



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

Determining the Deviance in police administration with special reference to the Hathras case

Sonali Gorai & Nilanjan Pain & Saptak Roy & Rinki Saha & Tofajjal Haque Mallick

ABSTRACT

Police are one of the front liners of the criminal justice system who, make the path of justice for the needy people. The Police administration has the primary authority to take charge over the investigation of a case or any disputes. The performance of police is the main pillar of a case. However, the deviant activity by the police may bring the path to the end of justice. The corruption and misbehavior with the common needy people will led to the termination of lawfulness society. In the present Hathras Case certain corrupt and heinous activity done by the police administration to stop the voice of the victim's family members. The authority is a higher position not only using their deviant power to protect the accused but also destroying the evidence and making threats to victim family members. Moreover, this paper is writing through the use of secondary data and also various legal websites and journals like Manupatra, Ebc Reader, Live law, Live mint, etc. In this paper, the author is discussing the deviance activity made by the police administration in the Hathras rape case. It is one of the burning issues in the present society. However, the author is trying to discuss the flaws to bring justice with regard to this case as well as discussing certain steps that should be taken to remove the deviance activity by the police administration in the future.

KEYWORDS: Police, Front Liner, Main Pillar, Deviance Activity, Destroying Evidence, Hathras Case, End of Justice.

INTRODUCTION

“The doctrine of police power, constitutionality validates punitive process for the maintenance of public order, security of the State, national integrity and the interest of the public generally. Even so, having regard to the solemn issue involved, deprivation of personal freedom, ephemeral or enduring, must be founded on the most serious considerations relevant to the welfare objectives of society, specified in the Constitution”.

- Gudikanti Narasimhulu v. Public Prosecutor,

High Court A.P., (1978) 1 SCC 240, para 2¹

Police administration is nothing but the prime safeguard of mankind. The duty and responsibility of the police are not only to force the law and order in society but also to maintain peace in society. The function of the law enforcement agency is to take precautionary measures to prevent crime. Moreover, from registering a case to take action an investigation of a case is upon the hand of the police. Police are working at a ground level and making the report of a case and on the basis of that report and investigation judge applies the laws and judgment pronounced. So, we can draw an image that the whole case or giving justice to the victim is mainly upon the investigation of police administration.

Criminality behavior by the protector of law (Kanoon ka Rakshak hai agar Bhakshak ho) became the end of the Justice system. According to the National Human Rights Commission², police are using their power and commit the crime which is more heinous in nature. Using the deviance power by the police and committees the crimes like illegal detention, Custodial Death, Custodial rape, Torturing the accused, Making false implications, Forcing for Narco-Test, and others³. According to the report of NHRC in 2009-2010, 80260 cases are registered for the human rights violation, 1599 cases are registered for custodial death, 104 cases are registered for encounter by the police and 7 cases are registered for encounter by the Defense Force⁴.

¹ Salaman Khursis Lokendra Malik, *Justice at Heart*, 476 (Eastern Book Company, 2016).

² National Human Rights Commission, India, available at <https://nhrc.nic.in/policecases>, last seen on 8/11/2020.

³ Ibid.

⁴ *Legal Accountability of the Police in India*, Centre for Law and Policy Research 1, 19 (2018), available at <https://clpr.org.in/wp-content/uploads/2018/09/Police-Accountability-CLPR.pdf>, last seen on 7/11/2020.

With regard to the present Hathras gang rape case, in Uttar Pradesh led to huge chaos due to the violation of not only human rights but also the violation of the Fundamental Rights guarantee under the Indian Constitution. The power acting by the official especially by the police is shameless for the country. However, it is still now not proved that it is gang rape, but after the death of the victim, the behavior of the officials and their work is blatant. Police official is the pillar of the case and has the responsibility for the investigation. But in this case, ultra power using by them is not only trying to stop the voice of the people but also fabricate the evidence in the case and incriminate victim's body in an open field with petrol without their family permission⁵.

WHO ARE THE POLICE?

According to THE POLICE ACT, 1861, *Police are those officials who are enrolled under The Police Act*⁶.

So, basically, police officials mainly recognized by their works, responsibilities, duties, and others. Police are those officials who work on the ground level to enforce the laws and regulations. Under various statutes, police are getting various powers like the power to arrest, power investigation, and others. Police are also restraining to use ultra power by the various statutes. However, the function of the police officer is most important to apply the principle of Natural Justice and equality.

