Chapter – IX

CONCLUSIONS AND SUGGESTIONS

Introduction

Police is inevitable for the maintenance of law and order and thereby creating a peaceful society. In order to achieve this there shall be proper enforcement of laws, which is the legitimate expectation of every society. No one could think of a non-police State. As enforcers of law, police play umpteen numbers of roles. Police often fails to fulfil their obligations. Complexity of the job, unnecessary external interference in their duties added with the stress and the strain of the job contributes to this situation. The failure of the police belies the very object of the creation of the organization and the spirit of the Constitution. The situation continues to exist at the cost of ‘rule of law’. The study reveals the need for change in this regard. For the betterment of the criminal justice system, both the machinery and the procedural laws must be changed.

In both systems of criminal justice administration, investigation is very important. Success of the system heavily depends upon the impartial and independent pre-trial phase. Hence, the role of investigative machinery in a democracy is a noble one. The police have to ensure safety and security to the common man. Though, they are burdened with many duties, crime control and investigatory functions should be given precedence over other duties. Police are burdened with various duties, which need no special skill. This may have adverse impact on the performance of the police officers. This will affect the investigation process. Therefore, investigative machinery should not be
entrusted with other duties and their skills may be fully utilised in the investigation process.

The present Indian situation shows that police is a tool in the hands of the political bosses. Consequently, bias in investigation and abuse of power usually occur in the performance of the police. Human rights violations by the investigative machinery are rampant. Though, some control mechanisms are there, it failed to control the police from misusing their power. Criminal justice system has to protect the lawful interests of the victim, accused and the society. Police should do justice to all concerned. However, in reality, police is abusing their power in every sphere of pre-trial process. If the law is made strict and definite, we can control the police. Abuse of power is not limited to a particular stage of pre-trial process. Procedural violations as well as human rights violations are very common in India. Detaining suspects in custody without an entry in the records, physical abuses are worst forms of human rights violations. Lock-ups are awesome cells and turned to be a place for the rights violations. It should be abolished. The arrested person may be detained in the detention centre, if needed, under the control of detention officer.

Now, there is no mechanism independent of the police, to look into the complaints against the police. If the complaints against the police are not dealt with strictly, the people may loose faith in the system. Notwithstanding the vigilance shown by the judiciary, police-culprits escape from the net of law due to paucity of evidence. The investigation in such cases is conducted by the police themselves and either they destroy or conceal the evidence. This situation can overcome by constituting an independent institution for investigation into the complaints against the police.
Awarding compensation to the victims of police abuses could, to a certain extent, mitigate the sufferings, but paying compensation from the public exchequer might have an adverse impact. For the wrong committed by the police, State shall not be penalised.

The police force must be a disciplined one. An officer who violated the rights of another should not be allowed to continue in the force. Poor selection and training process must be replaced with advanced methods. Adequate forensic facilities shall be provided to the investigative machinery.

The following are the suggestions to be implemented to make the system a better one.

**A. Reforms in the Police**

Various Commissions appointed before and after the independence, suggested many measures to be implemented for the reformation of the police system in India. The government’s lethargic attitude paved way for judicial interference by way of giving directions to the executive to be implemented. The Supreme Court has given ultimatum to all the States to implement their directions\(^1\) within three months from the date of order. So far no major States in India implemented the directions in its fullest extent. Some of the directions were implemented by some States.\(^2\) Since police including railway and village police is an entry in the State list\(^3\) Union Government is helpless in implementing any reform in the police. This resulted in multiplicity of Statutes enacted by various state governments. In this

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\(^1\) Prakash Singh v. Union of India, 2006(3) SCC (cri.) 417.

\(^2\) Two important directions viz, State Security Commission and Police Complaints Authority are established in Kerala.

\(^3\) Entry 2, List II – State list.
scenario, it is difficult to have a uniform police Act for all the States in India. This being the Constitutional position implementation of the suggestions contained in the Commissions appointed by the central government finds its own difficulties. This practical difficulty seems to be tried to circumvent when Supreme Court incorporates it as part of its decision, which become binding on all authorities. This attempt, though laudable, attending only the reform of police leaving other important aspects of criminal justice system is not seem to be a sound approach. It is suggested that special central legislation creating investigating machinery shall be made to ensure uniform standard throughout India.

