INTRODUCTION

In one way or other supervision and control of social behaviour is seen in all societies, including primitive tribes. If this could be considered as policing it will be apt to say that policing have existed since the inception of the civilization. This social control mechanism plays an important role in the prevention of crime. They are the symbol of law. It represents the law in action. Police is the organised force in a State meant to afford protection to individuals in their social life. It enables the exercise of rights possible. They are responsible for enforcing criminal laws. Maintenance of ‘rule of law’ is the prime and foremost duty of the police in a society. The police and the State are inseparable and the State makes its presence felt through the police.

Police is the instrumentality of the government to maintain peace and order in the society. Functioning of the police makes the government good or bad. Functioning of the police often becomes the yardstick of the efficiency/ inefficiency of the administration. Maintenance of law and order as well as the effective implementation of law depends on the police. Functioning of the police reflect the State in action. Police play an important role in the maintenance of social order in accordance with the letter and spirit of the law. The institution of police is an indispensable mechanism in a democratic setup and the *sine qua non* for the effective administration of criminal justice system.

**Society and the Police**

Collective living makes man stronger by overcoming his physical handicaps. Social living is inevitable for his self-preservation and survival. Collectively he realises things, which otherwise he could not. Social life requires ordering of behavioural pattern. Regulated
behaviour of the members strengthens the society. Norms were fixed to make the social interaction smooth and effective. Continued existence of the society needs strict observance of the Codes of conduct. Society forges mechanisms to ensure obedience to rules and regulations. If the violators are not booked, it would perpetrate further violation leading to disintegration of the society. Probably in earlier time, social control might have been achieved through moral teachings and self-regulation of the society, which created an atmosphere that observe the rules and carry out their task with out any coercive apparatus. In small communities, with its inherent simplicity, there were shared ideals and values. The people obey laws willingly. This is no longer a reality. In large communities, self-regulation is insufficient and legal control becomes imperative. Growth of complex society brought in frequent violation of the norms. Industrial development made social relationship more complex and necessitated new laws and law enforcement agencies. This might have been the reason for the emergence of a leader or group of leaders/elders. Thus, a specified person or group of persons were entrusted with corrective and preventive functions. The king used to maintain separate group of youngsters to exercise the police powers. This system paved the way for the emergence of organized police force.

**What is Policing?**

The term policing refers to a social process through which social control is achieved\(^1\) and police is only a part of it. The term police is being increasingly used replacing the term ‘policing’. This is the recognition that modern police forces are responsible for policing process found in different social order. However, it is to be noted that policing is different from police. Police is doing only a part of the

policing functions of the society. Policing implies a set of processes with specific social functions whereas police refers to a particular kind of social institution. Policing is carried out by different agencies and police is one of such institution by which the state exercises the authority over the civil population. Policing is carried out by specific individuals, organized to fulfil the functions. Policing refers to wide powers to ensure security to the people from external and internal threats and ensures peace, security and order in the community. This is achieved through a diverse array of people and techniques, which include specialists of State police forces, State bodies whose main responsibilities may lie outside policing, contract security companies, and citizens engaged in civil policing initiatives and technological devices such as cameras and bugs. This is done with a view to promote tranquillity and security in society. Police is the mechanism through which coercive force of the State is used for maintenance of law and order, keeping peace and investigation of crime.

Why We Need Police?

The modern nations are maintaining two institutions concerned with security viz. military and the police. Military deal with aggressions from external sources and the police internal threats. Though, peace keeping in the earlier time was carried out by localized organizations its failure in combating crime lead to the organization of an agency

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2 Id. at p.30.
controlled by the State. Industrialisation added speed to this process. In India, organised police force was introduced by the Colonial rule, which was structured in accordance to their need.  Police performs tasks closely associated with the sovereign function of the State. Along with the developments in the community, functions of police are also being increased. Peace keeping, crime prevention, protection of life and property, traffic control, patrolling the streets, protection and escort to VIP’s are being done by the police. Court duties and containing drug trafficking ads to their obligations.

