



NEWSLETTER

January 2019



Police Reforms: Some Pertinent Issues

By Dr. Gopal Ganesh, Vice-President, FRNV

As you are aware, FRNV has been actively pursuing the objective of bringing out reforms in the police system, so that they are responsive and accountable to the people, to enable them to live peaceful lives. In this connection, it has coordinated and supplemented action taken by various organizations towards attaining its objective. Reforms in the police system were recommended by the Supreme Court of India way back in 2006 but till date very little progress has been achieved. Meanwhile recent happenings, whether it was to do with developments in the Central Bureau of Investigation or in the Law and Order Enforcement in some States, have caused concern and reiterated the need to bring forth without any further ado, reforms recommended by the Supreme Court. In this background, a couple of articles which appeared in some leading newspapers provide interesting inputs for furthering FRNV's goals. Readers are invited to study them and offer their valuable comments.

The police & the Constitution

By A. G. Noorani

A charter of the CBI will be worthless unless it gives statutory recognition to the principle that it is a police officer's duty to enforce the law and to prevent and detect crime and that politicians cannot interfere in the discharge of this duty.

Pick up any work on British constitutional law and you will find an extensive discussion on the independent status of the police force. Pick up any work on India's constitutional law, and all you will find is a discussion of the Centre and the States' respective powers on the police. The

unedifying civil war in the Central Bureau of Investigation (CBI) will pass, leaving it more battered than before. The CBI will not get a charter ensuring its independence and integrity. The men in power abhor it.

For this, the country paid a heavy price—the assassination of Gandhi. Immediately after Madanlal Pahwa exploded a bomb at Gandhi's prayer meeting on January 20, 1948, Jamshid Nagarvala of the Bombay Criminal Investigation Department (CID) asked Bombay's Home Minister, Morarji Desai, for permission to arrest V.D. Savarkar on the basis of Madanlal's visit to him only the week before. Desai angrily refused. Had he agreed, Gandhi would not have been assassinated by that gang on January 30.

Legally, Nagarvala was not bound or even entitled to seek, still less follow, the Minister's order; and the Minister had absolutely no business to instruct or order the police officer. Both received their just deserts in 1970 from Justice J.L. Kapur, a former judge of the Supreme Court, in his report as Commission of Inquiry into the conspiracy to murder Gandhi.

Desai boasted in his testimony that after the murder, the investigation was conducted "under my direction". Justice Kapur remarked that "directing the police how to carry out its statutory duties or any interference with the statutory duties of the police ... is foreign to the notions accepted in countries governed by the Common Law. It is for this reason that both the Government of India Act, 1935, in Section 49, and the Indian Constitution, in Article 154, have excluded statutory powers performable by other authorities under an existing statute from the purview of the provincial and now the State Governments; and the Code of Criminal Procedure was an existing law."

Section 49 of the Government of India Act, then in force, and Article 154 are identically worded. They exclude from the executive authority of a province (or State) "any functions conferred by any existing law on any court, judge or officer or any local or other authority".

Justice Kapur rejected Desai's claim of a right to direct the police and give them the benefit of "my experience as a magistrate". He discussed in detail, in Chapter 8 of Volume 1, the law on "powers of a Minister and ministerial responsibility". It is directly relevant in the debate on the CBI's powers. It is a police force that we are talking about—armed with the powers of investigation, arrest and prosecution. Freedom is perfectly consistent with accountability. The report said: "In the opinion of the Commission, although a Home Minister is in charge of the police and police administration and answerable to Parliament about it, still he has no power to direct the police how they should exercise their statutory powers, duties or discretion. Both under the Criminal Procedure Code and under the Bombay Police Act, the statutory duty is of the police both to prevent crime and bring criminals to justice. Therefore, the Minister can and could only pass on the information of the commission of an offence to the police to investigate, so also in regard to the threats of the commission of an offence. If the Minister were to give orders about arrest, to arrest or not to arrest, that would be an end of the rule of law, as was said by K.M. Munshi. This view of the law has received recognition by our courts in cases where a distinction is drawn between administrative control of Government and its powers of interfering with statutory powers of various statutory authorities.

"There is a distinction between the constitutional responsibility of the Minister for the exercise of executive power in respect of public order, police and enforcement of criminal law on the one hand and statutory duties of the police and magistrate to exercise powers vested in them by the Police Acts and the Code of Criminal Procedure. It is the constitutional duty of the Minister, as head of the Department in charge of the police, who are instruments of maintenance of public order and enforcement of criminal law, to ensure that the police discharge their functions and exercise their powers properly and diligently. But beyond that, the Minister cannot go and issue specific instructions as to the matter of exercise of their statutory powers. That would amount to interference."

