

INDIAN POLICE AS AN ENFORCEMENT AGENCY

- A CRITICAL STUDY

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THANKING YOU

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TABLE OF CONTENTS

<u>TOPIC</u>	<u>PAGE NO.</u>
• DECLARATION	i
• CERTIFICATE	ii
• ACKNOWLEDGEMENT	iii
• TABLE OF CONTENT	
• LIST OF ABBREVIATION	iv-v
• LIST OF CASES	vi-vii
• CHAPTER I	1-5
• INTRODUCTION	
• CHAPTER II	6-18
• HISTORICAL BACKGROUND OF POLICE	
• 2.1 Ancient India	
• 2.2 Medieval India	
• 2.3 Modern India	
• CHAPTER III	19-25
• POLICE IN INDIA	
• 3.1 Indian Police	
• 3.2 Police and the Constitution Of India	
• 3.3 Police Acts	
• CHAPTER IV	26-46
• ESTABLISHMENT AND ORGANISATIONAL STRUCTURE OF POLICE	
• 4.1 Organizational Structure	
• 4.2 Police Headquarters	
• Units, Branches, Wings, Sections Or Departments Of Police Headquarter	
• Structure, Function And Powers Of The Headquarter Branches/Units	
• CHAPTER V	47-109
• FUNCTIONS, DUTIES AND POWERS OF POLICE	
• 5.1 Functions Of Police	
• 5.2 Maintenance Of Order	

- 5.3 Prevention Of Crime
- 5.4 Investigation Of Crime
- 5.5 VIP Security
- 5.6 Helping the Weaker Sections
- 5.7 Helping Senior Citizens
- 5.8 Role of Police During Disasters
- 5.9 Managing Vehicular Traffic
- 5.10 Powers and Obligations of Police
- **CHAPTER VI** **110-121**
- **INEFFICIENCY OF POLICE AND REFORMS NEEDED**
- **CHAPTER VII** **122-124**
- **CONCLUSION AND SUGGESTIONS**
- **BIBLIOGRAPHY** **125-128**

LIST OF ABBREVIATION

A.A.	:	Action Abated
A.C.B.	:	Anti-Corruption Bureau
Acct.	:	Accounts
Acq.	:	Acquittal
A.D.	:	Action Dropped
Addl. S.P.	:	Additional Superintendent of Police
A.O.	:	Administrative Officer
A.P.	:	Andhra Pradesh
A.P.P.	:	Assistant Police Prosecutor
A.P.P.A.	:	Andhra Pradesh Police Academy
A.P.P.S.	:	Andhra Pradesh Police Services
A.P.S.P.	:	Andhra Pradesh Special Police
A.R.S.I.	:	Armed Reserve Sub-Inspector
A.R.A.S.I.	:	Armed Reserve Assistant Sub-Inspector
A.R.H.C.	:	Armed Reserve Head Constable
A.R.P.C.	:	Armed Reserve Police Constable
A.S.I.	:	Assistant Sub-Inspector
A.S.P.	:	Assistant Superintendent of Police
A.R.	:	Armed Reserve
A.R.D.S.P.	:	Armed Reserve Deputy Superintendent of Police
A.W.S.	:	Average Weighted Score
Addl. D.G.P	:	Additional Director General of Police
B.P.R.& D.	:	Bureau of Police Research and Development
B.S.F.	:	Border Security Force
Con.	:	Conviction
Cr.	:	Crime
C.B.C.I.D.	:	Crime Branch Criminal Investigation Department
C.F.S.L.	:	Central Forensic Science Laboratory
C.P.L.	:	Central Police Lines
C.I.	:	Circle Inspector
C.I.S.F.	:	Central Industrial Security Force
C.I.D.	:	Crime Investigation Department
Cr.P.C.	:	Criminal Procedure Code
CRPF	:	Central Reserve Police Force
D.I.G.	:	Deputy Inspector General of Police
D.S.P.	:	Deputy Superintendent of Police
D.P.O.	:	District Police Officer
D.S.B.	:	District Special Branch
D.G. & I.G.	:	Director General and Inspector General of Police
E.D.P.	:	Electronic Data Processing
F.I.R.	:	First Information Report
F.P.B.	:	Finger Prints Bureau
H.B.	:	House Breaking
H.C.	:	Head Constable
H.R.M.	:	Human Resource Management
Hects.	:	Hectares
I.A.S.	:	Indian Administrative Service

I.C.S.	:	Indian Civil Service
I.E.A.	:	Indian Evidence Act
I.G.P.	:	Inspector General of Police
I.P.A.	:	Indian Police Act
I.P.C.	:	Indian Penal Code
I.P.S.	:	Indian Police Service
Inter	:	Intermediate
I.O.	:	Investigation Officer
I.R.	:	Industrial Relations
I/C.	:	In-Charge
kgs.	:	Kilograms
L.D.	:	Lower Division
M.T.O.	:	Motor Transport Officer
N.P.A.	:	National Police Academy
N.P.C.	:	National Police Commission
O.S.	:	Office Superintendent
P.I.L.	:	Public Interest Litigation
P.M.	:	Personnel Management
P.R.B.	:	Police Recruitment Board
P.T.	:	Pending Trial
P.T.O.	:	Police Transport Organisation
P.P.O.	:	Police Prosecuting Officer
P.T.C.	:	Police Training College
P.S.	:	Personal Secretary
P.C.	:	Police Constable
R.& T.	:	Recruitment and Training
Rep.	:	Report
R.I.	:	Reserve Inspector
S.A.R.	:	Special Armed Reserve
S.C.	:	Scheduled Caste
S.C.R.B.	:	State Crime Record Bureau
S.D.P.O.	:	Sub-Divisional Police Officer
S.D.P.O.	:	Sub-Divisional Police Officer
S.H.O.	:	Station House Officer
S.I.	:	Sub-Inspector
S.L.P.R.B.	:	State Level Police Recruitment Board
S.P.	:	Superintendent of Police
sq.km.	:	square kilometre
S.S.C.	:	Secondary School Certificate (10 th class)
S.T.	:	Scheduled Tribe
U/s	:	Under Section
U.I.	:	Under Investigation
U.N.	:	Undetected
U.D.	:	Upper Division
V.I.P.	:	Very Important Person
V.V.I.P.	:	Very Very Important Person
W.G., Dist.,	:	West Godavari District

LIST OF CASES

• Anantrao Lokhande v. State of Maharashtra, 1980 Mah. L.J. 849	87
• Arun Ghosh v. State of W.B., AIR 1970 SC 1228. .	62
• Bombay v. Kathi Kalu, AIR 1961 SC 1808	88
• Citizen for Democracy v. State of Assam, AIR 1996 SC 2193.	83
• D.K. Basu v. State of West Bengal, AIR 1997 SC 610.	84
• Daitri Das v. State, AIR 1956 Orissa 97 at 99	88
• Emperor v. Sada, 11 Cr. L.J.99.	93
• Forum, Prevention of Environment and Sound Pollution v. Union of India, 2005 AIR SCW 325	82
• Ganesh Dass v. State of Kerala, 1996 Cri LJ 612 (P&H)	78
• Ganesh v. State, 1988 CrLJ 475 (All).	87
• Hindustani Andolan v. State of Punjab, AIR 1984 SC 582.	82
• Jamshed alias Dalli v. State of U.P., 1976 Cr.L.J 1680	88
• Joginder Kumar v. State of U.P., AIR 1994 SC 1349.	81
• Kasturi Lal Kalia Ram v. State of UP., AIR 1965 SC 1039.	89
• King Emperor v. Khwaja Nazir Ahmad, (1944), 71 Ind App 203 at p. 213	87
• Madhubala v. Suresh Kumar, AIR 1997 SC 3104.	76
• Moti Chand v. State of U.P., 1973 All. Cr. R. 482	78
• Motilal v. State, 24 Cut.LT 445	73
• Nandini Sathpathy v. P.L. Dani, AIR 1978 SC 1025 (para 53).	75
• Nemichand Jain v. Supdt. Of Central Excise and Land Customs, AIR 1963 Manipur 35	78
• Pagla Baba v. State, AIR 1957 Orissa 130 at 145	87
• Piyush Kantilal Mehta v. Commissioner of Police, AIR 1989 SC 491.	75
• Prakash Singh v. Union of India	93
• Prem Shankar Shukla v. Delhi Administration, AIR 1980 SC 1535.	78
• Public Prosecutor v. Matam Bhai, AIR 1970 1969 AP 99.	88
• Pushker Mukherjee v. State of West Bengal, AIR 1970 SC 852	78
• Ratilal v. Asst. Collector of Customs, AIR 1967 SC 1639.	81
• Rupinder Singh Sodhi v. Union of India and others, AIR 1983 SC	65
• S.N. Sharma v. Bipen Kumar Tiwari, AIR 1970 SC 786;	73

•	Sate of U.P. v. M. K. Anthony, AIR 1985 SC 48.	77
•	Sheela Barse v. State of Maharashtra, AIR 1983 SC 378.	78
•	State of Bihar v. JAC Saldanha, AIR 1980 SC 326.	65
•	State of Haryana v. Ch. Bhajan Lal, AIR 1992 SC 604 Ibid., p. 169.	65
•	State of Rajasthan v. P.C. Goswami, 1988 RLW 160.	85
•	State of Rajasthan v. Teja Ram, 1999 SCC (Cri) 436	82
•	Sunil Batra v. Delhi Administration, AIR 1978 SC 1675.	78
•	Sunita Devi v. State of Bihar, 2004 AIR SCW 7116.	87
•	Suresh Chand Jain v. State of M.P., AIR 2001 SC 571.	86
•	Talab Haji Hussain v. Madhukar Purshottam Mondkar, (1958) SCR 1226	80
•	Thaniel Victor v. State, 1991 Cri LJ 2416 at 2424 (Mad)	88
•	Union of India v. Prakash Hinduja, AIR 2003 SC 2612 at 2621.	89

CHAPTER I

INTRODUCTION

Human beings forming an organisation or living together in a society have to follow certain norms of behaviour. A primitive society can exist under simple systems of societal norms with a simple form of authority or governance. With increase in population and progress, society become more complex and so is the structure of government. Under such a complex way of life and the multiple needs of the society and its numerous members, a huge machinery of government is needed. The norms of behaviour in such a society are enforced through a complex system of laws by a large police force entrusted with multifarious duties and responsibilities.

Due to changing perceptions and changing circumstances, different societies at different times have had different laws and manner of enforcing those laws. The responsibilities of the law enforcing agencies are not the same in different countries and the pattern of organisations also does not follow similar lines. The controlling authority of police may also be the local authority, an autonomous and independent body or the government - federal or a unit of a federation.

Police forces are governmental organisations charged with the responsibility of maintaining law and order. The word comes from the French, and less directly from the Greek 'polis' through the Latin 'politia'¹, referring to government or administration. The word police was coined in France in the 18th century. The police may also be known as constabulary named after constable derived from the Latin term 'stabuli', which means 'master of the horse' - a title given to the master of the horse of the East Roman emperors.² The title was inherited by the French and it denoted a military rank. So, in France the rank of constable was given to military officers. It was imported into England by the Normans with its military implications and was generally used to designate certain officers who were appointed by the King as commanders of his castle. Later on, the Normans gave this name to local officers whose duty was not only to detect and apprehend lawbreakers and bad characters, but also to enrolment in the militia. These men were an early manifestation of police officers. The major role of the police is to discourage and investigate crimes, with

¹RajinderPrasher, Police Administration, 1986, p.9.

²RajinderPrasher, Op.Cit., p.9.

particular emphasis on crime against person or property and maintaining of public order, and if able to apprehend suspected perpetrator(s), to detain them, and inform the appropriate authorities.

Police persons are often used as emergency service and may provide a public safety function at large gatherings, as well as in emergencies, disasters, search and rescue situations. To provide prompt response in emergencies the police often coordinate their operations with fire and emergency medical services. In many countries, there is a common emergency service telephone number that allows the police, firefighters or medical services to be summoned to an emergency.

The police personnel are responsible for reporting minor offences by issuing notes which typically may result in the imposition of fines, particularly for violations of traffic law. Police officials also involve themselves in the maintenance of public order, even where no legal transgressions have occurred. In many countries, particularly those with federal system of government, there may be several police or police like organisations, each serving different levels of government and enforcing different subsets of the applicable law.

Under Article 246 of the Indian Constitution, police is a state subject. The rules and regulations regarding the police are framed by the State Government. Each State or Union Territory has its separate police force. There is a good deal of similarity among them as the structure and working of the state police are governed by the Police Act of 1861. Common major criminal laws are applicable to all the States and Union Territories. The Indian Police Service forms the bulk of senior officers in the state police. Superintendence over the state police force is exercised by the state government. The Head of the police force in a state is the Director General of Police (D.G.P.) who is responsible for the administration of the State

Police and advises the government in police matters. The role envisaged for the police is to “preserve internal tranquility in the country under all ordinary circumstances, to keep the peace, to protect life and property, to prevent and detect crime, to furnish guards for public property, for jails, treasuries, and the like, to escort treasure, public stores and prisoners; and to perform a variety of civil duties connected with the watching of military buildings and military stores and property, both in the station and on the road”³. Sections 23, 24 and 25 of the Act 1861 lay out in detail the duties of police. Besides, police is empowered to act under

³Shailender Mishra, Police Brutality - An Analysis of Police Behaviour, 1986, p.6.

various Central and State laws. The Criminal Procedure Code, and various other Acts also lay down the power and procedure according to which police personnel are to exercise their powers. The Police Act of 1861 places the administration of police in a district under the “general control and direction” of the District Magistrate ensuring executive control.⁴ Various Police manuals and rules further elaborate these duties. The State Police is also entrusted with the duty of collecting and disseminating intelligence and providing security to public property and members of the society during natural disasters and other emergencies.

The state police is organised on the pattern of the army, with a rank structure, uniform and badges of rank. It consists of three wings – the District Police, the Armed Police Battalions and the Intelligence Unit called the Special Branch (S.B.). There is also a Criminal Investigation Department (C.I.D.) to investigate important crimes and to keep crime records. There is a Police Radio Organisation to maintain communications systems. Police Training Institutions also function at the state level. Each state is divided into administrative units known as police districts. A Superintendent of Police (S.P.) heads the police force in each district. A district is again subdivided into sub-divisions under a Deputy Superintendent of Police (D.S.P.) or an Assistant Superintendent of Police (A.S.P.) and a sub-division into Police Stations under an Inspector of Police or a Sub-Inspector of Police. The Police Station is the basic unit of police operation which operates in a small area. A group of such districts form a police range under a Deputy Inspector General of Police (D.I.G.). Some states have zones comprising two or more ranges, under the charge of an officer of the rank of an Inspector General of Police (I.G.P.).

The study covers as a whole, both the unarmed and armed branches of the police organisation including the intelligence wing to the extent possible, particularly during 1987 and 2005. To get a complete picture of the organization, the study also briefly covers the police administration during the British and post-Independence period under the state of Assam besides making a probe into the recent developments.

We have looked into the administration of the police organization at all levels from the Constable to the Head of Department and their inter-relationships. Study of each branch of the police organization has been done separately. Besides these, the study also covers the Police Public Relationship and the perception that the public possess of the police force. The

⁴See Section 4 of Indian Police Act (Act V) of 1861.

study also includes the effectiveness of the police in their daily functions as well as in emergencies and during natural calamities.

During the course of our study, we have looked into the structure, functions and process of police administration with a view to getting an in-depth idea about the same. During the course of the study, we have also dealt with the anti-insurgency activities as undertaken by the police as and when that were required.

Till date, no systematic study of any aspect of Police and its system of functioning has been done. There have been occasional adverse or complementary comments carried out by Newspapers in connection with certain incidents involving the police which are of interest to the public. These comments are not based on any systematic study of the subject. Absence of adequate published materials creates problems for the research. The records maintained by the police are not systematic. Old records are not preserved properly. The study, therefore, depended mostly on interviews of the serving and retired personnel of the police as well as members of the public and various functionaries of the Government having connections and dealings with the police. The reaction of the community to the functioning of the police is itself highly subjective and may not be based on the actual performance of the duties by the police. The assessment by the police authority or by the Government is normally an exercise in self-justification. Lastly, there is the secret aspect of the police which does not allow them to make all their reports public.

The study attempts to probe into the weakness, deficiencies and problems of Police and to find out the genesis of such short coming. The Study attempts at finding possible ways of making the police effective in its performance of duties and responsibilities. The study tries to identify the ways and means which will facilitate efficient performance of its duties. The study has also tried to find out if the services provided by the police come up to the expectation level of the people of India.

Some of the major objectives of the study include the following :

- a study of the origin, growth and development of police administration,
- a study of the problems and challenges faced by the police personnel in discharging their duties and responsibilities, and

□ a study of the need for better training, facilities and infrastructural support to the police to serve the people more effectively.

The study is based on secondary data as collected from various sources. Information have been collected from newspapers, journals, magazines, booklets and other published and unpublished sources.

CHAPTER II

HISTORICAL BACKGROUND OF POLICE

2.1 ANCIENT INDIA

As a law enforcing agency ensuring order, the origin of the police in India can be traced to the earliest Vedic period of Indian history. The two Vedas, the Rig-Veda and the Atharva Veda, eloquently mention about certain kind of crime and punishments known to Vedic India. The Kings in ancient India had their own network of secret intelligence and tried to remain well informed about the nature and incidence of crimes and the award of adequate and proportionate punishment to criminals.

We have detailed accounts of police organizations and police activities during the Mauryan and Gupta periods. The ancient writers and poets of Sanskrit, Pali and Prakrit languages seem to have special knowledge about the administration of order and justice prevailing during that period. There was no independent police department with exclusive functions of detection and control of crimes but there existed several agencies pursuing a coordinated policy for the maintenance of law and order in the society.

Kautilya has recorded full development of police in his Arthashastra yielding systematic information about investigation, patterns of crime, punishments, etc. The Arthashastra mentions that the police during ancient India was divided into two wings, namely, the regular police and the secret police. The regular police consisted of three tiers of officials: The pradesta (rural) or the Nagaraka (urban) at the top, the rural and urban sthanikas in the middle and the rural and urban Gopas at the bottom. In the course of his description of the pradesta's duties, Kautilya tells how an inquest was held in case of sudden death. This involved a post-mortem examination of the body as well as thorough police investigation. In Kautilya's work the secret police is divided into two categories namely, the peripatetic and the stationary.⁵

Manu Smriti mentions about the art of secret intelligence prevalent in ancient period for prevention and detection of crime. The instructions prescribed for the King to detect offences with the help of soldiers and spies in Manu Smriti, and mention of informant and investigating officer in Katyayana Smriti also suggest that an agency like modern

⁵Jois, op.cit. 320-21; Bharti, Dalbir, The Constitution and Criminal Justice Administration, p. 20.

police existed during that period to assist the King in administration of justice.⁶9 The police stations of today originate from the ancient *sthanakas*. Manu recommended that police stations, or may be police pickets, should be established one being intended for two, three, five or a collection of several villages.⁷10 A person who was appointed by the king to detect commission of offences was called *suchaka* (Investigation Officer).⁸

The special responsibility of the King in the matter of controlling crimes, detection of crimes and punishing offenders has been stressed in *Manu Smriti*. According to it persons who commit offences or who conspire to commit offences are generally found in assembly houses, hotels, brothels, gambling houses, etc. and therefore the King must post soldiers and spies for patrolling such places and in order to keep away thieves and antisocial elements. It also permits the King to appoint reformed thieves who were formerly associated with such doubtful elements and through them detect and punish offenders.⁹ During the Gupta period the police officers were known as *chauroddharanik* as their principal preoccupation was catching the thieves. During the Palas one finds their existence as well.

Some of the important principles pertaining to the police developed during ancient India are as under:

1. The information or complaint about the offence committed by any individual could be made by any citizen and not necessarily by the person injured or his relatives. The person, who on his own accord detected commission of offences and reported to the King, was known as *stobhaka* (informant). He was entitled to remuneration from the King for giving first information.¹⁰
2. Perjury, i.e. the act of giving false evidence was considered a serious offence and therefore, punishment was prescribed for it.¹¹15 The entire wealth of a person who cited false witnesses out of greed, would be confiscated by the King, and in addition, he would be exterminated.¹²
3. Failure of duty towards society was taken very seriously. Any person who failed to render assistance according to his ability in the prevention of crime would be banished with his

⁶*Ibid.*, pp. 318-23 (quoting *Manu IX 264-67, Katyana 33-34*).

⁷Choudhuri, Dr. Mrinmaya, *Languishing For Justice*, p. 106.

⁸Jois, *op.cit.*, pp. 319-21 (quoting *Katyana 34*).

⁹Choudhuri, *op. cit.*, p. 106.

¹⁰Jois, *op.cit.* p. 320 (quoting *Katyana 33*).

¹¹ *Ibid.*, pp.385-86

¹²*Ibid.*, p.388 (quoting *Katyana 407*).

goods and chattel.¹³ Double punishment was prescribed for those who fail to give assistance to one calling for help though they happen to be on the spot or who run away after being approached for help.¹⁴

4. Right of self-defence existed during ancient India. A person could slay without hesitation an assassin who approached him with murderous intent. By killing an assassin the slayer committed no offence.¹⁵ A person had a right to oppose and kill another not only in self-defence but also in defence of women and weak persons who were not in a position to defend themselves against a murderous or violent attack.

5. Offences and misconduct committed by police officers, Jail Superintendent and other public servants were taken very seriously and severe punishments were prescribed.¹⁶

2.2 MEDIEVAL INDIA

Though a few Hindu kingdoms existed during the medieval period, the country was mostly dominated by the Muslim rulers. The King, who was known as Sultan or Emperor, was assisted by his minister. The rulers during the medieval period emphasized the importance of administration of criminal justice and introduced reforms to improve the judicial machinery.

The Sultans of Delhi revived and re-established some of the police traditions and functions of ancient India. The Kotwal was the key police official. The normal duties of the Kotwal and his men included patrolling the thoroughfares at night, guarding vantage points, maintenance of records of all arrivals and departures of strangers and other routine functions.

The Amir-i-dad, assisted by Muntasib used to supervise and coordinate the police work of the Kotwals working under him. Balban introduced the system of espionage to find the truth about criminals. Sikandar Lodhi initiated several reforms in the criminal justice system. With the advent of Babar in 1526, the administration of order began to take shape on Indian soil. The Mughal rulers, especially the later Mughals, were deeply concerned with

¹³Ibid., p.380 (quoting Manu IX-274).

¹⁴Ibid., p.381 (quoting Vishnu p.31-74).

¹⁵Ibid., p.381 (quoting Vishnu p.31-74).

¹⁶Ibid., pp. 371-372 (quoting Manu VIII 350-351).

the problem of internal security of the empire. During Akbar's period the head of the provincial government, known as Subedar or Nazim, had a number of Fauzdars under him to administer the police functions. The principal duties of a Fauzdar were (a) guarding of the highways and arresting of robber gangs; (b) suppression of all disorders and smaller rebellions; (c) realization of state dues from defaulting villages; and (d) over-awing opposition by show of force. The Fauzdar had Thanedars as his subordinates. The nomenclatures "Fauzdar" and "Thanedar" are still in vogue in India.

The Ain-i-Akbari, written by Akbar's minister, AbulFazal, provides us a glimpse of the organization and functioning of the police. The Kotwal was the police prefect of the city. A Kotwal was allowed a large establishment and was given salary by the State out of which he had to also maintain his subordinate personnel.¹⁷ The Kotwal was a very powerful man who had to be present at all royal durbars. He acted as the chief of the city police, as a magistrate and a municipal officer. His major police functions were to arrange the watch and ward of streets, to post men at places of public gathering, to look out for pick-pockets and mischievous elements, to control distillation and sale of liquor, to look after prisons and also to execute royal sentences.

Sher Shah Suri was of the opinion that stability of the government depended on justice and that it should be his greatest care not to violate it either by oppressing the weak or permitting the strong to infringe the laws with impunity. Heads of the village councils were recognized and were ordered to prevent theft and robberies. In case of robberies, they were made to pay for the loss sustained by the victim. The Shiqahdars who had until now powers corresponding to those of Kotwals were given magisterial powers within the parganahs. Police regulations were drawn up for the first time in India.¹⁸

During the Muslim rule in India the policing of the cities and towns was entrusted to Kotwals and of the countryside to Faujdars. Judiciary and Police were placed under the Chief Sadr and Chief Qazi both offices being held usually by the same person.¹⁹

The Mughals had established the kotwali system in the cities and the chowkidari system in the villages. The Court of Fauzdar tried petty criminal cases concerning security and suspected criminals. Kotwals were also authorized to decide petty criminal cases. Contrary to

¹⁷ 21. Choudhuri, op.cit., p. 109

¹⁸ 21. Choudhuri, op.cit., p. 109.

¹⁹ Kulshreshtha, V.D., Landmarks in Indian Legal and Constitutional History, p.21.

the practice under Hindu law, all crimes were not considered injuries to the State under the Islamic penal law. The offences were classified under three heads, namely, (1) Crimes against God, (2) Crimes against the State, and (3) Crimes against private individuals²⁰. The institution of Kotwal came to an end with the crushing of 1857, the first war of freedom, by the British. The last Kotwal of Delhi, appointed just before the eruption of the first war of freedom, was Mr. Gangadhar Nehru, grand father of Pandit Jawaharlal Nehru, India's first Prime Minister.²¹

Among the Hindu kingdoms, the Vijayanagara empire, from AD 1336 to 1646, was the most famous. Krishnadevaraya was the greatest of the rulers of this dynasty. The example of Vijayanagar and their system of adjudication of the criminal justice indicate the functioning of a full-fledged judicial system.²²

In the Maratha kingdom, Shivaji's revenue officers such as Sar-subhedar, Subhedar, Havaldar, Kamavisdar, Mukadam or Patil (village officers) were also responsible for maintenance of law and order within their jurisdiction. Havaldars were also responsible to protect the forts. During the Peshwa rule, elaborate police organisation existed in Subha or Prant. Sar-Subhedars and Subhedars were responsible for law and order in their territories as well as security on the highways, for which police forces were kept under their control and supervision. The District and Pargana police was under the mamlatdar and the expenditure was incurred from revenue of the territory. Pargana police had also a force consisting of mounted police and foot police. If the rich men or traders required special police protection, expenditure was recovered from them. Village police work was entrusted to the Patils or the Mukadams.²³

2.3 MODERN INDIA

When the East India Company took over the reigns of administration from the Mughals, the law and order situation in the empire was at a very low ebb. The police

²⁰The Gazetteer of India, Volume II, pp. 457-58.

²¹Kulshreshtha, op. cit., p.23; Choudhuri, op.cit.pp.69-70.

