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Preventive Actions of the Police

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ABSTRACT

Criminal law is as a lot of worried about the counteraction of offenses, all things considered with the preliminary and discipline of the miscreant. Accordingly, Chapter XI of the Act contains certain arrangements with respect to preventive move to be made by the Police in specific conditions. S. 149 engages each Police Officer to mediate to forestall the commission of any cognizable offense as well as could be expected. It might be noticed that this segment accommodates avoidance of cognizable offenses as it were. More extensive forces for the avoidance of offenses as a rule are to be found in S. 23 of the Police Act, 1861. Besides, under S. 150, all of Police Officer getting any kind of information of any structure to submit any cognizable offense must impart such data to his senior Police Officer. So likewise, any Police Officer, knowing about a knowledge to submit any cognizable offense, may capture, with no prior order from the concerned Magistrate and that too without a warrant, the individual going to commit the offense, in the event that it appears to such Officer that he can't in any case should otherwise try to prevent the happening of the offense. The paper will be majorly focusing on the preventive actions of the police in the light of law and justice.

Keywords: Criminal Law, Police, Magistrate

I. INTRODUCTION

Nevertheless, such an individual can't be kept in detention for more than twenty-four hours from the hour of such arrest, except if his further confinement is required or approved under the Code or under some other law. (S. 151). "It has been contended that if any person is arrested under this section, and is thereafter detained under any other preventive measure, example, the Defense of India Rules, the order of that detention would be considered illegal. (Prem Lai Sharma, —1966 13 L.J.R. 395)."

The authority of a Police Officer under S. 151 is just restricted and special when it comes to stopping the commission of a cognizable offense; the force is, in no sense, comparable to the power of preventive detention. Under this section in CrPC, a Police Officer has no capacity to hold an individual apprehended fully in an expectation of detention. It has been held similarly

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that if a Police Officer captures an individual belonging to a political group, for example the Communist Party, and that group or the party has a programmed to commit a few offenses it would be a misuse of the authority conceded by S. 151. (Prahalad Panda, — 51 Cr. L.J. 891).

It will be seen that this section imagines the satisfaction of the Police Officer which is subjective to the officer concerned. In this manner, in a habeas corpus appeal, it isn't available to the High Court to go into the inquiry with respect to whether the Police Officer was correct in arriving at his decision. By and by, in suitable cases, the High Court can go into the question of correct exercise of that decision. (A.K. Gopalan, — 1962 Ker. 215)². Additionally, a Police Officer may, of his own power intervene to prevent any injury endeavored to be submitted in his view to any public property, or the evacuation or injury of any public or government landmark or some other imprint utilized for route. The expression public property includes roads, houses, lamp-posts, landmarks and signposts.

Also, any official responsible in charge for a Police Station may, without a warrant, enter wherever inside the area in limit of that Police Station, to examine or looking for any weight or measures or gauging instruments on the off chance that he has a reason to suspect that such place contains any false weights, measures or weighing instruments. On the off chance that any such false weights, measures or instruments are discovered, the Officer may hold onto the equivalent, and forthwith give data of such seizure to a Magistrate having jurisdiction of that area.

(A) Aim

This project aims to determine the idea behind the law authorizing the police to prevent the offences, maintenance of peace and maintain the public order under the chapter XI of Criminal Procedure Code, 1973 which has widened the field of certain powers given, purpose fulfilled, actions identified and to know impact of the preventive clauses giving such powers to the police in India.

(B) Objectives

- To critically examine the need of such preventive actions to the police and the reasons for the power's inquest to the police by the law.
- To critically examine the provisions regarding the preventive actions of Police in CrPC.
- To examine the consequence of power used by the police under chapter XI of the Criminal Procedure Code, 1973.

²A.K. Gopalan v. State of Madras, AIR 1950 SC 27

(C) Hypothesis

- The police can use all kind of force definite under chapter XI (preventive actions of police) of CrPC. 1973.
- The police are vested with enormous power but they can only exercise it summarily.

(D) Research Questions

- What is the interpretation of the sections 149-153 under the chapter XI of CrPC., 1973?
- What is the scope of the sections 149-153 in the Indian society?

(E) Research Methodology

The researches would be following the doctrinal research methodology. The researcher will be collecting valuable data from library and e books which includes the written works and from the field. The data will help the researcher to solve those research questions.

All other website, books, journals, articles and editorials published in newspapers, bodies, reports of law commission and case laws.

