

Incompetence of Police in Maintaining Law and Order: A Critical View Point

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Abstract

The police in developed countries face relatively few incidents of organized public defiance, and therefore the exercise of police discretion in handling major law and order problems has not been a focus of study. In contrast, the multicultural and multiethnic society in India, struggling to form a modern nation through a competitive democratic framework, presents situations virtually every day in which the police have to use discretionary judgments in maintaining order within a legal framework. The police in India have in fact failed to gain trust from common public, it will be relevant to point out herein that on various occasions the assumption of police has proven wrong and erroneous since they lack in broader perspective of issues and their approach is very limited and narrow. This paper examines the incompetence of Police in maintaining law and order by handling communal clashes between different religious groups, in dealing with political agitations and demonstrations, and in controlling crowds during visits by political leaders. Several tactics utilized by police administrators in dealing with large masses of people in these situations are described as well as the problems that arise from their discretionary judgments.

Keywords: Police System; Law and Order; Discretionary Judgments.

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Police in India

There is no surprise about the misbehavior and poor performance of the police, since the system was originally designed in 1861 to subdue the people and maintain the Raj of the British rulers. Unfortunately, the police system has continued unchanged even after the British left the country. Neither democracy nor widespread criticism has been able to change the behavior of police personnel and prevent misuse of their powers in the country. Democracy has not brought greater accountability of the police to the citizens.

Rather, policing has degenerated: ineffective supervision, poor performance of basic functions, and a growing sense of insecurity are the hallmarks of Indian police today. Few citizens repose any faith in the integrity of even the superior officers. Moreover, police are perceived to play a partisan role at the behest of the wealthy, vested interests, and politicians. It is widely believed that the police function to serve the ruling class and that the organization is heavily politicized. Police follow political directives even in matters of law enforcement and operate at the behest of the politicians. The self-seeking behavior of elected representatives and the direct interference in the functions of the police have reduced the officers to

being mere tools in the hands of the political class. Politics and poor management have seriously affected police performance and compromised the enforcement of law. While insecurity of the public and atrocities on the weaker sections – particularly the Harijans, women, and even children – are increasing, police priorities are to serve political interests. Brutality, corruption, inefficiency, and politicization are the observable characteristics of the Indian police [1]. The role and action of police has always been subject of criticism, and till date nothing much has been done to clean the image of police in India.

Short History of Police System

One would expect that the democratically elected people's representatives would address these citizen concerns and take steps to reform the police. During the pre-independence period, it was understood that the British had little interest in reforming the police system, since the organization served their objectives of maintaining the Raj and suppressing dissent against their colonial policies. But independence has not appeared to change the nature and structure of the police system. The Congress Party leaders, after taking over from the British, had considerable misgivings about the police establishment. Nehru and all his cabinet members had suffered at the hands of the colonial police, who never hesitated to use brutal power to suppress any challenge to the British authority. Nevertheless, despite broad opposition to the British-designed bureaucratic apparatus, Sardar Patel, as the first home minister, prevailed upon everyone to continue the civil and police services. He believed that the police leaders would faithfully serve the new government and elected leaders in similar ways that they had served the British masters. Consequently, despite the framing of a new constitution and establishment of a democratic framework for the country, the basic system of policing remained unchanged even after the British left the country. After the first flush of independence, the true nature of the Indian bureaucracy could no longer be ignored, as corruption, indifference to citizen concerns, and unaccountability began to surface in every wing. Yet, no fundamental changes were undertaken. Political control over the levers of government was considered sufficient to ensure that the bureaucracy would function to serve the people. By the 1960s, when political consensus began breaking down with a new breed of politicians and subsequent disintegration within the Congress Party, the demand to control

