



HUMAN RIGHTS AND ROLE OF POLICE

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I

Police, the largest and the most important law enforcing agency, has, no doubt, a special responsibility for the protection of human rights. But its role as a protector of human rights takes a beating, when the protectors themselves are accused of violating them. Accusations against individual police officers are understandable, because no organisation can be totally free from its black sheep. If it were only individual aberrations, they could be taken care of by the police department itself without much difficulty. The fact, however, is that these accusations are not confined to individual police officers. At times, the entire police force is painted with the same black brush. This harsh reality has to be faced to understand why does the police indulge in such indefensible behaviour.

It cannot be denied that the police in India do often function in an illegal manner. The question is not whether human rights violation by the police take place or not. It is common knowledge that large scale illegalities by the police do take place. The question that needs to be answered is: why do they take place on the scale as they do. The root cause of human rights violations by the police lies in the manner of its functioning in the Indian criminal justice system.

It is not that the police is not aware of the importance of human rights. Human rights are integral to the ethos of a civil society. The founding fathers of the Indian Republic were committed to their protection in independent India. Human rights are not an alien concept, but an essential part of the Indian philosophy. They were incorporated in the Indian constitution as fundamental rights much before their general acceptance even in the western countries. The Indian constitution guarantees the right to life, liberty, and equality to every citizen. A comprehensive list of fundamental rights is contained in the constitution and covers all the essential civil and political rights. A unique feature of the Indian constitution is that an aggrieved citizen can seek judicial intervention for a violation of a fundamental right. The constitution contains a further list of rights as the directive principles. Even though unlike the fundamental rights they cannot be enforced by a court of law, the instruments of the state are expected to observe them in spirit if not entirely in letter.

The police being the most important law enforcement agency has special responsibility to ensure that they are not violated by any individual, group or an instrument of the state. It can use force and take legal action to ensure that no one violates them. It is the weaker sections of the society: women, children, sick and the aged – the physically weak; the poor and destitute – the economically weak; and the minorities, the dalits and the backward – the socially handicapped, who need police protection.

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II

The difficulty arises when the use of force is illegal and unjustifiably excessive. Why does a police officer sometimes overstep legal limits and takes recourse to illegal methods? The problem gets more serious and complicated when the illegalities are justified inside and outside the police department on grounds of larger public interest of peace and security.

The use of third degree methods by the police is not a new phenomenon in India. They were widely practiced during the Moghul period and the practice continued during the British colonial rule. In fact, it was practiced so widely in the early British period that it appalled the then British Governor of Madras. He set up a commission in 1854, known as the "Torture Commission", to enquire into the malaise and suggest ways and means to eradicate it.¹ Following the findings of the Commission, the use of the third degree by the revenue officials diminished considerably, but not by the police, because the colonial rulers could not do without police brutality. Police was considered an essential tool to suppress the freedom movement. Unfortunately, even after the departure of the British the practice has continued.

What is worse, the violation of human rights is sought to be justified by many in the police department and outside. Testifying before the UP Police Commission in 1971, two Divisional Commissioners had this to say on the subject: "Third degree methods of the police have good utility and they are the only effective means of controlling bad characters."² The view is shared by many in authority even if they do not say so openly. The policeman in the field has learnt to live with the double-speak. He too pays lip-service to the rule of law, but continues to do what he considers best in public interest. He and the supporters of his view believe that torture is necessary to find out the truth from a suspect. The argument is that no one admits his guilt unless pressurised to do so. And if crimes are not solved and the culprits not punished, crime will go up and everyone will howl at the police for its inefficiency. What is happening in Mumbai and many other parts of the country today only proves this point.

The issues of criminal law enforcement range from the laws and procedures to the means and methods of enforcement. Unfortunately, what is not appreciated is that law enforcement is a joint function of the police and the judiciary. The police is exclusively responsible for the investigation of crimes, but shares the responsibility for the prevention of crime with other agencies, including judiciary. However, in public perception the responsibility for both prevention and investigation of crime rests exclusively with the police. After the separation of the judiciary from the executive following the 1973 amendment to the Criminal Procedure Code, the judiciary has for all practical purposes disowned its role for the prevention of crime. Once the responsibility for crime prevention is exclusively passed on to the police, the extra-legal role of the police becomes inevitable. Failure to get sufficient police remand of the suspect for thorough interrogation, tempts a police officer to arrest him illegally, that is without making a formal arrest. The National Police Commission has made a number of recommendations for amending the Cr PC

1. K.S. Dhillon, *Defenders of the Establishment*, Institute of Advanced Studies, Shimla.

2. *Ibid.*



and provisions of Evidence Act relating to bail, police remand, admission of guilt before an investigating officer, recovery of incriminating evidence, and procedure to expedite trials in courts. Unfortunately, it is a well-known fact that many senior officers turn a blind eye to such illegal arrests and by implication give a free hand to the investigating officer to use force to extract information about the case from him even when a confession made to a police officer is not admissible as evidence in court.

