Chapter - III

THE MACHINERY AND CRIME INVESTIGATION

The Investigative Machinery

The Police, Bar, Bench, Prosecution and Correctional institutions constitute the criminal justice system. Each has its own area of operation. The Police invested with the duty to investigate crime, curb violations of law and maintenance of peace and order in society.

The term ‘police’ has, come to be associated with a historically specific way of performing police functions. It refers to State organizations employing professionals who are trained and equipped as specialists in policing. These organizations are characteristics of all modern societies. In most of Europe, they originated explicitly as agencies of the State. In England and North America, they were represented as having some continuity with earlier forms of self-policing. In many other countries, which were once colonies of imperial powers, they originated as instruments of colonial domination.

The word ‘police’ might have come either from the Greek word, ‘politeia’ or its Latin equivalent ‘politia’ or from the French word ‘polis’. The meaning of the first two words is citizenship or administration of government. The French word means city or town. All the three words signify three things viz., polity, policy and police. First is a body of people organized under a system of government, ie, a

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politically organized community. So, polity means, the agreement by which they make themselves into a community for common good. Policy means the manner of regulating the conduct of business of the government. The basis for the formulation of policy is the polity. According to the third derivative meaning of the term, police is an institution for the maintenance of order and enforcement of law. Therefore, police is an association of persons, constituted by the government for executing its police functions. State can exist only so long as it continues to perform its police functions, and once the State is unable to do so, it fails.

The term “police” are now used primarily to denote a body of people organized to maintain civil order and public safety to enforce the law and to investigate breaches of law. The police are considered as the principal agents of the law of the land. It is the institution, which crystallizes the concept and practice of the maintenance of public peace, safety and order. The role of police touches all sorts of human problems. The police are considered as the watchdogs of peace and security in the society. They inspire confidence in the mind of the people and are primarily responsible for the well-being of the society.

**Evolution of Police**

Early police were either military or semi military organizations that developed from the personal bodyguards of rulers or warlords or from community organizations in which citizens are bonded together

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5. In the Concise Oxford dictionary, meaning of the word ‘police’ is given as “civil force responsible for maintaining public order”.

6. The Lexicon Webster defines police as an “organized civil force for maintaining public order, preventing and detecting crime and enforcing the laws.” *The Lexicon Webster*, vol.11.
for mutual protection. The first organized police force was the Roman vigil. The duties of the vigils were to protect the city from fire and to arrest lawbreakers. The vigils were armed with clubs and short swords. In 7 B.C., Augustus Caesar divided the entire Rome into fourteen regions and each region was again divided into several precincts (vici) under the supervision of vicomagistri, who is responsible for fire protection among other administrative and religious duties. In Japan, during 17th century, there existed an elaborate police system. The castle towns were under a military samurai warrior who also served as town magistrate and chief of police. He appointed other sword carrying samurai to serve as a patrolling police force. Russian Tsars also established a police system to enforce their laws. After Russian revolution, this police force became Lenin’s powerful ‘Cheka’. Mussolini’s OVRA and Hitler’s Gestapo are other examples for early policing.

**English Explanation**

In the earlier period there were persons appointed by the church to look after the properties of the church, who were known as ‘parish constables’. Their job was unpaid and usually the parish members were selected by rotation to discharge this duty. This parish constable had the power to arrest the offender but could hardly have done much in the way of investigation. They had no power to investigate the offence. Whenever the parish constable arrests a person for an offence, the investigation was entrusted with “Justices of peace”. It was the burden of the justices of peace to investigate the case. They were instruments of

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8. http://www.realpolice.net/police-history.shtml dtd.02-10-08
9. Supra n.7.
10. Supra n.7.
the local government and have many administrative duties. They were the keepers of peace. They were considered as men of all work. The work of justices of peace was not fully fruitful since the assistance of the parish constables was inadequate. The work of the constables was not up to the mark since they were unpaid and so, they did not show any responsibility towards their job. They had no power to investigate the offence. The casual and voluntary nature of the job performed by the parish constables prevented them becoming responsible in discharging their duties. This led to the constitution of a new force to assist the justices of peace. The frankpledge system of policing was the contribution of Saxons. All adult males were responsible for the good conduct of all others in this private system. In this system, all males in the society are grouped together into ‘tithing’ headed by a ‘tithing man’. Again, the tithings are grouped into ‘hundreds’ headed by a ‘hundred man’, who served as both administrator and judge. The working of the frankpledge system is very interesting. When crimes were observed, people were expected to raise an alarm to gather their countrymen and pursue the criminal to capture him. If anybody refused to pursue the wrongdoer, he would be punished. Moreover, if no witness is available it will be the responsibility of the victim to identify the criminal. The frankpledge system of early England is considered as the forerunner of modern police force. This is the beginning of the community policing

