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Inter-state Police Cooperation: Challenges, Policy Framework, and the Way Forward

| Aditi Dehal and Mrigank Patel



Issue Brief

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ISSUE BRIEF

Inter-state Police Cooperation: Challenges, Policy Framework, and the Way Forward

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ABSTRACT

Interstate arrest procedures of police are increasingly being discussed in public discourse. Recently, a news anchor made headlines in light of a tussle between the Chhattisgarh police and Uttar Pradesh police for his arrest. In May this year, the Delhi police and Punjab police faced similar public scrutiny over the arrest of a politician. In this context, exploring instances of non-cooperation between police authorities and inter-state arrests becomes relevant. The rules and regulations on arrest and the jurisdiction of police authorities need to be analysed for a clearer understanding.

While provisions of the Code of Criminal Procedure of 1973 are pivotal, other policies and guidelines also hold relevance. Through analysing the judgments of the Supreme Court and High Courts, this issue brief sheds light on the political motivations that impact the independence of police machinery and catalyse instances of non-cooperation. Lastly, the brief will recommend changes in the policy framework that can reduce instances of police non-cooperation, protect the rights of the accused, and facilitate the maintenance of law and order.

Keywords:

Code Of Criminal Procedure, Police Cooperation, Inter-state Arrest, Geographical Jurisdiction, Political Influence

INTRODUCTION

July witnessed a tussle between the Chhattisgarh police and Uttar Pradesh police over the arrest of Zee News anchor Rohit Ranjan who allegedly made misleading statements in the news about a politician from the Indian National Congress. Similarly, in 2021, the arrest of climate activist Disha Ravi by the cyber-crime unit of the Delhi Police sparked controversy since they detained Ravi without informing the local Bengaluru police. Such instances of non-cooperation between police authorities are not solitary but part of a trend. Such occurrences are primarily seen when police authorities arrested the accused from a state outside its jurisdiction without following due process, resulting in non-cooperation with other police authorities.

Former Supreme Court judge, Justice Madan B. Lokur, opined that if the police authorities are not reformed, instances of non-cooperation will increase, investigations will continue to be shoddy, and the justice delivery mechanism will face undue delays (Bhardwaj, 2020). In this context, it becomes significant to analyse the policy framework and jurisprudential literature around it. The article will analyse the reasons behind this, including political influence and inefficient policy framework, followed by policy recommendations.

POLICY AND JUDICIAL FRAMEWORK

The Constitution of India places 'Police' as Entry 2 in the List II of the 7th Schedule, i.e., in the State List. Hence, all the matters regarding the police are governed and regulated by the state government. The legislative intent is to empower state governments to maintain law and order within their jurisdictions. However, in certain circumstances, the law enables the police of one state to go beyond its jurisdiction and conduct operations such as arrests in other states. Sections 41 to 60 of the Code of Criminal Procedure [Cr. P. C.] provide the police with the prerogative to arrest. Section 78 to Section 81 of Cr. P. C. elaborate on the arrest procedures outside the jurisdiction of the police. Most relevant to the discussion are sections 48 and 79.

Section 48 empowers a police officer to pursue and arrest any person across India without a warrant if the said officer is authorised under the law to arrest such person. However, Section 48 merely says that "a police officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest, pursue such person into any place in India" (Cr.P.C, 1973). However, the procedure for arresting without a warrant has not been laid out. Moreover, the Section also fails to provide clarity on the term 'pursue'. It is unclear if the term means to enter another state to arrest an individual or if it is applicable only for the pursuit of an accused who is staying or residing in any other state and is not cooperating with investigators.

Meanwhile, Section 79 empowers the police to arrest any person beyond their jurisdiction based on a court's warrant. Under this Section, it is stated that the police officer with the warrant needs an endorsement by an Executive Magistrate or from a police officer with at least the rank of an Officer in Charge of the police station commanding the jurisdiction of the area where the arrest is to be made. However, this Section provides that an endorsement is not required if the police officer holding the warrant has sufficient reason to believe that the delay in obtaining such endorsement will prevent arrest or execution. Thus, Section 79 provides a detailed inter-state arrest procedure and an established mechanism in contrast to Section 48 in case a warrant is not issued.