The CBI was set up by a mere executive order, a Government Resolution, on April 1, 1963, and was given statutory cover under the Delhi Special Police Establishment Act of 1946. Since then, committees galore have urged that it be given a statutory charter in the light of the conditions of today. For instance, under Section 6 of the Act, a State government can withdraw its consent and render the CBI an illegal force. While the CBI as such is a Central subject, the "police" is a State subject. A constitutional amendment, based on consensus, with precise limits

is necessary. A particularly useful document is the report of the committee set up "to examine the structure and functioning of the CBI and Enforcement Directorate" dated November 18, 1997. Its convener was the distinguished civil servant N.N. Vohra, then Principal Secretary to the Prime Minister. He retired recently as Governor of Jammu & Kashmir after a splendid innings.

CBI circumscribed

Our politicians are predatory. See what they did to the Lok Pal Bill. In the hawala case, the Supreme Court struck down "the Single Directive" which barred the CBI from conducting even a preliminary inquiry into any offence committed by a Joint Secretary "and above"—that is, a Minister. It was reinstated by an amendment to the Act of 1946 supported by all the parties.

Vijay Karan, former Director of the CBI, wrote: "Even at the Centre, the system is such that the CBI has to *seek the government's permission before registering an FIR* [first information report] *and before filing charge sheets in courts against certain categories of public servants*. Rarely will the government refuse such permission. But it uses this power to procrastinate, by sitting on the paper concerned, by firing needless queries.

"Not too long ago, the present government further circumscribed the CBI by imposing a new rule that it takes the government's clearance before seeking to send 'letters rogatory' to foreign countries for investigation abroad." (Sunday, May 5, 1996; emphasis added, throughout.)

In fact the situation is far worse; witness the pace of the Bofors probe since the end of 1990, the CBI's behaviour in the hawala scam and its volte-face in the St. Kitts investigation. Matters are not allowed to reach a stage when the government has to "refuse" permission to file an FIR. But if even a Director of the CBI labours under the impression that the CBI "has to seek the government's permission before registering an FIR", one can imagine the inhibitions of officers of lower rank. In law, the CBI, like any police force, has to do nothing of the kind. Indeed, it would be a gross breach of its legal duties to do so. But that, as Vijay Karan admits, has been the practice. Small wonder that, as *The Indian Express* reported, "the Ministry of Surface Transport under Jagdish Tytler delayed the filing of a CBI FIR against his close associate Kiran Chaudhary for almost two years".

Vijay Karan's admission suggests that the CBI's denial on December 27, 1994, of a "final directive" to it by the government was untrue. The directive was that all

“investigations, final reports, preliminary inquiries and legal sanction to prosecute which relate to Cabinet Ministers, Ministers of State and deputy Ministers shall now be referred to the Prime Minister”.

British experience

Britain's first Labour Cabinet headed by Ramsay MacDonald took a formal decision on these lines on August 6, 1924. The minutes, published decades later, read: “No public prosecution of a political character should be undertaken without the prior sanction of the Cabinet being obtained.” Authorities on constitutional law characterised this as “constitutionally improper”. The decision was promptly rescinded by the next Cabinet. The MacDonald government fell because it withdrew a prosecution for political reasons.

The correct legal position was set out by Lord Denning in a case which was based on the same fundamental principle on which the Supreme Court intervened in the hawala case, that is, impartial enforcement of the law by the police. Raymond Blackburn, a Member of Parliament, was much exercised at the studied omission of the police to prosecute the big gambling clubs of London despite the fact that they openly flouted the law. He attributed it to a “policy decision” issued to them by the government. It was a confidential instruction issued to senior officers of the Metropolitan Police, on April 22, 1966, not to proceed against clubs for breach of gambling law unless there were complaints of cheating or other serious offences. This was contrary to the law, of course. It implied, in effect, connivance at violation of gambling laws unless other offences were also committed. Blackburn applied for a writ of mandamus, which means simply a mandate from the court to the executive to enforce the law. The policy decision was revoked.

In a pronouncement that is regarded as classic, Lord Denning said: “I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected, and the honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted and, if need be, bring the prosecution or see that it is brought, but in all these things he is not the servant of anyone, save of the law itself. *No Minister of the Crown can tell him that he must, or must not, keep observation on this place or not, or that he must, or must not, prosecute this man or that man.* Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone.”

