

# NEED FOR PLACING INVESTIGATING POLICE UNDER JUDICIARY

## I Introduction

BROADLY SPEAKING there are three principal functionaries in the administration of the criminal justice system, *viz.*, the police, judiciary and correctional services. Each complements the other to reach the common goal of "social defence". Thus, there is greater need for cooperation and coordination of efforts amongst these different branches of Indian criminal justice system rather than pulling strings in different directions which unfortunately seems to be the rule today.

## II French model of "police judiciaire"

Of necessity, the police, especially the investigating police, comes foremost in our catalogue as it discharges certain functions in the matter of collection and collation of evidence over which the court adjudicates at a later date. The 1962 Royal Commission of Police, therefore, opined that the investigation of cases is a part of the judicial process and that the police must be entirely independent in the discharge of functions which are judicial or quasi-judicial.<sup>1</sup> Though the position in India is not just the same, it cannot be denied that by collecting evidence for the ultimate decision of the court, the police helps the judicial process and, therefore, till the Contempt of Courts Act was recast in 1971, it was held by a catena of decisions that when the accused was arrested or his arrest was imminent, it was contempt to prejudge the case or express opinion on the quality of evidence and thereby prejudice mankind for or against a party notwithstanding the fact that the case had not yet been taken cognizance of by the court.<sup>2</sup> Whatever, might have been the reason for this change, having regard to too many instances of political or other types of interference at the stage of police investigation by interested persons or parties, it is time that the matter was reconsidered again and the investigating police were unequivocally brought under the court's protection so that no pressure could be put on them either to completely abandon a case or to let off certain person or persons because they happen to belong to an influential group or political party. In many countries the investigating police either work under the protection of the Ministry of Justice where the detectives are accountable to the District Attorneys as in USA or work, as in France and other civil law countries, where the "police judiciaire" (the investigating police)

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1. *Report of the Royal Commission on Police in U.K.*, para 230 (1962).

2. *Padmavati Devi v. R.K. Karanjia*, A.I.R. 1963 M.P. 61; *A.K. Gopalan v. Noordeen*, A.I.R. 1970 S.C. 1964; *Sheoraj v. A.P. Batra*, 1955 Cr. L.J. 1451 (All.).

is under the control and protection of the "Judges d' instruction" or examining magistrates who record the statements of the witnesses produced before them by the police in course of their investigation for building up the case dossier for the "cour d'assises" (the trial court) to which the accused is committed to stand his trial after a further scrutiny by a bench of three senior judges of "Cour d'appel" in the "chambre d'accusation". All this to ensure that none is exposed to the indignity of a court trial without substantial reasons.<sup>3</sup>

### III Judicial control over police investigation in India

Though there is no such direct association of the judicial wing with the investigation of cases in India, yet the scheme of the Criminal Procedure Code 1973<sup>3a</sup> (Cr. P.C.) goes to show that while investigating a case the investigating officer, as a matter of fact, acts under the control and supervision of the magistrate. Why then deny him the ring of protection afforded by the law of contempt in case there is an undue interference with his statutory duties, especially when investigation is nothing but a preliminary step to help the ultimate judicial process before a court of law.<sup>4</sup>

### IV Advantages of separation of 'investigating police' from the 'law and order police'

In logical sequence and as a necessary corollary to separation of judiciary from the executive by the Cr. P.C. it is perhaps highly desirable to separate the 'law police' (investigating police) from the 'order police' (the law and order police) without any further delay. The benefits of such a separation are, indeed, manifold.

*First*, it will bring the investigating police under the protection of the judiciary and greatly reduce the possibility of political or other types of interference with the police investigation by invoking the law of contempt, if necessary, by effecting suitable amendments. That all brands of politicians do interfere with the working of the police is a well known fact which has become so notorious that it hardly requires separate proof. The Punjab Police Commission (1961-62), the Delhi Police Commission (1968), the Gorey Committee on Police Training (1972), the National Police Commission (1977-80), the M.P. Public-Police Relations Committee (1983) all headed by eminent judges, educationists or outstanding civil servants have in one voice condemned political interference with the working of the police and suggested ways and means for making the police true agents of the law and not servants of the party in power.<sup>5</sup>

3. Rene David, *English Law and French Law*, ch. V, pp. 64-71 (1980).

3a. Ch. XII, esp. ss. 156-159, 164-167, 169, 170, 173, 174.

