Chapter – VIII

PROBLEMS IN LAW ENFORCEMENT

The job of the police is challenging and difficult. The success of criminal justice system depends on the work of the police. Effectiveness of the police enhances the feeling of safety among the people. Whether they got adequate protection from the criminal acts of others, depend on the efficiency of the police system. Any lapse in this matter will invite criticism from the people. How far the police are able to prevent crime is another criterion to measure the efficiency of police. The more they show the efficiency in this regard the sense of security in the mind of the people will also increase. Success of the prosecution depends on the efficiency of the police investigation. The task of the police undoubtedly requires proper care and intellectual ability. In a society with diversities, law enforcement is a complex problem. The present day police system in India fails to rise to the expectations of the common man. Their colonial inheritance, though a factor, is not the sole reason for the short fall.

Inadequacy of staff and lack of proper and modern training and co-ordination coupled with lack of support and co-operation from the public makes the job of the police ineffective. Deployment of police to other duties adds to this difficulty. This paved the way for questioning the integrity of the police as well as the need of reorganizing the present system of police. Though, several Police Commissions\(^1\) had gone into the issue and submitted reports it was of no use. Judicial directions\(^2\) in

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this regard also fell in deaf ears. This attitude of the executive contributes much to the making of the police force a socially deprived agency having all vices.

Post colonial experience of India remained the same. Except the change in masters, the police remained the same. Due to the political interference the independence of the police is compromised and made the police an agency to implement objectives of the political bosses. The Government in power unwarrantedly interferes and controls police in their day-to-day affairs. The Shah Commission in its report stated thus:

“Employing the police for the advantages of any political party is a sure source of subverting the rule of law. The government must seriously consider the feasibility and desirability of insulating the police from the politics of the country and employing it scrupulously on duties for which alone, it is by law intended”.³

This frustrates the very purpose of police system. Police should be made an agency for law enforcement, which should be independent and impartial.

Problems and Panaceas

The police force which upholds the rule of law in all its activities is the need of the hour. Maintenance of law and order and investigation

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of crime without partisan and oppressive means is ideal in any society. There are several factors, which prevents the achievement of the ideal State. The problems, which the police are facing, must be answered at the earliest. Following are the factors actually drag the police from becoming what it ought to be.

A. Institutional Problems

1. The Police Culture

There was no sincere attempt on the part of the government to redefine the role and responsibilities of the police. The Police Act, 1861 is still remaining unchanged and thus the police culture that was in existence during the British regime is still continuing. In the pre-independent period, the police was the principal force used to oppress the people. Torturing was the usual practice in the police behaviour. An oppressive and repressive philosophy guided the police in British India. The present day Indian police also follow almost in the same line. There developed a police sub-culture which is not human friendly, creating problem for the police as well as the public. The police are viewed by the public as an agency to implement the dictates of the Government in power rather than as one for enforcing law. To make the police human friendly it has to come out from the sub-culture. Atmosphere shall be created for them to act as an independent agency in the society. A police agency, which is not taken into account the miseries and problems of common man cannot uphold the dignity of the individual by safeguarding his constitutional and legal rights and safeguard the fabric of the society and the unity and integrity of the nation.4

2. Poor Selection and Training

4 Lord Canning in 1860, suggested that no police system can be really effective in India, which is not closely connected with the village system. Transactions, SVP Police Academy, Hyderabad, vol.38, 1983, p 20.
Law enforcers shall abide by the laws failing which there is no meaning in making laws and law enforcement machinery. A right person in the right office is the sine qua non of the achievement of the goals of law. Proper selection and efficient training imparted to the suitable persons are effective means of securing lawful and fair conduct. The nature of job, which is tedious and ill paid, prevents the police from rising to the expected high standard of conduct. Protection of individual liberty is considered as an obstacle in the fight against crime. Unscientific selection and inadequate training contributed to this attitude. Grossman’s observation regarding recruitment is apt in the present day context in India also. He argued, thus:

“Poor selection procedures for recruits, combined with low educational requirements and a promotion only from within policy abets the progressive advancement of mediocrity. If police departments cannot successfully recruit and retain their share of intelligent, educated persons, they cannot perform sensitive policy making functions. Police personnel must be capable of modern leadership. Rigid physical and social-cultural standards have dominated… recruitment. Such standards have little relation to the difficult problems faced by police today”.  