A.1. Amendments to Police Act

It is highly necessary to replace the present Police Act with a new one, which shall be a model for all states. It must provide for;

i. separation of Police (Investigation) and Police (Law & Order).

ii. Special court to try police atrocities.

iii. Constitution of Police Complaints Authority (PCA) in every State.

iv. Dismissal of the erring police officials from the service on the submission of the final report against him by the PCA as per article 311 of the Constitution.

v. Proper selection and training.

vii. Adequate promotion on the basis of merit and unblemished service.

i. Constitution of separate Investigating Agency

The Police organization may be divided into two separate and independent organizations viz, Police (Law & Order) and Police (Investigation). The Police (L&O) shall be entrusted with the work of maintenance of law and order and the investigation of offences punishable with less than two years imprisonment. The investigation work of all other offences shall be entrusted with the police (Investigation).

a. Police (Law & Order)

Police (L&O) shall be under the direct control and supervision of the ministry of home affairs of the concerned state. The present administrative set up can be followed here also.

b. Police (Investigation)

Police (Investigation) shall be an independent agency entrusted with the investigation of all warrant cases except earmarked for the other agencies. This agency shall be under the direct control, supervision and administration of the ‘State Prosecution Department’. This police agency should not be drawn for other police work.

ii. State Prosecution Department

Separate ‘State Prosecution Department’ shall be established in each State to control and supervise the investigation and prosecution function of the Police (Investigation). For the administration of this department, a State level Board shall be constituted under the Chairman ship of a Supreme Court Judge (Rtd.) / a Chief Justice of the High Court (Rtd.). The state level board shall include:
1. Chairman
2. Chief Secretary of the State
3. Chairman (Police Complaints Authority)
4. Director General of Police (Investigation)
5. Director General of Police (L&O)
6. Two jurists well-versed in criminal law nominated by the chief Justice of the High Court in consultation with the Chairman of the Board.

In every district, an office of the department shall be established with the public prosecutors and the law officers of the district. Law officers in each district, attached to the prosecution department shall help and assist both the investigating officers in the investigation and prosecutors in conducting the trial. Law officer and prosecutor post must be made permanent and interchangeable.

iii. Police Complaints Authority

In order to gain public confidence and also to ensure that the police do not abuse their power, it is necessary to have an effective complaints redressal mechanism. There is a tendency among the officers of the police to condone the offences committed by policemen due to various reasons. This brings a bad name to the police agency. In order to avoid this situation, the complaints against the police abuses must be dealt with seriously for which a separate mechanism and investigative machinery is highly necessary.

Police Complaints Authority (PCA) shall be established as an independent organization under the headship of a judge retired from the high court in every State,\(^4\) and regional Authorities in every

\(^4\) Recently after Praksh singh’s case some States constituted PCA, for example, Kerala. But, not working properly because of the lack of direction and legal changes.
district/region. The PCA has to investigate independently into the complaints of abuse of power by both police agencies. The aggrieved party shall file the complaint within two months and PCA shall take a decision on it within one month of the filing of the complaint. If PCA found that, the petition prima-facie deserves detailed investigation, they can do so. After the investigation the final report has to be filed before the court and the accused shall be prosecuted by the PCA, provided a case is made out against the police officer. A copy of the report shall be sent to the State Prosecution Board for taking disciplinary action against the erring police officer.

Constitution of the State PCA shall be:

i. Chairman
ii. DGP (Investigation)
iii. One IGP nominated by the State Prosecution Board, and
iv. Two jurists well-versed in criminal laws nominated by the Chief Justice.

The district level PCA shall include;

i. Chairman, a retired district judge
ii. S.P (Investigation) of the District
iii. One jurist nominated by the Chairman PCA of the State.