(F) Scope of the Study

This research includes an analysis of the provisions allowed by law to police in way of preventive action for the better society. From many clauses of preventive actions permitted to various authorities this research is concerned with the preventive actions of the police which grants police the power to in certain situations to prevent the offences, breach of peace and to maintain public tranquility. The research is focused on a detailed study of the chapter XI and of sections 149-153 of CrPC the researchers will analyze the usage, scope and implementation of these sections.

A research project based on the abovementioned sections is to be prepared. This will provide for a very comprehensive platform for audience to understand such complex provisions. A plain reading and understanding of these sections will result in appropriate way to address the police power empowered by the law. Thus, a proper information will be available regarding the powers of the police to the readers.

II. PREVENTIVE ACTIONS OF POLICE UNDER CRPC, 1973

The functions of the police are to deal with the finding and investigation of crime, arrest of offenders, gathering of evidences etc. Their functions also involve regular patrolling and preventive action against possible wrong doers. The primary task assigned to the police, in order to prevent crime, is to make arrest of the wrongdoers and suspected criminals and take

them into their custody.

These powers of the police are given in the Chapter XI from Sec. 149-153 of Code of Criminal Procedure, 1973. Police officials are also given powers which is given u/s 41, 42 and 151 of CrPC, 1973, to make an arrest without a warrant taking into consideration just the circumstances. Lawful functions of the police include “conditional release of accused on bond”³, etc. given u/s 438 of CrPC, 1973, interrogation of offenders and suspects, search and seizure. The search and seizure can be conducted by the police with or without a warrant only if it is reasonable.

The police officials are legally bound to maintain inquest register which also includes law relating to inquest register u/s 174 of CrPC, 1973. If in any case a person dies due to unnatural or doubtful circumstances, the police have to record that information in the Inquest Register. ‘Police also plays a crucial role in the prosecution by assisting the prosecutor’.⁴ In fact, the success in prosecution mostly depends on the punctuality and ability with which the investigation is done by the police.⁵

Sections 149 to 153 talks about the provisions relating to preventive action of the police. Such action of the police officer falls into following categories, viz.—

- (i) Prevention of cognizable offence,
- (ii) Prevention of injury to public property, and
- (iii) Inspection of weights and measures.

In the very nature of these situations, there can be no judicial inquiry in a case of police action, because the police have to act on their own initiative depending upon the urgency of the case.

The powers conferred to the police from these sections are as follows:

(A) Prevention of Cognizable Offence

(1) As mentioned in CrPC Section 149. ‘Police to prevent cognizable offences-Every police officer may interpose for purpose of preventing the commission of a cognizable offence, i.e., an offence for which he could arrest without a warrant’. (Section 149).

As per CrPC (Section 150). ‘On getting any information of a design to commit a cognizable offence, the police officer has to communicate such information to the higher officer and to

³ 1 Ratanlal & Dhirajlal, The Code of Criminal Procedure, (18th ed., 2006)

⁴ 1 Sarkar & Manohar, The Code of Criminal Procedure, (9th ed, 2007)

⁵*Ibid*

any other officer whose duty is either to avert or take cognizance of the commission of any such offence’.

As stated in (Section 151). ‘A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a magistrate and without a warrant, the person so designing, if it appears to him that a commission of the offence cannot be otherwise averted’.

Also, it states – ‘Legislature changed- Sub Section (2) is the new provision, it wasn’t included in the section 151 of old code of 1898, the joint committee of the parliament observed’⁶-

That the committee is required to clarify certain points concerning the preventive arrest made by a police officer under the provision of this clause under the section so as to decrease the scope for abuse or misuse of the power. Firstly, it is important to clarify that all the provisions of the code were applicable to arrest without warrant, e.g., production before magistrate within a specified time informing the person who is arrested on the grounds of his arrest, etc. should as far as may be, applicable to any person arrested under this provision of the CrPC. Secondly, the person who is arrested should have the right to be released on bail if he is otherwise entitled to be so released. The purpose is that if after the arrest no proceedings are introduced against him either to demand a security bond from him or for launching proceedings, in connection with an offence, against him as an accused he should be discharged. Finally, it is also crucial that the release from arrest should be from the orders of a magistrate as otherwise the provision is likely to be abused”.

Further New sub-clause (2) also includes and seeks to provide for the above”

1. Scope and application

S. 151 permits possible arrests only if the person in question is thought to have a plan to commit a cognizable offence.⁷ If for committal of cognizable offence an arrestee has designed can affect the maintenance of peace and order, his detention for certain days ordered by the magistrate would be proper and justified.⁸ A person does not become an accused simply because an FIR is lodged against him or he is arrested or detained by the police. Such a person can be described as an accused when there are reasons to believe that the accusation or information against him is well founded or investigated.⁹ Where a detenu

⁶Report of the Joint Committee, The Code of Criminal Procedure Bill, (pg. 15, 1970)

⁷Jagdish Chandra Bhatia v. State, 1983 CrLJ NOC 235 (del); Ahmed Noorbhai Bhatti v State of Gujarat, 2005(2) Crimes 26(SC).

