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PUBLIC ORDER

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PUBLIC ORDER

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PUBLIC ORDER

Introduction

Maintenance of public order and the rule of law is a key sovereign function of the State, as important in its own way as defending the nation from external aggression or maintaining the unity and integrity of the nation State. "It is through the rule of law", wrote Harold Laski, "that we have sought to avoid not merely the obvious dangers of unfettered executive discretion in administration, we have sought also to ensure that the citizen shall have his rights decided by a body of men whose security of tenure is safeguarded against the shifting currents of public opinion".

The eminent jurist, Locke, put it succinctly, "wherever law ends, tyranny begins". By putting the lives and liberty of common citizens at risk, the possible collapse of public order and of the rule of law has the potential to destroy the faith of citizens in its government and erode its legitimacy. Large scale violence and disruption can threaten a country's social fabric, endanger national unity and destroy prospects for economic growth and development. If there is a failure of public order, it is because of the inadequacies of the legislature, the executive and the judiciary and we need to address them holistically in order to change things for the better.

The police have always been recognised as a vital arm of the State, whether in the ancient kingdoms that ruled India or in the city states of Greece. Our colonial rulers recognised the importance of maintaining public tranquility through the use of an armed police force knowing that the tenuous grip of a few thousand British over India's teeming millions would not survive any large scale public upsurge. They did so by establishing good communication links - the railways and the postal services - and by using the strong arm of the State to put down, with the use of force, any sign of challenge to the authority of the British Crown. They therefore developed the police in India as an armed force, as an organisation oriented not to the service of the people of India but principally to maintain the authority of the Crown. It was an agency of oppression, of subjugation, used for protecting British interests and to sustain their empire. The relationship between the police and the public was one of suspicion.

At Independence, Sardar Patel envisaged quite a different role for the police in independent India. He observed, "You have served the previous regime under different conditions. The people then had a different attitude to you, but the reasons for that attitude have now vanished. Now the time has come when you can secure the affection and regard of the people."

threats to national security from such problems as insurgent movements in the North East and the secessionist movement in Jammu and Kashmir have overarching political dimensions as well, which we propose to deal with separately in a report on Conflict Management, many other threats to internal security are exacerbated by our collective failure in providing good governance in vast swathes of the country.

Organised crime in particular has emerged as one of the most menacing challenges faced by this country. Those most successful in the commissioning of crimes are often the best organised and garner the most profit and cause the most harm. While the realm of organised crime is somewhat fluid, its reach runs deep to cover areas like money laundering, drug trafficking, illegal immigration, fraud, armed robbery etc. It is a big business and comes with huge cost.

At the same time, the incidence of prevalent social evils such as untouchability, dowry, child labour and physical and mental violence against women and children has continued unabated. These evils are both a cause and a consequence of deep rooted discriminatory practices against the vulnerable and deprived sections of our

society. In particular, violence against women is complex and diverse in its manifestations. Its elimination requires a comprehensive and systematic response. Ending impunity and ensuring accountability for violence against women are crucial to prevent and reduce such violence. Often, the victims of such crimes that are rooted in the discriminatory practices of society suffer secondary victimisation at the hands of the police and it is critical therefore to sensitise police personnel to gender issues as well as other social disparities. This has to be backed by political commitment, systematic and sustained action and strong, dedicated and permanent institutional mechanisms to eliminate such offences that stem from social disparities.

Hence reform needed for enforcing the rule of law and maintaining public order, viz. the police and the criminal justice system. The emphasis is on changing the character of the police from a “force” meant to enforce the writ of the State to a “service” meant to secure the lives and liberty and constitutional freedoms of the citizens of a free and democratic country.

Public Order – A General Perspective

Public order implies a harmonious state of society in which all events conform to the established law and is synonymous with peace, tranquility and the rule of law. Public order implies the absence of disturbance, riot, revolt, unruliness and lawlessness. Irrespective of the nature of a polity – democratic or autocratic, federal or unitary – maintenance of public order is universally recognised as the prime function of the State. Anarchy would result if the State failed to discharge this duty. Such persistent anarchy would lead to decay and destruction and the eventual disintegration of the State.

There are many causes of public disorder. Widely prevalent crime is a cause as well as an effect of public disorder.

- In a pluralistic democracy like ours, political polarisation sometimes throws up issues leading to conflicts which escalate into public disorder.
- Even demonstrations held on legitimate grounds can sometimes degenerate into public disorder.
- Given our historical inequities on the basis of caste and other social factors, these can easily lead to conflicts that may degenerate into public disorder.
- Similarly, divisive impulses based on ethnicity, religion, region, language and the sharing of natural resources can exacerbate tensions.
- With enhanced citizen awareness and assertion, failure in the delivery of services by the State often leads to frustration manifesting itself in public disorder.
- This tendency is aggravated by increasing criminalisation of politics and persistent interference in the due process of law.
- With increasing globalisation and the communications revolution, indigenous and transnational criminal organisations have acquired enormous resources and power with the capacity to cause serious breakdown of public order and even undermine the security of India.
- As opposed to organised crime, which is motivated by the prospect of illegitimate economic gains, terrorist groups are activated by real or imagined ideological motives.
- They could be home grown armed groups like Naxalites holding sway in some pockets, or foreign sponsored secessionist groups indulging in reckless violence and mayhem with the sole objective of spreading terror.
- The greatest danger to public order emanates from the conjunction of foreign sponsored secessionist terrorists with organised crime networks.

Whatever be the cause of the breakdown of public order, it is imperative that peace and harmony be maintained.

Emphasis on public order in monarchies and feudal oligarchies was often a result of the desire to perpetuate the domination of ruling elites. But in a modern, liberal, democratic, development oriented State, there are other compelling reasons to preserve public order.

- First, peace and order are necessary preconditions for freedom of expression of individuals and for the resolution of conflicting interests in a democratic society.
- Second, violence and disorder necessarily undermine economic growth and development, perpetuating a vicious cycle of poverty, frustration and violence.
- Third, rapid urbanization, which is a necessary concomitant of modernisation, tends to promote impersonal lives and create alienation, thus reducing peer pressure and social control.
- Fourth, the State's constitutional commitment to equitable growth and justice itself may unleash social tensions, as powerful oligarchies attempt to perpetuate the status quo.
- Fifth, rapid economic growth may sometimes aggravate disparities between individuals, groups and regions leading to escalation of tension and breaches of peace.
- Sixth, weak enforcement and failure of the criminal justice system create a culture of lawlessness posing a major threat to public order.
- Finally, organised crime, militancy and terrorism have devastating consequences on the morale of the public; such a situation may even lead to the unnecessary loss of life as well as serious economic and political dislocation in an interdependent economy and polity.

State agencies such as the administration, police and the criminal justice system have the direct responsibility and the commensurate authority to maintain public order but non-State players – political parties, media and citizens' groups - also have a vital bearing on public order.

Among State agencies, police, by the very nature of their role, are the most visible arm of the government. The power of the State is expressed in its capacity to use force (i.e. power of state is expressed how well it uses its police force).

As police are the agency to enforce the will of the State, the capacity of the police agencies to respond to a potential or real challenge to public order - rapidly, efficiently and justly - is of paramount importance. It is equally important to ensure that this power is exercised in a democratic society within the bounds of the Constitution and the law.

Ultimately, the manner in which the police functions is an index of society's respect for civil liberty and the rule of law i.e. in a society where the rule of law is followed and rights of citizens are maintained police functions in a citizen centric way. Whereas where the anarchy prevails police functions on carrot and stick principle.

Principle followed for maintaining public order

While every violation of law should be seen as a challenge to public order, the State should not precipitate a crisis by treating every infraction as a public order crisis. Superstitions and cultural attitudes, for example, take time, patience and education to change. India is an over-legislated country. The temptation to short circuit the process of modernisation by law and use of force should be resisted except when local opinion and prevailing societal norms are grossly violative of the core principles of the Constitution and democratic governance. For instance, law must be applied with vigour in eliminating all forms of caste discrimination or protecting the vulnerable sections like women and children from exploitation. But when it comes to ending a practice such

as, say, animal sacrifice, persuasion and education and not use of force against strong public sentiment, are called for. The problem in such cases is where to draw the line. If a law is violated with impunity, even if it is a minor law, should the State remain a mute spectator and condone violations promoting a culture of lawlessness? Or, should the State risk triggering a major public order crisis in its effort to enforce a law whose gains are minimal and risks are huge? The answer lies in two broad approaches. First, the State should resist the temptation to over-legislate except in crucial areas which constitute the essence of constitutional values or prevent significant public loss or promote vital public good. Persuasion, public education and social movements are the desirable routes to social change in such cases. Second, if such laws do exist, effective enforcement on case-to-case basis through prosecution of offenders is the better route and not the thoughtless precipitation of a public confrontation.

Some Grave Public Order Problems

1. Communal Riots

Communalism in a broad sense implies blind allegiance to one's own communal group – religious, linguistic or ethnic – rather than to the larger society or to the nation as a whole. In its extreme form, communalism manifests itself in hatred towards groups perceived as hostile, ultimately leading to violent attacks on other communities. General amity and the peaceful coexistence of various faiths in India have been the envy of the civilised world. Nonetheless given the diversity of our society and our complex historical baggage, we are often beset with communal tensions which occasionally erupt into violence. At times, either bigoted and fundamentalist leadership, or unscrupulous political operators with an eye on short term electoral advantage, have deliberately and maliciously engineered communal passions, hatred and even violence to achieve sectarian polarisation. Most of the communal flare-ups have been between Hindus and Muslims, though conflicts involving other communities have also occasionally occurred. Similarly, there have been other ethnic clashes from time to time.

Administrative Defaults in handling of riots

While some communal riots could be spontaneous, many are organised and pre-planned. Even in the case of spontaneous riots it is the underlying tensions between the communities, which flare up at the slightest provocation.

The Union and State Governments have identified districts/cities/villages which are prone to communal violence because of their past history. Such areas obviously require special attention and preventive measures. It has been observed that while the administration swings into action to suppress riots, sufficient and timely attention is not paid to address the causes leading to such riots. Also, once the riots are controlled, cases against the guilty persons are not pursued with the required degree of urgency and tenacity.

There are also several instances of a new government resorting to en masse withdrawal of cases against those involved in earlier riots during the tenure of the previous government. Such political opportunism and short sightedness have seriously contributed to the erosion of public order.

Most major communal riots are followed by Commissions of Inquiry. Sometimes, these Commissions of Inquiry take a long time to give their reports and very often the crucial recommendations made by them are not acted upon. All these have led to perpetuation of the causes of public disorder.

A. Systemic Problems

- Conflict resolution mechanisms are ineffective;
- Intelligence gathered is not accurate, timely and actionable and
- Bad personnel policies - poor choice of officials and short tenures - lead to inadequate grasp of local conditions.

