POLICE REFORMS: TIME FOR ACTION

Dr. Vijaya Chandra Tenneti[1]

I. Introduction

Policemen have existed since the dawn of civilization. No country has been able to do away with the police as they are necessary checks against the ambivalence of human nature. Police are the primary constitutional force for the protection of individual in the enjoyment of their legal rights. Designed to stand between the powerful and the weak, to prevent oppression, disaster and crime, it represents the cause of law and order at all times and in all places. He is a reality to comprehend and upon his impartiality, efficiency and intelligence depends the estimation in which law is held by the masses[2]. The Indian police, like many other government institutions, are a product of colonial times. Though most of the institutions of the colonial times have accommodated change and undergone drastic restructuring, yet the state of affairs within the police force has seen little change in the past six decades.

It has rightly been said that in a civilized society the way the police organization functions truly reflects the values and norms of that society. Even though a great change has taken place in so far as a totalitarian State has given place to a democratic society, there has been no realization that the ruler-appointed police should now function as the 'people's Police". This is not easy and requires a conscious effort at the political level, which unfortunately is not forthcoming. The police, in a sense, act as the principal agency of the State, with the duty of maintaining law and order. Thus, functioning as the principal agency of enforcing law and order, it is invested with the very great responsibility demanding of them the highest standards of conduct, particularly, those of honesty, impartiality and integrity. It is however, very unfortunate that the police in modern Indian society is looked upon with fear, suspicion and distrust by the public[3].

Criticism of the police force has never been as seething and as pervasive as it is these days. Brutalization of the organization, increasing number of deaths in police lock up, rape in custody, corruption of all sorts, are some of the most frequent and the common accusations that are hurled

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1 Asso. Prof. of Law, & Principal, Uni. College of Law, KU, Wgl

2 W.L. Melville Lee, History of Police in England (1971)

3 Paranjape N.V, Criminology and Administration of Criminal Justice, 1976, p. 122.

against the police force from all quarters. The image of the Indian Police in the eyes of the people is that of a corrupt, rude, insensitive and high-handed group of officials who are a law unto themselves.

II. Policing in India: The State of Affairs

The Indian police today finds itself handicapped not in its numerical strength but its inadequate infrastructural facilities like modern weaponry and equipment, transport and communication network and more importantly, need-based training which is of paramount importance to make it more efficient and effective instrument of law enforcement. An ill-equipped and ill-trained policeman lacking self-confidence and professional excellence cannot successfully challenge the might of organized and motivated criminals, militants etc.

The Police Act 1861, under which the police functions, assigns a negative and restrictive role to the police. The outcome of such a role are police-politician nexus and establishment protection role of police which negatives public accountability, total collapse of criminal justice system which enables the people to clamor for ready and rough justice to the criminals and indirectly accords sanction to police violence, prevalence of organizational sub-culture which fosters and nurtures the credo that the ends justify the means, and absence of a self-regulating mechanism within in the police organization.

It enjoins the police to be a servant of the government and not the servant of law. The police have been extensively used in India by politicians to maintain the hegemony of the ruling party and smother opposition. This 'establishment protection role" has created a nexus between the police and the politician and has created a quid-pro-quo system in which the politician has forfeited his right of supervision over the police for the favors done.

It is sad to note that most often the approach of the policemen in the investigation of a case is not from crime to criminal but from criminal to crime. It again indicates that our police are either inadequately equipped with the modern devices or it is avoiding to have this approach from to criminal[4].

Yet another malady of the police force is that, with every passing day, the work burden and pressure of the policemen is mounting. There is hardly any public activity of significance in the country, which does not call for police help or presence and in many cases, police intervention. One of the consequences of such workload is that policemen and police officers,

[4] Mohd. Najmi, "Police Friend or Foe", in S.N. Gupta, (ed) Criminal Law, 1982, p.160.

particularly, at the lower level, are not easily available for in-service training courses or even for regular parade. It is paradoxical that on one hand there is ever increasing demand for more police while at the same time, there is ever greater and vociferous clamor for controlling the police and making them more and more accountable.

Grossly inadequate police-population ratios, inhumanly long working hours, poor physical work infrastructure, shoe-string budgets for working expenses, a pay structure which bears no rational relation to the powers and duties entrusted and a cumbersome criminal justice system- all these factors have cumulatively contributed to the image of the Indian police as an insensitive, high-handed and corrupt organization.