²² Singh, Dr. D.R., "Evolution of Criminal Justice", Indian Journal of Public Administration, July September

²³ 27. Joshi, Dr. P.L., Nagpur Police Through Ages, pp. 23-26.

organization conniving with criminals and harbouring offenders in return for a share of the booty was a challenge to the ingenuity of the foreign traders. The problems of internal security and protection of their commercial establishments invited their best attention. They evolved a concrete policy of gradual but piecemeal reforms in the organization and working of the police machinery in India. The British policy of gradual and piecemeal reforms was characterized by the processes of continuity and change in the evolution of police administration in the company's territories. They retained the village system but relieved the Zamindars of their liability for police duties. They quite laboriously and ingeniously built over a period of time the super-structure of a modern police, without much disturbing the indigenous police system. The police as it exists today, took its actual shape during the British period.

The British rulers in India took a detailed review of the existing criminal justice system of which the police was an essential component. Warren Hastings could observe the defects and inequities of the existing system of criminal law and the machinery of criminal justice. He, however, could not venture to uproot the Muslim criminal justice system and tried to tread a pragmatic path and adopted the device of experimentation with the triple policy of the preservation of heritage as far as possible, reorganization where inevitable and improvements where inescapable.²⁴

Lord Cornwallis was the first British administrator who tried to improve the police system. He appointed a Superintendent of Police for Calcutta in 1791 and thereafter, extended his efforts to the mofussil. He was of the opinion that the interests of the Company's government and that of the people were interconnected and therefore, protecting the interests of the people and ensuring the happiness and prosperity of the people was necessary to the Government even from the point of view of its own stability and permanency.²⁵ He took police powers out of the hands of the zamindars of Bengal, Bihar, and Orissa and ordered, in 1793, the District Judge to open a police station for every four hundred square miles and to place a regular police station officer over it. This officer was known as the Daroga. The Kotwal continued to be in charge of the police in the town.²⁶

The Daroga system introduced by Cornwallis was designed to represent the might of the government in the rural areas where the Zamindars were previously exercising

²⁴Choudhuri, op. cit., p.73.

²⁵ Ibid. p. 157 (quoting the minutes of Cornwallis dated February 11, 1793).

²⁶Choudhuri, op. cit., pp. 110-112.

police powers. The system was, however, undermined and the new arrangement was stretched too thin. It did not measure up to expectations. Crime continued to mount and the social conditions became even more unsettled. To reform the police, the Governor General in Council defined and specified the duties and powers of the Daroga under Regulation XX of 1817 which is regarded as the first Police Manual ever drawn up for the guidance of their conduct.²⁷

Lord Cornwallis, it is pity, had no model for a police system either at home or abroad. Even about five decades later, in 1839, the report of the Police Commission in England “continued a melancholy picture of the state of the English Police”. Police administration in England was, before the reforms of Sir Robert Peel, very nearly as much open to criticism as it was in India. To cope with the situation, Sir Robert Peel introduced his Metropolitan Police Force in London by special Parliamentary statute.

Lord Cornwallis in 1792 introduced a uniform pattern for the first time, abolished the Zamindari and Thanedari systems and organized a separate police force under a District Magistrate in Bengal. The districts were now divided into police station jurisdictions and a Daroga was appointed by the Government in each of these police stations with an establishment including a Moharir, a Zamadar and ten Burkundazes. This plan was later examined by three different committees on police reforms. All these committees were of the opinion that village police should be given more powers and responsibilities than what they had enjoyed so far. The District Collectors, in addition to their revenue duties, were made the administrative head of the police organization, an arrangement which still continues to prevail in India except in the areas for which Commissioners of Police are appointed. In 1808, the government introduced special and expert control over police administration through a new chief now to be designated as Superintendent of Police for the divisions of Calcutta, Dacca and Mursidabad in Bengal. The middle decades of the 19th century witnessed a greater systematisation and institutionalisation of policing in Calcutta. William Coats Blaquiere, a charismatic city magistrate, inaugurated a network of spies or “goondas”. In 1845 a committee under J.H. Patton brought key changes in police organisation which now began to be modelled on the London Metropolitan Police. A Commissioner of Police was appointed with powers of a justice of peace to preserve law and order, detect crime and apprehend offenders.

²⁷Ibid

In the city of Bombay, the system of policing had begun with the establishment of a police out post by the Portuguese in 1661. When the East India Company acquired Bombay in the year 1669, Gerald Aungier became the Governor of the City and is considered the founder of the city's present police force. He organised the Bhandari Militia with Subhedars headquartered at Mahim, Sewree and Sion. In the year 1779, James Tod was appointed as "Lieutenant of Police. In March 1780, the office of the Lieutenant of Police was annulled and office of Deputy of Police was created in its place. Subsequently, the designation was changed to Deputy of Police and High Constable. In the year 1793, the post of Deputy of Police and High Constable was abolished and in its place post of Superintendent of Police was created. Mr. Simon Halliday was the first Superintendent of Police, who continued till 1808.

The Governor in Council, under the provisions of the Indian Police Act of 1856 (XIII of 1856) had appointed Mr. W. Crawford as the Commissioner of Police for the "Town and Island of Bombay" on 13 October 1856. He was permitted to continue to perform his duties as Senior Magistrate of Police also. In the year 1864, the posts of Senior Magistrate of Police and Commissioner of Police were segregated and Mr. Frank Souter took over as the independent Commissioner of Police on 14 November 1864.

In Madras, in 1816, the Superintendent of Police was taken out of the hands of the Judges and was placed under the Collectors, who had the indigenous village police under their control. This was soon followed by other provinces. In Madras Presidency, the process of police reorganization commenced with the enactment of Regulation XI of 1816 which rescinded Regulation XXXVI of 1802. Impressed by reforms in police administration in Sind, the Madras Government in 1885 appointed the Torture Commission which examined the then existing organisation of Madras Police. The Commission observed : "Police, we consider, do involve a duty entirely distinct from the magisterial. It is to all intents and purposes in its nature executive and although not absolutely incompatible with that of a magistrate."

The enquiry into the organization and working of police in the presidency of Bombay began as early as 1813. A police committee was appointed that year and its recommendations were put into operation in 1827. Under Regulation XII of 1827, the orders of the Court of Directors became effective and the Collector, the Mamlatdar or the Tehsildar and the Patel in Civil hierarchy were authorized to employ all the revenue

servants of the village on police duties. This placed criminal justice and the police under the supervisory care of the Saddar Fauzdari Adalat. The Collector became the head of police administration in the district. In the newly conquered territory of Sind, now in Pakistan, Sir Charles Napier, in 1843, set himself to the task of introducing a police system on the model of Royal Irish Constabulary. As per his plan, while the police force was to continue under the authority of the Collector, yet in each district they were to be supervised by an officer whose sole duty was to control and direct them. Napier created a separate police organization directed by its own officers. Direction throughout the area of Sind was in the hands of the Inspector General of Police and in each district with the Superintendent of Police. The latter was accountable to the Inspector General of Police as well as the District Collector.²⁸

The Napier experiment in Sind impressed Sir George Clark, the Governor of Bombay, who in 1847 decided to re-organise the police of his presidency on similar lines. In 1848, Clarke appointed full-time European Superintendents of Police in many districts. In 1853, the police in Bombay was remodelled on Napier's lines.²⁹ The leading characteristic features of the model were three, namely, (i) every district was to have a Superintendent of Police who while generally subordinate to the District Magistrate was to have exclusive control over the police establishment in his district; (ii) every Tehsil was to have a native police officer; and (iii) the supreme control over police administration of the province, which was formerly exercised by the 'Fauzdari Adalat', was now to be transferred to the government of the province.

After the annexation of the Punjab in 1848, the Punjab Police was also re-organized on the lines contemplated in the Sind plan. Two kinds of police forces were created. One was an unorganised body of Burkundazes under the Deputy Commissioners in the districts and the other, regular police corps under the control of the Chief Commissioners. The latter was to be employed exclusively as jail and treasury guards and at such other places and on such duties previously performed by the army. The Punjab pattern initiated a similar process of police reorganization in the provinces of U.P. and Bengal.

All these reforms in the major provinces of the country in the pre-mutiny period laid down the foundations of the police organization which was later to forge an identity of

²⁸ Choudhuri, op.cit., 112-13.

²⁹ Ibid

its own and grow in stature after the termination of the company rule on Indian soil. The revolt of 1857 drew the attention of the Government of India to the urgency of police reorganization. Accordingly, a Commission was appointed in 1860 to study exhaustively the police needs of the government. Its main recommendations were embodied in the Police Act of 1861. The aims enshrined in the Act were to re-organize the police and to make it a more efficient instrument for the prevention and detection of crime. This Act is still in force in India.³⁰

Police Commission of 1860

The revolt of 1857 shook the very roots of the administration of law and order in India. It made the imperial government realize the inadequacy of police machinery and the urgency of a unified and organized police system for the entire country. The Court of Directors of the East India Company in its despatch dated 24 September, 1856 accepted a fairly liberal and progressive common plan of reorganization of the police in British India, specially as the Government was worried over the mounting cost of the police, particularly the Military Police. This was the background, in which the Government of India appointed a Commission to enquire into the whole question of police administration in British India and to suggest ways and means for an increase in police efficiency and to recommend sizeable reduction in the excessive expenditure involved in maintaining the police force. The Police Commission of 1860 brought forth its report in the course of a few months and its recommendations had a very far-reaching effect. The Commission inter alia recommended the following:

- (i) Abolition of the Military Police as a separate organization, which in the Commission's view was neither necessary nor desirable.
- (ii) The constitution of a single homogeneous police force of civil constabulary for the performance of all police duties, the general superintendence of which was to be vested in the respective State Governments.
- (iii) Police was to be organized on provincial basis with an Inspector-General of Police in charge of the 'general police district' on the pattern of Royal Irish Constabulary.

³⁰ Ibid.

(iv) A district-based police system in which each of the district establishments was to be headed by the Superintendent of Police who was to function under the general control and supervision of the District Magistrate.

(v) A subordinate police force was to consist of Inspectors, Head Constables, Sergeants and Constables.

(vi) The Commission recommended retention of village police though it labelled it to be both inefficient and corrupt; The major recommendations of the Police Commission of 1860 were incorporated into a Bill which was passed into a law as Act V of 1861. The Police Act of 1861 was adopted in all provinces except Bombay Presidency. Here Regulation XII of 1827 continued to govern the Police. It was only in the year 1885, that an Inspector General of Police was appointed for Bombay Presidency though his counterparts were created in most of the provinces in or around 1861. The basic structure of the police organization as it exists in India today is based on the Police Act of 1861.

Police Commission of 1902-1903

The appointment of the second Police Commission was another significant step taken by the British for developing the police system of India. The preceding Commission of 1860 and the subsequent enactment of the Police Act of 1861 on the basis of its recommendations were found deficient in several aspects. Inefficiency and corruption in the ranks of police force were woefully rampant and the personnel recruited in the organization continued to be untrained and ill-equipped for the job. To streamline this rambling structure and to reform policies in the area of personnel administration, a thorough probe became necessary. In 1902, Lord Curzon, the Governor-General in Council, with the approval of the Secretary of State for India appointed the second All-India Police Commission. The Commission found a great deal to criticize. It observed:

“The police is far from efficient; it is defective in training and organization; it is inadequately supervised; it is generally regarded as corrupt and oppressive; and it has utterly failed to secure the confidence and cordial co-operation of the people.”³¹³⁹

The recommendations of the Commission, besides being of far-reaching importance, were based upon a consensus obtained among the senior administrators and police officials, who

³¹The Police Act, 1861 (Act No. 5 of 1861).

jointly contributed to the labours of the Commission. Some of the major recommendations offered by the Police Commission of 1902-03 were as under:

(i) A criminal investigation department was to be established in each province with a Deputy Inspector General of Police as its administrative head to control and supervise its organization and working.

(ii) The province as a unit of administration was to be divided into several ranges and each such range was to be controlled by a Deputy Inspector General of Police to be appointed for the purpose.

(iii) The office of the Superintendent of Police of the district was to be strengthened. A Deputy Superintendent of Police was to be appointed to assist him.

(iv) A separate and independent police organization to be known as Railway Police was also to be constituted on the basis of the existing jurisdiction of the provinces.

(v) The Divisional Commissioner was no more to interfere directly in the day-to-day affairs and working of the police administration.

(vi) A cadre of Sub-inspectors was to be raised for the first time in India and they were henceforth to be distinguished from their former counterparts, namely, the Darogas, the Thanedars and the Kotwals.

(vii) An armed police force was to be constituted at the headquarters of each district to serve as a reserve police force to handle emergent situations and other special kinds of police jobs of an adhoc nature.

(viii) The institution of the village headman was to continue. He was to perform the rural police duties through the deployment of village watchman, who in turn were not to be the members of the regular police force of the State.

The main recommendations of the Commission were generally adopted. The police system modified and improved on the basis of the recommendations of the Police Commission of 1902-03 continued when the British left India on 15 August 1947.

Police since independence

On independence in 1947, India inherited a well defined police system, mainly developed

during the British period. But, the situation changed after the Constitution of India came into force on 26 January 1950 as protection of the Fundamental Rights of the people became one of the most important functions of the police. Obviously, a significant change in attitude and style of functioning of police was urgently needed.

In order to bring about improvement in the police system many States appointed State Police Commissions, enacted State Police Acts and compiled Police Manuals. A National Police Commission was appointed in 1977 under the chairmanship of Mr. Dharam Vira, a former Governor. The Commission studied extensively various aspects and functions of the Indian police and brought out eight reports. The recommendations of the Commission have not yet been implemented. However, despite all these efforts, the police system in India continues to be based on the Police Act of 1861 and the recommendations of the Police Commission of 1902 without significant changes.

CHAPTER III

POLICE IN INDIA

The chapter presents an overview of the context of the study i.e. policing in India. The chapter traces the historical evolution of policing in India. It also takes a stock of present status of Indian police. The chapter ends with the identification of signs of stress among Indian police.

3.1 Indian Police

The Context The term police has been derived from the latin word *politia* which means the condition of a Polis or State. According to Oxford dictionary, the term police means a system of regulation for the preservation of order and enforcement of law; the internal government of State (Kalia, 1995). The term broadly refers to purposeful maintenance of public order and protection of persons and property, from the hazards of public accidents and the commission of unlawful acts. It refers to civil functionaries charged with maintaining public order and safety and enforcing the law including the prevention and detection of crime . India is multi-cultural, multi-ethnic and vast country. It is the second most populated country of the world. Maintaining law and order in world's largest democratic country is an arduous task. The police personnel provide for the security of people and enforcement of laws of the country. It determines the manner in which democratic decisions are implemented in the country. In view of the growing violence, social conflicts and serious threats of terrorist activities, the role of police is becoming even more important. The assurance of equality and dignity to the weaker sections of the society is also dependent upon the performance of the police. Clearly, police has a crucial role in the existence and development of India.

In the field of administration, police men have an important role to play. In India, Police force is the coercive arm of the State, which is entrusted to perform the basic duty of the State, that is, maintenance of law and order. Therefore, law and order administration has acquired significance at the Central, State, Range, District and Sub-District level in rural and urban areas. Rapid growth of population, industrialization, urbanization and growing political consciousness lead to law and order problems. Agrarian and tribal revolts, political, caste and communal violence, labour and student unrest and terrorism are indications of law and order

problems. In all societies, particularly in developing societies, these conflicts and tensions are inevitable and many manifest in different forms. Freedom and independence will not have meaning unless these basic issues are properly attended. In this Unit, an attempt will be made to study the organisation of police at various levels; and critical issues that confront the Police Administration.

Police are one of the most ubiquitous organizations of the society. The policemen, therefore, happen to be the most visible representatives of the government. In an hour of need, danger, crisis and difficulty, when a citizen does not know, what to do and whom to approach, the police station and a policeman happen to be the most appropriate and approachable unit and person for him. The police are expected to be the most accessible, interactive and dynamic organisation of any society. Their roles, functions and duties in the society are natural to be varied and multifarious on the one hand; and complicated, knotty and complex on the other. Broadly speaking the twin roles, which the police are expected to play in a society are maintenance of law and maintenance of order. However, the ramifications of these two duties are numerous, which result in making a large inventory of duties, functions, powers, roles and responsibilities of the police organisation.

3.2 POLICE AND THE CONSTITUTION OF INDIA

The Constitution puts police and public order (including railway and village-police) in the State List of the Seventh Schedule giving the State Legislatures the powers to legislate on these subjects. The Constitution, however, assigns a definite role of supervision and coordination to the Union Government also in the matters pertaining to police.³⁴² While police and public order are within the State field of legislative competence; preventive detention for reasons connected with the security of a state, the maintenance of public order and persons subjected to such detention are under concurrent jurisdiction of Parliament as well as State Legislatures. Article 249 of the Constitution gives powers to Parliament to intervene in state police administration, if there is enough justification for doing so.

3.3 POLICE ACTS

The Police Act of 1861, which prescribes the framework of police, is the nucleus structure around which the various central and varying state laws have grown to organize policing at village, tehsil, district, State and Union levels.

The Police Act of 1888 was enacted to create general police districts embracing parts of two or more provinces. It provided that the superintendence of the police throughout a general police district, so constituted, shall vest in, and be exercised by, the Central Government. The Police (Incitement to Disaffection) Act, 1922 was enacted to penalise any attempt by means of threats, intimidation and otherwise to induce members of the police force to refrain from doing their duty and to spread disaffection among them.

After independence another Police Act was passed in 1949 which empowered the Central Government to constitute a general police district embracing two or more Union Territories and applied the provisions of the Police Act, 1861 to such a general police district. The Police Forces (Restriction of Rights) Act, 1966 provides for the restriction of certain rights conferred by Part III (Fundamental Rights) of the Constitution in their application to the members of the forces charged with the maintenance of public order so as to ensure proper discharge of their duties and maintenance of discipline among them.

Many States have also enacted laws to create, restructure and regulate their police forces such as the Bombay Police Act of 1951, the Kerala Police Act of 1960 and the Mysore Police Act of 1963.

In addition to the Police Acts, the police derives powers from the Cr.P.C., I.P.C., Indian Evidence Act and numerous other central and state criminal laws. Chapters IV to VII, and X to XII of the Cr. P.C. contain detailed provisions relating to the powers of the police including the power to arrest, search, investigate, disperse unlawful assembly, take preventive action.

The police forces in India are broadly divided into two, namely, (1) State Police and (2) Central Police Organizations.

(1) State Police

As regards the police set up in the States, the entire police establishment under a State Government is deemed to be one police force. The superintendence of the police throughout a State is vested in and, is exercised by the State Government and except as authorized under the provisions of the Police Act, 1861, no person, officer or court can be empowered by the State Government to supersede or control any police functionary. Since for maintaining public order in the Union Territories, the Union Territory police, though under the control of the Central Government, functions on the pattern of the State police as prescribed by the Police Act, 1861 and therefore, wherever State police is referred, it also includes Union Territory police unless otherwise stated.

As per the provisions of the Police Act, 1861 the administration of the police throughout the State is vested in an officer to be styled as Inspector General of Police. In post-independence period most of the States have created the ranks of Director General of Police and Additional Director General of Police which are higher than the rank of I.G.P. and therefore, now-a-days an officer of the rank of D.G.P. is posted as the head of the State police. However, in pursuance of the provisions of the Police Act the head of the State police is still designated as Director General of Police & Inspector General of Police.

The State is divided into convenient territorial divisions called police ranges. Generally an officer of the rank of Deputy Inspector General of Police is posted as head of the police range, but in some states like Maharashtra and Haryana, the practice of posting I.G.P. as an incharge of police range has come in vogue. In some States like Uttar Pradesh and Madhya Pradesh, a number of police ranges, manned by the D.I.G.s, constitute the zone which is put under an I.G.P. A police range consists of a number of districts.

The administration of the district police, under the general control and direction of the District Magistrate, is vested in an officer of the rank of Superintendent of Police. The whole area of the district is divided into police stations which are considered the basic units of the State police. An Inspector or Sub-Inspector is posted as officer in-charge of the police station, who, in some States like Haryana, is also known as Station House Officer. Although the jurisdiction of a police station is further sub-divided into police out-posts, police chowkies or police beats, yet the police station continues to be the basic unit of the State/U.T. police. A group of police stations forms a police sub-division which is supervised by a Deputy Superintendent of Police or Assistant Superintendent of Police. In most of the

States the incharge of a sub-division is designated as Subdivisional Police Officer while in some States like Uttar Pradesh he is known as Circle Officer.

In addition to the normal field hierarchy, as described above, there are specialized units and branches in the State, districts and police commissionerates which perform the subsidiary functions and work in coordination with the executive police. These include criminal investigation department, intelligence branch, traffic branch, motor transport section, wireless section, dog units, training institutions, etc.

As mentioned in the introduction of this study, the police is the primary and frontier organ of any criminal justice system. The process of criminal justice begins with initiative of the police. More efficient the working of the police, more will be the success of the criminal justice system. The police is an active limb of the criminal justice system which serves both prosecution and the courts. It is an agency which deals the public before any other organ of the criminal justice system. Its public dealing is more direct and impact worthy. It is only the working of the police which can generate trust among the people in the criminal justice system of the State. The role and functioning of the police depends on variety of factors, which includes political, social, economic and legal setups. Organisation is the most significant aspect of administration. Without it, the whole administrative efforts will be in vain. An organisation is a set of personnel working collectively to achieve a common objective. Organisation is both a structure as well as an activity to activate that structure. The structure of the organization sets the tone and trajectory of the functioning of any agency. Therefore, it will be worthwhile to analyse the organisational structure of police in India and the state of Punjab. The concept of modern policing in India was introduced under the British rule, particularly it was the Police Act of 1861 which set the ball rolling for the evolution of a comprehensive police system in India. It was this Act which become the corner stone of the police organization at all India level and various union territories and states in India. This Police Act gives each State Government the power to establish of its own police force.³²¹ In addition to this Act, other legislations like, Indian Penal Code and Code of Criminal Procedure (Cr.PC) were also made to regulate the police operations. This act remained in force till recently. It was in 2008 that Punjab Police Act 2007 came into force and replaced the previous system.

³²¹S.2 of the Police Act 1861.

The nature of the organizational structure of any police is by and large decided by the public policy of the state, or more particularly the policies of rulers. The main thrust of the rulers in pre-independence India, was to control their subjects. Therefore, the police structure was so built, which was meant to act as, an “efficient instrument for the prevention and detection of crime.”³³ Though, after India got independence, a democratic system was adopted, which was meant to act as an instrument of service to the people, but the Police Act of 1861 continued in practice.

In the post independence period various reform committees and commissions were set up to in-tune the police organizational structure according to the needs of the time. These commissions have been constituted to review the functioning of the police, identify the flaws within the existing system of administration, and make recommendations. The National Police Commission, was set in 1977 by the Union Government. It was given wide terms of reference that included the organization, role and functions of the police, policepublic relations, political interference in the police work, misuse of police powers and police accountability and performance evaluation.³⁴ The commission produced 8 reports between 1971 and 1981. Lastly, it prepared a draft of a new Police Act to replace that of 1861. Many subsequent committees like Ribeiro Committee, Padmanabhaiah Committee and Police Act Drafting Committee under Soli Sorabjee in September 2005³⁵ have largely reiterated the above recommendations. But there has been delay on the part of the Government to introduce these recommended police reforms. In 1996, Mr. Prakash Singh, a retired police officer petitioned the Supreme Court and urged to issue “directions to Government of India to introduce reforms in Police suggested by various commissions in order to ensure that the police is made accountable essentially and primarily to the law of land and the people.”³⁶ The Supreme Court referred to the recommendations made by various committees on police reforms and pointed out the requirement of reform to be made regarding:

- (a) State Security Commission at State level;
- (b) transparent procedure for the appointment of Police Chief and the desirability of

³³ Preamble, of the Police Act, 1861.

³⁴ See: Daniel Woods, ed, Police Reform Debates in India-Selected Recommendations, Commonwealth Human Rights Initiative, New Delhi, 2007

³⁵ South Asia Human Rights Documentation Centre, Handbook of Human Rights and Criminal Justice in India, Oxford University Press, New Delhi, 2007, p. 11

³⁶ of Human Rights and Criminal Justice in India, Oxford University Press, New Delhi, 2007, p. 11

giving him a minimum fixed tenure;

(c) separation of investigation work from law and order; and

(d) a new Police Act which should reflect the democratic aspirations of the people.

The Supreme Court directed State Governments to establish State Security Commission and Police Establishment Board to determine transfers, postings promotions, etc. It also outlined the procedure for the selection of the Director General of Police, prescribed minimum two years tenure for police officers, and directed police departments to separate the law and order function from the investigation function. The Apex Court also ordered the creation of district and state level 'Police Complaints Authority' to deal with the grievances against the police.³⁷

It was under these directions that Punjab Police Act, 2007 has been enacted which has come into force in the month of February, 2008. Though, the Punjab Police Rules are framed in 2011 by the Punjab Government but these are yet to be implemented.

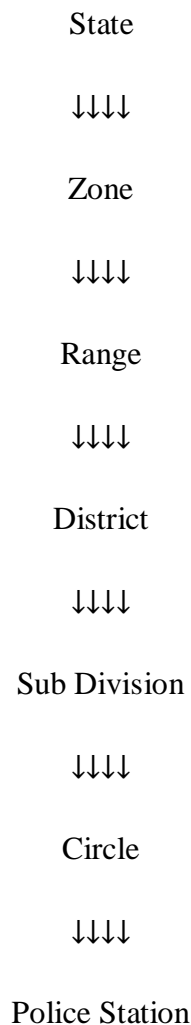
³⁷ Ibid. Supra

CHAPTER IV

ESTABLISHMENT AND ORGANISATIONAL STRUCTURE OF POLICE

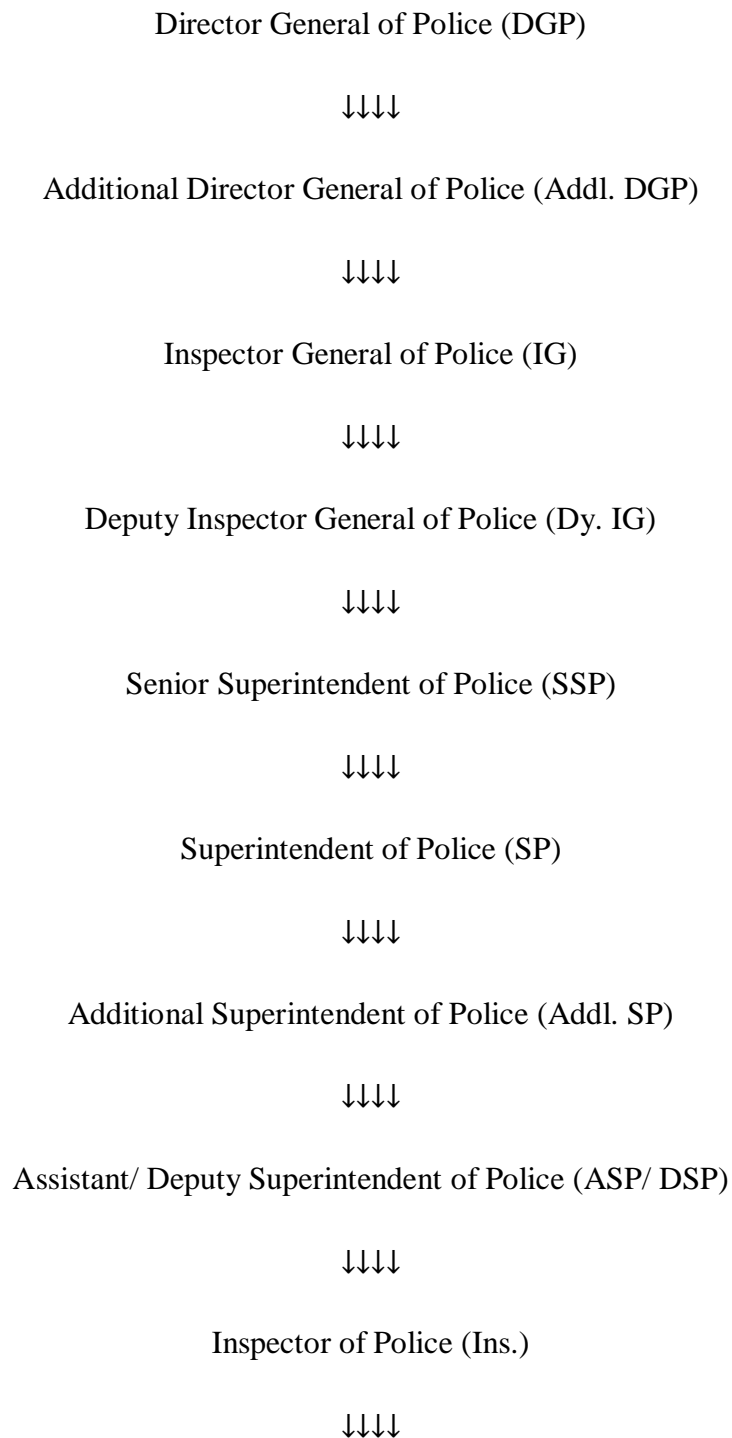
4.1 ORGANIZATIONAL STRUCTURE

Each of the 28 states of India has a police force. The superintendence over it is exercised by each State Government. The head of the police force in the State is known as Director General of Police (DGP). The DGP is responsible to the State Government for the administration of the police force in the State and for advising the government on the police matters. State Police Organizations in India are structurally organized into various formations. The structural formation of any State Police in India is as follows:



Police units in India are well-structured hierarchical organizations. Though, there is marginal variation in the ranks and hierarchical order in the different organization, however, there is a general uniformity in this context in most of the police organizations.