B. Administrative Shortcomings

- The administration and the police fail to anticipate and read indicators which precipitated violence earlier;
- Even after the appearance of first signals, the administration and police are slow to react;
- Field functionaries tend to seek and wait for instructions from superiors and superiors tend to interfere in local matters undermining local initiative and authority;
- The administration and police at times act in a partisan manner and
- At times there is failure of leadership, even total abdication on the part of those entrusted with maintenance of public order.

C. Post-riot Management Deficiencies

- Rehabilitation is often neglected, breeding resentment and residual anger and
- Officials are not held to account for their failures, thus perpetuating slackness and incompetence.

2. Terrorism

Terrorism has been defined as the illegal use of force or violence against people to create a wave of terror with the intention of achieving certain political or sectarian objectives. The border State of Jammu and Kashmir and some parts of the North East have witnessed prolonged terrorist activities.

Even when the proximate cause of action or the political objective of the terror group is limited to a part of the country, the existence of sleeper cells, the spread of modern communications, an integrated economy and the increasing use of terror technology and tactics, have made it easy for the merchants of terror to spread their tentacles all over the country. As a result, terrorism is not merely a public order problem but has emerged as a grave threat to national security as well.

The country has suffered huge casualties amongst civilians as well as security forces, besides colossal damage to private and public property, due to terrorist incidents.

An analysis of some of the recent terrorist attacks indicates that terrorist organisations have used the existing organised crime networks. Terrorist groups and these crime syndicates have international links with similar organisations and are supported by foreign agencies inimical to our interests. Their activities are being financed through international money laundering and drug trafficking thus creating an intricate web of crime, terror and trafficking in arms and drugs

Extra-territorial sponsorship of terrorism, porous borders, diplomatic complexities in dealing with safe havens across the border and the deficiencies in our own criminal justice system have made the task of countering terrorism extremely arduous and complex.

And yet the valour and sacrifice of our security forces, the alertness and high degree of cohesion among various agencies, a broad political consensus backed by strong public opinion, democratic legitimacy of the State and the economic and social strengths that form the bedrock of our nation have greatly helped us withstand the onslaught of terror.

The Indian response to terrorism has had significant success. Terrorism was totally eliminated from Punjab; Mizoram, which at one point of time was infested with insurgency, is now a peaceful state; there has been a decline in violence in Jammu and Kashmir, too. Several attempts of terrorists have been thwarted by timely action in many parts of the country.

The security forces have to win the confidence and support of the local people. High handed action by security forces, especially violations of human rights tend to alienate the local people who may then fall prey to terrorist designs.

To tackle the menace of terrorism, a multi-pronged approach is needed. Socioeconomic development needs to be taken up on a priority basis so that the local people do not fall into the trap of terrorists; the administration and the service delivery mechanisms need to be geared up so that the legitimate and long standing grievances of the people are redressed promptly and therefore cannot be exploited by terror groups. Strong measures are required to deal with criminal elements but with respect for human rights. To ensure this, the law enforcement agencies have to be supported with an appropriate legal framework, adequate training, infrastructure, equipments and intelligence.

3. North-East Militancy

The North East region has more than 200 ethnically diverse groups with distinct languages, dialects and socio-cultural identities. Some parts of this region have been suffering from militancy for several decades. Militancy in the region started with the Naga movement way back in the early 1950s and rose to serious levels in Manipur in the 1960s. Large scale immigration into Tripura gave birth to militancy there in the 1960s. Militancy in Assam, on the 'foreigners issue', has multiplied and spread to many new areas.

The numerous militant movements in the region have different objectives.

A few movements seek outright secession from the Indian Union, some aspire for separate Statehood while others demand greater autonomy within the existing State. Extortion and abduction are frequently resorted to by some of the militant groups. Apart from causing huge loss of human lives, militancy has hampered economic development of the region. The situation is compounded by the involvement of some foreign intelligence agencies, which are providing material support to the insurgents. Besides, the long porous international borders have facilitated the movement of these groups and the smuggling of arms. Corruption, economic deprivation and unemployment are driving segments of youth into the fold of militant organisations. Ad hoc solutions resulting in widely varying degrees of 'autonomy' to different bodies – sometimes within a single state – have led to competitive demands and when they are not met, to alienation and violence.

Another intractable problem has been created by migration from Bangladesh. Initially, this migration represented movement of peasants from the over populated eastern districts of Bengal to the sparsely populated and fertile and fallow Brahmaputra valley constituting Assam. The redrawing of national boundaries following Partition provided an impetus to migrants from East Pakistan for reasons of personal safety to settle in Assam, where their presence gave rise to ethnic and linguistic tensions. This was followed by fresh influx of all communities due to the agrarian crisis in East Pakistan. This migration has continued even after the emergence of Bangladesh. The fear among the local populace that this immigrant population would reduce them to a minority, as has in fact happened in some parts, has fueled militancy in the region

The Government of India is engaging some of the militant groups in negotiations while providing financial assistance to the State Governments for upgrading their police for countering violence. It is also holding talks with neighbouring countries for effective border management.

The problem of militancy in pockets of the North East is obviously very complex. The ethnicity, diversity, geography and history of the region demand a comprehensive nation building approach for resolving the complex issues. Fair reconciliation of conflicting interests in the region, adequate local empowerment with accountability, infrastructure development, economic growth, greater economic linkages with neighbouring regions and better governance and democratic legitimacy must together form the foundation of durable peace and prosperity in the region. However, in the short term, security agencies need to be strengthened, extortion and abductions must be stopped, militancy should be curbed and accountability should be institutionalised in order to protect human rights.

4. Naxalism

Naxalism has become an issue of major concern. Naxalites operate in the vacuum created by the inadequacy and ineffectiveness of the administrative machinery. It is a fact that the tribal hinterland of the country has emerged as the bastion of the Naxalite movement. The problems of poverty and alienation, the demand of territorial rights and displacement from traditional forest habitats have aggravated the problem. Besides, unequal sharing of benefits of exploitation of resources has also helped create a fertile breeding ground for the growth of this menace. Naxalites exploit local grievances and take advantage of the sufferings of the deprived sections, gaining local support and recruiting cadres. They have also successfully mobilised the support of some civil society groups to further their cause overtly. It is reported that they have been able to establish trans-border linkages with likeminded extremist groups for obtaining explosives and arms as also for organising training for their own cadres. These extremists often do not allow major development of the area including infrastructure development for fear of losing their hold over the people. They have also been making use of terror tactics to suppress any opposition and to demoralise the civil administration.

Thus what started as an ideological movement with 'romantic sacrificialism' as the main ingredient, has now become increasingly militarised and criminalised. Use of sophisticated weaponry, training in use of weapons and explosive devices, including for women and children, resort to abductions, mass killings, extortion rackets, links with secessionist and terrorist groups, assassination of public figures and arms trafficking are now the hallmark of Naxalite violence.

Initially, several groups with ideological differences operated separately and at times were in confrontation with each other. In 2004, two of the main left wing extremist groups in the country came together under the single banner of the Communist Party of India (Maoist) (source: Ministry of Home Affairs, Annual Report, 2004-05). They have a command structure with provincial and regional committees and local platoons of weapon wielding 'soldiers'. They are backed by a chain of 'couriers' and sympathisers and some civil society organisations. The command and control structure, strategic planning and operational efficiency of the Naxalites are impressive. There also seems to be sufficient local delegation, which gives flexibility to the local formations operating mostly in remote and inaccessible areas. The knowledge of the terrain offers a great advantage to Naxalites. There is need to upgrade the existing state police forces quantitatively as well as qualitatively with adequate infrastructure, specialised training and sound intelligence support. Effective coordination among the affected states and an overarching national strategy are critical in combating left wing extremism. Care must, however, be taken to institutionalise mechanisms to prevent human rights violations.

Government has adopted a multi-pronged strategy to contain this serious threat. Apart from countering violence, it is addressing the political issues involved, attending to the development needs of the affected areas and managing public perception. Strengthening of intelligence structures, financial assistance to the affected states, modernisation of the state police, long-term deployment of Central Police Forces, improved coordination mechanism, Backward District Initiatives and Backward Regions Grant Fund are some of the concrete measures taken by the Government of India. These initiatives need to be closely monitored to ensure that their impact is demonstrated on the ground and due accountability mechanisms for this have to be institutionalised. In dealing with the situation, a comprehensive political and administrative strategy is called for. While violence has to be dealt with by the security forces, other wings of civil administration have an important role to play in promoting development and equity and ensuring prompt action in tackling the problems confronting the people in the affected regions.

Causative Factors of Major Public Order Problems

According to David H. Bayley, a well-known authority on the Indian police, in the welter of disorder to which India was subjected, three broad categories of public violence can be discerned: violence of remonstrance, violence of confrontation, and violence of frustration. There are five broad causes of the types of violence mentioned above. These can be categorised as follows:

- i. **Social:** In India, the historical social structures and 'hierarchy' has been a root cause for social unrest. Caste has been a fundamental divisive factor in our society.
- ii. **Communal:** Religious orthodoxy and blind adherence to extreme viewpoints is another fundamental cause for unrest. In India, the existence of every religion side by side has been the matter of strength in our multi-cultural system but fringe elements often create unrest.
- iii. **Economic:** Underdevelopment is arguably a cause of tension. The desire to improve one's position in competition with others, itself creates stress and in India, with 250 million people below the poverty line, the strain is significant.
- iv. **Administrative:** The administrative machinery is not always perceived by people to be objective and fair. Slackness in delivery of services, lethargy in enforcement of laws is at times a major reason for frustration in citizens. Corrupt and self-seeking behaviour of some officials compounds the problem further. One of the major causative factors for the eruption of public disorder is the inadequacy of the administration in enforcing the legitimate constitutional, statutory and traditional rights of citizens leading to serious discontentment among them.
- v. **Political:** In a vibrant democratic system, not a totalitarian regime, divergent political viewpoints can lead to tension. More important, however, is the problem of political expediency where a section of the political leadership tries to use the administration for furthering its own political agenda. The increasing propensity to use public office for private gain, unwarranted interference in crime investigation and day to day functioning of police, short-term populism at the cost of durable solutions, complexities of a federal polity – all these make it difficult to address some of the growing threats to public order. Added to this is the relatively low importance attached to public order in our political discourse. All these contribute to breakdown of the public order fabric.

Lessons from the Past

Some of the major strengths of the existing legal framework are (a) a clearly laid down democratic, constitutional and legal framework, (b) an independent judiciary and an elaborate criminal justice system and judicial review of executive action, (c) representative institutions to debate issues of public importance, (d) a vigilant media and (e) emerging civil society responsiveness.