Courses on character building and public relations shall form part of the training programme. Proper and rigorous training given to graduate recruits made the British police popular. They are specifically trained in investigation of crimes, crowd control and in all aspects of police-public relations. The American Bar Association has provided

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6 Ibid.
guidelines and standards\textsuperscript{7} relating to the role, function and training of police. According to the Association, the effectiveness can be measured by the following standards.

a. Safeguard freedom, preserve life and property, protect the constitutional rights of citizens, and maintain respect for the rule of law by proper enforcement thereof, and preserve democratic government;

b. develop a reputation for fairness, civility, and integrity that wins the respect of all citizens, including minority and disadvantaged groups;

c. use the minimum amount of force reasonably necessary in responding to any given situation;

d. conform to rules of law and administrative rules and procedures, particularly those which specify proper standards of behaviour in dealing with citizens;

e. resolve individual and group conflict;

f. refer those in need to community resources having the capability to provide needed assistance.

This shows that the methods of training must aim at the mobilization of maximum information within the shortest possible time and to humanize the police towards complainants and witnesses by changing the attitude. Training must impart methods of crime

prevention, law enforcement, and use of police power including lawful use of force with full emphasis on human rights values.\(^8\)

Poor selection procedure for recruits, combined with low educational requirements, meagre payments, unreasonable political and superior interference, all helps the advancement of mediocrity. The department should be allowed to recruit intelligent, educated persons who can exercise the discretionary power for the good of the society. Now, the policemen are semi-skilled and half-baked. The training programme may be improved to instil them a sense of responsibility and ability to understand the importance of the tasks assigned to them and the complexity of the laws, which has to administer.

The present selection procedure is faulty because of two reasons. One is that the process is completely controlled by another agency, the public service commission. The screening test is only helpful to test the general knowledge of the examinee and those who are more fortunate than the other may get selection. This scheme is not useful to test the intellectual ability of the person. Secondly, the training imparted also lacks in material points. In the training period, physical training gets more importance than the classroom exercises. This makes them physically better. But a person ‘without brain’, however physically able is not worthy for the police job. The emphasis on selection is still on muscle and not on mind. It is presumed that constables are meant only for physical work and so, no need to have the capacity to think and act.

\(^8\) U.N. General Assembly resolution 34/169 of 17 December 1979, Code of Conduct for Law Enforcement Officials, art.1: Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

Art.2: In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.
The recruitment must be made on the basis of a competitive examination, which a fairly bright graduate is able to compete successfully. The constable, lowest in the police hierarchy, is the most common, visible manifestation of the police force so far as the public is concerned.⁹ The constable must be a man, educated, intelligent, possessing good judgment and courage. The selection and training programme must be designed in such a way to achieve these goals.

Organizational behaviour is largely the outcome of training and continuing education. In both areas, the Indian police are lacking content and methods. Present training is not proper and innovative. Police are not kept up-to-date on legal developments relevant to their work.¹⁰ When the final report is submitted the police have a feeling that their job has come to an end. They are least bothered about the defeat in the court. There is no homework regarding the defeat in the case and there is no enquiry from the top authority. A defeat in a case must be an educative one, so as to avoid flaws in the investigation process in future. This warrants a continuous and effective training.

The classroom exercises may be designed to inculcate a democratic sense, idealism, and a human rights approach. They should understand that the police are basically to help the public. Training in human rights, psychology, criminology, and criminal laws are to be included or improved to get the policeman qualified in every respect. One cannot expect a human friendly, law-abiding police, when the officers are indifferent to human rights. If the leadership itself is doubtful about the imperatives of human rights in policing, and if they disregard its importance in the training of subordinate officers, it is

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pointless to expect change in the behaviour of ordinary subinspectors and constables.\textsuperscript{11} Similarly, orientation programme for refreshing their intellect and solving their problems must be conducted for the benefit of the police personnel.

More over the police officers should have the quality of honesty, integrity, and commitment to genuine police work, and enabled and encouraged to function without interference. In order to get person with such qualities, high standards of rectitude and straightforward dealings are maintained at the stage of recruitment and training.\textsuperscript{12}

3. **Strength and Service Conditions of the Police**

At present, the numerical strength of the police in India is not in par with the population and the attendant increase in crime and police responsibility. It is not the number that matters but adequate quality personnel. Police work is very complex that needs quick action, intelligence, knowledge of law, good physique, sense of devotion to duty etc. Hence, the recruitment must be judicious and strictly according to the standards laid down for the purpose. Persons having education and a sense of duty shall be recruited to the police. A good and decent salary must be given to the recruited persons, so as to attract the best, qualified and talented hands to the police.