14 Ibid.
which led to the development of the Metropolitan Police Act.\textsuperscript{15} The United States inherited the Anglo-Saxon system of constables.\textsuperscript{16}

After the Norman Conquest, UK added the office of the constable to the system and they were responsible for overseeing the ‘watch and ward’ system. The Statute of Winchester of 1285 codified the obligations of the citizens. As far as ‘law and order’ is concerned five obligations were placed upon the shoulder of the citizens, which they had to adhere. Accordingly, it is everyone’s duty to maintain the King’s peace and any citizen could arrest an offender. The unpaid, part-time constables had a special duty to do so, and in towns, his inferior officer, the watchman, would assist him. If the offender was not caught red handed, a hue and cry must be raised. Everyone was obliged to keep arms and to follow the cry when required. The constable had a duty to present the offender at court tests.\textsuperscript{17}

In this system, the citizens are duty bound to join together to maintain peace and security in the society. In one form or the other, this system remained in Anglo-Saxon countries until the 19\textsuperscript{th} century. It was an unpaid police system and the citizens fulfilled the functions.

The ‘Parish Constable’ system and the ‘Frankpledge’ system have become anachronistic in a new and rapidly developing, industrialized and urbanized society. These institutions were ineffective. Moreover, when economic opportunities increased, householders found it unprofitable to assume their turn in keeping the peace. They hired others to do it for them. Until 1829, numerous Bills were presented in the Parliament for the improvement of police. Several Committees were

\textsuperscript{15} Ibid.
\textsuperscript{16} Id. at p.960.
\textsuperscript{17} Ibid.
appointed to investigate the question, but their recommendations were seldom implemented.\textsuperscript{18}

The creation of the Thames River police was one of the significant developments in the evolution of police system. This police force was organized to prevent theft in the port. The main feature of this system was that the officers were not stipendiary but salaried. The House of Commons in 1890, passed a bill making the Thames River police a publicly financed organization.

In 1821, Government of England was reshuffled and Sir Robert Peel was offered the Home Office and he accepted the same. He left office in 1830 but consolidated and reformed practically the whole of the criminal laws of England. In April 1829, Sir Peel introduced a bill for improving the police in and around the Metropolis. While introducing the Bill Sir Peel was of the opinion that, the increased crime rate was not due to depressed conditions but rather to a lax police system. He wanted a preventive police rather than an investigative police. Hence, from the unpaid, petty parish constables, the modern police system emerged as servants of the State, with adequate powers.\textsuperscript{19}

The Metropolitan Police Act established four principles that shaped the modern English policing. First, policing was to be preventive. Second, command and control were to be maintained through a centralized organizational structure. Third, the Act intended to make a professional police, which was impersonal and patient. Finally, the authority of the

\textsuperscript{18} Henry Fieldings Thief Takers; John Fielding’s Committee, 1770 ; Pit’s Bill, 1785; Corn Laws, 1815 etc. quoted in J.L.Lyman, “The Metropolitan Police Act, 1829; An Analysis of Certain Events Influencing the Passage and Character of the Metropolitan Police Act in England”, Journal of Criminal Law & Criminology, vol.55, 1964, p.141.

police was derived from three sources - the Crown, the Law, and the People.

Duke of Wellington, while dealing the subject in the parliament said, “...the best mode of avoiding the infliction of punishment, was to prevent the growth of crime; and the legislature would do away the necessity of frequent punishment by...an efficient police in the hands of the Magistrate”.

The police force was organized with an object of keeping peace and security in the society. At the early stage the view, prevailing was that the police were basically a crime-fighting agency. Instructions and Police Orders emphasized on the preventive and protective nature of police. It reads,

It should be understood, at the outset, that the principal object to be attained is the prevention of crime. To this end, every effort of the police is to be directed. The security of person and property, the preservation of the public tranquillity and all other objects of a police establishment will thus be better effected than by the detection and punishment of the offender, after he has succeeded in committing the crime. This should be kept in mind by every member of the police force as a guide to his own conduct...The absence of crime will be considered the best proof of the complete efficiency of the police.

**Indian Justification**

Some kind of organization for watch and ward or bringing evildoer to justice was in existence in one form or the other from time immemorial even in ancient India. The functions and duties of these

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21 *Id.* at p. 153.
organizations differ from place to place and they depend on the development of the citizen. Police as an independent unit in the State administration is a very recent development.