The Police Complaints Authority of the State can entertain petitions against police officers above the rank of Dy.S.P and complaints against any policeman, which is punishable with death or life imprisonment. The district/regional level authority can entertain all other petitions. PCA must have separate investigation department.
iv. **Abolition of Lock-ups**

Lock-ups in the police stations shall be abolished. Lock-ups are mainly used in India for keeping persons illegally taken into custody. The English style is acceptable in this regard. Police stations with lock-ups shall be established in every region under the direct supervision of a detention officer. Before locking up the person the detention officer must ascertain the need of the custody of the person and must record it. Above all, he must ascertain whether all procedures regarding arrest are fully complied with by the police officer who arrested the person. This will eliminate abuse of lock-ups and illegal custody. If the police officer is not able to convince the detention officer the need of the arrestee’s custody, the detention officer can release the arrestee.

v. **Detention Officer**

In every *tehsil* or for a group of police stations a detention centre shall be constituted under the direct control of a Dy.S.P./senior Circle Inspector, for detaining an arrestee overnight. The person who is in-charge of the detention centre is known as detention officer. It is his duty to see that the detention of the person is necessary and legal and all procedures of arrest are observed.

vi. **Special Courts for the Trial of Police Atrocities**

Special courts may be set up for the trial of petitions against police atrocities and a time frame also may be fixed for disposing such cases.

vii. **Strength of Police**

Considering the nature of work performed by the police, the strength of police men is very less, and it should be restructured. More over the vacancies must be filled as early as possible. Instead of
increasing the number of top level officers, the number of constables and the number of police stations must be increased.

viii. Selection and Training

What ever be the improvements employed in the police system it will avail no result if the selection and training procedure is not adequate. So, the introduction of substantive changes must start from the grass roots level namely recruitment and training of police personnel. Selection of the police personnel to the Police (Investigation) department shall be entrusted with the Prosecution Department. New criteria shall be introduced for the selection of persons. Along with physical strength, intelligence, sense of propriety and a sense to deal with situations may be given much importance. A pass in degree examination and good health shall be the basic qualifications to ensure recruitment of adequate persons to the police profession.

Training also must be improved. Only after the successful completion of one year training both indoor and outdoor, a candidate may be allowed to enrol as a policeman. The indoor training shall include classroom teachings in criminal laws, law of evidence, human rights, court practices, investigative techniques and forensic science. The outdoor training shall include physical training, participation in investigation work under the supervision of an officer and the preparation of records to that effect. More over the Government must ensure that adequate resources are allocated for selection and training of policemen.

Police training is one of the most neglected areas in the police department. Police training institutions are dumping ground for the incompetent, inefficient and corrupt officers who set a bad example for
the trainees to follow. The best persons must be selected to handle the training process, so as to produce competent officers with character.

ix. **Refresher Courses in Criminal Laws**

Refresher courses shall be conducted once in every two years to all police men. The course shall include criminal procedure code, IPC, NDPS Act, Law of Evidence, Human Rights Act and other minor criminal Acts. This will enable them to refresh their memory and will help them to refrain from committing further blunders.

x. **Review of Investigation**

There must have a review of the performance of every police officer by a Board appointed for the purpose by the State Prosecution Department. The Board shall include law officers and other legally qualified persons. Cases, which are decided by the courts, must be evaluated and the flaws must be ascertained, so as to avoid such mistakes in future. This review must be conducted periodically and in district wise. An officer who is repeating the same flaws shall be removed from investigative work.

**A2. Working Conditions**

i. **Adequate Wages and Promotion**

Increase in man power alone will never curb the crime, unless, they are motivated and facilitated with basic necessities such as equipment, transport, housing, medical insurance, education to children etc. Police personnel must be given adequate wages and must be extended with other good living facilities.

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For the police department separate Finance Commission may be appointed to decide on the issue of pay and other working conditions. Similarly, timely promotion and good service entries must be given to the members of the constabulary to encourage them to achieve the goal.

B. Procedural reforms

Police reforms would not be complete without corresponding changes in the procedural laws. The procedural laws must be amended to include the following.

B1. Amendments to Cr.P.C

i. Protection Under Section 160

Section 160 of the Code keeps juveniles and females away from the company of the police except at their residence. This protection shall be extended to all persons irrespective of their status. It is the duty of the police officer to find out the persons who are acquainted with the case and to take down their statements. No person shall be required to attend the police station in this connection. Section 160 of the Code shall be amended in the following manner.