It can therefore be observed that the powers of police to arrest the accused in another state without any warrant requires more clarity. Ideally, the arrest of any person beyond the geographical jurisdiction of the state police is to be made through the execution of a warrant issued by a competent court or, if the warrant could not be obtained, by informing the police of the concerned state in which the operation is to be conducted. However, the lack of a detailed procedure when the warrant for such an arrest is not made gives rise to clashes and conflicts between police forces of numerous states.

Thus, the aforementioned provisions lack clarity around terminologies used and procedural aspects for the powers of inter-state arrest. Fortunately, the judiciary has attempted to fill these gaps by laying out guidelines for inter-state arrests (Nagpal, 2020). For instance, the Delhi High Court, in the case of Sandeep Kumar vs The State (2018), had issued specific guidelines for inter-state arrests as follows:

- A police officer must seek written permission or permission on the phone from their superior to visit another state to arrest a criminal;
- The police officer must record reasons for such a move in writing and make an endeavour to get an arrest warrant from a court except in 'emergent cases'¹ ;
- Before visiting any other state to arrest any person, the police officer must endeavour to establish contact with the local police station in whose jurisdiction they are to conduct the investigation;
- After reaching the destination, the police officer must seek assistance and cooperation from the concerned police station, and the SHO must provide legal assistance to the other state's police while making an entry for the same in the said police station;
- A lady police officer should be made part of a team if the arrestee is a female;
- The police officer must follow the procedure given under sections 41A, 41B, 50 & 51 and 100 of Cr.P.C.; and
- The police officers should be in their uniforms carrying accurate, clear and visible name tags with their designations on them and have their respective IDs with them.

However, although the guidelines provide for an exception for 'urgent cases' wherein the police of one state may not inform their counterpart(s) in another about an impending arrest, the definition of such 'urgent cases' and the procedure to be followed thereon is still missing.

Despite the existence of an established mechanism for inter-state arrest procedures through the Cr.P.C. or guidelines through judicial decisions, the implementation of such a mechanism is rarely seen. Often, there have been cases of a state's police arresting a person in a different state without informing the police of the state from where the person was arrested. On the judicial front, courts have indeed objected to such a practice and have instructed the police forces to follow the rules to safeguard the rights of the people. However, its practice is yet to be witnessed (Nagpal, 2020).

¹ - Emergent cases refer to situations like a sudden, urgent, or unexpected occurrence or occasion that require immediate action to protect against an imminent threat to the public health, safety, welfare, or to protect against an imminent threat of significant damage to property.

REASONS BEHIND NON-COOPERATION

The most pertinent reasons behind non-cooperation between police authorities are interlinked with i) political influences on governmental departments & machinery; ii) legislative policies and framework of different states to govern, regulate and control their respective police focus; and iii) and non-compliance to existing guidelines dealing with cooperation and coordination of police forces. The aforementioned elements are elaborated as follows:

I Political Friction and Influence

Police authorities often act on the mandates of the state governments rather than legislative and judicial guidance. Political objectives such as securing the freedom of a local leader often undermine the independence of the police and lead them to make arrests without following due process (Nagpal, 2020). Politically-powerful people try to influence the police forces in inter-state matters to get a favourable investigation. This, yet again, prevents the forces from being transparent and cooperative with other police forces (Mouar, n.d.). An example of this occurred in May 2022 when Delhi police and Punjab police came into conflict with one other over the arrest of BJP leader Tejinder Pal Singh Bagga (Chand & Singh, 2022).

Courts have taken note of instances like these as well. While dealing with an investigation in the case of *Rhea Chakraborty v. State of Bihar & Ors.* (2020), the court stated that “since both states are making contentious charges of political involvement against one another, the investigation’s validity is in question. This court must work to guarantee that the quest for the truth is undertaken by an entity that is independent of both state governments.”