In *Vedas, Arthasasthra*, and the Epics like *Ramayana*, there was mention about certain organizations to police the community. It can be seen from these and other books of the past that the Kings used to keep secret service organizations to collect information. Hence, the kings were well informed of what was happening in the farthest corner of their kingdom.\(^{22}\)

The origin of police can be traced back to the earliest Vedic period of Indian history. In the Ramayana, there is a graphic description of ‘*dandayudha Dharanapi*’, parading through the streets of Lanka, the Kingdom of *Ravan* when *Hanuman* was engaged in espionage there.\(^{23}\) *Danda* means, law or club. Those who are armed with lathis can be equated with the present policeman on beat. The English translation of Ramayana reads thus:

> There savage warriors roamed in bands
> With clubs and maces in their bauds,
> Some dwarfish forms, some huge of size.
> With single ears and single eyes.
> Some shone in glittering mail arrayed
> With bow and mace and flashing blade;
> Fiends of all shapes and every hue,
> Some fierce and foul, some fair to view.
> He saw the grisly legions wait
> In strictest watch at Rávan's gate,
> Whose palace on the mountain crest.\(^{24}\)

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The men parading through the streets armed with clubs and maces can be compared with the constables on patrol duty today. There can be many examples to prove that there was an organization to perform police functions at the time when Valmiki wrote Ramayana.

Maurya age is one of the very important period from which we learn about the police system of ancient India. Kautilya’s Arthasasthra written in 310 BC describes elaborately the system that prevailed at that time. The prevention of crime was an aspect of maintenance of law and order. Secret agents working under the Chancellor were responsible for collecting information about various crimes. The Chief Controllers of alcoholic beverages and of gambling and betting were also responsible for collecting information about enemy agents and thieves. Entertainers and their wives were also used as agents. Doctors were obliged to report cases of secretly treating wounded persons. Dead bodies could be taken out of the city only through designated gates. All these were certain rules that prevailed at that time for the prevention of crime and the maintenance of law and order.

The indigenous system of police in India was very similar to that of Saxon in England; both were organized on the basis of land tenure. The report of the Indian Police Commission 1902-03, gives a good description about the police system which prevailed during the early period, that;

In India, zamindars were bound to apprehend all disturbers of the public peace and to restore the stolen property or make good its value. Under the large zamindars were a number of subordinate tenure-holders, all of whom were required in their degree to perform police duties and bear for their

25 Supra n.22.
26 Id. at p. 379.
areas the responsibilities which rested upon the *zamindar* for the whole estate; and finally, there was, as a rule, the joint responsibility of the villagers, which could only be transferred if they succeeded in tracking the offender to the limits of another village. This village responsibility was enforced through the headman, who was always assisted by one or more village watchmen. These later became the real executive police of the country.\(^{27}\)

During the Mughal period some kind of police organization began to take shape. In small towns, the police duties were entrusted with “*thanadars*”, and in the big towns, the police functions were entrusted to an officer called “*kotwal*”.\(^{28}\) He was responsible for watch and ward of streets at night and to post men at all places of public gathering to look for thieves and other miscreants.\(^{29}\) The Marathas also adopted the Mughal practice of maintaining the police by the state. *Kotwal* was the head of the city police and maintenance of security was his main duty.\(^{30}\)

East India Company also continued the system of policing followed by the native Kings. In 1792, The East India Company took the police in the country into their own hands by a resolution and attempted to introduce a uniform system. The control of the police was with the magistrates. The magistrates were allowed to divide their police jurisdiction into convenient jurisdictions, each to be policed by a


\(^{28}\) In the ancient India the chief officer of the police in the city was known as *Nagar-Pala*, means the protector of the town and sometimes *Kotta-Pala*, means one who protect the citadel. This name has continued to these days as *Kotwal* in hindi.


\(^{30}\) *Ibid.*
Deroga, who were renamed as Sub-Inspectors by the introduction of the Police Act, 1861. However, this change did not yield expected results. In 1814, the court issued orders for strengthening the police establishment. The duties of the Magistrate and the control of the police were transferred from Zillah judge to the collector. In 1860, the Government of India appointed a commission to enquire and suggest measures to increase the efficiency of the existing police system. Based on the recommendations, a bill was passed by the Legislative Council and received the assent of the Governor General in 1861, which was the first Indian Police Act. As per this Act, the general management of the force in each province was entrusted to an Inspector General of police. In each district, Superintendents were appointed for the supervision of the police in that district. Subordinate force was also constituted with inspectors, head-constables, sergeants and constables.

Though the British rulers also organized their police force in the style of Mughal, they recruited persons from all castes to the police force. They valued only the loyalty and obedience of persons and it means assistance and support to rule India overpowering the local people. During their regime, also, police force was not free from interference. British rulers used the Indians in the police to oppress the freedom struggle.