HISTORICAL BACKGROUND TO INTRODUCE THE POLICE ADMINISTRATION SYSTEM

The history behind to introduce the police administrative system can be traced from the Vedic Period. From the Ramayana and Mahabharata, we can trace the police system; like the people who make any mistakes or commit wrongs; they brought before the king by the people who are acting as police⁷. In the Vedic period, the king is protected by the people who are called “Rakhidaar”. And that Rakhidaar is also acting as police and protect the king. And if any people

⁵ Ismat Ara, *Hathras Gang-Rape and Murder Case: A Timeline*, The Wire (28/10/2020), available at <https://thewire.in/women/hathras-gang-rape-and-murder-case-a-timeline>, last seen on 9/12/2020.

⁶ S. 1, The Police Act, 1861.

⁷ *Criminal law- History of Police in India*, Law Project, available at <http://lawprojectsforfree.blogspot.com/2010/08/criminal-law-history-of-police-in-india.html>, last seen on 9/11/2020.

faced any problem than they came before king and the disputes are solved by the king with the help of members of that Rajsabha who can be the detector or the adviser to the king and others person also there like any experts to solve the disputes and imposing sanction etc.

In the period of Maurya, Gupta, Mughal police administration system can be traced. In this period the empires of Akbar implementation of rules and infringement of that rules imposing punishment can be traced to the presence of the police system. The Kotwal and Forzdari system was another form of the practices which maintain the peace in the locality and solve disputes⁸.

After the East Indian Company came to India, the collection of more taxes or revenue by the Britishers and maintain the force and fear on the people by the police was one of the sources can be traced for the police administrative system. In 1774, Warren Hasting for the first time introduced the proper measures for implementing the police reforms. After that in 1861, the police act came into existence to maintain the law and order in society. After independence also these rules were followed now our country with proper amendments⁹.

ROLE OF POLICE IN A CASE¹⁰

In a criminal justice system, the role of the police is main to bring justice like a God. The role of police can't be compared with any other profession. But in present, the deviant behavior and others factors led to the end of belief in the police system. However, there are various roles which police have to maintain or follows those are respectively:

1. Prevent the crime: Under Sections 149, 150, and 151 of the Code of Criminal Procedure 1973, police are empowered to take necessary action to prevent cognizable crimes.
2. Lodge the FIR: Section 154 of the Code of Criminal Procedure 1973, empowers the police authorities for lodging FIR.
3. Maintain the law and orders: The role of the police is to maintain the law and order in the society to maintaining peace. The police authority has the necessary power to stop the crime.

⁸ Ibid.

⁹ Ibid.

¹⁰ *Role of Police in administration of Criminal Justice System*, available at: https://shodhganga.inflibnet.ac.in/bitstream/10603/45012/11/11_chapter_6.pdf, last seen on last visited on 15/11/2020.

4. Power to arrest: Section 151 of the Code of Criminal Procedure 1973, empowers the police for arresting a person in the case of preventing the cognizable offense.
5. Power to seize: Section 102 of Cr.PC 1973, empowers the police to seize certain property.
6. Power to search: Section 165 of Cr.PC 1973, empowers the police to search to a certain limit.
7. Power to investigate a case: Section 156 and 157 of Cr.PC 1973, empowers the police to investigate a case which will be not questionable in nature.
8. Power to make charge sheet: Section 173 Cr.PC 1973, makes an obligation towards the police for making the reports on the investigation matter.

DEVIANCE BY THE POLICE IN HATHRAS CASE¹¹

A 19th year old girl was died at Hathras situated in Uttar Pradesh. She is alleged to be gang raped and brutally assaulted by the four men namely Sandeep, Ramu, Lavkush and Ravi in open field on September 14 in Boolagarhi village of Hathras. After that she was founded almost dead and admitted into several hospitals. After fighting for her life, she died. After this heinous crime everywhere in India people lodged protest through digital media. However, the body was under the control of the Uttar Pradesh police and the dead body was forcibly cremated with petrol¹² by the police in the open field without the consent of the family of the victim. Even they did not permit her Parents to take a glance over the dead body and to identify the body.

✦ **According to the Family's Complaint report¹³:**

From the family of the rape victim her brother made the first complaint, which is mentioned inside the first FIR. As a part of the complaint, the brother has mentioned the name of accused Sandeep and that he was trying to strangulate his sister in the field. Subsequently after hearing her screaming, when her mother arrived at the crime spot, the accused escaped. The brother has named

¹¹ *Sit Hathras Report questions victims late night incrimination*, The Times of India (4/ 11/2020), available at <https://timesofindia.indiatimes.com/city/lucknow/sit-hathras-report-questions-victims-late-nightcremation/articleshow/79030661.cms>, last seen on 30/ 10/ 2020.

