

# THE INDIAN POLICE

A STUDY IN FUNDAMENTALS

D N Gautam



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A Study in Fundamentals

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## Preface

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The bibliography on Police Administration has a galaxy of authors and publications. Authors mostly come from the field of police and general administration and academics. Only a few falling outside these two have contributed to police literature. Most of these authors have rich experience behind them and as such none of them would be having the infirmity of raw thinking. The biggest advantage of this work is that it is a product of this infirmity.

No profession has been so time-invariant and change-resistant as the Indian Police. Much has been said about the working of the Indian Police in and outside the legislatures as also in the reports of various Commissions, yet their basic ailments and elements seem either to have escaped their notice altogether or got camouflaged in the niceties of argument. This study attempts to lay bare these hard realities that make the Indian Police as notoriously infamous as they are. It will point to a philosophical vacuum in the law-and-order matters of State, resulting in such contradictory situations as most liberal provisions for bail of accused persons and preventive detention of persons for offences apprehended but not yet committed.

The basic problem in a democratic society is of striking a happy balance between the principle of liberty and a need for security which are often on warring paths and make conflicting demands upon the political system. People jealously guard their liberty and come to resent even the slightest restraint put on them in the larger public interest. This disturbs the order and a situation develops when confusion may prevail over our convictions as to liberty. The conflict reduces into 'liberty is dearer than life' vs. 'life is dearer than liberty'.

The likelihood of the majority preferring security in the bargain, painful though for a democratic system, cannot be totally ruled out.

In pre-Independence India the police did not have a positive and constructive role to play. They were employed only as an instrument for perpetuation of the colonial rule. But in the context of post-Independence India, particularly in a welfare society like ours, the study of the Indian Police acquires special importance because now the Indian police cannot be regarded as a task force or a force but a service organisation which is supposed to remove the impression of the general masses about the Indian Police as an instrument of coercion inherited as a legacy of the colonial past. Now, the Indian Police are not supposed to maintain law and order only but are required to provide a helping hand in the reconstruction of our society. Their developmental role is not less important than to maintain law and order as the maintenance of law and order is a prerequisite to all development.

I have been entertaining a feeling that there is something basically wrong with our police and the police system. I tried to find an answer in the existing literature on Indian Police. Most of this literature deals with either police administration or the secondary aspects of the police system without going into a spectroscopic analysis. There was a need to analyse the whole thing to its first principles in the Indian context. Therefore, the need to have a work on police prudence on the lines of jurisprudence appeared most essential. For the sake of perspective, the applied aspects in the Indian context have been kept in view. Hence this work, **The Indian Police — A Study in Fundamentals**.

Abuse of the right of freedom of speech sometimes camouflages rumour-mongering. We all know rumours provide a fertile hunting-ground to those who have a vested interest in inflaming communal passions and thereby disturbing public harmony. The 1978 Purnea riots are a typical example of this.

News items affecting adversely the police image and its credibility erode the people's confidence in this vital agency of law. Such news items even if proved false later make it difficult to correct the people's impression and rehabilitate it. Mischief done is often irrevocable. The news item about the alleged mass-rape by CRP men in 1977 at the Khetri Theatre hall provides one of many such savage instances.

We do not yet have a wholesome police policy that makes the role of the police crystal clear and provides a framework

consistent with that role. This adversely affects the performance of the organisation, causes public condemnation and, wrongly or rightly, demoralises the personnel who react and thus sustains the vicious circle of bad performance.

An unfortunate tendency has grown of late of disturbing governments by creating law-and-order problems. This is inconsistent with the democratic principles. Nevertheless, such tendency does succeed in creating situations of public disorder in the name of democracy.

Law and order is invariably the chief item in the election manifestos of almost all political parties. Elections, public order and democracy have come to occupy the pivotal position in them.

The preceding items should lead us to conclude that there has to be a consensus on vital national issue. Lack of a consensus on the need of public order has put a strain on the political system and is making society hypersensitive. In fact, Indian society is betraying signs of fragmentation. To conclude, it could be said that there is need to inculcate a basic democratic temperament in the people and accept democracy as a way of life rather than as a political system. This would also, ipso facto, resolve the perennial conflict between liberty and the needs of public order.

If this work can promote fresh thinking on the whole issue ab-initio, the purpose of this work will have been well served.

Before I conclude, it is my pleasant duty to express my gratitude to all those who have helped and encouraged me in bringing out this work. My special thanks are due to Prof. S.N. Mishra of IIPA, New Delhi and Prof. Bhagwan jee Ojha of Magadh University, Bodh, Gaya and my other friends and well wishers of Magadh University. I am grateful to the author and publishers of the books, periodicals and articles which have been consulted in the preparation of this work and same are acknowledged in the end of every chapter as references. Last but not the least, I thank Mr. K. M. Mittal for undertaking the publication of this work.

