

Police Reforms: Why This Delay?

Mr. Sangam Singh Kochar¹&Ms. Shanta Pandey²

Abstract

To many of us, the expression Police Reforms has already become an oxymoron. There had hardly been any leader, be he or she from political or social field or even from amongst bureaucrats, including police, who would not have made some statements on the subject.

Even after more than seventy years of independence, we are saddled with a colonial police with a feudal mindset. An alternative to this has been made several times but still not being implemented. Reasons? The reasons are simple. The existing system suits all and it is highly beneficial to everyone, be it honourable bureaucrats, respected parliamentarians and members of judiciary and esteemed IPS officers, excepting the members of general public for whom the service is meant.

Police functioning in India is so fossilized and complex that we need to reform, restructure, and revitalize to secure the rights of the common man, for survival of the democracy, maintaining the trajectory of economic progress and to deal with the major threats confronting the country. It is a high time to transform ruler's Police into People's police.

¹ Advocate, High Court of Delhi

² Advocate, High Court of Delhi

Introduction- An Evolutionary Pathway Of Indian Police

“Everybody needs police, but nobody likes it. Everybody hates crime, but nobody wants to do anything about it.”

Alfred Hitchcock famously said: *“I am not against the police, I am just afraid of them”*

The Indian police has a colonial origin and is characterized by despotic sub-culture to serve the motives of the governing power. Unfortunately, the colonial model of police continued even after independence and the Police Act, 1861 remained the Bible of police administration. Police is an exclusive subject under the State List (List II, Schedule 7 of the Indian Constitution) which faces multifarious challenges from extremist elements, terrorists, insurgents, cyber-criminals, hate-mongers through social-media, rapid urbanization, and rapid globalization. With increased media awareness and higher literacy levels, expectations of the public from the police are also increasing. To meet these challenges, Indian Police needs to embrace the tenets of ‘SMART’ Policing. However, the Bureaucracy and Politician nexus is so much deep-rooted that States are reluctant to implement any of the directions. Fundamental rights are the constitutional safeguards to protect individuals against State force despotism.³

Research Methodology

The Doctrinal Research Methodology has been opted while writing this paper which includes Statutory material, case reports, standard text books and reference books, legal periodicals, Parliamentary debates and Government reports, precedent case cases of the Apex Court & the High Courts. It involves a rigorous systematic exposition, analysis and critical evaluation of legal rules, principles or doctrines and their inter-relationship.

Objective

To ensure an effective, impartial and independent police system which is essential for fair and credible investigation of the crime thereby securing fundamental right of fair trial and speedy justice to the citizens in spirit of Article 21 of the Constitution of India. Starting from the second Police Commission in 1902 headed by A.H.L. Fraser, there have been many Commissions and Committees formed to look into reforming the Police. Prominent among them are: Gore Committee, National Police Commission, Ribeiro Committee, Padmanabhaiah Committee, the Supreme Court’s seven directives for Police Reform and Soli Sorabjee Committee. However, Union and State Government neither implemented the seven directives of the Apex Court nor the Model Police Act-2006 in letter and spirit.

³SHANKAR SEN, POLICE REFORMS Chapter 14 (1st ed. 2016).

To enlist what Police Reforms India needs, we need to first enlist the problems plaguing the police system. There are three main reasons for this menace: (i) Lack of Police infrastructure (ii) Archaic Police Laws (iii) Politicization of Police.

The first is police accountability and integrity, reducing misconduct and improving police professionalism. This requires progressive policies and practices within the law enforcement agency, such as new policies on police use of force, tracking and investigations of use of force incidents, and improvements in police training, hiring and supervision. There also have been significant changes in police equipment in the past decade, including in-car cameras and new less-lethal weapons, such as Tasers and chemical sprays (oleoresin capsicum/OC or pepper spray). Police accountability also requires internal systems for holding officers accountable when they engage in misconduct, including better systems for investigating citizen complaints.

Second, police departments and local government need much greater efforts at community engagement and dialogue, especially in the area of race and policing. This includes addressing racial profiling and police bias. Perceptions of police bias are still strong in minority communities, and officers need to know that racial profiling is not an effective law enforcement tool. But dealing with race and policing means more than just disciplining officers who engage in intentional discrimination.

Third element of police reform is police management and the development of policing strategies, in crime prevention, the use and deployment of police resources, and police training that puts policing squarely in its central role in our democratic society. The right police strategy is the one that is effective in reducing crime and fear of crime, and that reduces perceptions of police unfairness and bias.

Criminal Justice System in India

Law springs justice in society and maintains law and order for peaceful co-existence. The investigator, prosecutor, defense and magistrate constitute major stakeholders apart from correctional institutions-in Criminal Justice System. In real practice the Criminal Justice System (CJS) suffers several anomalies resulting in frustration of justice for which various stakeholders, under the aegis of power relationship, pass the buck to others.

Investigation officer (IO) being at the lowest rung in the hierarchy of power, shares most of the criticism. Contrarily, when IO deals with public during investigation, he enjoys the top authority and blames the public. In general, stakeholders lack accountability and covertly

facilitate in maintaining status quo. Rather than striving for categorical justice, many times they tend to save their own skin.