Police are aggrieved of their inadequate wages and service conditions.\textsuperscript{13} The police work is full of stress and strain. Whenever it is required they have to fall in line without questioning irrespective of the


\textsuperscript{12} National Police Commission, Third Report, p.45.

nature of work. It is a fact that the wages are meagre and not in proportion to their work and the time they spent in the uniform. This definitely has an impact on the morale of the police personnel and they feel dejected. Moreover inadequate wages breeds corruption. The feeling of unhappiness continues unabated due to unsympathetic attitude of the Government. The dissatisfaction reflects in their behaviour towards the public. Poor pay and promotion prospects coupled with low status in the society prevents person with good educational background and family status from joining the constabulary. Improvement in pay and living conditions alone will motivate educated and well-behaved youths to join the police force. In order to achieve this separate wage scheme must be introduced in the police department. Legitimate career ambitions of the constabulary are being blocked due to the promotional structure and consequently a large number of constables retire as constables.\textsuperscript{14} Unless this situation is changed the institution may not be able to attract young talented and educated youth to the police. It is high time to design attractive service conditions.

It is often the complaint of the police personnel that their hard work and sacrifices goes unnoticed without any appreciation from the government or from the department. Effective methods shall be forged to appreciate the efficiency as well as deprecating the abuses. Expectation of recognition and reward from the society and the government, shall be fulfilled. This must be built in as a routine affair within the police which alone will attract efficient and responsible man possessing good judgment in the police department. Good work must be rewarded and the abuse of power must be punished. Instead of giving

medals, monetary incentives may be given to best policeman and best police station. This may create a sense of responsibility and greater commitment. The police must promote a separate organizational culture where the concept of reward and punishment becomes the spirit of functioning of the organization. This will be needed to sustain the motivation level of the personnel.

4. Out dated Police Structure

The police agency in India is still structured based on 1861 Police Act, which was enacted to cater the political needs of the colonial administrators. The present structure is such that there are too many in the top to command and less to execute. There are personnel directly involved in investigation and maintenance of law and order on the one hand and those involved in administrative and supervisory work on the other. Police personnel up to the level of circle inspectors are directly involved in investigation and maintenance of law and order duties. They are, in fact, doing the police works in the community and has direct connection with the public. On the other hand the top officials of and above the rank of Dy.S.P are engaged in office work and seldom engaged in investigative work. Intelligent persons are selected by all India service examinations and given better training and posted at the top for controlling and supervising the police. Except in a few cases, the police agencies are not able to use the expertise of those officers in investigation. Though high scale of pay and perquisites are being paid, to the top officials they are not contributing much to the performance of real work and share the difficulties and dangers at the grassroots level work.

5. Work load
The investigation of a crime, a challenging and tough job, requires full time devotion from the Officer to make it successful. In India police spend lion share of their duty time to other kinds of routine work like law and order, patrolling, security, traffic duty, escort duty etc. and very little time is left to undertake investigation. Even in cases, which they are in charge of investigation they cannot concentrate in the investigation process and also loses continuity in the process. Diversion of the police to work other than investigation results in the handicap of crime detection process. The delay in completion of investigation adversely affects the entire criminal justice system. Increased workload and shortage of time for investigation may force the police to opt for shortcuts and resort to third degree methods.

The way out from this dilemma is to separate investigation and law and order work. Two independent agencies shall be entrusted with each duty by separating police into two. We can expect a better result in the investigation process if they could devote fulltime for investigation. By involving exclusively in investigation, the police (investigation) will become experts in the field. This in turn would reduce unjustified prosecutions as well as undeserved acquittals. No uniform is required for the police (investigation) and so, they can establish a better rapport with public. Since the investigation police is not participating in the maintenance of law and order they will be free from people’s ire and they will get maximum co-operation from the people in the investigation.

The police could be called into duty at any time and can be deployed anywhere and are obliged to work in conditions, which are abhorrent to many. Some time the duty is harassing, unpleasant and irksome and at certain times unsecured. In most of the areas,
accommodation facility is far from satisfactory. Discipline of the force requires them to work unconditionally at any time anywhere as the Government direct. Nobody is bothered about their plight and it seems that the Government is exploiting their discipline.

6. **Lack of Adequate Staff**

State’s police are under staffed. The population-police ratio in India is low\(^{15}\) and is largely concentrated in cities and towns. Territorial area with in the jurisdiction of a police station in rural areas is very wide, adversely affecting effective patrolling and law enforcement. In the rural areas, police have to work for long hours on most days of duty.

Though, after independence, the number of top officials has increased there was no corresponding increase in the lower level functionaries. During seventies in Kerala, one Inspector General of Police (IGP) was there in the top of the state police force to look after the whole affairs of the police. Now it is being entrusted to several Director Generals of Police. \(^{16}\) The number of constables did not increase in proportion to the increase of population. There are many to give commands, but less number to enforce it. It seems to be wise to increase the number of lower level functionaries corresponding to the increase of the number of top officials. \(^{17}\)

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\(^{15}\) http://www.bprd.gov.in/writereddata/linkimages/22. The police people ratio in India is 1:712, while the ratio in United Kingdom is 1:429. see also www.ncrb.in. The actual police strength of police in India in 2005 was 13.4 lakh against the sanctioned strength of 14.9 lakh (both civil and armed combined). The total strength of women police was 40101 against the sanctioned strength of 40737. For 100 sq. kms. the strength of the police was 42.4. But, Union Territories of Delhi and Chandigarh have recorded high-density values at 3652.5 and 3654 police men per 100 sq.kms. respectively.