The performance appraisal system in the police organization is based on quantity and not quality of service rendered. This makes the policeman a prey to the tyrant-statistics. The policeman is under almost inhuman persona land hierarchical pressure to achieve the results target-wise. Since personal advancement and survival depends on quantitative results, no one bothers about the means adopted. This has given rise to organizational sub-culture which propagates and nurtures the credo that the ends justify the means.

The police force in India still not woken up to the fact that it is a civilian force which is part of civil society. It is created by society, paid for by society and is required to deliver the mandate given to it by society through laws.

III. Recommendations of National Police Commission: Who will Bell the Cat

The functioning of the police, like all other arms and instruments of governance, has deteriorated sharply. Scores of committees have gone into the relevant issues and their reports have merely cluttered the archieves of the State and Central governments.

It is sordid to note that, even after more than six decades of independence, the functioning of the police has continued to be governed by the Police Act 1861 which is a colonial Act and became 145 years old. the National Police Commission, which was established on the background of gross misuse of police and the ‘committed bureaucracy’ during the Emergency, had, in its comprehensive reports submitted in the late 70s and early 80s, made major recommendations on police reforms. It has also prepared a model Police Act to replace the outdated and archaic Police Act of 1861.

The National Police Commission, headed by Dharma Vira, which was set up by the Janata Government way back in 1977, has gone into the

whole range of the problems of police administration in its eight reports submitted to the Government and has made many recommendations of far reaching significance to improve the effectiveness and efficiency of the police. But very sadly, the invaluable recommendations made by the Commission were quite conveniently ignored by the successive governments, for vested political interests. We still have to look for a committed government with a strong will to reform the policing in the country, on the lines suggested by the National Police Commission. The basic question is 'who will bell the cat".

A summary of the areas of recommendations made by the Commission need a special mention:

The First Report dealt inter alia with the constabulary, its pay structure, housing, welfare measures, recruitment, machinery for redressal of grievances of its personnel and modalities for inquiry into complaints against the police.

The Second Report covered the role, duties, powers and responsibilities of the police and interference with and misuse of police by illegal or improper orders or pressures from political, executive or other extraneous sources and remedial measures against these.

The Third Report cover the village, police relations with the weaker sections of society, public disorders, corruption in police, economic offences and modernization of law enforcement.

The Fourth Report focused its attention on police and students, communal riots, and urban policing. The Seventh Report covered organization and structure of police, traffic regulation, home guards and disciplinary control etc.,

The Eighth Report dealt with most vital aspect of the police reforms, namely, accountability of police performance.

Some of the significant recommendations made by the Commission include: the replacement of the outdated Police Act 1861 to improve its operational efficiency and protect the police from political and administrative interference, the setting up of a State Security Commission in each of the State police force to make it accountable to the rule of law and bring about a democratic control on its working.

The NPC was emphatic that the investigative tasks of the police should be 'beyond any kind of intervention by the executive or non-executive'. It is only in the performance of preventive tasks and service-oriented functions that the police could be subject to the overall guidance from the government which should lay down, 'broad policies' for adoption

in different situations from time to time'. Tragically, this salutary recommendation was never implemented.

IV. Police and Public Relations

In a democracy, police is meant to serve the people who are the ultimate masters. This is possible only when the police acts as a limb of the law and not as a strong arm of the executive authority and when it enforces the rule of law without fear or favour, upholding the democratic principles of liberty, equality and fraternity. Police organization, like any other democratic institution, is accountable to the people. This alone can ensure better police-public relations. Unfortunately, there is a lot of dichotomy between theory and practice in law enforcement. He public image of the police today is not very complimentary. The police stands alienated from the public which looks upon it as strong arm of the state for harassment and not their friend or guide in times of need or distress.

The image of police, not only in India, but also in other developing countries, is by and large, a negative one in the minds of the people. The reasons are varied. THE harassment caused by the police in the process of conducting investigation, their greater concern for the legal aspects of the crime than the social and human aspects etc., whatever the reasons may be, the fact remains that a positive image of the police in the minds of the people must be developed before one can think of police-public cooperation[5].

