

SECOND REPORT
of the
NATIONAL POLICE COMMISSION



Government of India

August 1979

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DHARMA VIRA
Chairman



D.O. No. 10/30/79-NPC-Ch.

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GOVERNMENT OF INDIA
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August 16, 1979.

My dear Deputy Prime Minister,

I have great pleasure in forwarding herewith the Second Report of the National Police Commission, which deals with :—

- (i) Welfare measures for police families;
- (ii) Police role, duties, powers and responsibilities ;
- (iii) Interference with and misuse of police by illegal or improper orders or pressure from political, executive or other extraneous sources—Remedial measures ;
- (iv) Gram Nyayalayas ; and
- (v) Maintenance of crime records and statistics.

2. One of our Members, Shri N. S. Saksena, is presently abroad and has, therefore, not been able to sign this report. But he had earlier participated in our deliberations which have led to this report, and he is in full agreement with the observations and recommendations made therein.

3. It may be recalled that our First Report dealt with item 10 (iii) and part of item 10 (iv) of our terms of reference. The enclosed Second Report disposes of items 1, 4 (part), 5, 10 (ii) and the remaining part of item 10 (iv) of the terms of reference.

4. When we gave the First Report to your predecessor on 7th February, 1979, we had the assurance that the Government would expeditiously examine our recommendations for very early implementation. Contrary to our hopes, the First Report has not yet been placed before the Parliament and consequently not yet released for general publication. We understand it was confidentially circulated to State Governments, on the eve of Chief Ministers' Conference on 6th June, 1979 which was convened as an emergent meeting in the context of policemen's unrest and agitation that erupted in some States in May-June, 1979. Our recommendations in the First Report included several measures for the redressal of policemen's grievances relating to their living and working conditions. In retrospect we cannot help feeling that if our First Report had been duly published and it was made known that the recommendations were under active consideration of the Government, perhaps the subsequent stir by policemen could have been avoided. Prompt publication of the report might have also evoked public interest and generated a measure of public debate which might have helped in reaching early decisions on connected matters. The importance of some fundamental issues involved in police reform and their impact on the public in their daily

life make it desirable that the examination of the reformatory measures is not conducted in the seclusion of the secretariat but is done with a measure of involvement and collective thinking of the public as well.

5. Several sections of the public are severely critical of the police being frequently subjected to unhealthy pressures and influences from political, executive or other extraneous sources, and police performance consequently falling off the standards required by truth, law and justice. The crux of police reform in our country today is to secure professional independence for the police to function truly and efficiently as an impartial agent of the law of the land, and at the same time to enable the Government to oversee the police performance to ensure its conformity to law. A supervisory mechanism without scope for illegal, irregular or *mala fide* interference with police functions as noticed today has to be devised. Our Second Report now submitted deals with this important aspect of police reform and is, therefore, likely to evoke considerable interest from different sections of the public as well as the services. We earnestly hope and trust that the Government would examine and publish this report expeditiously, so that the process for implementation of the various recommendations made therein could start right away and progress quickly with due awareness, understanding and support from the public.

Yours Sincerely,



(DHARMA VIRA)

Shri Y. B. Chavan,
Deputy Prime Minister and
Home Minister,
Government of India,
NEW DELHI.

WELFARE MEASURES FOR POLICE FAMILIES

Introduction

13.1 In May-June, 1979, the country witnessed the spectacle of policemen's unrest and agitation in some States in regard to their living and working conditions. Police leadership was surprised and jolted by the signs of defiance and violence manifest in the agitation in certain areas. The immediate need for relief was recognised and some benefit measures and concessions were announced. Policemen's Associations were formed in some States where they did not exist before, and channels were opened for articulation of grievances and their redressal by mutual discussion. The agitation has subsided and policemen have resumed their duties in a changed atmosphere with new hopes and expectations. Among the many deficiencies that got exposed in this situation, one relates to the welfare measures for the families of police personnel.

13.2 Welfare in the police differs from any of the schemes for the welfare of other Government servants. The manner in which policemen live and serve, and their exceptional handicaps make welfare specially important. Such measures have generally been accepted as normal by industry in the private and public sector, where they are almost completely supported by institutional funds but police welfare measures have suffered owing to inadequate appreciation of their importance and lack of enthusiastic involvement of the Government, police leadership and the police personnel themselves in organising such measures. Governments have tended to accord low priority to the funding of police welfare measures. Police leadership does not appear to have realised its responsibility to take the initiative and organise such measures with a total and complete involvement of the personnel in maintaining them. The rank and file themselves have tended to view these measures as a responsibility of the Government, and have been inclined not to perform their own contributory role in full measure. A study of the State budgets shows the relatively low quantum of funds set apart for police welfare measures. While a few States have shown their contribution to police welfare fund as a separate item, some States have not even shown any expenditure separately under the heading of 'police welfare' but have apparently lumped the expenditure under the general head of 'police administration'. The pattern of expenditure on police welfare in general, and the contributions made to police welfare funds in particular, in different States may be seen in the statement in Appendix I.

13.3 In chapter VIII of our First Report we have referred to the studies we had entrusted to the National Council of Applied Economic Research (NCAER),

Delhi and the Tata Institute of Social Sciences (TISS), Bombay to examine in-depth the 'economic profile' of a police constable's family by a sample survey of a large number of police families in Delhi, Uttar Pradesh and Maharashtra. A sub-committee under the chairmanship of Shri Ashwini Kumar, the former Director General of Border Security Force, was also set up to examine the organisation and funding of police welfare measures. We have now received the study reports from NCAER and TISS and also the recommendations from the Ashwini Kumar Committee. We have also received several suggestions from the study groups in different States. Having regard to the study reports and the various suggestions received, and the actual field conditions we have observed during our tours in the States, we make the following recommendations.

Ashwini Kumar Committee Report

13.4 The Ashwini Kumar Committee has referred to the need for welfare measures to cover housing, education, medical care, recreational facilities, financial aid and special retirement benefits in distress situations arising from death or physical disability caused by service conditions, grievance redressal machinery, etc. In our First Report we have already given our recommendations regarding housing, machinery for redressal of grievances of police personnel and supply of essential commodities to police families. Extracts from Ashwini Kumar Committee Report relating to the remaining aspects of welfare are furnished in Appendix II. We broadly agree with this Committee's recommendations, and would advise their adoption in planning police welfare measures. We would, in particular, like to focus attention on some important aspects in the following paragraphs.

Welfare measures—two categories

13.5 Welfare measures for the police may be broadly divided into two categories. The first category would cover such items like pension/family pension/ gratuity, medical facilities, housing, etc., which should be deemed as a part of conditions of service of the police personnel and, therefore, should be funded fully and adequately by the Government. The second category would cover such measures like welfare centres to provide work for police families and help in augmenting their income, financial aid and encouragement for pursuing higher studies by police children who show special merit, financial relief in distress situations not provided for under the regular rules, recreation and entertainment facilities to make life more bearable to police families in the midst of the stress and strain of their daily life, etc. For organising welfare measures of the second category, we would need an adequate

welfare fund which should be built up initially by contributions from the police personnel themselves, supplemented by *ad hoc* grant from the Government and sustained by recurring contributions and grants. In organising and funding welfare measures of the second category, a lot will depend on the initiative and interest taken by the personnel themselves and the continuous lead, guidance and support given by supervisory officers. The officer cadre of the force should realise their special responsibility in this regard and act accordingly. We would recommend that the work done by every officer in organising welfare measures for the personnel under his command should be specifically commented on in his annual confidential report. We would also like to observe that the wives of officers can play a significant role in bringing together the families of police personnel and encouraging their collective involvement in welfare work of different kinds.

Position in the States

13.6 We have collected information from different States regarding the existing welfare measures for the police personnel. A brief assessment of the facilities now available is furnished in Appendix 'III'. It indicates under different headings the most advantageous and beneficial arrangement that a few States have found it possible to introduce in regard to their own police personnel. We recommend that the remaining States may immediately examine the feasibility of introducing similar arrangements for their policemen also.

Pensionary benefit

13.7 In view of the extreme stress and strain of the working conditions of policemen and the serious risk of physical harm which they have to face while dealing with public order situations of increasing violence all round, not to speak of the hazards faced in dealing with the increasing incidence of robberies and dacoities in some States, we feel that the Government should take special care of the family of a policeman who happens to die or get disabled in circumstances arising from the risk of his office. In the case of a policeman who dies in such circumstances we would recommend financial aid to the family on the following lines :—

- (i) *Gratuity* equivalent to 8 months' pay last drawn by the deceased ;
- (ii) *Monthly Pension* to the family equal to the last pay drawn by the deceased till the date on which the deceased would have normally reached the age of superannuation, and thereafter a monthly pension equal to the amount of pension to which the deceased would have been entitled if he had continued in service till the date of his superannuation;
- (iii) *Ex gratia* grant of Rs. 10,000 as immediate financial assistance.

In the case of a policeman who gets disabled we would recommend a scale of pension as detailed in para 3(v) of the note furnished in Appendix III.

Medical facilities

13.8 Apart from the provision of police hospitals and special wards in Government hospitals at places with concentration of police families, as recommended by Ashwini Kumar Committee, we would point out the need for some special arrangements for getting a medical officer to visit the police lines at short notice to deal with any illness situation in which the patient cannot be quickly removed to the hospital or to the consulting room. Since policemen are drawn away from their homes by the call of duty for long hours at a stretch, their families find it extremely difficult in practice to secure prompt medical attention in case of illness of their children or old members at home. Arrangements for line visits by a Government doctor should also be made by authorising a small monthly allowance to the doctor from Government funds, if need be, depending on the frequency of calls and the distances involved.

13.9 We further recommend that medical treatment in all police hospitals should also be extended to retired police personnel and their families.

13.10 Police personnel in some States brought to our notice that there is considerable delay in the reimbursement of their medical claims. In some places they seem to prefer the monthly payment of a fixed allowance as medical allowance instead of the existing facility of recouping under which they have to wait endlessly for recouping an expenditure already incurred out of their pocket. We would emphasise that the officer incharge of police welfare in the State should deem it his special responsibility to monitor the position in this regard from time to time and effectively check the pendency of such reimbursement claims to eliminate delays in this matter.

Educational facilities

13.11 Various State Police Commissions have recommended from time to time that children of Policemen should get certain special facilities in the educational sphere. We endorse their important recommendations as indicated below :—

- (1) There should be free education upto high school standard ;
- (2) The children of policemen should get a grant of Rs. 50 per annum per child in lump sum for purchase of books ;
- (3) There should be no fees charged in Government or Government aided schools ;
- (4) Scholarships should be provided for vocational education ;
- (5) There should be hostel accommodation for the children of policemen at every divisional headquarters; and
- (6) Special scholarships should be given on grounds of exceptional merit for university education.

13.12 Children of police families even now have the benefit of free education up to a stage in several States under the scheme of general free education

upto to a specified standard. Where police children are particularly handicapped is the lack of adequate parental care, assistance and supervision in their studies at home because of the long and irregular hours of work of the police parent. We have reasons to believe that the children in most of the police families suffer from bad neglect on this account. TISS's study report shows that the children of 66% among the constables have dropped out of schools between 6th and 10th standard. Policemen's children need special assistance in this matter.

Police Education Fund and Police Schools

13.13 The first requisite of any arrangement for this purpose would be the creation of a separate police education fund in each State, made up of contributions from the police personnel themselves and supplemented and assisted by *ad hoc*/recurring grant from the State Government. The fund should be built up with the ultimate object of establishing at least one police school in each district headquarters which could take in police children for education upto the 12th standard. Hostel accommodation for children of police personnel located outside the district headquarters should also be planned. Admission to such schools should be governed by suitable tests to recognise merit and facilitate the development of bright young police children. In the curriculum of these schools, there should be special emphasis on discipline and a healthy combination of rigorous outdoor exercises with intensive academic pursuits. Management of all such police schools in a State may be supervised by the Head of the training wing of the Police Department and overseen by a Police School Board whose Chairman could be the Head of the Department of Education in the State and the Member-Secretary could be the Head of the training wing in the police. A couple of eminent educationists could also be nominated to the Board. The pay and allowances of the police personnel on the staff in the school could be borne by the Police Department. The deputation allowance and other incentives provided to the other teaching staff drawn on deputation from the other Government schools may also be borne by the Police Department. The rest of the expenditure may be borne by the Education Department. Police children who do exceptionally well in these schools may be encouraged with scholarship from 'police welfare fund' to pursue higher collegiate studies. In the survey made by TISS, it was disclosed that 61% of the constables very much desire their children to become graduates and go up further in life.

Retirement dues

13.14 A point of grievance with the police personnel, particularly at the level of constabulary, is the delay in settlement of their retirement dues including their monthly pension. The study report of TISS mentions that 36% of the constabulary mentioned this as a specific point of grievance. It would assure the police personnel that the department takes continuous and full care of their interests if every effort is made to settle all these matters in good time so that a

policeman receives his full pension order along with the gratuity amount and other dues on the very day of retirement itself. We were told in one metropolitan city about the initiative shown by the Commissioner of Police in arranging for farewell parades for all policemen who retired every month and seeing them off in a solemn ceremony with the full payment of their dues and pension order. We commend this initiative to all police units.

Leave

13.15 We have already made our recommendations regarding special leave facilities for police personnel, in chapter III of our First Report. We wish to point out here the inadequate provision of 'leave reserve' in the sanctioned strength of the non-gazetted police personnel in several States. The statistical position in some States is brought out in the note in Appendix III. Inadequate leave reserve is one of the reasons behind the organisation's inability to sanction and rotate leave promptly among the operating personnel. TISS study report mentions that 54% of the constables remained without availing their entitled leave. This deficiency in the strength of police personnel should be looked into and made good.

Group Insurance

13.16 Different types of 'group insurance schemes' are now available for all categories of employees in Government. Details of two special schemes which appear to be specially attractive and have been adopted in two States are furnished in the note in Appendix III. We recommend their adoption in other States as well.

Police Welfare Fund

13.17 We have earlier mentioned the importance of constituting a 'police welfare fund' to look after several items of police families' welfare which cannot normally be met from Government funds alone. At the Centre we have seen the example of the Border Security Force which has succeeded in organising its own welfare fund on a large scale—thanks to the initiative and interest taken by the commanding officers at various levels. It is the subscription raised from within the force itself that has made it possible to build up sufficient funds to start and sustain a variety of welfare measures. With the help of special grants given by the Government, the Border Security Force is now in a position to spend one crore of rupees per year on welfare activities. From the TISS study it is seen that the concept of 'Welfare fund' has not yet sufficiently spread among the police personnel. In fact, more than 2/3rd of the constables covered by the TISS study do not contribute to any welfare fund at all! We would advise the leadership of the force to take up this matter on hand immediately and build up the police welfare to cover all police personnel. Regarding the sources and mechanism for the initial building up of the fund and its sustained maintenance, the Ashwini Kumar Committee has made specific recommendations with which we agree. The broad principle which may guide the working arrangements in this matter should be that 60% of the requirements of the fund comes from

contributions from the police personnel themselves, 20% is made up from Government grants and the balance 20 % is covered by the interest generated by the initial lump sum grants which may be kept in fixed deposits or invested otherwise. Contributions from the police personnel should be made compulsory and on a graded scale starting with Rs. 5 p.m. from the constable and going up to Rs. 50 at the level of Inspector General of Police.

Management

13.18 There should be a representative committee to administer the fund and ensure its adequate utilisation for genuine welfare needs. Police personnel of all ranks should have ample scope to participate in planning welfare measures from time to time and projecting fresh schemes to meet their needs. In chapter VII of our First Report we have recommended the constitution of Staff Councils at the battalion/district level and also the State level. We recommend that the Managing Committees to administer the welfare funds be constituted by these Staff Councils at their respective levels.

Audit

13.19 There should be satisfactory arrangements for auditing the operation of the welfare fund from time to time. Since the fund is related to the actual welfare needs of police families which are best appreciated by the police personnel themselves, we consider that audit by an external agency may not really serve the purpose of the fund. We have to devise an internal audit but the composition of the audit party should carry credibility before the rank and file to assure them that all expenditure from the welfare fund has actually been in conformity with its avowed objectives. There should be no scope for a feeling among the men that the welfare fund has been wrongly utilised to further the special interests of the officer cadre. We, therefore, recommend that the audit of the welfare fund at the battalion/district level be made the responsibility of a sub-committee of the battalion/district Staff Council which would be representative in character and adequately reflect the interests of the rank and file. It will be open to this sub-committee to take the assistance of a qualified professional accountant or auditor to get this job done.

Welfare Centres

13.20 Facilities must be provided for the womenfolk in police families to engage themselves in productive employment at Welfare Centres established near police lines to augment their families' income. By virtue of his profession and involvement in law enforcement, a policeman is precluded from engaging himself in other trade and employment for augmenting his income. The scope for such employment for his family members is also correspondingly limited. Police families, therefore, need special assistance in this regard. Work centres have been established near police lines in some States to do such items of work as stitching police uniform, children clothing wear, etc. Our impression is that there is considerable scope for improving the facilities in this regard and increasing the spread of such centres to cover more

families. In a few places we noticed that the wages paid for uniform stitching and other allied work done at these centres were very much less than the local market rates. Government secretariat frequently argues for a reduction in wages in view of the facilities for work provided at Government expense. We feel that this reduction should not be arbitrary—as it appeared to us in one or two centres. Fixation of wages should be done by a local committee in which the Government secretariat and the police management could both be involved to take a realistic view of all the relevant factors.

Canteens and Stores

13.21 While supporting the recommendations of the Ashwini Kumar Committee in this regard, we would further recommend that educated girls in police families and retired police personnel may be given first preference for employment, to manage and run these canteens and stores.

Recurring Deposit Scheme

13.22 The Border Security Force has organised a 'recurring deposit scheme for its personnel which helps in augmenting the pension and gratuity assistance for the personnel at the time of retirement. A copy of this scheme is furnished in Appendix IV. We recommend the adoption of a similar saving scheme by all police units.

Sports

13.23 Organisation of sports for police families, specially the children, should be deemed an integral part of welfare measures. Outstanding performance and talent in games and sports should be quickly spotted and encouraged to develop in full measure.

Police Welfare Officer

13.24 Police families welfare is a matter that requires continuous attention and careful monitoring to ensure effective results to the satisfaction of the rank and file. It would not be sufficient if police welfare is merely treated as a portfolio to be looked after by an existing functionary in the State police in the midst of various other duties. Every State police must have a while-time police welfare officer at the State Headquarters who, by his initiative and interest, should organise welfare measures on a sound basis in every district/battalion and, what is more, ensure satisfactory delivery of welfare services on the ground. We leave it to the State Governments to decide the rank of this officer at State Headquarters, while observing that it is not the mere rank but the initiative and genuine interest shown by the officer and the example set by him that would count more in this matter.

Re-settlement of ex-policemen

13.25 Policemen who retire in the normal course will need assistance and advice to keep themselves occupied and settled in reasonable comfort. There is considerable scope for rendering assistance in matters like securing allotment of land for cultivation, or facilities for productive self-employment from various developmental agencies under the Government or otherwise. The State Police Welfare Officer should deem it a part of his responsibility to render this help on a systematic basis to retired police personnel.

CHAPTER XIV

POLICE ROLE, DUTIES, POWERS AND RESPONSIBILITIES

Criminal Justice System

14.1 The fundamental basis for any criminal justice system is the law of the land, specially in a democratic society. The very process of evolution of law in a democratic society ensures a measure of public sanction for the law through consent expressed by their elected representatives. The entire criminal justice system in our country, therefore, revolves around laws passed by the Union Parliament and State Legislatures. The durability and credibility of the system will, in the first place, depend on the inherent strength or weakness of the various laws enacted from time to time. After laws are made in the legislative bodies, their enforcement is taken up by the various agencies set up for that purpose by the government. Police come at this stage as the primary law enforcement agency available to the State. Enforcement by police is primarily an exercise of taking due notice of an infraction of law as soon as it occurs and ascertaining the connected facts thereof including the identity of the offender. Thereafter the matter goes for trial before the judiciary where the facts ascertained by the enforcement agency are presented by the prosecuting agency and the accused person gets a full opportunity to present and argue his side of the case. If the trial results in the accused person being found guilty, he is made to suffer a penalty either by being held in custody for a specified period or by being made to pay up an amount of money as fine to the State Exchequer and/or compensation to the victim of crime. Even in cases where a convicted person is to be sentenced to imprisonment, there are legal provisions for exempting him from such physical custody in certain circumstances and keeping him under special observation by correctional agencies with the avowed object of facilitating his reform and smooth return to society. The criminal justice system covers the entire scenario from the occurrence of crime, i.e., any deviatory conduct punishable by law, investigation into the facts thereof by the enforcement agency, adjudication proceedings in court aided by the prosecuting counsel as well as the defence counsel, the performance of the correctional services in facilitating the quick return of the delinquent person to normal behaviour and finally the administration of jails with the ultimate object of re-socialising the criminal apart from deterring him from repeating his crime. Police, prosecutors, advocates, judges, functionaries in the correctional services and jails form the different distinct organised wings of this system. The ultimate object of the system is to secure peace and order in society. The success of the system, therefore, depends largely on a proper understanding of the objectives of the system by all wings put together and their co-ordinated functioning to secure this objective. The role, duties, powers and responsibilities of the police with special

reference to prevention and control of crime and the maintenance of public order cannot be defined in isolation in absolute terms, but has to be fitted into the overall requirements for the success of the criminal justice system as a whole. We propose to examine in the succeeding paragraphs the limitations in police role that flow from this inter-relationship.

Criminal laws

14.2 The basic criminal law in our country is made up of the Indian Penal Code, the Code of Criminal Procedure and the Evidence Act, all of which were originally conceived in the late nineteenth century under the British regime and have largely remained intact in their original form since then. The amended Code of Criminal Procedure of 1973 vary largely reproduced the previous version of the Code. While the Indian Penal Code gives an exhaustive definition of several forms of deviatory conduct, the Code of Criminal Procedure limits police responsibility for dealing with them. Offences under the Penal Code are divided into two categories : cognizable and non-cognizable. In cognizable offences, police have a direct responsibility to take immediate action on a complaint by visiting the scene, ascertaining the facts, apprehending the offender and prosecuting him in court. Non-cognizable offences are generally left to be pursued in courts by the affected parties themselves. Police cannot intervene in non-cognizable offences except with magisterial permission to be specially obtained if found necessary in any specific situation. In the classification of offences as cognizable and non-cognizable, it appears that the framers of the Code were inclined to take a severe view of any violation of law relating to possession of property and a lenient view of offences against the human body. For example, even an ordinary theft involving a trifling amount has been made cognizable by the police and followed by aggressive prosecution while offences of causing hurt, assault etc. are held non-cognizable in certain circumstances. The classification of offences and limitations of police response to complaints thereof, as spelt out in the existing laws, do not conform to the understanding and expectation of the common people who, when they become victims of a crime or are otherwise subjected to a distress situation, naturally turn to the police for help. Police become a much misunderstood force when their action gets limited by law contrary to the natural expectations of the people. There is, therefore, immediate need to examine the procedural laws and allied regulations for modifying them to enable police response to conform to public expectations, consistent with the resources potential of the police.

Bail

14.3 The provisions in the Criminal Procedure Code for the release of an arrested person on bail have

been so framed that bail release would be possible only if the arrested person has some financial backing by way of sureties. The report of the Legal Aid Committee appointed by the Government of Gujarat in 1970 under the chairmanship of Justice P. N. Bhagwati, who was then the Chief Justice of Gujarat High Court, stated—

“.....the bail system causes discrimination against the poor since the poor would not be able to furnish bail on account of their poverty while the wealthier persons otherwise similarly situated would be able to secure their freedom because they can afford to furnish bail. This discrimination arises even if the amount of the bail fixed by the Magistrate is not high, for a large majority of those who are brought before the courts in criminal cases are so poor that they would find it difficult to furnish bail even in a small amount. The evil of the bail system is that either the poor accused has to fall back on touts and professional sureties for providing bail or suffer pre-trial detention.”

The amendments made in the Criminal Procedure Code in 1973 have not changed the position in this regard. Here again, on account of a procedural requirement of law, the police appear as a harsh and oppressive agency showing undue severity in dealing with poor people who happen to get arrested in certain situations. We are mentioning this as an example of several such features in law which handicap the police and rigidly circumscribe their actions in such a manner as to stifle their functioning effectively.