As an institution, the police organization established by the British in India in the mid-nineteenth century was foreign in its inspiration and design. At the same time, they adapted available ideas and policies in institutionalizing the police. The idea behind this was to resolve the existing problems and to meet needs locally felt.

31 Supra n.27 at. p.7.
32 David Arnold; Police Power and Colonial Rule, Madras 1859-1947; Oxford University Press, Delhi, 1986.p.7
Post independent era also depicts a sad picture of the police system in India. The present police force is only a modification of the force constituted under the 1861 Act. After the adoption of the Constitution, police is considered as a State subject. Hence, all States have passed separate legislations concerning the police. The contents of these Acts are same since State legislations followed the model of The Police Act, 1861 which continues to be in force by virtue of Article 372 of the Constitution.

French Experience

The French police system was totally different from the English system. Organized, financed, and controlled by the King, the French police was considered as a personal political organization of the King. The modern police of Paris owe its origin to the edict passed by Louise XIV in 1667, which created a new magistrate post- lieutenant de police- and in 1764, a new title was conferred upon this official- lieutenant general de police, which was a powerful post, appointed by the king. He had the power to scrutinize social, political and economic activities of Paris and had a responsibility for controlling crime and maintaining order. The Paris police was reconstituted after the revolution and the control of the police was centralized in the prefect de police, an office with administrative authority but no judicial authority. In 1796, the Ministry of Police was constituted with a mandate to enforce laws. Under the directorship of Joseph Fouche, the police in France became a popular force. The ministry brought within its control everything, which

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33 Entry 1 & 2, List II, State List.
34 Article 372 deals with the continuance of the laws, which are in force in the Indian Territory immediately before the independence. See, State v. Yashpal, A.I.R. 1957 Punj.91.
concerned public security and the direction of the police. During this period, France had the most elaborate police machinery, at the time when England was only exploring the possibility of establishing a new police force in their country.\textsuperscript{37} The police force in France developed into two national police organizations: police nationale and the gendarmerie nationale. The police nationale is responsible for policing the provincial towns while the other one serve as municipal police responsible for preventive patrol and control of traffic.\textsuperscript{38} The police nationale is attached to the ministry of interior and the police gendarmerie is attached to the ministry of defence. In principle, the administrative and judicial functions are separated and two separate agencies are constituted: police administrative and police judiciaire. Both consist of members from police nationale and gendarmerie nationale. To whichever of these two bodies, the members of police judiciaire belonged to; they have the same powers and are subject to the same rules.\textsuperscript{39} The role of the administrative police is to prevent crime and to maintain public order. They are under the control of the executive. The judicial police - police judiciaire - are engaged in the investigation and prosecution of the offences controlled by the prosecutor or the examining magistrate.

\textbf{Investigation}

The most important and common feature of both accusatorial as well as the inquisitorial systems of criminal justice administration are that both provides for a mechanism for investigation of crime. Investigation is the process through which the police collect evidence to determine whether to prosecute or not an alleged offender. The word

\textsuperscript{37} Supra n. 32, at p.574.
\textsuperscript{38} Supra n. 32, at p.964.
investigate is derived from the Latin word ‘vestigare’ which means ‘to track or trace’. It is the tracing of covered elements of a crime. Hence, “criminal investigation is the process of discovering, collecting, preparing, identifying and presenting evidence to determine what happened and who is responsible”.\(^{40}\) It is a systematic process of legal inquiry to solve out the ‘mystery’ surrounding the crime.

In both systems, the success of the criminal justice administration depends on the investigation report. The trial depends heavily on the investigation report. Regarding the pre-trial phase, the difference lies in the agency, which conducts the investigation. While police conduct investigation in the adversary system, *juge d’instruction* with the assistance of police conduct the same in inquisitorial system. It shows that police is an inevitable and important element in the investigation process of a crime. The success of the prosecution depends on the investigation, which depends on the ability of the agency, which conducts the investigation. Effectiveness of the criminal justice system depends on the efficiency of the pre-trial process. It must be fair, reasonable, proper and legal to balance the rights of the public as well as the accused. This impartiality is lacking in accusatorial system where the police often becomes partisan. Judges by training could stand neutral and detached. Since judges are kept away from investigatory process this advantage is not available in accusatorial system. Since there is no direct control or supervision over the police in the investigatory process, they may act as they please. Constitution of a new agency to supervise the investigation is likely to improve the situation.