It is needless to state that the success of the police in almost every sphere of their activity is dependent on the approval and respect of the public. The police-public cooperation is a two way traffic and not a one sided affair. The responsibility of the public to give their whole-hearted cooperation to the police is also to be stressed. The public should realize the difficult nature of the duties of the police[6].

It has been rightly pointed out that the police will reflect the culture and attitudes of the society. If society is violent, the police will be violent. If society is corrupt, the police will be corrupt. If there is communal bias, it is derived from society[7]. It is vital, therefore, that societal attitudes should change if the police is also to change. Expecting the police to change when

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5 Srivastava, R.G. "Police-public Cooperation in the Context of Crime Prevention", Social Defense, Vol. xi, No. 44 (April, 1976), p.111.

6 Venkateshwarlu, R.C, "Role of Police in a Changing Society", Paper presented at the 7th Annual Conference of Indian Society of Criminology, at A.M.U, Aligarh, p.3.

7 Julio Rebeiro, "Indian Police: Reflecting Social Ills", The Indian Express, 4.8.1995.

society itself is chained to a set of deep-rooted beliefs is like putting the cart before the horse. The police is drawn from the people. They have not descended from any other planet.

V. The New Police Act in Making

The Central government, in September 2005, has at last taken the initiative to replace the 145 years old Police Act 861, and for this purpose has constituted a committee to draft a new Police Act. However, a close look into the constitution of the committee and the draft provisions that have been prepared shows that, there are several doubts about the making of an effective and a better Police Act. It is pertinent to note that the committee has no Chairman, as perhaps the government could not agree upon a common name to head the committee. Most importantly, the committee makes no room for the representatives of civil society. More interestingly, the Preamble setting up the committee does not contain or makes any reference to the sharp deterioration in the functioning of the police and their public image and credibility, need to uphold the rule of law and giving functional autonomy to the police for the purpose and to ensure that political interference in the working of the police is minimized to the utmost extent. Thus the core issues which are most critical to the functioning of the police - their accountability and capability to perform have not been referred to in the order setting up the committee. Infact, very composition and constitution of the committee itself raises several doubts about the credibility of the committee itself and their terms of reference and the in the ultimate analysis, the effectiveness of the proposed new enactment which was very long due.

Yet another drawback in the proposed new Police Act is that, though public order and police are subjects in the State List in the Constitution of India there is nothing to indicate that the states had been consulted before setting up the committee.

The most critical issue in police reforms which seems to be a glaring omission in the scheme of the Proposed Police Act, is that of granting functional autonomy to the police. However, no political party is prepared to even look at the issue, leave aside understanding its pros and cons Upholding the rule of law and rigorous implementation of laws must be squarely recognized as the responsibility of the police and they must be mad answerable to het courts of law and other statutory and constitutional authorities for the purpose. Any dereliction of duty in this regard must lead to severe punishment. Ways need to be found to reconcile the demand for grant of functional autonomy with the answerability of the government to legislatures and Parliament. Autonomy without accountability would be a

recipe for high-handedness, and perpetuation of the regime of atrocities by the police.

Thus, it may be stated that, the proposed new Police Act to replace the age old Police Act of 1861, calls for paying utmost attention with all seriousness to imbibe a scheme which would ensure a functional autonomy to the police force with a viable and practical system of accountability and also an expeditious method of grievance settlement mechanism against the highhanded activities of the erring police and more importantly, free from political interference.

VI. Policing: The Emerging Challenges

The process of democratic decentralization, particularly after 1962 and the economic liberalization from 1991 have posed new challenges to the police and the paramilitary network. Besides, the rapid increase in terrorist incidents and cast and class violence in recent years has made the job of maintaining law and order tedious. The dissatisfaction among the lower level policemen over the service conditions has adversely affected their morale. As a result, in certain places policemen have been accused of extorting money from criminals and helpless people. The new trends in crime which are threatening the integrity and socio-economic well-being of the country are posing a major challenges to the police.

New forms of crime are on the increase. White-collar crimes like bribery and corruption, evasion of taxes, violation of fiscal laws etc., are eroding the socio-economic well-being of the country, while organized crimes in communal riots, terrorism, caste and class conflicts are putting the very unity and integrity of the country in jeopardy.