Legislation

14.4 There has been a spate of legislation in Parliament and State Legislatures year after year. The socialist democracy that we have evolved for ourselves finds increasing need to restrict and regulate the conduct or business of individuals to secure the objectives spelt out in our Constitution. In the three decades of 1947—57, 1957—67 and 1967—77, the number of laws enacted by Parliament were 692, 597 and 672 respectively. In their anxiety to secure the desired objectives, the legislators enact laws at a rapid pace and immediately hope that a rigid enforcement of the laws would secure what they want. Police, as the premier law enforcement agency available to the State, are suddenly brought into the picture by a ring of the bell as it were and given a bundle of new laws to enforce forthwith. There is no meaningful interaction with them at the earlier stages of legislative exercises. No thought is given to the resources potential of the police to handle the fast increasing volume of law enforcement work. The situation is something like planning and executing a very large number of irrigation dams and giant reservoirs without simultaneously planning and executing an efficient canal system for orderly distribution. Police involvement in law enforcement in these circumstances is, therefore, subject to considerable strain and pressure. We have to bear this in mind while re-defining police role and responsibility for law enforcement in such a situation.

Accusatorial system of criminal trials

14.5 A significant feature in our criminal law is the accusatorial system or the Anglo-Saxon or common law system of trial which is at the base of our criminal justice system. Unlike the inquisitorial system which has been followed in Europe from the thirteenth century onwards in which the judge is expected to take the initiative and find out for himself, by examining all relevant persons including the accused, what really happened, *i.e.*, what was the truth and then act according to law, in the accusatorial system the judge is only an umpire between two contesting parties. He will only give his decision on the issues and evidence put before him. In a criminal trial it is the prosecution side that charges the accused with a definite offence and having done so it has the responsibility to prove it as well. Section 101 of the Indian Evidence Act, 1872 says : “Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist”, and “when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person”. So the burden of proof, save in a few exceptional cases, lies on the prosecution. As the judge is an umpire and not an inquisitor, it is not for him to ascertain if the accused has violated a law. He will give a decision only on the evidence brought before him on the issues raised between the prosecution and the defendant. The rules which govern this system make various demands from and place various restrictions on the prosecution so that the defendant gets all the help he can to defend himself. After the accused has seen and heard the entire evidence against him, he can decide which line of defence he will adopt and, therefore, which documents and witnesses will he produce. At the end of the trial the prosecution must prove their case beyond reasonable doubt : the accused may, however, only raise a doubt and get its benefit to secure his acquittal. The severe limitations placed on the admissibility of evidence from the prosecution side and the norms for determining the value of the admitted evidence make it difficult for the police as the investigating agency to carry forward all the material uncovered during their investigation to the final point of success in getting the offender convicted under the law.

Prosecuting Agency—Police interaction

14.6 During pendency of proceedings in court, the police have no *locus standi* inside the court hall except when a specified police officer happens to be examined as a witness. Our criminal law has several provisions which breathe a total distrust of the police as a community (examples : section 162 of the Code of Criminal Procedure and sections 25, 26, and 27 of the Evidence Act). Our criminal procedures do not approve of police presence inside a court hall and do not envisage a legitimate interaction between the police and the prosecuting agency for proper marshalling and appreciation of all the facts uncovered during investigation. In fact, the amended Code of Criminal Procedure of 1973 has tended to segregate the prosecuting agency as another independent agency which, in practice, gets a feel of its independence only by declining to have effective interaction with police at

the stage of trial ! We are convinced of the need for this interaction without, in any manner, affecting the professional independence of the prosecuting agency and we are of the view that this principle should also be suitably recognised in law, instead of being left as a mere administrative arrangement. Later on, in a separate chapter, we shall deal with the details of the set up of prosecuting agency and the modalities for bringing about this interaction and coordination.

Court trial rituals

14.7 The rituals of court trials under the existing law and the general attitude shown by the legal counsel, tend to delay the proceedings in court. Apart from the delays at the stage of investigation which are attributable to deficiencies in police, the further delay at the stage of trial results in considerable harassment to the victims of a crime while at the same time the effect of deterrence of quick conclusion of proceedings in court is lost on the offender himself. Pendency of criminal cases under trial in courts has gone up enormously in the recent years and the system itself will soon get clogged up beyond repair if the existing law is allowed to operate without any modification. The loss of deterrent effect following prompt disposal of case in court and appropriate punishment in proved cases acts as a handicap in containing criminal activity in society. People tend to commit crime more freely when they know from what they observe in day to day life that it will take several years for the arm of law to hold them in effective custody. The relative ease with which accused persons with the influence of men and money get released on bail after repeated commission of crimes tends to encourage similar behaviour by the unruly elements in society. The ineffectiveness of court trials to produce the desired deterrence acts as a severe limitation on police success in containing crime.

14.8 Even in U.K., from where our present system is borrowed, it is not claimed now that this is a logical system. A Royal Commission on Criminal Procedure has been recently constituted there to examine if changes are needed in criminal procedure and evidence relating to the powers and duties of the police in the investigation of criminal offences and the rights and duties of suspects and accused persons including the means by which these are secured. Age old concepts regarding the process of investigation and trial in respect of criminal offences are thus under review in U.K. itself. We feel there is urgent need for a comprehensive reform in the procedural laws relating to investigation and trial in our own system. We shall be dealing with details of this reform in a separate chapter.

Correctional Services

14.9 Correctional Services which constitute the other end of the criminal justice system consist of the probation machinery, special schools to take care of delinquent juveniles as well as neglected and uncontrollable children, protective homes to look after women who may have been forced into the channel of immoral traffic under the compulsions of poverty

or social helplessness etc. and jails which are expected to hold the convicted criminals who are required to be kept in custody and handle them in such a manner as to aid their reform and reabsorption as normal members of society. Though well-conceived and based on progressive concepts, these institutions in practice have not been functioning to the desired levels of efficiency.

Probation

14.10 Although there were Probation Acts in some States before independence, the Parliament legislated the Probation of Offenders' Act in 1958 applicable to all the States and Union Territories in the country. The concept of Probation is intended to protect first offenders from the contamination of old offenders in prisons and probation officers are expected to place before the law court the socio-economic background, personality and behaviour of the offender to enable the court to decide whether the offender should be sent to a prison or can, under certain conditions, be allowed to return to the community. Should subsequent reports indicate any failure on the part of the person released on probation, the initial sentence which was suspended can be re-imposed without further trial. But the actual application of this act on account of too many cases and too few probation officers has been minimal only. The new section 361 of the Cr.P.C. wherein it is mandatory for the courts to record reasons for not adopting the rehabilitative system of treatment is by and large, reduced to a ritual. To illustrate, in 1976 a total of 1,20,910 juvenile offenders were put up before law courts and cases involving 33,227 juvenile offenders were disposed of. Out of these, 30,548 were sent to prisons and only 2,679 were released on probation. It is important to note that out of the juveniles arrested 89.2% of the offenders. Another important point is that 85% were new offenders who were sent to prison were for sentences of less than 6 months of imprisonment. The absence of adequate infrastructure of probation services to deal with juveniles has practically nullified the scope for reforming juvenile offenders.

Children Act

14.11 Although Children Acts have existed in various States for many years—in Madras it was enacted as early as 1920—the Central Children Act was passed in 1960. The Central Act which extends to all the Union Territories and serves as a model for adoption by the States provides for the care of non-delinquent as well as delinquent children; non-delinquent may be neglected or destitute children or exploited or victimised children. Delinquent children are expected to be dealt with by Children's Courts and non-delinquent children by Child Welfare Boards. The delinquent children go to special schools and the non-delinquent to Children Homes. Juvenile Courts do not exist in all the States and Union Territories. The Probation Officer is expected to investigate every case referred to the Juvenile Court and submit a report so that the court can select the most appropriate method of dealing with the child. Child Welfare Boards exist only in Delhi and Pondicherry to deal with the destitute children. The Children Act also provides

that female children should be handled by women police only but the number of women police in India is negligible and they are not to be found in every district.

Reformatory processes in law

14.12 A significant aspect of some laws—particularly those coming under the category of social legislation—is that the ultimate object of the law can be secured in reality, not by mere rigid enforcement of the law, but by successful implementation of the non-penal, remedial, rehabilitative and corrective measures spelt out in the law. It is common experience in all the States that the number of Protective Homes and Corrective Institutions as provided in Section 21 of the Suppression of Immoral Traffic in Women and Girls Act is far from adequate. There are only 74 Protective/Rescue Homes in the country and their total capacity is only 6290. The number of girls actually being exploited for prostitution may well exceed this number in any one large city itself. In one city hundreds of beggars were rounded up by police in the course of a drive against begging, but when they were produced before the Magistrate he had no alternative but to order their release as there was no room for them in any "Home". Anti-beggary laws are in force in 14 States and two Union Territories but a proper exit for beggars, after they have been put up before a court of law, is generally lacking. There is an All India Children Act (1960) which seeks to provide for neglected and delinquent children. But the accommodation, as compared to the requirement, in the various 'Homes' is infinitesimal. It has been estimated that we have about 10 million working children in "avocations unsuited to their age or strength". The number of neglected children is anybody's guess.

Jails

14.13 Our jails are terribly over-crowded. In 1961, there were 1176 prison institutions in the country and these included 52 central jails, 180 district jails, 919 sub-jails, 2 juvenile jails, 9 borstals, 3 women's jails, 6 special jails and 5 open jails. By 1970 the total number of institutions had come down to 1170 and yet admissions to jails in 1970 were 13,78,657 as compared to 10,05,896 in 1961. During this period the number of undertrials also rose; in 1960 there were 5,93,398 undertrials as against 4,12,498 convicts. In 1970 there were 9,38,598 undertrials as against 4,40,059 convicts. Thus while the convict admission rose by 7% only, the admission of undertrials rose by 58%. As the total accommodation remained the same it has led to more and more undertrials living with convicts, contrary to the requirement of section 27 of the Prison Act, 1894. The huddling together of a large number of undertrials with convicted prisoners and the mixing together of old and hardened criminals with young first offenders tend to promote in the minds of all inmates feelings of criminality instead of remorse and regret for their previous conduct and a desire to reform.

Apart from the over-crowding in jails, the general manner in which the rituals of the daily life inside the jails are rigidly administered and enforced tends

to dehumanise the prisoner who is cowed down by the oppressive atmosphere around with all its brutalities, stench, degradation and insult. Instead of functioning as a reformatory house to rehabilitate the criminal to reform him and make him see the error of his ways and return a better and nobler man, the ethos inside our jails to-day is tragically set in the opposite direction, making it practically difficult for any reformatory process to operate meaningfully.

14.14 The deficiency in the functioning of correctional services has meant the weakening of their corrective influence on the behaviour and conduct of all the delinquents who pass through the system. Police, who appear in the first part of the system to investigate crimes and identify the offenders involved, have again to contend with the likely continued criminal behaviour of the same offenders, without the expected aid and assistance from the other agencies of the system to contain their criminality. We are, therefore, of the opinion that in whatever way we may define the role, duties and responsibilities of the police, they cannot achieve ultimate success in their role performance unless all the wings of the criminal justice system operate with simultaneous efficiency. This would require our having some kind of body which will have the necessary authority and facilities to maintain a constant and comprehensive look at the entire system, monitor its performance and apply the necessary correctives from time to time, having in view the overall objective of the system. In view of the primacy of law in the entire system, our first thoughts in this matter go to the Law Commission. We feel it would be advantageous to enlarge the concept of the Law Commission and make it function as a Criminal Justice Commission on a statutory basis to perform this overseeing role on a continuing basis. For this purpose it would be desirable for appropriate functionaries from the police and correctional services to be actively associated with the deliberations of the new Commission. This arrangement at the Centre should be supported by a similar arrangement at the State level in which a high powered body under the Chairmanship of the Chief Justice of the High Court, either serving or retired, and with members drawn from the police, bar and the correctional services, would perform this monitoring role and evaluate annually the performance of the system as a whole. The deliberations of such a body would also help in more realistic enactment of legislative measures and their amendments as may be required from time to time.

Prevention of crime

14.15 Apart from investigating the facts of a crime after it has occurred, police have, according to normal public expectation, a responsibility for preventing the very occurrence of crime. Investigation may be deemed as an expert professional responsibility that has to be squarely borne by the police, and their success in this regard depends mostly on their own training, equipment and competence, aided by public cooperation wherever possible. But in regard to prevention of crime, police cannot do very much by themselves, since quite many among the factors that cause crime are beyond their control. In fact several of these factors

transcend the criminal justice system itself. At the fourth U.N. Congress on the Prevention of Crime and the Treatment of Offenders held in 1970, the criminogenic factors identified were urbanisation, industrialisation, population growth, internal migration, social mobility and technological change. All these factors are present in India in varying degrees and none of them is really controllable merely by police activity or influence. Criminogenic factors also vary from area to area within the country and also change from time to time. Communal tension which is marked in certain areas results in certain types of crime. Certain crimes are also generated by social tensions which affect the backward classes. The presence of a representative political leader, generally popular with large sections of the local public, is helpful in resolving conflicts and maintaining social order and harmony in certain areas. When such leadership is eroded by political instability in Government, there is consequent disturbance in the general state of law and order in the areas concerned. We thus see a large variety of factors which determine the state of crime and public order in society at any point of time, and it is obvious that police action alone cannot regulate the operation of these factors. Another aspect of prevention is deterrence. There is no doubt that certainty of detection and certainty of swift punishment in proved cases deter crime but while the former is within the control of police the latter involves, together with police, the prosecuting agency, the lawyer community and the law courts. Further, it is now being increasingly believed that one way to prevent crime is to resocialise the offender. This process lies entirely in the jurisdiction of the jail administration and the correctional services. Whether a person, who comes out of the other end of the criminal justice system, is absorbed by the community, or is capable of such absorption, depends on the degree of his resocialization at that stage. In a sense, laws create crimes and if more and more of human conduct is categorised as criminal, even an ideal criminal justice system, including the best possible police, cannot prevent the commission of more and more crimes. This is particularly true of those social laws which create the category of victimless crimes, such as gambling, drinking liquor, etc. where there is seldom any aggrieved party to complain. It would be seen, therefore, that the role of police in prevention of crime can only be defined in the context of the limitations described above.

Maintenance of public order

14.16 Police role in maintaining public order has even greater limitations specially in a democracy. Maintenance of order implies a certain measure of peace and avoidance of violence of any kind. Public order is deemed to have been upset, in public estimate, if violence breaks out in public in a noticeable form. The characteristic features of the existing social structure in India are (i) inter-group conflicts on account of religion, language, caste, etc.; (ii) a clear majority of the young in the population—there were according to the 1971 census 58.6% people below the age of 25; (iii) increasing pressure of poverty with 48% in rural areas and 41% in urban areas living below the poverty line in 1977-78; the total number of such persons according to the draft Five Year Plan (1978-83)

being in the neighbourhood of 29 crores; (iv) increasing unemployment—according to the National Sample Survey on a typical day 186 lakh people were seeking work; (v) groups of people congregating in urban areas—the Centre for the Study of Developing Societies (Delhi) has found that the urban growth rate of 4% a year is about the fastest in the world and at this rate by 1985 the Indian urban population is likely to be 350 million, possibly the largest in the world and there are many organised protest groups in urban areas such as Government employees, employees of autonomous bodies, professional groups, occupational groups, industrial workers, political groups, students and others; and (vi) increasing awareness of the destitute and the poor of what they do not have and what they should have. This awareness is increased by the spread of mass media. In 1947 there were 6 radio stations and now we have 82 with nearly two crore radios which means one set for about every 37-38 persons and our broadcasts cover all the regional languages and as many as 136 dialects. We have newspapers, 14,000 of them with a circulation (1976) of 340.75 lakh copies, and the films. All these factors, combined with the general belief among the haves that the only way to evoke response from administration is to launch an agitation or a strike or any form of protest activity involving violence of some kind or other, induce an atmosphere of continuing pressure and proneness to break into situations of public disorder.

14.17 Public urge for reform and relief from pressure situations of the above kind are often articulated by political parties, particularly those in opposition to the ruling party. Protest activity, therefore, gets mixed up with political dissent. Police methodology in dealing with such situations has necessarily to conform to democratic traditions and cannot have the trappings of the technique of an authoritarian regime to sustain itself in power. In such circumstances, the police have the most difficult role to perform to maintain order. Any step taken by them for this purpose is immediately viewed by the agitating public as partisan conduct to maintain the *status quo* and oppose the changes for which the agitators clamour. Police invariably get dubbed as being on the side of the conservative and the no-changer. Police action in such situations is severely handicapped on this account. Police cannot be expected to handle such situations all by themselves but they should have accommodation, co-operation, assistance, sympathy and understanding from organised sections of the public themselves.

14.18 In the foregoing paragraphs we have referred to some aspects of the present functioning of the different wings of the criminal justice system. The object of the criminal justice system is to secure a state of peace and tranquility in society by reinforcing the norms of society by laws and ensuring that those who violate the law of the land are detected, tried according to law and procedure in a court and treated in accordance with the best interests of society which could be anything from their segregation—permanent through death penalty or for a fixed period in jail—from society to correction and release back into the mainstream of society. This entire process should not only be reformatory but also effective enough to deter potential law

breakers. In other words, the effectiveness of this process should be seen as an aid to counter the temptation to commit crime. There is no doubt that, at present, the entire criminal justice system in our country is weak, is seen to be oppressive on the poor and the helpless and is highly convenient for the rich and the power elite. In 1966 reported cognizable crimes were 7,94,733. In 1976 this figure rose to 10,90,887. The number of cases which remained pending investigation at the end of 1966 was 1,08,127; for 1976 this figure was 2,30,650. The number of cases pending trial at the end of the year 1966 was 2,92,003; at the end of 1976 this figure was 10,43,085. This system is fast getting choked and is ceasing to command the confidence of the people. The victim of an offence does not believe that he will get justice from this system, particularly if he is poor and lacks influence.

14.19 We are of the opinion that police role in law enforcement is very much linked with the part played by other wings of the criminal justice system and has, therefore, to be defined and understood within a common framework applicable to the entire system as such. We now proceed to examine their role, duties, powers and responsibilities in this context.

Police—Law enforcement agency

14.20 Police, throughout the ages, have functioned as the principal law enforcement agency of the State. In the early and medieval periods of civilisation, governance of a State was centred in ruling individuals or family groups. Laws of the State were what the individual rulers felt inclined to pronounce as such from time to time. Police enforcement of the law as propounded by the ruler practically meant regimented compliance of the ruler's demands and desires.

Ancient India

14.21 The basic concept of governance in ancient India were of Dharma and Danda and there were functionaries to ensure the operation of 'Danda'. In fact Dandaniti was an important ingredient of statecraft. In the Dharma-sutras proper wielding of 'Danda' was held to be an important duty of the king. The basic unit of policing was the village; a village being an aggregation of families together with their lands and pastures surrounding the village. Every village had its local court which was composed of the Headman and the elders of the village. These courts decided minor criminal cases such as petty thefts as well as civil disputes. The Mahabharata speaks of Gramadhipati and the Buddhist Jatakas mention Grambhojaka. While these were actually village headmen the nagaraguthka was responsible for arresting and executing robbers. There is also the mention of "chora-ghataka"—slayer of thieves. Kautilya's Arthashastra refers to a detailed police organisation, a "sangrahana" for 10 villages, a "kharvatika" for 200 villages, a "dronamukha" for 400 villages and a "sthaniya" for 800 villages. Significantly there was accent on intelligence collection.

Mughal period

14.22 During the Mughal period the key functionaries responsible for policing were the Faujdar and the

Kotwal, at their respective levels. In the Mughal Empire a number of villages were grouped together to form a Mahal or Parganah. A number of Parganahs formed a Sarkar and a number of Sarkars formed a Subah or Province. The Empire itself consisted of Provinces, the number of which generally increased or decreased in accordance with what happened in the Deccan. The Kotwal was responsible for policing the cities, towns and their suburbs. The functions of the Kotwal are mentioned in the Ain-i-Akbari. He prevented crimes and social abuses, regulated cemeteries, burials, slaughter houses, jails and took charge of heirless property. He patrolled the city at night and collected intelligence from paid informers on men and matters. The sanad of his appointment enjoined upon him to ensure that there was no theft in his city. In a register he maintained the addresses and professions of every resident of the town, observed the income and expenditure of various classes of men, and checked the accuracy of weights and measures. Preparation and distribution of intoxicants and the profession of prostitutes were also controlled by him. Thus his functions were preventive, detective and regulatory. The Faujdar was the head of the Sarkar and commanded troops to suppress rebellion and disorder in the area—mainly rural—of his jurisdiction. Although he was subordinate to the provincial Governor, he could directly communicate with the Imperial Government. He dispersed and arrested robber gangs and took cognizance of all violent crimes. His functions were to guard the roads in the country-side, suppress violent crimes, hunt down bandits, prevent manufacture of fire-arms, arrest disturbers of peace and assist the Malguzars in the collection of revenue by making demonstrations of force to overcome opposition, where necessary. In practice the Zamindar was made responsible for peace and security of the people in his zamindari. The Faujdar was only to ensure that the Zamindars did their job.

Democracy

14.23 With the advance of civilization, ideas of socialism and democracy took root. Laws of the land no longer reflected the individual whims and fancies of ruling individuals or groups. Law making as a process involved increasing participation by the public through elected representatives. Law thus got delinked from the individual ruler or ruling group or party and got attached to the people of the State as a whole. Personalised laws were replaced by public laws. Police role consequently changed in its content. Instead of serving the interests of an individual ruler or a group, police started functioning as servants of an impersonal law which was something common to all citizens of the State. While this natural development came about smoothly and easily in free countries, the old concept continued in colonial countries which were ruled by foreign powers as was the case in India till 1947.

Police Act, 1861

14.24 The Indian Police system as organised by the Police Act of 1861 was specifically designed to make the police totally subordinate to the executive government in the discharge of its duties. No reference was made at all to the role of police as a servant of the law

as such. Thus when on 17th August, 1860 the resolution appointing the Police Commission was issued by the Governor-General in Council the Memorandum attached to the resolution stated, for the guidance of the Commission, the following "characteristics of a good police for India". The first was "that it should be entirely subject to the Civil Executive Government". It was added that this would require "a change in the rule which, as formerly in Madras and Bombay, gave the control of the Police to a judicial body—the Circuit Judges in Madras and the Sudder Foujdaree Adawlut in Bombay. In a Non-Regulation Province this rule would point to the necessity of the police being under the Civil Commissioner, or other head of the Executive Government, rather than under the Judicial Commissioner or other substitute for a Court of Appeal". It was further noted that "the organisation of the police must be centralised in the hands of the Executive Administration" and that "the organisation and discipline of the Police should be similar to those of a military body".

14.25 The Commission (1860—62) found it easy to follow the guidelines given by Her Majesty's Government because examples of the type of police structure desired in them were already available within the country, starting from Sind. After annexation of Sind (1843) General Charles Napier organised on the pattern of the Royal Irish Constabulary, a police force commanded at the district level by Army officers, a European Lieutenant of Police and an Adjutant and at the provincial level by a Captain of Police directly responsible to the Chief Commissioner. The Irish Constabulary was organized to control a colony and was, therefore, fundamentally different from the British Police. The British Police was and is a democratic police, an instrument of law answerable to the people and their representatives who form the police authority, and there were, at the last count, forty three police authorities. Sir George Clerk, the then Governor of Bombay, visited Sind in 1847 and impressed by Napier's police system reorganized his barquandazi police. Changes on similar lines were effected in Madras. The revelations by the 'Torture Commission' appointed in 1854 (reported in 1855) hastened the process and Act XXIV of 1859 set up the new pattern of a force led by an Inspector General of Police at the top and Superintendents of Police in the districts. Before 1860 a similar system had been established in Bengal. The Indian Police Commission of 1860, therefore, stated : "we have arranged for this force being in all respects subordinate to the Civil Executive Government and we have paid due consideration to the Despatch from the Majesty's Government of the 6th July on the constitution of the Police". The Indian Police Act, 1861 was enacted soon after, on the model of the Madras Act, formalising the present organisational set up and making the police at the district level function under the control and direction of the chief executive of the district, namely, the District Magistrate. The police force has since then remained an instrument in the hands of the State Government.

