Court’s judgment**, give some insights into how seriously the issue of police reform ranks in the scheme of things for governments.

# Judicial concern with police violence is also witnessed in a different manner — judicial support for “scientific” investigations. The support and fascination for techniques such as **narcoanalysis**, ensuring **video recording of investigations**, **passing orders for installing closed-circuit television cameras inside police stations**, all comes from a place of grudging acceptance by courts about how often police employ physicality to obtain evidence.

# Through technology, then, the hope is to reduce a **need for interacting with the body as a source of evidence**, and to gradually **delegitimise and dismantle** a set of archaic **practices reliant upon** the use of **force as a means to extract the “truth”**.

## Systemic failures

# **Constitutional courts** have seemingly tried to **change our reality** of police brutality for well over two decades.

# Yet, we are still here, with some reports (of course, not by the state) suggesting that across India there are as many as **five custodial deaths a day**.

# While this is undoubtedly a product of **continued institutional apathy** towards the **issue of police reform**, I would argue that it is also clear enough evidence that the **judiciary’s approach** of simply **passing directions and guidelines**, has
proven to be a failure, and that it is the ordinary magistrate, and not the constitutional court, who is the judicial actor wielding real power to realise substantial change in police practices.

# There is a reason why the judiciary is commonly called the weakest branch: All the noble intentions in the world cannot help transform the mere words of a court order into reality.

# This needs money and a power of immediate implementation, neither of which courts have.

# In fact, the gap between the highest court and the lowly police officer in India has been demonstrated through studies which show how despite criminal laws being struck down as unconstitutional, they continue to be enforced in various parts of the country by local police.

Culture of impunity

# At the same time, constitutional courts must shed the institutional baggage which often leads to them protecting the supposedly vulnerable morale of police.

# This tendency was on display when the Madras High Court reportedly saw the Thoothukudi incident as the result of a “few bad apples” ruining a system’s reputation.

# Rather than minimise, perhaps it is time to 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.

# Finally, constitutional courts could strike an inspired move by reorienting their guidelines to try and change the practices of magistrates, over whom they exercise powers of superintendence, as opposed to other non-judicial actors.

# For 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 that Indians take so much pride in.

# The Thoothukudi incident has brought to fore what appears to have been inexcusable lapses by the magistrate.

# It is tragic that the laxity apparently on display there in remanding accused
persons to further custody (both the police and judicial), is not the exception but the norm, in my experience.

# Data | Five States including Tamil Nadu recorded over 100 custodial deaths but zero police convictions between 2001-18

# The overworked magistrate, struggling with an ever-explooding docket, is very often in a rush to get done with the “remand case”, rather than treat an arrested person with the care and the consideration that she deserves and is entitled to.

# This is not the fault of the magistrate but the crystallisation of a systemic failure which constitutional courts are indirectly responsible for, and could do much to change.