4. R. Deb, *Police and Law Enforcement* 127-8 (2nd ed. 1988).

5. Police and "Order" Police, S.V.P. National Police Academy, Hyderabad, *Working Paper for Seminar on Desirability of Separation of "Law"*, para 6 (1983). See also, R.

*Second*, with the possibility of greater scrutiny and supervision by the examining magistracy and the public prosecutors, as in France, the investigation of police cases, especially the serious cases are likely to be more in conformity with the law than at present, which often is a cause of failure of even detected cases in court.

*Third*, as in the French and Continental system, it will reduce the possibility of unjustified prosecutions and consequently of a large number of acquittals in state prosecutions.

*Fourth*, it will result in speedier investigation and as such a speedier overall disposal of cases as the investigating police would be completely relieved from performing law and order duties, V.I.P. duties and such other miscellaneous duties which not only cause unnecessary delay in investigation of cases but also detract from their efficiency as detectives which require more of concentration, ability to think, and capacity of drawing right conclusions by a thorough and incisive analysis of the collected data.

*Fifth*, separation will increase the expertise of the investigating police, as in the case of the C.I.D., by relieving them from other duties and would result in more of successful detections and state prosecution.

*Sixth*, as the investigating police will be plain-clothesmen even when attached to a police station and being similarly dressed as the members of the public except for a small armband to show their identity, will be able to establish better rapport with the people and thus win their co-operation and support without which no force anywhere in the world can be a success.<sup>6</sup>

*Seventh*, not having been used in any law and order duties involving use of force like tear-gassing, *lathi*-charging and firing, they would not provoke public ire and hatred which stand in the way of police-public co-operation in tracking down crimes and criminals and in getting information, assistance and intelligence in this regard which the Indian police, like their counterpart in UK under the common law, have a right to get under the provisions of sections 37-44 of the Cr.P.C.<sup>7</sup>

## V Conclusion

In spite of these advantages it is feared that there is likely to be a stiff opposition from the police establishment itself to any scheme of total separation of the 'investigating police' from the 'law and order police' even

Deb, *Police and Law Enforcement*, ch. 11 (2nd ed. 1988) on "Need to stop Political Interference in Statutory Duties" and ch. 13 on "Safeguards against Interference with the Statutory Duties of the Police", especially the experiences of senior civil servants like K.F. Rustamji (*id.* at 104), B.K. Acharya (*id.* at 120-1), and Vice-President of India, Shankar Dayal Sharma (*id.* at 123).

6. R. Deb, *supra* note 4.

7. *Union of India v. Madan Dey*, 1991 Cr. L.J. 247 (Cal.).

though such a system is working satisfactorily in France and Japan,<sup>8</sup> and in a modified form in UK and USA where the plainclothes detectives attached to the police stations are not mobilised for any law and order duties as in India.<sup>9</sup> The usual argument against outright separation of the 'law police' is that it is not desirable to fragment the unity of command in the interest of better coordination of efforts amongst different branches of the police and for maintenance of proper discipline of the force as a whole. It appears that such an argument stems more from a subconscious feeling of losing a part of one's empire than from anything else. Certainly, the separated investigating police is not going to be a runaway force with no control whatsoever on their conduct. Rather, being squarely placed under the judiciary and the public prosecutor through whom they will have to put up their cases before the trial court, as in France, the investigating police will have to act with greater restraint and in strict conformity with the law of the land. The Law Commission of India had observed:<sup>9a</sup>

The investigation staff should be separated from the Law and Order staff to enable the investigating officer to devote undivided attention to investigation work. The separation of the investigating machinery may involve some additional cost. We think, however, that the exclusive attention of the investigating officer is essential to the conduct of efficient investigation and the additional cost involved in the implementation of our proposal is necessary. The adoption of such a separation will ensure undivided attention to the detection of crimes. It will also provide additional strength to the police establishment which needs an increase in most of the States.

It is high time that the weighty recommendations of the Law Commission of India were implemented by one stroke of pen, as was done in the case of the judiciary, by amending the Code of Criminal Procedure Code without further delay.<sup>10</sup>

R. Deb\*

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8. Letter dated 14-9-1984 from Director, UNAFEI, Fuchu, Tokyo as quoted in R. Deb, *supra* note 4 at 174.

9. *Working Paper*, *supra* note 5, para 9.

9a. *Fourteenth Report on Reform of Judicial Administration* (1958)

10. R. Deb, *supra* note 4 at 175.

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