The rank and hierarchical structure of the police organization is as following:



Sub-Inspector of Police (SI)

↓↓↓↓

Assistant Sub-Inspector of Police (ASI)

↓↓↓↓

Police Head Constable (HC)

↓↓↓↓

Police Constable

Director General of Police (DGP): For the overall direction and supervision of the police force, the State Government appoints a Director General of Police, who exercises power, performs functions and duties, and has responsibility and authority as is prescribed. The Director General of Police is the Chief of the PHQ and has the senior most position in the hierarchy of the Police Force of the State and no other officer senior or equivalent in rank to the incumbent Director General of Police is posted to any position within the police organization to ensure that the unity of command is maintained at all times. However, there is no restriction on appointment of an officer of the rank of Director General outside the State Police organization/force.

Additional Director General of Police (ADGP): Additional Director General of Police (ADGP) is a high ranking police officer in Indian States & Union Territories. All ADGPs are Indian Police Service (IPS) officers and are in above super time scale (HAG) (pay-band-4) grade. The equivalent position or designation in the state government(s) or Government of India (GOI) of Additional Director General of Police are as Commissioner of Police (city), Special or Additional Director (GOI), Special or Additional Secretary (R), Cabinet Secretariat (GOI). The rank insignia of a Additional Director General of Police or Commissioner of Police (city) is the national emblem over crossed sword and baton.

Inspector General of Police (IGP): The Inspector General of Police is a two-star rank officer and one of the senior most officers in the state police forces which usually head

the police force in each city. All Inspector Generals are Indian Police Service (short form IPS) officers. They are in some states the commissioner of police for the city, that is, they head a police force for a particular city. The rank insignia of a Inspector General of Police or Joint Commissioner of Police is one star above crossed sword and baton.

Deputy Inspector General of Police (DIG): An Officer of the rank of Deputy Inspector General of Police heads each Police Range. He supervises the police administration of the Range field formations i.e. police districts, circles, police stations and other police units under his charge. He reports directly to the Zonal Inspector General of Police. The Range office consists of the following Branches. • General Branch • Force Branch • Crime Branch • Law & Order Branch • Accounts Branch • Computer & MIS

Superintendent of Police (SP): The administration of the police throughout districts vests in an officer of the rank of Superintendent of Police. For an effective and efficient administration of the Police District, the Superintendent of Police, assisted by as many Additional, Assistant and Deputy Superintendents, are deemed necessary.

The SP office has the following branches/sections for efficient and quick disposal of its various functions and tasks: • Receipt and Dispatch Branch • Administration and Establishment Branch • Confidential Branch • Crime Branch • District Special Branch • Force Branch • Accounts Branch • General Branch • Welfare Branch • Complaints, Vigilance and DE Cell • Legal and Prosecution Cell • MOB, Photography and Scientific Aids Unit • District Crime Record Bureau (DCRB) • Computer Branch and MIS • Police Special Cell

Deputy Superintendent of Police (DSP): Deputy Superintendents are state police officers who belong to the provincial police forces, either direct entrants at that rank or promoted from inspector. DSPs who are members of the provincial forces (equivalent rank deputy superintendents) are equal in every way to IPS (equivalent rank assistant superintendent of police) although paid slightly less and fill the same positions (sub divisional police officer). Deputy Superintendents of Police who show potential could be promoted to the I.P.S after some limited years of service which varies from 8 to 15 years depending on the state.

Inspector of Police: An inspector is a non-gazetted police officer ranking above a SubInspector and below a Deputy Superintendent of Police (DySP). In the Rural areas Inspectors generally have jurisdictions over more than one police station (generally under a

Sub-Inspector of Police). However, in many cities, Inspectors would be the Station House Officer (SHO) at every police station. The rank insignia for a Police Inspector is three stars, and a red and blue striped ribbon at the outer edge of the shoulder straps. In rural areas where an inspector is in charge of a police circle (consisting more than one police station) he is also referred to as "Circle Inspector".

Sub-Inspector of Police (SI): A sub-inspector (SI) is generally in command of a police station (with head constables, the equivalent of corporals, commanding police outposts). He is the lowest ranked officer who under Indian Police rules and regulations can file a charge sheet in court, and is usually the first investigating officer. Officers subordinate to him cannot file charge sheets, but can only investigate cases on his behalf.

4.2. POLICE HEADQUARTERS

Police Headquarter, popularly known as PHQ, is an apex organization of any State police force. PHQ is a large establishment divided into various wings, branches, sections or units. A senior officer, who is of the rank of Additional D.G., I.G. or D.I.G.P heads each of such unit. Each wing, branch or section of the PHQ has adequate number of officers and men with requisite resources for smooth and effective functioning and for an efficient discharge of the various functions assigned to the specific unit.

1.UNITS, BRANCHES, WINGS, SECTIONS OR DEPARTMENTS OF POLICE HEADQUARTER

Police Headquarter, being an apex, high powered and an important level of any police organization is assigned numerous functions, powers, duties and responsibilities. In order to discharge all these jobs efficiently and smoothly every police headquarter is divided into various units, branches, wings, sections and departments. Police Headquarters of various States have the following units as per their needs, demands and functional requirements. An officer of the rank of Additional Director General or Inspector General or Deputy Inspector General of Police heads each of such unit.

- Establishment and Administration Branch
- Headquarter Branch
- Personnel Branch
- Reorganization, Modernization, Rules and Regulation Branch
- Planning, Welfare and Housing Branch
- Law and Order Branch
- Armed Forces Branch
- Vigilance Branch
- Crime Branch/C.I.D.
- Special/Intelligence /Security Branch
- Technical Services Branch
- Traffic Branch
- Police Training and Research Wing
- Provisioning, Logistics and Stores
- Legal and

Prosecution Wing • Co-ordination Branch • Police Transport Organization • Police Communication and Computer Organization • Government Railway Police • State Crime Record Bureau • Budget and Finance Branch

The State Police Organizations may set up as many branches and wings at the level of Police Headquarter in accordance with their policing requirements.

2. STRUCTURE, FUNCTION AND POWERS OF THE HEADQUARTER BRANCHES/UNITS

Each branch or wing and section of the Police Headquarter has an adequate structure and sufficient manpower and equipment according to the functional needs and duties assigned to it. The officers of various ranks are adequately empowered for an effective and efficient execution of the various tasks assigned to the respective branch or wing. Manpower planning is done in a judicious manner and adequate number of officers and men from all ranks and cadres are included in the sanctioned strength of each wing or branch of the PHQ.

Functions, duties, powers and responsibilities of each functionary are specifically spelt out and efforts are made to ensure that adequate decentralization of powers and functions exists for an effective, efficient and timely disposal of work. Important and significant administrative and management parameters like supervision; command, control, coordination, reward, punishment and motivation are clearly spelt out to remove any type of functional and operational confusion and uncertainty.

Each of the above units may have the requisite well-stratified and well-articulated structure, sanctioned strength, powers, functions and duties according to the policing requirements of each State. The personnel belonging to police force are governed by the respective Police Rules and other administrative staff is governed by Civil Services Rules applicable in the respective State.

The Central Government has also the power to amend some of the basic laws connected with police like the Indian Police Act, 1861; the Indian Penal Code, 1860; the Code of Criminal Procedure, 1861; the Code of Civil Procedure 1859 as these and other matters like administration of justice, preventive detention and other allied subjects which impinged upon the daily functioning of the State Police as these come under List III, Concurrent List. Thus, the Constitution creates a flexible situation in which the administration and organisation

of police, though they generally come under the jurisdiction of the states, are simultaneously within the purview of the Central Government under special circumstances.

The Union Government possesses the following police forces of its own which are: The Central Reserve Police Force (C.R.P.F.) is a paramilitary force under the Ministry of Home Affairs, Government of India. It was originally known as the Crown Representative Police (C.R.P.) and came into existence on 27th July, 1939.⁸³ After independence it became the Central Reserve Police Force (C.R.P.F.) on enactment of the C.R.P.F. Act on 28th December, 1949. It is basically a reserve armed police force with the Government of India for the purpose of assisting the State Police to maintain law and order and to deal with insurgency. Most of the States are short of armed police and there is a lot of demand for deployment of C.R.P.F. especially when there is a communal problem for its neutrality as compared to State Police who are constantly being accused of biases in favour of larger community.

It is under the command of a Director General. When deployed to a State it comes under the operational control of the State Police concerned. The Force was considerably expanded when numbers of State armed police battalions were incorporated to it in the sixties. Since then it continues to expand and the present strength is two hundred battalions.

The C.R.P.F. has within its fold ten battalions of a specialised outfit called Rapid Action Force (R.A.F.). It was formed in October 1992 to deal with communal riots and other related events. It is trained and equipped to enable quick movement and response with effectiveness. Secondly, there are two battalions exclusively staffed by women, the only such paramilitary units in the world. Until the creation of the Border Security Force (B.S.F.) in 1965, C.R.P.F. was deployed along international borders. On 21st October, 1959, Deputy Superintendent of Police Karam Singh and his 20 soldiers were attacked by the Chinese Army, at Hot Springs Ladakh, ten were killed and the rest taken prisoners. 21st October is now remembered across the country as POLICE COMMEMORATION DAY.

The broad gamut of duties performed by the C.R.P.F. include Crowd control, Riot Control, counter Insurgency operations, Deal with Left Wing Extremism, Overall coordination of large scale security arrangements specially with regard to elections in disturbed areas, Protection of VIPs and vital installations, Checking environmental degradation and protection of Flora and Fauna, Fighting aggression during War time, Participation in UN Peace Keeping Mission, and Rescue and relief operations at the time of Natural Calamities.

The Border Security Force (B.S.F.) is a central paramilitary force operating under the Union Ministry of Home Affairs. Until the Indo-Pak conflict of 1965, prevention of trans-border crimes and security of the borders were the responsibility of the respective Border States. The conflict highlighted the increasing incidence of crime on the borders. At that time the state police, the army units and the C.R.P.F. were all collectively involved in the administration of border security, but had no unified administrative command. The Central Government with the consent of the border states, established a separate and independent Border Security Force, which came to being on 1st December, 1965.³⁸ The Force is governed by the Border Security Forces Act 1968. The major functions of the B.S.F. are to coordinate the activities of various law and order agencies involved in the detection and prevention of crime in the border areas; to patrol the Indo-Pakistan, Indo-Bangladesh and Indo-Myanmar borders and to deal effectively and on the spot with incidents of minor intrusions, illegal infiltrations and trans border smuggling in the border areas. Mandated since inception to guard India's external boundaries, the B.S.F. ironically has found itself burdened with the additional task of tackling insurgency within the country, along with the Indian army, C.R.P.F. and State Police. Despite the success in a counter insurgency role, many in the government felt that this additional burden has led to a dilution of the B.S.F.'s mandate and degrading the force's ability to perform its primary role. The Indian government has now decided to implement to restrict each security agency to its mandate and thus, B.S.F. is gradually being withdrawn from its counter insurgency role. The B.S.F. has peace as well as war time role. Their task during peace time includes prevention of trans-border crimes, unauthorised entry into or exit from the territory of India, smuggling and related illegal activities, instilling a sense of security amongst the people living in the border areas and to help civil administration in maintenance of public order.

During war time the B.S.F. is to hold ground in less threatened sectors so long as the main attack does not develop in a particular sector and to protect vital installations against enemy commandos and para-troop raids.

The Railway Protection Force (R.P.F.) function is to protect the properties of Indian Railways and to prevent and investigate crimes committed against property of Indian Railways. Its duties are exclusively to guard railway property as well as property entrusted to the railways.

³⁸J.C. Chaturvedi, Police Administration and Investigation of Crime, 2006, p.224.

The R.P.F. is headed by a Director General of Police in the Railways Board.

The major functions of the force are protection of the railway tracks and railway property to ensure safe travel to the passengers; enforcement of laws and other administrative regulations of the railways to ensure a smooth passenger and cargo traffic all over the country; and initiating and executing of administrative measures conducive to the protection and security of railway property. It is a separate agency financed and directed by the railway administration itself.

Assam Rifles is the oldest Central Para Military Forces. Presently, it is headed by a Director General, who is an officer of the rank of Lieutenant General from the Army. Though the organisation has a cadre of its own officers, most senior positions are filled up by officers on deputation from the Army. The Force functioned under the control of the Ministry of External Affairs till 1965. Its control was then transferred to the Ministry of Home Affairs and has since been functioning under this Ministry.

However, it functions under the operational control of the army. The Assam Rifles was originally raised as the Cachar Levy for defending the North East Frontiers with a strength of 700 in all ranks. In 1863, the Cachar Levy was replaced by the Frontier Military Police unit commanded by a civil police officer. It was realised that the watch and ward of the frontier was a military task rather than civilian. In 1882 the Frontier Military Police was reorganized and converted into what was really military organisation, officered mainly from the Army. In 1917 further organisational change took place and the Frontier Military Police became the Assam Rifles.³⁹

The Assam Rifles Act 1941, presently governs the Force. Its Charter of functions include maintaining security of the North Eastern sector of the international border; helping states in the North east maintain law and order and other states as and when needed; and taking counterinsurgency measures in states of the North East.

The Sashastra Seema Bal (S.S.B.) is a border guarding force under the administrative control of Ministry of Home Affairs. The S.S.B. was set up in early 1963 in the wake of the Indo-China conflict to inculcate feelings of national belonging in the border population and develop their capabilities for resistance through continuous process of motivation,

³⁹Percival Griffiths, Op.Cit., pp. 389-390. J.C. Chaturvedi, Op.Cit., 2006, p.223.

training, development, welfare activities in the then North Eastern Frontier Agency (NEFA), Assam, Bengal, Uttar Pradesh, Himachal Pradesh and Ladakh.

The scheme was later extended to other states. Pursuant to the recommendations of the Group of Ministers on reforming National Security, S.S.B. was declared a border guarding force and lead intelligence agency for Nepal border in January 2001. Its role includes promoting sense of security among the people living in the border areas; preventing trans border crimes and unauthorised entries into or exit from the territory of India and to prevent smuggling and other illegal activities.

The Central Industrial Security Force (C.I.S.F.) was created by Parliament by passing the Central Industrial Security Force Act in 1968 and the Force came into operations on 10th March 1969. The C.I.S.F. was created to maintain the security of the major industrial undertakings in the public sector against labour unrest and other kinds of political violence which sabotage and retard productions in these units. Besides these the functions of the force include initiating legal action against those who threaten to disturb industrial peace and provoke situations leading to the destruction and damage of public property; coordination and cooperation between the state police and industrial authorities; posting of security data intelligence to the Ministry of Home Affairs; for formulation of policy; and undertaking of such ancillary duties may be conducive to better protection, safeguarding and special functioning of public enterprise. The C.I.S.F. was made into an armed force of the Union of India by an Act of Parliament passed on 15th June 1983. It is directly under the Ministry of Home Affairs and its headquarters at New Delhi. The C.I.S.F. now provides security cover to industrial units wholly owned or a joint venture with Government of India located all over India. It also provides consultancy services including security and fire protection to private industries as well as other organisations within the Indian government. The C.I.S.F. is now responsible for security at all commercial airports in India.

The Indo-Tibetan Border Police (I.T.B.P.) was conceived on 24th October, 1962 for security along the Indo-Tibetan Border. The I.T.B.P. was initially raised under the C.R.P.F. Act, however, in 1992 the Parliament enacted the I.T.B.P. Act, and rules thereunder were framed in 1994.⁹⁴ It is trained in mountaineering, disaster management and nuclear, biological and chemical disasters and most of the officers and men are professionally trained mountaineers and skiers. Its personnel have been deployed abroad to UN peace keeping mission in Bosnia and elsewhere. Presently battalions of the I.T.B.P. are deployed in

on border guarding duties manning border Out Posts at an altitude ranging from 9000 feet to 18500 feet in the western, middle and eastern sector of Indo-China border. The border outposts are exposed to high velocity storms, snow blizzards, avalanches and landslides, besides hazards of high altitude and extreme cold, where temperature dips up to minus 40 degree Celsius. I.T.B.P. conducts long range and short range patrols to keep an effective vigil on inaccessible and un manned areas on the border. To maintain optimum operational efficiency of troops, periodical tactical exercises are conducted independently as well as jointly with Army. Adventure and dare-devilry are the required professional skill for I.T.B.P. and therefore, from its ranks come world class mountaineers who have scaled more than a hundred Himalayan peaks, including Mount Everest. It has recently taken on disaster management role. Being the first responder for natural disaster in Himalayas, it was the first to establish Regional Response centres in Himachal Pradesh, Uttaranchal and North East and carried out numerous rescue and relief operations in various disaster situations. It has been training its personnel in Disaster management and in Radiological and Chemical/Biological emergencies. It also established a national Centre for Training in Search, rescue and disaster response at Bhanu, Haryana which is imparting training to its own members and that of other Paramilitary and State Police forces.

Its unit provides security to the Embassy and Consulates of India in Afghanistan. Besides this two companies are providing security in Afghanistan. The main role of this Force is to maintain vigil on the northern borders, detect and prevent border violations, and promotion of sense of security among the local populace; to check illegal immigration, trans border smuggling and crimes; to provide security to sensitive installations, banks protected persons and to restore and preserve order in any area in the event of disturbance.⁴⁰

The National Security Guard (N.S.G.) was created by the Cabinet Secretariat under the National Security Guard Act of 1985 (Act 47 of 1986).⁹⁶ The N.S.G. operates under the oversight of the Ministry of Home

Affairs and is headed by a Director General of who is from the Indian Police Service. The N.S.G. are also known as Black Cats because of the black nomex coveralls and the balaclavas or assault helmet they wear. The N.S.G. was established in response to the 1984 Operation Blue Star, the storming of the Golden Temple by the Indian military which caused widespread damage to the temple and heavy casualties, including civilians.

⁴⁰ J.C. Chaturvedi, Op.Cit., p.226.

The operation highlighted the need for a special force to conduct counterterrorist operations with greater efficiency.

The N.S.G. is a Federal Contingency Deployment Force to handle anti-hijack operations, rescue operations and to provide touch support to the Central Para Military Forces in dealing with anti-terrorist activities in whatever shape they may take place in different parts of the country. Its tasks include neutralization of terrorist threat in any specific area, building, vital installation, etc.; engaging terrorists in a specific situation in order to neutralize them; handling hijack situation involving piracy in the air or land and water and rescue of hostages in kidnap situations. It is also engaged in providing security of high risk VIPs; anti-sabotage checks of venues of visits/public meeting of VVIPs; data collection on Bomb Explosions; training of State Police personnel in anti-terrorism, VIP security, PSO duties and Bomb Detection and Disposal and Sky Marshal duties in Domestic and International flights.

The N.S.G. was modeled on the pattern of the SAS of the United Kingdom and GSG-9 of Germany. It is a task oriented force and has two complementary elements in the form of Special Action Group (S.A.G.) and the Special Ranger Groups (S.R.G.). All the personnel are on deputation.

The S.A.G. is the offensive wing drawn from the members of the Indian Army. The S.R.G. consist of members from other paramilitary forces such as B.S.F., I.T.B.P. and C.R.P.F. and State Police forces. There are other specialised units also. The N.S.G. commandos were first used to combat the insurgency movement in the Indian state of Punjab in 1985. The Force has now evolved into a counter-terrorist unit and has been continuing major combat operations in Jammu and Kashmir.

The Special Protection Group (S.P.G.) was raised on 8th April 1985.⁹⁸ The S.P.G., with about 3000 personnel, is used for the protection of VVIPs such as the Prime Minister. Recruits include Police and N.S.G. Commandos and they are trained like the US Secret Service. The officer cadre is mainly I.P.S. officers from various states and central cadres. The S.P.G. provides proximate security to VVIPs and the members of their immediate family. The S.P.G., over a period of time, grew both in size as well as specialisation.

Before 1981 the security of the Prime Minister at his/her residence and office used to be looked after by Special Security District of Delhi Police under the charge of Deputy Commissioner of Police. In 1981 a Special Task Force (S.T.F.) was raised by the Intelligence

Bureau (I.B.) to provide ring-round and escort to the Prime Minister during his movements both in New Delhi and outside. After the assassination of Prime Minister

Indira Gandhi in October 1984, a review was undertaken by a Committee of Secretaries and it was decided to entrust security of the Prime Minister to a Special Group under unitary and direct control of a designated Officer and the S.T.F. to provide immediate security cover both in New Delhi and outside. These decisions were taken as short term measures. On 18th February 1985, the Birbal Nath Committee went into the issue in its entirety and submitted its recommendations for raising a Special Protection Unit (S.P.U.). Accordingly on 30th March 1985, the President of India created 819 posts for the unit under the Cabinet Secretariat. The SPU was then re-christened, Special Protection Group, and the post of I.G.P. was re-designated as Director.

In addition to the above mentioned police forces there are other organisations which are under the overall control of the central government. They are the Central Intelligence Bureau and the Central Bureau of Investigation.

The Intelligence Bureau (I.B.) is a very important police organization under the Government of India and its working is in the 'top secret' bracket. It was established as Central Special Branch by an order of the Secretary of State of India in London on 23rd December, 1887.¹⁰⁰ The I.B. is reputedly the world's oldest intelligence agency.¹⁰¹ Following the recommendations of the 1902-03 Indian Police Commission, the organisation was renamed as the Central Criminal Intelligence Department. The word criminal was dropped in 1918 and its present nomenclature (I.B.) was adopted in 1920.

The I.B. maintains a very intimate contact with the state intelligence units and by virtue of its widely accepted superiority, maintains an indirect supervision over the state's intelligence machinery. Its advice and directions are invariably accepted by the states in all security matters. It is under the control of the Ministry of Home Affairs (M.H.A.). In practice, however, the Director of the I.B. (D.I.B.) is a member of the Joint Intelligence Committee (J.I.C.) and Steering Committee and has the authority to brief the Prime Minister should the need arise, but intelligence inputs (at least in theory) go through the regular channels in the M.H.A. to the J.I.C. It has branches all over the state capitals and important towns of the country so as to collect information about individuals and organisations.

The collection mechanisms of the I.B. vary depending on the region, but the IB operates both at the state level and the national level. The bulk of the intelligence collection is carried out by 'Grade II' employees of the I.B., i.e. in increasing order of seniority; the Security Assistant (Constable), the Junior Intelligence Officers (Head Constable), the Assistant (Central) Intelligence Officer (Sub-Inspector), Deputy Central Intelligence Officers (Inspector), and Joint Central Intelligence Officers (Superintendent of Police). The 'Class I' (gazette) officers carry out coordination and higher level management of the I.B. These officers are (again in increasing order of seniority) Asst. Director, the Deputy Director, Joint Director, Addl. Director, Special Director or Special Secretary and finally the Director I.B. Grade II officers are in part direct recruitment and officer deputed from State Police forces, but Class I officers are mostly deputed from state services.

At the state level all I.B. officers are part of the State Special Bureau report to a Central Intelligence Officer (the intelligence advisor to the Governor). The I.B. maintains a large number of field units and headquarters (which are under the control of Joint or Deputy Directors). It is through these offices and the intricate process of deputation that a very 'organic' linkage between the State Police agencies and the I.B. is maintained. In addition to these the I.B. has several units at the national level and in some cases Subsidiary Intelligence Bureaus to keep track of issues like terrorism, counter intelligence, VIP security and threat assessment, and sensitive areas like Jammu & Kashmir, North East Region (NER) and any other place which may be regarded as such due to any issue or matter.

The Central Bureau of Investigation (C.B.I) established in 1st April, 1963 evolved from the Delhi Special Police Establishment (S.P.E.) founded in 1941.⁴¹ This Bureau is under the Ministry of Home Affairs, as a central agency, for investigation of cases especially important crimes which have repercussions in more than one state. The Bureau has nine divisions, namely, the Anti Corruption Division, Economic Offences Division, Special Crimes Division, Legal Division, Coordination Division, Administration Division, Policy and Organisation Division, Technical Division, and Central Forensic Science Laboratory.⁴² The C.B.I. initiates its own investigation, and the states can borrow its services for the prevention and detection of crime, as and when required. It maintains a systematic statistics and records relating to crime and criminals on an all-India basis. The state governments and their police departments can seek and make use of the information collected by the C.B.I. The

⁴¹Rajinder Prasher, Op.Cit., p.44.

⁴²J.C. Chaturvedi, Op.Cit., p. 228.

C.B.I. is under the control of a senior Director General of Police. It handles criminal cases which can be broadly categorised as case of corruption and fraud committed by public servants of all Central Government Departments, Central Public Sector Undertakings and Central Financial Institutions; economic crimes, including bank frauds, financial frauds, Import Export & Foreign Exchange violations, large-scale smuggling of narcotics, antiques, cultural property and smuggling of other contraband items etc.; special Crimes, such as cases of terrorism, bomb blasts, sensational homicides, kidnapping for ransom and crimes committed by the mafia/the underworld.

