Reforming the Indian Police

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In the case relating to irregularities or even criminality in the allocation of coal blocks, where investigation was given over to the CBI, the Supreme Court has taken strong objection to government intervention in proceedings pending before the agency and the Hon'ble Judges have remarked that they will not rest till CBI becomes independent of government control. This has once again led to clamour for police reforms.

Let us go to the Act which created the Indian Police, the Indian Police Act of 1861. The Preamble of the Police Act reads, "Whereas it is expedient to reorganise the police and to make it a more efficient instrument for the prevention and detection of crime …" Let us compare this with the Delhi Police Act 1978, which followed 117 years later. The Preamble to this Act reads, "An Act to amend and consolidate the laws relating to the regulation of the police in the Union Territory of Delhi". This Act does not in any way detract from the objective of the 1861 Act which was to make the police a more efficient instrument for the prevention and detection of crime. In other words, the primary function of the police is to prevent and detect crime and it is for this purpose that we have organised a police force. Section 23 of the Police Act of 1861 reads as under:- "It shall be the duty of every police officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting public peace; to prevent the commission of offences and public nuisances; to detect and bring offenders to justice; and to apprehend the persons whom he is legally authorised to apprehend and for whose apprehension sufficient ground exists…" When we look at the Delhi Police Act of 1978 we find that under sections 59 and 60 the provisions of section 23 of the Police Act of 1861 have been elaborated but in essence the duties of the police remain as was prescribed in 1861. Even in the Model Police Bill prepared by the Soli Sorabji Committee this position has not substantially changed. The duty of the police is to prevent offences from taking place, investigate crimes when they occur and apprehend criminals. This is fundamental to every police force in the world.

The Police Act notwithstanding, the principal powers and functions of the police are given in the Code of Criminal Procedure. For example, the power to arrest persons is given in chapter V Cr.P.C. and in effecting an arrest the police officer is bound by the provisions of law. He has no arbitrary powers, nor can an unauthorised person direct or pressurise a police officer to arrest any person or persons. In fact section 60A Cr.P.C. is very specific in this behalf and it reads, "Arrest to be made strictly according to the Code: No arrest shall be made except in accordance with the provisions of this Code or any other law for the time being in force providing for arrest". A Magistrate, a Judge, a superior police officer who is directly connected with the case in hand may order the arrest of a person but certainly no minister, no politician, no other officer can give such an order to the police. If such an order is given the police must ignore it.

Chapter X Cr.P.C. gives the Executive Magistracy and the police the additional duty of maintaining public order and tranquility. In other words, the police is responsible for ensuring that law and order is maintained. For this purpose it is empowered to use force, including lethal force, to disperse an unlawful assembly, to prevent riots and to ensure that there is peace and

tranquility. Chapter XI reminds the police that it is its duty to interpose for the purpose of preventing the commission of any cognisable offence. Preventive action, therefore, is not only permissible, it is enjoined and failure to take preventive action could be treated as dereliction of duty. A police officer may arrest without a warrant a person designing to commit a cognisable offence and to intervene to prevent injury to public property. Once again the police is required to follow the law and intervene whenever there is adequate information to suggest that a cognisable offence may be committed. In this behalf the police is not subordinate to anyone and must act according to law.

Chapter XII Cr.P.C. is one of the most important parts of the Code of Criminal Procedure because it is under this chapter that the police registers information in relation to a cognisable offence and then proceeds with its investigation, arrives at a conclusion about the person or persons against whom there is sufficient evidence to establish a prima facie case, or decides that no case is made out against any person and, therefore, the case should be closed with the permission of a competent court. This is the chapter under which the police presents a challan before a Magistrate and if the Magistrate takes cognisance thereon, the police thereafter proceeds to help the prosecution in the trial which would follow.

In the matter of investigation the police, which includes the Delhi Special Police Establishment in whose name CBI takes action, is totally immunised from pressure by anyone. There are only three authorities which can ask questions to the police regarding an investigation. The first is the superior police officer who, under section 36 Cr.P.C. by virtue of his right to exercise the same power as the officer incharge of the police station located within his jurisdiction, can call the station officer to account. The second is a designated police officer who is so directed by the state government under section 158 Cr.P.C to be the channel through whom a report under section 157 is to be forwarded by the station officer to a competent magistrate. Such superior officer may give instructions to the officer incharge of the police station as he thinks fit and may record such instructions on the report under section 157 while forwarding it to the Magistrate. The limitation here is that no officer who is competent to give directions to the station officer may order him to function in contravention of law, add to the charge-sheet names of the persons against whom no prima facie case is made out or delete from the list persons against whom there is a prima facie case. The instructions have to be aimed at improving the quality of the investigation and nothing more and nothing less.

