

**POLICE AND LAW ENFORCEMENT** (1st ed. 1982). By Professor R. Deb. S.C. Sarkar & Sons (Pvt.) Ltd., 1-C, Bankim Chatterjee Street, Calcutta-700 073. Pp. iv+148+viii. Price Rs. 25.

THE BOOK under review is an exposition of the principles and problems relating to law enforcement by the police. The work is written in a clear and lucid style. In dealing with each topic the author has not lost the focus of the problem. The enriched experience of the author as a police officer, as an academician, as a practising lawyer and as a social thinker, extending over a long period of four decades, has added to the utility and value of the book. Different aspects of law enforcement work taken up by the police get fairly comprehensive treatment in eighteen chapters of the book. Besides discussing the procedural deficiencies and difficulties encountered by the police, Professor Deb has laid emphasis on questions of reform of the procedural and adjective laws, as well as on the need for discretionary power for selective law enforcement. In his plea for the suggested reforms the author seeks to equip the police with further powers which the police has been advocating before the law commissions and elsewhere, like national conferences and seminars. These relate, inter alia, to the admissibility of statements given to the police in course of investigation, particularly the non-confessional statement of the accused. He has also pleaded that confessional statements before the police be given a higher status rather than seeking its complete exclusion from the evidence. Likewise the evidence of fact discovered at the instance of a person, whether he be in the police custody or not, be made admissible in evidence by recasting section 27 of the Indian Evidence Act 1872. Furthermore, in the context of escalating crime "some risk of convicting the innocent must be run" and consequently a need for moderation on the use of the established canons of jurisprudence on the "burden of proof" and the "presumption of innocence" have been reiteratedly suggested.

These issues, in the past, have generated controversies. Till date these views have not been able to muster enough support for tilting the public or legislative opinion in their favour. The greatest need of the day with reference to the law enforcement is to reassure the public about the police conduct and their dealings with the public. The police image has sunken to the lowest. It has lost a great amount of credibility and respect as an institution. The author has brought out this facet of police image boldly by stating that "the reputation of the Indian Police today seems to be at its lowest ebb and thus the idea of a policeman being the living embodiment of Rule of Law has almost become an unattainable utopia."<sup>1</sup> Until such period the institutional credibility of the police department, as

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1. R. Deb, *Police and Law Enforcement* (1st ed. 1982).

well as the downgraded image of the police, subsist in the public mind, any suggestion tending to equip the police with any added power, however necessary, may have to be deferred for consideration.

Professor Deb has made immense efforts in his book to enable the police to restore its reputation and role as law enforcement agency. He has reiterated the view that the role of the police is to uphold the rule of law. It can be done by enforcing the law in a free, fair, fearless and impartial manner. In fact the police alone cannot be expected to cure all the ills, and contain the rising trend of criminality in a society which is transforming itself from an older social order to a newer one which seeks its sustenance from the modern political and economic values. Since the police has no role to play in shaping the socio-political as well as socio-economic policies it cannot be held directly responsible for the imbalances and aberrations that are caused in the system. To deploy the power of the police by a political agency to keep the problems away is an ad hoc solution which does not do any good either to the police or to the system. Instead, it damages the permanent governmental institution of police in a greater degree than the political component of the state power.

In the foregoing context the author's chapter on "Right to Disobey Illegal Orders" is highly educative. The author has cited judicial decisions in support of his view that the manifestly illegal orders are to be defied. Any insistence on carrying out such orders must be insisted upon to be given in writing. Such an insistence would by itself have a braking action on the extravagant and irresponsible use of coercive state power. Such courageous action can be expected only in societies where "a fine tradition of public service has been built up mainly on the basis of conventions."<sup>2</sup> The Indian police, now onwards, has to build up its own traditions and conventions. In the present set of circumstances this seems to be very difficult if not impossible. The legal basis for disobedience of illegal order has been very ably brought out. Illustration (a) of section 76 of the Indian Penal Code 1860 and section 23 of the Police Act 1851 lay statutory basis for police refusal to carry out a duty which is based on unlawful order. The statutory duties of the police are well stated and have been interpreted by the courts. Political interferences and extraneous considerations in this regard are to be eschewed since such interferences are mala fide in nature and illegal in content.<sup>3</sup> The Privy Council dictum in *Nazir Ahmad v. The King-Emperor*<sup>4</sup> has clearly established the rule that "where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."<sup>5</sup> Illegal actions, orders of the superior, and the plea of the ignorance of law do not offer any excuse to an erring police officer. The police is merely an agent of the law

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2. *Id.* at 51.

3. *Id.* at 46.

4. 40 C.W.N. 1221.

5. *Id.* at 1227.

and not of party in power. This theme has found elaborate expression in chapter 10 of the book.

Since the emphasis of the author is that the police power be exercised with utmost degree of fairness within the framework of law, as statutorily provided and also as enunciated by the courts of law, his concern logically veers around explaining the difficulties and solutions thereof in the matter of police work and responsibility. Chapters 13, 14 and 16 have very ably discussed the above themes. Professor Deb has made forceful pleas against the use of third degree methods in the investigation of crime and has insistently called upon the law enforcement officials not to forget to pay attention to the dignity of the individual. The police powers and duties are to be exercised in keeping with the norms set out by the society for itself. Rule of law is one of such valuable norms. Accordingly "law observance by the police is thus the best form of law enforcement that one can conceive of in a country under the Rule of Law."<sup>6</sup>

The book under review is a very incisive analysis of the police power and functioning in this country and is a useful tool for understanding the problem of the police as well as the administration of criminal justice.

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6. *Supra* note 1 at 3.

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