The Union Government, through the Ministry of Home Affairs, plays an informal role in police affairs which is of considerable importance. The Ministry of Home Affairs is responsible to the Government of India for Police administration and guides and assists its counterparts in the states in important matters pertaining to criminal administration and special problems of law and order. The centre has the authority to direct the states to ensure full compliance with laws passed by the Parliament of India.

The Home Ministry plays a crucial role in the coordination of police work, it annually convenes a conference of state Director Generals of Police and Inspector Generals of Police. The group has no formal authority but serves as a forum for discussion of mutual problems and setting forth of policy directives for the guidance of State Governments and Police Forces around the country. The Home Ministry has from time to time provided special assistance, in the form of money, equipment or experienced personnel to States with special security problems.

The National Investigation Agency (N.I.A.) is the latest federal agency to be approved by the Indian Government to combat terror in India after the Government realised the need for a central agency to combat terrorism in the aftermath of the Mumbai terror attack in November 2008. The National Investigation Agency Bill 2008 was moved in the Parliament on 16th December 2008 and cleared by Parliament in December 2008. As per the Bill, N.I.A. has concurrent jurisdiction which empowers the Centre to probe terror attacks in any part of the country, covering offences, including challenge to the country's sovereignty and integrity, bomb blast, hijacking of aircraft and ships, and attack on nuclear installations. The agency is empowered to deal with terror related crimes across the states without special permission from the states. The National Investigation Agency Bill and Unlawful Activities (Prevention) Amendment Bill became a law on Tuesday, 30th December, 2008 when the President

Pratibha Patil gave her assent. At present N.I.A. is functioning as the Central Counter Terrorism Law Enforcement Agency in India.

The N.I.A. is headed by a Director General assisted by an Additional Director General. The N.I.A. is divided into three divisions. The Investigation Division, headed by Inspector General (Investigation) under who four teams, each headed by an Superintendent of Police. The Superintendent of Police report to Deputy Inspector General (Investigation). The Policy Research and Coordination Division, headed by Inspector General (Operations and Coordination) who is assisted by Deputy Inspector General (Policy Research and Coordination). There are four teams each headed by a Superintendent of Police who looks after Northern, Eastern, Western and Southern parts of the country. They coordinate with State Police Forces and other Law enforcement agencies in the States. At Headquarters, Deputy Inspector General (Policy Research and Coordination) and Inspector General (Operations and Coordination) looks after the coordination activities in various departments of the Central Government. Technology/IT wing also report to Inspector General (Operations and Coordination). The Division collects and collates information and data on terrorism and terrorist activities. Assistant Inspector General (Policy) assists the division in various administrative issues. The Administrative Division looks after the administrative and Accounts of N.I.A. Deputy Superintendent (Headquarters) helps Deputy Inspector General (Policy and Administration) in various administrative works.

The police is a State subject and its organisation and working are governed by rules and regulations framed by the State Governments. These rules and regulations are outlined in the Police Manuals of the State Police, Circular Orders and Standing Orders of the Director General of Police. The State Government exercises superintendence over the Police Force in the state. The head of police in the state is the Director General of Police (D.G.P.), who is responsible to the State Government for the administration and for all functioning of the State Police and for advising the government on police matters. States are divided territorially into administrative units known as districts. An officer of the rank of Superintendent of Police (S.P.) heads the District Police Force. A group of districts form a Range, which is looked after by an officer of the rank of Deputy Inspector General of Police. Some states have Zones comprising two or more Ranges, under the charge of an officer of the rank of an Inspector General of Police (I.G.P.). Every District is divided into Sub-divisions and each Sub-division is under the charge of an officer of the rank of Additional Superintendent of Police (A.S.P.) or Deputy Superintendent of Police (D.S.P.). Each Sub-division is again further divided into a

number of Police Stations, the number depending on its area, population and volume of crime.⁴³

In some of the states there are Police Circles consisting of a group of Police Stations. Circle headed usually by an Inspector of Police. A Subdivision may have one or more Police Circle. The Police Station is the basic unit of police administration in the district. Under the Criminal Procedure code, all crime has to be recorded at the Police Station and all preventive, investigative and law and order work is done from there. A Police Station is divided into a number of Beats, which are assigned to constables for patrolling, surveillance, collection of intelligence and other police works. In larger Police Stations as in cities and metropolitan areas the officer in charge is an Inspector of Police or even a D.S.P., while in rural areas or smaller police stations the officer in charge is usually of the rank of Sub-Inspector of Police.

The State Police is divided into the Armed and the Unarmed Police.⁴⁴ The Unarmed Police or the Civil Constabulary is uniformed but unarmed, although the personnel may carry a short baton. It is the police with which the public comes in contact daily. It investigates crimes, patrol streets, regulate traffic, look for lost children and generally extends police assistance to the people whenever it is called upon to do so. The primary function of civil police is to maintain law and order and deal with crime in all aspects like prevention, detection and investigation. Even prosecution was in the hands of the Police earlier in many places but now performed by a separate prosecution staff.

The Civil Police include mainly District Police forces, supervisory structures at the Range, Zone and State Police Headquarters and specialised branches to deal with crime, intelligence and training problems. The District Police force also has armed reserves, which are used mainly to meet the requirement of armed guards and escorts. They are occasionally also deployed to meet any emergency situation, before the state armed police arrive to handle it. The armed reserves are treated as part of the district civil police.

The Armed Police is normally organised into battalions more or less similar to the infantry. There may be one or more battalions in the State. They are quartered at various places in the cantonments established at various places in the state and is, thus, concentrated in a few points. It does not have daily contact with the public. It does not respond to calls

⁴³ J.C. Chaturvedi, Op.Cit, p.200.

⁴⁴. Rajinder Prasher, Op.Cit, p.45.

of assistance from individuals but orders from superior officers, which are issued when a situation involving public interest has arisen. It usually acts as a group and its personnel hardly exercise any individual discretion. The Armed Police battalions are divided into companies. Generally there are six service companies in a battalion. A company is further subdivided into platoons and platoons into sections. Ordinarily, three sections constitute a platoon and three platoons in a company. The rank structure of an Armed Police battalion is different from the Civil Police. The head of a battalion is the rank of a Superintendent of Police called the Commanding Officer or Commandant. He has a second in command, called Deputy Commandant. An officer known as Assistant Commandant, commands a company assisted by an Inspector. In some cases an Inspector may command a company. A Sub-inspector commands a platoon and a section is in charge of a Head Constable.⁴⁵

The Armed Police battalion is the State reserved armed force. When a situation arises within the State to such a scale that the Civil Police cannot control or when it is likely to spread with wide repercussions the State

Armed Police is called to deal with the situation under the control of the Civil Police officers. It may also serve as guards for jails, escort of prisoners, important officials and government buildings usually during emergencies.

The State VIPs are normally under their protection. They also perform counter-insurgency duties and even hunting down dangerous criminals. In all these operations they are under the control of the S.P. of the district, D.I.G. etc.

There is also the Criminal Investigation Departments (C.I.D.) which are a specialized branches of the police force. They have two main components - the Crime Branch and the Special Branch. The Officer in Charge of the C.I.D. generally supervises the work of both branches. Now all the states have practically separated the two and separate officer in charge of Special Branch. The C.I.D. is the most important investigation agency of the State Police. It investigates certain specialized crimes like counterfeiting of currency, professional cheating, activities of criminal gangs, crimes with inter-district or inter-state ramifications, and cases which are for one reason or another especially important.

The Special Branch on the other hand, collects, collates and disseminates intelligence in respect of all political matters and other which are of interest to the public or to the state

⁴⁵ J.C. Chaturvedi, Op.Cit., p.208.

including security matters, subversive activities of persons, parties and organisations and keep all concerned informed. It is the eyes and ears of the Police and the State Government. The Officer in Charge of the State Special Branch directly reports to the Government with information to the D.G.P. He may directly brief the Home Minister and the Chief Minister. This Branch has, of late become very important in view of increasingly complex political situations in the country.

The head of this Branch is responsible for maintaining cooperation with other intelligence agencies operating in the State.

The bulk of police duties are done by the District Police, armed and unarmed, and by the Armed Battalions but there are auxiliary police units also to assist the regular police for specific works or areas. This auxiliary force consist of :

The Railway Police or Government Railway Police (G.R.P.) is a branch of the State Police and is administered by an officer of the rank of Additional Director General of Police or Inspector General of Police or others depending on the size of the force. The aim of this force is to prevent and investigate crime committed on railways or within the railway yards and railway stations. The G.R.P. should not be confused with the Railway Protection Force which is directed and administered by the Railways.⁴⁶

In some States there is rural or village police. It is an auxiliary group of the state police. Its personnel are essentially watchmen, responsible for patrolling the village at night and notifying criminal acts, suspicious activities and public unrest to the nearest police authority. They also have the duty to maintain the register of births and deaths in the village and to help in the collection of revenue. The village watchman is paid a paltry sum as salary by the state government. There may also be other auxiliary group of the State Police consisting of various volunteer police organisations. The most important of these are the Home Guards and the Village Volunteer Force which may also known as the Village Defence Party or Village Resistance Group. The Home Guard was originally raised in 1946 in accordance with the Home Guards Act and Rules of States/Union Territories, under the Ministry of Home Affairs. The Home Guard was reorganised in 1962 after the external aggression by China.¹¹⁴ The Home Guards are members of the public holding permanent or temporary jobs outside the police organisation and are subject to mobilisation by the State Government in

⁴⁶RajinderPrasher, Op.Cit., p.46.

times of local emergency. The nature of organisation of the Home guards may differ in States. They are trained to do auxiliary police work and to become nucleus of emergency aid units. The Home Guards get training at the time of recruitment and periodic refresher courses thereafter. They are paid according to the time put in training and on duty; besides they are supplied with free uniforms and are given travelling allowance while on duty. The Village Defence Party or Village Resistance Group is a small body or locally recruited men, who are give elementary instructions in village defence, trained in drill, and encouraged to take upon themselves the responsibility for the security of the area in which they reside.

CHAPTER V

FUNCTIONS , DUTIES AND POWERS OF POLICE

5.1 FUNCTIONS OF POLICE

The foremost objective of the police is to protect the society by preventing crime and prosecuting criminals. The other police functions such as preservation of the nation's unity and integrity, maintenance of public order and implementation of social laws flow from this main objective. All these functions involve the protection of life, liberty, dignity and property of the people and hence the role of the police emerges in the performance of these functions.

The Constitution of India has guaranteed the people certain Fundamental Rights. The earlier enactments like the Government of India Act, 1935 contained almost similar provisions of governance but there were no specific provisions for Fundamental Rights of the people. Apparently, the Fundamental Rights embodied in the Indian Constitution make it a different law, especially from the people's point of view. These rights aim at protecting the individual against unreasonable interference in his life. However, these rights, which are adjudged as basic and fundamental for the over all development of human personality, will remain only on paper if not enforced effectively.

Article 21 of the Constitution provides that no person shall be deprived of his life and personal liberty except according to procedure established by law. It means that every individual has the freedom to lead a peaceful life without any undue interference from anybody. But this Constitutional dictate is not obeyed by many unscrupulous people who endanger the life and liberty of other people by committing crimes of murder, kidnapping, etc. Therefore, the police come in the picture to prevent such acts of crime and prosecute those who succeeded in committing such acts. So, the police have the honour and responsibility to play a crucial role in realization of the major aims and objectives of the Constitution as enshrined in the Preamble by enforcing the Fundamental Rights and creating a safe and peaceful atmosphere for the over all development of the individual.

With the social, political and economical changes in the society, the duties and functions of the police also changed. There was a time when the police functioned as a coercive force to catch criminals and prosecute them for their misdeeds. It was not assigned the tasks which would bring it closer to the people in a positive manner. The police was used

more for repressing people's movements rather than for helping people in distress. But, after independence the situation has changed drastically. The police is no more in alien's hands. It is now controlled by the elected representatives of the people. Its functional jurisdiction has expanded and it has been assigned many new responsibilities.

With the changing circumstances, the priorities of the police also keep on changing. In the beginning, its main aim was to prevent and detect crime. As socio-political agitations became a common problem, maintenance of law and order got higher priority. In view of the frequency of communal riots, creating communal harmony and ensuring unity and integrity of the nation have assumed the highest importance. Providing security to VIPs and guarding vital installations are other areas of concentration. Management of vehicular traffic also requires constant attention. As it is not feasible to enumerate all the duties of the police, an effort is made in this chapter to describe some of the important functions of the police.

5.2 MAINTENANCE OF ORDER

One of the basic objectives of the State is to maintain order in the society. For smooth continuation of any State activity and for peaceful living in the society, orderliness is the foremost condition. If there is continuous disorder, the State machinery finds it difficult to discharge its normal functions. It may lead to a chaotic situation which would warrant extraordinary steps such as calling the army and pronouncement of emergency under article 352 or 356 of the Constitution. Therefore, maintenance of public order is considered the most important function of the police.

Maintenance of order includes both 'law and order' and 'public order'. However, there is a difference between these two terms which are commonly used to denote orderliness in the society. The Supreme Court has brought out the difference between these two phrases in Pushkar Mukherjee's case wherein it has been held as under:⁴⁷

“The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection a line of demarcation must be drawn between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace

⁴⁷1. Pushkar Mukherjee v. State of West Bengal, AIR 1970 SC 852 3. Article 12 of the Constitution of India, 1950. .

of a purely local significance which primarily injure specific individuals, and only in a secondary sense public interest.”

In another case⁴⁸, while reiterating its observations in Pushkar Mukherjee’s case, the Supreme Court has held that when two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder.

Theoretically speaking many other wings of the State are also required to contribute their might for the maintenance of order. But, practically, the police faces disorderly situations single handedly as the other agencies either keep aloof or are not able to contribute any thing worthwhile because of their inherent weaknesses.

The socio-economic and political changes in the post independence period have made law and order very complex and a daily affair for the police. Caste, religious and communal tensions, rising number of educated unemployed youth, agrarian conflicts, industrial unrest have increased the frequency of law and order problems. Unplanned and unabated urbanization, growing slums, and shortage of basic amenities have further aggravated the problem. Various social, economical and political sections of the society have formed pressure groups to demand relief and other benefits from the State authorities.

Whether there is an increase in prices, shortage of water supply or any other such issue, the affected people organize large scale demonstrations to attract the attention of the concerned authorities and the Government. These activities necessarily require the police to keep watch and maintain order. If the demonstrators turn into an unlawful assembly and start damaging public property, the police have to take immediate action to either disperse them or arrest them. Now the issue shifts and it becomes “the demonstrators versus the police”. Thus, frequently occurring law and order problems bring many difficulties for the police and make it vulnerable to public criticism. But, the police cannot escape from this professional compulsion which many times hazards the life and career of its personnel. The police have to act as buffer between the Government and the people and absorb the shock before it affects the Government. To face unpleasant scenes and circumstances in dealing with law and order problems has become a common affair for the police personnel.

Control of crowds

⁴⁸. 2. PiyushKantilal Mehta v. Commissioner of Police, AIR 1989 SC 491.

When a large number of persons gather, whether for any specific purpose or otherwise, there is always a possibility of some problem arising merely from the fact that they have gathered in large number. A collection of persons in a street each minding his or her own work cannot be called a crowd, but the audience in a public meeting, persons in a cinema hall, or participants in a procession may be called a crowd.

When a crowd becomes impatient and starts asserting its claims and rights, it converts itself into a mob. The behaviour of people in a mob is different from the normal behaviour of each individual constituting the mob. People become more assertive and impatient in a mob. Any small provocation may disturb the calm atmosphere and ignite the anger of the people to convert them into a mob which in turn may pose threat to public order. For example, in a theatre if there is delay in starting the film or the show for which the people have gathered, the people start making a noisy protests. Similarly, if there is any obstruction in the movement of a procession, the participants may become a mob and create a law and order problem. If such problems, erupting on petty issues, are not attended to promptly, the situation may take a bad turn. The anti social elements, if present on such occasion, may take undue advantage of the volatile situation. Therefore, the police are deployed at all such places where there is a probability of a crowd becoming a mob so that in case of any problem the situation can be handled before it worsens.

Festivals and processions

Festivals are the occasions when people get relief from their normal routines and enjoy with their families. But, unfortunately, most of the festivals are not occasions of relief and enjoyment for the police. In fact, the festivals are a source of tension for the police. With the increasing threat from anti-social and anti-national elements, the festivals require a lot of efforts on the part of the police to prevent untoward incidents.

The growing trend of taking out huge processions with participation of thousands of people on the eve of religious festivals or other such occasions has added to the difficulties of the police. The police have to exert and put their best efforts to ensure smooth flow of the processions. Besides the people actually participating in the procession, a large number of people gather to see the processions, which invariably carry music parties and interesting floats. The police personnel have to remain on their toes and under constant tension until the procession reaches its destination and the people disperse peacefully.

Processions are taken out on many religious occasions and on birth anniversaries of national leaders as a matter of tradition. In religious processions, instead of emphasizing the need of social harmony and mutual cooperation, which all religions teach, many times the participants make attempts to create ill will and hatred. Dancing with vulgar postures on the tune of film songs, which has become a convention in most of the processions, further undermines the sanctity and the purpose for which the procession was initially started. Every year the number of processions and the crowds therein show a significant increase. Many people organize such processions to show their strength of men and money, and thereby try to enhance their political interests.

Article 19 (i) (b) of the Constitution confers upon all citizens of India the right to assemble peaceably and without arms. From it flows the right to go in a procession.

However, this Constitutional right is subject to clause (3) of article 19 which empowers the State to impose reasonable restrictions in the interest of public order. For the purpose of fundamental rights “the State” means the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.⁴⁹

The police have powers, under section 30 and 30A of the Police Act of 1861, to regulate public assemblies and processions. As per the provisions of section 30 of the Police Act, the District Superintendent or Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads, or in the public streets or thoroughfares, and prescribe the routs by which and the times at which, such processions may pass. The police may also regulate the extent to which music may be used in streets on the occasion of festival and ceremonies. As per sub-section (2) of section 30A of the Police Act, any procession or assembly which neglects or refuses to obey any order given under sub-section (2) of section 30A of the Police Act shall be deemed to be an unlawful assembly. Many State Police Acts, such as the Bombay Police Act, 1951, also contain similar provisions to control and regulate processions.

Though many times in the past, such processions have created serious trouble in many parts of the country resulting into communal riots, yet, the authorities still find it difficult to ban them or reduce their size or change their route. Any attempt made by the authorities in this

⁴⁹ Forum, Prevention of Environment and Sound Pollution v. Union of India, 2005 AIR SCW 325

regard is strongly opposed by the organizers and their followers. As the action to prevent the people from taking out any traditional procession may hurt their feelings and invite their wrath, the police always try to avoid such decisions.

Playing loud music during the processions has become a common practice. However, the Supreme Court⁵⁰ has directed that no one shall beat a drum or tom tom or blow a trumpet or beat or sound any instrument or use any sound amplifier at night (between 10.00 pm and 6.00 am) except in public emergencies. The Court has observed as under:

“Article 21 of the Constitution guarantees life and personal liberty to all persons. It is well settled by repeated pronouncements of this Court as also the High Courts that right to life enshrined in article 21 is not of mere survival or existence. It guarantees a right of persons to life with human dignity. ...Anyone who wishes to live in peace, comfort and quiet within his house has a right to prevent the noise as pollutant reaching him. No one can claim a right to create noise even in his own premises which would travel beyond his precincts and cause nuisance to neighbours or others.”

Once the music and loudspeaker go off, the participants may lose enthusiasm in prolonging the procession and therefore the Supreme Court's directions are expected to have a positive impact on the processions which otherwise would go on till late night with heavy noise of music and loudspeakers.

Unlawful assemblies and public agitations

Section 141 of the Indian Penal Act, 1860 defines an unlawful assembly. Any assembly of five or more persons is designated an unlawful assembly, if the common object of the persons composing that assembly is to overawe by criminal force, or show of force; or to resist the execution of any law, or of any legal process; or to commit any mischief or criminal trespass, or other offence or any other such acts as described in section 141 of the IPC.

Section 129 of the CrPC provides that any Executive Magistrate or officer-in-charge of a police station or in the absence of such officer-in-charge any police officer, not below the rank of a sub-inspector, may command any unlawful assembly to disperse. If upon so commanded any unlawful assembly does not disperse the executive magistrate or the police officer may proceed to disperse such assembly by force.

⁵⁰ 352 Subsequently, the Apex Court relaxed its order and allowed the State to extend the time limit by two hours on any 15 days in a calendar year.

Pressurizing the State authorities by way of strikes, demonstrations, rallies, etc. has always been a method adopted by people to get certain policies and decisions reviewed or changed. In post independence era, the frequency and gravity of such public demonstrations and agitations have significantly increased. Agitations by workers of factories, government employees, students, members of political parties or any other such pressure group are very common.

In order to maintain law and order and to ensue that there are no clashes between the agitators and their opponents, the police make elaborate arrangements. To prevent direct confrontations, many times the police have to close certain roads and divert the vehicular traffic to alternative roads. Though the police take such measures in the larger interests of the people, yet many times, the agitators as well as the people at large object to these preventive steps of the police.

The Constitution of India, under article 19, provides that all citizens shall have the right to freedom of speech and expression; to assemble peaceably and without arms; to form associations or unions; and to move freely throughout the territory of India. The Constitution under article 19 itself authorizes the State to put reasonable restrictions on these freedoms of the people in the interests of the sovereignty and integrity of India, the security of the State, public order, decency or morality, or in relation to contempt to court, defamation or incitement to an offence, etc. So, the people cannot be allowed to enjoy certain freedoms if their actions are going to jeopardize the areas that are considered more important than certain freedoms of the individuals. However, while putting reasonable restrictions upon certain Fundamental Rights of the people for maintenance of public order, the police must exercise utmost care. In a case⁵¹ where the petitioners claimed unhindered and unintercepted use of highways, the Supreme Court, while dismissing the petition, observed as under:⁵²

“We agree that no one is entitled to barricade a highway so as to prevent members of the public from using it while they are on their normal business in the pursuit of normal avocations of life. But the police, whose duty is to enforce law and order in the wake of

⁵¹ 6. *Rupinder Singh Sodhi v. Union of India and others*, AIR 1983 SC 65; .Ahuja, Sangeeta, *People, Law and Justice*, pp.96-97. A declaration had been made by the Akali leaders that a morcha would be taken to Delhi on 19 November 1982, the date of the inauguration of the Asiad Games. Accordingly, the border States of Haryana and Uttar Pradesh took steps to intercept the movement of the Akalis across the border to Delhi in order to prevent the morcha and the anticipated disruption to the Asiad in 1982. The petitions invoked Article 21 of the Constitution to claim the right to use the highways and not to be discriminated against.

⁵²7. *Ibid.*

threatened mass agitations which are reasonably likely to lead to breach of public peace, are entitled in the discharge of that duty to impose reasonable restrictions on the physical movement of members of the public in order to [ensure] the protection of public property and the avoidance of needless inconvenience to other citizens in their lawful pursuits. But all such restraints on personal liberty, if at all, have to be commensurate with the object which furnishes their justification. They must be minimal and cannot exceed the constraints of the particular situation, either in nature or in duration. Above all, they cannot be used as engines of oppression, persecution, harassment or the like. The sanctity of person and privacy has to be maintained at all costs, and that cannot ever be violated under the guise of maintenance of law and order.”

Since many times the people who organize protests and demonstrations cross the Constitutional and legal boundaries and put the public order in jeopardy, the police are invariably required to keep watch and maintain law and order.

Communal riots

Communalism means disharmony or feeling of ill will between different communities on grounds of religion, language, race, caste or community. India has a large number of communities based on these diversities. Owing to the mixed character of Indian people, there are always chances of social differences, ethnic and cultural variations.

People tend to pressure their interests by forming groups and selecting identifications that maximize their advantages in the competition for scarce jobs and economic resources and for political power. Sometimes, these struggles cause wide spread violence or serious and costly disorder. Such incidents become the source of political instability and menace to peace and economic development.⁵³ Incidents of communal riots often disturb public order affecting the society at large. Therefore, handling communal riots promptly and properly is considered the most important function of the police. During communal riots, the police concentrate fully on handling the situation and bringing back the normalcy and thus, many of their routine duties get affected.

Though the people of India are taught to believe in the principle of ‘unity in diversity’, many a time this golden principle is prevailed over by communal frenzy. As a result, communal

⁵³ .Roy, JayatilakGuha, Ed., Policing in Twentyfirst Century, p.89 in the article ‘Law and Order Administration and Good Governance’ by O.P. Minocha.

differences occur which in turn lead to communal riots. About forty percent of the districts in India are identified as communally sensitive and prone to communal disturbances. Mostly, communal riots take place between Hindus and Muslims. In some parts of the country clashes between Hindus and Christians and between Shia Muslims and Sunni Muslims also take place.

Erection of large number of statues of national and community leaders and unauthorized construction of religious places have made the communal situation highly volatile. Since adequate security arrangements are not made by the concerned organisers to guard such statues and religious places, they become easy targets of anti-social and anti-national elements. If any disrespect or harm is caused to a statue or a religious place, the fundamentalists and fanatics come forward and mislead people to agitate. Even if the culprit is unknown, the people with prejudiced mind blame the other community whom they consider their opponent in religion and socio-cultural matters. Sometimes a furious mob attacks members of the other community and damage their properties. Here, lies the root cause of a communal problem. The other community is not able to tolerate the baseless allegations and, therefore, retaliate in the same manner. This leads to a communal disturbance which in turn gives way to communal riots and the police has to react swiftly with all its might and skills to handle the situation.

Religion based communalism is at the moment the most potent threat to the internal security of the country. This problem existed in pre-independence era also. But in post independence period, the problem has acquired a demonic shape and the country has witnessed the worst kind of communal riots. The communal riots that broke out in December 1992 after the demolition of the disputed structure at Ayodhya and the communal violence in Gujarat in 2002 that started with the Godhra incident not only endangered the national unity and integrity but also put humanity to shame.

The problem of handling communal riots has always been one of the most difficult tasks for the police. The police, being responsible for maintaining order in the society, are the first to absorb the shock. A communal disturbance emerged because of some local issue or any petty incident may be handled without much difficulty by bringing both the communities together and solving the problem. But communal riots erupted over national issues pose bigger threats. Such communal riots spread in a vast area covering many parts of the country. The communal riots that followed the demolition of the disputed structure at Ayodhya in

December 1992 put the police on their toes for months together. Similarly, the communal riots of 2002 in Gujarat not only made the lives of police personnel stressful but also gave opportunities to the people and the media to malign them as partial and ineffective.