\(^{16}\) Source: Office of the IGP (HQ), Thiruvananthapuram. Nine DGP posts include one DGP and eight Addl.DGP posts. See, annexure - 2

\(^{17}\) As per the 2001 censes the population of Kerala was 31838619. The police strength now is only 46935 including top officials. It means the police people ratio in Kerala is about 1:679.
7. Lack of Infra structure Facilities

The surroundings in which one works have an effect on the morale of the personnel, be it police or others. Lack of basic facilities is the hallmark of many of the police stations which are housed in rented buildings. The facilities in most of the rural police stations is either insufficient or totally absent. Such situations have a degrading and dehumanizing effect on the cops. It adversely affects their self-respect. Due to the increase in number of police stations and emergence of new areas of operation and issues of confrontation, the meagre resources available are further stretched making the conditions of the police personnel more miserable. Their working hours became more lengthy and unpredictable.\(^{18}\) The police could expect danger at any time. These issues remain unnoticed and unremedied and persons vociferous of protection of human rights never try to appreciate the agonies of police. The worries and troubles make them inhuman also create a sense of hatred against the society.

8. Job Stress

Police officer on duty undergoes much stress and strain. Long hours of work, dangerous nature of duties, inhuman environment in the police stations, strictly structured hierarchy, political interference in their day-to-day affairs, threat of suspension etc. are certain factors, which lead to high stress among police men.\(^{19}\) Some policemen may not be in a position to adjust with such situations, which may ultimately end in suicide or in serious physical problems. Participatory management and change of behavioural pattern of the top officials could bring about


\(^{19}\) *Supra* n.13, at p. 719. As per the report of the National Police Commission, a police man worked about 12 hours a day on an average.
change in the desired direction. Stress management could be taught as part of training.

9. Lack of forensic and technical facilities and Scientific Investigation

Due to the application of advanced technology in perpetration of crime, importance of scientific investigation increased considerably. However, the police are using the old conventional methods in the investigation process due to lack of forensic facilities. Even in cases where it is available the facilities are situated in distant towns or even in other State. The material objects and other data collected from the scene of crime are to be sent over long distances for expert analysis and report. The lie detector test, polygraph test and DNA fingerprinting may not be available in all States. The police department has to depend heavily on the forensic laboratories of other States. This may not be possible in all cases. Lack of scientific infrastructure facilities and training in using scientific investigation forced the police to search in darkness. The result will be either delayed investigation or the stoppage of investigation half way. The need for expertise in using modern scientific expertise in investigation is more evident in case of fight against terrorism. Terrorists use very-high end technologies. The present capabilities of the police are inadequate. The police have to integrate all intelligence work for which they must make use of the science and technology. Adequate facilities for scientific investigation and necessary training must be given to the police,\(^{20}\) for which the Government has to earmark separate amount in the budget every year.

10. Lack of continuing education and work assessment

\(^{20}\) The Report of the Committee on Police Training (Gore Committee), Ministry of Home Affairs, Govt. of India(1973), chapter IV.
Policeman has to tackle the problems which he faces during investigation independently and efficiently. To discharge the function he should have a thorough knowledge of the law, which must be ensured by a continuing education. Every failure must be a lesson to avoid the repetition of mistakes any more. The activities of the investigating officer shall be subjected to review in the light of the judgment to identify the strength and weakness of a case. The present attitude of closing the chapter by filing the final report under section 173 of Cr.P.C. shall be avoided. The police shall be concerned about the end result of the case. The lethargy in this aspect creates an unintelligent department. Good officers’ loss interest in work. Systematic and periodic review of the judgment in the presence of top police officers and law officers will enable the department to decipher the mistakes committed during investigation. This will help the conduct of investigation in future. This step will encourage the officers to work efficiently without repeating mistakes. Such post factum review will keep the officers educated, intelligent and efficient. The system of incentive by warning against the mistake and appreciation of success will help and encourage the investigating officers to do their job excellently in subsequent cases. Refresher courses on criminal laws, human rights laws, and psychology and forensic sciences may be conducted regularly and shall be given credit for every promotion.