**Deoki Nandan Gautam**

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## National Police Policy

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Do nations know their mind? Apparently, they ought to.

A nation normally has a basic document called Constitution – a document of collective wisdom or a guarantee card for protecting certain vested interests or a compromise Document between clashing interests sharing power or a Document setting out goals and objectives of the polity and providing a basic structure delineating rights, functions and responsibilities of individuals and institutions and their inter-relationships. We may say, a kind of codification of relationship between a State and its People does exist. There can be no standing assurance that this relationship will be cordial – inherently or in working, in any given time-frame. State may want its subjects to be generally compliant to the point of even being pliant. Subject may also exhibit a degree of dissension and fluctuate to the level of rebellion. Our recent Indian experience has contrasting shades which arose, perhaps, because of our general desire to have maximum of everything for oneself the freedom had to offer including liberty and security.

Monolemma has almost always evaded us when it comes to the question of security and liberty. The last half century of our history is a witness to a typical spectrum of valiant defiance, helpless subservience and sufferance, object compliance irresponsible arrogant diffidence as marked by our National Movements for Independence, and the aftermath of Independence attracting casual remarks as to our competence to be equal to the exacting nature of freedom. It is not only the general behaviour takes sommersaults with qualitative changes in socio-political situation, legal vacillations characteristic of 'soft state' also mosaic and fashion socio-political environ. The Nation has not very long back witnessed a state of emergency and has also seen the general mass-behaviour prior to, during and



after that event. It has also witnessed collective governmental behaviour, behaviour of the powerful people of the time as well as the enveloping contemporary legal scenario. One would see that coherence, wholesomeness, sobriety, perspective and philosophy look like prohibited items in the general security environment. In short, we are yet to learn to be at peace with the system of democratic institutions and develop a deference for them modulating our differences in an according manner. None of us, howsoever high and mighty that one may be, could be allowed to become a star around whom the institutions would revolve, that is, the democracy and empire-building do not go together. All the same, our democracy has been witnessing paradoxes of autocratic paternalism with a rather disturbing frequency.

Utter servility to utmost liberty – is how we, the people, tend to react. Science of liberty to utter subjugation – is the range of the laws that Government arraigns to deal with the people. The entire pattern of people's behaviour lack a sense of healthy responsibility and governmental behaviour defy predictability.

A keen desire to get things out of turn, jumping queues, crash through a traffic red light, travelling in ladies' compartment and the like are quite common place offences which the offenders consider as some kind of achievement worth-relating to others. But in face of a strong adversary these traits take a form of propitiating the strong by extreme servility and total absence of sense of dignity, propriety and justice. National thinking on liberty also fluctuates between two extremes. There is a dictum of 'bail is rule, jail exception' on one hand and provisions of preventive detention for an apprehended offence not committed yet on the other.

Ours is a democracy. There is rule of law and we may say that this is what the Police-Policy should be all about. Well, rule of law has as one of its enunciations that law does not discriminate and applies to all in a like manner. But this is only one side of the coin. The real problem is that all are not going to treat law in a like manner. So there have to be agent of law to see and oversee that there is rule of law. One of the agencies to see that there is rule of law would naturally be Police and the one to oversee that there is rule of law is Judicial system.

So there can hardly be any doubt that in scheme of things where rule of law would prevail, police can not be otherwise than agent of law and vice-versa. The entire gamut will encompass the

police and the laws the police is called upon to follow and enforce. This arrangement of things would to a good extent determine the quality of life of citizenry.

The nation has seen different kinds of security systems depending on the objectives of the state and its rulers. The Britishers came here initially with a view to have trade relations and earn profits. And so long as their objective remained profitable business they left the affairs connected with policing or the criminal justice system; practically untouched; so much so that in the treaty of Allahabad after the battle of Buxar all that they sought was 'Dewani rights' and not police powers. They allowed the native criminal justice arrangements to continue. But with their enterprise growing and acquisition of political power becoming necessary to retain and consolidate economic power. They became aware of their new role and stature despite original commandments against political ambitions and designs and with that of need to have an agency of coercion. It was an anomalous situation wherein a chartered company of one country viz. East India Company was becoming ruler of another country. Trade monopoly is one thing but holding territory is quite another. The writ of government and the Parliament that granted monopolistic trade rights to one of its chartered companies ran over far meagre a territory and lesser number of the people than the sway East India Company held over geographical area or numerical strength of its subjects. To maintain armed forces is one of the functions of a Sovereign. This function was now being acknowledgedly exercised by a chartered company in addition to many other functions akin to a Sovereign. However, the whole arrangement was not unabashedly radical in form though quite so in substance. A cover and camouflage in the name of protecting vessels and trade liners from pirates and having general security cover to the hinterland and the servants of the company led to the growth of security forces and security pacts and alliances with native rulers which put the company in the position of a patriarch. The process was accelerated by cascading effect with more trade needing greater security cover, meeting more resistance, getting stronger than moving from one position of strength to greater strength with spiralling influence and in the process putting bigger territories under its suzerainty. The ever-growing economic interests could no longer be separated from political interests and a certain pre-requisite of keeping order and tightening watch and ward as also thief-catching in order to protect trade interests. The East