The most unfortunate trend noticeable after the communal disturbances has been the increasing numbers of communal pockets which are fast changing the demographic pattern, dividing the two communities apart. In places where Hindus and Muslims always co-existed side by side, over the centuries with so much of affection and goodwill cannot live together anymore. Hindus are migrating to Hindu dominated areas and the Muslims are moving to Muslim dominated areas.⁵⁴

The success of law enforcement agencies in controlling communal riots must ultimately be judged not by the speed with which a riot is quelled, but by the manner in which explosions are recognized in embryo and averted.⁵⁵ Therefore, in communally sensitive areas, the police aim at incorporating various parts of the society into a functioning whole to reduce barriers between different sections. Besides providing adequate security to the respective areas, the police also take initiatives to teach people to tolerate the socio-cultural differences, respect other religions, and solve their problems by living together. These steps prove useful in creating social harmony which is the panacea for communalism.

Role of police during elections

An election may be defined as a means of choice of members of a governmental organization. Elections are the ultimate and most important means by which government in general and legislature in particular are subjected to popular control in a democratic system. Articles 325 and 326 of the Constitution of India confer the right of vote on every adult citizen, without any discrimination on grounds of sex, race or property ownership. This system of elections based on adult suffrage makes India a democratic country in the real sense.

⁵⁴9. Ghosh, S.K., Indian Panorama, Volume I, p.53. The author (Dr. DalbirBharti), who was Deputy Commissioner of Police, Aurangabad, during the communal riots of December 1992, also observed that from certain Hindu dominated colonies the Muslims sold their houses and migrated to Muslim dominated colonies. Similarly, from Muslim dominated colonies the Hindus migrated after selling their houses. The unscrupulous people, intending to purchase such houses in distress sale, would create fear in the minds of the house-mates by setting the doors of their houses ablaze. The police had to make vigorous efforts to stop this trend and create mutual faith and trust by organising mohalla meetings and interaction sessions for the members of both the communities.

Ordinarily, policemen need not be concerned with elections because these are occasions when people cast their votes in favour of party or parties and elect them in office. But the Indian experience has been that violence is perpetrated before, during and after the elections and therefore the police cannot keep itself aloof from the election process.

Every election is a time of intense, often underground, political pressures and activities more or less in an organized form. Propaganda and canvassing start a long time before the actual polling time and appeals to electorate are often made in the name of caste, creed and religion. During elections a large body of citizens who are normally of quiet and peace loving disposition are aroused. Large scale agitations, demonstrations, political and industrial unrests are matters of everyday occurrence. The atmosphere all over gets surcharged with intense activity, and group rivalries come to surface. Communal and political tension mounts and as a result clashes of major or minor nature take place.

Thus, the period of elections is another occasion when the police has to be in high alertness and readiness. It has to intensify its intelligence machinery and make all possible efforts to create an environment for free and fair elections.

Terrorism and insurgency

Terrorism is rapidly emerging as a major threat to the modern civilization. This is not to say that terrorism did not exist in earlier societies. History is full of incidents of assassination of King and his agents by rebellious men.

Terrorism has now become a global problem. Terrorists do not have any boundaries and cross inter-national borders to create havoc in other countries by their terrorist activities. In fact trans-border terrorism is the new challenge to security forces all over the world. The incidents of serial bomb explosions in many countries, attack on Indian Parliament and destruction of the World Trade Centre in New York show that any country may become victim of terrorist activities.

India is one of those countries which are worst affected by the curse of terrorism. Terrorism in Punjab caused immense loss to life and property of innocent people. The terrorist problem in Punjab has been solved but at a very heavy cost. Large number of police personnel lost their lives in the battle with terrorists. Before the Punjab problem subsided, terrorism raised its ugly head in Jammu and Kashmir. The prevailing situation in Jammu and Kashmir shows how much pain and trouble the police have to bear to face such situations. The police

personnel deployed in the troublesome and insurgency affected areas have not only to be always alert but also ready to lay down their lives while facing terrorist attacks.

Terrorism evolves into insurgency. Both aim at undermining the State authority. Terrorism becomes insurgency when the terrorists gain control over a territory or a sizeable area. The terrorists follow the philosophy which dictates “violence is a cleansing force” and therefore adopt all sorts of violent methods to kill and create fear in the minds of the people. Attacking VIPs, damaging vital installations, exploding bombs at public places, kidnapping civilians, hijacking planes, and indiscriminately killing innocent people are some of the common terrorist activities.

In the North-eastern region, many parts remained disturbed on account of high level of militant activities in Assam, Nagaland, Manipur and Tripura. In Assam, the ULFA violence has touched new heights.⁵⁶ The naxal movement has spread in many parts of India and put a serious threat to public order and stability of the State. The police forces of many States have to exert a lot to keep the naxal activities under control.

Use of military for handling any internal security problem for a long time is not advisable and hence the burden comes on the police to constantly face the situation of terrorism and insurgency. In order to ensure that the State police personnel handle terrorist activities effectively, necessary training is imparted to them. The younger lot of the police force is imparted specialized training. Anti-terrorist squads comprising commandos and specially trained policemen have been raised by the State police organizations to meet any eventuality. Since the terrorists use sophisticated weapons like AK-47, the police forces have also been provided with such weapons so that befitting reply is given during encounters. Besides performing duties to safeguard the people and places prone to terrorist attacks, the police personnel also educate and motivate the people to remain away from terrorist outfits and extend their cooperation to the police in its efforts to fight terrorism and insurgency.

5.3 PREVENTION OF CRIME

Any act or omission punishable by any existing law is called an offence. Offences with an element of force or moral turpitude are generally termed as crimes. The vices such as greed, envy, lust, hatred and vengeance compel people to cross the moral and legal boundaries and

⁵⁶11. Ibid., p.67, in the article ‘India’s Emerging Security Environment in the Twentyfirst Century” by O.P. Tandan.

commit crime. Many other factors like socio-economic and cultural changes resulting in inequality, unemployment and poverty are also responsible for crime.

The relation of crime to the society, is what the relation of disease to the human body is. As a person with a diseased body cannot do justice to himself or to his family, so also a society cankered with crime cannot be expected to contribute any thing to the progress of mankind. Crime puts life, liberty, dignity and property of the people in danger and creates law and order problems. The law and order problem may aggravate to disturb public peace and bring normal civic life to a grinding halt. This may, sometimes, even pose a threat to national security. Thus, crime is not merely a concern of the victim or the authorities dealing with it; the hidden potential in it may harm the whole society or even the nation. In other words, crime undermines the 'rule of law' and thus digs out the very root of democracy. In a crime ridden society violence prevails over the law, and the society starts turning into what is known as jungle raj. Therefore, crime is the foremost area of concentration for any police force and Indian police is no exception.

Keeping in view the golden rule that 'prevention is better than cure', the police always give high priority to prevention of crime. Like that of maintaining order, the job of preventing crime is a pro-active policing.

But the task of preventing crime is not child's play. It requires continuous efforts with constant vigil to prevent the occurrence of crimes. There is another problem in crime prevention work. It mostly remains un-noticed and un-appreciated for there is no effective method of measuring the success of police in the area of crime prevention. Any serious incident of crime occurred becomes a news and a matter of concern for everyone, but prevention of such an incident generally does not get the attention it deserves. The number of incidents of crime occurring in a particular area during a particular time period can very well be quantified but it is not possible to say definitely as to how many incidents of crime were prevented.

There are many valid reasons to keep the crime prevention work high on the agenda of the police. It saves life and property of the people whom the police are bound to protect; it saves a great deal of trouble to the victim, both physical and mental; it rules out litigation and thus helps in maintaining harmony in the society; and it saves a lot of time of the police because they are not required to record first information reports and take subsequent steps of investigation.

Preventing crime also contributes in improving the image of the police. The people would certainly prefer not to be robbed rather than have the dubious satisfaction from the fact that the culprits were arrested and prosecuted. Securing a conviction for a murderer is certainly a success for the police but it cannot match the success achieved in preventing a murder. Untiring and continuous efforts being made by the police to prevent crimes indicate that the police in India are well aware of this difference.

The Criminal Procedure Code, which is the basic procedural law for the police, also emphasizes the preventive aspect of crime. Besides chapter XI, which exclusively deals with the 'preventive action of the police', many other provisions in the CrPC reveal the mindset of the legislators who treated prevention of crime as more important than punishment of crime.

Various State police organizations have adopted different methods to prevent crime to suit their specific requirements. However, some of the commonly used methods in most of the States are discussed below.

Patrolling the area

This has been a traditional method to prevent crime. Police pickets are deployed at strategic points and police parties are deputed for patrolling the area. It is a common practice in many of the police units to organize sector wise patrolling. In urban areas, the area of a police station is divided into various beats and sectors and police parties are deputed for patrolling each sector. In order to ensure effective patrolling, in each sector certain strategic locations, such as hotels and petrol pumps, are identified to keep note-books. The police party deployed for patrolling in each sector is required to visit these locations and make entries indicating the date and time of the visit. The checking officer also visits a few such locations to keep track on the movements of the police patrolling parties. The locations for keeping note-books are changed after some time to cover other areas. This method not only ensures effective patrolling but also helps the police to project its crime prevention work before the people who observe the presence and movements of the police in their area.

Bonds for keeping peace and good behaviour

If normal preventive measures such as patrolling and keeping watch are not found effective to prevent crime, the police takes other steps contemplated under various provisions of the CrPC.

Chapter VIII of the CrPC exclusively deals with the subject of 'security for keeping the peace and for good behaviour'. Proposals for proceeding under sections 107, 108, 109 and 110 of the CrPC are initiated when the police is of the opinion that there is a need to bound down the concerned person to prevent the disturbance of the peace and tranquillity and to ensure his good behaviour. The Executive Magistrates or the police officers, who have been declared as Special Executive Magistrates and especially empowered by the State Government, deal with such proposals.

As per the provisions of the CrPC, a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, may be asked by the Executive Magistrate or the Special Executive Magistrate, as the case may be, to execute a bond under section 107 of the CrPC. Section 108 CrPC empowers the Executive Magistrate or the Special Executive Magistrate, as the case may be, to take security for good behaviour from the persons disseminating seditious matters. A suspicious person can be asked under section 109 CrPC to execute a bond for his good behaviour. Under the provisions of section 110 CrPC, habitual offenders are proceeded against and asked to execute a bond for good behaviour. Preventive detention When ordinary course of crime prevention fails and there are reasons to believe that a person is going to indulge in criminal activities and thereby put the public order in jeopardy, the police can initiate legal action to detain such person. Section 151 CrPC empowers a police officer to arrest a person who designs to commit any cognizable offence if the commission of the offence cannot be otherwise prevented.

Realizing the need of more effective tool in the hands of police, the State of Maharashtra has amended the CrPC and added sub-section (3) to section 151 to empower a Judicial Magistrate to detain a person for a maximum period of fifteen days in magisterial custody.⁵⁷ The provisions of sub-section (3) of section 151 are put in to operation when a person arrested under section 151 is likely to continue the design to commit or is likely to commit the cognizable offence after his release and the circumstances of the case are such that his being at large is likely to be prejudicial to the maintenance of public order.

If a person has disturbed public order and is likely to indulge in such activities again, such person can be detained for a longer period under the National Security Act, 1980 or under

⁵⁷ 12. Maharashtra Act 7 of 1981, S.18 (w.e.f. 27.8.1980).

any other such preventive law. Many times a question arises as what is 'public order' and how is it different from 'law and order'. On this issue the Supreme Court has held:⁵⁸13

“The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society.”

Many States in India have enacted their own preventive laws for detaining persons who indulge in activities prejudicial to public order. The Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act, 1986; The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 and the Maharashtra Prevention of Dangerous Activities of Bootleggers, Slumlords and Dangerous Persons Act, 1981 are some of such State preventive laws which allow preventive detention for a period of one year or so. Persons indulging in black marketing of essential commodities can be detained under the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

Proposals for detaining persons under these preventive laws are initiated by the police and submitted to the detaining authorities. Generally the Commissioner of Police or the District Magistrate have the powers of detention but under certain laws such as the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 the State Government is the detaining authority.

5.4 INVESTIGATION OF CRIME

As it is not always possible to prevent each and every crime, the next important function of the police is to record, detect and investigate crime. The role of the police in the criminal justice system is important because the police officer is the first man to arrive on the scene

⁵⁸ArunGhosh v. State of W.B., AIR 1970 SC 1228. .

and while applying law and his professional knowledge collects evidence on the basis of which the case is sent to the court of law for legal battles. If the police officer investigating a crime ignored certain evidence, which subsequently disappeared or got destroyed, it may prove fatal leading to acquittal of the case. Thus, the role played by the police during the investigation of a crime is most crucial in proving the case against the accused.

The law has divided crime in two broad categories, namely, cognizable and noncognizable. The police have the power and responsibility to register first information report in connection with a cognizable offence and investigate the case to collect necessary evidence to successfully prosecute the culprit. If the offender is not known then the work of investigation becomes complex requiring the police to use its professional knowledge and utilize the services of the informants to find out the culprit and his motive behind committing the crime.

Registration of FIR

The police in India derive powers to investigate mainly from the Criminal Procedure Code of 1973. Section 156 (1) of the CrPC provides that any officer-in-charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of chapter XIII of the CrPC. Whenever information about a cognizable offence is given at a police station, it is registered as a first information report (FIR) as per the provisions of section 154 of the CrPC. Since the registration of FIR and investigation of a case is the most important function from a common man's point of view, it would be worth reproducing section 154. It reads:

Information in cognizable cases.-

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer-in-charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

A glance at the above statutory provisions will reveal that it is the bounden duty of the police to record FIR and give a copy of the same to the informant free of cost. In case any police officer refuses to record the information as FIR, the concerned person can send a copy of the information to the Superintendent of Police or the Commissioner of Police, as the case may be, who shall take further steps as are necessary as per the law. The Supreme Court has held that when any information disclosing a cognizable offence is laid before the officer-in-charge of a police station, he has no option but to register the case on the basis thereof.⁵⁹

As regards the powers and functions of the police to investigate, the Supreme Court has observed:⁶⁰

“There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book.” Non-cognizable offences

In India, the level of legal awareness is very low and the laws are very complicated. Empirical experience shows that majority of the people approaching the police do not know the difference between a cognizable and a non-cognizable offence. A cognizable offence is that for which the police have powers to record the information as FIR, investigate the case and arrest the accused without any order or warrant from the Court. In non-cognizable offences, the police do not have such powers. First Schedule in the CrPC classifies offences punishable under the Indian Penal Code and other laws as cognizable and non-cognizable.

⁵⁹ State of Haryana v. Ch. BhajanLal, AIR 1992 SC 604Ibid., p. 169.

⁶⁰State of Bihar v. JAC Saldanha, AIR 1980 SC 326.

Section 155 of the CrPC provides that when information is given to an officer-in-charge of a police station of the commission, within the limits of such station, of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate. Sub-section (2) of section 155 says that no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

Thus, the role of the police in non-cognizable offences is merely to make an entry in the police station records and inform the complainant to approach the court for filing his complaint and prosecuting the accused. However, being unaware of the legal position, many people approach the police station with complaints of non-cognizable nature and expect the police to register FIR, investigate the case and arrest the accused. Though in non-cognizable cases the police have no such powers, yet the people, who are not aware or who are not made aware of the law by the police, feel disappointed. In many cases such disappointed complainants even make allegations that the police are not taking any action because of some ulterior motive or under pressure from the other party. As a result, the image of the police suffers without any fault on its part. It also creates confusion and suspicion in the minds of the people. In order to avoid such unwanted criticism, there is a need to create legal awareness among the masses. The police may start such programmes with the help and support of local advocates, retired judges and other legal luminaries to awaken the people to most important provisions of the law through media.

5.5 VIP SECURITY

To provide security cover to very important persons, majority of whom are politicians and celebrities, is another major function of the police. The need for police protection increases with the deterioration of law and order situation when criminals, terrorists and antisocial elements augment their activities. Attacking VIPs is considered an effective method by the criminals and terrorists to achieve their goal. The terrorists also attempt to gain people's sympathy by killing or injuring a person, who is a VIP from the angle of security but otherwise not a respectable person in the eyes of the masses. Therefore, instead of killing innocent people by exploding bombs at public places or by resorting to indiscriminate firing, terrorists sometimes prefer to attack such persons.

In the last few decades, the problem of security threat to VIPs has significantly increased. After the assassination of Prime Minister Mrs. Indira Gandhi in October 1984, the subject of VIP security assumed a very high importance. The unforgettable incidents of large scale killings of the Sikhs in Delhi, that followed the tragic incident of assassination of Mrs. Indira Gandhi, keep the police reminding that attack on a national leader may lead to serious law and order problems. In order to prevent such incidents, a specialized force, Special Protection Group, was created in 1985 solely for the protection of the Prime Minister and his family members. Pursuant to Shri Rajiv Gandhi's assassination in 1991, the Special Protection Group Act was amended to include former Prime Ministers and the members of their immediate families.⁶¹¹⁶ The National Security Guards is another police organization dedicated to provide protection to VIPs in the country.

The security agencies, especially the Special Protection Group and the National Security Guards, are doing their best to ensure that the persons under their protection are safe and secure and that no body dares to attack and harm them. However, in a vast country like India where the VIPs move in all adverse circumstances, there is always a danger of any attack on them and hence the State police organisations remain alert and cautious during the presence and visit of the VIPs in their areas.

5.6HELPING THE WEAKER SECTIONS

In the context of role of police, those sections of the people who are relatively in a weaker position to defend themselves and depend upon others for protection of their rights, especially the right to life, liberty and dignity, may be called weaker sections. In terms of these parameters the sections of people afflicted by poverty, ignorance, social injustice and exploitation would be called the weaker sections. Women and children are the most susceptible to atrocities more particularly in developing societies because of changing social structure and relationship.⁶²¹⁷ With the passage of time, such sufferings have got the approval of society as customs and traditions and therefore to annihilate them is not an easy task. Keeping these clues and the empirical experience in view, it may not be wrong to include children, women and the backward classes particularly the Scheduled Castes and the Scheduled Tribes in the category of the weaker sections of the society in India.

⁶¹16. Roy, op.cit., p.69, in the article 'India's Emerging Security Environment in the Twentyfirst Century" by O.P. Tandan.

⁶²17. Chaturvedi S.K., Ed., Role of Police in Criminal Justice System, p. vi

The Constitution of India, under article 46, expects the State to protect the weaker sections of the people, and in particular, of the Scheduled Castes and Scheduled Tribes, from social injustice and all forms of exploitation. The State should formulate its policies in such a manner that will lead it to fulfil the expectations of the framers of the Constitution. Accordingly, the Central Government has enacted special laws for the protection of the weaker sections of the society such as the Juvenile Justice (Care and Protection of Children) Act, 2000; the Immoral Traffic (Prevention) Act, 1956; the Dowry Prohibition Act, 1961; the Indecent Representation of Women (Prohibition) Act, 1986; the Protection of Civil Rights Act, 1955; and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The police as law enforcement agency has a crucial role in implementation of these laws.

For Children

The Convention on the Rights of the Child, which was adopted by the General Assembly of the United Nations on 20 November 1989, has prescribed a set of standards to be adhered to by all State parties in securing the best interests of the child. India has ratified the Convention on 11 December 1992. Bearing in mind the standards prescribed in the Convention and other international instruments, a new law, the Juvenile Justice (Care and Protection of Children), Act 2000, has been enacted. Section 63 of this Act provides for setting up 'special juvenile police unit' to enable the police officers to perform their functions of handling the juveniles or children more effectively. The Act inter alia enjoins upon the police, the responsibility of taking action under section 23 against those who assault, abandon, expose or wilfully neglect the children under their charge or control, and under section 24 against those who employ or use any child for the purpose of begging.

The function of the police in the case of juvenile delinquents relates to the implementation of different legal provisions concerning to care and protection of children. In other words, its role begins with identifying, tracing and locating the juvenile, taking him into safe custody, helping in rehabilitation and if so required presenting him for the prosecution. However, the most significant role of the police is preventive. Needless to mention that a proper and timely preventive role of the police may prevent the juvenile from going to be delinquent. The different Acts enacted by the Central and the State Governments provide functional scope to

the police to intervene in the case of juvenile whenever and wherever necessary.⁶³18 Women It is not in the hands of the individual to decide whether to take birth as male or female. Going by the course of nature, this choice is not available with the parents too. But, unfortunately, some weak minded and cowardly people succeed to undermine the natural course of keeping balance in the number of males and females. Such people adopt the most brutal and shameful method of killing females before they are born. May be that they are frustrated on seeing the position of women in India and want to avoid the risk of having daughters. But, such people forget that this trend has caused to unbalance the right proportion of males and females. This has already put the Indian society in danger because for survival of the society the availability of both males and females in right proportion is sine qua non.

Keeping in view the declining sex-ratio and its far reaching implications, Parliament has enacted the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. This law prohibits advertisements relating to pre-conception and prenatal determination of sex and provides punishment for contravention of the provisions of the Act. As per section 27 of this Act, every offence under this Act is cognizable, non-bailable and non-compoundable. If prompt and proper action is taken by all concerned authorities to implement this Act in letter and spirit, ghastly crimes of killing women, before they see this so called beautiful world, can certainly be curbed.

The system of dowry has led to torture of brides in various forms. In many cases the torture culminates in the death of the victim woman. In such cases the frustrated woman either commits suicide or her in-laws kill her by burning, poisoning, or in any other brutal manner. In order to prevent these crimes against women, various steps have been taken to make laws such as enactment of the Dowry Prohibition Act, 1961; and insertion of sections 498A and 304 B in the IPC and sections 113 A and 113 B in the Indian Evidence Act. With a view to enforcing these laws effectively, many State police organisations have issued instructions to senior rank police officers to visit the spots and personally supervise the investigations into crimes against women.

In the past, women of our country were subjected to another form of gruesome crime known as “sati”. In 1829 Lord William Bentick, Governor-General from 1828 to 1835, took a very bold step to abolish the prevailing inhuman practice of sati. It was made an offence

⁶³. 18. Ibid., in the article, “Juvenile Delinquency, Criminal Justice System and Role of Police” by Vinod Gaur, p. 58.

punishable like culpable homicide and its abetment was also made a punishable offence.⁶⁴¹⁹ Though there were strong protests from orthodox group of people, yet the great social reformer Raja Ram Mohan Roy, taking risk of his life, supported the British for their bold step of banning sati. In Sind, when the orthodox urged General Napier that the burning of widows was their custom, he replied: "My nation has also a custom. When men burn women alive, we hang them. Let us all act according to national customs."²⁰ Though the practice of sati is banned and the people have accepted that it was nothing but a matter of shame to have allowed such a practice in India, yet the ghost has not been completely destroyed. It may raise its ugly head any time, as happened in Rajasthan some years ago, and therefore the police have to be cautious and alert to prevent even the conception of such an idea.

Scheduled Castes and Scheduled Tribes

The Constitution of India, under article 15, prohibits discrimination on grounds of religion, race, caste, sex or place of birth and, under article 16, guarantees equality of opportunity in matters of public employment. Article 17 of the Constitution declares that untouchability is abolished and its practice in any form is forbidden. To give effect to this article, Parliament enacted the Untouchability (Offences) Act, 1955. This Act was amended and renamed in 1976 as the Protection of Civil Rights Act, 1955. Subsequently, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted. This law aims at prevention of atrocities against the members of the Scheduled Castes and the Scheduled Tribes and provides for severe punishments.

A large chunk of weaker sections of Indian society normally consists of individuals, whom the accident of birth deprives reasonable availability of money, power and social esteem. Social norms and customs deny them basic equality of the human tribe and culturally they stand handicapped because certain roles and facilities enjoined upon the dignity of their person are not made available to them in due course. Their social disability stands writ large on their endeavours and behaviours conditioned by the primary disqualifications and disabilities of the absence of education, money, merit and acceptability, etc., just compound them. Hence the framers of the Indian Constitution in their wisdom identified these weaker sections on the basis of their caste, birth, sex, etc., and desired the State to ensure that there is no unequal treatment with them only on these parameters.

⁶⁴¹⁹. Bharti, Dr. Dalbir, *The Constitution and Criminal Justice Administration*, p. 49; Kulshreshta, *op.cit.* pp. 152-55.

The police, being one of the most effective and powerful organs of the State, has the responsibility to enforce the laws and contribute its might in achieving the objectives of the Constitution. It is the function of the police to see that the weaker sections of the society are not subjected to ill-treatment and that their rights to life, liberty, property and dignity are well protected. Having realized the need of special attention towards this aspect of policing, various States have created special cells to deal with the issues pertaining to children, women and the SCs and STs.

Thus, helping weaker sections of the society and enforcement of various special laws enacted to prevent atrocities against the weaker sections have broadened the functional jurisdiction and social responsibilities of the police. The most important factor in dealing with the weaker sections of the society is the behaviour of the police personnel. If the police adopts a differential attitude towards the weaker sections as compared to the influential sections that will not enhance their credibility. Therefore, the police need to be extra cautious while dealing with the complaints of weaker sections of the society including children, women and the Scheduled Castes and the Scheduled Tribes.

5.7 HELPING SENIOR CITIZENS

Of late, another category of people has come to the limelight because of its weakness and vulnerability to crimes. The people in this category are the elderly persons who live alone. This is most unfortunate that the people who cared and catered the family and brought up children have to live alone after they become old and weak. Such people, especially those who are well off and own properties in cash or ornaments, become easy targets of criminals because such persons cannot themselves defend their persons and properties.

In the past, when the system of joint family was in vogue, the elders were never left alone and the question of providing them security by the police never arose. Today, the joint family system has almost disappeared. The size of family, particularly in the socially and educationally advanced classes, has also reduced significantly. The problem arises when the younger members of the family, viz. sons and daughters, leave the aged parents alone and start living separately with their spouses and children. This mostly happens because of the job or business compulsions. In many cases, the habits and the life style of the aged parents are not liked by the younger generation, especially the daughters-in-law or sons-in-law. Such younger members of the family compel their spouses to leave their aged parents alone.

Since there are no sufficient number of suitable old-age homes (Vridhashrams), such elderly persons have no option but to live in their own houses. Absence of an organized and well supervised class of domestic servants discourage such persons to employ full time servants. Thus, the elderly people living alone, especially in big cities where the practice of watching and helping the neighbours is not a culture, become easy targets of criminals.

Incidents of looting and killing of elderly people create sensational news putting questions on the ability of the police. Therefore, the police have to pay special attention towards this emerging problem of security of elderly people who are popularly addressed as senior citizens. In some cities the police have set up special cells and chalked out special schemes for helping the senior citizens.

5.8 ROLE OF POLICE DURING DISASTERS

Nature has always been playing the game of creation and destruction. Ever since the advent of the human being we have been watching it wonderly, bearing the wreck relentlessly and finally mitigating her horror game with our capabilities and constraints. Even the present supersonic and globalization era is not spared from the onslaughts of nature's naughty play. With the advancement of civilization, man-made disasters have also added to the problem. The Indian sub-continent is the most vulnerable region to natural disasters in the world due to its unique geo-climate conditions.⁶⁵

The natural calamities that affect people in India are floods, droughts, cyclones, earthquakes, fire, accidents and epidemics. More specifically, our region is highly vulnerable to droughts, floods, cyclones and earthquakes. The havoc created by Tsunami in many coastal areas of India in the recent past shows how vulnerable to natural disasters our country is.