14.26 This position is very clearly reflected in the manner in which police role, duties, powers and res-

ponsibilities have been spelt out in the Police Act of 1861. According to Section 23 of that Act, police are required to—

- (i) prevent the commission of offences and public nuisances ;
- (ii) detect and bring offenders to justice ;
- (iii) apprehend all persons whom the police are legally authorised to apprehend ;
- (iv) collect and communicate intelligence affecting the public peace ;
- (v) obey and execute all orders and warrants lawfully issued to them by any competent authority ;
- (vi) take charge of unclaimed property and furnish an inventory thereof to the Magistrate of the District, and be guided by his orders regarding their disposal ;
- (vii) keep order on the public roads, thoroughfares, ghats, landing places and at all other places of public resort ; and
- (viii) prevent obstructions on the occasions of assemblies and processions on the public roads.

The insistence on prompt obedience and execution of all orders lawfully issued by any competent authority underlines the total submission of police to executive authority and provides immense scope for the executive to use police for implementing decisions which may not be spelt out in any law, rule or regulation. An average policeman would deem an order to be a lawful order provided it comes to him from some one above in the hierarchy. He would not pause to check whether there is any enabling provision in any law for such an order to be issued. This is the present position.

Police reform in U.K.

14.27 In contrast to this situation brought about in India, police reform in Britain itself took a different shape and truly reflected the basic responsibility of police for enforcement of law, in a fair and impartial manner without any obligation to implement mere intentions or desires of the Government as expressed in their policy declarations as different from duly promulgated law. When the metropolitan police of London was radically re-organised in 1829 under inspiration from Robert Peel, the then Prime Minister of U.K., Charles Rowan and Richard Mayne, who were the first two Joint Commissioners of Police, propounded the following nine basic principles to govern all police actions :

THE FIRST PRINCIPLE. To prevent crime and disorder, as an alternative to their repression by military force and severity of legal punishment.

THE SECOND PRINCIPLE. To recognise always that the power of the police to fulfil their functions and duties is dependent on public approval of their existence, actions and behaviour, and on their ability to secure and maintain public respect.

THE THIRD PRINCIPLE. To recognise always that to secure and maintain the respect and approval of the public means also the securing of the willing co-operation of the public in the task of securing observance of law.

THE FOURTH PRINCIPLE. To recognise always that the extent to which the co-operation of the public can be secured diminishes, proportionately, the necessity of the use of physical force and compulsion for achieving police objective.

THE FIFTH PRINCIPLE. To seek and preserve public favour, not by pandering to public opinion, but by constantly demonstrating absolutely impartial service to Law, in complete independence of policy, and without regard to the justice or injustice of individual laws ; by ready offering of individual service and friendship to all members of the public without regard to their wealth or social standing ; by ready exercise of courtesy and good humour ; and by ready offering of individual sacrifice in protecting and preserving life.

THE SIXTH PRINCIPLE. To use physical force only when the exercise of persuasion, advice and warning is found to be insufficient to obtain public co-operation to an extent necessary to restore order ; and to use only the minimum degree of physical force which is necessary on any particular occasion for achieving a police objective.

THE SEVENTH PRINCIPLE. To maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and that the public are the police ; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen, in the interest of community welfare and existence.

THE EIGHTH PRINCIPLE. To recognise always the need for strict adherence to police-executive functions, and to refrain from even seeming to usurp the powers of the judiciary of avenging individuals or the State, and of authoritatively judging guilt and punishing the guilty.

THE NINTH PRINCIPLE. To recognise always that the test of police efficiency is the absence of crime and disorder, and not the visible evidence of police action in dealing with them.

vance in the police system in a democracy. The basic role of police is to function as a law enforcement agency and render impartial service to law, in complete independence of mere wishes, indications or desires, oppressed by the Government as a matter of policy which either come in conflict with or do not conform to the provisions in our Constitution or laws duly enacted thereunder. We will be separately discussing in another chapter the working arrangements and safeguards that would be needed to enable the police perform this role, but our purpose in this chapter is to underline this role as the basic role. We visualise that as we proceed further with our task of police reform, we might find it necessary to make several radical changes in the existing provisions of the out-moded Police Act of 1861. We recommend that the basic police role as noted above may be specifically spelt out in categorical terms in the new Police Act.

Code of Conduct for police

14.29 We notice that a Code of Conduct for the police in India was adopted at the Conference of Inspectors General of Police in 1960 and circulated to all the State Governments. This Code has the following clauses :

- (1) The police must bear faithful allegiance to the Constitution of India and respect and uphold the rights of the citizens as guaranteed by it.
- (2) The police are essentially a law enforcing agency. They should not question the propriety or necessity of any duly enacted law. They should enforce the law firmly and impartially, without fear or favour, malice or vindictiveness.
- (3) The police should recognise and respect the limitations of their powers and functions. They should not usurp or even seem to usurp the functions of the judiciary and sit in judgment on cases. Nor should they avenge individuals and punish the guilty.
- (4) In securing the observance of law or in maintaining order, the police should use the methods of persuasion, advice and warning. Should these fail, and the application of force becomes inevitable, only the absolute minimum required in the circumstances should be used.
- (5) The prime duty of the police is to prevent crime and disorder and the police must recognise that the test of their efficiency is the absence of both and not the visible evidence of police action in dealing with them.
- (6) The police must recognise that they are members of the public, with the only difference that in the interest of the community and on its behalf they are employed to give full-time attention to duties which are normally incumbent on every citizen to perform.

Police—servant of law

14.28 For the present purpose we would, in particular, draw attention to the fifth principle, which underlines police responsibility for absolutely impartial service to law in complete independence of policy. We hold this as the most fundamental concept for obser-

- (7) The police should realise that the efficient performance of their duties will be dependent on the extent of ready cooperation they receive from the public. This, in turn, will depend on their ability to secure public approval of their conduct and actions and to earn and retain public respect and confidence. The extent to which they succeed in obtaining public cooperation will diminish proportionately the necessity of the use of physical force or compulsion in the discharge of their functions.
- (8) The police should be sympathetic and considerate to all people and should be constantly mindful of their welfare. They should always be ready to offer individual service and friendship and render necessary assistance to all without regard to their wealth or social standing.
- (9) The police shall always place duty before self, should remain calm and good humoured whatever be the danger or provocation and should be ready to sacrifice their lives in protecting those of others.
- (10) The police should always be courteous and well-mannered; they should be dependable and unattached; they should possess dignity and courage; and should cultivate character and the trust of the people.
- (11) Integrity of the highest order is the fundamental basis of the prestige of the police. Recognising this, the police must keep their private lives scrupulously clean, develop self-restraint and be truthful and honest in thought and deed, in both personal and official life, so that the public may regard them as exemplary citizens.
- (12) The police should recognise that they can enhance their utility to the Administration and the country only by maintaining a high standard of discipline, unstinted obedience to the superiors and loyalty to the force and by keeping themselves in a state of constant training and preparedness.

While we are in general agreement with all the above clauses and are satisfied that they will admirably fit in with the re-defined role, duties and responsibilities for the police as envisaged now, we have some reservations in accepting clause (12) as it is. A reference to the utility of the police to the "administration" and the "country" separately would induce a general impression that the interests of the administration and the country may not always coincide. We have made clear our view that the basic role of the police is to function as a servant of the law and not as a servant of the government in power. The word "Administration" in clause (12) can only refer to the Government and, therefore, we do not accept its relevance in this clause. Further, the use of the words "unstinted obedience to the superiors" may also be misunderstood to mean an obligation to execute any decision taken by

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the hierarchy irrespective of its legal validity or propriety. We would, therefore, recommend that clause (12) of the above Code may be modified to read as under :

- (12) The police should recognise that their full utility to the people of the country is best ensured only by maintaining a high standard of discipline, faithful performance of duties in accordance with law and implicit obedience to the directions of commanding ranks and absolute loyalty to the force and by keeping themselves in a state of constant training and preparedness.

Law enforcement—Objectives

14.30 Law enforcement cannot, however, be held up as an objective by itself. It may be viewed as a fundamental duty and responsibility with the ultimate object of preserving peace and order, protecting the life and property of the people and, what is more, protecting the constitutional rights conferred on them. The preamble to the Constitution says that India is constituted into a sovereign, socialist, secular, democratic republic and it is to secure to all its citizens "Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation".

14.31 Having regard to the objectives mentioned in the Preamble, we would hold that law enforcement by police should cover the following two basic functions :—

- (i) Upholding the dignity of the individual by safeguarding his constitutional and legal rights. Police secure this objective by enforcing laws relating to the protection of life, liberty and property of the people.
- (ii) Safeguarding the fabric of society and the unity and integrity of the nation. Police secure this objective by enforcing laws relating to maintenance of public order.

Investigation and prevention of crime

14.32 Law enforcement essentially consists of two parts. One relates to investigation of facts concerning a crime, i.e. a violation of law, after such violation has actually taken place. The second part relates to the prevention of the very occurrence of crime by a proper study, assessment, regulation and control of factors and circumstances, environmental or otherwise, which facilitate the commission of crime. We are of the view that police have a direct and more or less exclusive responsibility in the task of investigating crimes but have a limited role in regard to the prevention of crime for the reason that the various contributory factors leading to crime do not totally and exclusively fall within the domain of police for control and regulation. A coordinated understanding and appreciation of these factors not only by the police but also by several other agencies connected with social defence and welfare would be necessary for effective prevention of crime.

Police responsibility for the prevention of crime has thus to be shared to some extent with other agencies. We feel that this distinction in police responsibility for investigation of crime on the one hand and prevention of crime on the other should be clearly understood and indicated in the Police Act itself, which would also thereby institutionalise and facilitate appropriate associative action by other social welfare agencies for preventing crime.

Maintenance of public order

14.33 The task of maintenance of public order includes several measures for preventing violations of law relating to public peace. Extending the principle mentioned in the foregoing paragraph, we feel that police should be enabled in law to take the assistance of other organised public bodies for undertaking appropriate preventive measures.

Private security arrangements

14.34 With increasing State ownership of the means of production and distribution of goods and delivery of services, there has been an enormous growth of public property, particularly after independence. Like the traditional protection extended to private property, public property also needs protection. This has led to the development of special forces such as the Industrial Security Force and the Railway Protection Force. With progressive industrialisation private property also has expanded its dimensions, and the owners have progressed from the utilisation of sundry watchmen to a system of organised private security guards. As many owners are willing to pay for the services of such security guards without taking on the burden of administering them directly a large number of privately operated Industrial Security organisations have sprung up in the country. With greater industrialisation these organisations are bound to increase in size because police cannot themselves possibly provide these services to individual business establishments.

14.35 Besides organised services in the private sector for protection of property, private detective agencies have also come up in the recent years to make informal inquiries in certain types of crimes where, for a variety of reasons, the victims of crime desire a quiet and confidential inquiry in preference to an open and aggressive investigation by police. We understand there are over 50 such agencies functioning in the country. They mostly deal with inquiries relating to insurance claims, matrimonial suits, divorce matters, elopement and infringement of trade mark and copyright. Such agencies are also known to be employed on some occasions for collecting intelligence to facilitate a better understanding of an internal situation by the management of private industries. There is at present no law in our country governing the functioning of such private agencies. In some foreign countries they have a system of licensing such organisations and bringing them within the framework of some rules and regulations to facilitate their healthy working and meaningful interaction with police in specified situations.

We would recommend a system of licensing with appropriate statutory backing to control the working of these private agencies.

Categorisation of crime

14.36 Police responsibility for investigation of crimes may be spelt out in general terms in the basic law, namely, the Police Act, but in actual procedural practice there should be graded situations specifying different degrees of police responsibility in regard to different types of crimes. In the existing law, we have a graded division of crimes into two categories—cognizable and non-cognizable. The procedural law describes in detail the responsibility of police in the investigation of a cognizable crime. Police intervention in a non-cognizable crime requires prior permission from a magistrate. We agree that police responsibility need not be made uniform in regard to all crimes under all laws. Certain types of crimes will require police intervention on their own initiative and on their own intelligence, without waiting for a complaint as such from any aggrieved person. Certain other types of crimes may justify police intervention only on a specific complaint from a member of the public. A third category of crime can be visualised where police may intervene only on a complaint from an aggrieved party and not by any member of the public. The different types of police response that will be desirable in different situations will be separately dealt with by us in another chapter where we will be examining the present provisions in law relating to inquiries and investigations. It is sufficient for the purpose of this chapter to state our view that police responsibility for investigation need not be the same for all types of crimes but may be graded and classified into different categories for different types of crimes.

Social and economic offences

14.37 Apart from the traditional form of crimes as spelt out in the Indian Penal Code which relate to the protection of human body and property, we have in the recent years seen the growing phenomenon of social and economic crimes. The Law Commission in their 47th Report have defined social and economic offences as under :—

“By now, the concept of anti-social acts and economic offences has become familiar to those acquainted with the progress of the criminal law and its relationship to the achievement of social objectives. Still, it may not be out of place to draw attention to some of the salient features of these offences”.

Briefly, these may be thus summarised :—

- (1) *Motive* of the criminal is avarice or rapaciousness (not lust or hate).
- (2) *Background* of the crime is non-emotional (unlike murder, rape, defamation etc.). There is no emotional reaction as between the victim and the offender.

- (3) *The victim* is usually the State or a section of the public, particularly the consuming public (*i.e.* that portion which consumes goods or services, buys shares or securities or other intangibles). Even where there is an individual victim, the more important element of the offence is harm to society.
- (4) Mode of operation of the offender is *fraud*, not force.
- (5) Usually, the act is deliberate and wilful.
- (6) Interest protected is two-fold—
- (a) Social interest in the *preservation* of—
- (i) the property or wealth or health of its individual members, and national resources, and
- (ii) the general *economic system* as a whole, from exploitation, or waste by individuals or groups ;
- (b) Social interest in the *augmentation* of the wealth of the country by enforcing the laws relating to taxes and duties, foreign exchange, foreign commerce, industries and the like.”

The Law Commission concluded that “social offences” are offences which affect the health or material welfare of the community as a whole and not merely of the individual victim. Similarly, economic offences are those that affect the country’s economy, and not merely the wealth of an individual victim. In this category fall white collar crimes *i.e.* crimes committed in the course of their occupation by members of the upper class of society, offences calculated to prevent or obstruct the economic development of the country and endanger its economic health, evasion of taxes, misuse of position by public servants, offences in the nature of breaches of contracts resulting in the delivery of goods not according to specifications, hoarding and black marketing, adulteration of food and drugs, theft and misappropriation of public property and funds, and trafficking in the licences, permits etc.

Enforcement of social legislation—Police role

14.38 During our visits to the States and group discussions with several members of the services as also public, a basic question was raised whether the police should have any role at all in the enforcement of such social and economic laws. We have received three views on this subject. The first and what may be called the conservative view is that police should have nothing to do with social and economic legislation because (i) the police are concerned with the basic criminal law only ; (ii) due to deficiencies of manpower and equipment, they can barely manage to enforce the basic criminal law and cannot undertake a wider role ; (iii) much of social and economic legislation is in advance of, and sometimes in conflict with, public opinion and, therefore, enforcement of

such legislation would increase public hostility to police ; (iv) socio-economic reform is not the business of police ; (v) greater efficiency would result from concentration on a narrow role and (vi) it introduces avoidable corruption in the ranks of police which then affects every aspect of their activity. The second view, which is opposite to the first, states that (i) police are the primary law enforcing agency and must enforce all laws ; (ii) social and economic legislation represent an attempt to fulfil the aspirations of the people as outlined in the Preamble of the Constitution and the Directive Principles of State Policy and, therefore, police must lend a hand in this national effort ; (iii) by enforcing such legislation police would be acting as agents of social change, a role which is definitely better for their psychological health than the traditional negative and punitive role ; and (iv) social legislation often aims at social defence which being preventive in approach is of direct concern to the police. The third view is a composite of the two and holds that the police need not concern themselves with every piece of social and economic legislation but must concern themselves with such as seek to curb (i) social evils that are generally acknowledged as such by the mass of people, an example of which is the Prevention of Corruption Act through effective enforcement of which police can promote rectitude in public life ; (ii) social crimes which have a tendency to sprout traditional crime relating to life and property and (iii) social and economic crimes which tend to develop into organised crime.

14.39 On this subject the Working Group on Police Administration set up by the Administrative Reforms Commission had this to say (August 1967) :

“In some quarters, there is a certain amount of resistance to the assumption of responsibility for the enforcement of social legislation particularly like Prohibition etc. by the police. We feel that multiplication of enforcement agencies involved avoidable extra expenditure and manifest risk of clashes of authority. The vesting of concurrent jurisdiction for enforcement in the police along with other agencies like the Excise Department etc. is likely to lead to diffusion of responsibility. Police are an organised, experienced and disciplined agency and as such most suitable for all enforcement. A separate agency may not prove as efficient as the police. As scope for corruption exists in the field of other police work as well, this argument for divesting the police of their responsibility for enforcement of social legislation does not carry conviction. Any other agency, in all probability, may also suffer from the same drawback. Effective supervision may help to curb this evil. The machinery for it may be strengthened according to the needs. No doubt, the task of enforcing such legislation is indeed enormous. Proper assessment of the new work-load and provision of adequate additional strength are absolutely essential for effective enforcement in this field. It is also felt that organisation of ‘Specialised Squads’ or ‘Social Police Wings’ on the lines

of similar units in Scandinavian countries deserve to be considered. Such legislation is an important part of the social welfare programme and the Study Group feels that the police of a democratic welfare state should participate whole-heartedly in all such schemes of social welfare”.

The Committee on Police Training also was in favour of enforcement of social legislation by police.

14.40 We are of the view that as the primary law enforcement agency available to the State, police cannot escape involvement in the enforcement of social and economic laws also in some form or the other. Police have a duty to enforce these laws but the manner of enforcement can certainly be regulated and controlled to avoid some possible evils that may arise from this involvement. Having stated our basic view on this question, we would be separately detailing in another chapter the mechanics of enforcement of social and economic legislation by police.

Public order—definition

14.41 Police responsibility for maintenance of public order is frequently mentioned and accepted in general terms. It would be useful in this context to understand the actual ambit of the words “public order”, and identify the distinguishing features of a public order situation. The following observations of the Supreme Court in *Ram Manohar Lohia versus State of Bihar* (AIR 1966 SC 740) may be read in this connection :—

“The contravention of law always affects order but before it can be said to affect public order it must affect the community or the public at large disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings..... Public order if disturbed must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detailed on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions, the problem is still one of law and order but it raises the apprehension of public disorder..... The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. One has to imagine three concentric circles. Law and Order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State”.

In *Arun Ghosh versus the State of West Bengal* (AIR 1970 Supreme Court 1228) the Supreme Court reaffirmed that a disturbance of the public order takes place when the current of life of the community is disturbed. “Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality”. Public order, therefore, embraces more of the community than law and order and it involves general disturbance of public tranquility. An act by itself or a breach of law by itself does not indicate a disturbance of the public order. If a man stabs another, some people may be shocked but the life of the community keeps moving at an even tempo. But if a man stabs a member of some other community with which there is already communal tension in the town, it affects public order because the repercussions may embrace large sections of the community and incite them to commit further breaches of law and subvert public order.

Internal Security—Role of Central Government

14.42 Our object in drawing attention to the above concept of ‘public order’ is to point out the fact that in a progressively deteriorating law and order situation in different parts of a State, a public order situation may arise in the State as a whole. Disturbances to public order in more than one State may mean threat to internal security of the country as a whole. Police responsibility for prevention and investigation of ordinary crimes may ultimately lead them on to involvement in containing law and order situations, public order situations and threats to internal security in that order. When the country’s internal security is threatened, the Central Government has a direct responsibility for taking appropriate counter measures. It has been the practice for the Central Government to come to the aid of State Governments by deputing armed forces of the Centre like CRP and BSF to aid the State police in dealing with serious public order situations. Police is at present a State subject in the 7th Schedule of the Constitution. It is for consideration of the Central Government and the State Governments whether the Central Government should be constitutionally facilitated to coordinate and direct police operations in situations which threaten internal security. In our view, the addition of Entry 2A in the Union List of the 7th Schedule following the Constitution (Forty Second) Amendment Act, 1976 recognises this need to some extent. We understand that no law has yet been enacted and no rules or regulations have yet been laid down governing the jurisdiction, privileges and liabilities of the members of the armed forces of the Union when they are deployed in a State in accordance with Entry 2A of the Union List. We recommend that appropriate law/rules/regulations for this purpose be enacted soon.

Group conflict

14.43 Sometimes law and order situations arise from confrontation between two organised groups like management-labour, landlord-tenant, academic bodies-students, etc. Each group might legitimately feel that its actions are only in the nature of a valid protest against an existing unjust situation and, therefore,

does not amount to any threat to law and order. Besides the two groups in conflict with each other in any particular situation, the police have also to contend with the third group—the largest group—which comprises the general public who are not at all involved in the conflict situation. We are of the view that the question whether the circumstances of such a situation constitute a disturbance to law and order or public order has to be judged by the police on their own understanding and appreciation of the connected facts, having in view the overall public interest as distinct from the interests of the two contesting groups alone. Preventive measures have to be planned by the police on this basis only. When specific violations of law actually take place, police intervention thereafter has to be in accordance with law.

Collection of intelligence

14.44 Under the existing law—Section 23 of the Police Act, 1861—the police are responsible for collecting intelligence affecting public peace only. As mentioned earlier, we recognise police responsibility for investigation of social and economic offences also besides offences affecting human body and property. Public peace as such may not always be affected by social and economic offences. Effective enforcement of these offences would necessarily involve collection of some related intelligence. The investigating agency cannot possibly operate in a vacuum while dealing with these offences. We, therefore, recommend that police powers for collection of intelligence should cover not only matters affecting public peace but also matters relating to crimes in general including social and economic offences, national integrity and security. The legal provisions in this regard should only be in the nature of enabling provisions which can be availed by the police to collect intelligence as and when required. Law should not place the exclusive responsibility on the police only for collection of all intelligence on these matters because we are aware that a variety of intelligence relevant to these matters may fall within the jurisdiction of some other developmental or regulatory agencies as well. We further recommend that a police agency should not have the power or facilities for collection of any intelligence other than what is specified in law, as proposed.

Discretion in discharge of police functions

14.45 We are aware that there is considerable scope for exercise of discretion at various stages in the discharge of police functions, particularly in regard to preventive policing measures before a crime occurs as distinct from investigation which starts after the occurrence of crime. Such matters like organisation of preventive patrols, action to be taken in a law and order situation, stationing of police personnel in considerable strength at strategic sectors to show the likelihood of immediate aggressive action if a crime were to occur, whether or not to make preventive arrests in any situation, whether or not to arrest a person during investigation, whether or not to pursue minor infractions of a law like traffic rule or regulation, etc involve discretion in the use of police power. We are of the view that exercise of discretion in all such

situations should be based on the assessment and judgment of the police functionaries concerned only. To prevent freakish or whimsical decisions in such matters some broad guidelines should be laid down to cover all such conceivable situations. Police Manuals which do not contain such guidelines at present should be appropriately amplified. These guidelines should be set out in clear terms and also made known to the public. *Ad hoc* views or policies declared on the spur of the moment and conveyed orally or otherwise from the executive hierarchy above should not be deemed equivalent to guidelines for such purposes. In the absence of a guideline, the matter should be left to the sole discretion of the police officer directly involved in the situation and should not be subject to directions from above, except where it falls within the legitimate supervisory responsibility of a higher functionary under the law.

Counselling role for police

14.46 We have already said that the police have a limited role in the field of prevention of crime. Even for performing this limited role, we feel that the police should have greater facilities recognised in law for dealing with different situations, in a less aggressive manner than through usual process of arrest, detention in custody. It is acknowledged that every individual member of the community can do a great deal to reduce the opportunities for commission of crime by taking due care of his person and property. In U.K. an important activity of the police is to advise people on how best they can keep their property secure. This is typified by the figures of the year 1976 according to which 40,000 persons were advised by the Metropolitan Police (Crime Prevention Mobile Advice Unit) on how to secure their house and motor-cars. In addition 20,000 surveys of premises were made and 1,900 talks given towards crime prevention. This advisory role of police is not recognised in our country. Such duties are performed here and there on the initiative of a few police officers but this performance is not institutionalised in the system. The use of a formal warning can also be helpful on occasions. Juveniles becoming wayward, taking drugs, pilfering objects out of bravado and smartness, could be warned on record and their parents duly advised. Persons in danger of falling into the clutches of criminals could be brought to the notice of social welfare organisations. Counselling and warning should be deemed legitimate as police activities towards prevention of crime and recognised as such in law.

