

## Police Firing & Concept of Sovereign Responsibility

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### ABSTRACT

The emergence of Indian autonomy changed the political system, but its pilgrim underpinnings like the Police remained retained by the government. Policing actions today urgently require paradigm shift from current method of policing to law-based policing, conform to standards of accountability, and the global standards of the shifting globalized world. UN Code of Conduct for Enforcement Officers requires that 'In performing of their duties, law enforcement authorities shall honor and uphold human poise and preserve the human rights of all persons. The need for reform is especially strong because, following large changes in government, the age-old Police Act of 1861 continues to regulate the police. Given the severity of the issue and the utter uncertainty with regard to when police reforms should be made, it is high-time that light be thrown on the issue by academic writings.

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Police working is a significant marker of the state of government, and their actions may shape nations 'social prosperity altogether. What recognizes and differentiates, great from terrible policing, is that it is the duty to protect common individuals', not just the popular and political, while helping to build a place that will improve their personal, social and socio-economic happiness, along with the force as a whole.

Generally speaking, human and national security is compromised in varied variety of ways and the global world is always prone to fear of outside and rebellion inside. The emergence of Indian autonomy changed the political system, but its pilgrim underpinnings remained retained by the government. The 1861 Police Act was not superseded. Political influence has remained unblemished over the police force all these years. Embedding mechanisms to ensure police accountability to the public in open has not been a requirement, but it should have been a top priority. Police's organizational thought, confidence and ethic remained structurally ready for war, and in reality suppressive.<sup>1</sup> The police structure in India can be defined as a machine power in hands of the mighty right up to the present time, which places lawmakers 'or powerful people's needs over the demands of the quality of law and common residents' requirements. Many state legislatures took steps at some point in the 1960s to set up committees to examine police issues and recommend improvements. Be that as it could, without delay, be influenced by the strength exchange of British hands at 12 p.m. on the advice of the stargazers, it was not yet conceivable to locate a suitable time to replace the 1861 Police Act.<sup>2</sup>

Policing actions today urgently require paradigm shift from current method of policing to law-based policing, conform to standards of accountability, and the global standards of the shifting globalized world. The manner in which state machinery

uses the entity called police to stifle people's hardening toward choosing power approaches needs to be checked. Ending the police atrocities is a challenge in today's political landscape in particular. It is difficult to figure out that, as a rule, police shooting reports are often directed towards particularly marginalized sections of the population. Examples will include the Nandigram ranchers, Meghalaya students or the uprooted Kalinga Nagar ranchers. The Naxalite rebellions are closely linked to some or other class of casualties.

The Commonwealth Civil Rights Initiative Study on Police Transparency reestablishes the comparison in a context that is very global. Minorities anywhere-whether racial or strict-and defenseless crowds, as an example, marginalized people and ladies, experience a policing weight that is all the more pulverizing.<sup>3</sup> The Study provides concrete evidence demonstrating how a one-sided police department is doubly plagued by the oppressed and weak races and gatherings. The most 'popular' remedy provided for securing wellbeing of victim and towards ending police firings/killings, is the inquiry commission under the Commissions of Inquiry Act,1952. Application pursuant to the Commission of Inquiry Act, 1952 cannot be designated as a Judicial Inquiry Commission on the grounds that, by chance, one sitting or retired judge is assigned as such commission's chief. Regardless of whether such commissions are headed by a serving or a retired judge, they do not have the power to arrange or deny a kind of trial. Such 'private' commissions 'report and recommendation are not official on the legislature, in comparison to a court's appeal. Before any such tribunal, somebody's testimony cannot be used as evidence against themselves under the steady eye of any official courtroom.

The outcome of these inquiry commissions, in a best case scenario can be used as a discovering fact for study by the legislature or in transparent case, a justification for initiating

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<sup>1</sup>MajaDaruwala and Clare DoubePolice(Ed) , Police Accountability: Too Important to Neglect, Too Urgent to Delay, Commonwealth Human Rights Initiative, New Delhi, 2005

<sup>2</sup>K S Subramanian, Reforms For Indian Police, Economic and Political Weekly, March 25, 2006 p. 1145

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<sup>3</sup>KirpalDhillon, Police and Politics in India, Colonial Concepts and Democratic Compulsions, (Manohar, 2002) cited from A G Noorani, Police and the Constitution, Economic and Political Weekly March 25, 2006, p. 1164

departmental or criminal proceedings. The Justice Misra Commission was appointed after the police firing in Maikanch, Orissa in 2000. Govt's Action Take Report (ATR) Placed in the house along with the Commission's Report, in addition to other items referred to the fact that the Commission defended the firing. To the awe and surprise of the victims commission had not suggested any action against any police officer. The dismay was conveyed by Sri PravasankarNaik, the then OIC of the Kashipur station, and in the wake of his request for clarification and consideration commission than contradicted itself in many statements. These and other discrepancies within the ATR, as well as the report on which the previous is said to have been based, demonstrate how spiritually are the Commissions of Enquiry done.<sup>4</sup>