If any crisis situation emerges, the police rush to handle it or to extend its best cooperation to the concerned authorities in handling it. The people's expectations from the police during any disaster go very high. As a result, police have to often undertake even those activities which are not strictly part of its duties. In times of accidents, fire, floods, earthquake, or any other such calamity, the police involves itself totally in helping the affected people even at the cost of the life of its personnel.

⁶⁵ Roy, op.cit., pp. 139-40, in the article 'Role of Police and Paramilitary Forces in Dealing with Disasters' by Yatish Mishra.

During a disastrous situation, the civil administration finds it difficult to handle the situation without the active support and help of the police. The police plays a crucial role in evacuating people from the affected areas and shifting them to safe places. During the devastating earthquakes in Maharashtra, Gujarat and Jammu and Kashmir in last few years, the State police and para-military forces did a commendable job and contributed their valuable share in rescue and relief operations.

Heavy rains had flooded many parts of Maharashtra including the city of Mumbai in July 2005. The police came forward to extend all possible help and support to the civic authorities in carrying out rescue operations. The Mumbai police, taking all sorts of risk, reached the flood-stricken people and helped them in shifting to safe places. The Commissioner of Police, Mumbai, Mr. A.N. Roy, using a boat, visited the flood affected areas to personally supervise the rescue operations and to boost the morale of the police. This shows the depth of police involvement in helping the community in a crisis situation.

5.9 MANAGING VEHICULAR TRAFFIC

There has been a massive increase in the number of vehicles in India in the last few decades. Earlier, only on certain important spots traffic policemen were posted to control and direct the vehicular traffic. But today, the situation has changed drastically and there are numerous traffic signals on roads in urban areas which are manned by traffic police.

With the increase in number of vehicles, roads and parking spaces have not been expanded proportionately. It causes the problem of traffic jams and unauthorised parking on public roads and streets. In big cities like Mumbai and Delhi, the prices of residential properties have gone very high and therefore, most of the people, even after increase in the size of family, continue in their old flats and houses. However, on the other hand, the prices of cars and two-wheelers being affordable, every member of the family likes to have a separate vehicle for him or her. As a result, the number of vehicles have increased disproportionately. Since most of the residential premises do not have sufficient parking place, a large number of vehicles are parked in the streets and on the roads. This causes a lot of inconvenience to the road users and the police are required to solve these problems.

Besides controlling vehicular traffic and regulating parking, the traffic police also perform many other duties. They check the drivers and take their breath tests to detect consumption of alcohol. This is done to prevent drunken people from driving vehicles which may endanger

others. In order to ensure that in future the problems of parking and congestion on roads and streets do not occur, the traffic police authorities participate in the town planning process. In Mumbai, construction of commercial complexes such as hotels, restaurants and theatres requires prior clearance from the traffic police.

In addition to the above described major functions, the police also discharges numerous other duties such as serving notices and summonses issued by the courts, escorting prisoners, conducting enquiries for character verification of certain persons and collecting intelligence.

5.10 POWERS AND OBLIGATIONS OF POLICE

The Police are assigned the difficult job of preventing and investigating crimes. They have the responsibility to maintain public order, protect VIPs and play a crucial role in the security of the State. To accomplish these onerous and sensitive tasks, the police are vested with wide legal powers. These include the power to arrest people, search their person and property, call them to police station for investigation and to take other such lawful actions as required for discharging their duties. In order to ensure that the police exercise these powers properly, the law has imposed various restrictions and limitations on the police.

In the past, many of the rulers used the police according to their whims and fancies to punish their opponents and suppress uprisings. The police would carry out the orders of the ruler without bothering for the rights of the people. As a result, the police got branded as a ruler friendly agency. However, with the advent of democratic institutions the people have become the source of power and the State has recognized their basic rights. Now, the police derive powers from the established law to discharge their duties rather than acting upon oral directions of the rulers. In other words, the basic duty of today's police is to ensure the 'rule of law' which is the essence of a democratic State.

The framers of the law were well aware that in a country like India, where majority of the people are illiterate and unaware of their rights, the police might exploit the innocent people by using their discretions arbitrarily. They knew that once the victims of police atrocities are awakened to their rights, they might not only oppose the police but also join hands to threaten the very existence of the State. In order to avoid such a situation, it was expedient to curtail the powers of the police so that they would perform their duties without subjecting people to undue harassment and hardship. Accordingly, new laws were enacted and detailed procedures

were laid down to maintain the balance between the powers of the police and the rights of the people. Consequently, many new obligations came to be imposed upon the police.

In the process of enforcing laws, many things depend upon the place, time and circumstances. The law cannot prescribe each and every thing to be done by the law enforcement agencies. For example, exercising the power under section 160 CrPC, a police officer investigating an offence may call any male person above the age of fifteen years to the police station and examine him in connection with the investigation. It is not possible to stipulate all the circumstances under which a person can be called by the investigating officer to the police station. The law has left it to the discretion of the individual police officer. He may exercise this discretion to avoid inconvenience to a person by not calling him to the police station or he may call a member of the public to the police station under the pretext of an investigation and make him wait for hours together.

Though the discretions also need to be exercised prudently and judiciously, yet it is very difficult to definitely say whether a particular discretion was exercised properly or not.

Therefore, the legislature, the Supreme Court and the High Courts have laid down laws and prescribed detailed procedures to be followed by the police, while exercising their powers including the discretionary powers. But, the experience shows that majority of the people in India are unaware of the powers and obligations of the police. As a result, many a time people unreasonably question the legal authority of the police and indulge in unnecessary arguments with them. For example, being unaware that any police officer investigating a cognizable offence is empowered to enter any place and make search without a search warrant for arresting a person or for seizure of certain things, many times the people ask the police officer to show the search warrant. On the other hand, many women and male persons below the age of 15 years, being unaware of their privilege of not to be called to police station, remain present at the police station in obedience of the unlawful orders of the police.

In order to remind the police of their obligations and to make people aware of their rights, an attempt is made in this chapter to discuss some of the commonly used powers of the police and legal limitations thereon. Besides various statutory provisions, some of the important guidelines and directions of the Supreme Court and the High Courts are also referred to and quoted.

ARREST AND DETENTION IN CUSTODY

One of the most vital duties of the police is to prevent and investigate crime. During the investigation of an offence, the police may have to arrest the persons who are alleged to have committed the offence or against whom there are reasonable grounds of suspicion. The police may be required to arrest a person against whom a warrant of arrest is issued by a Court. Under certain circumstances the police may have to arrest and detain a person for preventing a cognizable offence. Arrest at the hands of the police affects a person in many ways and hence the power to arrest people is considered the most important tool in the hands of the police.

Chapter V of the Criminal Procedure Code, 1973 inter alia deals with the powers of the police to arrest and the procedure to be followed by them. Section 41 CrPC empowers any police officer to arrest a person without any order or a warrant from a Magistrate. As per the provisions of this section, the persons who may be arrested by any police officer without a warrant include a person (a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists; (b) who has in his possession without lawful excuse any implement of house-breaking; (c) who has been proclaimed as an offender; (d) in whose possession anything is found which may reasonably be suspected to be stolen property; (e) who obstructs a police officer while in the execution of his duty; and (f) for whose arrest any requisition, whether written or oral, has been received from another police officer.

The police also have powers, under section 42 CrPC, to arrest a person who, in the presence of a police officer, has committed or has been accused of committing a noncognizable offence, refuses to give his name and residence or who gives a name or residence which such officer has reason to believe to be false.

Arresting some body is tantamount to temporarily taking away his right to personal liberty. Being under arrest, a person feels very awkward and uncomfortable. Arrest is always a matter of shock and shame for any self-esteeming person. Though the right to personal liberty was protected by the then prevailing Code of Criminal Procedure, 1898, yet, realizing its significance, it was incorporated in the Constitution as a Fundamental Right under article 21. To ensure that this right is not abridged by the police without reasonable grounds, the law has prescribed a detailed procedure to be followed by the police, while making arrests. The laid down procedure imposes certain obligations upon the police to safeguard the basic rights of the arrested person and subject him to minimum possible inconvenience.

Use of force while making arrest

Section 46 prescribes how the arrest is to be made. It says that in making an arrest the police officer shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action. This section appears to reflect the authority of the police, but in the present time when human rights are given high priority the provisions of section 46 need to be construed as restriction on the police. It has to be taken to mean that unless there is resistance the police officer making an arrest should not touch the body of the person to be arrested. Section 46 further empowers the police to use all means necessary to effect the arrest if the person to be arrested resists. However, sub section (3) of section 46 imposes a limit on the power of police to use force against a person for arresting him. It says that there is no right to the police to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

Physical restraint and handcuffing

Section 49 of the CrPC imposes another restriction on the powers of the police to handle the arrested person. It pronounces that the police are not permitted to use more restraint than is necessary to prevent the escape of the arrested person. The police used to exercise their discretion to handcuff an arrested person to prevent him from escaping from custody. However, with the increasing awareness about human rights the act of handcuffing an arrested person is now opposed unless it is fully justified. The issue of handcuffing a person, while in custody, has been raised before the Supreme Court in a few cases and the apex Court, after in depth discussions, has issued directions and guidelines to be followed by the police and other authorities.

In Shukla's case⁶⁶, the Supreme Court has held that handcuffing is prima facie inhuman, unreasonable, arbitrary and as such repugnant to article 21 of the Constitution of India. The Court in this case has directed:

“We clearly declare - and it shall be obeyed from the Inspector General of Police and Inspector General of Prisons to the escort constable and the jail warden - that the rule, regarding a prisoner in transit prison house and Court house, is freedom from handcuffs and the exception, under conditions of judicial supervision we have indicated earlier will be restraints with irons to be justified before or after. We mandate the judicial officer before

⁶⁶Prem Shankar Shukla v. Delhi Administration, AIR 1980 SC 1535.

whom the prisoner is produced to interrogate the prisoner, as a rule, whether he has been subjected to handcuffs or other “irons” treatment and, if he has been, the official concerned shall be asked to explain the action forthwith in the light of this judgment.”

In the case of Sunil Batra,⁶⁷ the Supreme Court has held that the indiscriminate resort to handcuffs when accused persons are taken to and from Court and the expedient of forcing irons on prison inmates are illegal and shall be stopped forthwith save in small category of cases where an under trial has a credible tendency for violence and escape a humanely graduated degree of “iron” restraint is permissible if other disciplinary alternatives are unworkable.

The apex Court in the case of Citizen for Democracy⁶⁸ once again dealt with the subject of handcuffing. Reiterating the guidelines issued in its earlier judgements and showing a grave concern on the instances of violation of the laid down directions, the Court in this case issued more detailed requirements to be followed by all concerned authorities. It has held that the police and the jail authorities are under a public duty to prevent the escape of prisoners and provide them with safe custody but at the same time the rights of the prisoners guaranteed to them under articles 14, 19 and 21 of the Constitution of India cannot be infringed. The Supreme Court in this case has issued the following specific directions to the police and prison authorities:

- (1) In all the cases where a person arrested by police, is produced before the Magistrate and remand - judicial or non-judicial - is given by the Magistrate the person concerned shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of the grant of the remand.
- (2) When the police arrests a person in execution of a warrant of arrest obtained from a Magistrate, the person arrested shall not be handcuffed unless the police has also obtained orders from the Magistrate for the handcuffing of the person to be so arrested.
- (3) Where a person is arrested by the police without warrant the police officer concerned may if he is satisfied, on the basis of the guide-lines given by us in para above, that it is necessary to handcuff such a person, he may do so till the time he is taken to the police station and

⁶⁷Sunil Batra v. Delhi Administration, AIR 1978 SC 1675.

⁶⁸3. Citizen for Democracy v. State of Assam, AIR 1996 SC 2193.

thereafter his production before the Magistrate. Further use of fetters thereafter can only be under the orders of the Magistrate as already indicated by us.

The Supreme Court, in its above mentioned judgement, has said that violation of any of the directions issued by it by any rank of police in the country or members of the jail establishment shall be summarily punishable under the Contempt of Courts Act apart from other penal consequences under law. Grounds for arrest and right to bail

Sub-section (1) of section 50 CrPC enjoins every police officer arresting a person without warrant to communicate to him the full particulars of the offence for which he is arrested and the grounds for such arrest. It is provided under sub-section (2) of section 50 that where a police officer arrests without warrant any person other than a person accused of a nonbailable offence, he shall inform the person arrested that he is entitled to be released on bail. This is relevant here to point out that under section 436 (1) CrPC any person arrested in a bailable offence is entitled to be released on bail. The provisions of section 436 impose an obligation on the officer-in-charge of a police station who has arrested such person to release him on bail if he is prepared to give bail. Cancellation of bail

In order to ensure that the persons released on bail do not obstruct the process of justice, the Supreme Court has considered the issue of cancellation of bail. The apex Court has held that though a person accused of a bailable offence is entitled to be released on bail pending his trial, if his conduct subsequent to his release, is found to be prejudicial to a fair trial, he forfeits his right to be released on bail and such forfeiture can be made effective by invoking the inherent power of the High Court under section 482 of the CrPC⁶⁹. Therefore, if at any subsequent stage of proceedings it is found that any person accused of a bailable offence is intimidating, bribing or tempering with the prosecution witnesses or is attempting to abscond, the High Court has inherent power to cause him to be arrested and to commit him to custody for such period as it thinks fit. This power can be invoked in exceptional case only when the High Court is satisfied that the ends of justice will be defeated unless the accused is committed to custody. Discharge of arrested person Section 59 provides that no person who has been arrested by a police officer shall be discharged except on his bond, or on bail, or under the special order of a Magistrate. Checks and balances have been introduced by the legislature through this provision, and hence instead of the police the Magistrates have been authorized to pass special orders with regard to discharge of arrested persons.

⁶⁹4. Talab Haji Hussain v. MadhukarPurshottamMondkar, (1958) SCR 1226.

Detention in custody

Detaining a person in custody is more shocking and humiliating than merely arresting and releasing him on bail immediately after the arrest. Detention in custody is a direct and effective restraint on one's personal liberty and therefore the law allows the detention of any person only on valid and reasonable grounds and that too for the minimum required period. The legislature has not given much discretion to the police in this regard and made elaborate provisions to safeguard the rights of the arrested person. Some of the statutory provisions are briefly described below:

(1) Section 56 CrPC requires that a police officer making an arrest without warrant shall without unnecessary delay take or send the person arrested before a Magistrate having jurisdiction in the case or before the officer-in-charge of a police station.

(2) As per the provisions of section 57 no police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

(3) Section 167 CrPC prescribes the procedure when investigation cannot be completed in twenty-four hours. In accordance with the provisions of this section whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours and there are grounds for believing that the accusation or information is well-founded, the officer-in-charge of the police station or the police officer making the investigation, shall forward the accused to such Magistrate. The Magistrate may authorize detention of the accused person, in custody of the police for a maximum period of fifteen days.

(4) As per the provisions of section 167 (2) an accused may be remanded to magisterial custody beyond fifteen days but not more than ninety days, if the offence is punishable with death, imprisonment for life or imprisonment for a term of not less than ten years, and sixty days in other cases.

(5) In the cases where a person is in jail under magisterial custody, the police officer investigating the case has to complete the investigation and submit the police report under section 173 (2) (i) CrPC within the time limit of ninety days or sixty days, as applicable to the

case, otherwise the accused person shall be released on bail if he is prepared to and does furnish bail. However, if the police complete the investigation and file police report, as required under section 173 (2) (i) CrPC, the custody of the accused can be further extended by the Magistrate in accordance with the provisions of section 309 of the CrPC.

The National Police Commission, 1979, also made an in depth study of police powers to arrest. The Commission, in its Third Report, has opined that a major portion of the arrests were connected with very minor prosecutions and cannot, therefore, be regarded as quite necessary from the point of view of crime prevention.⁷⁰

The Commission has suggested that an arrest during the investigation of a cognisable case may be considered justified in one or other of the following circumstances:⁷¹

(1) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror stricken victims.

(2) The accused is likely to abscond and evade the processes of law.

(3) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

(4) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

The Supreme Court, having referred to the above findings and suggestions of the National Police Commission, observed in Joginder Kumar's case⁷²:

“No arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a Police Officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own

⁷⁰. 5. Ratilal v. Asst. Collector of Customs, AIR 1967 SC 1639.

⁷¹Joginder Kumar v. State of U.P., AIR 1994 SC 1349.. 8. Ibid. 9. Ibid. 10. Ibid.

⁷²Ibid

interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified."

Right of the arrested person to have some one informed

The law requires that after arrest the person arrested should be informed of grounds of arrest and of right to bail. As the person under arrest may not be able to arrange for his bail, some one who will take interest in the welfare of the arrested person should be informed about his arrest. The right to have someone informed has been discussed by the Supreme Court in Joginder Kumar's case.⁷³ Taking a broad view, the apex Court in this case referred to the provisions of section 56(1) of the Police and Criminal Evidence Act, 1984 in England, which provides:⁷⁴

"Where a person has been arrested and is being held in custody in a police station or other premises, he shall be entitled, if he so requests, to have one friend or relative or other person who is known to him or who is likely to take an interest in his welfare told, as soon as is practicable except to the extent that delay is permitted by this section, that he has been arrested and is being detained there."

Observing that these rights are inherent in articles 21 and 22(1) of the Indian Constitution and require to be recognised and scrupulously protected, the Supreme Court issued the following requirements:⁷⁵

⁷³ Ibid supra

⁷⁴ Ibid supra

⁷⁵ Ibid supra

(1) An arrested person being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where he is being detained.

(2) The Police Officer shall inform the arrested person when he is brought to the police station of this right.

(3) An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections must be held to flow from Articles 21 and 22(1) and enforced strictly.

The Court has directed in very clear terms that the above requirements shall be followed in all cases of arrest till legal provisions are made in this behalf and that these requirements shall be in addition to the rights of the arrested persons found in the various Police Manuals. The Court has specifically directed the Directors General of Police of all the States in India to issue necessary instructions requiring due observance of these requirements. The Court has also directed that in addition to these directions departmental instruction shall also be issued that a police officer making an arrest should also record in the case diary, the reasons for making the arrest. These directions of the Supreme Court have the effect of law under article 141 of the Constitution of India and therefore any violation of these may render the concerned officer liable for action under the Contempt of Courts Act.

Custodial Violence and Police torture

The Supreme Court, in the case of D.K. Basu,⁷⁶ took a serious view of violations of the right to life and personal liberty and laid down requirements to be followed by the police and other authorities while arresting a person and detaining him in custody. The apex Court in this case observed:⁷⁷

“The importance of affirmed rights of every human being need no emphasis and, therefore, to deter breaches thereof becomes a sacred duty of the Court, as the custodian and protector of the fundamental and the basic human rights of the citizens. Custodial violence, including torture and death in the lock ups, strikes a blow at the Rule of Law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizens. It is

⁷⁶D.K. Basu v. State of West Bengal, AIR 1997 SC 610.

⁷⁷Ibid.,para 9

committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless.”

On the issue of police torture of the arrested person, the Supreme Court, in the above case, further observed:⁷⁸

“Police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but it must be remembered that the law does not permit use of third degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. End cannot justify the means. The interrogation and investigation into a crime should be in true sense purposeful to make the investigation effective. By torturing a person and using third degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit it.”

In D.K. Basu’s case, the Supreme Court, after having had lengthy discussions on various aspects of the right to life and personal liberty, has issued the following requirements to be complied with in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:⁷⁹

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as

⁷⁸Ibid.,para 29.

⁷⁹ Ibid., para 36

practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or and through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous police board.

The Supreme Court has stated in clear terms that failure to comply with the above requirements shall apart from rendering the concerned official liable for departmental action also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

Power to get the arrested person medically examined Section 53 CrPC is another important provision in law which empowers the police for effective investigation. Section 53 (1) provides that when a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.

Sub-section (2) of section 53 CrPC creates a safeguard for women. It requires that whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner.

While section 53 CrPC confers a very important power on the police, it also imposes the following obligations on the police: (i) the power of getting an arrested person examined can be exercised only by an officer not below the rank of a sub-inspector; (ii) there should be a reasonable ground to believe that such examination will afford evidence as to the commission of an offence; and (iii) a female person can be examined only by, or under the supervision of, a female registered medical practitioner.

There was no such provision under the old Code of Criminal Procedure but the legislature thought it proper to incorporate this new section in the CrPC of 1973 to empower the police to get an arrested person medically examined. This provision has been made to facilitate effective investigation.⁸⁰ This is one of the most powerful instruments available in the hands of the police for accomplishing the ticklish task of detecting offences and prosecuting the culprits in an effective manner. The developments in the medical jurisprudence has further

⁸⁰The Statement of Objects and Reasons states that this provision has been made to facilitate effective investigation. (Gazette of India Extraordinary Part II, sec. 2, dated December 10, 1970)

strengthened this power of the police. The facilities of DNA finger printing, brain mapping, etc. can help the police in a big way in detecting and proving the prosecution cases.

The powers of police under section 53CrPC were discussed by the Bombay High Court in the case of Anil AnantraoLokhande.⁸¹ The High Court in this case has held that section 53 imposes an obligation upon the arrested person to subject himself to medical examination at the instance of police to help investigation. The High Court has clarified that examination of person includes taking of blood sample and that subjecting an arrested person to medical examination, e.g. for taking blood sample, semen sample, is a proceeding under the CrPC and forms part of investigation. The High Court has observed:⁸²

“Though it may cause some discomfort to the arrested person, it does not come within the mischief of testimonial compulsion within the meaning of article 20 (3) of the Constitution. ...Where the case had been committed to the Court of Session and an application to the Sessions Judge by the police for directing the accused to give blood sample to the surgeon had been allowed, the application was maintainable under section 53 read with section 173 (8).”

On the issue of examination of ‘person’ the Allahabad High Court has held: “Examination of person does not mean the examination of the skin and what is visible on the body. If it is necessary to make an examination of any organ inside the body, this is permitted by section.”⁸³19 The Supreme Court has also held that the obtaining of such evidence is not violative of article 20 (3) of the Constitution which grants protection against selfincrimination.⁸⁴

Many times a question is raised whether a person arrested and released on bail can be compelled for medical examination of his person. The answer is affirmative. Merely by the fact that a person has been released on bail does not mean that the law has lost control over him. He is still in custody of the court. On this issue the Madras High Court has held: ⁸⁵

⁸¹Anil AnantraoLokhande v. State of Maharashtra, 1980 Mah. L.J. 849.

⁸² Ibid

⁸³Jamshed alias Dalli v. State of U.P., 1976 Cr.L.J 1680 as quoted in Sohoni’s Code of Criminal Procedure, Vol. 1, p.286

⁸⁴ Bombay v. KathiKalu, AIR 1961 SC 1808 as quoted in Ratanlal&Dhirajlal ‘s The Code of Criminal Procedure, p. 63.

⁸⁵Thaniel Victor v. State, 1991 Cri LJ 2416 at 2424 (Mad) as quoted in Commentary on the Code of Criminal Procedure, 1973 by S.C. Sarkar, volume 1, p. 499

“It will not be correct to say that only because the accused had been released on bail he ceased to be in the custody and therefore, powers under section 53 of the CrPC could not be exercised. The release on bail does not change the reality and from that fact alone, it cannot be said that he was not a person arrested for an offence. A person released on bail is still considered to be detained in the constructive custody of the Court through his surety. He has to appear before the Court whenever required or directed. Therefore, to that extent, his liberty is subjected to restraint. He is notionally in the custody of the

Court and hence continues to be a person arrested. Even in spite of the fact that the accused had been released on bail, he continues to be a person arrested on a charge of commission of an Offence and therefore, his medical examination can be carried out under Section 53 of the Code.”

The observations of the Supreme Court in the case of *Sunita Devi v. State of Bihar*⁸⁶22 affirms the above views of the Madras High Court that a person even after his release on bail continues to be in custody of the court. Right of the arrested person to get his body examined While empowering the police to get the arrested person examined the legislature also thought it proper to entitle the arrested person to a similar type of right and hence incorporated section 54 in the CrPC of 1973. Cursorily looking, the contents of both sections 53 and 54 may appear to be same. But it is not so. The contents of section 53 include the words ‘examination of his person’ whereas section 54 uses the words ‘examination of his body’. Thus, section 53 empowers the police for getting the examination of ‘person’ of the arrested person whereas section 54 gives a right to the arrested person for getting examination of his ‘body’.

In the case of *SheelaBarse*, the Supreme Court has discussed section 54 CrPC and issued the following directions:⁸⁷

“We would direct that the Magistrate before whom an arrested person is produced shall enquire from the arrested person whether he has any complaint of torture or maltreatment in police custody and inform him that he has right under Section 54 of the Code of Criminal Procedure, 1973 to be medically examined. We are aware that Section 54 of the Code of Criminal Procedure, 1973 undoubtedly provides for examination of an arrested person by a medical practitioner at the request of the arrested person and it is a right conferred on the

⁸⁶*Sunita Devi v. State of Bihar*, 2004 AIR SCW 7116.

⁸⁷*SheelaBarse v. State of Maharashtra*, AIR 1983 SC 378.

arrested person. But, very often, the arrested person is not aware of this right and on account of his ignorance, he is unable to exercise this right even though he may have been tortured or maltreated by the police in police lock up. It is for this reason that we are giving a specific direction requiring the Magistrate to inform the arrested person about this right of medical examination in case he has any complaint of torture or maltreatment in police custody.” Thus, the law has provided for the protection of an arrested person and given him a right under section 54 to make a request to the Magistrate for getting his body examined. In view of the Supreme Court’s directions now it is the duty of the Magistrate to specifically ask the person produced before him whether he has any complaint of illtreatment at the hands of the police.

SEARCH OF PLACES AND PERSONS

Power to make searches of persons and places is another effective device used by the police. During the investigation of a case the police have to make searches of various persons and places to trace clues and collect evidence for the detection of the case and prosecution of the accused. Section 47 (1) of the CrPC authorizes a police officer, having authority to arrest, to enter any place and search for the person to be arrested and the person who is residing in such place or is in charge of such place shall afford all reasonable facilities to such police officer for the search. Sub-section (2) of section 47 provides that if ingress to such place cannot be obtained under sub-section (1), it shall be lawful for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person. In case a police officer lawfully entered a place to make search and he is locked and detained there, he may break open any outer or inner door or window of any house or place in order to liberate himself.

Section 165 of the CrPC empowers the officer-in-charge of a police station or any police officer investigating an offence to make searches of places for collecting evidence. Subsection (1) of section 165 provides that whenever an officer-in-charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far

as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

Sub-section (2) of section 165 requires a police officer proceeding under sub-section (1), to conduct the search in person, as far as practicable. If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the place to be searched, and so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.

As authorized under section 166, an officer-in-charge of a police station or a police officer not being below the rank of sub-inspector making an investigation may require an officer-in-charge of another police station, whether in the same or a different district, to cause a search to be made in any place. The officer of such other police station, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made. However, whenever there is reason to believe that the delay occasioned by requiring an officer-in-charge of another police station to cause a search to be made might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer-in-charge of a police station or a police officer making any investigation to search, or cause to be searched, any place in the limits of another police station in accordance with the provisions of section 165, as if such place were within the limits of his own police station.

