

## POLICE AND THE LAW

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The police is an organ of the State whose main job is the maintenance of law and order, the prevention, investigation and prosecution of offences and safeguarding of the sovereignty and integrity of the country against insurgency, militancy and separatist threats. In a democracy the police functions according to law, rules and regulations, orders of the courts and lawful orders of government. Beyond this it has no inherent powers. This is quite different from a dictatorship where the police is an instrument of tyranny and operates according to the whims and fancies of the ruler. That is why in Nazi Germany the Gestapo had almost unlimited power to arrest anyone, torture him, detain him indefinitely and even cause his death. There was no accountability.

Article 19 (1) (b) of the Constitution gives the citizens the fundamental right to assemble peaceably without arms. The right to assemble can be reasonably restricted by law in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Unless specifically prohibited by law citizens have a right to congregate and provided that they are not causing public nuisance the police has no power to disperse them. Chapter X of the Code of Criminal Procedure provides for maintenance of public order and tranquility. An Executive Magistrate or a police officer may cause an unlawful assembly, or an assembly of five or more persons likely to cause a disturbance of the public peace to disperse and in case the assembly so ordered does not disperse the Magistrate or police officer can use necessary force to disperse it. For this purpose under section 130 Cr.P.C. the Executive Magistrate can even requisition the services of the Armed Forces. Under the Delhi Police Act the Police Commissioner, exercising his powers as the head of the police to make regulations for maintenance of order in public places, can give directions about how and where processions or assemblies of persons may congregate and direct persons who are in violation of law to either move on or otherwise act as directed. The definition of an unlawful assembly is given in section 141 Indian Penal Code and such assembly should have as its objective the use of criminal force to prevent a government functionary from doing his duty, resist the implementation of a law or a legal process, commit mischief of criminal trespass, use criminal force to take possession of property and deprive people of the enjoyment of right of way, etc., or force an individual to do something which is illegal. It is necessary to understand this definition because whereas an assembly which was not unlawful when it assembled may subsequently become unlawful. Unless it does so the police has no right of intervention.

A yogacharya called Baba Ramdev publicly announced that he would take up the cause of elimination of corruption and repatriation to India of the money illegally taken out of the country. For this purpose he would organise a protest at Delhi. From this protest a fast unto death was not precluded. He toured a number of States for about a month before coming to Delhi and he reiterated publicly his intentions. At Delhi he obtained necessary authorization for assembling at the Ramlila Maidan, ostensibly for conducting a yoga camp. It has been alleged that he misused this permission to organise his agitation, but this ipso facto does not make the people who congregated members of an unlawful assembly because they were coming to a venue which was legally permitted.

When Ramdev landed at Delhi four ministers led by Shri Pranab Mukherji met him at the airport, ostensibly to persuade him not to proceed with the agitation but to hold talks with government. Subsequently in Claridges Hotel he held discussions with the ministers, which lasted for over four hours.

It was announced that most of Ramdev's demands have been accepted by government and government also had an exchange of letters with Ramdev. The scene now shifts from the hotel to the Ramlila Maidan. It was the evening of 4th June 2011. Government says that Ramdev reneged on his promise and announced that he would proceed with the fast unto death. Things were still completely peaceful at the venue and the assembled crowd adopted no threatening posture. Suddenly at about midnight the Delhi Police swooped on the camp, tried to take Ramdev into custody and virtually without any previous warning tried to forcibly evict the thousands of people who were assembled at the venue, with most of them sleeping peacefully. There was a virtual stampede because of the utter chaos at the site and, I am sure, there must have been some resistance to forcible eviction. The police fired tear gas shells and resorted to lathi charge. The crowd had women and children, many of whom were temporarily separated from their own group as they ran helter-skelter. This drama lasted for about four hours, during the course of which there were great hardship, a number of casualties and, undoubtedly, some people must have lost their belongings. At the time of the police action there was no prohibitory order. Under section 144 Cr.P.C. if an order is promulgated prohibiting an assembly, the people who have assembled have to be given a reasonable chance to disperse, which means that if they have belongings they should be allowed to collect them, they should be able to find suitable transport to move away and family groups should be assisted in staying together. None of these happened, the police acted without any notice and order gave way to disorder. Even today it is a mystery as to how in the eyes of the police this lawful assembly suddenly became unlawful.

It is said that the police used excessive force. Once an assembly is to be dispersed then there is no meter by which one can measure the exact amount of force that needs to be used. But the question really is whether the police had any right whatsoever to use any force under these circumstances because the very act of dispersing a congregation of people peacefully assembled is illegal. Any District Magistrate worth his salt would have refused to permit the police to intervene in this manner. I am absolutely certain that if Ved Marwah had been Police Commissioner he would have refused to allow the police to act as they did. Ajay Raj Sharma also would not have permitted this to happen and that is because both Ved and Ajay are police officers who have always felt themselves bound by law and have always conducted themselves as true servants of the law. When P.R. Rajgopal was IG Delhi Police and Mrs. Indira Gandhi asked him to arrest the ring leaders of the Punjab National Bank staff who were on strike, he refused to do so because these persons were not violating any law, causing any obstruction in a public place, nor creating any threat to public order and tranquility. He had to pay the price for this by being transferred, but he did establish a tradition that the police at all times must act according to the law. What has happened to that tradition today?

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