The Commissions take such a long time to record their findings that their restorative impact is lost. The report of the firings at Poonch on 2 December 1978 and 5 January 1979, for example, was discharged 16 months after the actual fact, and the case had lost all intrigue. These delays unintentionally, legitimized the firings. Similarly, the inquiry report on firings that took place in Kairana and Muzaffarnagar in October 1976 was transmitted about four years after the actual fact in August 1980. Apart from the Enquiry Reports, there is a progression of 8 Reports submitted by the National Police Commission headed by Dharma Vira and established in 1977 (Reports submitted in 1979-1981) that were made ineffective due to the lack of actualization by the progressive Governments.<sup>5</sup> Seeing the harms caused by these inquiry commission recuse of the highest court of the land was taken, by invoking of writ jurisdiction of the Hon'ble Supreme court by way of PIL, which led to orders issued by the Supreme Court in Prakash Singh v. Union of India.<sup>6</sup>

### The Question of Accountability

In a wider framework, we see sovereign duty as that towards the general public everywhere, with regard to the norms of the rule of law and superior administration. Democratic administration refers to the administration of cultural undertakings in accordance with the all-inclusive voting-based system that increases the popular consent and cooperation, the legitimacy and obligation of the rulers, and also the sensitivity of the latter to the expressed interests and desires of the general population ... This duty must be maintained during the lifespan of the legislature in power, not just at the hour of races yet. In any case, it would prove to be merely a symbolic exercise in casting a ballot and not a systematic method of recognition-based governance. Conceived as an end, in this way, only administration will likewise necessitate that the constitution, depicted as the most visible arm of the authority of the state, matches the values and ethic that people see it as the grunt norm.

With regard to the actions by the police to smother the Naxalite uprisings in Calcutta in the early 1970s, it has been said that the brutalities orchestrated in those days gave rise to

an incentive between the simple people and the police.<sup>7</sup> If these attempts call for such a response from individuals, it can be assessed to what degree the firings against quiet masses with legal immunity are taking place. Committee headed by Soli Sorabji on the Model Police Act and its goals represents a clear understanding of these issues.<sup>8</sup>

The narrower or finer legal point of view will tell us with certainty, how if and when it adds up to a crime, the state as the only real governing body over the police will have to be held responsible and be brought. It is important to remember here that we view the t to book. Police as well as the State are the annexes of the same equipment. Via legal advocacy, the degree and reach of fundamental rights has been expanded in recent number of years. The Supreme Court re-articulated the "State duty" whenever an opportunity occurs to infringe certain rights and the deep-rooted British notion of "sovereign resistance" was now cast away in this manner.<sup>9</sup>

### The Code of Criminal Procedure

Section 129 of Cr.P.C lays down options available to the police authorities for dispersing an illegal meeting. What this section has to find is a fair harmony against the sacred guarantee of choosing to amass under Article 19(1)(b) and check the same vis-a-vis Article 19(3). The ambit of this section covers 1) a genuinely illegal gathering 2) a likely unlawful gathering. Since the unlawful character of a gathering is adjudged and must be resolved with regard to Section 141 of the Indian Code. Further, political frustration or failure to disperse does not transform a lawful gathering into an unlawful one, thus use of power over such a gathering would be unjustified. Another condition is that the officials entrusted with maintaining peace should use just as much power as it is necessary to suppress an illegal mob gathering and concealment. This advice grows out of the preceding rule. An old QE v. SubbaNaik judgment<sup>10</sup> articulates that firing is warranted by the need to protect people or properties against various forms of gross misconduct, or by the need to dispense with a disruptive party that is dangerous. Without fulfilling these requirements, event of firing may offer ascension to any offense. Nonetheless, as per section 132, such indictment will occur only after approval of the government.