The strong points of the administrative framework of the country have been (a) firmly established administrative traditions, (b) a well-organised police machinery, (c) systems of accountability, even if deficient and (d) the existence of a professional bureaucracy which brings about administrative cohesion and uniformity.

We should however recognise that our legal and administrative framework has certain weaknesses:

- Delays in the criminal justice system;
- Unresponsiveness of the administration;
- Lack of functional autonomy for law enforcement and investigation agencies;
- Lack of adequate and effective accountability mechanisms;
- Outdated and unprofessional interrogation and investigation techniques;
- Tendency to use unwarranted disproportionate force and abdication of duties under partisan pressures;
- Inadequate training and infrastructure for police;
- Lack of coordination between prosecution and investigation;

- Insufficiency of laws dealing with terrorism and organised crime;
- People's propensity to perjury; and
- Neglect of victim's rights these are some of the malaise which have to be addressed urgently, boldly and in an innovative manner.

The lack of accountability has been one of the main reasons for the tardy response of the government machinery. Rarely is an official held to account for his/her acts of omission or commission in dealing with a public order problem. The government machinery rarely attempts to address a brewing conflict.

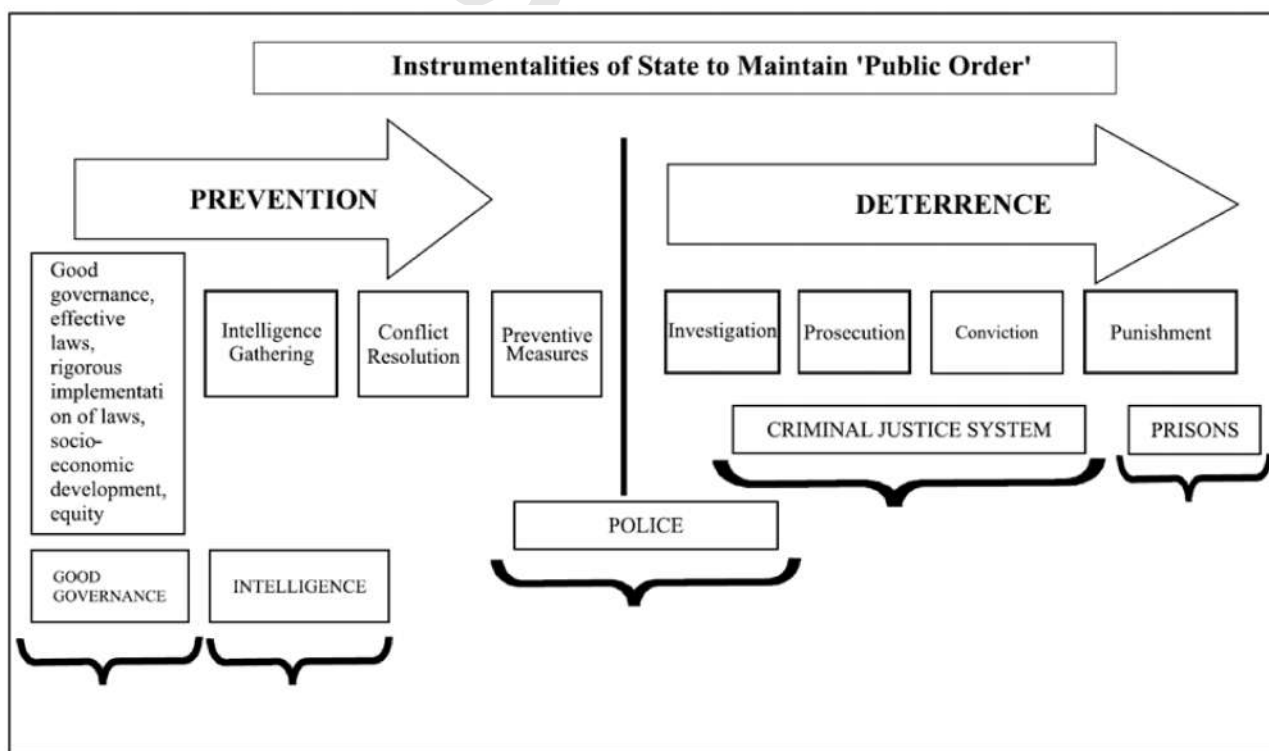
There have been cases, where adequate precautionary steps were not taken even when there was a high probability of outbreak of violence. In several instances, violence was not controlled with the degree of firmness required.

One of the reasons for this is that incentives are often skewed in favour of not dealing with a situation firmly even when the situation so demands.

Using force to restore order even when justified, runs the risk of future inquiries whereas soft pedaling may be a 'safer' option. There have, however, been cases where the security forces have over-reacted.

An equally glaring problem is the propensity to use third degree methods and habitual violation of human rights by law enforcement agencies. Reconciliation of the imperatives of public order with a citizen's liberty and dignity is a vital requirement in a liberal society. Training, equipments, procedures and attitudes need to be attuned to the citizens' human rights.

The civil administration including the police, today, have to perform their duties under a far more vigilant and demanding environment. Because of an increasing level of public awareness and expectations, there are greater demands on the administrative machinery, for delivery of better service. There is also greater public scrutiny of their actions because of enhanced consciousness of the citizens about their rights and privileges and the emergence of a powerful media and citizens' groups.



The Existing Police System

'Public order' and 'Police' figure as Entry 1 and 2 respectively, in List II (State List) in the Seventh Schedule of our Constitution, thereby making State Governments primarily responsible for maintaining public order. Invariably, police, which is a part of the civil administration, is at the forefront in maintaining law and order. In the field, the district administration (the District Magistrate and the Superintendent of Police) and in bigger cities in some states the Commissioner of Police assume the responsibility for public order.

Article 355 of the Constitution enjoins upon the Union to protect every state against external aggression and internal disturbance and thereby to ensure that the government of every state is carried on in accordance with the provisions of the Constitution. The Police Act, 1861 is still the basic instrument governing the functioning of the Indian police. Under this Act, the Inspector General of Police (now designated as the Director General and Inspector General of Police) is the head of a state police. States are divided into districts and a Superintendent of Police heads the district police. A few states have also passed their own State Police Acts. Besides, other laws like the Indian Penal Code (IPC) of 1862, the Indian Evidence Act (IEA) of 1872 and the Code of Criminal Procedure (CrPC) of 1973 also govern the functioning of the police.

What people think about police?

The police are the instrument of physical force of the State. Thus the police always has to be at the forefront and face the wrath of the public even for the failure of other instruments of governance.

The police have faced and continue to face many difficult problems. In a country of India's size and diversity, maintaining public order at all times is indeed a daunting task. It is to the credit of the police that despite many problems, they have by and large been successful in maintaining public order. Despite this, the police are generally perceived to be tardy, inefficient, high-handed and often unresponsive or insensitive.

Police-public relations were in a very unsatisfactory state and police partiality, corruption, brutality and failure to register offences were the most important factors contributing to this situation. People also felt that police often harass even those who try to help them; and while by and large people did not think that police are inefficient, they want a change in the style of their functioning. Policemen, in general, did not believe that they are at fault and blamed the system for deficiencies and deviations.

It is argued that the traditional snobbery and system of patronage has continued, corruption levels have gone up and so also the extent of political interference. There is a propensity to resort to physical violence and coercion even during investigations rather than taking recourse to scientific and sophisticated methods to gather evidence. The emphasis, therefore, is on oral evidence or confession, rather than on forensic evidence.

Indian policing focuses on maintaining law and order rather than trying to understand and resolve underlying problems in the society.

It would not, however, be fair to place the entire blame on the police for the failure of the criminal justice system, because there are many factors responsible for the present situation. These could be broadly classified as follows:

i. Problems related to general administration

- Poor enforcement of laws and general failure of administration;
- Large gap between aspirations of the people and opportunities with resultant deprivation and alienation; and
- Lack of coordination between various government agencies.

- ii. Problems related to police
 - Problems of organisation, infrastructure and environment;
 - Unwarranted political interference;
 - Lack of empowerment of the cutting edge functionaries;
 - Lack of motivation at the lower levels due to poor career prospects, and hierarchical shackles;
 - Lack of modern technology/methods of investigation;
 - Obsolete intelligence gathering techniques and infrastructures; and
 - Divorce of authority from accountability.
- iii. Problems of organisational behaviour;
 - Inadequate training; and
 - Entrenched attitudes of arrogance, insensitivity and patronage.
- iv. Problems of stress due to overburdening;
 - Multiplication of functions, with crime prevention and investigation taking a back seat;
 - Shortage of personnel and long working hours; and
 - Too large a population to handle.
- v. Problems related to ethical functioning;
 - Corruption, collusion and extortion at different levels;
 - Insensitivity to human rights; and
 - Absence of transparent recruitment and personnel policies.
- vi. Problems related to prosecution
 - Best talent not attracted as public prosecutors;
 - Lack of coordination between the investigation and the prosecution agencies; and
 - Mistrust of police in admitting evidence.
- vii. Problems related to the judicial process/criminal justice administration
 - Large pendency of cases;
 - Low conviction rates;
 - No emphasis on ascertaining truth; and
 - Absence of victims' perspective and rights.

Principles of Police reforms

That there is need for police reforms in keeping with the requirements of a modern, democratic State. The principles of police reforms are:

1. Responsibility of the Elected Government

In a democracy, the government is elected to serve the people. People transfer a part of the right over their lives to government in order to serve the common goal of ensuring public order and protecting the liberties of all citizens. It is but natural that such an elected government must have authority.

A police free from political direction can easily degenerate into an unaccountable force with the potential to undermine the foundations of democracy. The coercive power of the police can easily extinguish liberty unless it is tempered by responsible political direction. A corollary or welcome consequence of responsible political direction will be the much needed depoliticisation of the police.

2. Authority, Autonomy and Accountability

The various wings of police should have the authority and resources to fulfill their responsibilities. Each such wing should have functional and professional autonomy commensurate with its requirements. For instance, intelligence wings need to have the flexibility to recruit personnel at short notice through summary procedures and the authority to procure sensitive intelligence-gathering technology without having to go through normal procurement processes. Traffic police need the resources to deal with the increasingly complex urban transport challenges, the quasi-judicial authority to impose fines on offenders when facts are incontrovertible or uncontested and flexible funding mechanisms without tortuous financial clearances. Police for riot control need a clear and unambiguous framework in which to operate, ready reinforcements when necessary and the confidence that bonafide use of force will not lead to victimisation. For each arm of the police, these requirements of authority and autonomy need to be spelt out clearly and codified. However, such autonomy and authority should be accompanied by clearly defined formal systems of accountability.