India Company, therefore, came to develop an instrument of police forces not necessarily distinct from army but with fairly good division of labour. As the policing needs grew, separate police institutions also grew along with it and this also lowered the cost of policing. The separation of police from army also helped to have a more professional army for protecting acquisition.

This is how and what for the police was created by the East India Company. The objectives were very clear and hence the police-policy of the Company was also very clear. The grant of 'Diwani rights' to the company by the Emperor of Delhi through the treaty of Allahabad gave an altogether new dimension to the whole scenario. What began with granting of trade facilities by the Moghul Emperor Jehangir (1600) had now culminated into granting away territories. What was unfinished by the battle of Plassey was completed by the battle of Buxar. Conferring of 'Diwani rights' on the Company called for intensive and extensive involvement of police in ensuring good revenue-collection for the Company. However, there was no uniformity in organisation or functioning of the police in Company dispensation but the police-policy of the company seems to have been quite clear to both the company as well as the police and perhaps the people too.

With glittering fortunes, the company was on the threshold of turning into something of a benevolent despot and its attention was apparently turning to impart policing a degree of service-orientation as may be conjectured by several committees set up to review police functioning. In fact, a poor quality policing did affect the company-trade and to that extent there came about vested interest in improved police efficiency. But before anything concrete could emerge, the 1857 avalanche changed the landscape and there came about a district magistrate pattern of police administration modelled after Napier's Sind Police to institutionalise the police role in all affairs through the instrumentality of District Magistrate.

Taking over of the reign of Indian holdings by the crown was surely not an entirely noble gesture towards the Indian masses after the first major fight for Indian Independence. The East India Company had acquired territories, armies and tremendous economic power. It not only disturbed the domestic social-balance by pumping money but had also started affecting the political ecology of the mother country adversely. It had well-entrenched lobbies in House of Commons and promoted its own candidates for positions of power. In short,

the company was a political force to reckon with that had to be caged. The 1857 uprising provided much-needed opportunity to the Crown. So the immediate professions and cover had to promise a difference for better but in actuality all it did was putting the Royal Seal on what was already a reality and thenceforth run the affairs directly in the name of the Crown. Nothing really changed. Not least, the objectives and therefore also the police-policy.

So, whatever be the form of rule or objectives of the polity there was a conscious and deliberate police-policy consistent with those objectives.

No walk of national-life and no discipline has defied the putting down of calendars as the Indian Police. It is quite understandable that the police-policy of Britishers remained virtually unchanged after the take-over of the Indian colonies of the Company by the Crown as the switch over did not involve any substantial change. It was only a change form. Status of India and Indians remained that of slaves. But what is a big paradox of twentieth century is that even 15th August 1947 did not make a difference as far as the Police and Policing in India were concerned. On the contrary, 1857 was an year of breach in the Indian Police System but 1947 was an year of continuity like any other time interval in between and thereafter.

By the time Indian Independence came about, the police system had consolidated itself into a giant apparatus where in all influential and powerful sections of the elite had come to have vested interests in it to retain the hold over masses; be it landlords, politicians, administrators, policemen, top-publicmen and the like. Without any conscious efforts for change it had to be self-perpetuating.

That we have discovered fresh justifications for continuance of a colonial police-system in the democratic settings is a good topic for research in political philosophy.

Under the changed circumstances, the key official viz. the District Officer now combines the office of the District Election Officer and also in most cases that of Returning Officer for the Lok Sabha elections. He is the most important functionary in the process of elections which are life and blood of democracy. All other departments are duty bound to assist him in conduct of elections. The power of supervision and control over the police and subordination of the District Superintendent of Police gives him irresistible authority which does not leave any room for the system of checks and bal-

ances to operate (which is so vital for democracy). Fixing of booths, preparing of voter list, the actual conduct of elections, decisions as to nature and degrees of force deployment and police action implementing the rules of Election Commission for ensuing free and fair elections do call for devising a police and law and order are so important that improvement of law and order is invaluable one of the electoral promises made by all contending political parties.

