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A CRITICAL ANALYSIS OF THE POLICE ACT AND INFRINGEMENT OF FUNDAMENTAL RIGHTS CAUSED BY POLICE AUTHORITY

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ABSTRACT

The Police Act of 1861, enacted in the aftermath of the Revolt of 1857, remains one of the most enduring colonial statutes governing policing in post-independence India. Designed to consolidate imperial control rather than to protect individual liberties, the Act institutionalized a centralized, executive-dominated policing structure premised on obedience and coercion. Despite the adoption of the Constitution of India in 1950 and the entrenchment of fundamental rights under Articles 14, 19, and 21, the colonial framework of policing continues to shape law-enforcement practices across most Indian states. This article critically examines the constitutional and human-rights implications of the continued operation of the Police Act, 1861. Through doctrinal analysis of constitutional provisions, landmark judicial pronouncements, and reform commission reports, the study demonstrates how the colonial ethos embedded in the Act has contributed to systemic violations, including custodial violence, arbitrary arrest, extrajudicial killings, and suppression of democratic dissent. The article evaluates the judiciary's role in constitutionalizing police powers through decisions such as *D.K. Basu v. State of West Bengal* and *Prakash Singh v. Union of India*, while highlighting the limitations of judicial reform in the absence of legislative transformation. Drawing comparative insights from democratic policing models in jurisdictions such as the United Kingdom, the United States, and Canada, the study argues that the Police Act of 1861 is fundamentally incompatible with a rights-based constitutional order. It concludes by advocating the repeal of the colonial statute and its replacement with a modern police law grounded in constitutional morality, accountability, autonomy, and respect for human dignity.

KEYWORDS

Police Act, 1861; Fundamental Rights; Article 14, 19 and 21; Custodial Violence; Arbitrary Arrest; Judicial Intervention; Police Reforms; Constitutional Morality; Prakash Singh Case; D.K. Basu Guidelines.

CHAPTER I: INTRODUCTION: A THEORETICAL CONCEPT OF THE POLICE ACT, 1861 BY UNDERPINNINGS OF INFRINGEMENT OF FUNDAMENTAL RIGHTS

Background

The Police Act of 1861 remains one of the most enduring colonial statutes governing post-independence India. Enacted in the aftermath of the Revolt of 1857, the Act was conceived as

an instrument of political control rather than public service. Its central objective was to establish a disciplined, hierarchical, and executive-controlled police force capable of suppressing dissent and securing colonial authority. The Act was never intended to operate within a democratic framework or to protect individual liberties; instead, it institutionalized coercion, surveillance, and obedience as core policing values. The colonial

police model departed fundamentally from modern democratic conceptions of policing. Rather than functioning as a rights-protective public institution, the police were structured as an extension of the executive, operating under the overarching control of the District Magistrate. Community participation, transparency, and independent oversight were entirely absent. The population was treated as subjects, not rights-bearing citizens. Following independence and the adoption of the Constitution of India in 1950, it was expected that colonial statutes such as the Police Act, 1861 would be repealed or comprehensively reformed to align with constitutional guarantees under Articles 14, 19, and 21. However, despite the establishment of a rights-based constitutional order, the Police Act continued to govern policing across most Indian states with minimal modification. Only a few states enacted replacement legislation, while the majority retained the colonial framework. This continuity reflects an incomplete constitutional transformation: democratic governance coexists with institutions rooted in authoritarian design. The consequences of this persistence are evident in contemporary policing practices. Custodial torture, arbitrary arrests, extrajudicial killings, and suppression of peaceful dissent remain recurring phenomena. These practices reflect the enduring influence of a policing culture that prioritizes order and obedience over accountability and constitutional restraint. The continued operation of the Police Act of 1861 therefore raises serious questions regarding its compatibility with India's constitutional commitment to equality, liberty, and human dignity.

Problem Statement

The continued operation of the Police Act of 1861 presents a structural contradiction within India's constitutional democracy. While the Constitution envisions a rule-of-law state grounded in fundamental rights, policing continues to function under a colonial statute designed for autocratic governance. The Act

centralizes power in the executive, provides no independent accountability mechanisms, and renders the police institutionally vulnerable to political interference. These structural deficiencies translate into persistent violations of fundamental rights. Arbitrary arrests and selective enforcement undermine Article 14; excessive force against peaceful protestors restricts freedoms under Article 19; and custodial violence and deaths violate the core guarantee of personal liberty under Article 21. Despite repeated judicial condemnation and extensive documentation by bodies such as the National Human Rights Commission and various reform committees, meaningful transformation remains elusive. The persistence of the Police Act is therefore not merely a legislative oversight but a manifestation of deeper constitutional inconsistency—where democratic norms are proclaimed but authoritarian administrative tools are retained.

Objectives of the Study

This study seeks to:

1. Examine the provisions of the Police Act of 1861 in light of constitutional guarantees under Articles 14, 19, and 21.
2. Analyze patterns of police misconduct and human rights violations through judicial decisions and institutional reports.
3. Evaluate the judiciary's role in defining constitutional limits on police power.
4. Draw comparative insights from democratic policing models in the United Kingdom, the United States, and Canada.
5. Propose reforms aimed at replacing the colonial statute with a rights-based, accountable policing framework.