Police and the prosecuting agency

14.47 We have already pointed out in para 6 *supra* the need for effective interaction between the police and the prosecuting agency at the stage of trial in court. We would recommend that this provision be recognised suitably in the Police Act itself.

Information system

14.48 A full and proper assessment of the various factors responsible for causing criminal behaviour in society will require a collated study of a variety of data and information not only from police records

but also from the proceedings and activities in courts, correctional institutions and jails. In depth studies made by social welfare organisations on some related subjects would also be relevant in this connection. We, therefore, feel that the building up of a good information system based on various inputs from the different wings of the criminal justice system is absolutely necessary for planning appropriate measures for prevention of crime and treatment of offenders. This information system has necessarily to be computerised to handle the increasing volume of data that is likely to pour in when once it is started. The police, as the premier law enforcement agency, should play a leading role in the organisation and maintenance of this information system. In another chapter of this report dealing with item 5 of our terms of reference we have described the detailed set up for maintaining crime records and all other relevant statistics and data for this purpose.

Service-oriented functions

14.49 Lastly we come to an important area of police work which is presently not recognised in law. That relates to service-oriented functions of police, which are meant to provide relief to persons in a distress situation. Even now policemen do render service of a general nature outside their statutory responsibilities connected with prevention and investigation of crimes as such, but this depends largely on their own initiative and interest, and not considered by them as a necessary part of their role. Situations of collective distress arise out of natural calamities such as cyclones and floods during which police perform numerous activities that are not related to either enforcement of law or maintenance of order. Examples are the rescue of the marooned, rendering first aid to the injured, clearing the debris, opening the roads, disposing of corpses and carcasses and helping in the distribution of food and clothing. In situations of individual distress involving a destitute or a lost woman or child, police are expected to help, but they generally do not on account of lack of emphasis on this role. Ideally a police post should be able to advise the citizens about their problems which they bring up before the police, whether they may or may not arise out of violations of law. For example, the victim of a crime may seek advice about the procedure for seeking compensation through civil laws. This kind of help is particularly important for victims of traffic accidents. Most important, it should be considered vital for police to so conduct themselves as to encourage people to seek their help, which must, to the extent possible, be given.

14.50 When a function is not duly recognised as important no preparation is made to discharge it well. For example, police have always been coming to the help of people during flood situations but no State police in India is really equipped for it : boats for rescue work do not exist in flood-prone districts, there is no disaster planning and policemen are never trained for it. While a State Police Manual may generally speak of police having to help a destitute, what precisely is the nature of help that may be rendered and what are the resources for rendering this help are not known to many police officers. We recommend that the police be trained and equipped properly to

perform these service-oriented functions. Counselling, which is a service activity par excellence, also requires preparation and training. Police officers will have to have a general knowledge of the functioning of various government offices, forms, procedures, locations, addresses etc. We recommend that the police should make a start in the metropolitan cities with this activity of counselling.

Conclusion

14.51 In the light of our observations in the foregoing paragraphs regarding the re-defined role, duties, powers and responsibilities of the police, we recommend that the new Police Act may spell out the duties and responsibilities of the police to—

- (i) promote and preserve public order ;
- (ii) investigate crimes, and where appropriate, to apprehend the offenders and participate in subsequent legal proceedings connected therewith ;
- (iii) identify problems and situations that are likely to result in commission of crimes ;
- (iv) reduce the opportunities for the commission of crimes through preventive patrol and other appropriate police measures ;
- (v) aid and co-operate with other relevant agencies in implementing other appropriate measures for prevention of crimes ;
- (vi) aid individuals who are in danger of physical harm ;
- (vii) create and maintain a feeling of security in the community ;
- (viii) facilitate orderly movement of people and vehicles ;
- (ix) counsel and resolve conflicts and promote amity ;
- (x) provide other appropriate services and afford relief to people in distress situations ;
- (xi) collect intelligence relating to matters affecting public peace and crimes in general including social and economic offences, national integrity and security ; and
- (xii) perform such other duties as may be enjoined on them by law for the time being in force.

Item (ii) above will give legal scope for police to be associated with the process of prosecution and have effective interaction with the prosecuting agency. Items (iii) and (v) will afford scope for police to be associated in a recognised manner with the other wings of the criminal justice system for preventing crime and reforming criminals. Items (ix) and (x) will facilitate the performance of service-oriented functions and will

also recognise a counselling and mediating role for the police in appropriate situations.

14.52 While closing this chapter we would like to observe that the police organisation should pursue certain objectives for effective role performance. These should be (1) to keep the organisation at a high pitch of efficiency particularly through effective personnel and financial management ; (2) enforce the law impartially and use discretion in accordance with given guidelines ; (3) accept the limitations of their

role and powers as something inherent in the democratic system and not look upon them as a handicap to be overcome somehow or the other ; (4) maintain effective working relationship with every sub-system of the criminal justice system and with community services and media ; (5) through research and study, continually update the training and the operating procedures of the organization ; (6) and, above all, ensure that every member of the organization renders service due and not service that is demanded, extracted or purchased.



INTERFERENCE WITH AND MISUSE OF POLICE BY ILLEGAL OR IMPROPER ORDERS OR PRESSURE FROM POLITICAL, EXECUTIVE OR OTHER EXTRANEANOUS SOURCES—REMEDIAL MEASURES

Introduction

15.1 "Long years ago we made a tryst with destiny, and now the time comes when we shall redeem our pledge, not wholly or in full measure, but very substantially. At the stroke of the midnight hour, when the world sleeps, India will awake to life and freedom. A moment comes, which comes but rarely in history, when we step out from the old to the new, when an age ends, and when the soul of a nation, long suppressed, finds utterance. It is fitting that at this solemn moment we take the pledge of dedication to the service of India and her people and to the still larger cause of humanity..... We end today a period of ill fortune and India discovers herself again. The achievement we celebrate today is but a step, an opening of opportunity, to the greater triumphs and achievements that await us. Are we brave enough and wise enough to grasp this opportunity and accept the challenge of the future? . . . Freedom and power bring responsibility. That responsibility rests upon this Assembly, a sovereign body representing the sovereign people of India. . . . The service of India means the service of millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us, but as long as there are tears and suffering, so long our work will not be over. And so we have to labour and to work hard, to give reality to our dreams. . ."—thus spoke Jawaharlal Nehru, our first Prime Minister, when he addressed the Constituent Assembly in New Delhi on the eve of Independence on 14th August, 1947. On the conclusion of this Assembly's deliberation, we adopted, enacted and gave to ourselves the Constitution of India embodying all the fundamental concepts and principles of a socialist, secular democracy.

15.2 Looking back over the years that have rolled by since then, one is apt to question and doubt whether we have progressed well on the path of democracy and evolved smooth and successful working arrangements for the purposeful functioning of the three important wings of the democratic system : Legislature, Executive and the Judiciary. The Executive has two layers—the top layer constituted by the elected political leadership in Government and the lower layer covering the career executive, namely, the civil services. While steering the country towards the promised objectives of the socialist welfare State for its hundreds of millions of people, the Government have had to control and regulate in an increasing degree

the conduct and business of different sections of people through progressive legislation and other related measures. This has meant increasing exercise of power by the Government through its widely spread apparatus of the executive in several matters affecting the daily life of the people. National leaders, who were at the helm in different parts of the country in the first decade after Independence, conducted the affairs of the Government with great vision and wise statesmanship and set down patterns of conduct and inter-relationship between the political leadership in Government on the one side and the civil services on the other. Though not precisely defined, their respective roles were mutually understood fairly well and followed in practice. While the civil services had the benefit of lead and guidance in policy from the political leadership having in view the expectations and aspirations of the public, the political masters had the benefit of professional advice from the civil services regarding the different dimensions of the problems they had to solve. Great leaders and statesmen like Jawaharlal Nehru, Sardar Patel, Abul Kalam Azad, Rajagopalachari, Govind Ballabh Pant, Rafi Ahmed Kidwai, K. Kamaraj, B. C. Roy and Sri Krishna Sinha provided an atmosphere of dignity and sense of direction for the civil services to function honestly and efficiently, with public interests constantly held in view. Passing years saw the entry of a large variety of people into the field of politics and increasing contact between politicians and the executive at various levels in a variety of situations, including those caused by decreasing majorities in legislatures. Scope for exercise of power through the political leadership in Government induced political functionaries outside the Government to take undue interest in the conduct of Government affairs, and gradually the spectre of 'political interference' appeared on the scene. Police, as a part of the civil services, came within the ambit of this interference. In fact the police became specially vulnerable to interference from politicians because of the immense political advantage that could be readily reaped by misuse of police powers. The quality of police performance was and continues to be adversely affected by such interference. During our tours in several States and discussions with different sections of the public as well as services, we heard repeated references to the partisan performance of police owing to frequent interference and pressures from political, executive or other extraneous sources. We propose to deal with this malady in this chapter.

Pre-Independence Police

15.3 Prior to Independence police functioned *de jure* and *de facto* as an agency totally subordinate to the

executive and ever ready to carry out its commands ruthlessly, even though they may not always have been in genuine 'public interest' as viewed by the public. Though the concept of "rule of law" was introduced by the British regime, law enforcement was subject to the ultimate objective of protecting the British Crown and sustaining the British rule. In a criminal justice system in which the executive and judicial functions were combined in the same functionaries who constituted the magistracy, accountability to law was covertly subordinated to the executive will. Military strands of the organisation, with their emphasis on discipline and unquestioning obedience, made it easy for the Government to use or misuse the police as they wished.

Post-Independence Police

15.4 After long years of tradition of law enforcement subject to executive will under the British rule, the police entered their new role in independent India in 1947. The foreign power was replaced by a political party that came up through the democratic process as laid down in our Constitution. For a time things went well without any notice of any change, because of the corrective influences that were brought to bear on the administrative structure by the enlightened political leadership. However, as years passed by there was a qualitative change in the style of politics. The fervour of the freedom struggle and the concept of sacrifice that it implied faded out quickly, yielding place to new styles and norms of behaviour by politicians to whom politics became a career by itself. Prolonged one-party rule at the Centre and in the States for over 30 years coupled with the natural desire of ruling partymen to remain in positions of power resulted in the development of symbiotic relationship between politicians on one hand and the civil services on the other. Vested interests grew on both sides. What started as a normal interaction between the politicians and the services for the avowed objective of better administration with better awareness of public feelings and expectations, soon degenerated into different forms of intercession, intervention and interference with *mala fide* objectives unconnected with public interest.

15.5 The interaction of the political party in power with the civil services in general and the police in particular has also been considerably influenced by the tactics adopted by some political parties in opposition who believe in establishing their political presence only by continuously keeping up an agitationist posture. The manner in which different political parties have functioned, particularly on the eve of periodic elections, involve the free use of musclemen and Dadas to influence the attitude and conduct of sizeable sections of the electorate. Commenting on the last panchayat elections in Bihar the local correspondent of the "Hindu" reported as below in its issue of August 5, 1978 :—

"The Panchayat elections like the other elections in the recent past have demonstrated once again that there can be no sanity in Bihar as long as politics continue to be based on

caste and gangsterism. A significant pointer to this was the frank confession in the Assembly the other day by the Minister of Agriculture, Mr. Kapildeo Singh that he patronized and would continue to patronize gangsters and criminals to fight and win elections as long as the existing system of fighting is not changed. Speaking in the Assembly, Shri Singh declared : 'It is well known that each one of us, irrespective of all party affiliations, who is serious about fighting elections, patronizes anti-social elements and enlists their support. It is another matter that we do not admit this.'"

The involvement of such people in political activity brings in its wake anti-social elements who exploit their proximity to politicians to gain protection from possible police action under the law. The nexus between unscrupulous elements among politicians and such anti-social elements particularly affect the enforcement of social and economic enactments such as those against prostitution, gambling, smuggling, black-marketing, hoarding, adulteration, prohibition etc. whenever they involve politically influential accused. Arrest and enlargement on bail of persons involved in such offences and their subsequent prosecution in court attract political attention. This also results in some places in a kind of link being established between the elected representatives and the Station House Officer in the day to day affairs of the police station in which the local Dadas frequently get involved. This link facilitates the practice of corruption and other malpractices by the police and politician acting in collusion with each other.

15.6 Consequent on the agitationist posture taken up by some political parties in opposition, protest demonstrations, public meetings, processions, politically motivated strikes in the industrial sector, dharnas, gheraos, etc. have become a recurrent feature of political activity in the country. Police have been increasingly drawn into the resultant law and order situations and are expected by the ruling party to deal with all such situations with a political eye. Putting down political dissent has become a tacitly accepted objective of the police system.

15.7 The relationship that existed between the police and the foreign power before independence was allowed to continue with the only change that the foreign power was substituted by the political party in power. The basic law—Police Act of 1861—remained practically unaltered and no attempts were made to redefine the relationship between the police and the politically oriented Government. More and more time of the police was taken up with law and order work which really meant dealing with street situations in a manner that would cause maximum satisfaction to the ruling party. In the process, individual crimes affecting the interests of individual citizens by way of loss of their property or threat to their physical security got progressively neglected. Police got progressively nearer to the political party in power and correspondingly farther from the uncommitted general public of the country. Since most of the law and order situations

tended to have political overtones, the political party in power got habituated to taking a direct hand in directing and influencing police action in such situations. This has led to considerable misuse of police machinery at the behest of individuals and groups in political circles. Police performance under the compulsions of such an environment has consequently fallen far short of the requirements of law and impartial performance of duties on several occasions.

State Police Commissions

15.8 We notice that several State Police Commissions have also referred to this malady. The Punjab Police Commission (1961-62) said : "The evidence led before the Commission has disclosed that members of political parties, particularly of the ruling party, whether, in the Legislature or outside, interfere considerably in the working of the police for unlawful ends. We have been told that politicians accompany complainants to police stations and try to influence the Station House Officer to take down reports implicating innocent persons against whom the complainant has enmity . . . no objection can be taken to politicians accompanying their constituents for lawful purposes but the objection is that they approach the Station House Officer for ulterior purposes and use their position to influence him. He is threatened that if he does not support them, they will bring orders from above for his transfer, or will otherwise harm him in his career. . . . the result of this political interference is disastrous and it has considerably and very seriously affected the police work in the State. The police are demoralised". The Kerala Police Reorganisation Committee (1959) said : "The greatest obstacle to efficient police administration flows from the domination of party politics under the State administration. Pressure is applied in varying degrees and so often affects different branches of administration. The result of partisan interference is often reflected in lawless enforcement of laws, inferior service and in general decline of police prestige followed by irresponsible criticism and consequent widening of the cleavage between the police and the public affecting the confidence of the public in the integrity and objectives of the police force". The Tamil Nadu Police Commission (1971) stated : "The problem of political interference is not a new one. It cannot be dated from February 1967. It has grown over the years, during the term of office of a number of different Ministers. And it has grown in spite of the most explicit public declarations made by successive Chief Ministers (including the present one) that there should be no political interference and they expect officers to do their duty without fear or favour, in the confident expectation of government support. . . . The problem is by no means peculiar to Tamil Nadu. The position in this State is no worse than in the best among other States and much better than in many". The West Bengal Police Commission (1960-61) found that there were frequent allegations that investigation of offences is sometimes sought to be interfered with by influential persons highly placed in society or office. . . . and concluded : "We have little doubt that such interference takes place, although it is difficult to say to what extent they are prevalent".

The Committee on Police Training set up by the Government of India (1972) reported : "There have been instances where Governments have been accused of using the police machinery for political ends. There are also instances of individual politicians interfering with the administration and the work of the police". The Committee had found a great deal of political interference in the administration as well as the operation of the police forces, particularly at the lower level. The Delhi Police Commission (1968) observed : "We have been informed that political interference is another rich source of corruption. Allegations have been made before us that some politicians resort to the device of securing the assistance of goondas and bad characters who are given protection by the police. This protection is the result of influence exercised by the politicians upon policemen. We are not in a position to say to what extent this allegation is true, and if there is a large substance of truth in it, but the evil undoubtedly exists. . . . and the only way to do away with it is to take a strong stand against political interference. This can come only from within the police force and the higher officers of the department should make it a code of their conduct to resist all kinds of unlawful interference and to see that their subordinates also do not permit themselves to be influenced by this kind of pressure".

Study by I.I.P.O.

15.9 The extent of political interference with police as perceived by the public is also revealed in a study conducted by the Indian Institute of Public Opinion, New Delhi at the instance of the Ministry of Home Affairs in September—December, 1978 regarding "Image of the Police in India". The study covered interviews with a total of 4,000 respondents, made up of a random sample of 1,000 each from the districts of Ballia (Uttar Pradesh), Ramanathapuram (Tamil Nadu) and Ranchi (Bihar), besides Delhi. The questionnaire for the study had three types of questions. One type was the unaided question where the respondent was free to indicate his own reply, without being restricted to alternatives posed by the questioner. The second was the 'aided' question in which the respondent had to indicate his choice among the specific alternatives proposed before him. The third was the 'priority' type where the responder had to indicate the relative priority of his preferences. Respondents were divided into two broad categories :—

- (i) Complainants, *i.e.*, those who had had direct interaction with the police; and
- (ii) Non-complainants, *i.e.*, those who did not have such interaction.

15.10 In answer to a question (unaided) regarding causes of misuse of power and disregard of law by the police, 33% in the complainant category identified the cause as "political pressures, interference by influential people". This item jointly shared top rating with another item "motivated by money and lack of morality" which was also identified by another 33% of the complainant category. All the other causes were rated lower. In the non-complainant category, "corruption" got the top-rating at 38%,

“political interference” was second with 31% and other causes fell well behind. In the complainant category, political pressure is more acutely perceived in rural areas (35%) as compared to urban areas (31%). The same position obtains in the non-complainant category also with 39% in rural areas and 22% in urban areas.

15.11 When the same question was repeated with a set of 14 alternative causes to elicit a well thought out answer, political interference took the first place, being mentioned by the highest number of respondents (81%), in the complainants category as well as non-complainant category. When the question was again repeated requesting the respondents to give priority ratings for the different causes, political interference was given the first priority by the largest number of respondents in the complainant category as well as non-complainant category, with all the other factors taking a lower priority.

15.12 The statistical tables of this study support the following conclusions :—

- (i) Political interference is seen by the public as a major factor contributing to the poor image of the police and manifests itself in the misuse and abuse of police powers and disregard of the law by the police;
- (ii) People consider political interference with police as a greater evil than even corruption ; and
- (iii) Political interference appears more pronounced in rural areas than in urban areas.

Examples

15.13 Some typical situations or matters in which pressure is brought to bear on the police by political, executive or other extraneous sources are listed below :

- (i) Arrest or non-arrest of a person against whom a case is taken up for investigation by the police.
- (ii) Deliberate handcuffing of a person in police custody merely to humiliate him.
- (iii) Release or non-release on bail after arrest.
- (iv) Suppression of material evidence that becomes available during searches by police.
- (v) Inclusion or non-inclusion in the charge-sheet placed in court on conclusion of investigation.
- (vi) Posting or non-posting of police force in an area of apprehended trouble to create an effect to the advantage of one party or the other.
- (vii) Taking persons into preventive custody to immobilise them from legitimate political activity in opposition to the party in power.
- (viii) Foisting false criminal cases against political functionaries for achieving political ends.

- (ix) Discretionary enforcement of law while dealing with public order situations, with emphasis on severity and ruthlessness in regard to persons opposed to the ruling party.
- (x) Manoeuvring police intervention by exaggerating a non-cognizable offence or engineering a false complaint to gain advantage over another party in a situation which will lie outside the domain of police action in the normal course.
- (xi) Preparation of malicious and tendentious intelligence reports to facilitate action against an opponent.

Transfer or suspension weapon

15.14 Pressure on the police takes a variety of forms, ranging from a promise of career advancement and preferential treatment in service matters if the demand is yielded to, and a threat of drastic penal action and dis-favoured treatment in service matters if the pressure is resisted. While it is not possible to punish a police officer with a statutory punishment under the Discipline and Appeal Rules, without adequate grounds and following a prescribed procedure, it is very easy to subject him to administrative action by way of transfer or suspension on the basis of an alleged complaint taken up for inquiry. While suspension acts as a great humiliating factor, a transfer acts as a severe economic blow and disruption of the police officer's family, children's education, etc. The threat of transfer/suspension is the most potent weapon in the hands of the politician to bend down the police to his will. We have been told in several States about the frequent transfer of police personnel ordered on direct instructions from political levels in Government, in disregard of the rule that the transfer of the personnel concerned fell within the normal domain of the supervisory ranks within the police. We are aware of an instance in which the Inspector General of Police himself was transferred to an inconsequential post under the State Government immediately after he had shown his reluctance to issue orders for the transfer of a large number of police personnel as desired by the political leadership when he felt that the transfers were not justified on normal administrative grounds. A typical instance was brought to our notice in which even though the local commanding officer specifically pointed out the hardship and loss of morale that would result from the peremptory transfer ordered by a Minister, he was over-ruled and was asked to comply with the order forthwith. We were also informed of an instance in which an Inspector of Police, under orders of transfer issued by his departmental superiors, exclaimed publicly that he would soon get orders from above cancelling his own transfer order and transferring away his superior officer instead. The Inspector's transfer was in fact cancelled within the next few days and it was his superior officer who had to move out under the compulsion of a politically directed transfer order! The consequent serious damage to discipline and morale of the chain of command within the police system can be easily imagined.

15.15 We had commissioned the National Council of Applied Economic Research (NCAER) to make a sample survey of the living and working conditions of the constabulary in Delhi and Uttar Pradesh. Their study has *inter alia* revealed that about 53% and 43% of constables in Uttar Pradesh and Delhi respectively were transferred from one District to another or from one place to another in less than a year and they had mentioned it as a sore point of grievance. In their view the transfers were too frequent, *ad hoc* and arbitrary in nature, and were mostly ordered as a means of punishment and harassment, sometimes due to the influence of local politicians. During our tours in the States several officers brought to our notice this phenomenon of frequent and indiscriminate transfers ordered on political considerations. In one State, a Sub-Inspector broke down while narrating his story of 96 transfers in 28 years of his service! We analysed the frequency of transfers in different ranks in the States in the five year period 1973—1977 and found the following position in many States :

Rank	Average period of stay in the same post/ same station	
I.G.	1 year & 8 months	(In one State 6 IsG were changed, in three States 5 IsG were changed in this period).
S.P.	1 year & 7 months	(In one State it is as low as 11 months).
Sub-Inspector	1 year & 2 months	(In one State it is as low as 7 months and in three others it was 10 months)

In computing the above period, we have excluded the transfers arising from normal administrative reasons like promotion to a higher post, deputation to training or to a post under the Central Government, retirement, removal/dismissal from service, etc. The frequent changes of officers, particularly at the operational level of Sub-Inspectors in Police Stations and Superintendents of Police in districts coupled with frequent changes at the apex, namely, Inspector General of Police, have no doubt largely contributed to the sharp decline in the quality of police service down the line. Inspectors General in some States have been changed as often as the Chief Minister or Home Minister changed! The interests of real professional service to the public have been sacrificed at the altar of political expediency.

Sources of pressure

15.16 Political interference emanates not only from political functionaries in Government but also from others outside the Government who are connected in any manner with different political parties including the ruling party. Further, an individual's capacity to generate political pressure on the police is not necessarily linked with his formal association with a political party. He can operate through several links that are forged by considerations of money, caste, community, regional affinity, etc.

15.17 We are also aware that the unhealthy influences and pressures that are brought to bear on the police do not always originate from political sources alone. Capitalists, industrialists, businessmen, landlords and such others who form the richer and more influential sections of society have immense capacity to generate such pressures to operate at different levels in the police, either directly or indirectly through political sources, and influence the course of police action. Any corrective measure to deal with this malady has, therefore, to cover this pressure group also.

Repercussions of interference

15.18 Interference with the police system by extraneous sources, especially the politicians, encourages the police personnel to believe that their career advancement does not at all depend on the merits of their professional performance, but can be secured by currying favour with politicians who count. Politicking and hob-nobbing with functionaries outside the police system appear very worthwhile in the estimate of an average police officer. Deliberate and sustained cultivation of a few individuals on the political plane takes up all the time of a number of police personnel to the detriment of the performance of their normal professional jobs to the satisfaction of the general public at large. This process sets the system on the downward slope to decay and total ineffectiveness.

