The democratic set up of a country is sustained and strengthened by the observance of the rule of law. As a law enforcement agency the police have constantly to keep in mid that their enforcement of law derives its sanction from the public at lange. A healthy police-public relationship on a continuing day to day basis is vital to secure the desired measure of public involvement and cooperation in police work to make it meaningful and acceptable to society.

A democratic state is one “where Government is accountable to the people through free and fair elections to the public office; adults have equal rights to vote and stand to a election, civil and political rights are respected; and a form of civil society can function where social associations are independent of the state exists.”¹

Police means “a branch of Government which is charged with the preservation public order and tranquility, the promotion of public heath, safety and morals, and the prevention, detection and punishment of crimes.”²

The very basis of a democratic government is public support. Without that support no government can function. The same offices to the relationship between the public and the police no policemen will succeed unless he gets enthusiastic public support.


Police is a sub system within the democratic set up of the state. In a democracy, it is vital that the operational styles of all public institutions are geared to report to the needs of good governance by ensuring that they draw sustenance from the people’s support and elicit public participation in their working.

“Democratic governance exist not only to meet people’s need but also to fulfil people’s ideals, such as liberty.”\(^3\) Since police function is essentially an administrative function and as “The primary responsibility of an administrator is to perform his function in the service of the nation as an enlightened citizen to strengthen a new democratic state…..”\(^4\) democracy is threatened when police ceases to respect the legal and constitutional rights of citizens and persistently disregard the due process of law.

The objective of policing is maintenance of peace, security and reduction of crime and conviction of the offender and ensuring protection in the community. Police discharges these functions conveniently in an authoritarian system, but in a plural, social and democratic political setup where individual, offender and victims equally have certain rights and state is supposed to implement laws for social welfare, where there is lot of gap between ever rising demands of the people response of the state apparatus in fulfilling them and where socio-political, economic and cultural tensions
brew up, police walks on a double edged dagger of authority and accountability in an effort to maintain a balance between the two……

Since “a small curb on one’s wishful movement may turn one prejudical to the force” Police administrator must always seek the decision which takes into consideration the subtle balance between efficiency in goal achievements and propriety of means used for such achievements. In a democratic society governed by the ‘Rule of law’, the police are an institution falling under the hegemony of the legal system have the basic commitment, of the ‘Rule of law’, implies interalia, that no citizen can be deprived of his life or liberty except according to the procedure established by law. The police in seeking to attain the goals of law must do so in a manner which abides by the ‘Rule of law’.

The need for maintaining the ‘Rule of law’ while seeking to achieve police objectives has important operational significance. To do this, police is precluded from basing their operational decisions solely on grounds of efficiency and has to take into consideration the constitutional propriety of their decision. Proper police administrative decisions have to maintain a balance between economic efficiency and constitutional propriety. There must be an equilibrium between the fundamental rights of the duty of the police is to act in accordance with the law of the land and this has been best
explained by the learned Law Lord, -Lord Denning in R.V. Metropolitan Police Commissioner\(^7\) as – “I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps to post his men that crimes may be detected, and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and if need be, bring the prosecution to see that it is brought; but in all these thing he is not the servant of anyone, save of the law itself.”

The police is vested with adequate powers to make arrest, conduct searches and interrogate of suspects and even use deadly force if necessary. As, it is not possible for the legislature to visualize all situations which the police faces in the practical application of the law, it is necessary, that the police exercise there discretion wisely as an arbitrary action amounts to break of Constitutional provisions and infringement of human rights.

K.C. Davis has offered some clarification of the term discretion in the following words,\(^8\) “A public officer has discretion whenever limits of his power allows him the necessary freedom to make a choice among possible courses of actions or inactions”. In view of this definition, a police officer exercises discretion whenever he or she has a choice. In some cases, the choice is easy- like arresting red handed a law breaker. But at times, such as
in a case of dispute between two individuals standing apparently on the same ground, it becomes difficult. The application of discretion is influenced by several factors like: background of the parties, characteristic features of suspects, nature of the offence, departmental policy and the law of the land. Moreover, it can also be affected by the influence of other police officials on that police personnel (departmental influence), who is dealing with the case, educational and environmental factor of the police personnel and his outlook. Apart from this, extra legal factors like – officer background, victim pressure, individual perception, community pressure also affects police discretion. As the main responsibility of administration of criminal justice is to balance the conflicting principles of order and legality, it is expected from policemen to adopt a policy of prudent application of discretion keeping in mind that “discretion is governed by rule of law, and it must not be arbitrary, vague and fanciful or oppressive.”