\(^{40}\) Wayne W. Bennett & Karen M.Hess, *Criminal Investigation*, Wadsworth, Belmont,USA, Sixth edn., p.3.
Investigation - Historical Account

Crime being a challenge to the unity of the society the State monopolizes the determination of whether or not a crime has been committed and sentencing the offenders in cases of violation. Irrespective of the involvement of the interests of individuals, the cases are not considered as a private affair between the victim or his relatives and the perpetrator of the crime. The investigation and the booking of the accused are the duties of the State. Separate machinery is constituted in all the countries for the same. The object is to prevent private justice by retribution. Whenever a case is reported to the police, they will investigate and submit the final report. The trial becomes a contest between the prosecutor representing the State and the offender, the accused.

Investigation is the process of systematic examination of different aspects involved in a crime by a person authorized to do it. Efficient investigation is the cynosure for the success of prosecution for which efficient investigative machinery is highly needed. Investigation is not simply the collection of evidence, which the police are getting in due course, but it is a systematic discovery of evidence adequate for the forensic purpose. Earlier there was no such institution for conducting investigation and the victim had to collect evidence necessary to prove his allegations against his opponent. The introduction of expert agencies for the collection of necessary evidence changed the scenario. The weakness of the system in controlling the crime had been a cause for the agitation for the improvement of the police system in the seventeenth century England. Due to the increasing rate of crime, the people were under fear. They were apprehensive of the ability of the system to protect their life and liberty. The demand was for more severe laws and to increase the severity of punishment. Though capital punishment was
prescribed for several offences and laws were strictly enforced, the authorities were not able to control crime rate. The absence of timely intervention and apprehension of the culprit was one of the reasons for this awesome situation. This undoubtedly led to the development of feeling of insecurity and loss of confidence of people in the efficiency of criminal justice administration.

This unhealthy situation paved the way for a movement to strengthen the moral fibre of the nation. The King issued several proclamations. The Royal Proclamation of 1690 which provided ‘for apprehending robbers on the highway and allowing a reward to the discoverers’\textsuperscript{41} caused the residents in an area stand united and set up associations to find out and apprehend the offenders. This movement of voluntary policing was successful in some extent. The society as part of the voluntary policing, appointed agents as informers. Later these informers were given rewards for their efficient work. The best way to gather information regarding offenders was to seek help from their former companions or offenders. The associations, which were formed for apprehending culprits, used such persons to spy upon their companions and many ex-convicts became informers.

The system of rewarding the informant has caused the emergence of many private initiatives in the investigation of crimes. Thus, the discovery of criminals became a highly competitive business. This created many problems in the society. They charged very high from the people and even connived with the offenders to grab more from the citizens. The association or a thief finder, who received a reward on the arrest of an offender, was forced to share it with the

informer. Due to this corruption in this field increased. This situation forced the authorities to confine the police activities within an agency, the police.

In 1800, the House of Commons resolved that a police office be established, with proper assistants for more effective prevention of criminal activities on the River Thames and its vicinity. This police force was given adequate power to control the crime and to apprehend the offenders. They have given power to collect evidence without the intervention of intermediaries.\(^\text{42}\) This was the beginning of the investigation by a police officer, independently. But, a Criminal Investigation Department was formally created in 1878 only. Along with the passage of time, much legislation came into being to streamline the investigation. Hence, the power of the police regarding investigation increased, legalized and regularized.

**Relevance of Police Investigation**

The Indian criminal justice system shows an ambivalent attitude towards the police investigation and the final report. It accords no special status to police findings and to the case diary. The accusatorial principle envisages that, the factual conclusions of the police cannot be admitted as such in the evidence, but it must be proved, beyond the shadow of doubt by adducing admissible evidence. Even though, the outcome of the investigation is not attached with any special status, the police investigation is considered as an important tool in the criminal process.

The outcome of the case largely is the product of the police action, because at the trial, the case presented is that which is prepared

\(^{42}\) *Id.* at p.388.
by the police.\textsuperscript{43} In \textit{Kaptan Singh v. State of Madhya Pradesh}, \textsuperscript{44} court observed:

The ‘police report’ (result of the investigation under chapter XII of the Code of Criminal Procedure) is a conclusion that an investigating officer draws on the basis of materials collected during investigation and such conclusion can only form the basis a competent court to take cognizance there upon under section 190(1) (b) of the Code to proceed with the case for trial, and it cannot rely on the investigation or the result thereof.\textsuperscript{45}

To facilitate the process of investigation, the law provides the police with a series of powers to interfere with the legal rights of members of the public: powers of arrest and detention, power to enter, search and seize property and power to interrogate. The law establishes a framework for controlling the exercise of such powers by setting conditions as to who may exercise the powers and the circumstances in which it may be exercised and by providing for supervision or periodic reviews.