15.19 Apart from deterioration in the quality of police performance viewed from the public point of view, the exercise of such pressure on the police system from political and other extraneous sources immediately damages the control system and weakens the normal chain of command that has to operate efficiently if the discipline and health of the system are to be maintained. Interference at the operational level in police stations, police circles, etc. results in the total by-passing of the supervisory officers in the hierarchy. Subordinate officers see it in every day of their official life that their superior officers count little in the ultimate disposal of a matter which lies in the normal course within their official cognisance only. Decisions taken at a far higher level—political levels in government—are implemented without question at the operational level. The frequent by-passing of the normal chain of command results in the atrophy of the supervisory structure. It, therefore, fails to operate effectively even in matters which do not attract any such extraneous interference. This was strikingly seen in the situation arising from the policemen's stir in certain States in May-June 1979. It is also significant that the policemen's protest activity in this period, which mostly centred round the living and working conditions of the constabulary, is reported to have been triggered off by an alleged incident in one State in which a police constable was attempted to be victimised at the behest of a political functionary. The seriousness of the situation was recognised by the conference of Chief Ministers of States convened by the Union Home Minister on the 6th June, 1979, to discuss Police Reforms, with particular reference to the First Report we had submitted to Government in February 1979. In the note circulated by the Ministry of Home Affairs for this Conference, it was

noted that "there is a feeling in all States that interference not only in the matter of postings and transfers, but also in the matter of arrests, investigations and filling of charge-sheets in wide-spread. The principal grievance of the policemen is that if there is any unwillingness to comply with unlawful or improper suggestions, the persons concerned are harassed or humiliated". The note went on to observe further that "Government of India would like to impress upon the Chief Ministers that efforts should be made to ensure that there is no unlawful interference in the exercise of statutory powers. Secondly, in the matter of postings and transfers States should see to restore leadership and effectiveness of the official hierarchy with a view to ensure that the requisite rapport between the officers and the men is not further eroded". At the end of the deliberations of this conference the participants agreed that the "problems arising out of interference will bear effective solutions at the political level". The suggestion was noted that Chief Ministers might discuss with leaders of political parties the basis for some consensus on the issue. It was also agreed that a "similar effort at the national level would also be explored and the Home Minister will request the Prime Minister to initiate appropriate steps in this behalf".

Issue of illegal/irregular orders by State Governments

15.20 In their anxiety to ensure police performance in accordance with the appreciation of the situation by the political party in power, some State Governments are known to have issued executive instructions restricting the scope for police action even in situations where a specific line of action by police is enjoined on them by law itself. We have a typical instance in West Bengal in what has come to be known as the "Jay Engineering Works Case". This case arose from the executive instructions issued by the Government of West Bengal on 27th March, 1967, laying it down that in cases of "gherao" of industrial establishments by their workers resulting in the confinement of managerial and other staff, the matter should be referred to the Labour Minister and his directions obtained before deciding upon police intervention for the rescue of the confined personnel. When an affected party obtained an injunction from Calcutta High Court against the implementation of this order, a further order was issued by the State Government on 12th June, 1967, stating that "the police must not intervene in legitimate labour movements and that, in case of any complaint regarding unlawful activities in connection with such movements, the police must first investigate carefully whether the complaint has any basis in fact before proceeding to take any action provided under the law". Executive instructions conveyed in both these circulars were later struck down by Calcutta High Court as contrary to law, without jurisdiction and invalid. In view of the importance of the legal position clearly set out in this judgment, a copy of extracts from AIR 1968 Calcutta 407 (V 55 C 84) which give the ruling of the Court on the specific issues raised in this case along with copies of the three circulars dated 7th February, 1956, 27th March, 1967 and 12th June,

1967 of the Government of West Bengal, is enclosed as Appendix V.

15.21 We have seen another instance in another State (U.P.) where the following executive instructions were issued in March 1977, governing police action in law and order situations :

"Whenever a situation likely to have a bearing on the general law and order situation arises in the district, the Superintendent of Police will immediately inform the District Magistrate by the quickest means available and seek his instructions in regard to the steps to be taken to meet the situation, unless circumstances make it impracticable to do so. Further action to meet the situation will be taken according to the instructions of and in close and continuous consultation with and guidance from the District Magistrate."

[U.P. Government Order No. 7850/VIII-1-51-A/76 dated 21st March 1977]

This insistence on prior consultation with the executive functionary who has direct contact with Government before taking action to deal with a law and order situation would definitely inhibit the police from taking even such steps as are enjoined on them directly by law in a given situation. To that extent we feel that these executive instructions must be deemed to be illegal.

15.22 We are also aware that in several States executive instructions have been issued conferring a kind of supervisory and inspecting role on the subordinate executive magistrates *vis-a-vis* the police. Section 3 of the Police Act, 1861, runs as under :—

"3. SUPERINTENDENCE IN THE STATE GOVERNMENT—The superintendence of the police throughout a general police district shall vest in and be exercised by the State Government to which such district is subordinate, and except as authorised under the provisions of this Act, no person, officer or court shall be empowered by the State Government to supersede or control any police functionary."

The Act itself does not confer any supervisory or inspecting role on the subordinate ranks of executive magistrates in a district and, therefore, any executive instructions issued by the Government empowering them to control the police in any manner should be deemed to be illegal.

15.23 We have referred to the above-mentioned instances to underline the fact that in the garb of executive instructions that flow from the Government from time to time, attempts have been made to subordinate police personnel to executive requirements, without regard to the requirements of law as

such. Interference with police by political, executive or other extraneous sources have to be seen as a part of this philosophy and therefore, require to be analysed from the point of view of propriety or impropriety of such an approach.

Police during Emergency of 1975—77

15.24 The brazen manner in which the police were misused during the emergency of 1975—77 to subvert lawful procedures and serve purely political ends is brought out in Chapter XV of the Interim Report II dated 26th April, 1978, given by the Shah Commission of Inquiry, which is reproduced below :

“15.16 The Commission invites the Government's attention pointedly to the manner in which the Police was used and allowed themselves to be used for purposes some of which were, to say the least, questionable. Some Police officers behaved as though they are not accountable at all to any public authority. The decision to arrest and release certain persons were entirely on political considerations which were intended to be favourable to the ruling party. Employing the police to the advantage of any political party is a sure source of subverting the rule of law. The Government must seriously consider the feasibility and the desirability of insulating the police from the politics of the country and employing it scrupulously on duties for which alone it is by law intended. The policemen must also be made to realise that politicking by them is outside the sphere of their domain and the Government would take a very serious view of it.

15.17 In this context the Commission can do no better than quote from one of the speeches of Sir Robert Mark, the ex-Chief Commissioner of Police, London. Its relevance for the Police of our country is self-evident. Sir Robert Mark says :—

‘Our authority under the law is strictly defined and we are personally liable for the consequences whenever we invoke it. We play no part in determining guilt or punishment and our accountability to the courts, both criminal and civil, to local police authorities, to Parliament and to public opinion is unsurpassed anywhere else in the world. In the legal and constitutional framework in which society requires us to enforce the laws enacted by its elected representatives, the most essential weapons in our armoury are not firearms, water cannon, tear gas or rubber bullets, but the confidence and support of the people on whose behalf we act. That confidence and support depends not only on the factors I have already mentioned but on our personal

and collective integrity and in particular on our long tradition of constitutional freedom from political interference in our operational role. Notwithstanding the heavy responsibilities for the policing of England and Wales given to the Home Secretary by the 1964 Police Act, it is important for you to understand that the police are not the servants of the Government at any level. We do not act at the behest of a minister or any political party, not even the party in government. We act on behalf of the people as a whole and the powers we exercise cannot be restricted or widened by anyone, save Parliament alone. It is this which above all else determines our relationship with the public, especially in relation to the maintenance of public order, and allows us to operate reasonably effectively with minimal numbers, limited powers and by the avoidance of force, or at least with the use only of such force as will be approved by the courts and by public opinion.’

‘To sum the position up for you in easily understandable and practical terms, a chief officer of police will always give the most careful consideration to any views or representations he may receive from his police authority, be it Home Secretary or police committee, on any issue affecting enforcement of the law, whether public order or anything else, but in England and Wales it is generally for him and him alone to decide what operational action to take and to answer for the consequences. In the case of the Commissioner of Police of the Metropolis his exercise of those responsibilities will no doubt be all the more scrupulous in that he alone of all chief police officers enjoys no security of tenure and that subject to parliamentary approval he may be removed by the Home Secretary.’

‘I emphasise this because while the police place great importance on their constitutional freedom the significance of their accountability should not be overlooked as a counter-balance to any improper use of it’.

15.18 The Commission feels that what applies to the police applies in equal measure to the Services as a whole. The politician who uses a public servant for purely political purposes and the public servant who allows himself to be so used are both debasing themselves and doing a signal disservice to the country.”

Political instability and politicisation of police

15.25 The phenomenon of political interference appears to have assumed larger dimensions particularly

after 1967 when the continued stability of the elected Governments in some States got disturbed and a period of political instability started. Increased political interference in such a context meant the increased division of the police personnel into different cliques and groups with different political leanings. A police force which does not remain outside politics but is constantly subjected to influences and pressures emanating within the system from the politicised police personnel themselves will in turn seriously disturb the stability of the duly elected political leadership in the State itself and thereby cause serious damage to the fabric of our democracy. This danger has to be realised with equal seriousness and concern by the politician as well as by the police.

15.26 The increasing scope for *mala fide* interaction between the politician and the police has also encouraged unscrupulous policemen at different levels to forge a working relationship with the politician for gaining undue career advantage, besides pecuniary advantage resulting from collusive corruption. The phenomenon of political interference has thus grown to enormous proportion, assiduously fed by vested interests among the police as well as the politicians. We are conscious that any remedial measures we might think of in this context will have to contend with resistance from such vested interests on both sides.

Experience in other democracies

15.27 On a survey of the existing situation as outlined in the foregoing paragraphs, any observer of the national scene is bound to feel extremely pessimistic and throw up his hands in despair. He may, however, draw some consolation from world history which indicates that perhaps this is an inevitable and passing phase in the growth of any young democracy.

15.28 An interesting study of the evolution of police reform in the United States of America by Robert M. Fogelson, Professor of Urban Studies and History at the Massachusetts Institute of Technology and Consultant for the President's Crime Commission, shows a remarkable similarity to some of the problems we are currently experiencing in the Indian police situation. The following extracts from Fogelson's study report, which depict the situation on the American scene around 1900, are relevant in this connection.

"Whoever dominated the police could assign to the polls hundreds of tough, well-armed, if not necessarily well-disciplined men, whose jobs, the politicians reminded them, depended on the outcome. Empowered to maintain order in the streets, the police decided whether or not to permit agitators to speak, protestors to march, and laborers to picket, and if so, judged whether or not the protests remained orderly. They also determined whether or not to intervene in racial, ethnic, and religious clashes, and if so, at what point, on whose side, with how many men, and with how much force. Whoever controlled the

police possessed an enviable flexibility to respond to confrontations and crises in ways consistent with their own political objectives, which was a tremendous advantage in a society so prone to group conflict.

* * *

The captain's wardman, a patrolman who collected the payoffs in the precinct, had more influence than many sergeants and roundsmen; and so did veteran patrolmen who were well regarded by local politicians. As every recruit who survived for long learned, most officers derived their prerogatives and influence as much from their political connections as from their official positions. Formal organization also corresponded poorly, if at all, with actual operation. The chiefs could not possibly know what went on outside headquarters; and their assistants, who owed their positions to the political organizations, would rarely tell them. The captains, who got their jobs through the ward bosses, felt no compunction about ignoring departmental instructions inconsistent with the injunctions of the local machines.

But as the investigative committees discovered, the police manuals were deceptive. Most politicians, including the Democrats who paid lip service to the concept of an apolitical police and the Republicans who criticized their opponents for interfering with the department, viewed control of the force as a prerogative of the party in power.

* * *

To secure an appointment, most candidates went not to the police commissioners or the police chiefs but straight to the New York district leaders, the Philadelphia ward leaders, the Chicago aldermen, and other influential politicians. Some politicians demanded a payoff: in the 1890s the going rate for a patrolman was \$300 in New York City and \$400 in San Francisco, according to investigating committees. But most politicians preferred evidence that the candidate and his friends or relatives had been helpful to the party in the past and could be counted on by the organization in the future.

* * *

As most patrolmen soon learned, the sympathetic concern of an influential politician was far better protection than the procedural safeguards of a departmental hearing."

15.29 Even the phenomenon of transfers at the dictates of political bosses was a noticeable feature in the American Police system. Fogelson's study report refers to an intransigent New York City officer who told a State Investigating Committee, "I have been transferred so continuously that I keep my goods packed ready to go at a minute's notice".

15.30 The direction of subsequent police reforms in the United States was towards strengthening the position of the police chief by giving him a reasonable tenure of office and reducing the scope for political interference. Policing was developed as a profession with emphasis on high admission standards, extensive training, and acquisition of a wide range of special skills. Policemen were made to subscribe to a Code of Ethics devoting themselves to the public interest.

15.31 In the United Kingdom the need to prevent political patronage from affecting the performance of civil services was recognised by the creation of the Civil Services Commission in 1855 which established independent civil services recruited through open competition. It, however, took nearly 15 years for the political parties to relinquish the patronage they had till then enjoyed and agree to the new arrangement. The experience of several other democracies has also shown the need for evolving healthy norms in the interaction between the political leadership in Government and the executive services, to ensure that each section performs its duly recognised role and benefits by the corrective influence from the other in constantly serving the cause of public interest.

15.32 We have already observed how in the early years after independence the political leadership provided by well-motivated administrators and statesmen had in fact enabled the services including the police to function effectively in the best interests of the public at large. We feel confident that the existing situation can certainly be corrected and we can evolve practicable remedial measures to bring about a healthy functioning of the police with helpful and wise guidance from the elected representatives of the people.

Remedial measures

15.33 Before we proceed to set out some possible remedial measures we would like to clarify at this stage the ambit of the meaning of certain terms we will be frequently using in our Report while dealing with this subject.

Some definitions

15.34 The term "politician" will denote any person who indulges in political activity of any kind, directly or indirectly, either as a formal member of a political party or otherwise. Political functionaries in government, like Ministers and Deputy Ministers will be referred to by the term "political executive". The mere term "executive" without the suffix 'political' will be used to refer to the normal career executives in government. The meanings of the words 'intercede', 'intervene' and 'interfere' require to be well understood to appreciate the points that will be made in the paragraphs to follow. A may be said to intercede in a situation with B if he merely pleads with B on behalf of another person to make B better understand the representation of the other person. A may be deemed to have intervened in a situation with B if by such intercession he seeks to modify the disposal of a matter by B without in any way bringing any kind of pressure

on B. Lastly, A may be said to interfere with B in the discharge of the latter's functions if A directs B or exerts pressure directly or indirectly on B to act or omit to act in a manner otherwise than on B's own judgment and assessment of the relevant facts. However, it shall not amount to 'interference' if A has the direct supervisory responsibility over B and has the concurrent power to act as aforesaid under the law or rules or duly recognised procedure and takes direct responsibility for the orders.

Shah Commission's observations

15.35 We would commence our analysis of the problem by quoting the following observations in Chapter XXIV of the Third and Final Report dated 6th August, 1978 of the Shah Commission of Inquiry :

"Para 24.10—The political system that our Constitution has given to our country is such that it contemplates parties with different political ideologies administering the affairs of the Centre and the State Governments. It is necessary in the interest of the territorial, political and economic integrity of the nation to ensure that the factors which contribute to such integrity are forever and continuously strengthened and not impaired. One such factor, and a very important and decisive one, is the body of public servants at various levels and particularly those at the decision making levels belonging to the different disciplines and functioning in the States and at the Centre. If the basic unity and territorial integrity of the country is to be emphasised at the political level it is imperative to ensure that the officials at the decision making levels are protected and immunised from threats or pressures so that they can function in a manner in which they are governed by one single consideration—the promotion of public well-being and the upholding of the fundamentals of the Constitution and the rule of law. The Government ought to ensure this, if necessary, by providing adequate and effective safeguards to which the officials may turn if and when necessary against any actual or attempted threats by the political and/or administrative authorities to sway the officials from performance of their legitimate duties.

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Para 24.17 If a recurrence of this type of subversion is to be prevented, the system must be overhauled with a view to strengthen it in a manner that the functionaries working the system do so in an atmosphere free from the fear of the consequences of their lawful actions and in a spirit calculated to promote the integrity and welfare of the Nation and the rule of law.



This will call for considerable heart-searching both at the political and the administrative levels. Both the groups, during the period of the emergency, sadly deviated from their respective legitimate roles of duty, trespassing into each other's areas with the consequences that are there for all to see and many to lament. If the officials on the one side and the politicians on the other do not limit their areas of operation to their accepted and acknowledged fields, this Nation cannot be kept safe for working a democratic system of Government. . . .”

Our principal task in this exercise will, therefore, be to spell out as precisely as possible the areas in which political functionaries including the political executive may have legitimate facility for interaction/intercession and intervention with the career executive which will naturally include the police, and to further spell out the appropriate safeguards to ensure that this facility does not lead to unauthorised interference with the executive.

Government's superintendence over police

15.36 The phenomenon of 'interference' with police is, in popular estimate and belief, linked with the existing system of control over the police by the political executive in Government. It has been argued before us by functionaries in the political executive in some States that the Minister in charge of police has to account for and defend police performance in the State Legislature and in order to fulfil this responsibility properly he must have full control over the police. According to them the police cannot be conceived as an agency independent of Government control. Everyone will readily agree that while attempting to insulate the police from unauthorised interference from political and other extraneous sources, we should not confer a totally independent status on the police which would then make it function as a 'State within a State'. Our object, however, is to devise a system in which police will have professional and operational independence, particularly in matters in which their duties and responsibilities are categorically specified in law with little or no room for discretion and at the same time their overall performance can be effectively monitored and kept within the framework of law by an agency which will involve the Government also. In the existing set up the Government seeks to have full control over the police by virtue of Section 3 of the Police Act, 1861 according to which "Superintendence of the police throughout a general police district shall vest in and shall be exercised by the State Government to which such district is subordinate". While evolving ideas regarding the nature of relationship between the Government and the police that would be desirable in public interest in a democracy, we have examined the scope of supervision and control that can be deemed to flow from the word 'superintendence' occurring in the above section of law. In this context we have seen some rulings of the Supreme Court relating to article 227 of the Constitution according

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to which "Every High Court shall have superintendence over all Courts subject to its appellate jurisdiction". The purport of some relevant observations of the Supreme Court is furnished below :—

- (i) The general superintendence which the High Court has over all courts and tribunals is a duty to keep them within bounds of the authority and to see that they do what their duty requires and they do it in a legal manner. It does not involve responsibility for the correctness of the decisions of the subordinate tribunals either in fact or in law—AIR 1971(SC) 315.
- (ii) An error of fact or law resulting in a tribunal exercising jurisdiction not vested in it by law or in having failed to exercise jurisdiction vested in it by law, both come within the scope of superintendence of the High Court. Apart from matters relating to jurisdiction, flagrant abuse of elementary principles of justice, manifest error patent on face of record, or an outrageous miscarriage of justice, all call for exercise of powers by way of superintendence—1971 CRLJ 134—1971 BLJ 116.
- (iii) The power should be restricted to *interference* in case of grave dereliction of duty for which no other remedy is available and which would have serious consequences if not remedied. The High Court cannot under the 'superintendence' powers go into the merits of the dispute before the inferior court or tribunal in the absence of grounds such as, one of jurisdiction, grave irregularity of procedure, resulting in prejudice to the detriment to one of the parties and so on—AIR 1953 (SC)—58-59.
- (iv) Ordinarily there should be no interference by the High Courts with the decisions of the inferior courts or tribunals in matters which are left by law to the discretion of the inferior tribunal or court—AIR 1972 HP 24.

15.37 From these observations it may be seen that the power of superintendence by the High Court is generally exercisable in the following category of cases :—

- (i) Lower court or tribunal acting without jurisdiction.
- (ii) Lower court or tribunal refusing or failing to exercise jurisdiction or to do its duty.
- (iii) Conflict of jurisdiction (interference only when there is no other remedy).
- (iv) Refusal or failure to proceed with a case.
- (v) Proceeding contrary to principles of natural justice.

- (vi) Personal interest of Judge in the issue to be decided.
- (vii) Illegal orders of the court.
- (viii) Patently erroneous decision on facts.

15.38 Having regard to the general principles enunciated above in regard to judiciary, we feel that it would be appropriate to lay down that the power of superintendence of the State Government over the police should be limited for the purpose of ensuring that police performance is in strict accordance with law.

Police tasks—categorisation

15.39 Police tasks may be broadly divided into three categories for the purpose of this analysis. They are (i) investigative ; (ii) preventive and (iii) service-oriented. Investigative tasks will include all action taken by the police in the course of investigating a case under Chapter XII of the Code of Criminal Procedure. Preventive tasks will cover such actions like preventive arrests under section 151 Cr. P.C., initiation of security proceedings, arrangement of beats and patrols, collection of intelligence and maintenance of crime records to plan and execute appropriate preventive action, deployment of police force as a preventive measure when breach of peace is threatened, handling of unlawful assemblies and their dispersal, etc. Service-oriented functions will include rendering service of a general nature during fairs and festivals, rescuing children lost in crowds, providing relief in distress situations arising from natural calamities, etc.

Investigative tasks—professional independence

15.40 As far as investigative tasks are concerned we have a clear ruling from the Supreme Court that the nature of action to be taken on conclusion of investigation is a matter to be decided by the police only and by no other authority—*vide* para 18 of the Supreme Court judgment in criminal appeal No. 218 of 1966 reported in AIR 1968 Supreme Court 117 (V 55 C 32). In view of the importance of this judgment which sets out a fundamental principle, a copy thereof is furnished in Appendix-VI. It may, therefore, be safely projected as a fundamental principle governing police work that the investigative tasks of the police are beyond any kind of intervention by the executive or non-executive. Any arrangement in which the investigative tasks of the police are sought to be brought under executive control and direction would go against this fundamental principle spelt out by the Supreme Court and hence should be deemed illegal. We would, therefore, recommend in the first place that all the executive instructions issued by the government having a bearing on investigative tasks of the police may be scrutinised and either cancelled or modified to conform to the above principle.

15.41 If, during the pendency of an investigation, any person including a political functionary gets information which he feels should be passed on to the

police for appropriate follow up action during the course of investigation itself, he should merely pass on such information to the police without in any way attempting to interfere with the investigation.

Preventive tasks and service-oriented functions— Policy control by Government

15.42 In the performance of preventive tasks and service-oriented functions, the police will need to interact with other governmental agencies and service organisations. For example, in planning preventive measures in a near-strike situation in an educational institution or an industrial unit, police will have to keep in touch with the educational authorities or the labour departmental authorities to have a proper perception of the developing situation. In the performance of such preventive tasks there is considerable scope for exercise of discretion, having in view the overall public interests involved in any particular situation. Every police officer should normally be left free to exercise this discretion on his own judgment but there may be situations the disposal of which may have repercussions beyond the jurisdiction of one police officer and it will become necessary in such cases for the supervisory ranks to step in and exercise discretion at their level. Extending this analogy one can visualise a State wide situation in which the exercise of discretion in regard to preventive tasks may have to take into account several factors of State wide significance and it would be appropriate in public interest that the exercise of discretion in such situations conforms to some policy approach that may be evolved at the highest political level in the government which has the ultimate responsibility for proper governance of the State. We, therefore, recommend that in the performance of preventive tasks and service-oriented functions police should be subject to the overall guidance from the government which should lay down broad policies for adoption in different situations from time to time. There should, however, be no instructions in regard to actual operations in the field. The discretion of the police officer to deal with the situation, within the four corners of the overall guidance and broad policies, should be unfettered. An erring officer can always be made accountable for his action. Such policy directions should be openly given and made known to the State Legislatures also as and when occasion demands.