11. Unnecessary interferences from the top order

Interference from the ‘top’ in the process of investigation is a ground of grievance of the police in India. It may be by politicians or by top officers in the police department or otherwise. Threat of being transferred to distant places or threat of suspension from service on some flimsy grounds is the instruments used to pressurize the unwilling investigators. This puts the policemen in a dilemma whether to obey or
not. General tendency would be to fall in line as the ‘bosses’ desire so as to avoid personal inconveniences and harms. Needless to emphasise, this forms a great threat to police efficiency and impartiality.

12. Lack of Professionalism

Professionalism, which encompasses a technical foundation supported by a systematic body of knowledge, lacks in police functions. They handle situations in a routine manner. Lack of professionalism has a bearing on their nature and quality of work as well as behaviour. Police still linger on the old techniques in investigation of cases. Organizational freedom stands denied to the efficient officers in the department. Strict authoritative hierarchy coupled with interference from politicians snatches away the real autonomy from the police in the operational side. Bureaucratic and other structural constraints make it impossible for police to get unshackle from the fetters. To develop professionalism legal orientation is necessary. Pure managerial or structural change will not do any good. They must know the law and shall have a commitment to the norms of law.

13. Corruption in Police

Indian police is known for rampant corruption. Corruption is perhaps the biggest problem the system is facing. Police corruption seems to have been tolerated as an unavoidable fact of life. People show readiness to give bribe to the police to get an undue advantage. There is no guarantee that an FIR would be registered in all complaints made to the police. Impartial enquiry from the police seems to be next to impossibility. Efficient and timely investigation remains as a dream of the common man. Abkari contractors and other business men are said to be the regular payees of bribe just to see that their illegality is left unnoticed by the police. No measures have been taken to tackle the
grass root level corruption in the police. Inadequate wages and living conditions might be the reason for the perpetration of the corruption. Increase in salary, though not a panacea to this malady may be effective in solving this problem to a great extent.

Bribe is demanded and accepted even at the stage of selection of recruits to the police at different levels. Persons who join the police after paying bribe to somebody involved either directly or indirectly in the recruitment process, can hardly remain honest when he takes up his field duties. He may find out different modes of making money in the discharge of his duties. A system, which is built on such recruits, can hardly remain clean.

14. Malpractices in Investigation

Fabrication of evidence and use of third degree methods tarnishes the image of the police in India. These practices cause the people to fear the police and alienate them. Scrupulous officers resort to manipulation of case diary which resulted in the reduction of standards of the police. It is also true that police consciously omits the recording of the statements of important witnesses. This belies the expectation of the public.

B. Social Problems

1. Strained relationship with the public

Police-community relationship turning to competition and enmity is almost universal though the degree of bitterness varies from community to community and from time to time. India is not an exception. Repressive measures adopted by the Indian police during

\[21 \text{ National Police Commission, Third Report, p.45.} \]
\[22 \text{ Noor Khan v. State of Rajasthan, A.I.R. 1964 SC 286} \]
\[23 \text{ Supra n.21 p.330} \]
colonial rule created public fury, which remains even today. It is true that confrontation with the public is inevitable while enforcing the law, which is the primary duty of the police. The arbitrary implementation of law and differential enforcement of law and order coupled with interference from politicians worsen the situation. Police corruption adds fuel to the fire. The people view the police with suspicion because of the abuses of power. Absence of public co-operation is the main hurdle in the way of effective policing. People are generally reluctant to give evidence even if they are accustomed with the facts. Their desire not to jeopardize their neighbours and friends coupled with the fear of being caught in the legal process and wasting their time in the corridors of the court may be contributing to this state of affairs.

2. **Lack of co-operation from the public in the investigation**

   The police could discharge their duty to deal with the criminal and investigate the crime only with the effective co-operation from the public.\(^{24}\) This positive response from the public is unfortunately lacking in India. This serious and complex problem has manifold reasons. The first and foremost reason is the lack of faith in the police system. The people consider the police as a tool in the hands of the politicians and that have the general belief that they are not going to get much assistance from the police. This feeling becomes stronger in case the complaint is against the police. Apart from this the victims are scared of retaliation if they complaint against the police.

   There exists a general apathy towards persons facing trouble. This might be either due to lack of social sensibility or fear of the complex legal process. Many crimes are unreported and in many

\(^{24}\) The police forces of developed countries had long back realized the necessity of securing public co-operation and participating in combating crime. See supra n. 13.
instances, victims are not helped in time. Even in accident cases victim is left uncared for. The cumbersome court proceedings prevent even the right-thinking persons to avoid it, if possible. Frequent adjournments, inconvenience in facing cross examinations, lack of financial support to meet the expenditure incurred with the court proceedings, and need to abstain from ones work along with absence of even minimum care and attention to a witness turning to court in response of summons deters the public from rendering any help to the legal process. Harassment from the accused and his kith and kin, and lack of adequate witness protection measures also deters the common man from rendering help to the public authorities. They may even refrain from lodging complaint even when they are the victims of crime. This unhappy situation encourages the culprits to perpetrate the crime and the police confront an embarrassing situation.