However the discretionary decision made daily by police officers is free from examinations by superiors. As a result, this freedom to make individual discretionary decision are sometimes based on personal bias, studies have shown that it is the tendency of patrol officers to under-enforce law in cases including minor offences. Thus police exercise what is termed as ‘non invocation discretion’. “Non invocation Discretion is primarily due
to law visibility exercise of authority.”

The Indian Democracy, with its outdated, Police Act of 1861 on several occasions has witnessed, arbitrary usage of police discretion, on political consideration. The disastrous consequences of such arbitrary usage of discretion were seen during the Emergency (1975-77) when, as observed by Shah Commission; “the police was used and allowed themselves to be used for purposes some of which were, to say the least, questionable. Some police officers behaved as though they were not accountable at all to any public authority. The decision to arrest and release certain persons were entirely on political considerations which were intended to be favourable to the ruling party. Employing the police to the advantage of any political party is a pure source of subverting the rule of law”

In India today, a dual system of criminal justice has grown up-the one of law and other of politics. At least with respect to the police, decisions made by the police officials about the application of law, are frequently subject to partisan review by the elected representatives. The autonomy of the police officials, in specific and routine application of laws, has been severely curtailed and on the other hand people accused of crime have got into the habit of appealing to political figures for remissions from the sanctions of law. Police officials throughout India have grown accustomed
to calculating the likely political effect of any enforcement action they contemplate. Fearing for their careers and especially their posting, they have become anxious and cynical.

Under circumstances there is an urgent need to insulate the police from political and other extraneous factors with a view to ensure impartiality and fairness of policing.

In this context, it is also necessary to analyse the internal autonomy of police as prevalent in other democracies of the world.

In U.K. – the doctrine of Constabulary Independence does give police officers ‘the widest possible discretion’¹², but at the same length the British Police remains exceptionally accountable, despite their independence of governmental institutions. Sir Robert Mark, a distinguished Commissioner of London Metropolitan Police has observed “The fact that the British Police is answerable to law, and that it acts on behalf of the community and not under the mantle of the government, makes them the least powerful, the most accountable and the most acceptable police in the world.”¹³

In Canada, the police at all levels are independent operationally and only respond to operative directives emanating from within the department. In terms of Federal Police Function, the Royal Canadian Mounted Police
(RCMP) reports to Federal Solicitor General, a post equivalent to the Home Minister of India. At provincial level, the police reports to the Provincial Solicitor General but there is no interference at any level. In New Zealand, the police Act of 1988, ensures that the police are not subjected to the directions given by the Minister-in-charge in matters of law enforcement. The constitutional relationship between the police Commissioner & the Minister-in-charge of police differs from that of the chief executives of all other government agencies and their ministers. While responsible to the Minister of Police for the general administration, the Commissioner is not subject to the direction of the minister in any operational matter of law enforcement.

Similarly in Japan, a very developed democracy, the National Police Safety Commission (NPSC), an apex body of police system, has virtually insulated the police from any kind of political pressure or control, Even the Prime Minister of Japan is not empowered to give any operational direction to the police. Similar circumstances can be seen to prevail in so far as police investigations are concerned in the United States of America, where it is said that, “political machines can no longer control American police departments nor can they protect police departments from public scrutiny.”

Unfortunately, inspite of the existence of constitutional and legal arrangement which establish democratic practices and Rule of Law in a
State, police Behaviour can actually change the image and nature of Government making it look like less democratic and less respectful to Rule of Law.

Democracies all over world have witnessed various forms of diabolic intrusion in life and liberty by the police. The strong pillars of democracy in USA was shaken time and again by the police, as has been reflected in the leading cases of America like Rochin Calefornia\textsuperscript{15} (1985) Tennessee v. Garner\textsuperscript{16}, Mckune v. Lile\textsuperscript{17} (1985) and so forth. In UK the case of Satpal Ram\textsuperscript{18}, in Ireland the case of Byrne v. Ireland\textsuperscript{19} and the list continues.

The analyses of recent police scandals in Western societies seems to suggest that democratic accountability and repressive styles of ‘law and order’ policing (zero tolerance) do not go well together’ Kertesz and Szikinger see a ‘cacuum of legitimacy’\textsuperscript{20} at the core of the difficulties that go along with the formation of accountable police forces in the modern democracies. They draw our attention to auditing procedure and human resources development, and about the positive impact that ethical standards and transparency can have for good police management.