II Lacking Legislation Facilitating Inter-State Police Cooperation

Section 6 of the Delhi Special Police Establishment Act of 1946 states that a case can be transferred to the CBI with the prior consent of the state government. Pertinently, the matters related to election issues, terrorism, inter-state criminal gangs, illegal inter-state transfer of liquor/firearms, etc. are required to be handled by a force that holds authority and jurisdiction to investigate in such cases which are not geographical centric instead pan across several states and even the country at large. However, there are no other mechanisms dealing with matters of the jurisdiction of the police. Similar legislation exists in other countries. For instance, in Canada, the Interprovincial Policing Act of 2009, enacted by the Ontario Legislature, enables police officers in the Ontario province to work in other provinces of Canada (Solicitor General, 2010). Thus, to inculcate and incorporate a mechanism which helps in inter-state police cooperation and coordination in India, a proper framework either governing, regulating, and strictly defining the procedure for such inter-state police is necessary (Nagpal, 2020).

Additionally, in Australia, in the year 2009, history was made when the new Cross-border Justice Scheme [CBJS] was incorporated by enacting laws which effectively removed legal boundaries between Western Australia, South Australia, and Northern Territory. The CBJS is a partnership scheme aimed at removing the state and territory borders in the cross-border region to improve law enforcement and justice. (Australian Government, 2009) To achieve the same, the Cross-Border Justice Act was enacted in Western Australia in 2008, followed by similar Acts in the Northern Territory and South Australia in 2009 (Putt et al., 2013). In other words, the police, judges, fine enforcement agencies, community corrections officers, and prisons can deal with offences that may have occurred in another state or territory.

RECOMMENDATIONS

After observing numerous instances of lack of coordination amongst the Indian police forces, there is a dire need for the establishment of a system which promotes cooperation for an efficient and effective justice delivery system. To do so, the following elements can be focused upon:

I Adaptations from Foreign Frameworks

As highlighted previously, some developed countries have adopted laws that promote coordination and cooperation of police forces. Canadian legislations empower police forces in one jurisdiction or state/province to operate in others to maintain law and order. Australian legislation incorporates partnership schemes for interstate police cooperation, which could also be very useful for the Indian police setup. Additionally, if some questions arise about the viability of such laws, they can be curated explicitly per the requisites of the Indian context.

II Stricter Enforcement

Post the enactment of law by the legislature or a judgement by the court elaborating further guidelines on the said laws, strict measures to apply and enforce such laws and guidelines should be taken by the judiciary. Government officials or police officers flouting such laws and guidelines should also be held in contempt and punished accordingly to deter nonadherence. Additionally, a system for submission of periodic reports regarding inter-state police cooperation and coordination shall also be incorporated to have general oversight of the implementation and enforcement of rules.

III Independent Mechanism

A mechanism to check the interdependence of state governments on police forces and vice versa must be devised to make the police forces function independently. The recent case of Prakash Singh v. Union of India (2006) could be seen as the perfect example. Herein the Supreme Court ordered all states and Union Territories to implement novel policy reforms such as mandating the performance of duties without any fear of political influence, formation of 'establishment boards' to oversee transfers and posting of senior police officials all across India, and fixed period of tenure of a Director General of Police in one state before their transfer to another state.