3. Political interference

Interference from the politicians in the process of investigation is one of the main difficulties experienced by the police. The officials are pressurized to drop the proceedings initiated against persons having access to the centres of power. It may be by the politicians or caste/religious leaders or from the top officers of the police itself. The upright officers who shows the courage to ignore the ‘directions’ of the ‘higher ups’ are harnessed through frequent transfers or by avoiding from the investigation or suspended and harassed on some false accusations of misconduct. It is high time to insulate the police from the “politics”.

The functions of the police are not subjected to control by any other official body. District Magistrate though vested with the general control and direction of the police in his district it is not the control over
the process of investigation instead it is an administrative control over
the police. In certain areas, the Code of Criminal Procedure empowers
the District Magistrate to exercise some legal powers through the police
for the maintenance of public order.\textsuperscript{25} The District Magistrate is
empowered to ask for reports to superintendent of police in any issues
but, usually reports are not being sent promptly or never.

Same is the case with State government. It is purely
administrative in nature and has nothing to do with the day-to-day work
of the police. How a particular law and order situation is to be handled
or how an investigation is to be conducted is not for the government to
control and direct. It is beyond the competence of the state Government
to issue orders to the police in this matter. It is for the police to decide
on such matters in the light of the facts and circumstances of each
situation. However, in practice under the guise of executive control
governments are controlling the police in all respects. Even the ruling
political parties used to interfere in matters connected with law and
order as well as investigation, often suggesting the manner the
situations are to be handled or the way in which investigation is to be
conducted. Needless to emphasize, the outcome of such a state of affairs
would be disastrous. It would compromise the impartiality of police in
carrying out their duties. Extraneous considerations overweigh
unhindered discretionary powers of the police. Freedom of action shall
be granted to the police to get higher levels of impartial performance
from them. There is widespread complaint that they misbehave with any
one who happens to be in a police station in connection with a case.
Using filthy language, negligent recording of statements and employing
of third degree methods are the usual complaints against the police.

\textsuperscript{25} Cr.P.C ss. 129,130 144 &144A.
They often turn deaf ear to the problems of the common man. So, both external as well as internal elements contribute to the worsening of the present condition of police maladministration.

C. Legal Problems

Need to adhere strictly to provisions of Code of Criminal Procedure and the Indian Evidence Act is seen as hurdles in the process of investigation of a case. Crime prevention is the job of the police but they are alienated from the court proceedings. The case is prepared for trial by prosecutors. The police, a part of the machinery of prosecution, are confined to initiation of the prosecution and gathering of material for the same. But the prosecutor has to decide which of the evidence gathered by the police is to be used in the trial\textsuperscript{26} and the court has to decide the admissibility and the evidentiary value of these materials. On filing the final report in a case, investigative duty of the police ended. They remain as a silent spectator to the court procedures, wherein most of their endeavours became meaningless. Even after a failure, the department may not take any measures to correct it. There is no performance audit in the police department.

Protection of the rights the accused are given more importance by our criminal justice system. Procedural laws are primarily aims at the protection of the rights of the culprit leaving the victim and his rights in oblivion. In a murder case, for example, rights of the suspects/accused are being highlighted ignoring the violation of the right to life of the victim. It seems that the ‘victim’ who is dead and gone is ignored and more care and emphasis is given to the rights of those who are alive.

\textsuperscript{26} The duty of the prosecutor is to lay all facts before the court and not to obtain convictions by hook or crook. See, \textit{Shrikekha Vidyarthi v. State of U.P.},(1991)1 SCC 212; Patrick Devlin, \textit{The Criminal Prosecution in England}, Oxford University Press, London, 1960, at p.23.
This is not a balanced approach and leaves many conflicting social values unaddressed. ‘Investigation’ a legal reaction of the society towards a crime aims to control crime and law breaking. Society demands punishment of the criminal who violated the life of its member. Society demands justice to the victim by punishing the criminal. Victim’s rights shall be balanced against the rights of the accused.

1. Criminal Procedure Code and the Police

Though dispassionate attitude from the police in the investigation is a desirable state of affairs the criminal justice system does not expect this from the police. It is presumed that the police are prone to abuse their powers and ruthlessly use any method to get the accused punished. The legal system forges method to meet this unhappy situation. Threat, inducement or promise to the accused of all kinds by the police is totally prohibited. The evidence Act bars admission of confessional statement by an accused to the police.\textsuperscript{27} The Code goes to the extent of prohibiting the use of statements made by any person to the police during the course of investigations\textsuperscript{28}. These prohibitions, though aims at affording protection to the accused against possible ill-treatment and torture from the police, may result in shutting out valuable evidence.