The president’s Commission on Law Enforcement and Administration of Justice set up by President Lyndon Johnson observed “Crime does not look the same on the street, as it does in the Legislative Chamber. Many
times, a police officer has to act in difficult and fast moving situations, can bring about calamitous consequences. However, the efforts of the police should be, never to abuse or sacrifice the use of his best judgment or discretion and act in a discriminating way, but with common sense and discretion.”

The citizens expectation of safety is a prerequisite for the exercise of rights in a civil society and this safety must be guaranteed by accountable and effective forms of policing. Thus there is a change in the philosophical mandates of law enforcement across the world and many of those changes challenge the way police agencies are managed. In the first report of the Twelfth Criminological Colloquium, Amadue Racasens has pointed out that, apart from cultural and political change in the last decade, policing has also changed and at present it is going a stage of rapid change. Recasens while defining the historical roots of the police in democracies, locates the police within the framework of the sovereign state, the administration, the judiciary and the citizenry. In both the US and the UK, the change has been stimulated by the introduction of New Public Management (NPM) initiatives. A core element to the changes in the police system has been a re-branding from ‘force’ to ‘service’ and the development of Community Policing techniques. Police management can no longer take comfort in the
traditional response of a punishment centered organizational bureaucracy accentuated through a reactive policy because of the due process revolution through which the people in a democracy reciprocate to police actions. In circumstances, police leaders have to morally, ethically and legally guided by an inner strength that speaks of their integrity to the individuals who report to them and the individuals whom they serve with exemplifying levels of commitment in today’s climate of uncertainty.

Problems of social and cultural discontinuity do affect policing in all modern societies, especially those that are in the process of rapid modernization. However, the transition of policing from democratic civilian mode i.e. (policing by consent) to a military form is an obvious predicament in many societies in transition.

Thus, in order to serve democracy, the policy system has to contribute, to the upholding of the principles of liberty, equality and freedom of expression. They have a paramount ethical and moral responsibility to ensure that enforcement of laws is impartial. David H. Bailey in his book ‘The limits of Police Reforms’ with reference to the use of police-discretion in Japan says “There, the obligation, to make police behaviour conform to the high standards, has been entrusted, primarily to the police, keeping external suppression in reserve, in the event self regulation fails.”

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As the dynamics of a modern state demands a continuous upgradation of personnel, quality and practices; in tune with the modern principles of human resource management, police must also change itself, keeping in mind that “Every public servant is a trust of society and in all falters of Public Administration. Every public servant has to exhibit honesty, integrity, sincerity and faithfulness in the implementation of the political, social, economic and constitutional policies to integrate the nation, to achieve excellence and efficiency in Public Administration…”

Conclusion

Citizens of any democracy expects the police to be humane and efficient. In other words, policing is a combination of welfare activities with punitive strategies under strict ethical standards, which at times involves the use of force for legitimate purposes only in a professional and disciplined manner. It must be remembered that the task entrusted to police is enormous and the police cannot succeed in fulfilling their functions without people’s co-operation and public approval. Professor R. Deb., a scholar in Indian Police Service said- “if law represents the collective conscience of Society, the Policeman, its principal law enforcing agent ought to be the staunchest protagonist, defender and keeper of that conscience.” He quotes Shri B.N. Mullick – an eminent policeman of his times, as saying that a modern
policeman ought to be an ideal citizen from every point of view. “He must be on the side of good, everywhere and at all times. But to do good the policeman must himself be good. To be able to include others to obey the law of society, he must obey them first. With his example set before them, people will flock to his banner not only to seek his help and protection but also to assist him in his noble task. He must be the leader amongst men. This leadership he must earn by his integrity, kindness, character, steadfastness, dignity, ability and self-sacrifice. He must always set the right example”. Professor R. Deb’s description of an ideal police is- “He should never forget that, like every other citizen he too is subject to the Rule of Law, and is legally responsible for his actions in carrying out his duties, for he who enforces law must live by the law. In discharging his onerous duties and responsibilities under the law the policeman must eschew all temptations to have recourse to short-cuts and extra-legal methods. He must also be absolutely honest, impartial and fair even to the worst legal transgressor. In fact, he must be the ideal citizen and a true servant of the people in the performance of his duties under the law.”26
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11. Ibid


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