and reform the bureaucracy – and the police in particular – became more vociferous. Many states appointed police commissions to suggest reforms, but nothing emerged from their deliberations. Finally, the trauma of the emergency period and the change in central government brought by the Janata Party, which replaced the Congress Party, saw the first real attempt to reform the police. The National Police Commission (NPC) was set up under a seasoned bureaucrat, Dharma Vira, to recommend steps for transforming the police and making that institution more democratic, in tune with the wishes of the voters. The NPC undertook a comprehensive examination of the functioning of the police and, in particular, examined its role during the emergency period, when it operated to fulfill the narrow political interests of the ruling party. Unfortunately, due to the change in government and the return of Indira Gandhi, the recommendations of the NPC were not accepted. In particular, the major recommendation of instituting an independent Security Commission to prevent direct political interference in police functions was brushed aside. Even today, the politicians continue to oppose any dilution of their power over the police apparatus. It is clear that the police system can only be changed at the behest of the political initiative, since large-scale organizational change is not possible without a change by policy makers. The police are a state subject and governed by laws and regulations passed by the elected representatives. These rules governing the functioning of the police cannot be changed by police officers themselves. The structure of the police organizations, their role in society, their functions, and the resources necessary to carry them out – all of these require a political directive. Why the elected representatives of democratic India do not implement their mandate and address the concerns of the citizens is a question that cannot be answered here. What is obvious is that all politicians are opposed to changing the system that serves their personal interests. Further, in the multiparty contentious polity of the country, it is also becoming apparent that a single party leader cannot impose his or her will on everyone. Even if a party has the majority in the Parliament or the state assembly, the passage of a bill that would transform the nature of the police cannot take place without the cooperation of other parties and political leaders. However, political control over the police is such a major issue that most elected representatives do not support accepting the recommendations of the NPC and other bodies that have examined the problems of the police force. Most politicians are reluctant to support mechanisms that would weaken their hold over the police machinery,

as the police serve their personal interests and are an important tool in exercising power. The power to transfer and post an individual police officer – especially the field functionaries serving at the police stations, police districts, and as heads of organizations – is an important source of authority for the politicians. It is this power that enables them to control the discretionary judgments of the officers and force them to carry out their orders without regard to existing laws and regulations. The authority to have an opponent arrested or embroiled in a criminal case, or alternatively to have a friend escape the clutches of the law, is important to Indian politicians. Politics is about exercising power to acquire wealth and status.

In the murky waters of politics, it is imperative that the politician be able to act without the encumbrance of legal constraints. Money is needed to win elections, and politicians who gain power are expected to pacify their supporters through government contracts, a share in public finances, and outright corrupt practices. In the prevailing atmosphere of combative electoral politics, winning elections at any cost has destroyed well-established democratic norms, the system of checks and balances, and openness to public scrutiny. Such deviance is not possible without exercising control over the police. There are numerous examples to suggest how political control over the police has subverted its functioning as an instrument of law. Charan Singh, as the home minister, sent police officers to arrest Indira Gandhi on trumped-up charges that were immediately dismissed by the judge. Yet, she was forced to spend some time in jail. Jaylalitha, a former chief minister of Tamil Nadu, sent her officers at midnight to arrest Karunanidhi, who was her political opponent.

TV cameras caught officers manhandling and dragging this 80-yearold man. On the other hand, the Bofors case has lingered for more than 20 years without bringing Quattrocchi to justice for his involvement in the bribery scandal. His Italian background and friendship with Sonia Gandhi, the current head of the Congress Party, is said to have played an important hidden role in this failure of the police. Despite hundreds of people murdered in riots engineered by the Congress Party goons in 1984 against the Sikhs in Delhi, and by Bharatiya Janata Party (BJP) supporters against the Muslims in 2002 in Gujarat, the police have not taken action except against a few culprits. The police have also largely failed to intervene in violence perpetuated by the landlords against the lower castes in the State of Bihar [2].

Factors which are also Responsible for Deteriorating Police Image

While reviewing the role and performance of police, we must keep in mind some other factors also which are responsible for deteriorating police image that can be thus summed up.

Poor Leadership

A force gets the leadership it deserves. Professional incompetency is caused due to faulty training and organisational defects which have resulted in the production of poor leaders of the force. Today, there are limitless insolent and indolent public servants who by their professional incompetence create all round confusion and an environment of indiscipline. Poor leadership comes into play when there is extensive political interference and lack of organisation discipline

Over-Work

The organisation which places policeman on the street has no proper system of relief, food and timely support as a result of which after few hours of duty the symbol of duty and discipline becomes worst representative of the Government on the street.

Poor Turnout

Turn out has to do with the effective functioning of the policemen where he is under constant observation of the public. Today policemen is smart turnout is a rarity.

Lack of Public Support

The backing of the political party in power and moral support of the public in the face of mounting criticism is a far better weapon than a rifle or machinegun against a horde of criminals or unruly mob. For seeking such support, both the police and the public has to be trained and educated about the onerous duties and difficulties of the police as it has been rightly pointed out by Sri H.V.R. Iyanger: "It seems to me particularly important at this stage of life when there is no much disrespect of law, that we should build our police services in such a way that enjoy the confidence of the people. Just as two props of any Government are the defence services and the civil administration, the two props of civil administration are the political party in power and the police services. It cannot be assumed that the political party in power will always command so much respect from the people that their writ will be

accepted without question. Occasions are bound to arise as they have already arisen in our country in which popular faith in the ability of even bona fides of the ruling party may give place to cynicism and distrust. In such a situation, it is of utmost importance that the internal security services also do not go down in public estimation along with the politician.