Bar against use of statement of witness under section 161 of the Code creates problem to the police/prosecution. In most of the cases witnesses turned hostile to prosecution resulting in the acquittal of the accused and the prosecution is allowed to pin down them based on their previous statement. Witnesses disapprove the claim of the police that their version is the original and true version of statement of the witness.

\textsuperscript{27} Evidence Act. Section 25.
\textsuperscript{28} Ibid.
This might be either due to inaccurate clumsy recording of statement mixed with something added by the police themselves or the witness might have been won over by the accused. The present legal position is not in any way helpful to tide over this difficulty.

The statements recorded by the police under section 161 of the Code are subject to the restrictions imposed under section 162 of the Code. The witness should not be asked to sign the statement and the use is also very limited. At the same time, accused can use the statement to contradict the witness. It is improper that the statement prepared under section 161, which can be used by the defence, cannot be used by the prosecution for the reason that it is prepared by the police. The statement is not intended to be binding on the witness nor had he given any assurance that it is a correct statement. 29 This is an unhappy feature of our criminal justice system. This has a two-sided impact. Police will never approach the problem realistically. They approach a case with preconceived notion that whatever they collected will not be admissible in evidence and may deal with the situation lightly resulting in flouting the law as well as the rights of the persons concerned. On the other hand, the culprit will take advantage of this situation. In order to be admissible the evidence collected by the police has to conform to a very high standard and the society demands a quasi-judicial approach from the police. 30

Usually the trial of a case will be held after a long period after the commission of the offence. By this time the witnesses may win over by the accused. In such situation, the provision, which ban the use of such statements help the witnesses to withdraw from their earlier stand

and the result, will be the acquittal of the accused. In order to meet this contingency the prosecution cannot rely on the statement recorded by the police since it is barred by law. It seems to be better to allow both parties to use the statement recorded by the police in the trial without drawing any presumption for or against the veracity of the statement leaving it for the court to decide the reliability of it. The Code must be amended to facilitate this.

The procedure prescribed for search requires that the search shall be attended by two independent and respectable inhabitants of the locality. It is very difficult to obtain the presence of independent witnesses because people do not want to involve in cases connected with their neighbours or because of the fear of the hectic court procedures. If the prosecution gives up the examination of the search witness some court will take adverse inference. So, the prosecution, invariably in all cases, wanted the search witness to be examined to prove the search and seizure. Thus, the police will hire the service of ‘stock witnesses’. In order to avoid such situation section 100(5) of the Code shall be implemented strictly by courts. This section clearly states that, the search witness shall not be required to attend the court in a routine manner. Only if his examination is highly needed, the court will send special summons to him. So, in most cases, examination of search witnesses can be avoided. A copy of the inventory prepared by the police after the search has required to be handed over to the occupant or person. This would enable the person concerned to file complaint before the Police Complaints Authority if the police officer wrongly prepares it. If no such complaint has been filed it could be presumed to be properly done and search and seizure could be proved and the

31 Cr.P.C. s. 100(4).
32 Cr.P.C. s.100(6)
materials admissible without examining the search witness. To enable this sufficient rules shall be incorporated in the relevant provisions.

The code of Criminal Procedure prescribed time frame for the completion of investigation. Generally, the Code grants twenty-four hours to complete the investigation.\textsuperscript{33} If it is not possible to complete the investigation within twenty-four hours as prescribed, then it should be extended to ninety days where the investigation relates to offence punishable with death, life imprisonment or imprisonment for a term of not less than ten years and sixty days where the investigation relates to other offences.\textsuperscript{34} But, usually, police may not be able to complete the investigation within the stipulated time due to several reasons. Non availability of time to devote exclusive attention to investigation causes delay in completion of the same. Attention of the police is diverted by entrusting various other duties as per the directions of the Government. There is no wing in the police, which undertakes investigation as the sole duty. Investigation becomes an intermittent process. The loss of continuity affects the quality of investigation adversely. Lack of adequate scientific facilities and non availability of labs for expert analysis hampers gathering of evidence in time. this factor also adversely affect the chance of the prosecution to win.