A third authority would be the Magistrate before whom the report is presented. Under section 159 Cr.P.C. a Magistrate may direct investigation, depute a subordinate magistrate to hold a preliminary enquiry or himself hold such enquiry. Such intervention is legal and lawful, but it cannot replace the police investigation, nor can it result in the police being given instructions which are not lawful. When the investigation is completed and the police officer sends his report under section 173 to a Magistrate, either by way of a challan or as a final report requesting permission to close the case, such report may be submitted through a superior police officer designated under section 158 and such officer may either immediately forward the report to the Magistrate or order further investigation. Once, however, the challan has been presented the responsibility passes to the Judiciary for further action, except to the extent that under section 173 Cr.P.C even after the challan is presented the police is competent to make supplementary investigation and forward a further report to the Magistrate.

This elaboration of law becomes necessary in order to explain that in the law as it stands today there is an absolute bar on anyone, other than a superior police officer or a Magistrate, to intervene in the investigation of an offence. The Chief Minister, the Minister incharge of Home, their officers, other politicians, members of the media, people at large are totally precluded from any role in the investigation of an offence. The autonomy of the police in this behalf is absolute and it has been so ever since the British established the present system of policing and justice in India. The amendments to the Code of Criminal Procedure, various Acts governing the police, have not altered this position, that is, in the investigation and prosecution of offences the police is totally independent of any executive or political authority. This does not mean that if the police needs legal advice it cannot refer the matter to the Home Department for obtaining the advice of the Law Department, of the Advocate General or the Attorney General, but this has to be done formally, specific questions have to be forwarded for a clarification or advice and the legal advice must be in writing and in the form of an opinion. It can never take the form of a directive because ultimately the decision whether to prosecute or not and the charges on which the prosecution is to be done rests with the investigating officer. The Law Ministry or Law Department cannot given any directive whatsoever to the police in this behalf. This becomes all the more important in the light of the DSPE/CBI investigation of the cases relating to coal allocation. The mistake that the DSPE made was in showing a status report meant for submission to the Supreme Court to the Union Law Minister, the Attorney General and certain officers representing the Coal Ministry and the Prime Minister's Office. These are all persons who have no authority whatsoever in either suggesting to the police or directing it to change any part of the report. This is all the more so because DSPE had not made any formal reference for legal advice and, therefore, all the unauthorised interveners were acting without jurisdiction. Whose fault is this? Certainly the law cannot be faulted because some persons violated the law. It is the Director of the SDPE/CBI and his officers who acted wrongly in answering a summons by the Law Minister. What they should have done is to politely but firmally tell him that they would be unable to share any information with him regarding a specific case. The Supreme Court can direct that officers shall obey the law, but if an officer chooses to ignore this direction the only remedy is to punish him. Any other action by the Supreme Court in the face of the existing clear provisions of law would be tautological and uncalled for.

Having established that the existing law gives the police complete freedom in the matter of investigation of offences and for which the police must be protected from undue influence or pressure, what are the areas in which government may and in fact should give directions to the police and what is the manner of discharging accountability in the matter of the functioning of the police? When we talk of police reforms we must take these into account. First and foremost it must be recognised that the police is a part of the executive government, created by law and as such it is both a creature of law and a servant of society as part of the Executive. To state that the Executive has no rule to play in the matter of policing is something which is totally unacceptable. The Executive brings legislation before the Legislature to further its own ability to perform as an effective organ of the State. This authority of the Executive cannot be diluted. Similarly, it is the Legislature which legislates, even in matters relating to the police and this authority also cannot be diluted. The power of superintendence over the police, including the Delhi Special Police Establishment or CBI constituted under any law creating it, will have to continue to vest in the Executive, if for no other reason than the fact that rules, regulations, etc., framed under the Police Act, any Police Act, would come under the definition of delegated legislation and would form an extension of the law in question. Delegated legislation cannot be

further delegated to subordinate authorities and, therefore, the ultimate arbiter of what rules and regulations will govern the police has to be the Executive Government.