Research Methodology

The study adopts a doctrinal research methodology based on primary and secondary legal sources. Primary sources include the Constitution of India, the Police Act of 1861, and

landmark judicial decisions such as *Joginder Kumar v. State of U.P.*, *D.K. Basu v. State of West Bengal*, and *Prakash Singh v. Union of India*. Secondary sources comprise academic commentaries, law review articles, reform commission reports, and human rights documentation, including those of the National Police Commission, Ribeiro Committee, and Padmanabhaiah Committee. Comparative references are drawn from established democratic policing frameworks. The analysis remains primarily normative, evaluating the coherence between statutory design and constitutional values.

Scope and Limitations

The study is confined to an examination of the Police Act of 1861 and its impact on fundamental rights in India. While comparative perspectives are considered, the focus remains on India's constitutional framework. Specialized central agencies are excluded except where contextually relevant. Limitations arise from inconsistent state-level data and limited transparency in reporting police misconduct.

Significance of the Study

This research bridges the gap between constitutional ideals and policing realities. By tracing the colonial foundations of the Police Act and examining its continued operation, the study demonstrates how outdated legal frameworks perpetuate rights violations. It contributes to the discourse on constitutional morality by emphasizing that democratic policing must internalize constitutional values, not merely comply with formal legality. The study holds academic relevance for constitutional and human rights scholarship and practical relevance for legislative and institutional reform.

CHAPTER II: HISTORICAL EVOLUTION OF THE POLICE ACT, 1861

Origins of the Police Act, 1861

The origins of the Police Act, 1861 are inseparable from the colonial experience of governance in India. Prior to 1857, law

enforcement under the British East India Company was fragmented and largely dependent on local intermediaries such as zamindars and military detachments. This decentralized and inconsistent system proved incapable of maintaining imperial control during the Revolt of 1857, when large sections of the native police either defected or failed to suppress rebellion effectively. The uprising exposed the structural fragility of colonial administration and compelled the British Crown, after assuming direct control under the Government of India Act, 1858, to establish a centralized and loyal coercive apparatus. The Police Act of 1861 (Act V of 1861) emerged as a direct response to this crisis. Its objective was not crime prevention in a civilian sense, but political stabilization through surveillance, discipline, and obedience. The law sought to create a uniform, hierarchical police force subordinated to the executive, capable of preempting dissent and enforcing colonial authority. The Act institutionalized a dual structure comprising civil police and armed police, both placed under the control of provincial governments. Drawing inspiration from the Irish Constabulary model, it combined military organization with civil functions, reinforcing the perception of the police as an occupying force rather than a public service institution. The fusion of executive and policing power was symbolized by the District Magistrate's authority of "superintendence," a feature central to colonial governance.

Colonial Legacy and Its Implications

The Police Act of 1861 entrenched an authoritarian ethos that continues to shape policing practices in India. Its emphasis on hierarchy, discipline, and executive control created a culture oriented toward command rather than accountability. The language and structure of the Act reveal its coercive intent: obedience was valorized, while public trust and transparency were irrelevant considerations. This legacy manifests in several enduring features. First, the police were conceived as agents of the State rather than servants of

society. Second, centralized control marginalized local participation and insulated the institution from public scrutiny. Third, the absence of independent accountability mechanisms fostered a culture of impunity, where misconduct was addressed internally, if at all. Even after independence, the administrative culture of colonial policing persisted. While political authority changed hands, the institutional mindset remained intact. The police continued to function as instruments of executive power, frequently deployed to suppress dissent or manage political opposition. This continuity underscores how colonial laws can outlive colonialism by adapting to new political masters without abandoning their original logic of control.

Post-Independence Developments

At independence in 1947, there was an expectation that colonial statutes incompatible with democratic governance would be repealed or reformed. The adoption of the Constitution of India in 1950, with its emphasis on fundamental rights and rule of law, reinforced this expectation. However, the Police Act of 1861 was retained almost unchanged across most states. This decision was driven by administrative expediency and political calculation. In the early years of independence, the centralized police force was viewed as essential for managing Partition-related violence, communal unrest, and secessionist movements. Over time, this temporary justification hardened into permanent institutional inertia. The colonial framework thus became embedded within a democratic constitutional order, producing a paradoxical coexistence of constitutional rights and authoritarian policing structures.

Reform Commissions and Committees

Recognizing the incompatibility of colonial policing with constitutional democracy, successive governments constituted several reform bodies. The National Police Commission (1977–1981) was the first comprehensive post-independence review. It categorically described the Police Act of 1861 as obsolete and

recommended structural reforms, including fixed tenures for senior officers, separation of investigation from law-and-order functions, and the creation of State Security Commissions to insulate the police from political interference. The Ribeiro Committee (1998) emphasized accountability and recommended independent Police Complaints Authorities at state and district levels. The Padmanabhaiah Committee (2000) focused on modernization, training, and community policing to restore public trust. The Model Police Act, 2006, drafted under the chairmanship of Soli J. Sorabjee, offered a rights-based alternative. It reconceptualized policing as a public service, embedded accountability mechanisms, and sought to harmonize police functioning with constitutional values. Despite its comprehensive nature, adoption by states has been limited and selective.