We embrace the perception of an inborn inconsistency in this system, leaving moral adrift. Government, as a general rule, would seek to legitimize the leadership of government under its control, and failure to give up such approval would misguidedly legitimize police violence. Some claim that a cop who murders, assaults and blinds is better guard in the presently volatile times.<sup>11</sup> The courts must therefore be serious in accepting plea of Section 132. No approval is necessary if the cop is not a police officer liable because his conduct is unlawful; or if the cops are prosecuted ss. 302, 304, 326, 148 IPC so forth, yet it gets essential on the off chance that they'll show that they acted or intended to act under section 129. In

<sup>4</sup>DrParamjit S. Jaswal, Public Accountability for Violation of Human Rights and Judicial Activism in India: Some Observations, (2002) 3 SCC (Jour) 6

<sup>5</sup>A G Noorani, Police and the Constitution, Economic and Political Weekly March 25, 2006, p. 1163

<sup>6</sup>2006 8 SCC 1.

<sup>7</sup>Police Firings- Aimed to Quash Protest, PUCL Bulletin, 1981 from <http://www.pucl.org/from-archives/81june/police-firings.htm> last viewed on 20/03/20

<sup>8</sup>C f. Himatlal v. Police Commissioner, AIR 1973 SC 87

<sup>9</sup>Supra note 1.

<sup>10</sup>1898 ILR 21 Mad 249

<sup>11</sup>Supra note 7,

any case, the load of proof lies on the arraignment to prove that consent is not necessary if it is to proceed with a body of evidence against a cop. Whether or not the need exists could be a question determined by enquiry into actuality and law.

### Universal Principles

UN Code of Conduct for Enforcement Officers requires that 'In performing of their duties, law enforcement authorities shall honor and uphold human poise and preserve the human rights of all persons.' It requires police to take care of the consistency of the law, ensure the well-being of citizens, be sensitive, respectful and ensure popularity-based qualities. For the reason, as adopted more than 25 years ago, this Code of Conduct sets out three center highlights of adequate policing: "Like all organizations within the context of criminal justice, each law authorization office will demonstrate, and be attentive and accountable to the network all dead."

The Basic Principles of the United Nations on the Use of Force and Arms by Security Officers (1990) sets out the basic guidelines to be taken when monitoring illegal gatherings. "In India, principle 4 of the Police Code of Conduct stipulates that the techniques for power, advice and warning must be used to the degree practicable. In the event that the use of power is necessary, the absolute minimum power needed under the circumstances must be used in compliance with principle 5 at that time. Furthermore, Principle 7, the govt responsible for ensuring that the arbitrary or injurious use of power and weapons by law enforcement agencies is dismissed as a criminal offense under their rule, is usually enormous right away. principle 9 stipulates that weapons be used to a restricted degree against men, with the highest goal of self-protection or other defenses against the imminent danger of death or serious injury. principle 14 specifies that violent illegal gatherings should be dispersed with weapons only when less dangerous approaches are not feasible and are necessary to the lowest degree. Principle 24 states that Governments and law enforcement agencies shall ensure that unrivaled officials are deemed capable in the event that they know, or are expected to know, that law enforcement agencies are turning to, or have turned to, the illegal use of, power and guns and that they have not taken all steps in their capacity to avoid, smother or grow."<sup>12</sup>

In commending it, Principle 25 articulates that Governments and law enforcement agencies must ensure that no lawbreaker or administrative authorization is coerced by law enforcement authorities who, in compliance with the Code of Conduct for police officers and these basic principles, fail to attempt to call for involvement in the use of power and weapons or disclose such use by specific authorities. Such rules specifically conceive that obligation would tie the stacked hands with more energy, and not just the individuals who literally take up lathi or firearm in compliance with their prevailing official's requests.

### Independence and Accountability

<sup>12</sup>Dr. Justice A.S.Anand, the then Chairperson, NHRC in the Inaugural Address at Seminar on Human Rights Sine-Qua-Non of Democratic organized by Merchants' Chamber of Commerce at Kolkata on 8th September 2006

On 22 September 2006, India's Supreme Court issued a memorable judgment in *Prakash Singh vs. Union of India*<sup>13</sup> ordering focal and state governments to comply with lots of seven orders setting out strategic components for implementing police reform. The mandates of the Court aim to accomplish two fundamental objectives: functional self-governance for the police – by residence protection, standardized structure and movement methods, and also the establishment of a cradle body between the police and the legislature – and improved policing duty, both for hierarchical execution and individual offence. The need for reform is especially strong because, following large changes in government, the age-old Police Act of 1861 continues to regulate the police. Given the severity of the issue and the utter uncertainty with regard to when police reforms should be made, the Supreme Court found in 2006 that it could not be more assured that governments should take fair action for police reforms and need to provide sufficient headings to ensure continuity. Such bearings are official to governments before proper legislation is established for them.