Political interference

This is of fundamental importance. *A charter of the CBI will be worthless unless it gives statutory recognition to this principle.* Other principles concerning tenure, suspension and transfer must also be incorporated. An upright and fearless officer, N.K. Singh, Joint Director of the CBI who investigated the St. Kitts case, said in a press interview: “The real problem is the unrestrained, unchecked power of the executive to transfer and ask CBI officers.” Incidentally, he confirmed the existence of “an illegal administrative” order issued “during Rajiv Gandhi's time” which required the CBI to secure the concurrence of the government before registering cases. His memoirs, *The Politics of Crime and Corruption*, are most instructive.

I recall the late Naresh Chandra, one of our finest civil servants, cautioning me, when he was Union Home Secretary, not to identify “the policeman” with “the fat thanedar” but rather with the one on the beat in the open.

One has heard of the “thinking soldier”. The country should be proud of its thinking police officers. How many or how few read *The Indian Police Journal* published by The Bureau of Police Research & Development, Union Home Ministry, from Lodhi Road, New Delhi? Its Editor-in-Chief is Pervez Hayat, Indian Police Service (IPS). It maintains a uniformly high standard and contains informed articles on a vast range of subjects. The issue of January-March 2018 contains an excellent article on “Inhuman Wrong Perpetrated by the Police Against the Arrested Persons” by Dr Shyam Sunder, former Director General of Police, Tamil Nadu. The issue of January-March 2016 had an excellent article on the Armed Forces (Special Powers) Act, 1958. Having discussed the subject with soldiers of the rank of Lt. General, I find the author, “a policeman”, far more liberal than “the soldier”. A collector's prize is the issue of October-December 2012 on “The Intelligence Bureau: The First 125 years”. It is profusely illustrated and has excellent essays.

On October 10, 1949, Vallabhbhai Patel warned the Constituent Assembly: “This Constitution is meant to be worked by a ring of service which will keep the country intact” (*Constituent Assembly Debates; Volume X, pages 48-52*). This is true, if not more so, of the country's police force as well. Yet, the politicians in power interfere at all stages—from arrest, investigation, filing of the cases, conduct of the prosecution and even withdrawal of the prosecution. Read this from a classic on British constitutional law by A.V. Dicey written over a century ago: “With us every official, from the Prime Minister down to a constable or a collector of taxes, is under the same legal responsibility for every act done

without legal justification as any other citizen. The Law Reports abound with cases in which officials have been brought before the courts and made, in their personal capacity, liable to punishment or to the payment of damages, for acts done in their official character but in excess of their lawful authority. A colonial governor, and all subordinates, though carrying out the commands of their official superiors are as responsible for any act which the law does not authorise as is any private and unofficial person.”

Dicey cited cases in support of his reference to each of these high officials in his classic on the law of the British Constitution. In the United States, Judge John J. Sirica could comfortably stretch the arm of the law to reach a President in office, Richard Nixon, in the Watergate affair. Can that ever happen in India?

Source: <https://frontline.thehindu.com/the-nation/article25661621.ece>

The anatomy of a police station

By Rashmi Sharma, former IAS officer

□ Lacking personnel, funds and motivation, the thana is not structured to enforce the rule of law

The death of inspector Subodh Kumar Singh, shot while trying to control a mob of cow vigilantes in Bulandshahr district of Uttar Pradesh, is a vivid expression of the contempt of our ruling classes, and those aligned to them, for the rule of law. The increasing number of human sacrifices for the alleged protection of cows signals a steep rise in this contempt. These incidents shock us because they are graphic and indicate a discernible change for the worse. The shock turns into dread as the ruling elite fails to condemn and punish the perpetrators. Mob violence is growing, and the government's efforts to contain it are wanting.

Underlying these shocking incidents is an equally terrifying lawlessness, which is quiet, insidious and pervasive. The stunningly casual statements from the establishment after the incident are a new development in a systematised attack on the rule of law. This is illustrated in my case study of an unobtrusive, sleepy looking police station in the tribal belt of central India.

□ Unable to enforce law

The police station was structured to perpetrate lawlessness in two ways. First, it was simply not enabled to enforce the rule of law. Manned by 16 people in all, with six of its 22 posts vacant, and headed by a sub-inspector, it was expected to serve 83 villages across 2,680 sq km. The police personnel

were expected to investigate crime, maintain law and order, and were frequently deployed on VIP duty. The personnel rotated through it rapidly, as there was at least one transfer per month. The senior officers complained that postings were based on patronage, and it was not possible to deploy the best people for the most difficult tasks. The thana was always short of money, and personnel spent from their pocket on stationery and other needs.