⁸Rajesh Ramarao Raut v.State of Maharashtra, (2003) 4 Rec Cri 174

⁹Uma Shankar Sahay v State of Bihar, 1998 CrLJ 2807

cannot furnish security and the magistrate had well-ordered his detention in judicial custody without any enquiry and without applying his judicial mind, the order of such detention was held illegal.¹⁰ The person's right who has been arrested to inform anyone one about his arrest and to consult his lawyer privately is fundamental right guaranteed in Arts.21 and 22.¹¹ It was also held that S. 151 is not unconstitutional.¹²

2. Justification for the arrest

Sometimes it may be possible that a person arrested under this section, does not plan or prepare to commit a cognizable offence and the police are wrongly mistaken, even then, if the police are acting under an honest impression or on data and appearance, and from which a reasonable man would infer the design or possibility of the commission of a cognizable offence, then the arrest is justified.¹³

(B) Prevention of Public Injury to Public Property

Section 152 confers power on a police officer to prevent any injury attempted to be committed in view to any public property whether immovable or immovable or removal of any kind of injury to a public landmark or other marks for navigation and it's essential that the attempt must be made in view of police officer

(C) Inspection of Weights and Measures

Section 153 also confers power on an officer in charge of a police station that he may for the purpose of inspection may enter any place to check for false weights for measures and may seize the same and report the seizure to a magistrate having the area jurisdiction

III. STANDARD AND PROCEDURE FOR CROWD CONTROL

The police and the district authorities have a responsibility to facilitate these meetings, in which citizens exercise their fundamental right to assemble publicly. Also living in democracy requires the compliance of certain rules, to allow the State to discharge its accountability of preserving peace and security for everyone at all times. These are giving past evidence about the nature and time of protest and the course to be used by the demonstration. If these steps are followed, the police and the authorities cannot do anything that will intervene in holding peaceful protests.¹⁴

It is always a likelihood that a public rally might become unruly, which can mean injury to

¹⁰Arunsingh v State of MP, 1984 CrLJ 1616 MP

¹¹Joginder Kumar v State of UP, AIR 1994 SC 1349

¹²Ahmed Noorbhai Bhatti v State of Gujarat, 2005(2) Crimes 26(SC)

¹³Kanhaiyalal Dongarwal v Sugansingh, 1961(2) CrLJ 875

¹⁴PPS Sidhu, IPS (Retd.), *Precis on Crowd Control*, BPRD, MHA, GOI (2016)

life and property. That is when its public assembly might become unlawful, which is well-defined in Section 141 of the Indian Penal Code.¹⁵ Under those circumstances, the district authorities and the police are allowed to disperse the crowd to prevent injuries or harm. This might involve the use of force in a controlled and specified way.

The principles governing the usage of force as described in the law and in police procedures remains constant: force should only be resort to when it is absolutely required, it should be minimum and proportionate to the situation and its use should be withdrawn as soon as the danger to life and property diminishes.

(A) The Police Code of Conduct

To an extent, they should resort to a method of persuasion, advice and warning. If, however, the use of force seems inevitable then only the irreducible minimum force required in the circumstances should be used.¹⁶

(B) Law

Executive magistrate or an officer- in charge of a police station¹⁷ are the only authorities that can order the use of force. Force can only be used if an unlawful assembly or an assembly of five or more people (likely to disturb public peace) does not disband on being ordered to or displays a determination not to disperse.¹⁸ If such an assembly cannot be dispersed otherwise and such dispersion is required in public interest, then the executive magistrate can order and resort to armed forces to disperse such assembly. Even then, use of force should be minimum, and do as little injury to person and property.¹⁹

Law enforcement authorities also enjoy the same right of private defense as ordinary citizen under the Indian Penal Code to defend life and property, which in any situation cannot exceed harm than it is necessary for defense.²⁰

(C) International Standards

As an accountable member of the international community, India has to follow the United Nations standards, which are the base of many of our laws and regulations. To restate, the UN Basic Principles state that the dispersal of non-violent unlawful assemblies should be avoided and if it is not possible, then least force should be used.²¹ And in situation of violent

¹⁵ Standards and Procedures For Crowd Control, CHRI (2005)

¹⁶ The Code of Conduct for the Police in India, 1985, Guidelines by MHA, Principle 4

¹⁷ In her/his absence a police officer not below the rank of sub-inspector.