Judicial Interventions

In the face of legislative inaction, the judiciary emerged as a catalyst for reform. The Supreme Court's judgment in *Prakash Singh v. Union of India* (2006) marked a watershed moment. Acknowledging the colonial and unconstitutional nature of the existing police framework, the Court issued seven binding directives aimed at ensuring police autonomy, professionalism, and accountability. These included the establishment of State Security Commissions, fixed tenures for key officers, separation of investigative functions, and independent Police Complaints Authorities. While the judgment articulated a constitutional vision of democratic policing, implementation across states has been uneven and largely symbolic. Many states enacted laws that diluted the spirit of the directives while retaining executive dominance.

Contemporary Relevance and Constitutional Morality

The continued operation of the Police Act of 1861 poses a serious challenge to constitutional morality—a principle that requires institutions to internalize constitutional values beyond formal

compliance. Articles 14, 19, and 21 guarantee equality, liberty, and dignity, yet policing practices under the colonial framework frequently violate these guarantees. Custodial violence, extrajudicial killings, and arbitrary detention persist as systemic problems. Reports by oversight bodies consistently document low conviction rates and institutional resistance to accountability. Political interference in transfers and investigations further undermines neutrality and professionalism. The police remain structurally dependent on the executive, compromising their role as impartial enforcers of law. Resistance to reform persists due to entrenched interests. Political and bureaucratic elites benefit from retaining control over policing, while the absence of public pressure allows inertia to prevail. As a result, the colonial logic of control continues to dominate, even within a constitutional democracy.

The Way Forward

The historical analysis demonstrates that the Police Act of 1861 is fundamentally incompatible with democratic governance. Reform is not merely desirable but constitutionally necessary. A modern police law must replace executive domination with autonomy balanced by accountability, embed human rights standards, and promote community-oriented policing. The Model Police Act, 2006 provides a viable foundation for such transformation. The persistence of the colonial police statute symbolizes India's unfinished decolonization of state institutions. Genuine democratic policing requires dismantling this legacy and enacting legislation that reflects constitutional morality, public trust, and respect for human dignity.

CHAPTER III: CONSTITUTIONAL FRAMEWORK AND FUNDAMENTAL RIGHTS

The Constitutional Vision: From Colonial Subject to Citizen

The adoption of the Constitution of India in 1950 marked a decisive normative rupture from colonial governance. It transformed individuals from subjects of imperial authority into citizens

endowed with enforceable rights. Part III of the Constitution, which guarantees Fundamental Rights, was designed as a safeguard against the arbitrary exercise of state power that characterized colonial administration. Policing, as a core coercive function of the State, was therefore constitutionally required to operate within the bounds of legality, equality, and human dignity. Dr. B.R. Ambedkar emphasized that fundamental rights constitute the "conscience of the Constitution," ensuring that state authority remains accountable to constitutional values. This vision stands in sharp contrast to the Police Act of 1861, which was enacted to consolidate executive power rather than protect individual liberty. The constitutional framework thus redefined policing as a rights-bound public function, not an instrument of control.

Core Fundamental Rights Relevant to Policing

Article 14 – Equality Before Law

Article 14 embodies the rule of law by mandating non-arbitrary and equal application of state power. In the context of policing, it requires impartial enforcement and prohibits selective or discriminatory practices. Arbitrary arrests, biased investigations, and differential treatment based on caste, religion, or political affiliation violate this guarantee. Judicial interpretation has consistently held that arbitrariness itself constitutes a denial of equality, rendering discriminatory policing constitutionally impermissible.

Article 19 – Freedoms of Speech, Assembly, and Movement

Article 19 protects democratic participation by guaranteeing freedom of expression, peaceful assembly, and movement. Policing directly impacts these freedoms, particularly through crowd control, preventive detention, and prohibitory orders. While reasonable restrictions are permitted, the Supreme Court has clarified that dissent is a constitutional right, not a concession by the State. Excessive use of force or blanket prohibitions on peaceful protest

violate Articles 19(1)(a) and (b), as reaffirmed in *Re: Ramlila Maidan Incident* (2012).

Article 21 – Right to Life and Personal Liberty

Article 21 has evolved into the cornerstone of rights-based policing. Initially interpreted narrowly, it was expanded in *Maneka Gandhi v. Union of India* (1978) to require that any deprivation of liberty must follow a procedure that is “fair, just, and reasonable.” Subsequent decisions—most notably *Joginder Kumar v. State of U.P.* (1994) and *D.K. Basu v. State of West Bengal* (1997)—constitutionalized safeguards against arbitrary arrest, custodial torture, and inhuman detention. Article 21 thus imposes positive obligations on the State to prevent abuse and ensure accountability.

Constitutional Limits on Police Power

The Constitution recognizes the necessity of police power but subjects its exercise to strict limitations. The Supreme Court has developed key doctrines to restrain discretion. The doctrine of reasonableness requires that any restriction on fundamental rights pursue a legitimate aim and adopt proportionate means. The principle of procedural fairness, derived from Article 21, mandates transparency in arrest and detention, including communication of grounds, access to counsel, and judicial oversight. The test of proportionality, reaffirmed in *Modern Dental College v. State of M.P.* (2016), requires that coercive measures bear a rational nexus to their purpose and employ the least restrictive alternative. Together, these doctrines transform police powers from privileges of authority into duties conditioned by constitutional restraint.