Efficient and effective system of law enforcement is a prerequisite to achieve the ideals of the Constitution. Active assistance of the police is required for the enjoyment of many fundamental rights. Police ensures peace and order, creates atmosphere for democratic functioning of the State, and thereby paves the way for the unobstructed enjoyment of rights by every individual.

Quality of governance is often measured in terms of the efficiency of police. Common man comes directly in touch with the police and gets direct experience. Police seems to be more accessible and reachable for the under privileged and the poor and they approach the police rather than the court for the redressal of their grievances. Considering the police as the guardians of law, the common man expect the police to be helpful in solving their problems.

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6 The tasks which were assigned to police in the colonial rule were wide ranging: maintaining external boundaries, collecting customs revenue, pacifying opposing groups, collecting taxes, maintaining law and order etc. All these tasks are concerned with governability and sovereignty. Hence, one can understood that, development of police is directly connected with the State sovereignty.

7 “the modern police became as indispensable for the functioning of the International state system as the standing armies and navies…… No International treaty could be concluded unless all the signatory parties were reasonably secure at home”. His-Huey Liang, The Rise of the Modern Police and the European State system from Matternich to the second World War, Quoted in Les Johnston, Policing Britain, Risk, Security and Governance, Longman, Harlow, United Kingdom, 2000, p.16.
Working of the Police System in the Post-independent Period

The post-independent experience shows that police system became power abusing. Experience taught that the society is not safe in the present police system, which is unsuited to protect the society from crimes and criminals. Police often violates valuable rights of the people. If the criticism, which emanates from the people, judiciary and the medias is of any indication, it seems that in general there is widespread discontent and distrust against the police. Indian police is said to have been involved in corruption, organized crime, looting, arson and human rights violations, in times of civic strife. The negative role played by the police during Delhi\textsuperscript{8}, Bombay\textsuperscript{9}, Gujarat\textsuperscript{10} violence and other custodial tortures occurred in the post-independent period is pointing towards this.

Corruption seems to be the most important menace which police faces in the Post-independent period. Difference in the rank or position is not an exception to this. Bribe rules the affairs, leaving the common man helpless. There is no deterrence in the system, which dissuades one from corruption. No wonder, the people does not show any confidence in police nor do they co-operate with the police.

Over burdened with other policing work the investigation into a crime becomes the casualty. The police could not pay sufficient attention to investigation, which often results in faulty investigation and consequential acquittal of the accused. Intervention from the higher officials and politicians adversely affects the independent functioning of the police diverting the channel of investigation. This scenario points to the fact that urgent reforms both legal and administrative is over due.

\textsuperscript{8} Riot occurred in connection with Mrs. Gandhi assassination in 1984.
\textsuperscript{9} Communal riots occurred in Bombay during 92-93.
\textsuperscript{10} Communal violence in Gujarat, 2002.
Rate of police crimes increased in Independent India. Enforcement agencies indulge in law breaking and thereby became the single largest law-less group in India. The Supreme Court in *Kishore Singh Ravinder Dev v. State of Rajasthan*,\(^{11}\) after analyzing the present status of the police observed:

“Police believe more on fists than on wits, on torture more than on culture. They believe all is well with the police, the critics are always wrong. Nothing cowardly and unconscionable than a person in police custody being beaten up and nothing inflict a deeper wound on our Constitutional culture than a State official running berserk regardless of human rights”.\(^{12}\)

The real status of the post-independent police is picturised by the Supreme Court in another case,\(^{13}\) where it is observed that, police lock-ups are awesome cells and they are perpetrating violent violations against the citizens. Lock-up deaths are quite common, shooting without provocation is considered as an easy method to avoid opponents, and human rights violations by police are rampant. Professor Upendra Baxi observed that, it is surprising to know that so many young people come to police stations to end their lives. What is truly striking about India is the lack of respect for the ‘rule of law’ not just by the people but also by those who make and enforce it.\(^{14}\)

The police are bestowed with vast powers, but they show scant respect for human rights. The number of cases in which police are accused of, is increasing. They show an indifferent attitude towards human dignity and Constitutional rights. The Supreme Court and High

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\(^{11}\) (1981)1 SCC 503.  
\(^{12}\) *Id.* at p.505.  
Courts have relied heavily upon Article 21 to deter and to punish the police officers who indulged in human rights violations.