The police should be accountable to the law and law alone. This, it is argued, would give the police the required autonomy to function in a fair and impartial manner and would totally insulate them from political and bureaucratic interference but the commission viewed that public servants are also accountable to the public and public institutions established by law

3. Disaggregation and Deconcentration

One of the major problems impeding police reforms stems from the traditional approach of clubbing a variety of disparate functions in a single police force and concentrating all authority at one level.

A single, monolithic force now discharges several functions: maintaining law and order, riot control, crime investigation, protection of State assets, VIP protection, traffic control, ceremonial and guard duties, service of summons and production of witnesses in courts, anti-terrorist and anti-extremist operations, intelligence gathering, bandobast during elections, crowd control and several other miscellaneous duties.

Often, even fire protection and rescue and relief are treated as police functions. In addition, giving support to state functionaries in removal of encroachments, demolition of unauthorised structures and such other regulatory activities are also treated as police responsibilities.

Aggregation of all these functions in a single police force is clearly dysfunctional for four reasons:

- First, the core functions are often neglected when the same agency is entrusted with several functions.
- Second, accountability is greatly diluted when duties cannot be clearly and unambiguously stated and performance cannot be measured and monitored.
- Third, the skills and resources required for each function are unique and a combination of often unrelated functions undermines both morale and professional competence.

- Fourth, each function requires a different system of control and level of accountability. When a single agency is entrusted with all functions, the natural propensity is to control all functions by virtue of the need to control one function.

The Commission is of the view that three broad categories of functions can be clearly identified and the police force can be structured on those lines, while setting up mechanisms for effective coordination to prevent water-tight compartmentalisation; no agency of state can be an island, and each must support and draw strength from others. The three categories are:

- **Crime investigation** – this function would, in particular deal with serious offences. Crime investigation can be treated as a quasi-judicial function and an elite agency can be created to discharge this crucial function.
- **Law and order** – maintenance of law and order is another important function of police. This function includes intelligence gathering, preventive measures and riot control. Performance of this function requires close interaction with other government agencies, especially the Executive Magistrates. This function should be with the 'law and order' police. Other peripheral services like protection of State assets, ceremonial duties, service of summons etc. can be progressively outsourced.
- **Local policing** – Many functions like enforcement of civic laws, traffic control, investigation of petty crime, patrolling and management of minor law and order problems can be effectively supervised by local governments. Apart from these local functions, other functions performed by law and order police can be progressively transferred to elected local governments over a definite period of time, but with adequate institutional checks and safeguards to prevent abuse of office.

4. Independence of Crime Investigation

Unearthing evidence in a crime, identifying the culprit, establishing the means, motive and opportunity, presenting evidence in a court of law through the prosecution, and securing a conviction are all critical functions of the police. Many citizens, fed on a staple of detective fiction, crime thrillers and television serials portraying police functioning, regard painstaking crime investigation and police assistance in prosecution as the key functions of the police. However, in real life this core function, often, is relegated to the background. Excessive reliance on 'brawn' in other areas has blunted the professional skills required for effective investigation. The use of third degree methods to extract a confession from an accused or obtain cooperation of the culprit to recover stolen goods or unearth other evidence sometimes replace analytical investigation. Failure to link all the threads in a criminal case and produce clinching evidence often leads to over-reliance on oral testimony in court.

The net result of deficiencies in crime investigation is the widespread belief that crime pays and the perpetrator can escape the clutches of law. It is usually the poor and illiterate who are victims of third degree methods and are convicted on the basis of oral evidence. The well-connected and better-off sections of society often find it easy to escape the consequences of their crimes as they are able to subvert crime investigation and the due process of law.

Given these circumstances, the Commission is of the view that a separate, elite crime investigation agency of police should be created in each state and it must be completely insulated from undue political and partisan influences. While separating crime investigation from other functions, care must be taken to ensure that the crime investigation agency is not overburdened with petty offences, unable to apportion sufficient time for the investigation of serious crimes. It is therefore advisable to entrust only specified cases to the separately created elite crime investigation agency. Such an investigative agency must be well-trained and supported by adequate infrastructure including a network of forensic laboratories.

5. Self-esteem of Policemen

Nearly 87% of all police personnel are constables. The constable is the lowest level at which recruitment takes place. The educational requirement for selection of a constable is a school leaving certificate. A constable can

generally expect only one promotion in a life time and normally retires as a head constable. An average constable has little hope of becoming a Station House Officer (SHO). The statutory powers of investigation are with the Station House Officer who is usually a sub-inspector in rural police stations, and an inspector in urban police stations. As a result, constables have become 'machines' carrying out the directions of their superiors with little application of mind or initiative.

Constant political interference in transfers, placements and crime investigation, long and difficult working hours, the menial duties they are often forced to perform as orderlies to senior officers, and the emphasis on brawn rather than brain in most situations tend to brutalise and dehumanise policemen.

A constable devoid of dignity, lacking opportunities for vertical mobility, constantly pilloried by superiors and politicians, often derided by the public and habituated to easy recourse to violence and force cannot generally be expected to sustain his/her self-esteem or acquire the professional skills to serve the citizens.

Apart from the constabulary, the police force is top heavy. There is over-crowding at the top with no real strength at middle-management levels. Recruitment in most states is at several levels – constabulary, sub-inspector, deputy superintendent of police, and the Indian Police Service. Several tiers of recruitment have diminished opportunities for promotion and the level of recruitment by the accident of an examination often determines career progression, not competence, professionalism, integrity and commitment. Lateral entry to the police is not feasible, as rigorous training, experience, expertise and knowledge of peers and colleagues are vital to the police service. Since this is a sovereign function, no agency or experience outside government prepares outsiders for police work. At the same time, incentives for performance within the police agencies are feeble.

The Commission is of the view that police recruitment needs to be restructured significantly in order to enhance motivation and morale, professionalism and competence of the personnel. This would require empowerment of the cutting edge functionaries and commensurate upgradation of their calibre and skills.

6. Professionalisation, Expertise and Infrastructure

Effective crime investigation, competent law and order management and useful intelligence gathering demand high standards of professionalism and adequate infrastructural and training support. Specialised training facilities are vital to hone skills and constantly upgrade them. Forensic laboratories need to be established for every district or a group of districts – at least one per 3 to 4 million population. Only such well-endowed forensic facilities will help police agencies to meet the growing challenge of combating crime in a rapidly urbanising society. Strong communications support, state-of-the-art weapons, non-lethal, modern tools for riot control and a high degree of mobility are prerequisites for modern policing. Adequate resources, technology and manpower need to be deployed on a continuing basis to meet these requirements.

7. Attendant Criminal Law Reform

Police reforms by themselves, though necessary, are not sufficient. There is a growing perception in the minds of people that getting a criminal punished is a difficult proposition. The low conviction rates and the delays in disposal of cases reaffirm this belief. It is therefore necessary that other parts of the criminal justice system are also made effective and efficient.

The number of courts in India is inadequate to meet the requirement of justice. It is well-known that our judge-population ratio is of the order of 11 to 1 million³², whereas in many developed democracies it is of the order of 100 to 1 million, or nearly ten times that of the strength of the Indian judiciary. The resultant inaccessibility, coupled with archaic and complex procedures has made our justice system slow, inaccessible and in reality unaffordable. The pendency of over 25 million cases is a testimony to this. It is therefore not surprising that people, particularly the poor and vulnerable, have little faith in the system's capacity to deliver justice or enforce their rights. Consequently, they hesitate to approach courts and are often forced to accept injustice and

suffer silently. Some even resort to extra-legal methods to obtain rough and ready justice through musclemen and organised gangs. This is leading to a culture of lawlessness in society and is a serious threat to public order in the broader sense of the term. Therefore, enhancing the strength of judges and creation of local courts to settle disputes and punish crimes swiftly are vital.

8. Police to be a Service

Every member of the force must remember his (sic) duty is to protect and help members of the public, no less than to apprehend the guilty persons. Consequently, whilst prompt to prevent crime and arrest criminals, he must look upon himself as the servant and guardian of the general public and treat all law abiding citizens, irrespective of their position, with unfailing patience, courtesy and good humour". The concept of police as a 'Service' instead of a 'Force' encompasses the ideas of effective accountability, citizen centricity and respect for human rights and the dignity of the individual. These values should permeate all aspects of policing.

Police reforms recommended by Second ARC

The important ones are summarized as under:

1. Separation of investigation functions from other functions to inject the much needed specialization into the various functions of the Police and to relieve the average Policeman from multifarious responsibilities up to a certain extent.
2. The constitution of the State Police Performance and Accountability Commission which shall frame the broad policy guidelines for efficient, effective and responsive and accountable policing, in accordance with law.
3. All cities with population above one million should have Metropolitan Police Authorities. This Authority should have powers to plan and oversee community policing, improving police-citizen interface, suggest ways to improve quality of policing, approve annual police plans and review the working of such plans. This Authority should however not interfere in the 'operational functioning' of the police or in matters of transfers and postings. In order to ensure this, it should be stipulated that individual members will have no executive functions nor can they inspect or call for records.
4. Reducing Burden of Police by Outsourcing Non Core Functions. Each State Government should immediately set up a multi-disciplinary task force to draw up a list of non-core police functions that could be outsourced to other agencies. Such functions should be outsourced in a phased manner. Necessary capacity building exercise would have to be carried out for such agencies and functionaries in order to develop their skills in these areas.
5. On the issue of structural reforms within the Police, the Police Act is sought to be amended and certain new features need to be introduced. For example the existing system of the constabulary should be substituted with recruitment of graduates at the level of Assistant Sub- Inspector of Police (ASI). This changeover could be achieved over a period of time by stopping recruitment of constables and instead inducting an appropriate number of ASIs. Recruitment of constables would, however, continue in the Armed Police. The orderly system should be abolished with immediate effect. The procedure for recruitment of police functionaries should be totally transparent and objective. Further, the Police-public ratio should be improved as it is touching dismally low levels especially in some states like Bihar. Affirmative action should be taken to motivate persons from different sections of society to join the police service. Recruitment campaigns should be organized to facilitate this process. All this is expected to not only empower the cutting edge functionaries and also vest better skills in the police functionaries of that level along with improving upon the diversity within the police force which is again an important determinant of improving Police-Public relationship.