Judicial Development of Democratic Policing

Judicial intervention has been central to embedding constitutional values in policing. Through progressive interpretation, the Supreme Court has articulated a model of “democratic policing” grounded in accountability and respect for rights. Key judgments have established that arrest must be based on necessity (*Joginder Kumar*), custodial torture violates human dignity (*D.K. Basu*),

structural independence is essential for professionalism (*Prakash Singh*), mental coercion infringes liberty (*Selvi v. State of Karnataka*), excessive force against protestors is unconstitutional (*Ramlila Maidan*), and privacy limits surveillance (*Justice K.S. Puttaswamy v. Union of India*). Collectively, these decisions constitutionalize policing by subordinating power to rights.

Constitutional Morality and the Ethos of Policing

Constitutional morality requires institutions to internalize constitutional values beyond formal legality. For policing, this entails a shift from coercion to service and from obedience to accountability. The police must view themselves as trustees of public power, bound to protect rights rather than merely enforce order. The Police Act of 1861, however, embodies an opposing ethos—one that prioritizes executive control and discipline over dignity and transparency. This ethical dissonance remains a central obstacle to reform.

Emerging Rights and Modern Challenges

The recognition of the right to privacy in *Puttaswamy* has profound implications for modern policing. Surveillance, data collection, and facial-recognition technologies must now satisfy legality, necessity, and proportionality. Similarly, the constitutional prohibition of torture, read into Article 21, imposes an obligation to ensure humane detention conditions, even though India has not ratified the UN Convention Against Torture. Gender-sensitive policing has also emerged as a constitutional requirement. Judicial mandates on prompt FIR registration and victim-centric procedures underscore that equality and dignity must inform police conduct, particularly in cases involving sexual violence.

Comparative Constitutional Insights

Comparative experience reinforces India’s constitutional mandate. In the United Kingdom, statutory safeguards under the Police and Criminal Evidence Act, 1984 regulate arrest and

interrogation. In the United States, the Miranda doctrine ensures informed consent and procedural fairness. In Canada, the Charter of Rights guarantees access to counsel and judicial exclusion of illegally obtained evidence. These frameworks demonstrate that rights-compliant policing is achievable through coherent legislation—something India lacks while relying on the 1861 Act.

Institutional Mechanisms and Persistent Contradictions

Institutions such as the National Human Rights Commission, State Human Rights Commissions, Police Complaints Authorities, and the judicial magistracy are intended to enforce constitutional limits. However, weak mandates, inadequate resources, and poor implementation undermine their effectiveness. This results in persistent contradictions: expansive constitutional rights coexist with colonial statutory structures; judicial innovation confronts administrative inertia; and rights discourse clashes with an entrenched command-and-control culture.

CHAPTER IV: CRITICAL ANALYSIS OF THE POLICE ACT, 1861

Structural and Philosophical Foundations

The Police Act of 1861 is rooted in the authoritarian logic of colonial governance. Enacted in the aftermath of the Revolt of 1857, its central purpose was to create a disciplined and loyal force to safeguard imperial authority rather than to serve the public or protect rights. The Act embodies an executive-centric theory of policing, placing the institution firmly under governmental control. The District Magistrate's power of "superintendence" symbolizes this fusion of executive authority and police administration. This structural design produces three defining characteristics: centralized hierarchy, absence of institutional independence, and internalized obedience to political authority. Such a framework is fundamentally inconsistent with democratic policing, which requires impartiality,

professional autonomy, and public accountability. In post-independence India, the colonial architecture has been retained, enabling the police to function as instruments of political power rather than neutral enforcers of law.

Outdated Provisions and Contemporary Realities

The text of the Police Act of 1861 is anachronistic in both language and substance. Key provisions, such as Section 23, define police duties in broad terms of crime prevention and maintenance of order, without reference to constitutional limitations or human rights safeguards. The Act contains no articulation of procedural fairness, dignity, or proportionality—principles now central to constitutional governance. The statute also fails to accommodate modern policing challenges. It does not address technological advancements, cybercrime, digital evidence, or inter-agency coordination. Nor does it provide for specialized units or professional training frameworks necessary in a complex, technologically driven society. As a result, police functioning is governed by executive circulars and ad hoc administrative instructions rather than clear legislative mandates. Equally significant is the Act's silence on gender sensitivity and protection of vulnerable groups. In an era where crimes against women and marginalized communities demand responsive and rights-based policing, the absence of statutory safeguards exposes the law's deep anachronism.

Political Interference and Operational Inefficiency

One of the most damaging consequences of the 1861 Act is its facilitation of political interference. By vesting complete superintendence in the State Government, the Act allows the political executive to control appointments, transfers, promotions, and disciplinary proceedings. This dependence undermines professionalism and institutional integrity. Arbitrary transfers and politically

motivated postings discourage independent decision-making and long-term planning. Officers are often incentivized to prioritize political loyalty over legal compliance. This environment fosters selective law enforcement, where opposition voices are targeted and ruling interests protected. The result is erosion of public trust and distortion of the rule of law. The centralized hierarchy also impedes operational efficiency. Field officers lack autonomy to respond innovatively to local problems, leading to delays and ineffective service delivery. Reform bodies have repeatedly identified political interference as the single greatest obstacle to police reform, yet structural change remains resisted.