The Code gives ample power to the police to question a person who is acquainted with the facts and circumstances of the case.\textsuperscript{35} But, in reality, people are not generally willing to testify against their friends, relatives or neighbours. This may adversely affect the collection of evidence in the case. Even if the police knew that the person know fully well the facts of the case, they are helpless, if the person is not ready

\textsuperscript{33} Cr.P.C  s.57.
\textsuperscript{34} Cr.P.C. s.67
\textsuperscript{35} Cr.P.C. s.161
and willing to divulge information to the police. In a society like India, where relationships are more intimate and personal, people sometimes may not co-operate with the police.

Section 170 of the Code gives an impression that all the accused must necessarily be arrested in every non-bailable offences and should be produced before the Magistrate. The purpose of arrest is to ensure the presence of the accused before the court. This purpose can be achieved by issuing summons to the accused. Hence, section 170 of the Code may be amended so as to remove the impression that the arrest is a necessary condition in the case of investigation of a case.

2. Evidence Act

The Indian Evidence Act, more than a centaury old, requires amendment to accommodate use of modern technology and gadgets to investigation and evidences obtained thereby as admissible. This is required to meet the modern criminal who adopts new modus operandi for the commission of the crime. Crimes using devises and methods produced by technological advancement are in the increase. Scientific innovations are increasingly being used by the terrorists and such crimes could be proved only by the help of science. The present Act is not adequate to accommodate scientific evidence in its true spirit. Though the expert evidence is relevant, it s considered as a weak piece of evidence,36 because it is only an opinion evidence. When direct evidence is adduced before the court, naturally, the court will declined to accept expert evidence. So, when two or three witnesses are purchased by the accused, the entire case will collapse. The evidence Act must be amended to enable the judge to arrive at a conclusion on

the basis of scientific evidence in a case. The police and the prosecutors must also be given adequate training in scientific investigation.

Statements of witnesses recorded by the police under section 161 of Cr.P.C., though cannot be used by the prosecution, can be used by the defence to point out contradictions\(^\text{37}\) between police report and the evidence deposed before the court. Similarly, there is a general rule, which makes the confessions given to a police officer inadmissible in evidence.\(^\text{38}\) The provisions of section 27 of the Evidence Act are an exception to this rule. It provides that so much of such statement, which leads to the recovery of a material object or the fact discovered, can be admitted in evidence. The result is that, invariably in all cases, there will be a disclosure statement of the accused and consequent discovery. In order to obtain this disclosure statement, police will either coerce the arrestee or will manipulate the statement. In both situations, the very object of law regarding confessions\(^\text{39}\) and the spirit of fundamental right of the person\(^\text{40}\) will be frustrated. Moreover, the police will employ the service of ‘stock witnesses’ to witness the discovery.

3. Lack of legal knowledge

Legal knowledge is a *sine qua non* for an investigator. If the officer is not having adequate knowledge of law, he will make blunders and the law enforcement become a farce. Not only at the time of training, but in every interval they must be taught the latest developments in law. Updating of legal development will help the police officer to do his job efficiently and effectively. Strict adherence

\(^{37}\) Indian Evidence Act, s.145

\(^{38}\) Indian Evidence Act, s. 25 & 26

\(^{39}\) *Ibid.*

\(^{40}\) Art.20(3) of the Constitution which states that, “no person accused of any offence shall be compelled to be a witness against himself”.
to legal principles is highly needed for policing the community. Every body knows the law and they must be ruled in accordance with the dictates of law. So, it is very much needed that the members of the law enforcement machinery must have the up to date knowledge of law.

4. Hostility of Witness

Witnesses identified and examined with great difficulty by the police often turns hostile during trial. Witnesses may some times turn hostile with *malafide* intention. The long delay in concluding the investigation and trial will help the accused to influence the witnesses. Moreover, the law with regard to recording of statement of witnesses and its uses\(^{41}\) definitely an impetus to witnesses to dishonour what had stated before the police with impunity. Hard work of the police goes waste. This practice must be discouraged by amending the Code.

Conclusion

Investigation is the search for truth and the truth will be found out by analyzing the evidence collected by the police. This pre-trial process is the important phase in the criminal justice system. In all countries, this important job is entrusted with police. In India every State has its own police force controlled by the Home Ministry of the concerned State. The police are doing a great job in the society, but they moved away from the people due to their misdeeds. They abuse their authority and power and deviating from the humanitarian methods of law enforcement.

The investigating process must be conducted fairly so as to maintain rule of law in the society. The present system is not able to do it properly because of several reasons already mentioned. The only way

\(^{41}\) Section 161 & 162, Cr.P.C.
out is to separate the investigative mechanism from the law and order so as to enable them to spend their maximum time for investigation.

A Central legislation for the constitution of police (investigation) under the State Prosecution Board is the need of the hour, because crime is not a matter which could be managed by local resources. Only a separate force entrusted with the investigative purpose, armed with scientific facilities can be able to tackle the situation effectively.