Poor Investigation

The existing investigation system is based on dogmatic approach rather than of scientific methodology. It is almost old and outdated. It is not more than a patch work. The elements of a good investigation like scientific approach, competence and perseverance proper supervision from the Circle Officers and the Superintendent of Police who have neither experience nor the aptitude and time to supervise and guide the investigation's response time also needs to be improved.

Unbalanced Prosecuting Agency

The most ill organised and neglected branch in the police hierarchy is Prosecution Branch for which the only onerous duty seems to be is to present the cases before the lower courts without associating itself with the investigation. The new Cr.P.C. has done further damage to the system. The present inertia in the prosecution branch can be traced due to lack of promotional avenues, inadequate coordination between the prosecuting agency and the investigator and dual control of the Police and the Magistracy. Moreover, the ousting District Government Counsel and Panel Lawyer system is nothing but remnant of favouritism practised by the British Raj. The result produced by the system is far from satisfactory.

Outdated Laws of the Land

The outdated laws have made the confusion confounded. Like the outdated police machinery, the law dispensing machinery is also very old, deriving its origin from colonial past when laws were drafted with a repressive spirit behind them and the law dispensing authority was never aware about the customs and traditions of the land, the same old machinery and laws are being pursued in spite of the observations of the Santhanam Committee. "The social and economic structure of India has changed to such a large extent that in many respect, the code does not truly reflect the need of the present day. It is dominated by the notion that almost all major crimes consist of offences against the person, property or state. There is no place for offences against the society

and nature. "Then, there are basic procedural defects in the criminal procedure code and the Indian Evidence Act.

All police action must be guided by the laws of the land, spirit of the time and demand of the society.

Outdated Training Techniques

While Indian Army has happily adopted the latest training techniques, the police training technique remains old and hackneyed. Recruitment through career processing system is hardly known. Refresher courses are not properly organised although some breakthrough has been made towards this direction by the Border Security Force, the Central Reserve Police Force and the Bureau of Police Research and the Development and Institute of Criminology.

Corruption

Corruption within the Indian police is well recognized and pervasive. Corruption exists within every rank, from the constable to the chief of police and in every police department of the country. Such pervasive corruption flourishes because of organizational culture that evolves in the system through several kinds of practice, beliefs and value systems. The sub-culture of the Indian police was assiduously built by the British for the purpose of establishing their Raj. The police were meant to suppress any dissent against the British rule, a situation that gave unlimited power to the police officers. Consequently, corruption became endemic and rampant in the police department. Unfortunately, after independence the system has not been reformed and police culture and organizational practices remain unchanged. During the British period, accountability of the rulers to the citizens was naturally not a question since the country was under the colonial rule. Post-independent India is democratic and the power to change the government lies with the people. Nevertheless, the old system continues and the police are still not accountable to the citizens. There is little change in its functioning and corruption has continued to grow and take new roots.

The Indian Police Act (IPA) of 1861

The Indian Police Act (IPA) of 1861 is the current basic governing instrument of the Indian police force. It lays down the structure and functions of the police departments in the country. The IPA was drafted by the British colonizers as a direct consequence of the first war of independence to ensure the police

system's subservience to the executive and to remain authoritarian in its contact with the public. The section 4 of the IPA the police falls under the control of not only their superior but also of the executive. This was created with the intent to maintain the British rule in the districts in India. Needless to say, the police was neither accountable to the people nor to independent institutions. The police system was designed to a strict hierarchical and military structure, based on the colonial distrust of the lower ranks. The decision making authority lays with a few high placed police officers, while the police constables merely followed orders. After independence, efforts were made to change the political system but the police system still remains almost intact. The current administration of the police falls under the IPA; the Indian Penal Code (IPC) of 1862 (amended in 1993); the Indian Evidence Act (IEA) of 1872; and the Code of Criminal Procedure (CrPC) of 1861 (revised in 1898 and 1973). Together they form the current, but outdated, police system in India. There have been some efforts to reform the police system at the state level, but the efforts have all been based on the IPA of 1861 leaving the colonial legacy and philosophy intact in these Acts. According to Article 246 of the Indian Constitution and section 3 of the IPA, the police force is a state subject and not dealt with at central level. Each state government has the responsibility to draw guidelines, rules and regulations for their respectively police forces. These regulations are found in the state police manuals [3].

Why Police Faces Criticism?

During the last few days or so, due to uncontrollable repeated cases of rape and violence in different parts of country, the Indian Police perspective of dealing with law and order problem has come in for a lot of criticism. Despite ongoing criticism of policing, India still broadly follows the 1861 British Police Act which has become obsolete and outdated [4].