Non-Compliance with Judicial Directives

The Supreme Court's decision in *Prakash Singh v. Union of India* (2006) represented a constitutional turning point. Acknowledging the incompatibility of the colonial police framework with democratic governance, the Court issued seven binding directives to ensure autonomy, accountability, and professionalism. These included State Security Commissions, fixed tenures, separation of investigation from law-and-order functions, and independent Police Complaints Authorities. Despite their binding nature under Article 141, implementation has been largely perfunctory. Many states enacted legislation that diluted the substance of the directives while formally claiming compliance. State Security Commissions are often dominated by political executives, and Police Complaints Authorities lack independence or resources. This pattern reveals entrenched resistance to relinquishing executive control and highlights the limitations of judicial reform in the absence of legislative will.

Need for a New Legal Framework

The persistence of the Police Act of 1861 raises a fundamental constitutional question: can a democratic polity continue to rely on a law designed for colonial domination? The answer, echoed by reform commissions and judicial observations, is in the negative. A new police

law must explicitly align policing with constitutional values under Articles 14, 19, and 21. It should define the scope and limits of police power, embed enforceable accountability mechanisms, and recognize the police as a service-oriented institution. Autonomy must be balanced with public oversight through independent complaints bodies, legislative scrutiny, and judicial review. Human rights and gender sensitivity must be integral to training and operations, not peripheral considerations. The law must also address modernization—regulating surveillance, digital investigation, and forensic processes in line with privacy and proportionality principles.

Lessons from the Model Police Act, 2006

The Model Police Act, 2006 provides a comprehensive blueprint for reform. It reconceptualizes policing as a public service, mandates independent oversight, ensures fixed tenures, and emphasizes transparency and community engagement. Its limited adoption reflects political resistance rather than conceptual inadequacy. Implementing this model, with contextual adaptation, remains the most pragmatic path toward democratic policing.

CHAPTER V: CASE STUDIES AND JUDICIAL PRONOUNCEMENTS

Introduction: Judiciary as the Constitutional Corrective

In the absence of comprehensive legislative reform, the Indian judiciary has played a pivotal role in infusing constitutional values into policing. While the institutional framework continues to be governed by the Police Act of 1861, judicial intervention has progressively constitutionalized police powers by subjecting them to Articles 14, 19, and 21. Courts have acted as constitutional correctives, addressing custodial violence, arbitrary arrest, political misuse of police power, and erosion of civil liberties. This chapter examines landmark judicial pronouncements that have reshaped the discourse on police accountability and

fundamental rights, alongside contemporary case studies illustrating the persistent gap between constitutional ideals and policing realities.

Landmark Judgments and Doctrinal Evolution

Joginder Kumar v. State of Uttar Pradesh (1994): Arbitrary Arrest

Joginder Kumar marked a foundational shift in arrest jurisprudence. The Supreme Court held that the mere existence of statutory power does not justify arrest. Arrest must be necessary, proportionate, and justified by compelling reasons such as prevention of further offences or securing presence at trial. The Court emphasized that personal liberty under Article 21 cannot be curtailed as a routine administrative practice.

The judgment established three critical principles:

1. Arrest is an exception, not the rule.
2. Reasons for arrest must be recorded.
3. The arrested person has a right to inform relatives or friends.

Despite its transformative potential, mass arrests during protests and preventive detentions indicate limited institutional internalization of this doctrine.

D.K. Basu v. State of West Bengal (1997): Custodial Rights

The *D.K. Basu* decision constitutionalized protection against custodial torture and deaths. Recognizing torture as an affront to human dignity and Article 21, the Court laid down eleven mandatory guidelines governing arrest and detention, including identification of arresting officers, preparation of arrest memos, medical examination, and access to legal counsel. These guidelines were later incorporated into Sections 41B–41D of the CrPC, converting judicial standards into statutory safeguards. Nevertheless, custodial deaths continue at alarming rates, revealing systemic enforcement failure rather than normative deficiency.

Prakash Singh v. Union of India (2006): Structural Police Reform

In *Prakash Singh*, the Supreme Court directly confronted the colonial architecture of Indian policing. Acknowledging that executive control under the Police Act of 1861 undermines professionalism and accountability, the Court issued seven binding directives to restructure police administration.

Key mandates included:

- State Security Commissions to insulate policing from political interference
- Fixed tenures for senior officers
- Separation of investigation from law-and-order functions
- Independent Police Complaints Authorities

Despite their binding nature, implementation has been diluted across states, reflecting entrenched resistance to structural reform. The judgment represents judicial idealism constrained by executive non-compliance.

Selvi v. State of Karnataka (2010): Mental Privacy and Coercion

The Court in *Selvi* held that involuntary narco-analysis, polygraph, and brain-mapping tests violate Articles 20(3) and 21. Expanding the scope of personal liberty, the judgment recognized mental autonomy as an integral component of dignity. This decision extended Article 21 beyond physical protection to cognitive liberty, limiting coercive investigative techniques and foreshadowing contemporary concerns over neuro-surveillance and digital policing.

Re: Ramlila Maidan Incident (2012): Policing of Dissent

The violent midnight dispersal of peaceful protestors at Ramlila Maidan was held unconstitutional. The Supreme Court ruled that excessive use of force against non-violent assemblies violates Articles 19 and 21. The judgment emphasized proportionality and

reaffirmed that police are duty-bound to facilitate, not suppress, democratic dissent. This case crystallized the doctrine of “constitutional policing,” positioning the police as protectors of civil liberties rather than instruments of state intolerance.