Tenure of office for the Chief of Police

15.43 We have already referred to the weakening of the normal chain of command resulting from unauthorised interference with police work by political and other extraneous sources. To restore the capacity of the police as an organization to resist such pressures and illegal or irregular orders, we consider it would be extremely useful if the Chief of Police in a State is assured of a statutory tenure of office, without the Damocles' sword of transfer hanging over his head all the time, subject to political whim. Such a tenure of office will strengthen his position and enable him to stand up effectively against such pressures on the system. The tenure may be fixed as a period of four years or a period extending upto the date of his retirement or promotion in the normal

course, whichever is shorter. This tenure should be put on a statutory basis by being included in a specific provision in the Police Act itself. It shall also be provided that the removal of the Chief of Police from his post before the expiry of the tenure period shall require approval from the State Security Commission as proposed in paragraph 15.46 infra, except when the removal is consequent on—

- (i) a punishment of dismissal/removal/compulsory retirement from service or reduction to a lower post, awarded under the provisions of All India Services (Discipline and Appeal) Rules ; or
- (ii) suspension ordered under the provisions of the above said Rules ; or
- (iii) retirement from service on superannuation in the normal course ; or
- (iv) promotion to a higher ranking post either under the State Government or the Central Government, provided the officer had given his consent to the posting on promotion.

15.44 It shall be further provided that an officer who has functioned as Chief of Police shall, on retirement from service, be barred from re-employment under the State Government or the Central Government or in any public undertaking in which the State or the Central Government have a financial interest.

Appointment of Chief of Police

15.45 Any arrangement of protecting a functionary like the Chief of Police with an assured tenure of office has necessarily to be accompanied by a procedure to ensure a proper selection of the person so that the protection is not put to abuse. For this purpose we recommend that the posting of Chief of Police in a State should be from a panel of IPS officers of that State cadre prepared by a Committee of which the Chairman of the Union Public Service Commission will be the Chairman and the Union Home Secretary, the seniormost among the Heads of Central Police Organisations, the Chief Secretary of the State and the existing Chief of Police in the State will be Members. In the absence of the Chairman of the Union Public Service Commission, the seniormost Member of the Commission shall chair the Committee. The panel should not have more than three names at any time. Posting from the panel should be according to seniority : We visualise that in the future police set up at the Centre and in the States, the Chiefs of State Police and the Heads of Central Police Organisations will be of comparable status and it should be possible for the Central and State Governments to arrange for periodic inter-change of officers at this level without involving any loss of rank or status as experienced now. The association of the Central Government and the State Government in jointly preparing this panel would ensure its acceptability to both and facilitate smooth inter-change of officers at the highest level in the normal course.

State Security Commission

15.46 We have already given our views on the scope of the power of superintendence of the State Government over the police and the necessary limitations within which that power has to be exercised if the police were to function as servants of law truly and efficiently. It would not be enough to secure the desired objective if lofty principles are merely enunciated and the existing control mechanism is allowed to operate in practice without any change. There is immediate need to devise a new mechanism of control and supervision which would help the State Government to discharge this superintending responsibility in an open manner under the framework of law, with due regard to healthy norms and conventions that may develop in due course. For this purpose we recommend the constitution of a statutory Commission in each State which may be called the State Security Commission which shall have the State Minister incharge of police as the *ex-officio* Chairman and six others as Members. Two Members shall be chosen from the State Legislature, one from the ruling party and another from the opposition parties. They shall be appointed to this Commission on the advice of the Speaker of the State Legislature. The remaining four members of the Commission shall be appointed by the Chief Minister, subject to approval by the State Legislature, from retired judges of the High Court, retired Government servants who had functioned in senior positions in the Government while in service, social scientists or academicians of public standing and eminence. The Chief of Police will *ex-officio* function as Secretary of this Commission which shall have its own Secretariat for the transaction of its business. Arrangement of funds for the functioning of this Commission will be made on the same lines as for the State Public Service Commission.

15.47 The term of the Members of the Commission (other than the Chairman) shall be three years. If any among the four non-political Members were to join a political party after being appointed to the Commission, he shall immediately cease to be a Member of the Commission and the vacancy shall be filled by fresh appointment from the non-political category.

15.48 The functions of the State Security Commission shall include—

- (i) laying down broad policy guidelines and directions for the performance of preventive tasks and service-oriented functions by the police ;
- (ii) evaluation of the performance of the State Police every year and presenting a report to the State Legislature ;
- (iii) functioning as a forum of appeal for disposing of representations from any police officer of the rank of Superintendent of Police and above regarding his being subjected to illegal or irregular orders in the performance of his duties ;

(iv) functioning as a forum of appeal for disposing of representations from police officers regarding promotion to the rank of Superintendent of Police and above; and

(v) generally keeping in review the functioning of the police in the State.

15.49 The Commission shall devise its own procedures for transaction of business. It shall be open to the Chairman and Members of the Commission and also the Chief of Police to bring up for consideration by the Commission, any subject falling within its jurisdiction.

15.50 The Commission shall meet at least once every month and may meet more often, if required by the Chairman or Members of the Commission or the Chief of Police for considering any particular subject proposed by them.

15.51 As the Chairman of the Commission, the Minister-in-charge of police will be able to project the government point of view during the Commission's deliberations. Any policy direction or guidelines which the government desire to issue shall have to be agreed to by the Commission before they are passed on to the police for implementation. However, in an emergency, the Government may directly issue a policy direction or guidelines in regard to a specific situation, but such direction or guidelines shall as soon as possible be brought before the Commission for ratification and be subject to such modifications as the Commission might decide.

15.52 In recommending the constitution of a State Security Commission as outlined above, we have taken into consideration the various suggestions received in this regard from different sections of the public as also the services in response to our questionnaire in which we had posed this suggestion and sought their reactions. Analysis of the replies received to our questionnaire shows an interesting pattern of response. A majority of respondents from the administration outside the police have favoured strengthening of the existing executive control without the intervention of a separate Commission as proposed. On the other hand a large majority of police officers have wholeheartedly welcomed the constitution of such a Commission. Leaving aside these sections of services which are intimately and directly involved in the present arrangements and, therefore, may be biased one way or the other, we find that a good majority of the other respondents from the judiciary, lawyers, businessmen, elected representatives and the general public have favoured the idea of such a Commission.

15.53 The constitution of the Security Commission as visualised above would ensure its overall non-political character though it would, in its internal deliberations, have scope for taking into account political views as may be reflected by the Chairman and the two political Members. When we discussed the proposed set up of the Commission with a cross-section of the public as well as services in different

States, we heard comments that in the present set up of the country it would be difficult, if not impossible, to find a non-political being! We consider this to be a somewhat cynical and defeatist view of the matter. We are firmly of the opinion that a beginning has to be made to set up an institution like the proposed State Security Commission to ensure political neutrality in police performance. There may be reservations and doubts to begin with, but we are confident that as the system gets going, it would soon acquire maturity and effectiveness to the satisfaction of the general public.

Amendment to Section 3 of the Police Act, 1861

15.54 The constitution of such a Commission will, in our opinion, help considerably in making police performance politically neutral. While retaining governmental responsibility for overseeing the police, this Commission will ensure that this responsibility is discharged in an open manner with publicly known policy directions and guidelines. The arrangements of an annual evaluation report from the same Commission and constant review of the functioning of the police by it would also further ensure that police performance in any given period has conformed to the prescribed policy directions and guidelines and has served public interests in the best possible manner. We recommend that the limits of supervisory responsibility of the State Government in regard to police performance as observed in paras 15.36 to 15.38 above, and the constitution of a State Security Commission as proposed above to help the State Government in discharging this responsibility may be spelt out in a new provision in the Police Act in replacement of the existing Section 3 of that Act.

Intelligence wing of the police

15.55 A sensitive area of police functions with considerable scope for misuse of police relates to collection of intelligence. Under the garb of having to collect intelligence regarding matters which have a bearing on the law and order situation and internal security in the State, the intelligence wing of the State Police frequently collects a variety of information regarding activities of political parties and individual politicians. It is a fact that the style of functioning of certain political parties and individuals with certain political ideologies has sometimes led to disturbances to public order. Collection of intelligence regarding activities which are likely to lead to such situations becomes a necessary part of the preventive functions of the police. The assessment whether the activity of a particular party or group or individual is likely to lead to a public order situation as such, is sometimes made by the police functionaries in the intelligence wing, not on their own judgment but on directions or indications emanating from the political leadership in Government at a given point of time. When this assessment is made at the instance of the political executive, it is likely to be coloured by political considerations in preference to the actual requirement of the interests of the public or the State as such. This very often leads to misuse of the intelligence wing to collect intelligence in political matters, not strictly relatable to public order or internal security. In this context, the Shah Commission of Inquiry has referred to

some aspects of the functioning of the Intelligence Bureau and the Central Bureau of Investigation at the Centre and has pointed out the need for appropriate safeguards to be evolved to ensure that these organisations are not put to misuse by the Government or some one in the Government. We would like to point out that the tendency to misuse these organisations would get accentuated by political instability in Government and, viewed from this angle, the functionaries in these organisations would need protection from improper and unhealthy pulls and pressures that might operate in such situations. We understand from the Ministry of Home Affairs that they have recently received the Report of the high-level Committee headed by Shri L. P. Singh, a former Home Secretary and presently Governor of Assam, Meghalaya, Nagaland, Manipur and Tripura, which was appointed in pursuance of the observations of the Shah Commission of Inquiry regarding the Intelligence Bureau and the Central Bureau of Investigation. The points that may emerge from the analysis of L. P. Singh Committee Report would, in our opinion, be applicable in a substantial measure to the working of the intelligence wing in the State Police as also the State Anti-Corruption agencies. We recommend that Central Government may communicate to the State Governments the essential observations and recommendations emanating from the L. P. Singh Committee Report for their information and further action in regard to their own agencies, not only for overseeing their performance but also for protecting them from unhealthy influences.

Policemen's involvement with political individuals and parties

15.56 Conduct Rules prohibit all Government servants including the police personnel from being members of or otherwise being associated with any political party, or any organisation which takes part in politics. They are also required to endeavour to prevent any member of their family from taking similar part in politics. Canvassing or otherwise interfering with or using their influence in connection with any election is also prohibited—*vide* Rule 5 of the All India Services (Conduct) Rules and Rule 5 of the Central Civil Services (Conduct) Rules. However, in practice this important Conduct Rule does not appear to have been enforced with the required strictness and severity. It is well known that in the symbiotic relationship that has developed between the politicians and the executive, several police personnel have developed close contacts with politicians and are known to seek political influence and interference to secure undue advantages at different stages in their career. We find that the number of instances in which police personnel get punished for infringement of this Conduct Rule are very rare. We would recommend that the administration should take a severe view of any infringement of the above mentioned conduct rule and deal with erring officers in a deterrent manner. In appropriate cases resort may also be had to article 311(2)(b) or (c) to weed out such personnel from the system. In cases where this constitutional

provision is invoked, all the available material against the police personnel concerned should be scrutinised by a small Committee under the Chairmanship of the Chief of Police. Members of this Committee may be drawn from senior ranks in the prosecuting agency set up of the State and police officers of the rank of Deputy Inspector General of Police (other than the one who may have been concerned either directly or in a supervisory capacity with the situations or instances that figure in the material for consideration by the Committee).

Political infiltration into police

15.57 We would also like to point out another danger in this context—the danger of political infiltration into the police system. It is conceivable that some political parties adopt a deliberate strategy of injecting into the police system, through channels of recruitment at different levels, young men who are strongly committed to the ideologies of the political party and could be expected to influence, from within, the functioning of the police system to conform to these ideologies. While we do not hold any brief for or against any political party to say that the membership thereof or association therewith should not or should act as a bar for recruitment to the police at any level, we would state emphatically that the continued involvement in political activity of any kind either directly or indirectly by any personnel after joining the police at any level should not be tolerated in any circumstances. The weeding out of such persons should receive special attention of the Chief of Police from time to time. Here again, recourse may be had to the provisions of article 311(2)(b) or (c) of the Constitution, if need be in appropriate cases.

Transfer/Suspension of police personnel

15.58 We have already referred to the threat continuously faced by police officers in the shape of frequent transfers, suspensions, etc. ordered by the government on political considerations. An analysis of suspensions ordered in a few States in 1977 has shown that in the rank of Inspectors 27% of suspensions were actually ordered by authorities higher than the authority normally competent to order their suspension. In the case of Sub-Inspectors this percentage is 16. This indicates the trend of interference from a higher level to bring about the suspension of officers when the normally competent authority to order a suspension may not consider it necessary to do so. We feel that police officers should be effectively protected from such whimsical and *mala fide* transfer/suspension orders. One step for securing this protection could be to incorporate a provision in the Police Act itself specifying the authorities competent to issue transfer/suspension orders regarding different ranks. Such a statutory provision would render null and void any transfer/suspension order passed by any authority other than those specified in the Act. This would be an improvement over the present position where the powers of transfer/suspension are merely spelt out in rules or executive instructions which can always be overruled by the government as and when it feels like doing so for reasons of its own.

15.59 Another step could be to lay down as a rule that every transfer/suspension order should also contain a brief paragraph indicating the reasons for the issue of the order, and making it a further rule that any transfer/suspension order which does not contain this explanatory paragraph shall not be a valid order. The advantage in this arrangement would be that the recipient of the transfer/suspension order will have some material with him which he can agitate before the authorised available forums if he feels that the reasons are *mala fide* or otherwise not sustainable.

Oral orders

15.60 Situations arising from oral orders issued by the supervisory officers including the political executive, while on tour or otherwise, are known to cause considerable embarrassment to the field officers when the orders happen to require the commission of illegal, irregular, improper or unjust acts. A few State Governments have issued instructions in the recent past for the guidance of officers to ensure proper conduct. The purport of these instructions is that the officer receiving such oral instructions should make a record of the instructions and get it confirmed by the superior officer concerned. We are aware that an administrative apparatus would get badly cramped and become ineffective in day to day service to the public if it is rigidly insisted that no functionary need take action under orders from a higher ranking functionary in the normal line of supervision unless the order is in writing. Several situations may occur in daily life in which a supervisory functionary on the spot may give oral orders for immediate execution by the subordinate functionaries concerned. Several such situations can be easily imagined in law and order matters. We are, therefore, not in favour of enunciating any rigid rule that every order that flows from one level to the lower level in administrative hierarchy should be in writing before the intended action is taken. While oral orders cannot be shut out totally from the administrative system, they can and should certainly be avoided in situations which do not involve any element of urgency and can wait for the oral orders to be confirmed in writing before the intended action is initiated. Our recommendation would, therefore, be that—

- (i) oral orders should be avoided as far as possible and may be resorted to only in situations which call for immediate executive action and cannot wait for the issue of written orders in confirmation of the oral order ;
- (ii) a record of every oral order be kept both by the issuing officer and the recipient officer in the relevant files; and
- (iii) a subordinate officer receiving oral orders from a higher ranking officer shall be entitled to ask for and get confirmatory orders in writing from the higher functionary, for record.

Interaction between elected representatives and the police

15.61 In any democratic system we must have facilities for the elected representatives to interact

with the executive at different levels for bringing to the notice of the executive whatever information the elected representatives may have in which they feel the need for some kind of corrective action in the interests of justice. We must keep open all scope for such interaction. Persons subjected to flagrant injustice by executive action will be inclined to share their grief and disappointment with several others in public including the elected representatives and will expect them to do something to set matters right. While conceding the need for interaction between elected representatives and the executive in such situations, we are anxious to ensure that this does not lead to unauthorised interference as such with the performance of the executive. We, therefore, feel that if as a code of conduct it is laid down that elected representatives will interact with the police at the level of the Deputy Superintendent of Police or above only it would avoid situations in which the executives at the operational level in police stations and circles may be overawed by the stature of the political functionary and may be inclined to accept and act upon whatever information he passes on to them without making the necessary check and verification which they might make normally.

Conduct Rules for Police

15.62 In regard to the representations or information which elected representatives of the people may have to communicate to Government servants (including the police) existing instructions emphasise that while the Government servants should consider carefully and listen patiently to what the elected representatives may have to say, they (*i.e.* Government servants) should always act according to their own best judgment. These instructions are contained in the following references :

- (i) Government of India, Department of Personnel and Administrative Reforms, letter No. 25/19/64-Ests (A) dated 29th April, 1975 addressed to Chief Secretaries of all the State Governments.
- (ii) Circular No. PMG-1075/XVIII(O&M) dated 25-11-1975 issued by the Government of Maharashtra, General Administration Department.
- (iii) G. O. Ms. No. 976 dated 24th May, 1969, issued by the Government of Tamil Nadu, Public (Services A) Department, Madras to all Heads of Departments.

In this context it will be relevant to refer to rule 3(3) of the All India Services (Conduct) Rules, 1968, which is reproduced below :

“No member of the Service shall, in the performance of his official duties or in exercise of powers conferred on him—

- (i) act otherwise than in his best judgment except when he is acting under the direction of his official superior and he shall obtain such direction in writing, wherever practicable, and where it is not practicable, he shall obtain written confirmation as soon thereafter as possible ; and

- (ii) evade the responsibility devolving legitimately on him and seek instruction from, or approval of, a superior authority when such instruction or approval is not necessary in the scheme of distribution of powers and responsibilities.

The same rule is embodied in rule 3(2)(ii) of the Central Civil Services (Conduct) Rules, 1964. However, this does not find a place in the Conduct Rules in several States which are applicable to the police personnel. We would recommend the adoption of this rule in the Conduct Rules applicable to police personnel of all ranks in all States.

Code of Conduct for Legislators

15.63 The conduct of Government servants (including the police) can be controlled and guided by the issue of rules and instructions and enforcing their strict compliance in actual practice. If, however, the political functionaries, whose conduct is not subject to such rules and regulations, do not change their present attitudes and approach to this matter, their inclination to interfere with the executive including the police will continue in some form or other. While on one side we may be thinking of several remedial measures to enable the executive to resist this interference, our objective can be achieved in a substantial measure only when the political functionaries also change their style of functioning. In the Government of India, Department of Personnel & Administrative Reforms letter No. 25/19/64-Ests. (A) dated 29th April, 1975, addressed to the Chief Secretaries of all the State Governments, it was indicated that a Code of Conduct of Legislators was being separately processed by the Ministry of Home Affairs. Our enquiries reveal that this Code of Conduct for Legislators has not yet taken any shape. We recommend that the Ministry of Home Affairs complete their exercise expeditiously and have the Code issued very soon so that the elected representatives as also the general public at large may know and appreciate the requirements of ethics and propriety in this important and sensitive matter. We also trust that the contemplated exercise on the political plane as decided at the Chief Ministers' Conference of 6th June, 1979 (*vide* para 15.19 above) will be taken up in right earnest and completed soon.

Declaration by police personnel at the time of appointment

15.64 To bring home the primacy of the rule of law in a democracy and the paramount duty of every police officer to recognise this primacy and stoutly resist any interference with the course of his duties as enjoined by law and in accordance with the Constitution, we feel it would be appropriate if every member of the police is made to swear or solemnly affirm a declaration embodying this fundamental principle, at the time of his joining the police, whatever be the rank of entry. Police regulations in States do not envisage any separate affirmation or declaration by police officers, but in common with other Government servants they are required to sign a simple declaration proclaiming their allegiance to India and to the Cons-

titution of India as by law established. We feel that something more positive is required on the part of a police officer and would, therefore, recommend the following form of declaration :—

I, A B, do swear/solemnly affirm that I will be faithful and bear true allegiance to India and to the Constitution of India as by law established; that as a member of the police in the State of——— I will honestly, impartially and truly serve the people without favour or affection, malice or ill-will; that I will to the best of my ability, skill and knowledge discharge, according to law, such functions and duties as may be entrusted to me as a police officer, and in such a manner as to uphold and protect the dignity and rights of the citizen as proclaimed in the Constitution.

Apart from the initial declaration at the time of joining the police, it would further serve the purpose and embed the principle firmly in the minds of all the police officers if this declaration is remembered and repeated by them in groups and assemblies of police personnel drawn up on an annual ceremonial occasion like the 'Police Commemoration Day' which is observed on 21st October, every year.

Training

15.65 The sustained capacity of the police system to function as an efficient and impartial instrument of law will largely depend on the attitudes developed by the personnel at different levels in the system and the manner in which they respond to different situations in their career. This in turn depends on the training which they get at the time of their entry into the system and in the subsequent lead and guidance they receive from the leadership at various levels within the system. The structuring of the initial training courses and the later in-service training courses for all police personnel should be suitably designed to facilitate the growth of proper attitudes and sense of values on the part of every police officer, viewing himself throughout as a servant of law to uphold and protect the dignity and rights of every individual fellow citizen of the country. We shall be referring to this aspect in greater detail when we deal with the subject of training for police officers.

Conclusion

15.66 In recommending the various measures in this chapter for minimising, if not eliminating, the scope for interference with or misuse of police by pressures from political, executive or other extraneous sources, we have placed great hopes equally on politicians and police personnel and trust they would look at these measures objectively and see in them a mechanism for rendering genuine public service. We earnestly believe and trust that our expectations will not go in vain and, recalling the words of Jawaharlal Nehru, we hope the politician as well as the police would be "brave enough and wise enough to grasp this opportunity and accept the challenge of the future".

CHAPTER XVI

GRAM NYAYALAYAS

16.1 The present system of investigations and prosecutions under the provisions of the Code of Criminal Procedure involves a lot of delay in the ultimate disposal of every criminal case that passes through the system. A variety of reasons may be cited for the overall delay, but most of them would be relatable to the existing procedural rituals in law. The entire system is sophisticated and remains beyond easy reach of the common man, ill-informed of legal niceties, unless assisted by lawyers at a cost far beyond his resources. The existing situation of the legal and judicial system in the rural areas is best brought out by Justice Bhagwati Committee on Juridicare, constituted by the Government of India, which gave its report in August 1977. The following observations of that Committee are relevant in this connection :—

“To-day the poor and the disadvantaged are cut off from the legal system—they are functional outlaws not only because they are priced out of judicial system by reason of its expensiveness and dilatoriness but also because of the nature of the legal and judicial system. They have distrust and suspicion of the law, the law courts and the lawyers for several reasons. One is ignorance and illiteracy on their part which prevents them from taking advantage of the legal process. Another is their helplessness and lack of assertiveness which arises by reason of social disabilities and economic dependence and that also places the legal process effectively beyond their reach. But apart from these factors which we have discussed at length in another part of the Report, the functioning of the courts is unfortunately shrouded in mystery for the poor and the under-privileged. There is an air of excessive formalism in law courts which overawes them and sometimes scares them. Often the proceedings are conducted in a language which they do not understand. They do not know what is happening in the court. They sit as helpless spectators, not understanding what is going on in the court in regard to their own case. It is an ironical situation that they who should know most about their case know the least. They are completely mystified by the court proceedings and this, to a large extent, alienates them from the legal and judicial process. And lastly our system of administration of justice, which is an inheritance from the British, is archaic and suffers from obsolescence and obscurantism. It is not at all adapted to our socio-economic conditions and is wholly unsuited to our national

genius. The result is that it has failed to inspire confidence in the poor and they have little faith in its capacity to do justice.”

16.2 A study of the progressive institution of fresh criminal cases for trial in regular courts year after year and the corresponding disposal in court shows that while the input of fresh cases has been rapidly increasing the output by way of disposals in courts has not kept pace, resulting in the clogging up of the entire judicial machinery. The tabular statement enclosed as Appendix-VII indicates the comparative picture from 1953. Compared to about 2 lakhs of criminal cases under the Indian Penal Code pending in Courts in 1962 there are over 10 lakhs of such cases pending in courts now. Protracted court proceedings tend to dilute the deterrence of prosecution for containing the activities of criminals. Repeated attempts made to speed up the disposals by various measures including the setting up of a monitoring cell at the Centre have not led to any noticeable improvement. It is obvious that in the present system with its emphasis on procedures and rituals rigidly spelt out in law, the pendency of cases in court cannot be brought down within manageable limits except by devising a totally new system with simpler procedures to deal with ordinary crimes involving simple and straight evidence. Such a new system would not only ensure inexpensive and speedy justice but what is more, would also help in preserving the harmonious relationships in the community which usually get affected if criminal matters are subjected to prolonged trials which might ultimately involve prison sentences also. This is particularly relevant in the rural areas where community opinion and village harmony have been and continue to be perceptible factors of life.

16.3 The Indian Police Commission of 1902 had appreciated this aspect of the matter and had even then observed that “it is expedient to relegate the trial of petty offences to village headmen and panchayats, and that where the system does not exist, it should be cautiously and experimentally introduced”. This recommendation was apparently not followed up and implemented effectively, and in course of time the regular judiciary was saddled with a growing volume of cases, which ultimately resulted in the delay and, in a large number of cases, the consequent denial of justice. After independence the Law Commission of India (1954) gave a fillip to the then thinking in the country to provide speedy justice to the rural areas by endorsing the views of the Civil Justice Committee of 1924-25 which observed, “the Village Panchayat—villagers mediating between contending parties in their own village—has, in some form or other, existed in this country from the earliest times and that

without resort to any elaborate or complicated machinery. . . . The judicial work of the panchayat is part of that village system which in most parts of India and Burma has been the basis of indigenous administration from time immemorial."

