

Core Principles of Police Reforms

That there is need for police reforms in keeping with the requirements of a modern, democratic state is self-evident. Several expert Commissions and Committees have made a compelling case for police reforms. Many useful and practical suggestions emanated from these bodies as well as experts and civil society groups. The recent Supreme Court's directions are a reflection of the mounting concern in all sections of society on this vital issue. However, a careful examination of the literature on the subject and the suggestions of various expert bodies shows that there is significant divergence of opinion on several issues of reform. What is more important, several recommendations have been made in isolation, without regard to the linkages with other facets of police administration and judiciary. The Commission therefore feels that it would be useful to outline the overarching principles of reform of police and criminal justice system. Once such principles find acceptance, a reform package can be evolved in an integrated manner. Police constitute the key element of the coercive power of the state to enforce compliance with the laws of the land, and a vital institution to safeguard the citizens and public property. Therefore police reforms must ensure minimal dislocation. Reform must meet the growing challenges of urbanization and emerging threats to Constitutional order, even as humane, effective, citizen-friendly police machinery is institutionalized. On the basis of the analysis and recommendations of various expert bodies, and the inputs from citizens, civil society groups and professionals, the Commission is of the view that the following seven core principles should form the bedrock of police and criminal justice reforms.

1. Supremacy of the Elected Government:

In a democracy, the government is elected to serve the people. People transfer a part of the authority over their own lives to the government in order to serve common goals and protect the liberties of all citizens. It is but natural that such an elected government must be fully in authority. In our system, the government

is accountable to the legislature and to the people, and to no one else. The government must exercise real authority once elected to office. The imperatives of impartial investigation and fair trial demand autonomous functioning of investigative and prosecution wings. But the overall accountability to the elected legislature, and broad direction and supervision of the duly constituted government cannot be diluted. Also, several others functions of police including protection of public property, fight against terrorism, riot control and maintenance of public order, and intelligence gathering to anticipate threats need to be monitored and supervised by the political executive. The reform proposals should recognize this requirement of democratic accountability and the supremacy of the political executive and elected legislatures. Complete independence of police force is neither feasible nor desirable. A police force impervious to political control can easily degenerate into a rogue, unaccountable force, and will undermine the foundations of our democracy. The coercive power of the police can easily extinguish liberty unless it is tamed by political control.

2. Authority, Autonomy and Accountability:

The various wings of police should have the authority and resources to fulfill their responsibilities. Each such wing should have functional and professional autonomy commensurate with its requirements. For instance, intelligence wings need to have the flexibility to recruit personnel at short notice through summary procedures, and the authority to procure sensitive intelligence-gathering technology without having to go through normal procurement processes. Traffic police need the resources to deal with the increasingly complex urban transport challenges, the quasi-judicial authority to impose fines on offenders when facts are incontrovertible or uncontested, and flexible funding mechanisms without tortuous financial clearances. Riot control police need a clear and unambiguous framework in which to operate, ready reinforcements when necessary, and the confidence that bonafide use of force will not lead to victimization. For each arm of the police, these requirements of authority and autonomy need to be spelt out clearly and codified. However, such autonomy and authority should be

accompanied by clearly defined formal systems of accountability. Ours is an evolving democracy, and our institutions need to be constantly refashioned to suit changing needs. In our system of compensatory errors, often the failings and distortions of one institution are compensated by the distortions of another institution. If the policemen resort to third degree, political intervention in police functioning actually unearths such torture and protects the citizen. Therefore any autonomy must be accompanied by strong and verifiable systems of a accountability so that the citizen is protected from abuse of authority. In a democracy struggling to reform its colonial institutions, there is nothing more frightening and enfeebling to a citizen than to be at the receiving end of police excesses. Any reform will yield dividends only when the efficacy of the system is enhanced while ensuring that the propensity for abuse of authority is curbed. As Paster Niemoller said “Man’s capacity for justice makes democracy possible; man’s inclination to injustice makes democracy necessary!”