As provided under sections 47, 100, 165 and other parts of the CrPC, the powers of police to make search of a place are subject to the following obligations:

(1) Before exercising the power to forcefully enter the place to be searched by breaking open any outer or inner door, the police officer is required to notify his authority and purpose, and make demand of entry to such place. It is only after that an entry is not granted that the police officer can forcefully enter a place as provided under section 47 (2) of the CrPC. However, it does not require that where the door of the house is open the constable should wait and make a formal demand for admittance to the owner of the house⁸⁸.

⁸⁸Daitri Das v. State, AIR 1956 Orissa 97 at 99

(2) If there are more than one gates of any house, the police should go to the main gate and demand entry. However, the police may guard the other gate or gates, if deemed necessary, to prevent escape of the person to be arrested. The police should also give their personal search before taking searches.

(3) As per the proviso to sub-section (2) of section 47, if the place to be entered and searched is an apartment in the actual occupancy of a female (not being the person to be arrested) who, according to custom, does not appear in public, the police officer shall, before entering such apartment, give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it. A police officer who knowingly disobeys this requirement may be liable for action under section 166, IPC.

A question may arise as to how the police officer intending to enter a place will come to know that the intended place is in the actual occupancy of a female. Since the law cannot answer all such questions, it depends upon the judgment of the individual police officer based on the probabilities. The Orissa High Court has held that where a room is facing the village road it is highly improbable that it would be the apartment set apart for the females and therefore in the absence of any evidence to that effect the entry into the room without observing the formalities required by the proviso in sub section (2) of section 47 of the CrPC is not illegal.⁸⁹

(4) Before making a search, the police officer is required to call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situated or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search. If these requirements are not fulfilled the entry of the police may be held to be illegal.⁹⁰ The officer may issue an order in writing to call upon the inhabitants and if any person who, without reasonable cause,

⁸⁹ Ibid

⁹⁰ Pagla Baba v. State, AIR 1957 Orissa 130 at 145. In this case a party broke open the southern gate for purposes of arresting and making search and did not take the two gentlemen witnesses whom they had taken with them or any other gentlemen witnesses when they made the entry through the southern gate and after entering they did not give any personal search of themselves, it was held that by virtue of sections 47, 48 and 100 of the Criminal Procedure Code, it was incumbent upon the police either for effecting the arrest of the four persons or for searching and seizing the arms under the search warrant, to have gone to the eastern gate which was the main gate of the math and demanded Pagla Baba to allow them to enter the math for the said purposes of arrest and search, the entry of the police party was held to be illegal)

refuses or neglects to attend and witness a search, he shall be deemed to have committed an offence under section 187 of the Indian Penal Code, 1860.

(5) The search shall be made in the presence of the witnesses and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses.

(6) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person.

(7) When any person is searched under sub-section (3) of section 100 CrPC, a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person.

(8) Sub-section (4) of section 166 CrPC requires that any officer conducting a search, under section 166, (i.e. out side the limits of his police station) shall forthwith send notice of the search to the officer- in-charge of the police station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under section 100, and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in sub-sections (1) and (3) of section 165 CrPC.

(9) The owner or occupier of the place searched shall, on application, be furnished free of cost with a copy of any record sent to the Magistrate under sub-section (4) of section 166 CrPC.

From the above, it is observed that the law while empowering the police to make searches of persons and places has imposed many obligations upon them. If the legal requirements are not fulfilled the actions of the police to enter and search any place may be declared as illegal and the concerned police officer may be held liable for criminal action.

A police officer has to exercise due care and attention before entering a place to carry out a search. The law does not make it obligatory for the police to enter any place and make search; it merely allows the police to do so if the situation and circumstances so warrant. There cannot be mechanical application of the legal provisions. The time, place and urgency as well as the prevailing circumstances need to be kept in view before deciding to make an entry into a place for search. Mere fact that the police have the authority to enter a place and make

search does not necessarily mean that the police shall enter such a place and make search. The police have to assess the situation and ensure that its action, though lawful, should not invite the wrath of the general public to such an extent so as to put the public order in grave peril and endanger the life and property of the people at large. Similar views are reflected in the judgment of the Supreme Court in the case of Hindustani Andolan, wherein it is held: ⁹¹

“It is impossible and undesirable for any Court to issue a general writ of mandamus to the effect that whenever a criminal is suspected to have taken shelter in a place of worship, the police must enter that place, regardless of the overall situation of law and order. Speaking generally, courts cannot enforce law and order by issuing general direction without reference to specific instances. The Government has to assess, in the context of prevailing conditions, the impact of the steps taken to enforce law and order. And, it is the executive which has to take a policy decision as regards the steps to be taken in a given situation, after taking into account the demands of the prevailing situation. We do not commend or suggest that the police should be silent spectators to wanton destruction of life but we cannot, as men of some little experience of law and life, commend that the police must enter places of worship forcibly. While enforcing law and order, the executive cannot be oblivious of the possibility that while solving one problem of law and order, others more acute than the one sought to be solved may arise. That is always a valid and relevant consideration.”

As regards the powers to search a person, section 51CrPC provides that whenever a person is arrested by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and whenever a person is arrested without warrant, the officer making the arrest may search such person, and place in safe custody all articles, other than necessary wearing apparel, found upon him and where any article is seized from the arrested person, a receipt showing the articles taken in possession by the police officer shall be given to such person. This power of searching a person is subject to the following limitations:

(1) If a woman is to be searched, the search shall be made by another woman with strict regard to decency. As regards observance of this obligation also it will depend upon the personal decision of the other woman as what would not be decent while searching a woman. However, if the woman making the search of a woman crosses the generally accepted norms of decency her action could be questioned and she may be held liable for penal action. If a

91

female accused is searched by a female in the presence of witnesses and the sub-inspector to remove batua (purse) from her ghagra in the presence of males, such search cannot be said to be in accordance with strict regard to decency.⁹²

(2) Though section 51CrPC does not require that search of a person should be made in the presence of any witness yet it is in the interest of the police and the fair trial of the case that search is made in the presence of independent witnesses and the general provisions relating to search as provided under section 100 CrPC are followed.

(3) It has been held by the Allahabad High Court that the law does not give any authority whatsoever to a police officer to search a person until he has arrested the person.⁹³29 However, the provisions of sub-section (3) of section 100 of the CrPC, 1973 indicate that a person can be searched even before his arrest. Similarly a person can be searched under the provisions of other laws which provide for search of persons before formally arresting them. For example, section 42 of the Narcotics Drugs and Psychotropic Substances Act, 1985 empowers the police and other agencies to search any person under certain circumstances before making arrest.

POWER OF SEIZURE

During the investigation of a case the police have to seize various articles and items which may help in detection of the cases and later on in proving the prosecution case against the accused. Such articles and items may be valuable property such as licensed weapons, vehicles, parts of machinery and computer as well as the articles and items which may not have marketable value such as dust particles, stains of blood and saliva. Even under certain other circumstances such as accidents and unclaimed property, the police may take into custody or seize such property and take further steps for their disposal as well as other legal action.

Section 52 CrPC provides that the police officer making any arrest under the Code of Criminal Procedure may take from the person arrested any offensive weapons which he has about his person. The weapons so taken by the police officer shall be taken to the Court or the officer-in-charge of the police station, if the police officer making such seizure is other than an officer-in-charge of a police station.

⁹²Hindustani Andolan v. State of Punjab, AIR 1984 SC 582.

⁹³Motilal v. State, 24 Cut.LT 445

Section 102 CrPC provides that any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Such police officer, if subordinate to the officer-in-charge of a police station, shall forthwith report the seizure to that officer. Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.

This section gives the police very wide powers to seize property which is alleged or suspected to have been stolen or which may be found under circumstances which create a suspicion of the commission of any offence.⁹⁴ However, the police powers of making seizure are subject to the following legal requirements:

(1) The police power to make seizure of property, alleged or suspected to have been stolen, does not extend to taking away other property simply because they are mixed with the stolen ones.⁹⁵

(2) On seizing property under section 102 CrPC, the police officer must prepare a list of the articles seized. The police cannot detain any property without including the same in the seizure list.⁹⁶

(3) When property is seized by a police officer, he should forthwith send a report of the seizure to the Magistrate concerned.⁹⁷

(4) After the property is seized by the police, orders for its final disposal can only be passed by the Judicial Magistrate and the Police are expected to hold the property subject to the orders of the Magistrate. In a case, the Station House Officer handed over the two bullocks seized by him without the orders of the Magistrate to a third person, the High Court directed

⁹⁴ 30. *Kasturi Lal Kalia Ram v. State of UP.*, AIR 1965 SC 1039.

⁹⁵ *Emperor v. Sada*, 11 Cr. L.J.99.

⁹⁶ *Nemichand Jain v. Supdt. Of Central Excise and Land Customs*, AIR 1963 Manipur 35

⁹⁷ *State of Rajasthan v. P.C. Goswami*, 1988 RLW 160.

that compensation should be paid by the State to the person from whom the bullocks had been seized.⁹⁸

(5) If any offensive weapons have been seized from the person arrested the police officer making such seizure is required to deliver all weapons so taken to the Court as provided under section 52 CrPC.

While complying with the above described legal bindings, the police are also expected to take many other precautions to make sure that their lawful actions are not doubted and the evidence so collected is not rejected by the Court. Therefore, though there is no provision in the CrPC making it obligatory for the recovered articles to be sealed on the spot, yet, it would be better if all seized articles were sealed. Recovery of unlicensed arms, as generally happens in cases under sections 399 and 402 of the Indian Penal Code, may become doubtful if it cannot be established at the time of trial that the particular arms were those which were recovered from the possession of the accused. Recovered property in cases of theft and dacoity also requires to be sealed on the spot so that there may not be any doubt about the correctness or genuineness of subsequent identification proceedings.

In a case where the recovered articles, pistol and cartridges, were sealed on the spot, but signatures of witnesses present were not taken, the Allahabad High Court has held that though it would have been better if the signature of witnesses had been obtained, absence thereof on the sealed bundle was not fatal to the case.⁹⁹ The Supreme Court has also held that if the evidence of Investigating Officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses do not support the prosecution version. 36 However, certain special laws such as the Narcotics Drugs and Psychotropic Substances Act, 1985 provide for more detailed procedure for seizure and the Court dealing with cases under such laws take non-compliance of the laid down procedure very seriously. Therefore, the police should know the law and procedure and comply with all legal requirements while exercising their powers to make search and seizure.

POWER OF INVESTIGATION

The police have authority to investigate any cognizable offence without any order of the Magistrate. Section 156 (1) provides that any officer in charge of a police station may,

⁹⁸Ganesh v. State, 1988 CrLJ 475 (All).

⁹⁹35. Moti Chand v. State of U.P., 1973 All. Cr. R. 482

without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of chapter XIII of the CrPC. Any Magistrate empowered under section 190 CrPC to take cognizance of any case, may refer any cognizable case to the police for investigation. Schedule I of the CrPC, specifies as which offences punishable under the Indian Penal Code and other laws are cognizable. While dealing with the police powers of investigation the Supreme Court has ruled:¹⁰⁰

“There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book.”

The issue of the power and jurisdiction of the police to investigate a cognisable case also came up before Supreme Court in the case of Union of India v. Prakash P. Hinduja. The apex Court has held:¹⁰¹

“Thus the legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the first information report till the submission of the report by the officer-in-charge of police station in Court under section 173 (2), CrPC, this field being exclusively reserved for the investigating agency”

Though the CrPC gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, yet, in appropriate cases, an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers.¹⁰²

¹⁰⁰State of Bihar v. JAC Saldanha, AIR 1980 SC 326.

¹⁰¹Union of India v. PrakashHinduja, AIR 2003 SC 2612 at 2621.

¹⁰²S.N. Sharma v. Bipen Kumar Tiwari, AIR 1970 SC 786; Sarkar's Commentary on the Code of Criminal Procedure, 1973Volume 2, p.8.

As regards the authority of the Magistrate to order investigation by exercising his power under section 156 (3), it was held by the Punjab & Haryana High Court that the Magistrate while passing order under section 156 (3) was not empowered to direct the police to register the FIR. The registration of FIR pertains to the sphere of powers of investigation by the police, and the registration of the FIR is done in exercise of powers by the police under section 154 CrPC. That function of the police need not, and cannot be usurped by the Magistrate while passing an order under section 156 (3), Cr PC. Even plain reading of section 156 (3), Cr PC indicates that the Magistrate is empowered to direct the investigation by the police, and there is no mention regarding the powers to direct registration of the FIR.¹⁰³ But the Supreme Court in Madhubala's case has held contrary view. In this case the apex Court has held:¹⁰⁴

“In our opinion when an order for investigation under Section 156 (3) of the Code is to be made the proper direction to the Police would be ‘to register a case at the police station treating the complaint as the First Information Report and investigate into the same.’”

The issue of the powers of the Magistrate to direct registration of FIR while passing order for investigation under section 156 (3) once again came up before the Supreme Court in the case of Suresh Chand Jain and the Court has held: ¹⁰⁵

“Any judicial Magistrate, before, taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer-in-charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer-in-charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.”

¹⁰³. Ganesh Dass v. State of Kerala, 1996 Cri LJ 612 (P&H)

¹⁰⁴. Madhubala v. Suresh Kumar, AIR 1997 SC 3104.

¹⁰⁵Suresh Chand Jain v. State of M.P., AIR 2001 SC 571.

Thus, the Supreme Court has now settled the issue that the Magistrate, while passing order under section 156 (3) of the CrPC, is empowered to direct the police to register FIR and investigate.

The criminal law in India seems to have divided the criminal cases into three categories. The minor and petty cases which have been declared non-cognizable offences fall under the first category. A person aggrieved of any non-cognizable offence may approach a court of law and file a complaint before the Magistrate. In the common language such a case, filed before the Magistrate, is called 'private case' and in the legal language such a case is known as a 'complaint case' as provided under clause (a) of section 190 (1) CrPC. The second category includes the cognizable cases triable by Magistrates. In regard to such a case, an aggrieved person may approach the police and lodge an FIR or he may approach a court and file a complaint before the Magistrate. If the complaint is filed directly before the Magistrate, the case is termed as a 'private case' or a 'complaint case'. However, if in such a case an FIR is registered, it will become a 'state case'. After filing of the police report under section 173 CrPC, when the Magistrate takes cognizance of the case, it will be termed as a case instituted upon a police report as provided under clause (b) of section 190 (1) of the Cr.P.C. In the third category will fall the cases which are exclusively triable by the Court of Session.

Section 225 of the CrPC provides that a trial before the Court of Session will be conducted by a Public Prosecutor and thus all cases which have been found fit and committed by a Magistrate for trial by the Court of Session are considered to be state cases because the services of Public Prosecutor will invariably be available to the complainant. But in a case instituted as complaint case before the Magistrate, the services of the Public

Prosecutor or Assistant Public Prosecutor may not be available on State expense and the concerned complainant may have to hire the services of a private pleader to prosecute the accused. In a non-cognizable case, instituted on a complaint filed before the Magistrate, the case will be a private case and the concerned complainant will have to pursue the case by hiring the services of private pleader.

Thus, the law seems to have created a difference between a private case and a state case. Earlier, the cases being referred to the police by the Magistrates under section 156 (3) or under section 202 of the CrPC were entered separately in the crime register and were called as "M" cases.⁴³ Rule 115 (3) of the Bombay Police Manual, Part III provides that the cases referred to the Police by the Judicial Magistrates under section 156 (3) or Section 202 of the

Cr.P.C. should not be entered in the crime register and entries about such cases be made at the end of the register marking them as “M” cases’. It indicates that the case which is referred to the Police by the Magistrates for investigation under 156(3) was not to be given regular crime number as is given to a case in which an FIR is registered. However, in view of the above mentioned rulings of the Supreme Court, FIRs need to be registered in respect of the cases referred to the police by the Magistrates for investigation under section 156 (3) CrPC.

On a cognizance of the offence being taken by the Court, the police function of investigation comes to an end subject to the provision contained in section 173 (8) CrPC. Then commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the Court, and to award adequate punishment according to law for the offence proved to the satisfaction of the Court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate. This has been recognised way back in the case of the King Emperor v. KhwajaNazir Ahmad¹⁰⁶ where the Privy Council observed as under :

“In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the court’s functions begin when a charge is preferred before it, and not until then.”

Where the law under section 156 (1) empowers a police officer to investigate a cognizable offence, sub-section (2) of section 156 protects a police officer who investigated a case which such officer was not empowered to investigate. The provision in sub-section (2) makes it abundantly plain that want of authority in the investigating officer investigating a case under

¹⁰⁶King Emperor v. KhwajaNazir Ahmad, (1944), 71Ind App 203 at p. 213.

sub-section (1) will not vitiate the trial started on his report or complaint. Such defects have no bearing on the competence of the Court to take cognizance of the offence, however, serious the defect may be, or on the procedure of the trial. Even an invalid report of a police officer may fall either under clause (a) or (b) of section 190 (1). Then cognizance taken on the basis of an invalid report is in the nature of an error in a proceeding antecedent to the trial and to such a case section 465 (1) will be attracted.¹⁰⁷ Section 155 (2) CrPC provides that no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial. So, a police officer can also investigate a non-cognizable offence after obtaining orders from the Magistrate. As provided under section 155 (3) a police officer, while investigating a non-cognizable, may exercise the same powers in respect of the investigation as are available to investigation of a cognizable offence except the power to arrest without warrant.

POWER TO REFUSE INVESTIGATION

Proviso (b) in sub-section (1) of section 157 CrPC gives scope to an officer-in-charge of a police station to decide, after receipt of an information of a cognizable offence, whether to proceed with the investigation or to refuse investigation. It provides that if it appears to the officer-in-charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case. However, sub-section (2) requires that in the case of refusal to make investigation the officer- in-charge of the police station shall state in his report his reasons for not investigating the case and he shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.

POWER TO CALL PEOPLE TO POLICE STATION

Another area where the police have discretion is the authority to call people to the police station in connection with the investigation of offences. The police derive powers of investigation from chapter XII of the Code of Criminal Procedure, 1973. Section 156 CrPC authorizes the police to investigate any cognizable offence without any order of the Magistrate. The First Schedule, CrPC of 1973, inter alia classifies offences under the Indian Penal Code and other laws as cognizable or non-cognizable. Any Magistrate empowered under

¹⁰⁷. 45. Public Prosecutor v. MatamBhai, AIR 1970 1969 AP 99.

section 190 CrPC to take cognizance of any case, may refer any case to the police for investigation.

In the criminal cases where documentary evidence is not sufficient to prove the case, the police collect oral evidence to find out the truth. A police officer carrying out investigation of an offence should visit the scene of offence and other places to examine the witnesses. With a view to facilitating the investigation, the law under section 160 CrPC, authorizes a police officer investigating the case to require attendance before himself of any person except any male under the age of fifteen years or any woman.

The people in India still do not find it comfortable to visit police stations. Obviously, a person called by the police to the police station feels offended if in the opinion of such person there are no reasonable grounds for calling him to the police station. Even if the police officer, who has called a member of the public to the police station, does not behave rudely the person suffers by way of waiting at the police station for a long time. Generally, this happens because the police officer, who has called members of the public to the police station, gets stuck in some other more important and urgent work such as attending to a law and order problem or rushing to the scene of a serious crime. Unavailability of suitable waiting room and inadequacy of the basic facilities at most of the police stations in India make the waiting at the police station more unpalatable. The members of public, who go through the ordeal of visiting and waiting at the police stations for long hours, take with them antipathetic feelings. As a result the image of the police deteriorates.

The provisions of section 160 CrPC empowers a police officer making an investigation under chapter XII of the CrPC to require attendance before himself of any person who appears to be acquainted with the circumstances of the cases. An order under section 160 CrPC can be made requiring the attendance of any person except women and males under the age of fifteen. Any person who fails to comply with the order of the police may be prosecuted for disobedience under section 174 of the Indian Penal Code.

Many times a question arises whether the police have powers to issue order under section 160 CrPC to the persons who are accused in the case. This issue came up before the Supreme Court in the case of Nandini Satpathy. The apex Court has held:¹⁰⁸

¹⁰⁸Nandini Satpathy v. P.L. Dani, AIR 1978 SC 1025 (para 53).

We hold that ‘any person’ supposed to be acquainted with the facts and circumstances of the case includes an accused persons who fills that role because the police suppose him to have committed the crime and must, therefore, be familiar with the facts. The supposition may later prove a fiction but that does not repel the section. Nor does the marginal note ‘examination of witnesses by police’ clinch the matter. A marginal note clears ambiguity but does not control.”

To make it crystal clear the Supreme Court in the above case has held: “We hold that section 161 enables the police to examine the accused during investigation.” Thus the legal position is very clear that a police officer investigating an offence is authorised under section 160 CrPC to require the attendance of any person, including an accused.

The law has incorporated adequate safeguards for the people in this section itself. A mere glance at the section reveals the following limitations on the power of the police:

(1) Only those persons who are residing within the jurisdiction of the police station or the adjoining police station can be required by the police officer to remain present before himself. However, unfortunately, in many cases the police keep on requiring the attendance of the people residing at places beyond the jurisdiction of adjoining police station by issuing them written notices under section 160 CrPC. In most of such cases the people, being unaware of the legal protection available to them, obey such illegal orders of the police. It becomes very embarrassing for the police whenever any person raises a question of legal propriety in issuing a notice without jurisdiction. In such a case the Haryana Police had issued such a notice under section 160 CrPC requiring a person (who happened to be an IPS officer) from Orissa. This improper action of the police was challenged before the Cuttack High Court and the Court held that the notice was illegal.¹⁰⁹

(2) The police cannot call any woman, of whatsoever age, and any male under the age of fifteen years to attend at any place other than the place in which such person resides. The police officer has to go to the place of residence of such persons for examining them. In many cases this legal safeguard is also neglected and the police keep on calling such persons to the police station. The Supreme Court, in the case of Nandini Sathpathy,¹¹⁰ has very strongly

¹⁰⁹Singh, N.K., *The Plain Truth*, p152.

¹¹⁰Nandini Sathpathy, *op.cit.* .

condemned the police for calling a woman to police station. The apex Court in this case observed:¹¹¹

“Before discussing the core issues, we wish to note our regret, in this case, at a higher level police officer, ignorantly insisting on a woman appearing at the police station, in flagrant contravention of the whole-some proviso to Section 160 (1) of the Cr. P. C. Such deviance must be visited with prompt punishment since policemen may not be a law unto themselves expecting others to obey the law. The wages of indifference is reprimand, of intransigence disciplinary action. If the alibi is that the Sessions Court had directed the accused to appear at the police station, that is no absolution for a police officer from disobedience of the law. There is public policy, not complimentary to the police personnel, behind this legislative proscription which keeps juveniles and females from police company except at the former’s safe residence. May be, in later years, community confidence and consciousness will regard the police force as entitled to better trust and soften the stigmatising or suspicious provisions now writ across the Code.”

(3) Only those persons, who appear to be acquainted with the facts and circumstances of the case can be required by the police officer to attend before himself. Whether a person is acquainted with the facts and circumstances of the case or not can be made out from the contents of the FIR and the other progress made during the investigation. If the FIR mentions the names of the persons who witnessed the incident or are otherwise having knowledge about the incident, then such persons can be the possible witnesses to be examined by the police. Other than those whose names or description appear in the FIR, the investigating officer may call any person using his discretion on the basis of the evidence collected or on his own information. However, this discretion has to be exercised cautiously and judiciously.

EXAMINATION OF WITNESSES

As per the provisions of sections 161CrPC, any police officer investigating a cognizable offence under chapter XII of the CrPC can examine any person supposed to be acquainted with the facts and circumstances of the case. Though it requires such person to answer truly all questions put to him by such police officer, the provisions of sub-section (2) of section 161 provides that the person being examined by the police shall not be bound to answer the

¹¹¹ . 49. Ibid.

questions which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

Questions have been raised about the propriety of the police to examine the accused under section 161, as article 20 (3) of the Constitution of India provides that no person accused of any offence shall be compelled to be a witness against himself. The issue has been examined by the Supreme Court in the case of *Nandini Sathpathy*¹¹² and the Court has held that section 161 enables the police to examine the accused during investigation. But the apex Court has warned the police not to use pressure and coercive methods while examining an accused under section 161. While holding the view that a police officer is clearly a person in authority and insistence on answering is a form of pressure especially in the atmosphere of the police station unless certain safeguards erasing duress are adhered to, the Supreme Court has held thus:¹¹³

“We hold further that the accused person cannot be forced to answer questions merely because the answers thereto are not implicative when viewed in isolation and confined to that particular case. He is entitled to keep his mouth shut if the answer sought has a reasonable prospect of exposing him to guilt in some other accusation actual or imminent, even though the investigation underway is not with reference to that. We have already explained that in determining the incriminatory character of an answer the accused is entitled to consider and the Court while adjudging will take note of - the setting, the totality of circumstances, the equation, personal and social, which have a bearing on making an answer substantially innocent but in effect guilty in import. However, fanciful claims, unreasonable apprehensions and vague possibilities cannot be the hiding ground for an accused person. He is bound to answer where there is no clear tendency to criminate.”

STATEMENTS TO POLICE NOT TO BE SIGNED

The provisions of section 162 CrPC prohibit the police officer to take signature of a witness on the statement recorded by him during the course of an investigation under chapter XII of the CrPC. The use of the words “under this chapter” makes it clear that all those statements which are recorded in the course of investigation under chapter XII, including a statement of a witness recorded by the investigator during the inquest under section 174, would be within

¹¹² Ibid

¹¹³ Ibid. 52. Ch. Razik Ram v. Ch. J.S. Chauhan, AIR 1975 SC 667.

the inhibition of section 162.¹¹⁴ But the first information report (FIR) recorded under section 154 will not be a statement recorded in the course of investigation and therefore there is no bar in obtaining signature on it. The provisions of section 162 are not applicable to the statements (dying declarations) of the witnesses falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872. Similarly, this inhibition is not to affect the provisions of section 27 of the Indian Evidence Act, 1872 under which a statement (confession or otherwise) of an accused in police custody made before a police officer is admissible to the extent it leads to the discovery of any fact.

As regards the implications of obtaining signatures on the statements in violation of section 162 CrPC, the Supreme Court has held:¹¹⁵ “If an investigating officer obtains the signature of a witness on his recorded statement, the evidence of the witness is not thereby rendered inadmissible. It merely puts the court on caution and may necessitate an indepth scrutiny of such an evidence.” In another case, the apex Court has held that if any Investigating Officer, ignorant of the provisions, secures the signature of the person concerned, it does not mean that the witness’s testimony in the Court would thereby become contaminated or vitiated. The Court will only reassure the witness that he is not bound by such statement albeit his signature finding a place thereon.