16.4 The important conclusions reached by the Law Commission after a review of the then existing Panchayat Courts are mentioned in their 14th Report, reproduced below :

- (1) The Panchayat Courts are capable of doing a good deal of useful work by relieving the regular courts of petty civil litigation and criminal cases of similar types.
- (2) The panchayats are in a position to dispose of simple cases more cheaply and expeditiously and with less inconvenience to all concerned than ordinary courts.
- (3) An effort should be made to establish and popularise panchayat courts in States where they are not formally established.
- (4) Wherever possible, a panchayat court should be constituted for a group of villages situated in a nearby area.
- (5) Nyaya Panchas should be given training before they are allowed to exercise judicial functions.
- (6) To get over the difficulty caused by the existence of factions, the panchas deciding a case might be required to belong to neighbouring places, or each party to a dispute may be allowed to select his panchas.
- (7) The jurisdiction of Panchayat Courts should be exclusive.
- (8) The Criminal Jurisdiction of panchayat courts should be limited to inflicting a fine of Rs. 50 ; they should not have powers to award sentences of imprisonment either substantively or in default of payment of fine or to bind other parties to keep the peace. Cases in which such action is necessary, should be given over to the regular courts.
- (9) Panchayat courts should not be bound by procedural codes or by the law of evidence.
- (10) Legal practitioners should not be permitted to appear in these courts.
- (11) A revision should lie from the decisions of the Panchayat Courts before the Sub-Divisional Magistrate in criminal matters and he should be empowered to transfer a case from one panchayat court to another or to the regular court for trial.
- (12) The power of revision should not be given to the District Judge nor should a right of appeal to a larger panchayat be allowed.
- (13) The District Judge should be empowered to direct the removal of Panchas if he is satisfied upon a report that the Pancha in question

has been guilty of misconduct in the discharge of his judicial functions. There should be a provision for an appeal against such order of removal.

- (14) Special Officers should be appointed for the purpose of imparting training to Panchas and to supervise administration of Panchayat Courts.

16.5 In 1959 in the course of a discussion in the Rajya Sabha on the above mentioned Report of the Law Commission, Shri A. K. Sen, the then Law Minister observed, "There is no doubt the system of justice which obtains today is too expensive for the common man. The small disputes must necessarily be left to be decided by a system of panchayat justice—call it the people's court, call it the popular court, call it anything—but it would certainly be subject to such safeguards as we may devise—the only means by which for ordinary disputes in the village level the common man can be assured of a system of judicial administration which would not be too expensive for him and which would not be too dilatory for him".

16.6 The next important step in the study of this problem was the appointment of a Study Team headed by Shri G. R. Rajagopaul, the then Special Secretary (Law) to examine the question of composition, jurisdiction and functions of panchayat courts. The Rajagopaul Study Team gave its report in April, 1962 mentioning, *inter alia*, the following important points :—

- (1) Nyaya Panchayats are of respectable antiquity and their success in the past is a clear indication that by reviving and moulding them on the right lines we will be taking a much needed step in the direction of making law and administration of justice reflect the spirit of the people and become rooted once again in the people.
- (2) A study of the participation of laymen in the administration of justice in some of the leading countries of the world clearly reveals that with appropriate safeguards, it would not be difficult to make any institution of lay-judges successful, if the need for it is there.
- (3) Nyaya Panchayats, wherever they are in existence, are serving a real felt need of the villages by disposing of cases more expeditiously and with minimum of inconvenience and expenses to parties. Although some of the criticism directed against the nyaya panchayats may be justified, it is possible by suitable safeguards to remove the basis for any such criticisms.
- (4) To avoid the baneful effects of factions, unhealthy rivalries etc., a nyaya panchayat may be set up for a group of villages, and the grouping may be made having regard to factors like area, population, contiguity, compactness, means of communication, etc. Where in view of the size and population of

the village a separate nyaya panchayat has to be set up for a single village, the device of splitting up the village into a number of wards can be adopted.

- (5) As to method of constitution of nyaya panchayats, the system of nomination in any form has to be ruled out. Villagers must be given a free hand and the choice lies between the system of direct elections and indirect elections. The method of indirect elections seems to afford for the time being the best solution and of the various possible methods of indirect elections, the best seems to be the type in which each of the gram panchayats in the nyaya panchayat circle elects a specified number of persons to serve on the nyaya panchayat.
- (6) A minimum age of 30 years and ability to read and write the regional language fairly fluently may be prescribed as qualifications for a person to be eligible to serve as a nyaya panch. No property qualification need be prescribed. Relaxations of this minimum qualification may be necessary in backward areas.
- (7) The jurisdiction of nyaya panchayats should be exclusive.
- (8) Nyaya panchayats may be given criminal jurisdiction in respect of petty matters where the punishment in the form a fine would be an adequate corrective.
- (9) Nyaya panchayats may be empowered to inflict fines upto Rs. 50. The maximum limit of Rs. 50 may be increased to Rs. 100 if any State Government feels justified in doing so. Nyaya panchayats should, however, not be given power to award imprisonment either substantively or in default of payment of fine.
- (10) Nyaya panchayats should not be bound by the procedural codes or the Indian Evidence Act. Nyaya panchayat procedure should be of a simple character; but care should be taken to see that principles of natural justice are complied with.
- (11) No legal practitioner should be allowed to appear before nyaya panchayats.
- (12) Special officers or specified judicial officers may be appointed in consultation with the High Court wherever necessary, to supervise and guide the work of nyaya panchayats.
- (13) It is not necessary to make any provision for appeals from the decisions of nyaya panchayats.
- (14) Revision should lie from the decisions of nyaya panchayats to a senior judicial officer. The revisional authority may interfere only if he is not satisfied as to the correctness, legality or propriety of the decision and

should refrain from interfering if he is satisfied that substantial justice has been done.

- (15) No salary or remuneration may be paid to nyaya panchas, but they should be reimbursed in respect of travelling and other out-of-pocket expenses.
- (16) Nyaya panchas should be accorded the status and protection due to them as members of a judicial body and should be treated as 'public servants'. All official agencies, particularly police should extend the fullest co-operation to them.

16.7 In course of time Nyaya Panchayats were constituted in 15 States by special legislation. However, they are presently functioning in 8 States only, viz., Bihar, Gujarat, Jammu & Kashmir, Manipur, Rajasthan, Tripura, Uttar Pradesh and West Bengal. In 3 States, i.e., Haryana, Punjab and Himachal Pradesh, the regular Gram Panchayats have been vested with judicial functions in addition to executive and municipal functions. In Andhra Pradesh, Assam and Karnataka, the provisions of the Act relating to Nyaya Panchayats have either been held in abeyance or not been implemented. Maharashtra, Orissa and Madhya Pradesh have abolished these institutions after they had functioned for some time. Kerala and Tamil Nadu do not have such a system. There is no Panchayati Raj set up in Meghalaya and Nagaland.

16.8 In 1978, there were 29,942 Nyaya Panchayats working in this country. The composition and criminal jurisdiction of Nyaya Panchayats vary from State to State but generally they are based on a system of nomination or combination of elections with nominations except in the States where the Panchayats themselves exercise the judicial functions.

16.9 The various committees appointed by the State Governments to evaluate the working of the Nyaya Panchayats present a discouraging picture. The Orissa Committee (1958) found that the Adalati Panchayat established itself only as a "compromising body". The Badal Team of Punjab (1969) felt that judicial functions be withdrawn from Gram Panchayats to enable them to perform their regular functions better. The Maharashtra Evaluation Committee (1971) felt that the entrustment of judicial functions to Panchayats "on the basis of democratic elections or otherwise are both out of place and unworkable"—and recommended its abolition. The Rajasthan Committee (1973) felt that Nyaya Panchayats were languishing for want of funds, secretarial assistance, lack of powers and people's faith and should be abolished.

16.10 During our tours in the States and discussions with a wide cross section of the public as also the services, we got the impression that the working of Nyaya Panchayats, though well conceived in principle, suffered in practice, mainly because of the lay members of the Panchayat being subjected to local influences and pressures which defeated the purpose of an objective and fair disposal of cases handled by the

Panchayats. It was also pointed out that a Nyaya Panchayat solely made up of lay members was unable to handle the judicial work with requisite attention to the minimum requirements of a judicial process. It was further mentioned that Nyaya Panchayats would function far more effectively if they were manned by trained persons with a certain minimum knowledge of law, rules and procedure. The same views are reflected in the replies we have received in response to our questionnaire which referred to the Nyaya Panchayat system.

16.11 We appreciate that if the Nyaya Panchayats are made up of knowledgeable and academically competent persons alone, they would lose their lay character and, therefore, would merely appear as an extension of the existing sophisticated court system which, for a variety of reasons, does not command the confidence of the rural folk. On the other hand, if the Nyaya Panchayats are made up only of lay men who come up through a process of election, direct or indirect, they would become susceptible to unhealthy influences and pressures which may conflict with the interests of justice. We have, therefore, to adopt a *via media* which would preserve the lay character of the Nyaya Panchayat and at the same time ensure the disposal of cases with due regard to certain minimum judicial requirements.

16.12 The Ashok Mehta Committee, which gave its report to the Government of India in August 1978 on the working of Panchati Raj institutions, has also dealt with the subject of Nyaya Panchayats and expressed its view that a qualified Judge should preside over the Nyaya Panchayat and elected Nyaya Panchas should be associated with it.

16.13 The observations of Justice Bhagwati Committee on the advantages of the Nyaya Panchayat system and its recommendations regarding the composition of a Nyaya Panchayat and procedures for transaction of its business are set out in paragraphs 6.11 to 6.31 of the Committee's report which are furnished in Appendix-VIII.

16.14 We have carefully gone through Justice Bhagwati Committee's report and we find ourselves in whole-hearted agreement with it. We fully endorse the recommendations therein, subject to the modifications and refinements as spelt out in the following paragraphs, which we consider desirable in the present context.

16.15 The new courts proposed at the grass roots level may be called "Gram Nyayalayas", avoiding any reference to Panchayat as such so that they may not be viewed as an adjunct or extension of the Panchayats which are totally executive bodies with which political functionaries are associated.

16.16 A Gram Nyayalaya shall be made up of three Members. One shall be the Presiding Judge who will be appointed by the District Judge from retired judicial officers or other retired Government servants who, from their experience while in service, would have acquired the requisite knowledge of law and minimum requirements of judicial processes.

16.17 Two other members of the Gram Nyayalaya shall be lay members appointed by the District Judge from a panel of names prepared by the local elected body that goes by the name of Panchayat Samiti/Panchayat Union/Block Committee or its equivalent, in the manner described below.

16.18 One Gram Nyayalaya shall cover about 25 to 30 villages coming under 8 to 10 Panchayats. This would mean about 5 or 6 Gram Nyayalayas in the jurisdiction of one Panchayat Union/Panchayat Samiti. The headquarters of each Gram Nyayalaya shall be fixed at some suitable place within the group of villages in its jurisdiction.

16.19 The Presiding Judge for all the Gram Nyayalayas within the jurisdiction of a Panchayat Samiti shall be the same person appointed by the District Judge in the manner prescribed earlier. The lay members of each Gram Nyayalaya will however be separate for each Nyayalaya. The Panchayat Pradhans relevant to the jurisdiction of each Gram Nyayalaya will be associated in proposing the names of lay members for that Gram Nyayalaya. The Presiding Judge shall hold proceedings of each Gram Nyayalaya in the Panchayat Samiti by visiting the respective headquarters once a month by turn, or more often if required by the volume of work to be handled, and associate the two local lay members with the proceedings in each place.

16.20 The Presiding Judge and the two lay members shall normally hold office for a term of three years from the date of appointment. They shall be deemed to be public servants as defined in the Indian Penal Code while they hold office.

16.21 Gram Nyayalayas shall have exclusive criminal jurisdiction over the offences enumerated in the attached schedule, and such other offences under the local and special laws as may be notified by the Government, subject to the conditions that—

- (i) the information/report/complaint lodged before the Gram Nyayalaya is against a specified person or persons ;
- (ii) the person against whom the information/report/complaint is lodged has not had a previous conviction for anyone or more of offences enumerated in Chapters XII and XVII of the Indian Penal Code or under sections 264, 265, 266, 269, 272 and 273 of the same Code ;
- (iii) in case of offences involving property, the value of property is not more than Rs. 250 ; and
- (iv) the alleged offences under sections 172, 173, 174, 175, 177, 178, 179, 180, 182, 186 and 187 of the Indian Penal Code are relatable to the proceedings before the Gram Nyayalayas.

16.22 Gram Nyayalayas shall be competent to take cognisance of offences falling within their jurisdiction on information/report/complaint received by them directly either from the affected party or otherwise.

16.23 If an information or complaint involving an offence falling within the jurisdiction of the Gram Nyayalaya is laid before the police, they shall transmit it forthwith for disposal by the Gram Nyayalaya without making any inquiry, except in the circumstances detailed below.

16.24 On receipt of information/complaint of the nature mentioned above by an officer in charge of the police station, he may, if considered necessary by him in the interests of public peace, make an immediate inquiry into the matter for ascertaining the facts thereof. On conclusion of his inquiry if he finds that an offence falling within the jurisdiction of the Gram Nyayalaya is made out, he shall submit a brief report indicating the result of his inquiry and the facts thereof to the Gram Nyayalaya for further action. If, however, the offence made out falls within jurisdiction of the regular courts, he shall deal with it further as required under the Cr.P.C.

16.25 Gram Nyayalayas shall not be bound by procedural codes or laws of evidence. Their proceedings shall be in the nature of an inquisitorial inquiry which would mean that the Gram Nyayalaya would itself take a positive role in the inquiry to ascertain the facts regarding the involvement or otherwise of the person concerned, instead of merely functioning as an adjudicating body to give its view on two versions put before it, one by the prosecution and the other by the defence. This arrangement would confer on the Gram Nyayalaya a slightly extended role as compared to the regular court in the sense that the Nyayalaya would be free to make field enquiries also to ascertain the availability of evidence and witnesses. When the system gets going, Gram Nyayalayas may require the assistance of some village-based field staff to make inquiries of this kind. In such a contingency, we visualise that the village-based police functionaries in the new set up regarding which we would be making separate recommendations, will be able to provide this assistance.

16.26 Parties to the proceedings before the Gram Nyayalayas shall not be allowed to be represented by lawyers. Exceptions may arise when a person happens to be arrested or otherwise detained in custody in connection with an offence related to the proceedings before the Gram Nyayalaya, in which case the provisions of Article 22(1) of the Constitution may get attracted. The observations of the Supreme Court in the case of State of Madhya Pradesh *versus* Shobharam and others (AIR 1966 SC 1910) would be relevant in this connection.

16.27 There shall be a provision to enable a Gram Nyayalaya to issue processes to compel appearance of parties before it, when necessary.

16.28 If on the facts ascertained in the course of proceedings before the Gram Nyayalaya it is found that the case will fall beyond the criminal jurisdiction of the Gram Nyayalaya, the Gram Nyayalaya shall transfer

the case to the competent court for further proceedings under the Cr.P.C.

16.29 The findings of the Gram Nyayalaya shall be based on the majority view of the component members including the Presiding Judge, subject to the provision that in any case where the two lay members agree on a finding with which the Presiding Judge does not agree, and the Presiding Judge is clearly of the opinion that it is necessary for the ends of justice to submit the case to a higher court, he shall record the grounds of his opinion and submit the case for adjudication by the Chief Judicial Magistrate. We are recommending this procedure specially to guard against local unhealthy influences and pressures operating on the system.

16.30 Punishment awardable by a Gram Nyayalaya shall be limited to fines not exceeding Rs. 500. Fines shall be recoverable by processes applicable to arrears of revenue. A Gram Nyayalaya shall not be competent to award any sentence of imprisonment, even in default of payment of fine.

16.31 If in any particular case, having regard to the circumstances thereof, the Gram Nyayalaya feels that the person found guilty by it merits a more serious punishment than is awardable by the Gram Nyayalaya, it shall remit the case to the Chief Judicial Magistrate of the district for further action on the lines indicated in section 325 Cr.P.C.

16.32 In proposing the set up of Gram Nyayalayas on the lines recommended by the Justice Bhagwati Committee with further modifications and refinements spelt out in the foregoing paragraphs we have attempted to evolve a system that will take due account of the realities of the field situation and have adequate safeguards for eliminating the drawbacks in the functioning of Nyaya Panchayats as noticed hitherto. We recommend that the proposed set up of Gram Nyayalayas be given a statutory backing in a new self-contained legislation which would include all the safeguards detailed above.

16.33 If Gram Nyayalayas are set up on the pattern envisaged above, there would approximately be about 24,000 Gram Nyayalayas in addition to about 4,000 courts which are currently handling the bulk of the criminal cases all over the country. A statement showing the number of panchayat samitis, police stations and courts may be seen in Appendix-IX. We expect that the Gram Nyayalayas as proposed would be able to handle a fairly substantial volume of ordinary crime cases which would otherwise be taking up the time of the regular courts, particularly in States where there are no such institutions presently functioning. This alternative mechanism for dealing with ordinary crimes of generally frequent occurrence in the rural areas would greatly facilitate quicker disposal in courts of cases relating to more serious crimes. We also expect vexatious litigation from the rural side to diminish since villagers who may now be inclined to involve their opponents in complaints lodged at distant police stations would be more cautious if their complaints are to come up promptly before a local body. The resultant advantages will be many in the light of the overall effect on the criminal justice system.

SCHEDULE

(Para 16.21)

OFFENCES UNDER THE INDIAN PENAL CODE OVER WHICH GRAM NYAYALAYAS WILL HAVE EXCLUSIVE CRIMINAL JURISDICTION

Sl. No.	Section	Offence	Punishment	Cognizable or Non-cognizable
1	2	3	4	5
1.	160	Committing affray.	Imprisonment for one month or fine of 100 rupees, or both.	Cognizable
2.	172	Abscinding to avoid service of summons or other proceeding from a public servant. If summons or notice require attendance in person, etc., in a Court of Justice.	Simple imprisonment for 1 month or fine of 500 rupees, or both. Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Non-cognizable —Ditto—
3.	173	Preventing the service of the affixing of any summons of notice, or the removal of it when it has been affixed, or preventing a proclamation. If summons etc., require attendance in person, etc., in a Court of Justice.	Simple imprisonment for 1 month, or fine of 500 rupees, or both. Simple imprisonment for 6 months, or fine of 1,000 rupees, or both	—Ditto— —Ditto—
4.	174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority. If the order requires personal attendance, etc., in a Court of Justice.	Simple imprisonment for 1 month, or fine of 500 rupees, or both. Simple imprisonment for 6 months, or fine of 1,000 rupees or both.	—Ditto— —Ditto—
5.	175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document. If the document is required to be produced in or delivered to a Court of Justice.	Simple imprisonment for 1 month or fine of 500 rupees, or both. Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	—Ditto— —Ditto—
6.	177	Knowingly furnishing false information to a public servant. If the information required respects the commission of an offence, etc.	Imprisonment of 6 months, or fine of 1,000 rupees, or both. Imprisonment for 2 years, or fine, or both.	—Ditto— —Ditto—
7.	178	Refusing oath when duly required to take oath by a public servant.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	—Ditto—
8.	179	Being legally bound to state truth, and refusing to answer questions.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	—Ditto—
9.	180	Refusing to sign a statement made to a public servant when legally required to do so.	Simple imprisonment for 3 months, or fine of 500 rupees, or both.	—Ditto—
10.	182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	—Ditto—
11.	186	Obstructing public servant in discharge of his public functions.	Imprisonment for 3 months, or fine of 500 rupees, or both.	—Ditto—
12.	187	Omission to assist public servant when bound by law to give such assistance. Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, etc.	Simple imprisonment for 1 month, or fine of 200 rupees, or both. Simple imprisonment for 6 months, or fine of 500 rupees, or both.	—Ditto— —Ditto—
13.	264	Fraudulent use of false instrument for weighing.	Imprisonment for 1 year, or fine, or both.	—Ditto—
14.	265	Fraudulent use of false weight or measure.	—Ditto—	—Ditto—
15.	266	Being in possession of false weights or measures for fraudulent use.	—Ditto—	—Ditto—
16.	269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	Imprisonment for 6 months, or fine, or both.	Cognizable
17.	272	Adulterating food or drink intended for sale, so as to make the same noxious.	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Non-cognizable
18.	273	Selling any food or drink as food and drink, knowing the same to be noxious.	—Ditto—	—Ditto—

1	2	3	4	5
19.	277	Defiling the water of a public spring or reservoir.	Imprisonment for 3 months, or fine of 500 rupees, or both.	Cognizable
20.	278	Making atmosphere noxious to health.	Fine of 500 rupees.	Non-cognizable
21.	279	Driving or riding on a public way so rashly or negligently as to endanger human life, etc.	Imprisonment for 6 months, or fine of 1000 rupees, or both.	Cognizable
22.	280	Navigating any vessel so rashly or negligently as to endanger human life, etc.	—Ditto—	—Ditto—
23.	283	Causing danger, obstruction or, injury in any public way or line of navigation.	Fine of 200 rupees.	—Ditto—
24.	289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt, from such animal.	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	—Ditto—
25.	290	Committing a public nuisance.	Fine of 200 rupees.	Non-cognizable
26.	294	Obscene songs.	Imprisonment for 3 months, or fine, or both.	Cognizable
27.	323	Voluntarily causing hurt.	Imprisonment for 1 year, or fine of 1,000 rupees, or both.	Non-cognizable
28.	334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Imprisonment for 1 month, or fine of 500 rupees, or both.	—Ditto—
29.	336	Doing any act which endangers human life or the personal safety of others.	Imprisonment for 3 months, or fine of 250 rupees, or both.	Cognizable
30.	341	Wrongfully restraining any person.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	—Ditto—
31.	352	Assault or use of criminal force otherwise than on grave provocation.	Imprisonment for 3 months, or fine of 500 rupees, or both.	Non-cognizable
32.	358	Assault or use of criminal force on grave and sudden provocation.	Simple imprisonment for 1 month or fine of 200 rupees, or both.	—Ditto—
33.	379	Theft.	Imprisonment for 3 years, or fine or both.	Cognizable
34.	380	Theft in a building, tent or vessel.	Imprisonment for 7 years, and fine.	—Ditto—
35.	381	Theft by clerk or servant of property in possession of master or employer.	—Ditto—	—Ditto—
36.	411	Dishonestly receiving stolen property knowing it to be stolen.	Imprisonment for 3 years, or fine, or both.	—Ditto—
37.	417	Cheating.	Imprisonment for 1 year, or fine, or both.	Non-cognizable
38.	426	Mischief.	Imprisonment for 3 months, or fine, or both.	—Ditto—
39.	427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	Imprisonment for 2 years, or fine, or both.	—Ditto—
40.	447	Criminal trespass.	Imprisonment for 3 months, or fine of 500 rupees, or both.	Cognizable
41.	448	House-trespass.	Imprisonment for 1 year, or fine of 1000 rupees, or both.	—Ditto—
42.	491	Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so.	Imprisonment for 3 months, or fine of 200 rupees, or both.	Non-cognizable
43.	506 (A)	Criminal intimidation.	Imprisonment for 2 years, or fine, or both.	—Ditto—
44.	508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Imprisonment for 1 year, or fine, or both.	—Ditto—
45.	509	Uttering any word or making any gesture intended to insult the modesty of a woman, etc.	Simple imprisonment for 1 year, or fine, or both.	Cognizable
46.	510	Appearing in a public place, etc., in a state of intoxication, and causing annoyance to any person.	Simple imprisonment for 24 hours, or fine of 10 rupees, or both.	Non-cognizable

CHAPTER XVII

MAINTENANCE OF CRIME RECORDS AND STATISTICS

17.1 Item 5 of our terms of reference requires us to "examine methods of maintaining crime records and statistics and suggest methods for making them uniform and systematic".