3. Disaggregation and Deconcentration:

One of the chief problems of police reforms stems from the traditional approach of clubbing of a variety of disparate functions in a single police force, and concentrating all authority at one level. A single, monolithic force now discharges several functions: maintaining law and order, riot control, crime investigation, protection of state assets, VIP protection, traffic control, ceremonial and guard duties, service of summons and production of witnesses in courts, anti-terrorist and anti-extremist operations, intelligence gathering, *bandobast* during elections, crowd control and several other miscellaneous duties. Often, even fire protection and rescue and relief are treated as police functions. In addition, giving support to state functionaries in encroachment of evictions, demolition of unauthorised structures, and such other regulatory activities are police responsibilities. Aggregation of all these functions in a single police force is clearly dysfunctional for four reasons. First, the core functions are often neglected when the same agency is entrusted with several peripheral functions. Second, accountability is greatly diluted when duties cannot be clearly and unambiguously stated and

performance cannot be measured and monitored. Third, the professional skills and resources required for each function are unique, and combination of often unrelated functions undermines both morale and professional competence.

Finally, each function requires a different system of control and level of accountability. When a single agency is entrusted with all functions, the natural propensity is to control all functions by virtue of the need to control one function. For instance, riot control has to be politically monitored. A communal riot and students' agitation cannot be treated identically, and mere mechanical and uniform application of law in both situations will do irreparable damage to public interest and democratic fabric. Therefore the elected government and executive magistracy should broadly guide the use of force in riot situations. But crime investigation is a quasi-judicial function, and painstaking professional methods are involved in interrogation, gathering of evidence and forensic examination. There is no case for supervision of a partisan government or government - appointed executive magistracy in crime investigation. However, as political supervision police is inevitable in order to guide riot control and deployment of forces, such supervision will inevitably transgress into crime investigation when the same police force discharges both functions.

In addition, traditionally the police forces have been structured in the pattern of armed forces. Insignia similar to armed forces, hierarchical control extending from the SHO to DGP, a culture of unquestioned obedience, and a structure of units and formations have made police a highly centralized force. Inevitably, the Inspector General of Police in the earlier decades, and now the chief of police designated as the Director General and Inspector General (DG & IGP) has become the focus of authority of a vast police force discharging diverse functions. Everything therefore hinges on the personality of DG & IGP, the method of his (her) appointment, tenure, competence, integrity and ability to command loyalty of the troops. While such a focus of authority has certain advantages like effective coordination, it is largely dysfunctional because of over-

centralization. Such concentration of powers and functions inevitably results in incompetence, lack of accountability, serious and abrupt distortions in delivery of services, personality-driven functioning, and distancing from citizens.

At the same time, disaggregation and deconcentration cannot be pushed to the extreme. We need to strike a balance between authority and accountability, and between autonomy and coordination. Excessive fragmentation of the police forces is as detrimental to public good as over-concentration. The Commission is of the view that three broad categories of functions can be clearly distinguished, and the police forces can be segregated on those lines, even as mechanisms for effective coordination are evolved to prevent water-tight compartmentalization. No agency of state can be an island, and each must support and draw strength from others. The three categories are : crime investigation – particularly dealing with serious offence leaving out minor offences which can be summarily tried; Public order and riot control including anti-extremist operations; and local policing including investigation of minor offences, traffic management, and local law and order maintenance. Crime investigation can be treated as a quasi-judicial function, and an elite force can be created to discharge this core function. Riot control and anti-extremist operations are dependent on sheer deployment of manpower and ability to use force judiciously and effectively. They also need strong intelligence support to anticipate trouble and take preemptive action. It is not possible to deploy large contingents of armed police everywhere all the time to meet threats to public order. Therefore a well-trained, well-armed force under centralized control and ready to march to trouble spots at short notice would be ideal to discharge these functions effectively. These functions and intelligence wing can be combined under the control of the chief of police in the state. Many local functions involving traffic control, small crime, patrolling and minor law and order problems can be handed effectively by a force exclusively under the local government. The police stations as we know can be broadly in charge of these functions under local control, and they can be the first points of contact for aggrieved citizens. These

local functions and the local police can be progressively transferred to the elected local governments over a definite period of time, but with adequate institutional checks and safeguards to prevent abuse of office. Mechanisms need to be evolved for effective coordination among these three police forces. Other peripheral functions like protection of state assets, ceremonial duties, service of summons etc can be either outsourced or progressively given up.