One illegality leads to another illegality and then the whole illegal process continues with tacit approval of the seniors inside and outside the department. The actual gap in what is taught during the police training and actual work in the field has become so wide that training has lost much of its value. "Practical policing" is very different from theoretical policing taught in the police training schools. The removal of checks on the functioning of field officers lead to all sorts of malpractice, including violations of human rights.

III

There is no point denying the fact that human rights violations take place quite widely during the arrest and interrogation of suspects. The situation is worse in areas afflicted with terrorism, insurgency and organised crime. At the best of times the criminal justice system in India is very weak. Criminals with money and influence easily manage to escape from the clutches of law. The system virtually breaks down in areas afflicted with terrorism. The victims are afraid even to lodge a complaint; the police officer is scared to register a case and hesitates to investigate it; the judges refuse to hear the case; and few dare to reject the bail-plea. The witnesses do not come forward to give evidence even if a crime takes place in front of their eyes. Even the enactment of the Terrorist and Disruptive Activities Act (TADA) did not quite succeed in removing fear from the minds of the police and the judiciary, what to talk of the common man.

The crucial question is, how far we can balance the needs of the society for peace and security with the rights of the individual, that includes the suspect and the accused. In assessing the proper balance between human rights and the tasks assigned to the security forces, Arun Shourie, suggests a number of bench marks: like the scale of the threat; the nature of the adversary; the nature of the sponsors and the strength of the resources at his command, etc.³ Such suggestions are, no doubt, made with the best possible intentions, but they are misconceived, as it can never be ensured that police illegalities will always be committed only in public interest. What happens when an accused is tortured for malafide motives? What stops an unscrupulous police officer to make an innocent person appear as a criminal and then bump him off in the name of crime control. It is a known fact that quite a few Bhagalpur blindings were done at the behest of the landlords to terrify the landless labour. In Punjab too, according to reports, corrupt police officers used these tactics to pressurise one of the disputing party in a land dispute to surrender his rights in favour of the other for fear of being accused as a terrorist. Not all the so called "fake encounters" were staged to control terrorism in

3. Arun Shourie made these suggestions in a seminar held on 21st October, 1998, at Vigyan Bhavan organised by the Delhi Police



the state. Since no enquiry can make a distinction between a bonafide and a malafide case of police torture, the malafide cases also get the benefit of government's ambivalence in such matters.

The problem is that once a compromise is made with the rule of law and once an illegality is justified, for whatever reasons, it is bound to lead to a situation in which the decision to commit illegal actions will pass out of the hands of those who may have the best public interest at heart. In any case, it is not always easy to define what is best in public interest. Unbridled powers to make arrests, use third degree methods of interrogation, fake encounters to bump off suspects can be misused by officers with lesser scruples. Crime will not come down and terrorism will not disappear if innocents are tortured and killed in the name of controlling crime and terrorism. The strategy can, in fact, be counter-productive. Public cooperation is the most essential ingredient of effective policing. The first victim of police excesses is police-public cooperation.

IV

The justification of police excesses on ground of human rights of victims too is faulty. The police behaviour cannot be equated with that of a terrorist or a criminal. Its legitimacy is its biggest strength. It will discover that the battle against crime and lawlessness becomes more difficult and not easy, once the police loses its legitimacy and its action become suspect like that of a criminal. Illegal police actions cannot be justified under any circumstances.

The solution to the dilemma lies in making the criminal law and procedures more realistic and less idealistic. The problem of violation of human rights cannot be solved if the ground situation is such that some of the laws and procedures remain only on paper. There is not much justification for passing laws that are impossible to enforce. The police and the criminal justice system as a whole lose their credibility, if they cannot protect life and property. Right to life is the most sacrosanct of all human rights. Intense sense of insecurity can persuade even law-abiding citizens to demand ruthless police action. We only have to see what is happening in our neighbourhood in Karachi in Pakistan. The government has suspended the entire criminal justice system under intense pressure of public opinion. Protection of life of its citizens has to be the first priority of any government. No government, least of all a democratic government, can surrender its role to political and criminal mafias.

The solutions cannot be found by wishing away the problem. The solution lies in striking the right balance between the need for an effective criminal justice system with the ideals of a liberal democracy. Some compromise will have to be made, at least for some years till the ground situation improves, by amending some of our laws and procedures. It is easier to find safeguards against possible misuse of laws by the police, even the so called "draconian laws" like TADA, but it is almost impossible to check human rights abuses if knowingly police illegalities are ignored or the police is made totally ineffective. How can the enforcers of the rule of law be allowed themselves to become the violators of law? There can never be justification for balancing police violations of human rights with the needs of security and order.



The police force, of course, must be made more professional through better training and equipment. Police reforms are overdue and must be undertaken without further delay. The living and working conditions of the police must be improved. Police performance cannot improve in isolation. It is an integral part of the criminal justice system and, therefore, its performance and effectiveness will very much depend on the performance of other components of the system. Reforms do not necessarily mean that the police be given more powers, but it does mean that we take a fresh look at the functioning of the criminal justice system and amend some of the laws and procedures to enable the police to perform its legitimate role more effectively. The trend of growing adversarial relationship between the police and other components of the criminal justice system must be reversed at the earliest if the rule of law is to be established in the country.