The police, in addition to the matter of offences also is a guardian of public peace and tranquility. This calls for certain regulatory powers to the police and executive magistracy, including regulating the congregation of people, prescribing instructions and standing orders regarding traffic movement, processions and assemblies, public meetings, etc. Standing orders or procedures of how to deal with a law and order situation, a mob, an adamant procession must contain the instructions which government wants the police to follow. It is legitimate for government to state how force can be used, the quantum of force which may be used and the attitude of the police towards different types of assemblies. For example, government may desire that a crowd largely made up of women and children, students, a religious congregation, etc., should be handled with great restraint by the police even faced by the increasing defiance of orders by the assembly. It would not be permitted to use extreme force against persons who are individually quite helpless. Similarly, an agitation by students, workers with a genuine grievance, people who are handicapped would have to be dealt with patiently, sympathetically and with great restraint and government must make this clear to the police. On the other hand a violent riot in which there is arson, deadly assault, looting and in particular violence aimed at a particular community must be dealt with very firmly, with adequate force being applied at the earliest juncture to bring the situation under control. Here the police must act swiftly and if the use of firearms is called for, the police must do so, though under strict fire discipline. Here the instructions of government would be different from those relating to a collection of women and children. The power of superintendence covers all this. It goes further. If a police officer disobeys instructions or is derelict in his duty government should call him to account immediately and award suitable punishment. In this matter the subordination of the police to government has to be complete and there is no way in which the police can be made independent in this behalf. This does not mean that they will work under undue constraint, but they will observe the instructions given in this behalf by government, follow instructions or pay an immediate price.

It is argued that government should virtually have no power in the matter of postings and transfers of police officers. It is considered that one of the things which saps morale is arbitrariness in personnel management and, therefore, such arbitrariness must be removed. This is a principle which applies across the board to all government organisations and should not be restricted to the police only. There must be a specific policy regarding postings and transfers, but such a policy cannot eliminate government altogether from personnel management of the police. If there are charges of misconduct against a police officer, which are raised in the Legislature, can the Chief Minister or the Home Minister turn around and state that he has no authority in this behalf? Legislators can legitimately demand that if the law does not authorise the government to even look into police misconduct, except on the advice of a complaints authority which may take its own sweet time in reaching a decision, then the law should be changed and this would have to be done notwithstanding any instructions given by any court, including the Supreme Court.

Let us carry the argument further. At present the District Magistrate is an agency not under the police but with certain powers under the Police Act. Even the Soli Sorabji Committee has not recommended dilution of these powers. However, there is another power that the DM has, which is that people who have a grievance against the police can go to him and without in

any way intervening in any matter in which the police has exclusive jurisdiction, he can at least ask the Superintendent of Police about the specific complaint made to him and then take steps to persuade the police to settle the grievance. This is an immediate remedy available to people against police excesses and so far it has been working fairly well. The grievances redressal machinery suggested by Soli Sorabji Committee and pleaded for before the Supreme Court by persons who are fighting a series of writ petitions in the form of Public Interest Litigation, would be procedure bound and would not be able to give quick relief to a person who has a complaint against the police. Imagine the fate of a person illegally detained by the police, not having the wherewithals to approach a court of law and being kept at the tender mercy of the police, which has its own agenda. To whom should such a person turn? By the time the grievance redressal machinery swings into action the man may have already faced humiliation, illegal detention, physical violence amounting to torture and worse. Should there not be someone on the ground by whom at least his complaint can be looked at and the police be made immediately accountable for its actions?

We are not living in Britain or Scandinavia. We are living in India in which, like other arms of government, the police also can be arbitrary, venal, either deliberately or unknowingly uninfluenced by law and, perhaps, in some sort of arrangement with the very criminals it is supposed to suppress. One wants a civilised police force just as one wants an educated teacher and an honest revenue official, a knowledgeable forest official, a transport department which is not steeped in corruption and a municipality which actually serves the people. The police cannot be the only organisation to be subjected to reform, nor can the police be left to its own devices in which government virtually has no power to correct wrongdoing and, in the name of autonomy, accountability is shown the door. These are all factors which must be taken into account when we talk of police reforms. It is not an easy task, but there have to be two different but parallel approaches to reforming the police. The first is to remind the police of its own authority under law and then keep a strict vigil to ensure that the police actually functions according to the law. The second, equally important approach, is that whereas arbitrariness by officials and politicians in dealing with the police is eliminated, the system of accountability is tightened and the police must be forced to render account and tread the right path. That, according to me, is the true reform of the police.

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