4. Independence of Crime Investigation:

The perception of an average citizen is that the police are essentially a crime investigation agency. Unearthing evidence in a crime, identifying the culprit, establishing the means, motive and opportunity, presenting evidence in a court of law through the prosecution, and securing a conviction are the critical functions of police. Many lay citizens, fed on a staple of detective fiction, crime thrillers, television serials and reality shows portraying police functioning, regard painstaking crime investigation and police assistance in prosecution as the key functions of the police. However, in real life, in our country the police are overburdened with many other duties, and the core function of crime investigation is relegated to the background. Excessive reliance on brawn in other areas has blunted the professional skills required for effective investigation. In many police stations, the only work on crime investigation is the third degree methods employed to extract a confession from an accused or obtain cooperation of the culprit to recover stolen goods or unearth other evidence. Where there is no confession, the evidence is often very weak and conviction rates are appallingly low. Failure to link all the threads in a criminal case and produce clinching evidence often leads to overreliance on oral testimonies in court. In a country where perjury does not lead to serious legal or social consequences, the witnesses often turn hostile because of inducement or fear. This again leads to failure of conviction. The net result of deficiencies in crime investigation is the spreading belief that crime pays, and the perpetrator can escape the clutches of law. It is usually the poor and illiterate who are victims of third degree methods and are convicted on the basis of oral evidence. The well-

connected and better-off sections of society find it easy to escape the consequences of their crimes, as they can easily subvert crime investigation and due process of law.

It is in this background that many expert bodies and jurists have been urging that crime investigation must be separated from other police functions, and the professional skills and infrastructure improved to help police deal with the challenges of rising crime. But mere separation of functions and improving professional capabilities are insufficient. Over the years, the failure of criminal justice system led to a pervasive atmosphere of lawlessness. As a result, criminal gangs and factions arose providing rough and ready justice through brutal means at times. There is a growing market demand for such gangs to 'settle' land disputes, 'enforce' contracts, or collect dues. There are instances of financial institutions hiring musclemen to recover overdues from borrowers. Over time, these crime lords who make profitable career out of dispensing rough and ready 'justice' find politics attractive as a second career. This is because experience taught them that once a person dons political robes, he can control the police force, and influence crime investigation to his advantage. There is widespread belief that once you are politically influential, the police cannot touch you. What is worse, police can at times be even protectors and allies of the crime syndicates which are politically well-connected. This process led to rampant criminalization of politics.

Once police force is believed to be both unresponsive to common citizens and pliant to politicians, the innocent victims of crime are forced to seek the good offices of politicians and middlemen even for registration of a FIR, or pursuing an investigation. The lack of professionalism in an overburdened, under-funded and poorly-skilled police force, coupled with undue political interference led to low level of trust in law enforcement. The many honest and hard-working policemen and officers are doing their best to serve society, but they are powerless to arrest the general decline in crime investigation. As a result, enforcement of rule of law

and persecuting and punishing the guilty have become major challenges in our governance.

Given these circumstances, the Commission is of the view that a separate, elite crime investigation wing of police should be created in each state and it must be completely insulated from undue political and partisan influences. While separating crime investigation from other functions, care must be taken to ensure that crime investigation wing is not overburdened with petty offences, leaving serious crimes requiring painstaking investigative work unattended. Therefore, it is best to entrust only cases involving a punishment of one year's imprisonment or more to the separately created elite crime investigation wing. Such an investigative agency must be well-trained and supported by adequate infrastructure including a network of forensic laboratories. India established the first finger-print laboratory in the world in 1897. yet, over the years, both the skills and infrastructure have declined because of decades of neglect of crime investigation. These deficiencies need to be rectified by significant infusion of resources and renewed emphasis on skills and forensic capabilities. It is well-recognized that crime investigation cannot be completely isolated from routine police work and local intelligence gathering. Therefore, the local police station should remain the first point of contact for the citizens, and effective mechanisms should be evolved to ensure that the FIRs are registered and monitored in all cases. While petty cases (which are clearly defined) are dealt with by the local police station, other cases should be automatically transferred to the crime investigation agency. An effective coordination mechanism must be in place between local police and crime investigation agency on a continuing basis. Equally, there must be coordination between crime investigation agency and riot control police, so that support of armed police is available when dealing with murderous gangs and crime syndicates.