Justice K.S. Puttaswamy v. Union of India (2017): Privacy and Surveillance

Puttaswamy elevated the right to privacy to constitutional status under Article 21. The judgment has far-reaching implications for policing, particularly in surveillance, data collection, and digital monitoring. The Court articulated a three-fold test—legality, necessity, and proportionality—governing state intrusion. This framework restricts arbitrary surveillance practices historically unchecked under colonial-era laws such as the Telegraph Act and Police Act.

Contemporary Case Studies

Jayaraj–Bennicks Custodial Deaths (2020)

The custodial torture and death of a father and son in Tamil Nadu over a minor lockdown violation exposed the brutal persistence of colonial policing culture. Judicial intervention led to murder charges against police officers, reaffirming *D.K. Basu* principles. The case symbolized institutional normalization of violence.

Delhi Riots Investigations (2020)

Investigations following the Delhi riots were criticized for bias, selective arrests, and misuse of anti-terror laws. Judicial observations highlighted the conflation of dissent with sedition, underscoring systemic abuse of police discretion.

Hyderabad Encounter (2019)

The killing of rape accused persons in a staged encounter, widely celebrated as “instant justice,” was later found unjustified by the Sirpurkar Commission. The episode demonstrated how populism, political approval, and police impunity undermine the rule of law and Article 21.

Oversight Mechanisms and Their Limitations

Institutions such as the National Human Rights Commission, State Human Rights Commissions, and Police Complaints Authorities are intended to ensure accountability. However, their recommendations are largely non-binding, under-resourced, and often ignored. Police Complaints Authorities, mandated by *Prakash Singh*, frequently lack independence and credibility. Judicial oversight through writ jurisdiction remains reactive rather than systemic, addressing individual cases without dismantling structural causes.

Analytical Assessment

Achievements:

- Constitutionalizing of arrest and detention procedures
- Recognition of dignity, privacy, and mental autonomy
- Judicial articulation of structural reform principles

Limitations:

- Weak enforcement mechanisms
- Legislative vacuum in police reform
- Institutional resistance and political interference
- Limited public accountability

Judicial innovation has humanized policing norms, but without legislative replacement of the Police Act of 1861, these gains remain fragile.

CHAPTER VI: HUMAN RIGHTS VIOLATIONS AND POLICE MISCONDUCT

Introduction: The Paradox of Power and Rights

In a constitutional democracy, the police are entrusted with maintaining public order while safeguarding individual liberties. In India, however, this dual mandate frequently collapses into contradiction. The institution tasked with protecting fundamental rights often emerges as their principal violator. Custodial violence, arbitrary detention, extrajudicial

killings, and discriminatory enforcement are not isolated aberrations but systemic manifestations of a policing structure inherited from colonial rule. The Police Act of 1861, enacted to secure imperial control rather than constitutional justice, continues to provide the structural foundation of Indian policing. Its emphasis on executive dominance, discipline, and coercion conflicts directly with the constitutional vision of a rights-based State. The tension between colonial authoritarianism and constitutional humanism defines contemporary policing practices in India.

Colonial Roots of Systemic Abuse

The Police Act of 1861 institutionalized a centralized, militarized, and hierarchical police force designed to suppress dissent and protect ruling authority. By vesting supervisory power in the executive and excluding public oversight, the Act normalized coercion as a governance tool. Independence did not dismantle this structure; instead, the colonial police merely acquired new political masters. This continuity entrenched a culture where force is perceived as efficiency and accountability as interference. Custodial torture, illegal detention, and extrajudicial violence are therefore structural outcomes of an institutional design premised on control rather than service. The persistence of abuse reflects not individual deviance but systemic pathology rooted in colonial governance.

Custodial Torture and Deaths

Custodial violence represents the most egregious violation of Article 21. Despite judicial condemnation, deaths in custody remain alarmingly frequent. National Human Rights Commission data consistently records hundreds of custodial deaths annually, with negligible conviction rates. Civil society reports indicate that torture—physical and psychological—is routinely employed to extract confessions or enforce compliance. In *D.K. Basu v. State of West Bengal*, the Supreme Court recognized custodial torture as an assault on human dignity and laid down binding

safeguards. These guidelines, later codified in the CrPC, reflect constitutional incorporation of international human rights norms. However, weak enforcement, internal investigations, and institutional solidarity among officers perpetuate impunity. Compensation and prosecution remain rare, reinforcing the perception that custodial violence is a low-risk exercise of power.

Illegal Detention and Arbitrary Arrests

Arbitrary arrest remains a pervasive instrument of social and political control. Preventive detention provisions under the CrPC are frequently misused to suppress dissent, particularly during protests. Despite the *Joginder Kumar* mandate that arrest must be necessary and proportionate, law enforcement practice continues to treat arrest as a default administrative response. High arrest rates coupled with low conviction rates indicate systemic over-policing rather than effective law enforcement. The normalization of preventive detention undermines personal liberty and transforms constitutional guarantees into formal abstractions.