**Section 160. Protection of witnesses.** - No police officer shall require any person to attend the police station for examination. Police officer, conducting investigation shall examine persons who are acquainted with the facts and circumstances of the case at the place where such person resides.

ii. Recording of Statements

Section 161 of the Code gives wide power to the police to record or not to record any statement made to him during investigation. This discretion must be controlled. All the statements which have some
connection with the case shall be recorded and a copy of the same must be given to the deponent then and there.

Sections 161 and 162 of the Code may be amended so as to include the following:

“Section 161(3): The police officer shall reduce into writing any statement made to him in the course of an examination under this section; and if he does so, issue a copy of the statement then and there to the deponent under acknowledgement.”

(4): The deponent who have any complaint regarding the statement which is recorded by the officer, shall approach the Police Complaints Authority with a complaint within thirty days of the recording of the statement and the Authority shall take a decision in this within thirty days and the decision shall be final.

“Section 162: Use of statements in evidence. - (1) The statement recorded under this chapter shall be signed by the person making it; be used either to corroborate or to contradict the maker, at any enquiry or trial in respect of such offence under investigation at the time when such statement was made.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872”.

iii. Classification of Offences

The classification of the offences as cognizable and non-cognizable gives much freedom to the police to arrest a person irrespective of the gravity of the accusation against him. Police can freely include a cognizable offence also in a case with non-cognizable offences. The worst affected are the poor and the weaker sections of the society. This distinction paves way for abuse of power by the police.
So, this classification may be abolished and instead, the offences may be classified into arrestable offences and non-arrestable offences. Offences for which five year or more imprisonment can be awarded as punishment shall be classified into arrestable offences.

Section 2 of the Code may be amended to include the following.

“Section 2 (a) (i). ‘Arrestable Offence’ means and includes all offences for which five year or more imprisonment can be given in accordance with the First Schedule of the Code or under any other law for the time being in force and the police can arrest without warrant”.

“Section 2(l) (i). ‘Non-Arrestable Offence’ means and includes all offences except arrestable offences”.

iv. Arrest

Mandatory arrest must be restricted to arrestable offences. In other cases, police can record the arrest and direct the person to appear before the court on a particular day. Arrest on the ground of suspicion cannot be allowed. Section 41 of the Code shall be amended to include the following after deleting sub-sections (a), (b), (d) and (e).

**Section 41. When police can arrest a person.**

(1) Any police officer can without an order from a Magistrate and without a warrant, arrest any person-
(a) who has been concerned in any arrestable offence; or
(b) who has been concerned in any non-arrestable offence, if;
i. his identity is not revealed, or
ii. he is not prepared to take bail as per law, or
iii. he is absconding even after repeated notice from the police to present before the concerned officer.
(c) who has been concerned in any private wrongs, but only with an order of a competent court.

(2) In the case of non-arrestable offences, the police shall issue notice to the accused to present before the police and to take bail as per law.

v. **Protection of arrested person**

Detaining persons in police custody leads to custodial torture and abuse of power by police. This can be overcome by limiting the power of detention of persons by police. Section 46 A shall be inserted.

**Section 46A.- Detention of arrested persons.**

The arrestee shall be entrusted with the detention officer in the nearest detention centre, if it is not possible to produce him before the court immediately or overnight stay in the custody is necessary. The detention officer shall personally verify all records pertaining to arrest and the body of the detainee.

**Section 46A (i)** The detention officer shall decide the question of keeping the detainee in custody. If he feels that, custody of such person is not necessary, the detainee shall be released on executing a bond.

vi. **Search Witnesses and their examination**

Section 100 shall be amended to include the following.