Considering the importance and complexities of the duties of the police, they have been granted exceptional powers. In discharging their duty, an officer may use fire arms, run traffic lights, control vehicular traffic, regulate processions, enter premises without warrants, and take all steps to collect evidence in a case, conduct


\textsuperscript{44} A.I.R. 1997 SC 2485. in this case the appellants were charged for rioting and murder. The trial judge acquitted all of them. Respondent no.2, who was the grand father of the deceased, aggrieved by the trial court judgment, sent a letter to the High Court which was registered as a criminal revision and notice was issued to the appellants. After hearing parties High Court allowed the revision petition, set aside the acquittal order and remanded the matter to the trial court to pass a fresh judgment and if needed, to hold a retrial. This order is challenged in the appeal.

\textsuperscript{45} \textit{Id}. at p.2486.
preventive arrest, decide whether to prosecute a person or not, and can take action against public nuisance. The exercise of the power depends on two things, viz, seriousness of the situation and necessity.

While making criminal laws, the legislature will look into two things, viz., the seriousness of the offence and extent of harm it caused to the society. The purpose of this is two fold. One is to decide the quantum of punishment and the other is to give power to the law enforcement agency to deal with the situation. As per the Indian criminal laws, police are granted with wide powers to enforce the law.

**How to Control Discretion**

Powers granted to police are broad and general. Executive discretion has been given to the police in the exercise of these powers. Discretion is granted for the effective implementation of law and to do their job independently and intelligently. People expected that the police would act fairly as per the dictates of law. The procedures enacted for the law enforcement are with certain objects. First is to prevent crime and to deal with criminals effectively. Second is to prevent the law enforcement agency from transgressing into the rights of the law-abiding citizens. Third is to protect the suspects from inhuman treatment by the law enforcement agencies. Discretionary power is granted to the police to fulfil these objects in its true sense and spirit.

The experience shows that, the police abuse their discretionary power in all their dealings. The reason for this is the uncontrolled power and the position they occupy in the criminal justice system. More over too many interpretations regarding the power granted to the police facilitate them to abuse their power. At the same time, police must be given adequate power to control crime and to maintain the law and
order. If it is uncontrolled, it will corrupt the police. To prevent abuse of power, it has to be circumscribed with strict accountability, close supervision and correction by non-police authorities. Adoption of a system to enquire into complaints against police and to redress the grievances would ameliorate the condition to certain extent. The following measures can be adopted to rejuvenate the Indian police system.

**i. Arrestable offence**

The police wielded enormous power over life and liberty of common man. The basis of this power is the classification of offences into cognizable, non-cognizable, and granting of extensive power to police to deal with the former. It serves no purpose, except to give absolute power to the police to arrest a person. It is very easy for a police officer to make a suspect answerable for a cognizable offence if he ventures to do that. Once the allegation against a person is transformed into a cognizable one, police get more discretionary power to investigate the case and to arrest the suspect. It is to be noted that there are no criteria to analyse whether an offence is cognizable or non-cognizable. It is fixed as per the first schedule of the Code. Invariably, in all cognizable cases, police can arrest the suspect without bothering to ascertain whether arrest is necessary or not.

The power of arrest generally falls in four alternative situations. First is the objective situation where the arrested person involved in any cognizable offence. Second, when, the police have received reasonable complaint. Third, when credible information has been received against a person and fourthly, when reasonable suspicion exists. Most of the arrests by the police fall under the fourth category. The indiscriminate exercise of the power to arrest leads to many
unhappy situations. Added to this the police detains suspects without recording arrest. It is highly essential to find a solution to this problem which otherwise would perpetuate unnecessary curtailment of freedom. In order to overcome this situation The National Police Commission suggested for narrowing down the instances wherein arrest could be resorted to. It suggested for specifying the circumstances in which the police can arrest a person.\textsuperscript{46} The Commission makes the following suggestions. Arrest could be made in cases where it is required to infuse confidence among the terror-stricken victims. In cases where the accused is likely to abscond and evade the process of law, arrest could be made. It is the case where the accused is likely to commit further offences unless his movements are brought under restraint. In cases where it is evident, that the accused is a habitual offender and if not arrested, there is likelihood of committing similar offences, the suspect could be arrested.

The Supreme Court in \textit{Joginder Kumar v. State of U.P.}\textsuperscript{47} laid down similar recommendations. But nothing has been made concrete to prevent the abuse of arrest power. The arrest must be made in good faith for the furtherance of the object of criminal justice system. While taking a decision in this regard police must not be influenced by irrelevant matters.