The police is a standing public-issue. Also a majority of mass - movements when not originating from something relating to police, get sustenance on the people's anguish over some police action or inaction. Almost any public or private issue has the potentiality of climaxing into a law and order problems. A law and order situation is a sort of blood pressure measurement of a society. Any disease eventually affects the blood pressure. Agrarian problems, industrial disputes, inter- and intra-community interactions, festivals, entertainments, communications and family are all susceptible to friction. Thus the vulnerability of law and order situation is only too obvious. But the native still faces the basic issue as what is wants and expects from the police and how, as also whether it regards the police as an organisation meant to render the most important social service of ensuring pursuance of civilized living for law-abiding citizens or whether it is a band of baton-wielding state owned gangsters pressed into action to perform feats or dispersing unlawful assemblies and catching culprits. The basic approach to law and order problems needs to be formulated and the role of the police redefined accordingly.

As seen above, the police in pre-Independence India did not have a positive and constructive role to play. It was only employed as an instrument for perpetuation of the colonial rule. Mr. J. E. Stephen (later Sir), Law Member of the Governor-General's Council from 1869 to 1872, in the minutes on the Administration of Justice in British India, says<sup>1</sup> 'The object in view.. is to obtain as good a system for administration of justice as is consistent with the maintenance of British power in India. This condition is indispensably necessary to the maintenance of any regular system at all for the administration of justice, or for any other form of good government'. But under the changed circumstances, particularly with our professed goals of a welfare state, the police can no longer be regarded as a task force charged with the task of keeping a particular set of people in power or owing allegiance and loyalty to certain personalities, but has to be a service organisation acting as an agent of the law owing

allegiance and loyalty to the law of the land and dispel its image of an instrument of coercion inherited as a legacy of the colonial culture. Police has to have a new positive development-outlook even while discharging its traditional duties of maintaining law and order. It must lend a big hand in national reconstruction. For the castle of development cannot be erected on shifting sands of chaos and disorderliness. The police has a tremendous potential and it can make direct contribution in many areas of development where others may find it difficult to make a dent. We can see the case of Rajasthan State Transport Corporation which like similar corporations of most other States, was in deep red before Bhawani Mal, IPS took over as its Chairman and Managing Director. He brought the Corporation out of carcass and made it viable. His two other successors also from the Police Service have made it a sound business proposition combining better service to the people. The rich experience of managing the sad part of human existence gives policeman a unique gift to make a success story of many a sad tales. This potential if untaped does also have other repercussions which may afflict the police profession itself. One of such repercussions is stagnation. A shift in perception about policy affairs is clearly indicated.

Ushering into a welfare state opens up new vistas for the people. It also releases certain forces that colonial system manages to keep in a Pandora's box. This makes internal-security management quite complex.

The basic problem in a developing democratic society is of striking a happy balance between the principles of liberty and a need for security which may be often at warring terms and make conflicting demands upon the political system. People jealously guard their liberty and come to resent even the slightest restraint put on them in larger public interests. This disturbs the order and a situation develop wherein confusion may prevail over our convictions as to liberty. The conflict reduces into 'liberty is dearer than life Vs. life is dearer than liberty'. The likelihood of the majority preferring security in the bargain, painful though it may be for a democratic system, cannot be ruled out.

This would show that there is a need for caution and full deliberation. At the same, we have to break away from the colonial culture and wash the hangover.

In 1765, formal grant of Diwani to the East India Company by

the Moghul is the cut off date in the Indian Constitutional history whereafter evolution of colonial philosophy started – Moghul Empire having already disintegrated. This development directed the attention of East India Company to realisation of land revenue and therefore also survey and settlement which was entrusted to British Collectors and Superior British Officers. Then a very important development took place in 1793. Under the Cornwallis Code of 1793<sup>2</sup> Zamindars were divested of police powers and functions and these duties were assigned to a number of darogas in every district with distinct specific territorial divisions working directly under the magistrate. This was quite logical as the British Collectors were the Principal Zamindars under the new dispensation and police powers and functions were re-arranged to subserve objective. In public administration jargons, we can say that whereas earlier zamindars were basic unit of revenue administration, vesting of Diwani rights in the company was followed with a reorganisation with district as basic unit for revenue administration and with Cornwallis Code of 1793 District became basic units of administration with Collectors as the king-pin. Although wherever separate police were in existence they continued functioning as before the Cornwallis Code of 1793.