¹² Sanya Talwar, *Hathras case Supreme Court Asks Allahabad High Court to monitor CBI Probe*, Live Law (27/10/2020), available at <https://www.livewlaw.in/top-stories/hathras-case-supreme-court-asks-allahabad-high-court-to-monitor-cbi-probe-165034>, last seen on 25/11/2020.

¹³Snehanshu Shekar, *Contradictory claims in Hathras rape case: From family to doctors and police, who said what.*, India Today (30/09/2020), available at <https://www.indiatoday.in/india/story/contradictory-claims-in-hathras-rape-case-who-said-what-1726946-2020-09-30>, last seen on 10/11/2020

only one accused (Sandeep) in his first complaint. Inside the complaint, he has mentioned 9.30 am as the time of the incident .They registered an FIR under the SC/ST Act and Section 307 of Indian Penal Code. According to the FIR, its substance was perused out before the brother and likewise the FIR was registered after his assent and approval.

✦ **Brother's Statement¹:**

My sister gave her statement on 22 nd September and on basis of that the second FIR was filed and sections of gangrape and attempt to murder were added. I saw my sister and her condition. Her neck was badly broken. Her tongue has not been hacked off totally but cut. She revealed to me that her tongue got cut as it came in between her teeth.

✦ **Mother's statement on FIR²:**

At the point when I discovered my daughter, she was lying completely naked and was bleeding profusely. I covered her with my dupatta and a similar blood-drenched garment. We were incredibly confounded and in a condition of absolute shock. Our daughter was oblivious. So clearly, we were unable to give a statement as it was rape or gangrape to the Hathras Police at Chandpa Police Station where the first FIR was registered. Since we didn't realize that gangrape had occurred. Our daughter mumbled Sandeep's name in her brother's ears (one of the charged) and fell senseless. So we thought that a person named Sandeep from the village has pounded her. This is the thing that the first FIR also makes reference to.

¹ Ibid.

² Ibid.

There are certain contrary view came up in this case those were respectively:

As per the Hathras rape victim's family and police, for the first time on September 22, the girl mentioned the gangrape and named three other accused. Then, the charges were changed within the FIR and therefore the three accused who were named, were arrested on September 23, 25 and 26.

✦ **According to SP Hathras Vikrant Veer³:**

Sexual assault has not been ensured by any of the doctors in Hathras and Aligarh. So, the matter is going to be proved by doctors through forensic help. There have been no signs of abrasion on the victim's genitalia. The news of cutting of the tongue is totally wrong; we had even recorded a statement of the victim. Also, at some places there are reports that her backbone was broken, it's wrong; she was strangled and received injuries on the bone of the neck which led to the complications.

✦ **Post Mortem Report⁴:**

The Safdarjung Hospital of Delhi issued the postmortem report on October 1, 2020. However, rape wasn't mentioned anywhere in the Post-Mortem Report. In accordance with the report, the victim has bruises on her neck and her spine was broken. It further stated that she also had a blood infection and suffered a heart failure. As per the report, the estimated time of death was 6:55 am on September 29.

The post-mortem report revealed that the victim suffered fracture of "C6 cervical vertebra" and therefore there was "extravasations of blood along the fracture line" and the underlying medulla spinalis was "contused with ascending oedema". The post-mortem report also revealed that marks on the neck of the victim are consistent because of attempted strangulation. However, forensic experts have called attention to the fact that there was almost absence of the semen in the vagina of young lady since tests were taken 11 days after the supposed rape. A medical assessment ought to have been led within 24 hours of the occurrence of the crime.

From all the above statements and reports we came to the conclusion that not only the Police administration but also state machinery is in question to protect the integrity of the notion. There are various allegations came against them those are⁵:

³ Ibid.

⁴ *Hathras gang-rape: Forensic report says victim was not raped, she suffered 'fracture'*, Zee News, available at <https://zeenews.india.com/india/hathras-gang-rape-forensic-report-says-victim-was-not-raped-she-suffered-fracture2314018.html>, last seen on 1/12/2020.