Finally, the crime investigative agency should be impervious to undue political and partisan influences. This would be possible only when the recruitment,

placements and supervision are professionally managed in a transparent and efficient manner. And yet, the political executive must have the opportunity to give broad guidelines, and accountability to the elected legislature must be institutionalized. Keeping all these imperatives in mind, the Commission suggests that the independent, elite crime investigative agency should be governed by a Board headed by a retired judge, and comprising of jurists, chief of the agency, chief of prosecutions, chief of the riot control wing of police, and select chiefs of local police. The chief of the crime investigative agency will be appointed by this Board for a tenure, and will have complete operational freedom subject to accountability norms. There will be a separate directorate of prosecutions headed by a judge nominated by the High court, which will function under the supervision of the same Board. Serving District Judges will be District Attorneys supervising prosecutions, guiding crime investigation and recording statements of witness and confessions where necessary. The statements recorded by the independent prosecutors would be admissible as evidence, subject to certain checks to ensure compliance with principles of natural justice and due process. The Crime Investigation and Prosecution Board (CIPB) which supervises both the investigation and prosecution wings will ensure effective and close coordination between the two wings.,

The CIPB itself will be appointed by a high powered collegium, headed by the Chief Minister and comprising of the Speaker of the Assembly, Chief Justice of High Court, Home Minister and Leader of Opposition. This collegium will have the power to appoint the CIPB and monitor the overall functioning of the crime investigation and prosecution agencies, and the responsibility to allocate adequate resources and create the required infrastructure. There will also be an independent police complaints commission which will investigate complaints of abuse of authority by the policemen in any wing. In addition, abuse of police authority will be a serious crime to be investigated by the independent investigation agency. The CIPB will furnish annual reports on its functioning and submit them to the State Legislature. Such a mechanism will institutionalize

autonomy, impartial investigation and professional competence while ensuring effective accountability. The crime investigative agency will be an officer corps, and the officers will be drawn from the existing police forces on a one-time selection basis. Subsequently, the agency will have its own recruitment processes to appoint investigators. Serving policemen in other wings can join by selection, and once they join the crime investigation agency, are not transferable to other police forces. Only those officials who cannot withstand the rigours of crime investigation may be permitted to leave the agency and join the local police forces or riot control wing. Such a mechanism will ensure competence without compromising independence.

5. Self-esteem and Professionalisation of Policemen

Our police forces largely comprise of the constabulary. In most police forces, nearly 87% of the personnel are the constables. The constable is the lowest level of recruitment with very limited opportunities for career advancement. While the educational requirement for selection of a constable is a school leaving certificate, in reality well-educated young men and women with graduate and post-graduate degrees often become constables. A constable can expect only one promotion in a life time in most cases, and retires usually a head constable. The statutory powers of investigation are with the station house officer (SHO) who is often a sub-inspector in rural police stations, and an inspector or of higher rank in urban police stations. An average constable has no hope of becoming a SHO. As a result, constables have become messenger boys carrying out the directions of their superiors with little application of mind or initiative. The constant political interference in transfers and placements and crime investigation, the unnecessary duties of standing guard to VIPs and acting as security guards to legislators and ministers, the frequent resort to third degree, long and difficult working hours on the street or as traffic policemen, the menial duties they are often forced to perform as orderlies to senior officers, and the emphasis on brawn rather than brain in most situations tend to brutalize policemen. A constable devoid of dignity, lacking opportunities for vertical

mobility, constantly pilloried by superiors and politicians, derided by the public and habituated to easy recourse to violence and force has neither self-esteem nor professional skills to serve the citizens.

Apart from the constabulary, the police force is top heavy, with over-crowding at the top and no real strength in middle-management. Recruitment in most states is at several levels – constabulary, sub-inspector, deputy superintendent of police, and Indian Police Service. Several tiers of recruitment have diminished opportunities for promotion to most, and the level of recruitment by the accident of an examination often determines career progress, not competence, professionalism, integrity and commitment. Unlike in other government agencies, lateral recruitment to police is not feasible, as rigorous training, experience, expertise and knowledge of peers and colleagues are vital to be effective police officers. No agency or experience outside government prepares citizens for senior police work. The incentives for performance within the police agencies are feeble, even as lateral recruitment is not feasible.

The Commission is of the view that police recruitment needs to be restructured significantly in order to enhance the morale, professionalism and competence of the personnel. In a modern police force, there is no place for lathi-wielding or gun-toting policemen except in extreme situations necessitating overwhelming use of force. The Commission is of the view that recruitment to constabulary should be discontinued as a rule. The first point of entry into police should be as an officer with a university degree. These officers, recruited at the level of Assistant Sub Inspector (ASI) can rise quickly to higher levels depending on their performance and aptitude. The constabulary will diminish significantly over time by promotion or retirement, as new recruitment ceases. Most of the constabulary can be deployed in the riot control and anti-extremist wings of police. Depending on future requirements, the only new constables recruited should be in the riot control wing. Progressively, most of the police agencies except riot control wing will comprise of officers. Each such officer should be given legal status and clear

responsibilities with accountability. Local police stations should constitute teams of police officers to perform specific tasks. The hierarchical police force must give way to a professional force focused on outcomes. All positions between ASI and IPS must be filled by promotion based purely on competence and performance. Once various other levels of recruitment disappear, there will be incentives for performance and the accident of recruitment will not determine future career.