The police personnel were extremely dissatisfied. They were entitled to 16 days of leave in a year, but this was never actually sanctioned. They reported being overworked, on duty 24 hours a day, with high stress. Their families were neglected. A head constable said that he had never attended a parents' meeting in his child's school. A majority of the constables lived in the nearby city because of lack of housing, schools and health facilities in that area. They travelled to the police station everyday, which is not how things should be as they need to be available in case of a crisis. This cost them around ₹5,000 per month. They saw themselves as underpaid and not respected.

To this demotivating background were added idiosyncratic working styles. Though a police station is expected to respond to the needs and events of the area, it was assigned targets, such as for seizing a certain amount of liquor and issuing a number of *challans*. Every year, the targets were increased. Sometimes they simply did not correspond to the situation. For example, it had problems achieving its targets for issuing *challans* in the case of people riding without helmets, because there were few motorcycles in the area and people simply did not have money to pay the fine.

Discussions with the police personnel showed poor understanding about enforcing the law. When violence against women was discussed, many said that women usually made false complaints. During the study, a mentally disturbed person was beaten up as he stood hallucinating, decrying imagined enemies. The shortage of personnel, the sorry working conditions and their ignorance created a system not capable of upholding the rule of law.

□ Deep-rooted corruption

The second way in which the police station became an agent of lawlessness was corruption. Interaction with the community showed that the village people feared and avoided the police. They said that the police listened to those who had money. The usual dismal tales of police greed and brutality emerged. Constables extracted money from vehicles plying the highway, snatched away mobile phones of ordinary people and returned them only when they were paid money. When an FIR was lodged, the police evinced sympathy for the

victims as well as the accused, and took money off both to solve the case. An attempted rape was ignored after money exchanged hands.

One police personnel admitted that it was difficult not to be corrupt, because everyone was. She had started her career determined to never accept bribes. But over time, her perspective changed, as she faced pressure from senior officials as well as local leaders to 'help' in various ways. The pressure from inside, she said, was worse. This problem was clearly systemic and not individual, as the police personnel themselves were not happy with their corruption. They tried to atone for their sins by ensuring proper last rites when bodies were not claimed by anyone after accidents, by spending their own money.

This dull-looking police station was not newsworthy, and its activities did not shock anyone. But it symbolises the pervasive lawlessness to which we are now habituated. It is out of this system of lawlessness that the more dramatic incidents like the death of Singh emerge. We remain apathetic to systemic callousness, which also needs scrutiny and action.

Source: <https://www.thehindu.com/opinion/op-ed/the-anatomy-of-a-police-station/article25735171.ece>

NEWS & EVENTS

□ On 15th December 2018, a meeting was organized at FRNV Office to discuss about developing a common curriculum on Value Education that can be implemented across the country after reviewing the existing value education curricula of various Boards and states. The expert panel consists of :

- Smt. Vibha Parthasarathi, Advisory Board, FRNV
- Prof. Shakuntala Bhattacharya (Retd) NCERT
- Prof. Daya Pant (Retd) NCERT
- Ms. Simmi Mahajan, Headmistress, Father Agnel School, Gautam Nagar, New Delhi
- Dr. Garima Bharti, HoS, DUSC Secondary School, Maurice Nagar, Delhi
- Ms. Siba Saraswathy, NIOS, Sec – 62, Noida
- Mr. Sanjay Chakravarty, Friend, FRNV

FRNV, Advisory Board member, Smt. Vibha Parthasarathi ji shared her views on Value Education curriculum development and provided guidance in the process. She contemplated that there is a gap between the theoretical understanding of values and practice. In many schools, teachers have the modules on Moral/Value Education. Values are caught and cannot be taught.

The suggestions that came very strongly are as follows:

- Curriculum development should be started with primary classes.
- Teachers' Handbook should be developed.
- Curriculum should be activity-based which is comprehensive and teachers can implement it without any stress.
- List of activities to be developed
- Teachers' training to be done to implement the curriculum
- Primary teachers to be involved in the curriculum development
- Set of Values to be identified
- The curriculum should be in the bound form
- Additional members to be identified e.g. Primary Teachers, Creative writer to be member of this task force

However, there was difference of opinion on Dedicated teacher/period for Value Education or values integration with all subjects/activities.

It was decided by the Expert Committee to hold next meeting on Saturday, 5-January-2019 at FRNV Office. All members volunteered for development of VE curriculum.



Dear Readers,

FRNV invites stories from its readers on deep-rooted values that have helped us in our everyday lives. Some of these stories will be featured in the next issue of our newsletter. So put your thinking caps on, recall the values integral to your life which you cherish and write to us at shilpi@valuefoundation.in.