The lack of any effective accountability mechanisms and periodic review of performance is causing the police to lose confidence of the public. Another problem is that the widespread indiscipline and cavalier attitudes towards law and procedures are eroding the faith of people in the police. The people nowadays have little or no trust in the police. The Police Act, 1861 vests the superintendence of the police directly in the hands of the state government. At the present time, the Head of Police (Director General/ Inspector General) enjoys her/his tenure at the pleasure of the Chief Minister. S/he may be removed from the post at any time without assigning

any reasons. Such a state of affairs has resulted in wide-spread politicization of the police where increasingly, allegiance is owed not to the law but to the ruling political elite. Another problem with the present legislation is that the only independent authority with the capacity to oversee or investigate police excesses is the National Human Rights Commission (NHRC). The Commission has the power to only advise the Government. If any state government refuses to accept the NHRC's advice, there is no provision in law that empowers the Commission to force the government to implement its advice. It can of course approach the higher courts and seek directions. The NHRC had issued four summons to the Director General of Police, Bihar, over the last eight months for the two wrongful arrests of activists, only to be met with a wall of silence. The Government had set up the Soli Sorabjee committee to suggest police reforms and they came up with a draft bill which was never passed by the Parliament, for unknown reasons. Even the J.S Verma Committee which was set up after the Nirbhaya Rape case suggested police reforms. There is a need to bring in police reforms so that the police can be made accountable by the citizens. More power in the hands of the police will not help, but more responsible use of the abundant power that they already have. The Police Act, 1861 needs to be replaced with legislation that reflects the democratic nature of India's polity and the changing times. The Act is weak in almost all the parameters that must govern democratic police legislation [5].

While there are many honest law enforcement officials in India, there are also powerful, politically-connected careerist police officers who indulge in willful misconduct while investigating criminal cases. These erring officers and their supervisors in the IPS adversely impact the credibility of the criminal justice system. They can literally destroy the lives of innocent persons who are wrongfully accused and even convicted of crimes they had nothing to do with. From investigating officers who do not testify truthfully, to police officers who manufacture, destroy and suppress evidence, and even law enforcement officials who have improperly influenced witness identifications and suspect confessions, there have been many instances where police misconduct has resulted in wrongful convictions. When the Terrorist and Disruptive (Prevention) Act (TADA) was in operation between 1985 and 1995, maximum arrests in the country were effected in Gujarat, a state where there was not even a single case of terrorism during that period. This is an indication of how arbitrary the police can be in matters related to arrests and application of sections of law. The illegal practice of

the police picking up innocent people and keeping them in jail for years before the courts finally acquit them, has serious consequences. More than 66% of India's prisoners are undertrials, which is over twice the global average of 32%. When vulnerable scapegoats are framed in terrorist cases, it not only helps the real terrorists get away with their crimes but leaves them free to strike again. It stokes resentment in affected families and communities. The victims and their families and communities live with the stigma of imprisonment and its socio-economic impact on their livelihoods. Their families, generation after generation, continue to wait for adequate compensation, rehabilitation, truth and closure. There is no system in India to compensate individuals found to have been wrongful imprisoned. Professional criminals and their syndicates, exonerated and unpunished, boast about their ability to hoodwink the criminal justice system. For them, it is their victory over the rule of law. This misplaced swagger against the rule of law is a serious threat to the idea of India as a democratic republic. What is the contribution of the erring police officers and their investigating agencies to the perversion of India's criminal justice system? Between 1953 and 2013, the quality of investigation and prosecution has gone down. Convictions in murder cases fell from 51% to 36.5%. Convictions in kidnapping cases fell from 48% to 21.3%. Robbery convictions fell during this period from 47% to 29%. In 2013, only 26.5% of alleged rapists were brought to book. What is the relative contribution of the police led by the IPS to this mess? This is a question that should trouble the members of the elite service [6].

Conclusion

The police in India have in fact failed to gain trust from common public, it will be relevant to point out herein that on various occasions the assumption of police has proven wrong and erroneous since they

lack in broader perspective of issues and there approach is very limited and narrow.

The phenomenal rise in private security agencies also accounts for the growing lack of trust in the state police. This is a shameful but real state of affairs in most of India. The security of the society and the welfare of the people is paramount but no attention is paid towards general mass.

The distrust of the Indian police has reached a point where citizens rather avoid the police than report an incident due to harassment and the discomfort at the police station. Those who are compelled to go to the police sometimes even turn to less legal approaches, such as bribing, using influence or even approaching middlemen. The current prevailing public attitude is that criminals are getting away from justice

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