**Section 100(9).** On receiving the copy of the list prepared as per sub-clause 6 and 7 of this section, the recipient can, on finding that the list is not correctly prepared, approach the Police Complaints Authority and the Authority after conducting an enquiry decide on the issue within thirty days and the decision shall be final. If decision is not taken within the stipulated period, it can be presumed that the list is not correct and need proof.
vi. Preventive Action of the police

Chapter XI of the Code which deals with preventive action of the police shall be amended to include the following.

a. Section 149. **Police to prevent offences.** - “Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any offence which may affect the public tranquillity”.

b. Section 150. Instead of ‘cognizable offence’, ‘offences affecting public tranquillity’ shall be added.

c. Section 151(1). Instead of ‘cognizable offence’, ‘offences affecting public tranquillity’ shall be added.

d. Section 151(2). “The person arrested under sub-section (1) shall not be detained in custody for a period exceeding six hours from the time of his arrest unless his further detention is required or authorized under any other provisions of this Code or of any other law for the time being in force or under the authority of a competent court”.

iv. Time Frame for Investigation

The investigation of a case must be completed within a fixed time. This will help the prosecution as well as the witnesses. The evidence will become weaker if longer time is taken by the police for completing the investigation. After elapse of longer time after the commission of the offence, witnesses may lose interest in giving positive evidence. Hence, Section 173 (1) shall be amended in the following way.

Section 173. Report of police officer on completion of investigation.-
(1) (i) Every investigation under this chapter shall be completed within a period of three months and
if it is not possible, the concerned court can grant further time but shall not exceed six months, on a petition showing sufficient reasons by the investigating officer.

(1) (ii) In cases where the investigation is not completed even after the extended period, The State Prosecution Department can approach the court with a petition showing sufficient reasons and after hearing all concerned court can take an appropriate decision.

(1) (iii) Nothing in this section shall be applicable to offences which are punishable with life imprisonment or capital punishment.

v. **Information and power to investigate**

Some of the provisions in Chapter XII shall be amended in the following manner.

**Section 154. Information in cases.**—Instead of ‘cognizable offence’, ‘an offence’ shall be included.

**Section 154 (1) (a).** In the case of information relating to a warrant case is received in a police station (Law & Order), the matter along with the FIR shall be transferred to the Police (Investigation), having jurisdiction over the area for further investigation. In summons cases, Police (L&O) have the authority to investigate and file final report.

**Section 155. (Repeal)**

**Section 156.** Instead of ‘cognizable offence’, ‘any offence’ shall be inserted.

iv. **Change the Law of State immunity**

The existing law grants immunity to the police from prosecution for any offence committed while discharging their duty under section 132 and 197(1) of the Code. This concept should be abolished and members of the police force should be made accountable for the acts of
torture. National Police Commission also made such a recommendation in its concluding report. In order to make the police officers accountable a new section shall be introduced in the Code as follows.

Section 197 A. No previous sanction for Prosecution.-Notwithstanding anything contained in section 132 and 197, no member of the Forces charged with the maintenance of public order and investigation in a State will get immunity when abused his authority and torture any person physically or mentally and for the prosecution of such officers no previous sanction from the Government is necessary.

iv. Compensation for Illegal Detention

The social, psychological and material effects of pre-trial detention are very serious. In addition to the loss of liberty, the person may suffer economic loss by reason of his being unable to work. In such cases of illegal detention, the detainee shall be adequately compensated and a provision for this must be included in the Code. The compensation amount shall be recouped from the erring police officer. It shall not be borne from the public exchequer.


The provisions of legal procedure enunciated in various Acts are intended to be observed fully. At present, when watched closely the police actions, one can see the regular and constant violations of procedures by the police. Violations are continuing because no disability is attached to these violations. It is better to introduce penalty for violations of procedures by the law enforcement agency.

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B2. Evidence Act

1. Admissibility of Scientific Evidence

Our police are even now using obsolete and crude methods in investigation. Many times, the investigation leads to the collection of distorted evidence and ends in miscarriage of justice. Investigation shall be carried on scientific lines because now a days criminals are taking advantages of science and technology to ensure the completeness of their effort. One can commit a crime without participating in it and even without visiting the country, where the crime is operating. Commission of crime became more sophisticated and the proof of it became more complex. If the police get the assistance of science and technology, their work will become easier. The Evidence Act shall be amended to include scientific evidence as admissible in evidence.