**Special Acts***

Post independent India has seen the implementation of several special laws to curb internal violence and terrorist activities. Maintenance of Internal Security Act (MISA), Terrorist and Disruptive Activities Prevention Act (TADA), and Prevention of Terrorism Act (POTA) are some of them. All these acts were withdrawn due to the misuse of the provisions of these acts by the police including the targeting of minorities and political opponents. All these acts were given wide powers to the police and were included in its ambit provisions contrary to the generally accepted basic principles of criminal laws. For example, the POTA allowed detention of a suspect up to 180 days without filing the final report in court. A confession made to a police officer is admissible.\(^{15}\) There are enough provisions in these Acts vulnerable to misuse. The abuse of the provisions in these Acts was legion.

In order to conduct investigation in the terrorist activities a new agency was constituted as per National Investigation Agency Act, 2009. It is a federal agency which has the power to investigate terrorist activities in a State. Officers of the NIA have all powers, privileges and liabilities, which the police officers have in connection with investigation of any offence. The police officer in charge of a police

\(^{15}\) POTA, Sect.32(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical or electronic device like cassettes, tapes or sound tracks from out of which sound or images can be reproduced, shall be admissible in the trial of such person for an offence under this Act or the rules made there under.

* Powers of the police under these Acts are not a subject matter of this study.
station on receipt of the report of the offence shall forward it to the State government, which in turn will send it to the Centre. NIA will be directed to conduct investigation, if the Centre feels the offence is terror related. Other offences will also be investigated by the NIA, if such offences are terror related. It is in fact an usurpation in the power of the State government in the crime investigation process.

**Investigative Machinery in the Post independent India**

In a democracy, Police is responsible for performing multifaceted functions.\(^{16}\) Investigation is the prime function of the police which is a statutory duty. To obtain real and unvarnished truth wide powers are given to the police, in which interference from any quarters is not allowed. However the police have no authority to bolster up a case so as to enable the court to record a conviction basing on such evidence.\(^ {17}\) But, the truth is awesome. The police investigation is far from satisfactory. Administratively controlled by the government the police is directed by many. They have to act under dictation and it reflects in the functioning of the police exposing them to criticisms and centre of controversies regarding their professional roles.

Manipulation of evidence and planting of witnesses to shield someone is quite common in police investigation.\(^ {18}\) In order to obtain confession or to secure evidence, police often resort to third degree methods\(^ {19}\) including torture. They also adopt techniques of prolonged interrogation resulting in deprivation of liberty and omit to record arrest to screen the illegality of their action. Defective investigation helps the

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\(^ {16}\) Prevention of crime, maintenance of law and order, conduct of investigation of crimes, production of under trials before the Courts and post sentence surveillance over the criminals.


offenders to get an acquittal easily. In such situation, court becomes helpless.\textsuperscript{20} Defective investigation is seem to be purposeful in cases where politicians, police officers, or rich are involved. The Indian criminal justice system bagged a bad reputation due to the vitiated investigation.\textsuperscript{21} Indian police failed to gain the confidence of the people even after the independence. The malady is addressed by the Government of India and the State governments and appointed several Commissions \textsuperscript{22}, though their recommendations remained in the paper for reasons best known to the government. The defective functioning of the police continued unabated notwithstanding criticism from media as well as from courts. It is heartening to note that a positive gesture is emanated from the Supreme Court of India which gave several directions to States \textsuperscript{23} for taking steps to reform police, though one may doubt the feasibility of such steps to bring out positive change.

Pre-trial process is the crucial stage, which determines the success of criminal justice administration. Defect in this process will end in acquittal of the accused. Laxity from the part of the police in investigation is rampant, resulting in high rate of acquittal. There is wide spread belief that in most of the cases investigation is partisan either due to police corruption or as a result of heeding to the direction of top officials or political bosses. It is to be noted that police give a different version to this malady. They point out hostile attitude of the people, lack of forensic facilities, over work load and impediments

\textsuperscript{20} Karmel Singh v. State of M.P., A.I.R 1995 SC 2472. In this case despite defective investigation, prosecutrix, a labourer was relied on and the accused was convicted.