6. There is also a need to institute a variety of welfare measures for the Police viz. rational working hours for all police personnel, improved working conditions, better education facilities for their children, social security measures during service, as well as post retirement should be taken up on priority. Major housing construction programmes for police personnel should be taken up in a time bound manner in all states. All this is expected to drastically improve the morale of the Police force which shall not only de-incentivise corrupt practice but also reflect positively on the performance and sharpness of the Police on the ground.
7. District Police Complaints Authority (DPCA) shall be constituted in each district by the State government in consultation with the Chairperson State Human Rights Commission, to enquire into the misconduct or abuse of power against police officers up to the rank of deputy Superintendent of Police. The Authority should be empowered to investigate any case itself or ask any other agency to investigate and submit a report. The Disciplinary Authorities should normally accept the recommendations of the District Authorities. On similar lines a State level Authority (SPCA) should be constituted to look into complaints against officers of the rank of Superintendent of Police and above. The Authority should have the power to ask any agency to conduct an enquiry or enquire itself. The Authority should also be empowered to enquire into or review any case of police misconduct, which is before any District Police Complaints Authority, if it finds it necessary in public interest to do so. It should be provided that if upon enquiry it is found that the complaint was frivolous or vexatious, then the Authority should have the power to impose a reasonable fine on the complainant. The State Police Complaints Authority should also monitor the functioning of the District Police Complaints Authority. The Complaint Authorities should be given the powers of a civil court. It should be mandated that all complaints should be disposed of within a month.
8. In case of major breakdown of public order, the State Police Complaints Authority should take appropriate action to fix responsibility on the police officers for lapses in acting upon intelligence or on the intelligence officers in case there has been a failure on their part.
9. Further, media could also assist in maintaining public order. The administration must make facts available to the media at the earliest about any major development, particularly activities affecting public order. However, in order to have better appreciation of each other's viewpoints there should be increased interaction between the administration and the media. The Administration should designate points of contact at appropriate levels (a spokesperson) for the media which could be accessed whenever required. Officers should be imparted training for interaction with the media. A cell may be constituted at the district level which may analyze media reports about matters of public importance.
10. There is also a concern for the gender issue in policing particularly in reference to the though, sporadic, incidents of police excesses over women. Such misconduct is absolutely intolerable especially if it comes from the protectors of the society-The Police. Therefore in this regard several suggestions have been conceived viz. representation of women in police at all levels should be increased through affirmative action so that they constitute about 33% of the police. Police at all levels as well as other functionaries of the criminal justice system need to be sensitized on gender issues through well structured training programmes. Further, the administration and police should play a more pro-active role in detection and investigation of crimes against the weaker sections. Enforcement agencies should be instructed in unambiguous terms that enforcement of the rights of the weaker sections should not be downplayed for fear of further disturbances or retribution and adequate preparation should be made to face any such eventuality. The administration should also focus on rehabilitation of the victims and provide all required support including counselling by experts. Government must take concrete steps to increase awareness in the administration and among the police in particular, regarding crimes against children and take steps not only to tackle such crimes, but also to deal with the ensuing trauma.

11. Registration of Crimes in form of FIRs should be made totally citizen friendly. Technology should be used to improve the accessibility of police stations to the public. Establishing call centres and public kiosks are possible options in this regard. Police stations should be equipped with CCTV cameras in order to prevent malpractice, ensure transparency and make the police more citizen-friendly. This could be implemented in all police stations within a time frame of five years. However, the performance of police stations should be assessed on the basis of the cases successfully detected and prosecuted and not on the number of cases registered. This is necessary to eliminate the widely prevalent malpractice of 'burking' of cases.
12. Improvement of Forensic Science Infrastructure for professionalization of Investigation is of ultimate significance. There is need to set up separate National and State Forensic Science Organizations as state-of-the-art scientific organizations. There is need to expand the forensic facilities and upgrade them technologically. Every district or a group of districts having 30 to 40 lakhs population should have a forensic laboratory. This should be achieved over a period of five years. All the testing laboratories should be accredited to a National Accreditation Body for maintaining quality standards. Necessary amendments should be effected in the CrPC and other laws to raise the level and scope of forensic science evidence and recognize its strength for criminal justice delivery.
13. The importance of strengthening the intelligence gathering machinery has been emphasized time and again. Human intelligence should be combined with information derived from diverse sources with the focus on increased use of technology. Adequate powers should be delegated to intelligence agencies to procure/use latest technology. Intelligence agencies should develop multi-disciplinary capability by utilizing services of experts in various disciplines for intelligence gathering and processing. Sufficient powers should be delegated to them to obtain such expertise. Intelligence should be such that the administration is able to use it to act in time by resorting to conflict management or by taking preventive measures. Instead of monitoring public places by posting a large number of policemen it would be economical as well more effective if devices like video cameras/CCTVs are installed in such places. Informants giving information should be protected to keep their identity a secret so that they do not fear any threat to life or revenge. However, they could be given a masked identity, by which they could claim their reward at an appropriate time and also continue to act as informants as the situation develops. This was the practice of the FBI in America while acting against the infamous drug mafia of Chicago.
14. The most important component of Police reforms has to be the increased attention on the training of the Police. Deputation to training institutions must be made more attractive in terms of facilities and allowances so that the best talent is drawn as instructors. The Chief of Training in the state should be appointed on the recommendation of the Police Performance and Accountability Commission.

The instructors should be professional trainers and a balanced mix of policemen and persons from other walks of life who could provide specialized and even tailor cut training to the Policemen. There should be common training programs for police, public prosecutors and magistrates.

Training should also focus on bringing in attitudinal change in police so that they become not only more responsive and sensitive to citizens' needs but also become mentally and physically tough and conditioned to handle the challenges being posed to them especially during specialized anti-terror and counterinsurgency operations. The phenomenal improvements which have been brought in the capacities of some of the divisions of Mumbai Police could serve as a role model for other states where Police needs to work in similar environments.

Modern methods of training such as case study method should be used. For example the initiative of impartation of training in jungle warfare and martial arts like Krav Maga to MP Police involved in anti-Naxal operations is appreciable. Impact of training on the trainees however should be evaluated by independent field studies and based on the findings the training should be redesigned.

15. A special emphasis should be placed on the establishment of a Union-State and Inter-State Cooperation and Coordination the Ministry of Home Affairs should proactively and in consultation with the states, evolve formal institutions and protocols for effective coordination between the Union and the states and among the states. These protocols should cover issues like information/ intelligence sharing, joint investigation, joint operations, inter-state operations by a state police in some other state, regional cooperation mechanisms and the safeguards required. The joint task force constituted by the Ministry of Home Affairs for anti-Naxal operations is a commendable initiative, it however needs some further improvements, particularly on the political front to become a really effective instrument. Similarly the constitution of the National Investigation Agency (NIA) is also a positive step in this regard.
16. Confessions made before the police should be admissible. All such statements should be however video-recorded and the tapes should be produced before the court. Necessary amendments should be made in the Indian Evidence Act. The witness/accused should be warned on video tape that any statement he makes is liable to be used against him in a court of law, and he is entitled to the presence of his lawyer or a family member while making such a statement. This has been a perennial demand of the Police which could help them a lot in creating full proof cases against people involved in terrorist activities.
17. Constitution of the State Police Establishment Committee consisting of career civil servants at two levels, one to deal with all matters of postings and transfers, promotions and also grievances relating to establishment matters for all officers of the rank of IGP and the other committee to deal with similar matters of all gazetted officers up to the rank of DGP. The recommendations of these Committees shall normally be binding on the Competent Authority. However, the Competent Authority may return the recommendations for reconsideration after recording the reasons. Similar committees can be constituted at the district level under SPs to look into similar matters of non-gazetted officers. All officers and staff should have a minimum tenure of three years. Should the Competent Authority wish to make pre-mature transfer, it should consult the concerned establishment committee for their views. If the views of the establishment are not acceptable to the Competent Authority, the reasons should be recorded before the transfer is affected, and put in the public domain. This is expected to limit the role of politics and arbitrary discretion in the matters of career of Police functionaries.
18. Competent Prosecution and guidance to investigation by means of a system of district attorney which should be instituted. The District Attorney shall function under the Chief Prosecutor of the State. The District Attorney should also guide investigation of crimes in the district. The Chief Prosecutor for the State shall be appointed by the Board of Investigation for a period of three years. This is expected to sharpen the process of investigation and prosecution which could be a handful in improving the efficiency of law enforcement and reducing incidences of manipulation of law and exploitation of the weaknesses in the investigation and prosecution process especially by 'influential' criminals.
19. The issue of Organized Crime has to be brought to the fore and dealt with firmly. The first step in this regard could be to bring specific provisions to define organized crimes to be included in the new law governing 'Federal Crimes'. The definition of organized crime in this law should be on the lines of the Maharashtra Control of Organized Crime Act, 1999.
20. The Role of the Media in criminalization of politics and administration is very vital because politics has strong relations with public opinion and media is the vanguard of public opinion. Therefore facts related to background of the candidates contesting elections, background of the key administrators at the helm of the affairs should be released to the media to be brought in the public domain. This could go a long way in creating a public opinion in favor of the right candidates.
21. The dilution of governmental control over the prime investigative agency i.e. the CBI on the pattern of autonomy with accountability model could also help in improving the morale of the CBI to speak the truth, especially when it is against the people associated with the party in power. This is something which has been a long standing demand of the various civil society groups including the judiciary.

All these measures are aimed at making future policing citizen-centric and autonomous, working under the frame-work of law and reflecting the will of the society, and if implemented in consonance with each other is sure to go a long way in making the Police of the future, the way it needs to be.

Reforms in Criminal Justice System

A strong and effective criminal justice system is a fundamental requirement of the Rule of Law. The criminal justice system comprises the police (investigation), the prosecutor (prosecution), the courts (trial) and the prison (punishment and reforms). The role of the police is, no doubt, important in dealing with imminent threats to peace and order as well as in tackling violence when it erupts. However, for sustaining peace and order in society on a long term basis, the role of other wings of the criminal justice system is even more important. It is the criminal justice system which protects a law abiding citizen and deters a potential law breaker. The essence of an efficient criminal justice system is that the trial of an accused should be swift and punishment for a criminal should be certain and deterrent.

The reforms required in the criminal justice system would include the following:

- facilitating access to justice;
- proper investigation;
- effective prosecution;
- better and swift trial; and
- improving the prison system.

Some measures have already been taken in recent years to expedite disposal of both civil and criminal cases. Plea bargaining has now been recognised by the Criminal Law Amendment Act, 2005. This measure would help in dealing with the large pendency of criminal cases and would also provide relief to undertrial prisoners. The 'shift system' has been mooted for the functioning of courts. On July 25, 2006, the Chief Justice of India proposed that courts work in two shifts. The basic idea of the shift system is that the infrastructure available can be put to use during the 'idle' time of the day.