2. Exclusion of Evidence

In India, irrespective of the illegality in the actions of the police in collecting evidence it is admissible. This encourages the police to abuse their authority to concoct evidence or to violate human rights for the sake of collection of evidence. Controlling crime does not mean violation of law and human rights. A trial will become unfair when the evidence unfairly obtained is admitted. The trial cannot be viewed in isolation. The investigation as well as the trial, both must be fair and legal. So, the court must give due regard to the circumstances in which the evidence was obtained and if found any prejudicial effect, it should be excluded. Hence, the Evidence Act shall be amended to include the following new sub-section.

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7 This is subject to the provisions of the Evidence Act. The same rule applies in English Courts. However the U.S. courts adopts ‘exclusionary rule of evidence’ wherein they reject the illegally obtained evidence. Both in India and England it is left with the judge either to admit or reject the illegally obtained evidence ie. it a discretion of the court.
Section 5(1). Exclusion of Evidence.- After considering all the circumstances, including the circumstances in which the evidence is obtained, if found that the admission of such evidence would have an adverse effect on the fairness of the proceedings, the court shall exclude such evidence.

3. Repealing of Section 27

Section 27 of the Indian Evidence Act is one of the most misused provisions in the Act by the investigation officers. Police officers are very much concerned about the fruition of their efforts. So, they will employ any method to obtain believable evidence like section 27-discovery evidence. Police may torture the accused to make discovery or they will fabricate discovery evidence. This evidence is admissible as per the scheme of the Act and the Kerala High Court once observed that the discovery alone is sufficient to warrant a conviction.\(^8\) This is not a good and healthy practice. So, it is better to repeal Section 27 from the statute.

4. Presumption as to Custodial Death.

It is very difficult to prove the custodial torture before a judicial tribunal. Due to common interest no policeman will swear before the court what actually happened inside the station. Hence, it is necessary to include a new section regarding the burden of proof of custodial torture as follows.

Section 114 B. Presumption as to injury on the person taken into custody.- (1) In a prosecution for custodial torture, where the custody of the person is proved, the court shall presume that the injury is sustained by the person in police custody

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\(^8\) Ignatious @ jolly v. State of Kerala,
and has been caused by the officer-in-charge of the station.

(2) For the purpose of this section, the expression ‘police’ include officers of the Para-military forces, forest officials, revenue officers and abkari officers.

C. General Reforms.

The investigative skills of the police must be upgraded by imparting special training as also supply of modern aids to investigation. This will, *inter alia*, mean providing greater mobility, upgradation of communication facilities, establishing forensic laboratories in regions, establishing laboratories for DNA testing, polygraph, lie-detection tests etc., upgrading chemical laboratories, computerization of all police stations and networking at State and national level. This will enable the police to investigate a case in scientific lines. Once the investigation process is adopted a scientific approach, the physical abuse and custodial torture will come to an end. The Governments have to spend sufficient money for providing adequate facilities to the police and the police must be included in the national development plans.

Now India needs a fair, open, workable and efficient police system. In order to have this, there should be a balance in criminal justice between the rights of the suspects and the powers of the police. So, instead of several procedural Acts, Constitutional provisions and judge made laws, a detailed legal framework for the operation of police powers and suspects rights is highly needed as that of the Police and Criminal Evidence Act, 1985 of England. This will eliminate defects in criminal procedure and can protect the rights of the suspects.
Epilogue

Our police force needs to be friendly, corruption free, responsible, and tolerant of ambiguity and pressure and must have compassion and empathy for the people. It should be efficient and time conscious, stress tolerant, mentally and physically fit and robust, able to provide high quality leadership potential at all levels of the hierarchy, and be a model for conduct and discipline.

A democratic country like India need a good police force, who believe in rule of law, having humanitarian attitude in their dealings, courageous, impartial and intelligent. We cannot make the present system an effective one by doing an outer polishing work as suggested by the Supreme Court in Prakash Singh v. Union of India.9

India now needs an efficient investigative system. Change in the police alone will not provide desired results. The procedural laws must be amended to include the present developments and needs. An efficient police system and an effective legal frame work can make the criminal justice system more effective. A simple failure of the police will be noted and publicised. So, they must be more cautious while conducting the investigation. They should not create evidence and always they should remember the prophetic words of Reith, “police are public and public are police”.10

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9 2006(3) SCC (Cri.) 417.