\textsuperscript{22} The National Police Commission(1977-81);The Law Commission(154\textsuperscript{th} report); The Ribeiro Committee (1998); The Padmanabhaiah Committee (2000); The Sorabjee Committee (2005); The Dharamveera Committee (1977);The K.T.Thomas Commission in Kerala (2002) are some of them.

created by law as factors adversely affecting success of investigation. In either case, the police are at the centre of criticism.

Being the custodians of wide powers granted by law, abuse of power is likely. Custodial violence, human rights violations, procedural violations, custodial rape are some of the commonly occurring abuses. Legal control of the police to eliminate the possibility of abuse is a complex issue. The ruling\(^24\) of the Supreme Court, though aims at reforming the police, may not result in the desired change if necessary steps in various other deficiencies in the police administration is not addressed. The law concerning investigation must also undergo changes, in order to make the system effective. The investigation contained two distinct parts. It is very difficult to ascertain at what point the first part ends and the second begins. In the first part, the police will ascertain the parties involved in the case and in the second, police collect evidence to prove the guilt of the accused. The first part is purely administrative, where the freedom of the police is accepted. Police can question anybody who is acquainted with the facts of the case just to obtain useful information to ascertain the culprit.

When the suspect becomes the accused, the second phase of the enquiry begins. Here the task is to collect evidence against the accused to prove his guilt. This is the exact place where judiciary and the law control the police by imposing restraints. The purpose of these restraints is to uphold the principle of innocence till the proving of the case before a judicial tribunal. In the Indian situation, even if the control measures are violated by the police, it will not affect the quality of the evidence. Hence, the police may resort to any modus operandi to obtain evidence or destroy evidence often flouting the control measures. The law gives

\(^24\) *Ibid.*
an incentive to the police by allowing the prosecution to take advantage of even the illegally obtained evidence. Police continues the abuse because they are very much interested in the success of the prosecution. The nature of the law makes the police less fair.

The Prakash Singh Conundrum

In 2006 the Supreme Court pronounced a judgment in the case *Prakash Singh v. Union of India*. The petitioner sought direction to the Government of India to enact new Police Act on the lines of the model Act drafted by the Police Commission. This change, it is believed, make the police accountable to the law. The petitioner was aggrieved by the fact that recommendations of the Police Commissions to modernize the police are not implemented by the government and it allowed the police to continue as unaccountable. Agreeing with the contention of the petitioner the Supreme Court issued directions to improve the police system and stipulated three months time to implement it. It may be a moot question to ask whether three months time would be sufficient to implement the direction for the formulation of which, Court had taken ten years. Experience proves the importance of such a query.

The effort of the Supreme Court, it seems, is to make the Indian police an efficient and impartial (not independent) law enforcement agency thereby liberating them from unscrupulous masters. This decision fails to address the real maladies of the Indian criminal justice system. The maladies of the police system should be addressed in a deeper manner, so as to identify the reasons for high rate of acquittals, high rate of human rights violations, the partiality shown by the police.

25 Supra n.23. The petitioner in this case, prayed for the implementation of various reports of the Police Commissions.

26 Id. at p.8.
and illegal detention and custodial torture of the accused. The reason for the non-cooperation of the people with the police are to be identified and addressed. Answer to these queries is so vital to the reformation of the criminal justice system. The ruling of the court seems to have not addressed these aspects of the problem and as such is doubtful to have the desired result. This observation is not to belittle the bold and timely intervention of the apex court to rescue the little Indians from the fangs of the police lawlessness and violence. The court seems to extend its helping hand where the executive failed to initiate an essential legislative reform.\textsuperscript{27}

Improvements to police agency must aim at strengthening of the criminal justice system. Otherwise, it will have no effect on the amelioration of the problems faced by the public. Along with the improvement in administrative aspects of the police, necessary changes have to be made in the Code of Criminal Procedure, and the Evidence Act. Police have to work within the parameters prescribed by the procedural laws. It is the unchannelised powers under the law, which paves the way for misuse and corruption. Change in laws is \textit{sine qua non} for improvement in the criminal justice system. Without change in the procedural laws, the police are not going to be changed. The judgment is keeping silence over this issue and the decision even if implemented in letter and spirit no desirable change is to be expected.