On the recommendations of the 11th Finance Commission, 1734 Fast Track Courts were sanctioned for disposal of long pending Sessions and other cases and a grant of Rs 502 crore was also provided for disposing these cases. The scheme envisages the appointment of ad hoc judges from among retired sessions/additional sessions judges, as well as judges promoted on ad hoc basis and posted in these courts from among members of the Bar. Selection of judges would be done by the High Courts. State Governments would have to fill the consequential vacancies resulting from ad hoc promotion of judges through a special drive. The Fast Track Courts of Sessions Judge disposed of 133475, 168861 and 171626 cases in 2003, 2004 and 2005 respectively. The Lok Adalats, constituted under the Legal Services Authority Act, 1987, have been successful in settling a large number of cases, particularly the claims under the Motor Vehicles Act. Fast Track Courts have also proved to be successful.

Former Chief Justice of India, Justice Y K Sabharwal has made several suggestions such as:

- Carrying out a Judicial Impact Assessment of each new legislation and making appropriate provisions for resources for augmentation of the judiciary;
- Adopting case management techniques which include:
 - a) Identifying key issues in a case;
 - a) Encouraging parties to settle cases or agree on issues;
 - b) Summary disposal of weak cases and trivial issues;
 - c) Deciding the order in which the issues are to be resolved;

- d) Fixing a time table for parties to take specific steps;
- e) Allocating each case to specific track (Fast Track/Multi Track) courts;
- Adopting Court Management Techniques;
- Classification and assignment of cases;
- Managing cause lists in a rational manner so that unnecessary cases are not posted merely for the sake of being called out;
- Making use of Alternate Dispute Resolution methods;
- Modernisation and computerisation of courts;
- Video conferencing;
- Setting up Fast Track subordinate courts;
- Transfer of petty cases from regular courts to special courts;
- Adopting discretionary prosecution;
- Using modern means of communication for service of summons;
- Conducting pre-trial hearings;
- Enlarging the list of compoundable offences; and
- Submission of 'Statement of Prosecution' followed by a 'Statement of Defence'

Second ARC recommendations

A. Facilitating Access to Justice - Local Courts

Providing citizens with improved access to justice also requires a major thrust on increasing the number of courts; equipping the courts with required human, material and technological resources; simplifying their cumbersome procedures and placing an increased emphasis on use of the local language to deliver swift justice at lower costs.

- Hence a system of local courts should be introduced as an integral part of the judiciary. There should be one such court for a population of 25,000 in rural areas (this norm could be modified for urban areas).
- The local courts should have powers to try all criminal cases where the prescribed punishment is less than one year. All such trials should be through summary proceedings.
- The judge of the local court should be appointed by the District and Sessions Judge in consultation with his/her two senior-most colleagues. Retired judges or retired government officers (with appropriate experience) could be appointed.
- These courts may function from government premises and could also be in the form of mobile courts.
- These local courts may be constituted by a law passed by the Parliament to ensure uniformity.

B. Reforms in Investigation

Once a crime is registered, investigation by the police begins, which prepares the ground for prosecution and trial. It has been observed that very often investigations are done in a superficial manner with little reliance on modern forensic science.

The Commission has made wide-ranging recommendations regarding grant of autonomy to police, emphasis on professional investigation, focus on 'brain' rather than 'brawn', improving training of the police, taking steps to improve the morale of the cutting edge functionaries etc. It is expected that with these changes, the quality of investigations would improve. The recommendations are:

a) Citizen Friendly Registration of Crimes

- Registration of FIRs should be made totally citizen friendly. Technology should be used to improve the accessibility of police stations to the public. Establishing call centers and public kiosks are possible options in this regard.
- Police stations should be equipped with CCTV cameras in order to prevent malpractice, ensure transparency and make the police more citizen-friendly. This could be implemented in all police stations within a time frame of five years.
- The performance of police stations should be assessed on the basis of the cases successfully detected and prosecuted and not on the number of cases registered. This is necessary to eliminate the widely prevalent malpractice of 'burking' of cases.

b) Statements Made before a Police Officer

- Sections 161 and 162 of CrPC should be amended to include the following:
 - i. The statement of witnesses should be either in narrative or in question and answer form and should be signed by the witness.
 - ii. A copy of the statement should be handed over to the witness immediately under acknowledgement.
 - iii. The statement could be used for both corroboration and contradiction in a Court of Law.
- The statements of all important witnesses should be either audio or video recorded.

c) Confessions before Police

- Confessions made before the police should be admissible. All such statements should be video-recorded and the tapes produced before the court. Necessary amendments should be made in the Indian Evidence Act.
- The witness/accused should be warned on video tape that any statement he makes is liable to be used against him in a court of law, and he is entitled to the presence of his lawyer or a family member while making such a statement. If the person opts for this, the presence of the lawyer/ family member should be secured before proceeding with recording the statement.
- The accused should be produced before a magistrate immediately thereafter, who shall confirm by examining the accused whether the confession was obtained voluntarily or under duress.

C. Reforms in Trials

- It is necessary to amend Section 311 CrPC and impose a duty on every court to suo motu cause production of evidence for the purpose of discovering the truth, which should be the ultimate test of the criminal justice system. Suitable amendments to the Indian Evidence Act, 1872 may also be made to facilitate this.
- A central issue facing all criminal justice systems is to strike a balance between the extent to which an accused could be used as a source of information and his/her right against self incrimination. Right to silence is a natural corollary of the maxim that no person can be forced to give evidence against one's

own self. The right to silence is a legal protection enjoyed by an accused person during investigation or trial. This right mandates that adverse inferences cannot be drawn by the judge from a refusal to answer questions before or during a trial or hearing. The right to silence has various facets. One is that the burden is on the State or rather the prosecution to prove that the accused is guilty. Another is that an accused is presumed to be innocent till he is proved to be guilty. A third is the right of the accused against self incrimination, namely, the right to be silent and that he cannot be compelled to incriminate himself. There are also exceptions to the rule. An accused can be compelled to submit to investigation by allowing his photographs taken, voice recorded, his blood sample tested, his hair or other bodily material used for DNA testing etc. Hence committee recommended that in every trial, the Court shall, immediately after the witnesses for the prosecution have been examined, question the accused generally, to explain personally any circumstances appearing in the evidence against him.

- A new law for protecting the rights of the victims of the crimes may be enacted. The law should include the following salient features:
 - a) Victims should be treated with dignity by all concerned in the criminal justice system.
 - b) It shall be the duty of the police and the prosecution to keep the victim updated about the progress of the case.
 - c) If the victim wants to oppose the bail application of an accused he/she shall be given an opportunity to be heard. Similarly, for release of prisoners on parole, a mechanism should be developed to consider the views of the victims.
 - d) A victim compensation fund should be created by State Governments for providing compensation to the victims of crime.

D. Classification of offences

- To remove the distinction between cognizable and non-cognizable offences and making it obligatory on the Police Officer to investigate all offences in respect of which a complaint is made.
- Increasing the number of offences for which no arrest shall be made.
- Increasing the number of offences where arrest can be made only with the order of the court and reducing the number of cases where arrest can be made without an order or warrant from the Magistrate.
- Increasing the number of offences which are bailable and reducing the number of offences which are not bailable.
- Increasing the number of offences that can be brought within the category of compoundable / settlement category.

Constitutional issues

1. Whether “Police” should be brought under Concurrent List so that Union and State both can make rules for it?

Under our Constitution the responsibility for maintaining public order rests mainly with the State Governments. This does not dilute the overall constitutional obligation of the Union Government to preserve order throughout the country. To maintain internal peace and security central government too can take steps.

But the crimes have increased so much. Major public order issues can even threaten our social fabric and endanger national security. The proliferation of organised crimes and terrorism, the rise of insurgent movements in certain parts of the country and the nexus among these, throw up challenges that require a coherent national response in the form of new laws and administrative structures.

Hence the question arises that public order should move to the concurrent list so that both state and centre can make legislation and rules for its maintenance.

Points in favour:

The collapse of 'public order' has wide ramifications for national security, economic development and even on the legitimacy of the State. The absence of a clear-cut role of the Union Government in such situations means that it is often powerless to intervene in major crisis situations even when they threaten the social fabric and national security.

As a result, the Union Government can either use the extreme provision of Article 356 (President Rule) of the Constitution or merely be a passive spectator till such time that the State Government seeks its assistance.

Another reason often cited for bringing public order in the Concurrent List is that inter-state crime is on the increase. Differences in the legal and the administrative framework among the States can be easily exploited by organised criminal gangs. Due to the rapid growth in communication facilities and the use of modern technologies, organised crime and terrorism often operate on a national or even international scale and can best be tackled by providing for a unified legal, administrative and operational framework for police forces across the country. This would require certain uniform and effective legislations to deal with both organised crime and terrorism which can be best undertaken if 'Public Order' is in the Concurrent List.

Points in against:

The principle of subsidiarity demands that these functions be exercised by State Governments. In most of the large developed countries, the national government does not handle law and order which is left to the provincial and even local governments.

States in India are administered by responsible, elected governments whose willingness to uphold public order and the rule of law should not be doubted.

Any move to bring public order into the Concurrent List would also amount to duality of responsibility which may be detrimental to the efficient handling of serious public order situations.

In an era of democratic decentralisation a move to bring public order into the Concurrent List would be a retrograde step and is likely to be resisted by State Governments as they would view this as an encroachment on their legitimate jurisdiction.

The size and diversity of our country is another reason why 'Public Order' and 'Police' have been kept in the State List so that State Governments are in a position to enforce rule of law as per local requirements.

Conclusion

The existing constitutional responsibilities between the states and the Union which have stood the test of time should not be disturbed.

Given the size and diversity of India, public order should continue to be the responsibility of State Governments. Moreover, with democratic decentralisation, there is need to entrust the responsibility to deal with minor public order issues to local governments.

A move to place 'Public Order' in the Concurrent List may also bring in duality of responsibility. This would heighten and not lessen any confusion that may exist today in the role of the two levels of government. The existing provisions of the Constitution maintain a very fine balance between the responsibility of the State Government to maintain public order and the overall responsibility of the Union to ensure constitutional governance in each state. Therefore public order should continue to be in the State List. The Union Government should continue to assist the State Governments in maintaining public order.

2. Issue of Deployment of Forces of the Union including Armed Forces

According to Article 256 - *The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.*

Under this Article Union can deploy armed forces in the State at the time of public crisis. Deployment of Forces of the Union including Armed Forces is made on the request of or with the concurrence of the concerned State Government. In such circumstances the Armed Forces assist the civil administration in restoring order.

The issue, which arises, is whether the Union can deploy its Forces and/or order that the these Forces act on their own without depending on the State Government machinery or not.

According to Sarkaria Commission:

The purpose of deployment which is to restore public order and ensure that effective follow-up action is taken in order to prevent recurrence of disturbances, cannot be achieved without the active assistance and cooperation of the entire law-enforcing machinery of the State Government. If the Union Government chooses to take unilateral steps to quell an internal disturbance without the assistance of the State Government, these can at best provide temporary relief to the affected area and none at all where such disturbances are chronic.