Issues Which Require Prompt Action

Poor Implementation of the Directions laid down by the Apex Court

In *Prakash Singh v. Union of India*,⁴ the Supreme Court directed the Union and State governments to comply with seven directives to kick-start police reforms. The Supreme Court intended to bring functional autonomy and accountability in the police. The Court being aware of the political pressures on the police sought to depoliticize appointments and to insulate police officers by creation of 'buffer body' between police and government by streamlining appointment and tenure of posting may release police from extraneous pressures in day to day functioning. The Apex Court has also directed the investigating agencies to emphasize upon scientific investigations to link the accused with the crime. But the most unfortunate part is, the judgement has not yet been implemented in letter and spirit by some of the States. In fact, the State governments seem reluctant to unshackle their control on the 'legitimate power' of the State.

An Overburdened Police Force

State police forces had 24% vacancies (about 5.5 lakh vacancies) till January 2016. Hence, while the sanctioned police strength was 181 police per lakh persons in 2016, the actual strength was 137 police. Note that the United Nations recommended standard is 222 police per lakh persons.

Crime per lakh population has increased by 28% over the last decade (2005-2015). The Law Commission has observed that one of the reasons behind this is the poor quality of investigations.

Police Power For Arrest, Search And Seizure: Anti-Thesis To Liberty

Liberty is the cornerstone of all human rights and quintessence of human dignity. Arbitrary use of police powers poses great challenges to transforming police into a state organ with democratic face. Habeas corpus, the mother of all Writs, basically protects individual from arbitrary arrest and detention by the state machinery. In India the writ jurisdiction lies with the Supreme Court and the High Courts under Article 32 and 226 of the Indian Constitution respectively.

Tyranny of Crime Registration

⁴Prakash Singh v. Union of India, (2006) 8 SCC (India)

The denial by police in registration of crime cases is a historical problem and remains subject matter of police reforms. Police continues the habit of either refusing to act on the information of crime or force the complainant to tone down the gravity of crime under the (mal)practice of ‘crime management’.

The Nirbhaya rape and murder case in Delhi (December 2012) ignited the public sentiments on the issue of women security. Consequently Indian Parliament passed the Criminal (Amendment) Act, 2013, under the said Act, section 166 A of Indian Penal Code has introduced not only penal provisions for non-registration of cases pertaining to notified offences against women but also penalizes erring police officers for intentional defective investigation.

*Lalita Kumari v. State of Uttar Pradesh*⁵ is a landmark judgement by the Apex Court of India where various issues pertaining to registration of cognizable offence and conducting inquiry by police. The Supreme Court has clearly mentioned that the officer concerned is duty-bound to register the case on the basis of information disclosing a cognizable offence and hence section 154 (1) Cr PC has status of ‘shall’ for registering FIR. Now the prime responsibility rests on senior police officers especially district chief of police to ensure the implementation of judgement in letter and spirit. It may be a great leap towards police reform and may provide immense relief to public.

Investigation: A Process full of Anomalies And Discrepancies

Investigation represents a kind of inquiry subsequent to the registration of FIR and pertains to the collection of evidence which determines the fate of FIR under section 173 Cr Pc. In reality the unfettered powers of IO are the major source of corrupt practices creeping into investigation.

However, Section 166 A (b) of IPC reveals that under the law no specific ‘manner of investigation’ is prescribed. In *State of Gujarat v. Kishanbhai*,⁶ the Hon’ble Supreme Court of India directed the Home Department of every State Government to formulate a procedure for ensuring departmental action against all erring investigating and prosecuting officials responsible for failure of a prosecution case on account of sheer negligence or because of culpable lapses.

Proposed Roadmap Towards Bolstering The Police Force & Introducing Measures To Amplify Their Efficiency

⁵(2014) 2 SCC 1 (India).

⁶(2014) 5 SCC 108 (India).

Expeditious Implementation of the Directives of the Apex Court And Model Police Act, 2006 in letter and spirit

The Hon'ble Prime Minister on 30th Nov, 2014, at the Guwahati Conference of Director General of Police, enunciated the concept of SMART Police – a police that should be sensitive, mobile, alert, reliable and techno-savvy but failed to mention the implementation of the seven directives of the Apex Court or the implementation of Model Police Act which are necessary constituents towards achieving a SMART police force.

The implementation of the directives of the Apex Court set-out in Prakash Singh's case would indeed be the giant leap in policing reforms and would be a step towards de-politicization of the police force and also towards ensuring functional autonomy of the police force.

Modernization of Police Force

With the rapid advancement of technology it is imperative that the police force keeps up with the pace of technological advancement not only to investigate crimes using scientific methods but to also track crimes using such methods as has been emphasized by the Courts. Furthermore with the rising incidence in technological crimes, it becomes imperative that the law enforcement agencies are well equipped to deal with the same. As such procurement of equipment for surveillance, procurement of modern weaponry, establishment of forensic science laboratories etc. would ensure that the law enforcement agencies are equipped to deal with the said issues. The weaponry of several state police forces is outdated as per the report of the CAG. Audits have noted that police vehicles are outdated and in short supply thus affecting their response time.