Extrajudicial Killings and “Encounter” Culture

Extrajudicial killings, euphemistically termed “encounters,” reflect the most extreme breakdown of constitutional governance. Often justified as self-defense or public necessity, these killings bypass due process and judicial scrutiny. Public endorsement of such acts as “instant justice” further erodes the rule of law. In *People’s Union for Civil Liberties v. State of Maharashtra*, the Supreme Court mandated independent investigation and judicial oversight in all encounter deaths. Nevertheless, compliance remains superficial. Inquiry commissions routinely reveal fabricated evidence and premeditated use of lethal force. The encounter culture thrives on political patronage, media glorification, and institutional impunity, rendering Article 21 illusory.

Suppression of Peaceful Assembly and Dissent

The policing of protest exposes the enduring colonial mindset of law-and-order governance. Peaceful assemblies are frequently met with prohibitory orders, preventive detentions, and disproportionate force. Judicial pronouncements affirming the constitutional right to dissent are often disregarded at the operational level. The *Ramlila Maidan* judgment clarified that police are constitutionally obligated to facilitate peaceful protest, not suppress it. Yet recurring instances of excessive force during demonstrations reveal institutional resistance to democratic tolerance.

Discrimination and Structural Bias in Policing

Policing in India remains deeply entangled with social hierarchies. Empirical studies demonstrate disproportionate targeting of Dalits, Adivasis, and religious minorities. Selective enforcement, custodial abuse, and biased investigations perpetuate structural inequality, undermining Article 14's guarantee of equality before law. Gender bias further compounds the crisis. Despite judicial mandates for victim-centric policing, non-registration of FIRs in cases of sexual violence persists. Custodial sexual abuse and institutional apathy reflect entrenched misogyny and absence of gender-sensitive training. Communal bias during episodes of mass violence has repeatedly exposed police complicity or inaction, eroding minority trust and constitutional legitimacy.

International Human Rights Framework

India's constitutional obligations are reinforced by international human rights standards. Instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights prohibit torture, arbitrary detention, and extrajudicial killings. Although India has not ratified the Convention Against Torture, the Supreme Court has incorporated its principles into Article 21 jurisprudence. The persistence of violations thus reflects not normative gaps but institutional failure to implement binding standards.

Structural Causes of Persistence

Human rights violations persist due to:

- Absence of independent accountability mechanisms
- Political interference in police functioning
- Internal disciplinary systems lacking transparency
- Weak oversight bodies with non-binding powers
- Public fear and limited access to remedies

The Police Act of 1861 reinforces each of these deficiencies by privileging executive control over constitutional accountability.

CHAPTER VII: POLICE REFORMS AND RECOMMENDATIONS

Introduction: Reform as a Constitutional Necessity

Police reform in India is no longer a matter of administrative convenience; it is a constitutional imperative. The persistence of the Police Act of 1861 undermines the guarantees of equality, liberty, and dignity enshrined in Articles 14, 19, and 21. Judicial pronouncements and reform commission reports have consistently recognized that democratic governance cannot coexist with a policing framework designed for colonial control. Reform is therefore essential to realign policing with constitutional morality and the rule of law.

Historical Context of Reform Efforts

Post-independence reform initiatives have repeatedly identified the colonial origins of Indian policing as the source of institutional dysfunction. The National Police Commission (1977–1981) provided the first comprehensive diagnosis, recommending structural autonomy, insulation from political interference, and accountability mechanisms. Subsequent committees—the Ribeiro Committee (1998) and Padmanabhaiah Committee (2000)—reinforced these findings, emphasizing independent

oversight, modernization, and community engagement. Despite the clarity of these recommendations, implementation has remained minimal. Political reluctance to relinquish control over policing has stalled meaningful reform, allowing the colonial framework to persist.

Judicially Mandated Reform: The *Prakash Singh* Directives

The Supreme Court's decision in *Prakash Singh v. Union of India* (2006) represents the most authoritative articulation of police reform as a constitutional obligation. Recognizing the incompatibility of executive dominance with democratic policing, the Court issued seven binding directives aimed at restructuring police governance. These included the establishment of State Security Commissions, fixed tenures for senior officers, separation of investigation from law-and-order functions, independent Police Complaints Authorities, and merit-based personnel management. While doctrinally robust, implementation has been uneven and often superficial. Many states enacted legislation that formally complied with the directives while substantively preserving political control.

The Model Police Act, 2006: A Rights-Based Framework

The Model Police Act, 2006 offers a comprehensive legislative blueprint for reform. It reconceptualizes policing as a public service dedicated to protecting rights rather than enforcing authority. Key features include:

- Clear articulation of police duties grounded in constitutional values
- Fixed tenures and transparent appointment processes
- Independent complaints and oversight mechanisms
- Emphasis on professionalism, training, and community partnership

The limited adoption of the Model Act reflects political resistance rather than conceptual

inadequacy. Its framework remains the most viable foundation for nationwide reform.

Comparative Perspectives: Lessons from Other Democracies

Comparative experience demonstrates that rights-compliant policing is achievable through coherent legal frameworks. In the United Kingdom, statutory safeguards regulate arrest, detention, and interrogation. In the United States, constitutional doctrines ensure procedural fairness and exclusion of unlawfully obtained evidence. In Canada, access to counsel and judicial oversight are entrenched in constitutional law. These systems illustrate that police autonomy can coexist with accountability when supported by clear legislation and independent oversight—an equilibrium absent under the 1861 Act.