The uprising of 1857 changed things drastically. The Police Act of 1861 brought about uniformity in administration with the district police placed under the general supervision and control of the District Magistrate. The colonial philosophy had come of age was now to be direction, organisation and system for British interests in India. All the major laws are the aftermath of this uprising including the present police system. Our framework and basic legal infrastructure have not changed. Existing premises and ascions set for the whole legal environ must be re-tested as to their continued validity. One such notion is about justice itself. The existing legal philosophy has been sanctified and judiciary regarded as the only and exclusive fountain head of justice. This limits our approach to mere patch work like free legal aid, lok adalats. This tightens the bondage of existing legal system of the common man. The fact remains that free legal aid in practice covers non-serious litigation and lok adalats are some sort of condensed arbitration. In the context of criminal justice system, justice hinges more on the judicial infrastructure i.e. the police rather than on the judicial superstructure i.e. the judiciary as against commonly held belief to the contrary. The police has a major hand in setting the process of the law in motion. It writes the script, lawyers read and

plead on it and judiciary handles the title giving task. The invisible foundation stone cannot be overlooked if a strong structure for justice is to be built.

The investigating agency presents dressed-up dishes before a court of law and the court having little choice as to material and presentation, tastes it and pronounces verdict on the same which is akin to the role of an umpire in a match. The process is essentially one of screening. The judiciary thus can offer only paper justice - very rarely substantial justice.

General dynamics of a complaint, would show how justice eludes the poor and injustice greets him at every step. Registration of a complaint is the minimum the police must do. It is well known that this is not all that simple or straight forward or easy. Personal influence, money and many other factors weigh with the people charged with this important function.

Law treats everybody alike. But there are people who treat the law as they like and get away with it. Police is the only agency having utmost potential for a shift from justice in court-rooms to justice at the grass-roots level, in fact, justice at door-steps.

Few subjects have perhaps been dealt with in such an ad-hoc manner as the problem of life and liberty so basic to democracy. The preamble to the constitution promises equality, alround justice security and life of dignity. But the Nation is yet to put its home policy crystal-clear. There is a dichotomy in the thinking on issues of individual liberty and general security; discipline and obedience; trust in police and the police system as part of criminal justice system. There is a need for deciding as to what kind of system of Jurisprudence is most suitable for the nation consistent with the constitution of the country and draw up legal framework anew instead of jolting to the continental system after taking undue liberty with the Anglo-Saxon system and vice-versa.

The nation knows its mind on various important issues that affect it. We have a nuclear policy, industrial policy, foreign policy, health policy, policy on environment, language policy, sugar policy, food policy. There is a philosophical vacuum on police affairs unless of course, the colonial philosophy still holds good. And in that case we should be fighting rather than writing a thesis on the subject. The police are the law personified, the state in action. A nation can by miracle have a police in harmony with constitutional professions and



practices unless it has National police policy consistent with the objectives of the polity.

It has not been possible for us to get rid of our prejudices and predilections about police. There has been marked vacillations on various challenges of internal security because of our ambivalence on police acceptability. It is still a fashion to castigate police and have a populist posture even at the cost of being fair and just to the police. Entry of police into religious places, places of worship, educational institutions, within 200 yards of polling booths in elections remain very delicate matters and even public interest have been put in jeopardy on numerous occasions by illegally restraining the police from doing its job. Imagine a polling booth being captured by some elements or by polling staff itself and police being a hopeless by-stander for the colluding presiding officer does not requisition the police help. Even State Police Chief cannot act *sue moto* in such cases. Reader may be assured here that we are very much talking about this in the realm of things. A pronounced level of election-violence in Bihar in comparison to other states is not because the people like it that way but for reasons of lack of people's confidence in the machinery deployed in the conduct of polls. Different parties make their own 'preparations' for the occasion when they see that administration is not so much keen about fair poll as about peaceful election or, in fact, has itself become involved. This is a major cause of tension on the election eve. By-polls are particularly notorious in this respect as they constitute occasional tests of so-called 'popularity' and life of many a chair appear to hinge on that. High-tech vote looters both within the administration and outside are commissioned for the job. We should put a stop to by-elections to avoid concerted assault on democracy. There are many other matters in which police role is very vital yet they are considered untouchables.

Abuse of the right of freedom of expression also complicates the security-environ. We all know rumours provide a fertile hunting-ground to those who have a vested interest in inflaming communal passions and thereby disturbing public harmony. The 1978 Pune riots, the latest violence on 5th Dec. 1986 in Delhi on Guru Teg Bahadur Shahidi Diwas are typical examples of this. The Karnataka riots of December 1986, on the other hand, pose an altogether different question on issues connected with freedom of expression.

News-item and public speeches affecting the police image and credibility adversely tend to erode the people's confidence in this