Emphasis on Specialised IO and Developing Standard Operating Procedure (SoPs) for Scientific Investigation

The Apex Court in Prakash Singh's case has directed the separation of Investigating police from Law & Order police.

In the era of specialization, the process of evidence collection demands skilled and professional endeavor and IO must be groomed as an expert for investigating crimes. In general IO suffers deficit in professional skills since one is expected to investigate a variety of crimes. In absence of proper guidelines and Standard Operating Procedure (SoP) for heinous crimes in most of the States, IO may un/knowingly affect the investigation either by avoiding collection of certain vital evidence or may concoct them according to his discretion. It also provides wider scope for external interventions in the investigation which remain the major concern for police reforms.

Empowering Constables: The Backbone Of Indian Police Department

86% of the state police comprises of constabulary and are considered to be the backbone of our Indian Police department. Constables are typically promoted once during their service, and normally retire as head constables. This could weaken their incentive to perform well. If we want to strengthen the Indian Police System, then there is a need to start from the grass root level i.e. from empowering the Constables by providing them timely promotions and good living conditions.

Gender Sensitization of Police Force

With the rising incidence in the number of gender based crimes and crimes against children, police needs to be sensitized towards dealing with such crimes. Police officials need to be gender sensitized during their initial training as well as regularly in the course of their employment.

Fitness standards & mental health

It is imperative that certain standards pertaining to maintaining the fitness physical or mental of the members of the police force be adopted. It cannot be denied that the intense, stressful & pressing nature of the job starts taking its toll on the health of the officers rapidly; with no fitness standards in place to regularly assess the physical or mental of the members of the police and to take corrective steps in that regard, the same takes its toll on the job and the officer concerned fails to perform his duties efficiently.

Periodic Training of Various Stakeholders in Criminal Justice System

Knowledge and practice towards enhancing professionalism which unfortunately is found missing among majority of investigators and supervisory officers in India. In general, government officials including police suffer with the psyche of being training resistant and believe in 'know all' syndrome. Merely increasing the numerical strength of the working force may not yield desired reforms rather one qualitative and professionally equipped policeman may be Fair and Participatory Investigation better than a platoon of ill-trained police personnel. In *State of Gujrat v. Kishanbahi*,⁷ the Supreme Court has categorically emphasised on training for investigators and prosecutors handling sensitive matters.

Police Accountability

Police accountability ensures a transparent and impartial approach to public complaints of ill treatment by the police. The judgment of the Apex Court in Prakash Singh's case as well as the Model Police Act, 2006 has addressed the issue of accountability.

⁷(2014) 5 SCC 108(India).

The tendency to abuse power vested in police personnel cannot be lost sight of. Setting up of mechanisms to make officers accountable for their illegal acts by independent authorities would be a welcome step in such direction. The Apex court in Prakash Singh's case directed the setting up of a Police Complaints Authority at the district level to look into complaints against police officers of and up to the rank of the DSP; Similarly a Police Complaints Authority was to be set up at the state level to look into the complaints against officers of the rank of the SP and above. The district level authority may be headed by a retired District judge while the state level authority may be headed by a retired judge of the High Court/Supreme Court.

Community Policing

Community policing is a paradigm shift established at the bedrock of community partnership in creating safe and secure environment for all. It is policing whereby the people take active part in their own affairs; the police are not seen as a problem or stranger whose presence stands for danger but as partners in development and those members of the community are co-producers of justice and quality police service.

The concept involves close interaction of public with police thereby instilling in people a sense of trust in the police; the concept results in a people-police participation to effectively prevent and tackle crimes in their neighborhood & community.

Conclusion

The list of reforms is inexhaustible. What we need to understand is the urgency of bringing such reforms. As in the case of the Lokpal Bill, we need a leadership role of the civil society in demanding an independent and efficient police. Also, the State & the Union Government need a stern warning from the Apex Court to implement the directives of the Apex Court in letter and spirit.

The government should also consider introducing and promoting Police University in each state so that professionally trained graduates may get attracted to join police department. We need a virtual leap in the field of police training. This has to be intensive and has to be reinforced from time to time. It can be possible if the best trainers, internal or outsiders, are posted in training units and they are given the stature and respect which is, in no way, lower than the "field officers". Youth must be encouraged to participate and to contribute ideas during various meetings held at police stations which help in transforming police into a people friendly and democratic organ of government rather than being suppressive and autocratic force. Police must draw a charter of self-restraints and follow Standard Operating

Procedures(SoPs) for ensuring scientific methodology of investigation so that scope of external interference may be minimized in crime detection.

FormerCJI Mr.Y.K.Sabharwalin one of the proceedings said,“*the police had to be insulated from extraneous pressures to be able to enforce the rule of law, and that without a professional police, the country could not have a stable democracy or achieve sustained economic progress.*”