The legislators appear to have provided such a protection to the witnesses with the sole purpose of keeping them free while deposing before the court of law irrespective of what they stated before the police during the investigation. The continuation of such a provision in law indicates that the legislature still doubts the credibility of the police. Any violation of this condition by the police may not only reduce the reliability of the evidence of the witnesses but also may create serious suspicion on the trueness of the whole investigation. Therefore, it is not only the duty of the police to follow this condition but also the members of the public to resist any demand by the police to sign the statements recorded by them.

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RECORDING OF CONFESSIONS

¹¹⁴ State of U.P. v. M. K. Anthony, AIR 1985 SC 48.

¹¹⁵ State of Rajasthan v. Teja Ram, 1999 SCC (Cri) 436

Section 164 provides that any Metropolitan Magistrate or Judicial Magistrate may record any confession or statement made to him in the course of an investigation under chapter XII of the CrPC or under any other law before the commencement of the trial. However, to ensure that this provision is not misused by the police, the law has incorporated many precautions and prescribed a detailed procedure to be followed before recording the confession of any person. In this regard the following are the relevant points, as provided under section 164 CrPC, to be kept in view both by the authorities, viz. the police as well as the Magistrates, and the people desirous of making confessions.

(1) A police officer on whom any power of a Magistrate has been conferred cannot record any confession. However, under any special law, such as the Maharashtra Control of Organised Crime Act, 1999, powers to record confessions can be conferred on police officers.

(2) The Magistrate shall, before recording any confession, explain to the person making it that he is not bound to make a confession.

(3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorize the detention of such person in police custody.

CONCLUSION

The above discussion shows that the law has conferred wide powers on the police and prescribed detailed procedures within which these powers are to be exercised. The Declaration of Human Rights, 1948 has made the nations alive to the sufferings of humanity. The Declaration's guiding principles were adopted by the leaders of India and incorporated in the Constitution of India as Fundamental Rights. The Fundamental Rights, guaranteed to the people, include the right to life and personal liberty.

The Supreme Court, which is not only the highest court of law but also the protector of the Constitution, while dealing with various cases, has expanded the scope of the Fundamental Rights and imposed certain obligations on the polices. The police are supposed to keep these requirements, which have the force and effect of a law, in mind while exercising their powers. The apex Court in a number of cases has not only awarded compensation to the persons whose rights had been violated but also has made the police officers liable to penal action.

It is true that the people, especially the victims of the crime, expect the police to take severe action against those who perpetrated violence and committed heinous offence putting the humanity to shame. But the police is supposed to work within a legal frame work; it cannot allow itself to be controlled by emotions. When the Constitution, the legislature, the Supreme Court and the High Courts say that the rights of the people, including those of the accused, should be protected, then it is the bounden duty of the police to obey such legal directions.

The police is a component of the criminal justice administration which is a wing of the State. The law has assigned certain tasks to the police and prescribed procedures to be followed by it to accomplish them. The police, being a law enforcement agency, is supposed to enforce the “rule of law” which is the basis of a democracy. The police will not fully succeed in this endeavour merely by making others to follow the law unless the police personnel themselves follow the law in letter and spirit. If any prevailing law is found to be ineffective or a more stringent piece of legislation is needed, the police may consider to approach the Government and propose to make necessary amendments in the existing law or enact a new law. Obviously, the police has no option but to follow the existing law.

Therefore, the police should improve its professional competence and win the confidence of the people to function as an efficient and effective law enforcement agency. Unless the police values the rights of the people and has a humane approach it would not be able to win the confidence of the people. It should make the people aware of its limitations so that they do not expect more than what the police can do legally. If the police enforces the law impartially, follows the laid down procedures in letter and spirit and protect the rights of people, the legislature and the Courts may consider to pose more trust in it by conferring more powers rather than putting further restrictions on it.

CHAPTER VI

INEFFICIENCY OF POLICE AND REFORMS NEEDED

The inefficiency in the current police force can be a result of various factors and can differ from state to state. Many police forces are overburdened and struggling with backlog investigations. To combat these problems it is important to see the reasons behind the problem. One reason can be inadequate human resources and inadequate financial means. In the following chapter four policy issues have been analysed and given a short description. The four identified issues are:

1. Training of police personnel; 2. Hiring of police personnel; 3. Technical equipment 4. Financial resources

These four areas together with the structural design defects (chapter 4) gravely affect the outcome of the police force. "Financial resources" will be left out in this report due to limited time for a thorough research in this filed.

Training of police personnel

Training of police personnel is compulsory at all the four levels in the system. The general training programme for the police recruits is satisfactory, but could be improved in the field of police investigators, according to the Malimath Committee.

"There is, thus, a great need to develop and sharpen investigative skills of the officers through regular training programmes at the induction stage and periodical in-service training courses."¹¹⁶

Currently there are only three Central Detective Training Schools in India. The small number of qualified training schools complicates the possibility to send police personnel on continuous training. Apart from the inadequacy of specialised training of police investigators many investigators are opposed to transfers and rearrangements in the force . These shortages, together with the inadequacy in modern equipment, result in unprofessional conduct and poor investigations.

¹¹⁶"Committee on Reforms of Criminal Justice System Report Volume 1" (India March 2003) Government of India, Ministry of Home Affairs p. 101

Hiring of police personnel

To ensure an efficient and modern police force it is crucial to have sufficient number of and well trained personnel. Currently in India, one police officer serves 700-750 citizens, compared to 242 in Australia or 382 in South Africa.

The high figures in India can be explained by a large number of unfilled vacancies in the police forces, this applies to all levels and all over the country. This is not a new phenomenon. Already in the year of 1980 the National Police Commission (NPC) addressed the issue of the understaffed Indian police force in their fourth report. It was established that one police officer was handling 122 cases per year The NAC wrote:

“The enormous burden of investigational workload that falls on the available investigating officers is too heavy to be borne with any reasonable efficiency. There is urgent need for increasing the cadre of Investigating Officers.”

It has also been stated that an investigating officer in Hyderabad today has a case work load of approximately 250-300 cases a year which is double compared to the national equivalent in 1980.

It is further stated that a desired number of cases per investigating officer per year would be 50 to 60 cases to ensure efficient and fair investigations. However the Malimath Committee stretch it to a maximum of 10 cases per investigating officer per year. To enable this aim, for e.g. in Hyderabad the case load on each investigating officer must decrease by 96 percent. To ensure the aim it is either required to employ more investigative officers into the police force, which would demand increased financial resources or to empower already existing personnel in the force to investigate minor criminal offences. The investigative powers lies with ASI and above ranked officers, in Andhra Pradesh this would mean that only 12% of the states police force is currently empowered to investigate a criminal case, whereas 88% is not. Therefore one suggestion to increase the number of investigators would be to empower the 88% to solve minor criminal cases and consequently decrease the number of pending investigations.

Unwarranted political interference

As mentioned earlier there are a certain scope for political interference in the police force today, this is particular true in the field of crime investigation, promotions and transfers. The following discussion will focus on these problems and the suggested solutions will be presented later in this report (section IV).

Unwarranted political interference in crime investigation

In theory, the police force functions independently from the executive and is according to the Indian constitution accountable to the state government.¹¹⁷70 In reality, police personnel are subjected to frequent and arbitrary transfers and they are exposed to unwarranted political pressure. The reasons for this pressure are two fold: corruption and political patronage of criminals.

Financial reasons

The Chief Minister (CM) is dependent on the support of the legislators. This has created a scope for the legislators to pressurise the CM (in exchange for their support) to transfer, promote and appoint certain police officers at various levels. Leading to the transfer of unwanted and inconvenient police officers who can get transferred to a less attractive post or district, while those who are easily influenced can be posted to 'rewarding' or powerful positions. In return for this service these legislators get payments from the involved police officers. This money can be understood to be a return for these legislators, on the massive investments made by them during elections. This is the purely monetary, totally illegitimate, side of political interference. In addition, police officials or politicians may be bribed for suppressing or distorting evidence and to undermine prosecution of a criminal case.

Where does the scope for political interference arise?

In the Indian political system, the voters elect the Members of Legislative Assembly (MLA) and the MLAs vote for their Chief Minister (CM). In theory, the CM and his/her government is accountable to the citizens. But in reality, the CM is accountable primarily to the MLAs because it is their support that keeps him/her in office.

Again, in theory, the government headed by the CM alone decides all appointments, transfers and promotions of police officers in a state. But again reality is different. The MLAs (well

¹¹⁷ Seventh Schedule Article 246 List II, the Constitution of India

aware of the government's dependence on their support for survival) can and actually do influence the appointments, transfers and promotions of individual officers, to their benefit.

Huge amounts of money change hands during this process, where chosen officers are posted in and disfavoured officers are shunted out to less 'rewarding' posts. Hence creating the scope for political interference.

Personal reasons

Over the last thirty years, candidates to the state legislature first took the help from less legitimate elements to get elected; and now, increasingly, these elements themselves are getting elected. This has led to known criminals being elected to the state legislature.⁷¹ The police personnel once again get pressured from the legislators for an investigative officer to neglect or close an ongoing investigation. The police investigation officers as well as the public prosecutors are under tremendous pressure not to present a strong case in the courts. This is the more dangerous side of political interference, where rule of law and the existence of democratic institutions are being threatened.

Because of the two reasons stated above, it is common that the Chief of Police is changed to suit the legislators whenever a new government is elected. The changes do not merely affect the top levels, but can go all the way down to the Station House Officer, to please the new regime.

To survive in such a system, police personnel feel compelled to surrender to political influence in their work. This in turn gravely affects the police work, and specifically the criminal investigations. A police investigator, who is one day leading an investigation, can find him/herself transferred the next day to conduct traffic, if he or she resists the pressure of a local MLA.

Appointments, transfers and promotions

In the present police force, appointments, transfers and promotion are mostly based on subjective opinions. Promotion to higher positions directly involves the executive, while transfers and postings are vested in the hands of higher ranked police officer and applied to

all levels. Even here the political executive has an important say. A new government usually appoints, transfers and promotes policemen they know are loyal to them.

The same applies to the appointments of prosecutors. In theory, the District Magistrate shall prepare a panel of names of persons that are fit to be prosecutors for the district. The list shall be put forward by the Magistrate and a Judge shall appoint who he or she seems to be fit.⁷³ In practice, it is different. It happens that the state government first recommends names to the Magistrate, which he puts on the panel and hands it back. The listing of the names is based on personal loyalties and political affiliations, rather than on merits and skills.

The result of this is a police force and a prosecution system that rather serve the politicians than the public. Hence the police force cannot function independently under this system.

Disparate functions performed by an overburdened police force

The current Indian police force is in charge of vast and multi-faceted functions due to vague descriptions of the police duties in the IPA and is consequently overburdened by the shortage of trained police personnel. Hence a police officer might be in charge of a sensitive crime investigation one day and the next he or she might be made responsible to conduct traffic or controlling a crowd due to the current structure in the police force.

To ensure a modern and professional police force, the police personnel should be able to specialise in a specific field and work in that field without fear of being transferred. The modern police work includes multi-faceted tasks and it is neither fair nor realistic for a police officer to handle all sorts of duties (ranging from crime investigation to traffic control). If this is the system, it is inevitable that some duties will not be given priority and may even be neglected leading to bad police work and low public trust.

It is therefore recommended in this report to clearly separate the police duties to ensure a professional, efficient and specialized police force.

Empowerment of police personnel

The hierarchical structure laid down in the IPA originates from the colonial structure and mindset. Hence only a few high ranking police officer have true decision making powers while the manpower is concentrated at the lowest level—constable level. This hierarchical system does not encourage, nor expects the constables to think independently or to take their own initiatives. The constables are strictly following their superiors' orders and acting merely

as messenger boys. In Andhra Pradesh 88 % in the police force are ranked Head-constables or Constables, which forms a much skewed system (chapter 2.3). Even the police officers with higher ranking can feel disempowered; their decisions can be undermined either by orders of their superior, or by unwarranted political interference.

This lack of empowerment together with absence of meaningful career growth has contributed to the generally low degree of morale and decreased sense of public responsibility. Therefore this report suggests that empowerment of all police personnel is essential.

Absence of an independent oversight body

The police work today is heavily influenced by unwarranted political interference and police officers can feel compelled to use drastic methods to obtain a confession. Excessive force by police officers are sadly common and the National Police Commission stated already in 1980:

“Police are frequently criticised of their use of third degree methods during investigations while examining suspected or accused persons”¹¹⁸

There is also pressure on district police to keep crime statistic low. Often, this is accomplished by merely suppressing crimes, by the simple expedient of not recording complaints and registering the FIR (47% in the Transparency International India study felt compelled to bribe the police officer to ensure their FIR got recorded). This has lead to both obstruction of justice and abuse of authority, which in the best of cases get investigated by the superior officers unless they themselves are pressured. The Transparency International India concludes that the police force is found to be the most corrupt department in the public service in India. India itself was ranked 90th (of 146 countries) in the Transparency International’s 2004 Corruption study.

To restore public trust in the police force, an independent oversight body should be created to investigate all allegations of police abuse. Therefore this report suggests the creation of an independent oversight body .

¹¹⁸National Police Commission (1980), “Fourth Report of the National Police Commission” p. 8 75 Supra note 57, p. 219

Collaboration between the police and the prosecutor

Article 50 of the Indian Constitution provides the provision of separation between the judiciary and the executive. A clear separation between the both entered into effect after the amendment of the Code of Criminal Procedure in 1974. However, the separation between the police and the prosecutor was taken to such an extent that there is hardly any cooperation between the two. Consequently there is no legal guidance during police investigations, which increase the risk of fragmented cases. Currently the prosecutor will only be involved after the police have filed the charge sheet.

At the same time the prosecutors too are largely opposed to undue political interference. Both investigation and prosecution, which ought to be quasi-judicial functions, are largely driven by subjective political influences.

Therefore this report suggests increased cooperation between the police force and the prosecution as well as an independent prosecution wing .

Previous attempts at Police Reforms

After independence the need for police reforms was important and many states set up their own police commissions. The first state police commission was set up in 1959 in Kerala. Most of the States had the Police Act of 1861 as a model when drafting the state acts, hence the same idea and structure is found in the State police Acts. This sub-chapter will not analyse the former police reform attempts but merely describe briefly the reform commissions after independence. The chapter is based solely on “Report of the Review Committee on the Recommendations of National Police Commission & Other Commissions/Committees on Police Reform” (March 2005).

Gore Committee on Police Training 1971 – 1973

The Gore Committee on Police Training was set up to review the training of the state police from constabulary level to IPS level. The committee made 186 recommendations, 45 of those were related to police reforms. The recommendation that relates to the police training has mostly been implemented however the reforms relating to the structure of the police system has on the other hand been overlooked.¹¹⁹

¹¹⁹ “Report of the Review Committee on the Recommendations of National Police Commission & Other Commissions/Committees on Police Reform” (March 2005), p. 5 4 Supra note 26, p. 7, 8

National Police Commission (NPC) 1977 – 1981

The National Police Commission (NPC) was the first commission to exhaustively review the Indian police system. NPC wrote eight reports in four years. The eight reports suggested all together 291 recommendations all related to police reforms. Most of the recommendations have not been implemented.

Ribeiro Committee on Police Reforms 1998

The Ribeiro Committee was set up in 1998 on the order of the Supreme Court following a Public Interest Litigation (PIL) on police reforms. The committee proposed five major recommendations related to state security, selection of DGP and complaints against the police, the recommendations have not been implemented.

Padmanabhaiah Committee on Police Reforms 2000

Former Union Home Secretary Shri K. Padmanabhaiah was appointed chairman of the Padmanabhaiah commission in 2000 by the Home Ministry of Affairs. The commission inspected the recruitment to the police force, training, duties and responsibilities, police officers behaviour, police investigations, prosecution, amongst others. The committee suggested 99 actionable recommendations, of which 54 need to be implemented by the central government and 69 needs to be implemented by the state governments.

Group of Ministers on National Security 2000 – 2001

The Group of Ministers on National Security was worked on four tasks namely a) the intelligence system b) internal security c) border management and d) the management of defence. 62 recommendations were made, 54 needs action taken by the central government and 42 by the state governments.

Malimath Committee on Reforms of Criminal Justice System 2001 – 2003

The Malimath Committee addressed the principles of the Criminal Justice System, investigation, prosecution, judiciary, crime and punishment. The report has been heavily criticised by human rights organisation for its suggestion of changing the burden of proof.³⁹ The committee made 158 observations and recommendations. There are 55 major recommendations of which 42 have to be implemented by the central government and 26 by the state governments.

The Police Act Drafting Committee submits its Model Police Act, 2006

In October 2005, the central government set up a "Police Act Drafting Committee" (PADC) - commonly known as the Soli Sorabjee Committee - tasked to draft a new model Police Act. The PADC was mandated to take into account the changing role and responsibilities of the police and the challenges before it and draft a model act that could guide states while adopting their own legislation. The constitution of the PADC was prompted by the Prime Minister's concern expressed at the Conference of District Superintendents of Police in early 2005 that: "We need to ensure that police forces at all levels, and even more so at the grassroots, change from a feudal force to a democratic service".

*****AFTER PRAKASH SINGH V. UNION OF INDIA*****

Ever since the Police Act was enacted in 1861, there have been few and far reforms to the police system in India. Several committees were set up by the Government to look into these reforms. One very important milestone in this regard was Prakash Singh v. Union of India in 2006.

The problem of political interference in the work of the police and its disastrous consequences on the rule of law in this country were examined by the National Police Commission in its Second Report (August 1979). The Commission made the following major recommendations to deal with the problem :-

A State Security Commission should be set up in each State to:

- (i) lay down broad policy guidelines
- (ii) evaluate the performance of the State police
- (iii) function as a forum of appeal to dispose off representations from officers regarding their being subjected to illegal orders and regarding their promotion.
- (iv) generally review the functioning of the police force.

The Chief of the State Police Force should be selected from a panel of three IPS officers of that State cadre. The panel itself should be prepared by a committee headed by the Chairman of the UPSC. The Police Chief thus selected should have a fixed tenure.

Under the existing system, selection of the head of the State Police Force and his continuance in office are dependent on the discretion of the Chief Minister/Home Minister. This encourages a very unhealthy race amongst senior officers in the police to lobby for the top post. It leads to erosion of standards of leadership and discipline in the police, besides disrupting its organisational structure and command system. The Police Act of 1861 should be replaced by a new Police Act, which not only changes the system of control and superintendence over the police but also enlarges the role of the police to make it function as an agency which promotes the rule of law in the country and renders impartial service to the people.

154th Report, the Law Commission highlighted that¹²⁰ :-

(i) reduction of executive control over police investigation as the latter would enjoy protection of the judiciary, (ii) better investigation owing to scrutiny of courts which will lead to successful prosecutions, (iii) reduction in the possibility of unjustified and unwarranted prosecutions, (iv) speedy investigation leading to speedy disposal of cases,

The advent of Independence changed the political system, but the police system remained more or less unaltered. However, the need for change and reform in the police had been realised widely. Throughout the 1960s, many State Governments took initiatives to set up commissions to examine the problems of the police and suggest improvements. During the 1970s, the Government of India became active and set up the Committee on Police Training in 1971, and later the National Police Commission in 1977.

In 1996, Mr Prakash Singh, a retired police officer, petitioned the Supreme Court under Article 32, urging for the issue of directions to the Government of India to frame a new Police Act on the lines of the model Act drafted by the Commission in order to ensure that the police is made accountable essentially and primarily to law of the land and the people. Supreme Court considered in 2006 that it could not further wait for the Governments to take suitable steps for police reforms and had to appropriate directions for immediate compliance.

The Supreme Court referred to the recommendations made by several committees on police reforms and culled four requisite points of reform: (a) State Security Commission at State level; (b) transparent procedure for the appointment of Police Chief and the desirability of

¹²⁰ 7 “one fifty Fourth Report of the law Commission”,

giving him a minimum fixed tenure; (c) separation of investigation work from law and order ; (d) new Police Act which should reflect the democratic aspirations of the people.

On 22-9-2006, the Supreme Court of India delivered a historic judgment in *Prakash Singh v. Union of India* instructing the Central and State Governments to comply with a set of seven directives laying down practical mechanisms to kickstart police reform. The Supreme Court required all the Governments, at the Centre and State levels, to comply with the seven directives by 31-12-2006. The Supreme Court cast away the objections raised and stated that its directions had to be complied with without any modification. The Court granted a three month extension to comply with four of its directives, while stating that the others had to be complied with immediately.

A number of States have taken the initiative to put in place special committees to draft a new Police Bill and committed to introducing it in the legislature in the coming months. It is hoped that these new pieces of legislation will be openly debated and ultimately reflect the essence of the Supreme Court judgment. The judgment is the first tangible step towards police reform in a long time but also only an initial step. What is now required is strong political will to introduce longlasting reforms and not merely cosmetic changes.

Directions of the Supreme Court in *Prakash Singh v. Union of India* :

These directives can be broadly divided into two categories: (i) those seeking to achieve functional autonomy for the police (Part I); (ii) those seeking to enhance police accountability (Part II).

Directive 1 State Security Commission The State Governments are directed to constitute a State Security Commission to: (i) ensure that the State Government does not exercise unwarranted influence or pressure on the police, (ii) lay down broad policy guidelines, (iii) evaluate the performance of the State police.

Directive 2. Director General of Police The State Government is to ensure that the Director General of Police is appointed through a merit based, transparent process and enjoys a minimum tenure of two years.

Directive 3. Minimum tenure for other police officers The State Government is to ensure that other police officers on operational duties (including Superintendents of Police in charge of a

district and Station House Officers in charge of a police station) also have a minimum tenure of two years.

Directive 4. Police Establishment Board The State Government is to set up a Police Establishment Board, which will decide all transfers, postings, promotions and other service related matters of police officers of and below the rank of Deputy Superintendent of Police and make recommendations on postings and transfers of officers above the rank of Deputy Superintendent of Police.

Directive 5. National Security Commission The State Government is to set up a National Security Commission at the Union level to prepare a panel for selection and placement of Chiefs of the Central Police Organisations (CPO), who should also be given a minimum tenure of two years.

Directive 6. Police Complaints Authority The State Government is to set up independent Police Complaints Authorities at the State and district levels to look into public complaints against police officers in cases of serious misconduct, including custodial death, grievous hurt or rape in police custody.

Directive 7. Separation of investigation and law and order police The State

Government is to separate the investigation and law and order functions of the police. Separation of investigation and law and order police The State Government is to separate the investigation and law and order functions of the police.

CHAPTER VII

CONCLUSION AND SUGGESTIONS

For safeguarding the person and property of the people and for maintaining order in the society, the State was created and the King, as head of the State established an law enforcing agency. During various phases of history, this agency developed in structure and functioning and during the period of British rule in India it transformed into a disciplined and specialised force known as the police. Various institutions of the criminal justice system had taken their shape during the Vedic period in India. The system gradually developed and during the Mauryan period a well defined criminal justice system with a specialized agency like that of the present day police to deal with criminals had come into existence. During the medieval period, the rulers developed and reorganised the judicial system to suit their needs. The nomenclatures such as Kotwal, Fauzdar and Daroga, created during the medieval period, are still used for various ranks of the police.

During the British rule in India, the police developed into a well trained and specialized agency. The British had the experience of having a well trained police force in Britain and wanted to set up a police system in India almost on the same pattern. They introduced new standards of discipline, uniform, training and command, and passed new laws and framed rules for proper police administration in India. They set up the first Police Commission in 1860 and enacted the Police Act of 1861 incorporating most of its recommendations. The British appointed the Police Commission of 1902 and keeping in view its recommendations brought about changes to improve the police system.

Thus, the police which we see today has its roots in the very foundation of the State and passing through various phases of history it has evolved to its present status as a specialized agency without which even in a democracy the rulers cannot imagine to run the State.

From the above discussion, it may be observed that though its basic functions of preventing and investigating crime and maintaining law and order remain unchanged, many additional responsibilities have been assigned to the police.

The people of all strata approach the police with all conceivable problems that torment them and seek help in resolving their conflicts. The weaker sections of the society such as children, women and the Scheduled Castes and the Scheduled Tribes specially need the police to

protect their rights and to prevent atrocities on them. Various wings of the government require the help and protection of the police in implementation of various policies and developmental programmes. The civic authorities largely depend upon the help and assistance of the police to handle disasters.

The analysis of the functions of the police indicates that, instead of being merely “a force” with coercive powers, the police in India has become ‘a service’ in a realistic manner. Stretching its resources to the maximum possible extent, the police puts its best efforts to serve the people and safeguard the nation. Hence, for the general public the police is ‘helper in crises’; for the State it is “a catalyst of change”; and for the weaker sections of the society it is ‘a saviour’.

SUGGESTIONS

- Yet, despite its best efforts in providing multifarious services to the society,
- The police does not get its due share of appreciation from the people and the media.
- On the other hand, no opportunity is left to criticize and condemn it as a whole for an isolated incident of misconduct committed by any frustrated or disgruntled member of the police organisation.
- It is true that the police being a disciplined agency, the society expects the police personnel to behave in an exemplary manner.
- Nevertheless, the police personnel are also human beings, vulnerable to many weaknesses; it may not be possible to totally rule out rare incidents of misconduct. If the authorities have dealt with the delinquent promptly and properly, the people should not keep the issue alive and criticize the whole organisation ignoring its valuable contribution towards the society.
- However, the experience shows that the people in India make the police a target of unreasonable criticism and condemn it without understanding its difficulties and limitations.
- It may demoralize the police personnel who otherwise deserve appreciation for working in adverse circumstances and difficult situations. Unfortunately, the following quote of August Vollmore appears to be still relevant to tell the abysmal condition of Indian policeman:
- “The policeman is denounced by the public, criticized by the preacher, ridiculed by movies, berated by newspapers and unsupported by the prosecuting officers and

judges. He is shunned by respectable, he is exposed to countless temptations and dangers, condemned while he enforces the law and dismissed while does not.

- He is supposed to pass the qualifications of soldier, doctor, lawyer, diplomat and educator with remuneration less than that of a daily labourer.”
- There is no denying the fact that the police personnel still need to improve their behaviour. They must realize that most of the people who approach the police are in distress. Such people come to the police with an expectation that they would be listened and helped.
- The police must take prompt and proper action to help them within the framework of the law. In cases where the complaints are of such nature that the police have either limited power or no power at all to take action, the complainants should be shown due sympathy and courtesy. With all politeness the people in such cases should be apprised of the limitations of the police. They may be guided to approach the proper forum. If this much care is taken by the police, the people would go back satisfied even without having got any substantial help from the police. This costs nothing but can earn a large fund of gratitude and goodwill.
- The people should also realize that in today’s democratic India, they are the masters and the police are their servants. It is the responsibility of the master to ensure that his servant is efficient and effective. For winning the loyalty of the servant, the master must understand his difficulties and limitations and show due concern to his health and welfare. When the servant works day and night ignoring his health and family to protect the person, property and dignity of the master, he certainly deserves a pat on the back. Thus, the people have a definite role and responsibility to boost the morale of the police and make it an efficient and effective agency. If the people stop looking at the police with awe and suspicion, encourage it in its efforts of fighting crime and support it when it requires their help, the police will certainly work more enthusiastically to serve the society in a better manner.

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