The rapid increase in the number of violent incidents, coupled with an increased fear of international and domestic terrorism, has created a serious situation for the police. Apart form undertaking counter-terrorist operations, the police have to play a crucial role as the protector of the day-to-day law and order situation. Thus there is a tremendous pressure on them from myriad quarters to get quick results.

Despite its many shortcomings, it goes to the credit of the police force that it has continued to provide socio-political stability to the country under most trying circumstances and has successfully prevented disorder and anarchy. But the question arises whether our police force in its present state can meet this growing challenge successfully.

VII. Police Reforms: An Agenda for Action

During the last more than four decades, independent India has experimented with ever-increasing variety of police forces and wide range of laws. However, it is sordid to note that, no sincere attempts were made to introduce the necessary reforms, keeping in view the growing responsibilities, and challenges thrown open to the police force. An overview of the spectrum in which a stagnant organization of police confronts a dynamic society, poised for development calls for urgent reforms in relation to its infrastructure and refining it on professional lines. What is more important is the designing of a new 'accountability structure' of police, free from the political shadows, which may inspire popular confidence and dispel mass apprehensions.

The police culture needs a total transformation through behavioral modifications and corrective strategies so that the personnel develop a healthy respect for human dignity and basic rights that are consistent with the democratic rights and the rule of law. The process of revitalization of the police administration on professional lines includes imparting training to infuse confidence and make them proficient in a job-oriented manner and also a humanitarian touch to deal with the common mass and the general public to raise the esteemed flag of police in the eyes of the general public[8].

Apart from modernizing police skills and tools, it is of utmost importance that happier and healthier police-public relations are built up so that the police is in a better position to win public confidence in providing an improved service to the nation. Even while protecting the interests of the State, the police has to uphold the law without fear and safeguard the human rights of the citizens. Accordingly, steps should be initiated to ensure that the interface of the police with the civil society needs to be institutionalized. Police reforms have necessarily to be a mixture of measures to control and monitor the police, provide penal measures to punish criminal violations etc., besides providing positive measures and suggestions to help the police to function better and effectively and be of meaningful service to the public. Many of these measures involve changes in law and law related procedures.

The proposed new Police Act will have to provide for an independent annual evaluation of the work of the police at the tehsil/taluks, district and State level. Such an evaluation must be made on a scientific basis through qualified consultants, social scientists and experts. The new Police Act will have to address the question of rampant corruption in police. A separate section needs to be incorporated in the Act to deal with custodial crimes. The new Police Act should be so framed so as to adopt a holistic approach to strengthen the role of the police in upholding the rule of law and

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[8] M. Ponnain, Criminology and Penology, (1992), p. 174.

to make police the protectors of downtrodden and weaker sections of society. There is a need to evolve a broad political and civil society consensus on complex and vital issues involved in policing of the country. It is high time necessary remedial steps were taken for the removal of all handicaps that come in the way of the effective police working in the service of society. After all, an efficient and impartial police is one of the guarantees for the successful working of democratic system in any country.

It is needless to state that, no attempts to reform the policing will be fruitful, without the interface of the society. As aptly remarked by K.K. Puri[8], "If it is true that a country gets the government it deserves, it is equally true to say that the society gets the police it deserves. Surely, we deserve a better police". Infact, it is the individuals who are also responsible for perpetrating or degenerating the police in their morale, for their greedy and acts of self-interest. To quote K. Nityanandam[9], "There are systemic failures and we all contribute to it one way or the other, we bribe because we want to get out of a self-created situation – breaking a traffic rule being one simple example. It is a combination of our greed and someone's willingness for exploitation".

A massive personal contact program and a propaganda campaign to instill the value of ethics, legality and human rights in the minds of police rank and file should be undertaken.

To conclude in the words of M. Ponnain[10] "The process of revitalizing the police administration has taken new dimensions and there has been tremendous amount of radicalization in impressing upon the scientific method of investigation, the avoidance of third degree methods, efficiency in professionalism and to act as a protector and savior of the community. Even though the renaissance can not be achieved overnight the new methodical training to the police is picking up momentum and in the years to come, it will blossom with new horizons to pronounce that police is a friend, philosopher and guide".

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[9] K.K. Puri, "Policing Problems: Recommendations of the National Commission have to be Implemented". The Indian Express.

[10] K. Nityanandam, "The Other Side of the Police Force", The Hindu, issue dated. 13.9.2009.