Key Challenges to Reform Implementation

Several obstacles impede reform:

- Political interference and executive reluctance to cede control
- Bureaucratic inertia and institutional resistance
- Weak civil society engagement and limited public pressure
- Fragmented state-level legislation and lack of uniformity

These challenges perpetuate the status quo, allowing colonial structures to survive within a constitutional democracy.

Proposed Legislative and Institutional Reforms

A comprehensive reform agenda must include:

1. **Legislative Replacement:** Repeal the Police Act of 1861 and enact a modern police law aligned with constitutional values.
2. **Autonomy with Accountability:** Insulate operational policing from political interference while ensuring oversight through independent bodies.

3. **Independent Complaints Mechanisms:**
Strengthen Police Complaints Authorities with binding powers and transparent procedures.

4. **Professionalization and Training:**
Emphasize human rights, gender sensitivity, and ethical policing in training curricula.

5. **Judicial and Parliamentary Oversight:**
Institutionalize continuous oversight beyond episodic litigation.

Role of Civil Society, Media, and Institutions

Civil society organizations and the media play a critical role in exposing abuses and sustaining reform discourse. Judicial vigilance must be complemented by legislative action, and Parliament must assume responsibility for dismantling colonial frameworks. Reform cannot be achieved through judicial intervention alone; it requires democratic consensus and political commitment.

CHAPTER VIII: CONCLUSION AND SUGGESTIONS

Introduction: From Colonial Order to Constitutional Justice

This study has examined the continued operation of the Police Act of 1861 as a central impediment to constitutional governance in India. Enacted to consolidate colonial authority, the Act institutionalized a coercive, executive-dominated model of policing fundamentally incompatible with the democratic and rights-based framework established by the Constitution of India. Despite constitutional guarantees under Articles 14, 19, and 21, and despite decades of judicial intervention and reform discourse, policing in India continues to reflect colonial logics of control rather than constitutional commitments to liberty, equality, and dignity.

Summary of Key Findings

The research demonstrates that:

1. The Police Act of 1861 is structurally and philosophically inconsistent with

constitutional democracy, privileging executive control over accountability.

2. Judicial interventions—particularly in cases concerning arrest, custodial violence, police autonomy, dissent, and privacy—have constitutionalized policing norms but remain inadequately enforced.

3. Human rights violations by police are systemic rather than incidental, rooted in institutional design rather than individual misconduct.

4. Reform commissions and model legislation have repeatedly identified viable solutions, yet political resistance has prevented meaningful implementation.

Together, these findings reveal a persistent constitutional contradiction: a rights-based Constitution operating alongside an authoritarian policing statute.

The Need for a Paradigm Shift

Effective police reform requires a paradigmatic shift from colonial command-and-control policing to constitutional service-oriented policing. This shift must be normative, structural, and cultural. Policing must be reconceptualized as a public service accountable to law and society, not as an extension of political authority. Constitutional morality demands that institutions internalize democratic values rather than merely comply with formal legality.

Legislative Reform Proposals

The most urgent reform is legislative. The Police Act of 1861 must be repealed and replaced with a comprehensive police law that:

- Explicitly recognizes the police's duty to uphold fundamental rights
- Defines clear limits on police powers consistent with proportionality and due process
- Provides statutory protection against political interference

- Establishes enforceable accountability and oversight mechanisms

The Model Police Act, 2006 offers a strong foundation for such legislation and should be adopted with necessary contextual adaptations.

Institutional and Structural Reforms

Beyond legislation, institutional reforms are essential. These include:

- Functional autonomy for police leadership with fixed tenures
- Strengthened and genuinely independent Police Complaints Authorities
- Separation of investigative and law-and-order functions
- Transparent systems for appointments, transfers, and promotions

Such reforms would professionalize policing while ensuring accountability to constitutional standards.

Cultural and Ethical Transformation

Legal reform must be accompanied by cultural change within the police institution. Training must emphasize human rights, gender sensitivity, ethical conduct, and community engagement. Accountability should be understood not as external interference but as an essential component of democratic legitimacy. Without transforming institutional culture, structural reforms risk remaining symbolic.

Role of Civil Society, Media, and Institutions

Civil society and the media are indispensable in sustaining reform momentum by exposing abuses and mobilizing public discourse. Judicial vigilance must continue, but courts cannot substitute for legislative action. Parliament and state legislatures bear primary responsibility for dismantling colonial frameworks and enacting democratic policing laws.

International Standards and Comparative Learning

India's constitutional obligations align with international human rights norms prohibiting torture, arbitrary detention, and extrajudicial killings. Comparative experience demonstrates that rights-compliant policing is achievable through coherent legislation, independent oversight, and professional autonomy. These lessons reinforce the feasibility and necessity of reform.

Future of Democratic Policing in India

The future of policing in India depends on completing the unfinished project of decolonization of state institutions. Retaining colonial statutes undermines constitutional legitimacy and public trust. Democratic policing is not aspirational idealism but a constitutional mandate essential to the rule of law.

Final Observations

The Police Act of 1861 symbolizes the unresolved tension between colonial governance and constitutional democracy. Judicial pronouncements have illuminated the path toward reform, but without legislative replacement, the colonial foundation remains intact. A modern police law grounded in constitutional morality, accountability, and human dignity is indispensable. Only by dismantling this colonial edifice can India realize the constitutional promise of justice, liberty, and equality in everyday policing practice.

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