Thus, practical considerations, as indicated above, make it imperative that the Union Government should invariably consult and seek the cooperation of the State Government, if it proposes either to deploy suo motu its armed forces in that State or to declare an area as 'disturbed', the constitutional position notwithstanding. It need hardly be emphasized that without the State Government's cooperation, the mere assertion of the Union Government's right to deploy its armed forces cannot solve public order problems.

Hence before deploying Union armed and other forces in a State in aid of the civil power otherwise than on a request from the State Government, or before declaring an area within a State as a 'disturbed area', it is desirable that the State Government should be consulted, wherever feasible, and its cooperation sought by the Union Government. However, prior consultation with the State Government is not obligatory".

There are two main issues in the deployment of the Forces of the Union. First, whether these Forces can be deployed without the consent of the State Government and second whether the Forces, upon such deployment, can act on their own or need to receive instructions from the State Government or other authorities of the State Government.

According to one view, Article 355 empowers the Union to unilaterally deploy its forces. They argue that as per the said Article, the Union is bound to protect a state from internal disturbance to ensure that the government of every state is carried out in accordance with the Constitution. A natural corollary of this is that the Union has the authority to use the Forces at its command to ensure this. Therefore the Union can deploy as well as command the Forces, if the situation so demands.

The other view is that Article 355 does not empower the Union to deploy its Forces against the wishes of the State Government. The contention is that since the Constitutional framework lays down the principle of civilian control over use of forces, this control has to be provided by the State Government. This is all the more necessary as investigation and prosecution has to be done by agencies which are in the purview of State Governments. Thus the Forces of the Union, when deployed cannot supplant the State Government.

Conclusion

Maintenance of public order comes within the domain of State Governments, at the same time, the Union also has a constitutional responsibility i.e. to ensure that the government of every state is carried on in

accordance with the provisions of the Constitution. Indeed, if the Union is of the considered view that the government of a state cannot be carried on in accordance with the provisions of the Constitution, it may impose 'President's Rule' in the state. A major breakdown of public order would definitely signal a constitutional breakdown in the state, and the Union would be well within its rights to invoke its powers under Article 356 and go to the extent of dismissing an elected State Government. Once President's Rule is imposed, the Union can deploy and direct the police and the Union Forces.

At the same time sufficient safeguards need to be provided to prevent partisan misuse of this provision. The safeguards would also include a step-by-step approach under Articles 256 and 355, explaining the facts and giving directions and requiring the state to adopt certain measures. Any such deployment of Union Forces should be on a temporary basis not exceeding three months which could be extended by another three months after authorisation by Parliament. The law should spell out the hierarchy of the civil administration which would supervise the Forces under such circumstances.

3. Issue of Federal Crimes

Rapid economic development and improvement of transport and communication infrastructure has added another dimension to crimes. Increasingly, major crimes like organised crimes, terrorism, trafficking in arms and serious economic offences have inter-state and even international ramifications and they often threaten national security.

Though 'Criminal law' is in the Concurrent List, 'Police' is in the State List. As a result the state police investigates all major crimes in the country. Though the Central Bureau of Investigation has been constituted, it can investigate criminal cases only with the consent of the respective State Governments.

It has been argued that the state police, with its jurisdiction confined to the respective state finds it difficult to carry out investigations across state borders.

Hence there is need to entrust such major crimes to a specialised federal agency.

Another reason cited is that at times crimes have international ramifications, and gathering information and investigation would require the expertise and resources which ordinarily are not available with the state police.

There is a need for declaring a few selected categories of cases as federal offences and recommended the following criteria for categorising such offences:

- *"They have international implications.*
- *They relate to security of nation.*
- *They relate to the activities of the Union Government.*
- *They relate to corruption in All India Services.*
- *Protecting Government currency.*
- *Controlling National borders."*

Padmanaih Committee recommended that CBI in a year in able to take up 600 cases. *If any central agency is to take up investigation of cases under more heads than the ones listed above, or take up cases under the above heads we need to have a huge set-up with staff spread throughout the country. Such an organization would compete with State police forces for scarce financial and human resources. If important cases are, as a matter of routine, to be taken up by the federal agency, the state police would be relegated with investigation of only less important cases, which, in course of time, can create a question of credibility of state police forces in public perception.*

Hence to avoid this situation there is no need to create a separate organisation at the national level for the time being, and investigation of federal crimes should be handed over to the special crimes/economic offences division of CBI.

4. Issue of organised crime

Organised crime can be regarded the unlawful activities indulged in by a group of individuals with a degree of planning and resources not found in case of ordinary gangs of criminals. Unlike groups of terrorists, the objective of such groups is pecuniary gain rather than subversion of established order.

The globalisation of the economy has definitely helped the crime syndicates carry out their illegal activities across the borders with great ease. This has been further facilitated by the phenomenon of 'digital money'. Such organisations, very conveniently find safe havens outside the country.

The existing legal framework i.e. the penal and procedural laws and the adjudicatory system were found to be rather inadequate to curb or control the menace of organised crime. Government, therefore, should enact a national law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organised crime on the lines of MCOCA (law on organised crime in Maharashtra).

The law should include:

- Enhanced punishment for organised crime
- Constitution of Special Courts for trial of offences
- Authorisation of interception of wire, electronic or oral communication, appointment of a Competent Authority for it and constitution of a Review Committee for review of authorisation orders
- Special rules of evidence for the purpose of trial and punishment of offences under the Act
- Certain confessions made to police officer not below the rank of the Superintendent of Police to be taken into consideration
- Protection of witness
- attachment of property

5. The Role of the Media in Public Order

While maintaining public order is an important aspect of the State's effort to earn the approval of its people, equally important, for the purpose of legitimacy, is the people's perception regarding its ability to do so. This perception cements the people's faith in the State – a necessary input in legitimising the existence of the State. It is here that the positive role of the media emerges quite significantly. The increasing exposure of the general public to audio-visual and print media influences people's perception towards the capabilities of the State.

Technology has endowed the electronic media with three major attributes –instantaneity, spontaneity and locality. Instantaneity has provided it with a ringside view in real time, spontaneity has allowed it cover events as they unfold and locality has provided it with the power to bring the farthest corner of the globe into a household. This has also enhanced the reach and, therefore, the hold of the electronic media over the viewers' minds.

It has, however, also given rise to a multiplicity of players in this field, with consequential concerns of accountability, responsibility and public good. It is, therefore necessary to ensure that the media is prompt, responsible, sensitive, accurate and objective in its presentation of news. In the context of maintenance of public order, the role of the media could go a long way in preventing rumour mongering and incorrect or mischievous coverage by a small section of the media which could be supportive of partisan elements.

The central issue, thus, is how to have an effective interface with the media. Given the technological environment in which the media functions today, the fact that there is no monopoly over sources of information and the need to have an informed public, control measures are neither feasible nor desirable. Thus, it is incumbent on the administration to continuously provide the media with immediate, accurate and reliable information so that

the public is not left with gaps in their information which might be filled by sensational and biased news reporting. This requires capability building at various levels of the administrative machinery so as to provide a transparent and responsive administration.

To ensure that government officials interact with the media in a professional manner, media management modules should be integrated in various training programmes. Media persons may also be associated with such training modules. Emphasis on local language media would obviously be useful.

In hierarchical structures within the government, interaction with the media is generally regulated to avoid confusion and contradictions. To overcome such hindrances, officials should be designated at appropriate levels to interact with the media and their accessibility should be ensured.

6. Reforms in the Criminal Justice System

In recent times, there has been a serious erosion of the people's faith in the Criminal Justice System. One of the essential requirements for preservation of peace and order in a sustained manner is deterrence emanating from certainty and speed of punishment for those who indulge in crimes against society.

Our Criminal Justice System is crippled currently with so many shortcomings that anti-social and anti-national elements are able to commit their nefarious criminal activity almost with a sense of impunity. An illustrative example is the snail's pace of judicial process in the infamous Mumbai riot cases of 1992-93. The inadequacies of our Criminal Justice System, therefore, need to be comprehensively examined.

The ineffectiveness of our Criminal Justice System in dealing with criminal elements, also contributes to alienation of the public from the law enforcement agencies, making their task of public order management even more difficult. In such a scenario, it is imperative to search for the various legislative and administrative measures needed for better management of public order.

The criminal justice system comprises the police (investigation), the prosecutor (prosecution), the courts (trial) and the prison (punishment and reforms). The essence of an efficient criminal justice system is that the trial of an accused should be swift and punishment for a criminal should be certain and deterrent.

In this regard, our track record has been rather dismal, with delays, mounting pendency and falling conviction rates being major shortcomings. There are innumerable examples of culprits, including those committing heinous offences, going scot-free.

For a victim, it is an uphill task to get justice. In the first instance, it is difficult to get an FIR registered. Even after the FIR is registered, investigation proceeds in a casual and an unprofessional manner. Once the case is charge-sheeted it may take several years for the conclusion of the trial. Making repeated visits to the court is usually an unpleasant experience for the victim and the witnesses. During trial, witnesses often resile from their original statements. Prosecution is often ineffective because of lack of coordination with investigation. The net result in many cases is the acquittal of the culprit who had actually committed the crime. This, apart from emboldening the accused, also leads to cynicism in the minds of law abiding citizens. The recent public outcry against the acquittal of the accused in some high profile cases is a pointer to this deeper malaise. Immediate restoration of the people's faith in the criminal justice system is therefore vital in the interests of public order and a just society.

The reforms required in the criminal justice system would include the following:

- facilitating access to justice;
- proper investigation;
- effective prosecution;
- better and swift trial; and
- improving the prison system.