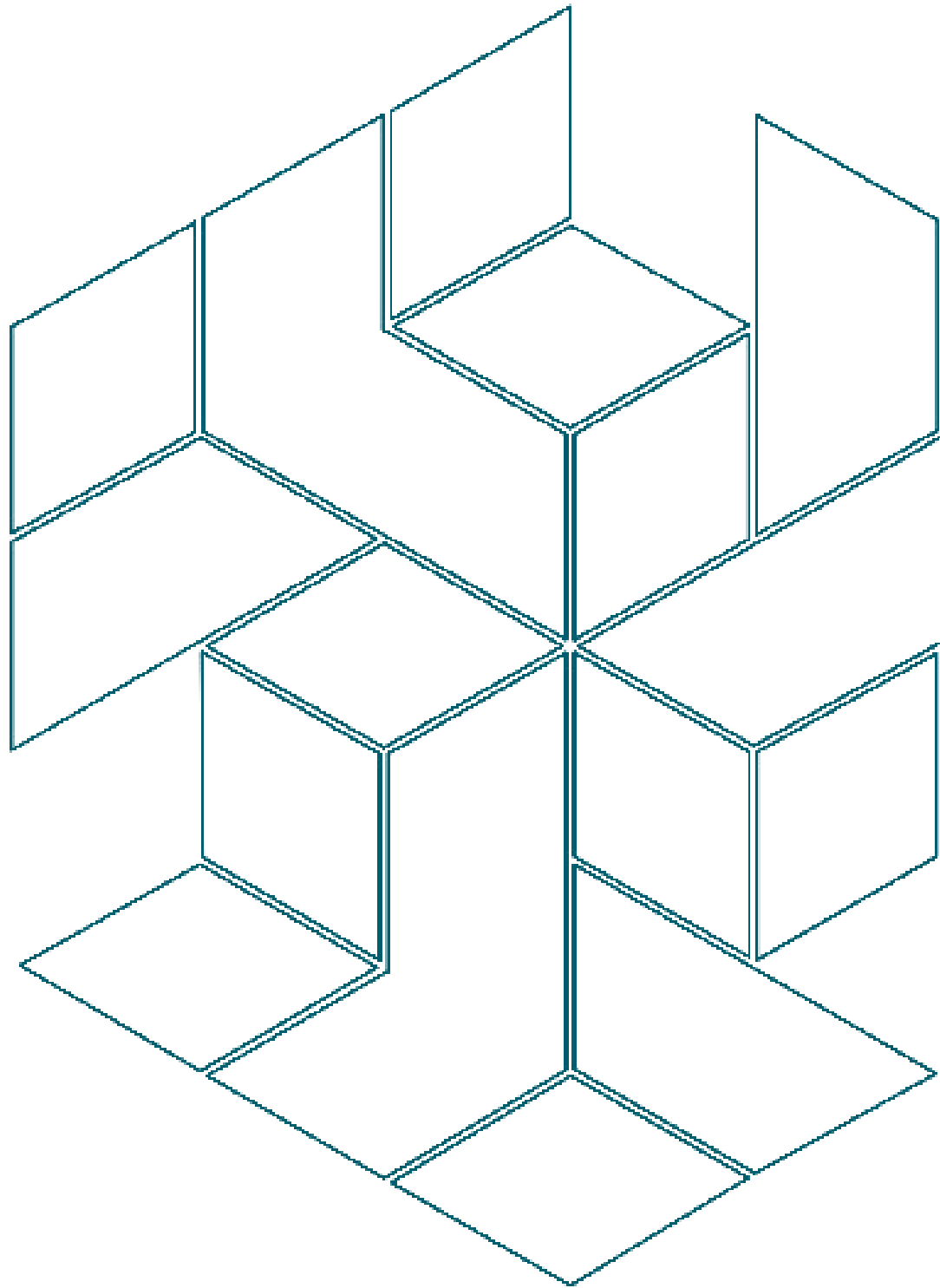
To sum up, it could be understood that a system for proper coordination and cooperation of interstate police is required. The laws enacted to create and implement such a mechanism must be very clear, unambiguous, descriptive, and detailed about the procedures, power, and duties of the police forces for their inter-state operations. Additionally, the judiciary should monitor the strict implementation of such laws and issue detail-oriented guidelines whenever needed.

Notably, efforts are being made to improve police cooperation. Former Vice President of India, Shri M. Venkaiah Naidu, called for a renewed thrust to implement reform in police forces. The NITI Aayog also suggested some reforms, such as the Model Police Act of 2015, creating a Task Force under the Ministry of Home Affairs to identify non-core functions which could be outsourced, and moving police to the Concurrent List. Therefore, it is reasonable to conclude that adequate legislation for inquiry and arrest must be enacted while examining the practical and theoretical elements to develop a sense of collaboration and security.

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