At the center and state level, the Supreme Court mandated all legislators to comply with the seven mandates by 31 December 2006 and to record statements of conformity by the third of January 2007. Regime responses have varied tremendously, ranging from consenting to the mandates in time via official demands, expressing solid concerns with the directives and requesting the Court to review them. Others have indicated that the Court will provide them with more opportunity to consent to the judgment. The Supreme Court dismissed the objections presented on 11 January 2007 and confirmed that its bearings must be followed without any modification. The Court allowed a multi-month extension to commit to four of its demands, while at the same time stressing the need to decide immediately on the others.<sup>14</sup>

Various states have stepped up to the challenge and set up exceptional committees to draft another Police Bill, planning on bringing it to the council in the months to come. The powers of the SC are as far as everyone knows that the govt. official administrator keeps over the police is expected to weaken. However, human rights activists warn that free ordinary citizen power (UK has the simplest such instrument) should be replaced in order to avoid more mayhem. In either case, we agree with the individuals who say that the situation would be exacerbated by the large quantities of custodial passages and incidents of police ruthlessness, replacing government power of toothless offices. Enabled that the risk / pay off of correctional or investigation after transactions is unreservedly used to cripple legitimate cops who the political official sees police power as the authority of their own desires and enjoys it rather than as employees of the community as a whole. This being so, it is equally evident that the police authority may automatically be a willing accomplice of giving-and-taking, and also that the police find themselves sensitive to the leaders of the day rather than to the law.<sup>15</sup> Politicization of Police is the interest that acquires it. The commonwealth right initiative

<sup>13</sup>2006 8 SCC 1.

<sup>14</sup>Police Overhaul: Courts and Reforms, Economic and Political Weekly, May 7, 2007, p. 1584

<sup>15</sup>*Ibid.*

report police accountability: too critical to ignore, too urgent to postpone, also recommends multiparty police oversight by members of parliament, assemblies and native councils.<sup>16</sup>

### From Police Force to Police Service

The formation of the Police Act Drafting Committee was prompted by the anxiety of the Prime Minister, announced at the Conference of District Police Superintendents in mid-2005 that: we must ensure that police powers at the lowest level, and even more so at the grassroots level, change from a primitive power to a just service.

True as it remains, it is equally important to ensure that the Police Committee is created. Some pinpoint India's rulers 'primitive perspective, like Jawaharlal Nehru, to blame for spoiled police system making. For police duty (Chapter XIII), the model Police Act put together by the panel sets divided a whole section. In any case, the scope of the charges of 'true misconduct' in respect to which the Police Reform Commission is allowed to investigate prevents passage if a police firing occurrence may occur. The concept includes 'intolerable damage' under the scope of Section 320 and police care expenses.

A demise due to the firing of officers, naturally, will not come into any of those classifications. In either case, the accomplishment of the Act is sought at once within the viability of its implementation and thus the operation of the Police Oversight Commission. Additionally, the factors that can support the police force vary from force power into a popularity-based power are different. Across Canada, the convergence of an extraordinarily diverse population, a civil rights ethos, and decentralized local policing has undoubtedly caused the greatest complex changes across network security and accountability at the community level. In any case, strongly controlled Singapore has built up a reliable and agreeable police force with a network. The United Kingdom, which knew policing like most of the Commonwealth nations, suddenly built up a model of policing contrary to the one established in its previous settlements that it left.

### Conclusion & Suggestions

An offense of baseless police firing should be treated as an unusual offense, prosecution should be done with speedy trial. To determine whether an officer has acted in consonance with his forces under section 129, arrangements should be made for a judicial inquiry/ investigation. The criteria for deciding whether a case of police firing was in line with the need and proportionality trial could be: 1) the proportionality of the size of the police power to the incident 2) the source of knowledge that led the police to influence their feelings about the group's identity, existence, and destinations. (3) The composition of the party, whether or not they were prepared, whether or not they contained a greater number of female individuals (4) the character of the demands set out in the meeting; 5) The length of the entire occurrence; irrespective of whether the firing was tainted with 'undue scurry.' The present legislation, which revolves around section 129 of the Cr. P.C., has failed to compose any such criteria and even the usually

appointed commissions of petition do not qualify to illuminate such points of view.

Pressure from politicians is the biggest hindrance in crime investigation. If India is to emerge as a progressive modern nation, it is absolutely essential that the police infrastructure, training, be improved. It needs the necessary resources and equipment to be able to discharge its multifarious responsibilities and that an environment is created in which police consider enforcing the Rule of Law to be their paramount duty. Further, the police act needs urgent revamping along with holistic plan to sensitize the police force

*"India's future as a democracy and an economic powerhouse cannot be secured by an obsolete criminal justice system and an obsolete Police force".*

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<sup>16</sup>ArvindVerma, The Indian Police: a Crucial Assessment, Regency Publications, 2005