\textsuperscript{47} A.I.R 1994 SC 1349. In this case the Ghaziabad police took petitioner into custody. When enquired, police told that he would be released in the evening after questioning in connection with a case. But he was transferred to Mussoorie police station. When the relatives approached the Mussoorie police, Joginder was transferred to some other location. But, if there is a provision to treat the custody of the person in another police station as a new custody, police may not be in a position to play such tricks. Police and Criminal Evidence Act, 1984 of England included such a provision to control the police from abusing their power using loopholes in the Act.
Law Commissions also suggested various recommendations in this regard.\textsuperscript{48} One Hundred and Fifty Fourth Report of the Law Commission incorporated all the suggestions of the earlier Law Commissions and the rulings of the Supreme Court. The Malimath Committee\textsuperscript{49} suggested for the removal of the classification cognizable and non-cognizable. In this regard, the change adopted in England could be a model for India also. The Royal Commission on Criminal Procedure\textsuperscript{50} while arguing for restricting the wide arrest powers of the police suggested the adoption of the ‘necessity principle’ wherein arrest and detention would be allowed only if one of the following conditions were satisfied.

\begin{enumerate}[i.]
\item The person concerned refused to reveal his or her identity so that a summons could be served.
\item In order to prevent repetition of the offence.
\item There is a need to protect the arrested person or property.
\item There is a need to secure or preserve evidence, or obtaining it by questioning, and
\item There is a likely hood of failure on the part of the accused in appearing at court to answer the summons.\textsuperscript{51}
\end{enumerate}

\textsuperscript{48} Law Commission of India 152\textsuperscript{nd} Report on ‘Custodial Crimes’ recommended for the insertion of two sections 41(1) and 41(1A), one deals with the issue of notice of appearance to the person concerned and the other is regarding the satisfaction of the police officer regarding the complaint or information which he received about the commission of the crime. 135\textsuperscript{th} Report deals with the arrest of women.

\textsuperscript{49} Ministry of Home Affairs: \textit{Report of the Committee on Reforms of Criminal Justice system}, (Government of India, 2003). Committee on Reforms of Criminal Justice System was appointed by the Government of India under the chairmanship of Mr. V.S Malimath, former Chief Justice of Kerala (2003).

\textsuperscript{50} Royal Commission on Criminal Procedure, Report (Cmnd.8092), London, HMSO, 1981. This Commission also known as Philips Commission.

\textsuperscript{51} Quoted in Andrew Sanders & Richard Young, \textit{Criminal Justice}, 2\textsuperscript{nd} edn. 2000, Butterworths, London. p.139.
In this way police be allowed to use the coercive power, only when it is highly needed. The Police and Criminal Evidence Act (PACE Act), 1984 empowers the police to arrest a person who is involved in an arrestable offence without prior warrant. Arrestable offence includes offences, which are punishable with imprisonment for a term exceeding five years. If the purpose of arrest is to procure the accused’s presence in the court, the Philips Commission recommendations are acceptable. However, the fact remains that the

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52 PACE Act. Section 24.- (1) The powers of summary arrest conferred by the following sub-sections shall apply—
(a) to offences for which sentence is fixed by law;
(b) to offences for which a person of 21 years of age or over (not previously convicted) may be sentenced to imprisonment for a term of five years (or might be so sentenced but for the restrictions imposed by s. 33 of the Magistrates’ Courts Act 1980); and
(c) to the offences to which sub-section (2) below applies, and in this Act ‘arrestable offence’ means any such offence.
(2) The offence to which this sub-section applies are—
(a) offences for which a person may be arrested under the customs and excise Acts…
(b) offences under the Official Secrets Act 1920…
(bb) offences under any provisions of the Official Secrets Act 1989 except section 8(1), (4) or (5)...
(c) offences under section 22 (causing prostitution of women) or 23 (procuration of girl under 21) of the Sexual Offences Act 1956:
(d) offences under section 12(1) (taking motor vehicle or other conveyance without authority, etc.)
(e) any offence under the Football (Offences) Act 1991…
(k) an offence under s1(1) of the Prevention of Crime act 1988…
(l) an offence under s 139(1) of the Criminal Justice Act 1988…
(n) an offence under the protection from Harassment Act 1997…
(o) an offence under s 60(8)(b) of the Criminal Justice and Public Order Act 1994…
(p) an offence falling within s 32(1)(a) of the Crime and Disorder Act 1998…
(r) an offence under s 12(4) of the Criminal Justice and Police Act 2001…
(4) Any person may arrest without a warrant-
(a) anyone who is in the act of committing an arrestable offence;
(b) anyone who he has reasonable grounds for suspecting to be committing such an offence.
(5) Where an arrestable offence has been committed, any person may arrest without a warrant-
(a) anyone who is guilty of the offence;
(b) anyone whom he has reasonable grounds for suspecting to be guilty of it.
(6) Where a constable has reasonable grounds for suspecting that an arrestable offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds for suspecting to be guilty of the offence.
(7) A constable may arrest without a warrant-
(a) anyone who is about to commit an arrestable offence;
(b) anyone whom he has reasonable grounds for suspecting to be about to commit an arrestable offence.
police arrest persons to facilitate investigation, rather than to bring him before the court. There shall be effective measure to see that arrest is not resorted merely for facilitating investigation. Indeed it is to be admitted that power of arrest as granted by the present law could be justified as one required to combat increased instances of terrorism. This point to the need for balancing various interests involved in the process of criminal justice administration. But, under the guise of terrorism, police should not be allowed to abuse their authority. Hence, it is high time to amend the law of arrest to suit the situation.