¹⁸ The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974, S.129

¹⁹ The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974, S. 130

²⁰ The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974, S. 99

²¹ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, OHCHR, 1990, S. 13

unlawful assemblies, firearms should only be resorted to if alternate less dangerous means are not available and only to the minimum extent necessary.²²

IV. SUGGESTIONS

India is a country on the move. Determination is gathering toward achieving the democratic principles enshrined in the Constitution. its high potential to change the organization of the Police, tying down an appropriate for each resident to address and analyze customarily secret aspects of Police conduct. In the present nonappearance of another Police Act to supplant the pilgrim 1861 Police Act. There ought not just arrangement in regards to up the Police to a more elevated level of open investigation, yet additionally advances network interest in policing

There must be guideline to advance attention to the privilege especially as it identifies with the Police and its collaborations with the general population. Right now, can be utilized as an asset for both the general population and police. The Police must know about the commitments while the open should likewise realize the law so as to vocalize and practice their lawful rights. This gives an establishment to advancing getting, mindfulness, and exchange between the Police and the general population. It must analyze the effect this will have on the Police; and the third segment looks to inspect specific issues encompassing the Police.

The advancement of a decent police-public relationship is basic. It must be supported so as to realize open contribution and collaboration in the proceeding with everyday working of the police. This will prompt a lot of command over the group and obliteration off the harmony and open property would be overseen.

India's strategies of controlling a fierce group in this way bomb worldwide models, but on the other hand are extreme and unbalanced inside their own right. The unpredictable and deadly utilization of pellet firearms on fighting regular people is an exceptionally unbalanced reaction to stone tossing by regular folks. The utilization of certain gear and non-deadly weapons utilized for control group ought to follow three fundamental standards: no more power ought to be utilized than is essential; power ought not be utilized as a correctional measure; and it must stop following the group has scattered. Government ought to guarantee that group control weapons are completely non-deadly, and that they are utilized in a way that doesn't compromise human life and the option to dissent but instead secures against loss of human life and decimation of property.

²²Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, OHCHR, 1990, S. 14

The legislature should genuinely rethink the utilization of pellet firearms as group control weapons. It must receive SOP on brutal group control that utilizes non-deadly weapons to scatter the group and recognize vicious and quiet nonconformists and onlookers.

The utilization of lead pellets builds the odds of a solitary shot hitting more than one individual and lethally harming them. Security authorities should just utilize power where there is a genuine and up and coming risk to life and property and they have depleted every other intend to scatter the group.

In a state like Kashmir where tossing stones at security authorities has gotten ordinary and unsurprising, government may give security authorities appropriate defensive apparatus.²³ Head protectors, veils, body covering and shields ought to be given to those managing nonconformists to guarantee that law requirement authorities are not harmed to the point that they take part in brutality themselves.

V. CONCLUSION

Police is an integral part of our general public and plays a crucial job in the criminal management of justice since police is essentially worried about the maintenance of the peace and harmony and requirement of the peace and security of the individual and the property of people. The police additionally need to stop the delinquency and atrocities against children and women. Despite the fact that the objectives of the police are honorable however they have been reprimanded and denounced for submitting acts which are simply opposite and this is on the grounds that the vested forces given to them to satisfy their social obligation are fit for being mishandled by them to stomp on the constitutional rights of the individuals in the public society. It likewise brings down the respect of the official and shakes the establishment of the trust and confidence imposed on them by the society.

Generally, the Police has worked under the strictures of secrecy acquired from frontier times. This absence of transparency prompts doubt of corruption even where it is missing, making a Police force lacking certainty and reliability. There is right now a lot of acknowledgment of these weaknesses of the Police, especially regarding abuse of power and corruption. These are exceedingly significant headings the Police need to take in a democratic society. Undoubtedly, it is hard to perceive how a society can depict itself as a democratic just without democratic policing. In any case, to date such changes have stayed in the open discussion of discussion where there are numerous honest goals and minimal evident advancement. So, to deal with the due methodology.

²³ Kriti M. Shah, *Dealing with violent civil protests in India*, ORF (2017)

The advancement of a decent police-public relationship is basic. It must be reinforced so as to achieve open contribution and collaboration in the proceeding with everyday working of the police.

In particular, the nation must start to truly consider police changes at the middle and state level. Regardless of the government or political group in force, police powers at both central and state level must make sure to work for, secure, and safeguard the residents. By progressing in the direction of settling issues emerging from the politicization of the police power, residents can be certain that in any event, when a fair thoughtful dissent turns fierce, police powers will reestablish open harmony and request in a legal, legitimate and sacred way.