⁵ Raghav Tanka, *UP Police Officers Must Be Investigated for Attempting to Shield Hathras Accused*, The Wire (03/10/2020), available at <https://thewire.in/law/hathras-case-uttar-pradesh-police-shielding-accused>, last seen on 12/11/2020

1. The police administration should work with the motive to prevent the crime and immediately taking action against the alleged authority. But in this case, the Police administration not lodged the FIR even they knew that the person came before for registered the case which is cognizable and heinous in nature.
2. There is another allegation came that the forensic examination is not conducted properly with a specific time period. And before the report came the Doctors are making statements that rape has not committed. So, I can conclude here that the police administration should take care of the forensic examination because it is one of the important procedures to prove the allegation and reveal the truth. As a result, the delay of the examination may bring the end of justice.
3. Now, after all of that when the police administration is not able to control the situation in the means of deviance; they are pressuring the family to change the statement against the accused and threaten them to murder. So, in this allegation, we can make the statement that there is a gap created between the victim's family and the police authority. While the police should sympathize with the victim's family and make them promise that they should try to punish the accused. But they try to protect the accused and forced them to change the statement.
4. And in the end, they are doing shameless work which is not only against the Constitution but also against the religious culture. The police administration burns the victim's body in the open field with petrol. And they did not take consent from the victim's family and in the end victim's family is not allowed to see the dead body of the victim.

The chronology of events is conducted by the police administration and the behavior of the magistrate is hilarious. However, magistrate rather than to tell the people that they are conducting the fair procedure to bring justice, he treats the victim's family and to settle the disputes among themselves. The various videos when showing the behavior of the police authorities and Magistrate to the common people, then they are trying to act against them by their means without knowing what actually happens to the victims. Therefore the reason for

killing or maybe raped or the real truth, not come before the common people and they act against society's rules and regulations¹⁹.

Moreover, the court orders, special protection to the victim's family as well as the witness. The case was pending before the court till now. The issue came up that the illegal incriminated by the highest office under Article 21 of the Indian Constitution.

WHAT STEPS SHOULD BE TAKEN TO STOP THE DEVIANCE ACTIVITY

From all the facts circumstances of the case, I came to the conclusion that the gap between the higher official and the common people is created before this case also which is one of the major factors for not believing the higher authority. The reputation of the Police authority rate is very poor in society. Common people do not believe the police authority rather than they thought that the police authority is sinking in corruption. So, according to me to change this mindset of the people the media should take steps into it. Media have to present the role of the police in a case and have to show the real hard work in a case to bring justice. Because it does not only help the people to faith in the police administration but also helps the police administration to again motivation to do their work.

However, sometimes the police authority is doing their work but the higher authority pressuring them to destroy the evidence exchange of money or treat them for losing a job or any other things. So, in the end, the reputation of the police authority is suffering, and reality which not came before the people.

Media is such an authority that maintains the means of the democracy and transparency of the case. In this case, the media presents the case in such a way that people are against the police authority where according to me they are performing their official duty or higher authority orders. Moreover, Police must act in a transparent way where the common people make faith in them. The higher authority should not act as deviance because they are the protector of the law. And they should maintain their morality.

¹⁹ 'Media will leave tomorrow': Hathras DM caught on cam threatening gang-rape victim's family, Times now news (01/ 10/ 2020), available at <https://www.timesnownews.com/india/article/caught-on-cam-hathras-dm-threatens-gangrape-victim-s-family-to-change-statement/661048>, last seen on 2/11/2020.

CONCLUSION

Deviance in police administrations are issues that concern and will continue to be concern for an unknown time for both the police administrators and public at large. The negative out-turn of the acts of delinquency in police administration are beyond litigation and damaged reputations of the agency when considering the discrete sufferer who have been affected by it. Such deviance can be avoided in long run if proper measures are taken, such as decreasing the gap between police administration and general public by maintaining transparency, improving the selection process of police and hiring moral driven officers as well as implementing strong legal framework that punishes anyone who perform corruption practices.

The Hathras Case is one of those case where the necessary actions were sometimes absent from Police administrations as a result numerous gaps clearly showed up between the police administration's progress on the case and the victim's family's and general public's knowledge about the progress. This led to numerous speculations as well as further more mistrust over police agency which was near about to a communal violence

over the area. Also the cremation of the victim's body without family's consent and family's testimony that they faced tremendous pressure from the administration exposed deep conspiracy and deviance in the police activities. 5 police officers including the Superintendent of Police was suspended by state government after this incident. The case is currently pending before the court and it is being investigated by CBI. The matter of illegal cremation is now in question before the court along with many other things.