It is the demand for the last several years to separate investigation from the law and order. Two independent agencies are envisaged, one for investigation and another for the maintenance of law and order. This suggestion, if accepted, is expected to ensure speedy investigation. Present practice of dividing the constabulary into two

\textsuperscript{27} Dr.K.N.C.Pillai, “The Supreme Court on Police Reorganization”, 2007(1) KHC j-12.
branches with the liberty to draw cops from both wings to non-investigative activities is not an ideal practice. The two wings should be constituted as independent agencies with special cadre of personnel specialised in their respective spheres of action. The job shall not be an inter-transferable one.

The judgment required the respective Governments to establish three authorities in the State level and one in the national level. First one is the State Security Commission (SSC). In order to constitute the State Security Commission, states are free to choose one model among the three given.\textsuperscript{28} Except the NHRC model, in the other two models, the constitution is in such a way that the Government will get majority in the Committee. So, naturally, the Government will select either of the two. Leader of Opposition, Chief Secretary of the State and The DGP of the State as ex-officio secretary found their place secured in the commission. The purpose of the Commission is to function independent of Government control as a watchdog body for laying down the broad policy guidelines.\textsuperscript{29} One may wonder how a committee controlled by the Government can lay down a policy independent of government control. The Committee is likely to be another wing of the Government.

Police Establishment Board, the second one, is meant for deciding all transfers, postings, promotions and other service related matters. It will be an in-house arrangement with DGP and four other

\textsuperscript{28} National Human Rights Commission Model, Ribeiro Committee Model, and Sorabjee Committee Model. NHRC model include Chief Minister or the Home minister as the chairman and Lok Ayukta, a sitting or retired judge nominated by the Chief Justice of the High Court, Chief Secretary, Leader of Opposition as members and DGP as ex-officio Secretary. Ribeiro Committee model include Minister in charge of police as chairperson and Leader of Opposition, a judge nominated by the Chief Justice of the High Court Chief Secretary, three non-political citizens of proven merit and integrity as members and DGP as secretary. Sorabjee committee model include Minister in charge of Police as chairperson and Leader of Opposition, Chief Secretary, and five independent persons as members and DGP as Secretary. See \textit{Supra} n. 23 at p. 14.

\textsuperscript{29} \textit{Supra} n.23at p.14.
senior officials in the police. The intention behind such a mechanism is to avoid political interference in the day-to-day affairs of police administration. However, the State Government could interfere in the decision of the Board after recording its reason for doing so.\textsuperscript{30} It is expected that this would control the possibility of extensive interference from the part of the government and the insistence to record reasons would act as deterrence to the government. Moreover, judicial review over the sufficiency of grounds /reasons for interference could put the matter under control. It may not be a displaced apprehension that this provision, which enables interference, may allow the State Government to control the cops to meet their ends. What is the guarantee that the Board, directly under the control of the Home Ministry of the State, would not be overwhelmed by the influence of government and would act under the dictates of the minister? The Board, it seems, is free to transfer an efficient officer from the investigation branch to law and order branch and vice versa. By this way, the Government can control the investigation of a case like what is happening now. Probably this could be eliminated by a strong judicial supervision and review of the decisions of the Board.

Police Complaints Authority, the third one, is to deal with the complaints against police officers. This suggestion fulfils a long-standing demand of the public. It is high time to constitute such an authority in every State. The Supreme Court has not laid down any clear guideline regarding the qualification and appointment of its members. The job of the Authority would be a difficult one for the reason that they have to separate complaints arising out of vengeance to paralyse

\textsuperscript{30} Id at p. 15.
the police efficiency from genuine complaints. This indicates to the desirability of having persons qualified in criminal law as its members.