**ii. Detention Centre and Detention Officer**

Lock-ups in the police station are being used for detaining persons according to the whims and fancies of police officers. It is unfortunate that people in general accept it as a mechanism for crime control. Lock-ups in police stations are turned to be places of illegal detention and torture of suspected persons. It often turns to be the perpetrator of custodial death. Police station symbolizes human rights violations. Under this scenario, it is better to stop the practice of keeping accused/suspect in police stations for significant length of time and thereby facilitating the infringement of their rights. Keeping suspect/accused in police station overnight must be viewed seriously. Some alternate arrangement for keeping the arrestee in custody should be made. Adoption of a scheme for creation of detention centres could be resorted to. Instead of lock-ups in stations, under every deputy superintendent of police, one station or place may be declared as ‘detention centre’ and the Dy.S.P as the ‘detention officer’; to keep the suspect/accused overnight, if it is necessary,. The detention officer must personally verify the custody report and analyse the necessity of

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keeping the person in custody. Hence, there will be a supervision and verification of the legality of the arrest and custody by a senior officer. The establishment of ‘detention centre’ and ‘detention officer’ can avoid torture and other human rights violations.

iii. Interrogation

Interrogation of suspects as well as other persons having acquaintance with the facts of the case, by the police is part of the power of investigation. Through this process, the police could get valuable information related to the offence in question. Police wielded ample power for interrogation. Under section 160 of the Code, an investigating officer could require, by order, any person to report before him on specified time, date and place. This power could be used against a person who appears to the police officer, to be acquainted with the facts and circumstances of the case. This power could not be exercised against a person below the age of fifteen years of age or a woman. Persons belonging to these two categories could be


55 Cr.P.C, Section 160 (1) any police officer making an investigation under this chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:
Provided that no male person under the age of fifteen years or women shall be required to attend at any place other than the place in which such male person or women resides.
(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section 1 at any place other than his residence.

Section 161 (1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.
(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.
(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each person whose statement he records.
interrogated only at the place where such person or woman resides. The purpose of this protection is to avoid probable indignities and inconveniences that might be caused to them by the abuse of police power. If so, why this protection is not extended to adult male persons? Should they not be protected against the possible abuses of police power and torture? Should the criminal justice system be neutral in this regard? The place of residence seems to be a better place for interrogation of the persons, male or female. If the statement of the witness is taken at his home, he will be in a safe and relaxed mood and will divulge everything, which he knows about the incident to the police. It is better if section 160 of the Code is amended to give protection to all persons.

Formal training to develop the skills of interrogation is hardly imparted to police officers. They learn the skills by watching the performance of his seniors. By this on job training, they imbibe the wrong methods and practices of the superiors who extract confessions by inflicting torture. This crude method, which gives quick results, is being perpetrated since they have no training or experience in scientific interrogation. To remedy the situation and to make the system humane adequate scientific training in interrogation must be imparted to the police officers.

iv. Custody of Woman

Section 46(4) of the Code prohibits the arrest of a woman after sunset and before sunrise except on exceptional circumstances, and that too with the prior permission of the Magistrate. The arrest in the night is

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56 Niloy Dutta v. District Magistrate, Sibsagar, 1991 Cri.L.J 2993 (Gau.) in this case two suspected women ULFA activists were taken to military camp for interrogation. They were detained in the camp. One was a class X student and the other was a higher secondary student.
prohibited, then why not the custody? It would be appropriate if a woman who is involved in a case punishable up to five years shall be released on bail from the police station itself and in other cases, the woman accused shall not be kept in the police custody after sunset without judicial scrutiny. This could be achieved by amending Section 46 of the Code. This may help in avoiding possible abuse of power by the police. To avoid abuses the best way is to avoid opportunities, which the police have in this regard.

**Conclusion**

The role of police in a democracy is a noble one. His duty is to protect the good and kill the evil: instead, the police are now creating evils. A colonial style of policing is prevalent in India even now. Security and safety are not commodities, which the common man cannot purchase from the government. It is the duty of the state to provide these to each and every citizen.