Back of the envelope calculations indicate that replacement of constable oriented force with an officer-oriented force need not involve a drain on the exchequer. A leaner, more mobile, better-trained force will deliver far better outcomes. The menial functions like orderly duties and guarding all and sundry functionaries must end immediately. Law enforcement agencies should not be used for personal aggrandizement. An officer recruited into the force must have a realistic opportunity of enjoying three or four promotions in a career. In a less hierarchical force, the officer has the opportunity to deploy his skills to the maximum and will find fulfillment in professional police work.

6. Professionalization, Expertise and Infrastructure:

Effective crime investigation, competent law and order management and useful intelligence gathering demand high standards of professionalism and adequate infrastructural and training support. Specialized training facilities are vital to hone the skills and constantly update them. Forensic laboratories need to be established for every district or a group of districts – at least one per 5 million population. Only such well-endowed forensic facilities will help police agencies to meet the growing challenges of crime in a rapidly urbanizing society. Strong communications support, state-of-the-art weapons, non-lethal, modern tools for riot control, and a high degree of mobility are prerequisites for modern policing. Adequate resources, technology and manpower need to be deployed on a continuing basis to meet these requirements. The state's core functions in any society are maintenance of public order, ensuring speedy, accessible and effective justice, and enforcement of rule of law. Like national defence, internal

security and public order cannot be compromised under any circumstances, if the integrity of the state and constitutional values are to be protected.

7. Attendant Criminal Law Reform:

Police reforms are vital to ensure rule of law and effective maintenance of public order in the broad sense of the term. However, police cannot function in isolation. Failure of delivery of justice is at the heart of the crisis in our criminal justice system. In particular, two broad areas need to be examined.

First, the courts in India are inadequate to meet the requirement of justice. It is well-recognized that our judge, population ratio is of the order of 11:1000,000, where as in many developed democracies it is of the order of 100 : 1000,000, or ten times that of Indian judge strength. The resultant inaccessibility, coupled with archaic and complex procedures has made our justice system slow, ponderous, inaccessible, unaffordable and incomprehensible. The pendency of over 25 million cases is well-known and much talked about. What is even more disconcerting is, the delay, expense and inaccessibility drove many people to despair. Most people, particularly the poor and vulnerable sections of population, have no faith in the system's capacity to deliver justice or enforce their rights. Consequently they never approach courts, and prefer to swallow injustice and suffer silently. Some may resort to extralegal methods to obtain rough and ready justice through the musclemen and organized gangs. This is leading to a culture of lawlessness in society, and is a serious threat to public order in the broader sense of the term. Therefore, enhancing the strength of judges, and creation of local courts to settle disputes and punish crimes swiftly and fairly are vital. The Commission understands that a Bill to create local courts is under the consideration of the government. The Commission is of the view that one local court per 50,000 population needs to be established with an honorary magistrate of suitable skills and background. The court should be empowered to try civil and criminal cases through summary procedures; It should give time-bound verdict within 90 days. Lawyers may represent clients. Where possible, the

court should hear cases at the place of dispute or offence, in order to unearth the truth. It can be a circular court traveling to designated places on designated days to hear cases. An appeal will be allowed to a higher court. The local courts will have civil jurisdiction of upto Rs one lakh and other matters notified, and criminal jurisdiction of cases upto one year's imprisonment. Such an accessible, simple, low-cost system of courts will be assisted by the local police as envisaged by the Commission and dealing with criminal cases of upto one year's imprisonment. With the local court and local police station having the same jurisdiction – geographic and functional – it would facilitate effective coordination and speedy trial and act as a check on the functioning of local police.

In addition, we need to amend procedural law to suit the requirements of modern era. Once police act independently with accountability, we need to trust them, and alter the provisions related to statements recorded by the police. Given the propensity of witnesses to perjure themselves in our courts, we need to strengthen the law against perjury, and make truthful evidence the norm in courts. The challenge posed by terrorists and armed groups to national unity and integrity must be squarely met by appropriate legal provisions. The role of Union government in respect of inter-state crimes, organized crime, terrorism etc needs to be redefined to be able to protect national interests.

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