Steps needed are:

- a) Providing citizens with improved access to justice also requires a major thrust on increasing the number of courts; equipping the courts with required human, material and technological resources; simplifying their cumbersome procedures and placing an increased emphasis on use of the local language to deliver swift justice at lower costs. Local courts with the following features:
 - One court (honorary magistrate) for every 50000 population;
 - Summary procedures and trial at the scene of offence where possible;
 - Exclusive jurisdiction of cases of up to one year's imprisonment and all other cases specified by law;
 - Integral part of independent justice system;
 - Provision for appeal; and
 - Verdict within 90 days.
- b) There is an urgent need to focus on the critical procedures that need to be modernised such as the outmoded methods of recording oral evidence which should be replaced by digital sound and video-recording combined with text transcription by transcribers working outside the court rooms. A fully developed IT-enabled case management system, including on-line payment gateways for payment of fees and issue of authenticated copies of court records, and a full-fledged reengineering of judicial processes to be combined with use of modern technology tools would improve performance of the justice delivery system. Virtual courts or e-Courts without the physical presence of all the key participants viz. lawyers, accused, witnesses, judges etc in the same place and real time multi-media transcripts to replace paper should be the ultimate goal. Prioritization and selection of courts for the programme of computerisation based on levels of pendency and use of a clustering approach to provide common physical infrastructure to proximate subordinate courts through the use of local area networks (LANs) would be an appropriate implementation strategy. This has to be carried out in conjunction with large-scale expansion and upgradation of physical infrastructure, phasing out the old and outdated court buildings and replacing them with modern, state-of-the art buildings with the latest facilities and fixtures.
- c) Registration of FIRs should be made totally citizen friendly. Technology should be used to improve the accessibility of police stations to the public.
- d) Establishing call centers and public kiosks are possible options in this regard.
- e) Police stations should be equipped with CCTV cameras in order to prevent malpractice, ensure transparency and make the police more citizen-friendly. This could be implemented in all police stations within a time frame of five years.
- f) The performance of police stations should be assessed on the basis of the cases successfully detected and prosecuted and not on the number of cases registered. This is necessary to eliminate the widely prevalent malpractice of 'burking' of cases.
- g) Confessions made before the police should be admissible. All such statements should be video-recorded and the tapes produced before the court. Necessary amendments should be made in the Indian Evidence Act.
- h) The witness/accused should be warned on video tape that any statement he makes is liable to be used against him in a court of law, and he is entitled to the presence of his lawyer or a family member while making such a statement. If the person opts for this, the presence of the lawyer/family member should be secured before proceeding with recording the statement.

- i) The accused should be produced before a magistrate immediately thereafter, who shall confirm by examining the accused whether the confession was obtained voluntarily or under duress.
- j) A new law for protecting the rights of the victims of the crimes may be enacted. The law should include the following salient features:
 - i. Victims should be treated with dignity by all concerned in the criminal justice system.
 - ii. It shall be the duty of the police and the prosecution to keep the victim updated about the progress of the case.
 - iii. If the victim wants to oppose the bail application of an accused he/she shall be given an opportunity to be heard. Similarly, for release of prisoners on parole, a mechanism should be developed to consider the views of the victims.
 - iv. A victim compensation fund should be created by State Governments for providing compensation to the victims of crime.
- k) The Union and State Governments should work out, fund and implement at the earliest, modernisation and reforms of the Prison System as recommended by the All India Committee on Jail Reforms

7. Militarisation of police

A state police force has two main components-the civil police and the armed police. The primary function of the civil police is to control crime, while the armed police mainly deal with law and order situations.

The civil police include mainly the 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 requirements 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 of districts are treated as a part of the district civil police force. The armed police is in the form of battalions, which are used as striking reserves to deal with emergency situations. On 1.1.2001 the strength of the state armed police forces was 372,346.

In addition, the combined strength of five central para-military forces, like the Border Security Force (BSF), Central Police Reserve Force (CRPF), Central Industrial Security Force (CISF), Indo-Tibetan Border Police (ITBP) and Assam Rifles was 5,09,829.

Besides, there are other armed organisations at the command of the central Ministry of Home Affairs, like the National Security Guards. Even if other organizations are not taken into account, the armed police accounts for about 46% of the total police strength in the country.

This huge expansion has been necessitated by an increasing deployment of central paramilitary forces on law and order duties. The Central Government has been playing a wide and active role in maintaining law and order in different parts of the country, something that was never envisaged by the Constitution of India for them. Under the Constitution of India, Police and Public Order are State subjects. Law enforcement is a civil function and it is the responsibility of the State Governments to discharge this function effectively through their own Police Forces.

Most State Governments have failed to do so. They have neglected the development of their police forces and have instead preferred to depend heavily on the central para-military assistance to meet urgent and emergent law and order needs. This heavy dependence on the central assistance has been the result as well as the cause of comparatively poor development of the state police forces. The state governments requisition the central assistance on the ground that their own police forces lack adequate strength, arms, equipment and training to deal with tough situations effectively. The availability of central assistance in turn allows the state governments to keep on neglecting the need to strengthen and modernise their police forces.

In some cases, the public demand deployment of central para-military forces because of lack of faith in the impartiality of the state police forces to handle critical situations, particularly those marked by communal and caste violence. Lack of fairness on the part of the state police forces in dealing with such situations has often been the result of poor quality of political control exercised over them.

Somehow or the other, the central government has allowed this dependence to continue. While the state governments have found it administratively convenient and economically beneficial to let the centre handle their serious law and order problems, the central government has probably found it politically expedient to do so, particularly in dealing with caste and communal riots.

The central para-military forces are organised more or less like the infantry battalions of the army. They are equipped, armed and trained to assault and annihilate. While their deployment in areas affected by terrorism or insurgency may be understandable, there is absolutely no reason why the Central Government should not turn down requisitions for assistance in dealing with other law and order disturbances. It is time the Central

Government evolved a sound and strict policy of deployment, restricting the use of central police forces on law and order duties and utilising a part of the saved money in developing the state police forces instead.

This, in fact, is essential for other reasons too. Besides causing a huge dent on public exchequer, the heavy and growing militarisation of the Indian Police is leading to other developments. Pre-occupation with threats to law and order and security and dealing with emergency situations is indeed gradually reducing the capability of the police to do normal traditional policing effectively. The inevitable result has been an increase in crime and a feeling of insecurity afflicting the ordinary citizens in normal areas, unaffected by terrorism and insurgency.

Traditional policing needs to be strengthened and improved not only to prevent and control crime but also to deal with problems of law and order. Most major caste and communal disturbances generally originate in small minor incidents. Trouble in such cases must be nipped in the bud and that requires a skillful approach of the friendly policeman in the neighbourhood, and not one coming from a distant place, equipped with heavy arms and moving in an armoured vehicle. The former species is being seen less and less in performing its role of building community relations and defusing tensions through intervention of community leaders.

We are developing a culture of para-militarism in law enforcement, which is not a very healthy sign. We must change the basic philosophy underlying policing, which has remained largely 'colonial in mould'. We are a democratic society and can do without so many 'warrior cops'. Policing must be performed by a well organised, well controlled well led and a well-trained civil police service, which is friendly, sensitive and fair, but firm.

Yes, violence in society is increasing. However, the roots of violence lie in bad politics and bad economics. Para-military law enforcement cannot provide a solution, definitely not a lasting one.

8. Politicisation and Criminalisation of the Police

"Corruption is the root cause of both politicisation and criminalisation of the police." If the word "corruption" had been interpreted in a wide sense, to mean decline in the public standards and value systems affecting the institutions of society and governance, this analysis could have been accepted. However, the recommendations made by the Committee "to curb the growing trend of criminalisation" clearly show that this is not what it means. These recommendations include (i) raising the status of the constabulary and improving their service and living conditions; (ii) preparing a new Departmental Inquiry Manual and a new Code of Conduct for the police; (iii) filing of property returns both by gazetted as well as non gazetted police officers; (iv) improving the in-house vigilance within the police department; (v) improving the accessibility of police officers to the public; and (vi) reviewing the record of arrests made by the police station staff.

There are two problems in accepting this narrow interpretation of the problem of increasing criminalisation of the police. Firstly, criminalization of the police is not confined merely to corruption in the financial sense.

There is ample evidence of different types of police deviance increasing in India. The newspapers everyday report incidents of brutality, murder, rape, grievous hurt and other crimes committed by police personnel, which are not necessarily motivated by financial considerations. A couple of years ago, the CHRI did a media scan on “criminality amongst police personnel”, which revealed that over the last few years there had been an increasing involvement of police personnel in committing crimes. Two findings of this scan are relevant here. One, this involvement is confined not merely to flouting of departmental rules and regulations or in indulging in peccadilloes, but to committing the most heinous and sordid crimes. Two, it is not merely police personnel of lower ranks who are involved in crimes, but even the officers of higher ranks. In fact, the number of officers committing crimes is showing signs of increase.

Secondly, criminalisation of police cannot be de-linked from criminalisation of politics. It is the criminalisation of politics, which has produced and promoted a culture of impunity that allows the wrong type of policeman to get away with his sins of commission and omission. The Committee's report does not suggest effective mechanisms to deal with these basic issues.

The Committee ascribes the growing political interference in the police administration and its work to “recruitment and transfer policies/procedures, failure of political leadership and the failure of police leadership.”

The Committee is of the view that most problems of police are due to arbitrary and frequent transfers of police personnel of different ranks and once the powers in this regard are given to the departmental hierarchy, political interference in policing will be reduced.

To reduce political interference, the Committee has suggested that “(I) coordination with the secretariat should be the function of the DG/Commissioner of Police” or their nominee and “no one else should frequent the Secretariat”; and “(ii) any officer approaching a politician for transfers/ postings, training, rewards etc. should be severely dealt with.” However, “oral/written representation to the Chief Minister, Home Minister, Minister of State for Home would be legitimate.”

Role of Media in public order

The Fourth Estate has always played an influential role in the public sphere. Historically, the press has been a formulator of public opinion, been instrumental in bringing about change and has also provided a powerful platform for addressing national and public sentiments.

While maintaining public order is an important aspect of the State's effort to earn the approval of its people, equally important, for the purpose of legitimacy, is the people's perception regarding its ability to do so. This perception cements the people's faith in the State – a necessary input in legitimising the existence of the State. It is here that the positive role of the media emerges quite significantly. The increasing exposure of the general public to audio-visual and print media influences people's perception towards the capabilities of the State.

The central issue, thus, is how to have an effective interface with the media.

The Administration must make facts available to the media at the earliest about any major development, particularly activities affecting public order.

In order to have better appreciation of each other's viewpoints there should be increased interaction between the Administration and the media. This could be inter alia in the form of joint workshops and trainings.

The Administration should designate points of contact at appropriate levels (a spokesperson) for the media which could be accessed during whenever required.

Officers should be imparted training for interaction with the media.

A cell may be constituted at the district level which may analyse media reports about matters of public importance.

Role of Political Parties

Our democratic polity encourages the resolution of conflicts and disputes through discussion, debate and consensus. This is ensured by participation in the political process institutionalised by the Constitution. There have been many instances where political outfits which once promoted the attainment of political and social objectives through violent means have accepted the democratic set-up of the country and have participated in the electoral process, thereby reducing conflicts.

Hooliganism and anti-social behaviour sometimes becomes a necessary accompaniment of many political rallies or demonstrations. The responsibility of political parties in such situations and their attitude towards the police involved in maintaining law and order needs to be redefined. This necessarily brings to centre-stage the relationship between politicians and the police. While the police have to be responsible and accountable to the people at large in a democratic set up, their efficiency and impartiality cannot be allowed to be impinged upon by extraneous political interventions.

The Commission hopes that the political leadership of the country would come together to evolve a consensus on political conduct which would enable peaceful resolution of conflicts for overall maintenance of public order.

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