National Security Commission is an authority to be constituted in the national level to select and place Chiefs of the Central Police Organisations and to take measures to upgrade the effectiveness of these forces, improve the service conditions of its personnel and ensure coordination between these forces. The Commission will be headed by the Union Home Minister and comprise heads of Central Police Organisations and a couple of security experts.

Other two important directions are about the selection and minimum tenure of DGP and IGP and other police officers in a post or police station. Though the State Government can select the DGP, their right to choose is restricted to the list prepared by the Union Public Service Commission. In short, the UPSC will select the DGP in a State and once a person is appointed, he should be given minimum two-year service irrespective of his date of superannuation. This seems to be a rational step, which enables the official concerned to implement his vision and policies. This would also create an atmosphere, which enables the official to discharge his duty properly and independently. Guaranteed minimum tenure to an officer in a station will help him to do his job impartially and without fear or favour.

Apart from suggestions contained in Prakash Singh, procedural laws must also be amended. This is inevitable to improve the working of the criminal justice system. Partial reformation would not make any marked change in the criminal justice system. The court ought to have approached the problem in a more comprehensive manner

31 Supra n.23.
rather than partially. The Apex Court missed the opportunity to forge a comprehensive policy to reorganize the police agency and ended up with directions to introduce changes only in the police department leaving other areas untouched.

The Present Problem

When the Crown had taken over the internal administration of India after the first Independence struggle, in 1857 it became necessary to have a police code for the effective enforcement of law in the country. Therefore, the then administration passed the Police Act in 1861. Indian police system is the balance of the British rule and inherited all the characters of the colonial past. The Police Act 1861 has no human face. Though change occurred in every sphere of activities, police culture remained unchanged. Post-independent experience of the Indian citizens with the police is bitter and they strongly advocate for a change. The factors that highlight the need for a change is three fold. First, the criminal justice system plays an important role in safeguarding the rule of law. Police being part of the criminal justice system, have a greater role in the maintenance of rule of law in the society. Secondly, police activities directly affect the man in the street. Without the cooperation of the public, police cannot perform their part efficiently and effectively. In order to extend the co-operation public must feel that the system is inevitable in the society and without their effort rule of law will not prevail in the community. Finally, it is the attitude and behaviour of the police towards the public is the criterion for public confidence in the police. The police must respect the rights of the common man and they must be instrumental in redressing the grievances of the public.
The present situation in India is not satisfactory. The criminal justice policy has become highly politicized. Police involving in criminal activities are on the increase. Human rights violations are rampant; lock-up deaths are common; employment of third degree methods are the order of the day; number of custodial rapes are increasing; procedural violations are quite common; assault on minorities are also on the increase. This situation forced the Indian polity to expect for a renewed and rejuvenated police system.

Putting the police under direct supervision of the judicial officer, as in the case of continental system, would not be a remedy for the present system of defective functioning of the investigative agency. The contrary is the common law practice, which seems to be acceptable. Judiciary must be an independent institution and should not take part in the investigative process. It is not proper on the part of the judiciary to decide a case after controlling, directing and supervising the investigation of the case. This would raise further question regarding impartiality of the judicial system, which is a problem faced by the French system. The investigation of a case must be conducted by an independent, impartial and efficient agency, which should not be controlled by another agency. As other organs of the democracy, the investigative police must be self-contained and self-administered. But, the present system of abuse of power by the police allowed to continue will lead to failure of the criminal justice system leading to lawlessness. This would create a situation where security and peace would be a distant dream. The criminal justice system should be organised in such a manner as to afford protection to the common man. The mechanisms to protect the rights of accused/suspect shall be nicely balanced against powers of the police to contain criminal activities. Power should be used in tune with the rights of the common man and shall not prejudice
them. At the same time it shall not hamper the efficiency of the police system, and shall provide sufficient room for the police to carry out all the lawful activities. While using these, police should respect the rights of the common man. At the same time, the law must be able to make all the lawful activities of the police into success. Whether the procedural laws in existence regarding the investigation are effective in fulfilling the objectives of the criminal justice system is to be analysed in the light of the contemporary values.

Half-century stock taking proved that, remedies for this awesome situation lies not only in the reorganisation of the police alone. Investigative process must be restructured and must be entrusted with a new agency.