17.2 Sometime prior to the constitution of our Commission, a committee under the chairmanship of Shri S. Tandon, the then Director, Bureau of Police Research and Development, was set up by the Ministry of Home Affairs to look into some aspects of police computerisation programme and the development of a National Crime Information Centre. Since that Committee was to cover some ground common to the above mentioned item in our terms of reference, we got this committee's terms of reference suitably amplified to cover our item in depth and to make its recommendations on the amplified terms of reference. The Ministry of Home Affairs issued orders for this purpose on 21st February, 1978. A copy of this notification is furnished in Appendix—X.

17.3 It was also arranged that a senior officer from the Ministry of Law would be associated with the above committee, that it would work under the guidance of Shri N. S. Saksena, a Member of this Commission, and submit its final report to the Government through the Commission.

17.4 The above mentioned Committee, hereinafter referred to as the Tandon Committee, completed its deliberations and gave its report to us on 14th July, 1979. We have carefully examined the observations and recommendations of this Committee and we find ourselves in agreement with its general approach to this matter. Extracts from chapters 2 to 7 of the Committee's report relating to its important observations and recommendations are furnished in Appendix—XI.

17.5 We endorse the following important points made out in the Tandon Committee's Report :—

- (i) Maintenance of crime records at the police station level and submission of periodic reports and returns from there to the district level and the State level should be so designed as to fit into a scheme of computerised maintenance of data/information at the State level/National level.
- (ii) Changes in the existing crime record system in different States should be minimal for the limited purpose of achieving the objective mentioned above.

(iii) Detailed recommendations made by a Committee of DIsG set up in 1962 regarding the type of records to be maintained at police stations may be kept as model and worked upon further in States.

(iv) District Crime Record Bureau, State Crime Record Bureau and the National Crime Record Bureau should be set up with legal backing and adequate staff.

(v) The Central Finger Print Bureau which is now located in Calcutta should merge with the National Crime Record Bureau which may be located either in Delhi or Hyderabad. Hyderabad location will facilitate useful interaction with the SVP National Police Academy.

(vi) Collection and maintenance of data for national and Interpol purposes, at present handled by the Bureau of Police Research and Development and Central Bureau of Investigation, may be integrated with the proposed National Crime Record Bureau.

(vii) Computerisation of Finger Prints at the State level and National level should be taken up on hand and completed within a reasonable time frame, say five years.

(viii) Communication channels in the shape of VHF telephones and teleprinters between police stations and district headquarters, between district headquarters, and State headquarters and the final link up with the headquarters of the National Crime Record Bureau should be built up to facilitate prompt exchange of data/information. This will be very necessary to aid investigational work and reduce infructuous arrests and prolonged detention of persons on mere suspicion without adequate grounds.

(ix) One or more educated constables must be specifically designated in every police station as Collators who will be responsible for maintenance of crime records at the police station, preparation of the input forms originating from the police station in respect of all police computer applications, placing all computer outputs received in the police station before the Station House Officer for their effective utilisation, handling the P&T telephone and other technical equipment, if any, in the police station, and generally

assisting the Station House Officer in all correspondence with the District Crime Records Bureau and the State Crime Records Bureau.

17.6 Another important recommendation made by the Tandon Committee relates to the enactment of a new comprehensive law in replacement of the existing "Identification of Prisoners Act, 1920" to facilitate the collection and recording of a large variety of data/information connected with crimes and offenders. The existing law facilitates the collection of finger prints, foot prints and photographs only of arrested/convicted persons in certain limited circumstances, either by the police officer in the course of his investigation or on orders from a Magistrate. The emphasis in the present law is on the collection of very limited data after a person has been arrested or convicted or ordered to give security for good behaviour. A proper study of the problem of crime in society would require analysis of a much larger variety of data concerning the very occurrence of different forms of crime irrespective of the offenders involved, and several aspects of the conduct and personality of individuals who are found prone to criminal behaviour or are actually involved in the commission of specific crimes, irrespective of whether they are arrested or convicted in any particular case. A lot of significant data/information may get thrown up when a probation officer completes his supervision over the conduct and behaviour of a juvenile delinquent entrusted to his charge. Several interesting bits of information of vital interest to criminologists and social scientists may come up through correctional institutions if the inmates' response to the atmosphere and treatment inside these institutions is carefully watched and assessed. It is in this context that we visualise the proposed Crime Record Bureaus at the State/National level to function as an authorised storehouse of a variety of data and information which will help not only the police in the performance of their investigative jobs but also the functionaries in probation services, jails and correctional institutions, besides criminologists and social scientists, in their respective fields of correctional work and analytical studies. To serve this manifold purpose, the Crime Record Bureaus should be authorised to receive information from all the different branches of the criminal justice system which will include the police, prosecutors, courts, probation services, jails and other correctional institutions. We, therefore, fully endorse the recommendation of the Tandon Committee for the enactment of a new comprehensive Act in replacement of the existing Identification of Prisoners Act, 1920.

17.7 The Tandon Committee has also enclosed to its Report, a draft of the new Act. We have carefully examined the provisions embodied in the draft.

We feel that the definition of "Crime and Offender Data" as proposed by the Committee should be made more specific, and the circumstances in which the prescribed data may be collected should be described in a more precise manner to avoid scope for harassment and misuse. We also feel that, as a further safeguard, the rules that may be framed under the Act from time to time should be laid before Parliament/State Legislature for a prescribed period and be subject to such modifications as the House may specify. We, therefore, recommend a revised draft as furnished in Appendix XII for the new Act which may be called "The Crime and Offender Records Act". It may be enacted as a Central Act with rule-making powers available to the Central and the State Governments.

17.8 The proposed Crime Record Bureaus at the State/National level will form the bedrock of the new information system for the entire country and its success will very much depend on the effective spread of the computer network. We are aware that the Government of India have rendered substantial aid to the States for installing computers in the police communication and record systems, and we recommend the continuance of this aid in increasing measure to complete a time-bound computerisation plan.

17.9 As regards the district level bureau, the Tandon Committee has recommended the name "District Crime Bureau" while the corresponding units at the State level and the National level are to be called "State Crime Record Bureau" and "National Crime Record Bureau". We would recommend the name "District Crime Record Bureau" for the district unit, as otherwise it might be confused with a field unit with direct investigative responsibility. As regards the staffing pattern for the three units at the district/State/National level, we would prefer to leave it to the respective State Governments to decide in consultation with the Chief of Police, who will no doubt take into account the views expressed by the Tandon Committee in this regard.

17.10 The proposed Crime Record Bureaus, when they get going, will be able to receive, store and furnish back different types of data/information relevant to different purposes like investigational requirements of the police, study of the effect of the present scheme of court trials and procedures and sentencing policy on the subsequent conduct of the criminal, assessment of the effect of probation and correctional services now in operation, study of the various environmental and other factors which promote deviant behaviour and criminality in society, etc., and thus effectively serve the overall purpose of the criminal justice system as a whole.

CHAPTER XVIII

SUMMARY OF OBSERVATIONS AND RECOMMENDATIONS

Welfare measures for police families

18.1 Among the many deficiencies that got exposed in the situation following the recent agitation by policemen in some States, one relates to the inadequacy of welfare measures for police families.

(Para 13.1)

18.2 Governments have tended to accord low priority to the funding of police welfare measures. Police leadership does not appear to have realised its responsibility to take the initiative and organise such measures with a total and complete involvement of the personnel in maintaining them. The rank and file themselves have tended to view these measures as a responsibility of the Government and have been disinclined to perform their own contributory role in full measure.

(Para 13.2)

18.3 The Ashwini Kumar Committee has given a report recommending several welfare measures to cover housing, education, medical care, recreational facilities, financial aid and special retirement benefits in distress situations arising from death or physical disability caused by service conditions, etc. Extracts from Ashwini Kumar Committee's Report are furnished in Appendix II. We broadly agree with these recommendations and would advise their adoption in planning police welfare measures in the States.

(Para 13.4)

18.4 One category of welfare measures would cover such items like pension/family pension/gratuity, medical facilities, housing, etc. which should be deemed as a part of conditions of service of police personnel and, therefore, should be funded fully and adequately by the Government. Another category would cover such measures like welfare centres to provide work for police families and help in augmenting their income, financial aid and encouragement for pursuing higher studies by police children who show special merit, financial relief in distress situations not provided for under regular rules, etc. For organising welfare measures of the second category, an adequate welfare fund should be built up initially by contributions from the police personnel themselves, supplemented by *ad hoc* grants from the Government and sustained by recurring contributions and grants. In organising such measures and building up the necessary fund, a lot will depend on the initiative and interest taken by the personnel themselves and the continuous lead, guidance and support given by supervisory officers. The officer cadre of the force should realise their special responsibility in this regard and act accordingly.

(Para 13.5)

18.5 The work done by an officer in organising welfare measures for the personnel under his command should be specifically commented on in his annual confidential report.

(Para 13.5)

18.6 Wives of officers can play a significant role in bringing together the families of police personnel and encouraging their collective involvement in welfare work of different kinds.

(Para 13.5)

18.7 A brief assessment of the existing welfare measures for the police personnel in different States is furnished in Appendix III. It indicates under different headings the most advantageous and beneficial arrangement that a few States have found it possible to introduce in regard to their own police personnel. The remaining States may immediately examine the feasibility of introducing similar arrangements for their policemen also.

(Para 13.6)

18.8 Government should take special care of the family of a policeman who happens to die or get disabled in circumstances arising from the risks of his office. In the case of a policeman who dies in such circumstances we would recommend financial aid to the family on the following lines :—

- (i) *Gratuity* equivalent to 8 months' pay last drawn by the deceased ;
- (ii) *Monthly pension* to the family equal to the last pay drawn by the deceased till the date on which the deceased would have normally reached the age of superannuation, and thereafter a monthly pension equal to the amount of pension to which the deceased would have been entitled if he had continued in service till the date of his superannuation ; and
- (iii) *Ex-gratia grant* of Rs. 10,000 as immediate financial assistance.

(Para 13.7)

18.9 Arrangements for line visits by a Government doctor should be made by authorising a small monthly allowance to the doctor from Government funds, if need be, depending on the frequency of calls and the distances involved.

(Para 13.8)

18.10 Medical treatment in all police hospitals should also be extended to retired police personnel and their families.

(Para 13.9)

18.11 We endorse the following important recommendations of various State Police Commissions in regard to the educational facilities for policemen's children :

- (1) There should be free education upto high school standard ;
- (2) The children of policemen should get a grant of Rs. 50 p.a. per child in lump sum for purchase of books ;

- (3) There should be no fees charged in Government or Government aided schools ;
- (4) Scholarships should be provided for vocational education ;
- (5) There should be hostel accommodation for the children of policemen at every divisional headquarters ; and
- (6) Special scholarships should be given on grounds of exceptional merit for university education.

(Para 13.11)

18.12 The first requisite of any arrangement for this purpose would be the creation of a separate police education fund in each State, made up of contributions from the police personnel themselves and supplemented and assisted by *ad hoc*/recurring grants from the State Government. The fund should be built up with the ultimate object of establishing at least one police school in each district headquarters which could take in police children for education upto the 12th standard. Hostel accommodation for children of police personnel located outside the district headquarters should also be planned. Admission to such schools should be governed by suitable tests to recognise merit and facilitate the development of bright young police children. In the curriculum of these schools, there should be special emphasis on discipline and a healthy combination of rigorous outdoor exercises with intensive academic pursuits. Management of all such police schools in a State may be supervised by the Head of the training wing of the Police Department and overseen by a Police School Board whose chairman could be the Head of the Department of Education in the State and the Member Secretary could be the Head of the training wing in the police. A couple of eminent educationists could also be nominated to the Board. The pay and allowances of the police personnel on the staff in the school could be borne by the Police Department. The deputation allowance and other incentives provided to the other teaching staff drawn on deputation from the other Government schools may also be borne by the Police Department. The rest of the expenditure may be borne by the Education Department. Police children who do exceptionally well in these schools may be encouraged with scholarship from 'police welfare fund' to pursue higher collegiate studies.

(Para 13.13)

18.13 Every effort should be made to finalise pension papers in good time so that every policeman receives his full pension order along with the gratuity amount and other dues on the very day of retirement itself. We were told in one metropolitan city about the initiative shown by the Commissioner of Police in arranging for farewell parades for all policemen who retired every month and seeing them off in a solemn ceremony with the full payment of their dues and pension order. We commend this initiative to all police units.

(Para 13.14)

18.14 Inadequate leave reserve is one of the reasons behind the organisation's inability to sanction and

rotate leave promptly among the operating personnel. This deficiency in the strength of police personnel should be looked into and made good.

(Para 13.15)

18.15 Different types of 'group insurance schemes' are now available for all categories of employees in Government. Details of two special schemes which appear to be specially attractive and have been adopted in two States are furnished in the note in Appendix III. We recommend their adoption in other States as well.

(Para 13.16)

18.16 Regarding the sources and mechanism for the initial building up of police welfare fund and its sustained maintenance, the Ashwini Kumar Committee has made specific recommendations with which we agree. The broad principle which may guide the working arrangements in this matter should be that 60% of the requirements of the fund comes from contributions from the police personnel themselves, 20% is made up from Government grants and the balance 20% is covered by the interest generated by the initial lump sum grants which may be kept in fixed deposits or invested otherwise.

(Para 13.17)

18.17 Management of the welfare fund should be by a committee constituted by the police staff council.

(Para 13.18)

18.18 The audit of the welfare fund at the battalion/district level should be made the responsibility of a sub-committee of the battalion/district staff council which would be representative in character and adequately reflect the interests of the rank and file. It will be open to this sub-committee to take the assistance of a qualified professional accountant or auditor to get this job done.

(Para 13.19)

18.19 Wages for work done by police families at welfare centres in stitching police uniform or for other similar occupation should be determined by a local committee in which the Government secretariat and the police management could both be involved to take a realistic view of all the relevant factors.

(Para 13.20)

18.20 Retired police personnel and educated girls in police families may be given first preference for employment to manage and run police canteens and stores.

(Para 13.21)

18.21 A recurring deposit scheme as organised in the Border Security Force for augmenting the pension/gratuity assistance for the police personnel at the time of their retirement may be adopted by all police units.

(Para 13.22)

18.22 Every State police must have a whole-time police welfare officer at the State Headquarters who, by his initiative and interest, should organise welfare measures on a sound basis in every district/battalion and, what is more, ensure satisfactory delivery of welfare services on the ground. We leave it to the

State Governments to decide the rank of this officer at State Headquarters, while observing that it is not the mere rank but the initiative and genuine interest shown by the officer and the example set by him that would count more in this matter.

(Para 13.24)

18.23 Resettlement of ex-policemen who retire in the normal course will need assistance and advice to keep themselves occupied and settled in reasonable comfort. There is considerable scope for rendering assistance in the matter of securing allotment of land for cultivation, or facilities for productive self-employment from various developmental agencies under the Government or otherwise. The State Police Welfare Officer should deem it a part of his responsibility to render this help on a systematic basis for retired police personnel.

(Para 13.25)

Police role, duties, powers and responsibilities

18.24 Police, prosecutors, advocates, judges, functionaries in the correctional services and jails form the different distinct organised wings of the criminal justice system. The role, duties, powers and responsibilities of the police with special reference to prevention and control of crime cannot be defined in isolation in absolute terms, but has to be fitted into the overall requirements for the success of the criminal justice system as a whole.

(Para 14.1)

18.25 The classification of offences and limitations of police response to complaints thereof, as spelt out in the existing laws, do not conform to the understanding and expectation of the common people who, when they become victims of a crime or are otherwise subjected to a distress situation, naturally turn to the police for help. Police become a much misunderstood force when their action gets limited by law contrary to the natural expectations of the people. There is, therefore, immediate need to examine the procedural laws and allied regulations for modifying them to enable police response to conform to public expectations, consistent with the resources potential of the police.

(Para 14.2)

18.26 The rules which govern the present accusatorial system of criminal trials make various demands from and place various restrictions on the prosecution so that the defendant gets all the help he can to defend himself. At the end of the trial the prosecution must prove their case beyond reasonable doubt, but the accused may, however, only raise a doubt and get its benefit to secure his acquittal. The severe limitations placed on the admissibility of evidence from the prosecution side and the norms for determining the value of the admitted evidence make it difficult for the police as the investigating agency to carry forward all the material uncovered during their investigation to the final point of success in getting the offender convicted under the law.

(Para 14.5)

18.27 We are convinced of the need for effective interaction between the police and the prosecuting agency at the stage of court trial for proper marshalling and presentation of all the evidence uncovered

during investigation. Facilities for such interaction should be provided without in any manner affecting the professional independence of the prosecuting agency. The need for such interaction should also be suitably recognised in law instead of being left as a mere administrative arrangement.

(Para 14.6)

18.28 The rituals of court trials under the existing law and the general attitude shown by the legal counsel tend to delay the proceedings in court. Apart from the delays at the stage of investigation which are attributable to deficiencies in police, the further delay at the stage of trial results in considerable harassment to the victims of a crime while at the same time the effect of deterrence of quick conclusion of proceedings in court is lost on the offender himself. Pendency of criminal cases undertrial in courts has gone up enormously in the recent years and the system itself will soon get clogged up beyond repair if the existing law is allowed to operate without any modification.

(Para 14.7)

18.29 There is urgent need for a comprehensive reform in the procedural laws relating to investigation and trial in our system.

(Para 14.8)

18.30 Though well-conceived and based on progressive concepts, the institutions and services contemplated under the Probation of Offenders Act, the Children Act, the Suppression of Immoral Traffic Act and similar enactments in the category of social legislation suffer in practice because of a totally inadequate infra-structure.

(Para 14.9)

18.31 Our jails are terribly overcrowded. The population of undertrial prisoners in relation to convicts has rapidly increased. The huddling together of a large number of undertrials with convicted prisoners and the mixing together of old and hardened criminals with young first offenders tend to promote in the minds of all inmates feelings of criminality instead of remorse and regret for their previous conduct and a desire to reform.

(Para 14.13)

18.32 Apart from the over-crowding in jails, the general manner in which the rituals of the daily life inside the jails are rigidly administered and enforced tends to dehumanise the prisoner who is cowed down by the oppressive atmosphere around with all its brutalities, stench, degradation and insult. Instead of functioning as a reformatory house to rehabilitate the criminal to reform him and make him see the error of his ways and return a better and nobler man, the ethos inside our jails to-day is tragically set in the opposite direction, making it practically difficult for any reformatory process to operate meaningfully.

(Para 14.13)

18.33 The deficiency in the functioning of their correctional services has meant the weakening of their corrective influence on the behaviour and conduct of all the delinquents who pass through the system. Police, who appear in the first part of the system to investigate crimes and identify the offenders involved, have again

to contend with the likely continued criminal behaviour of the same offenders, without the expected aid and assistance from the other agencies of the system to contain their criminality. We are, therefore, of the opinion that in whatever way we may define the role, duties and responsibilities of the police, they cannot achieve ultimate success in their role performance unless all the wings of the criminal justice system operate with simultaneous efficiency. This would require our having some kind of body which will have the necessary authority and facilities to maintain a constant and comprehensive look at the entire system, monitor its performance and apply the necessary correctives from time to time, having in view the overall objective of the system. In view of the primacy of law in the entire system, our first thoughts in this matter go to the Law Commission. We feel it would be advantageous to enlarge the concept of the Law Commission and make it function as a Criminal Justice Commission on a statutory basis to perform this overseeing role on a continuing basis. For this purpose it would be desirable for appropriate functionaries from the police and correctional services to be actively associated with the deliberations of the new Commission. This arrangement at the Centre should be supported by a similar arrangement at the State level in which a high powered body under the Chairmanship of the Chief Justice of the High Court, either serving or retired, and with members drawn from the police, bar and the correctional services, would perform this monitoring role and evaluate annually the performance of the system as a whole.

(Para 14.14)

18.34 Police role in maintaining public order has even greater limitations specially in a democracy. Maintenance of order implies a certain measure of peace and avoidance of violence of any kind. Public order is deemed to have been upset, in public estimate, if violence breaks out in public in a noticeable form. The characteristic features of the existing social structure in India are (i) inter-group conflicts on account of religion, language, caste, etc; (ii) increasing pressure of poverty; (iii) increasing unemployment; and (iv) rapid urban growth rate with a concentration of organised protest groups in urban areas like Government employees, industrial workers, political groups students, etc. All these factors, combined with the general belief among the havenots that the only way to evoke response from administration is to launch an agitation or a strike or any form of protest activity involving violence of some kind or other, induce an atmosphere of continuing pressure and proneness to break into situations of public disorder.

(Para 14.16)

18.35 Public urge for reform and relief from pressure situations of the above kind are often articulated by political parties, particularly those in opposition to the ruling party. Protest activity, therefore, gets mixed up with political dissent. Police methodology in dealing with such situations has necessarily to conform to democratic traditions and cannot have the trappings of the technique of an authoritarian regime to sustain itself in power. In

such circumstances, the police have the most difficult role to perform to maintain order. Any step taken by them for this purpose is immediately viewed by the agitating public as partisan conduct to maintain the *status quo* and oppose the changes for which the agitators clamour. Police invariably get dubbed as being on the side of the conservative and the non-changer. Police action in such situations is severely handicapped on this account. Police cannot be expected to handle such situations all by themselves but they should have accommodation, co-operation, assistance, sympathy and understanding from organised section of the public themselves.

(Para 14.17)

18.36 The basic role of the police is to function as a law enforcement agency and render impartial service to law, in complete independence of mere wishes, indications or desires, expressed by the Government as a matter of policy which either come in conflict with or do not conform to the provisions in our Constitution or laws duly enacted thereunder. We recommend that this basic role of the police may be specifically spelt out in categorical terms in the Police Act.

(Para 14.28)

18.37 A Code of Conduct for the police in India was adopted at the Conference of Inspectors General of Police in 1960 and circulated to all the State Governments. We recommend that clause (12) of the above Code may be modified to read as under :

- (12) The police should recognise that their full utility to the people of the country is best ensured only by maintaining a high standard of discipline, faithful performance of duties in accordance with law and implicit obedience to the directions of commanding ranks and absolute loyalty to the force and by keeping themselves in a state of constant training and preparedness.

(Para 14.29)

18.38 Having regard to the objectives mentioned in the Preamble to our Constitution, we would hold that law enforcement by police should cover the following two basic functions :—

- (i) Upholding the dignity of the individual by safeguarding his constitutional and legal rights. Police secure this objective by enforcing laws relating to the protection of life, liberty and property of the people ; and
- (ii) Safeguarding the fabric of society and the unity and integrity of the nation. Police secure this objective by enforcing laws relating to maintenance of public order.

(Para 14.31)

18.39 We are of the view that police have a direct and more or less exclusive responsibility in the task of investigating crimes but have a limited role in regard to the prevention of crime for the reason that the various contributory factors leading to crime do not totally and exclusively fall within the domain of

police for control and regulation. A co-ordinated understanding and appreciation of these factors not only by the police but also by several other agencies connected with social defence and welfare would be necessary for effective prevention of crime. Police responsibility for the prevention of crime has thus to be shared to some extent with other agencies. We feel that this distinction in police responsibility for investigation of crime on the one hand and prevention of crime on the other should be clearly understood and indicated in the Police Act itself, which would also thereby institutionalise and facilitate appropriate associative action by other social welfare agencies for preventing crime.

(Para 14.32)

18.40 We recommend a system of licensing with appropriate statutory backing to control the working of private detective agencies which have come up in the country in the recent years.

(Para 14.35)

18.41 Police responsibility for investigation of crimes may be spelt out in general terms in the basic law, namely, the Police Act, but in actual procedural practice there should be graded situations specifying different degrees of police responsibility in regard to different types of crimes.

(Para 14.36)

18.42 Certain types of crimes will require police intervention on their own initiative and on their own intelligence, without waiting for a complaint as such from any aggrieved person. Certain other types of crimes may justify police intervention only on a specific complaint from a member of the public. A third category of crime can be visualised where police may intervene only on a complaint from an aggrieved party and not by any member of the public.

(Para 14.36)

18.43 With regard to police role in the enforcement of social legislation, we are of the view that as the primary law enforcement agency available to the State, police cannot escape involvement in the enforcement of social and economic laws also in some form or the other. Police have a duty to enforce these laws but the manner of enforcement can certainly be regulated and controlled to avoid some possible evils that may arise from this involvement.

(Para 14.40)

18.44 Police responsibility for prevention and investigation of ordinary crimes may ultimately lead them on to involvement in containing law and order situations, public order situations and threats to internal security, in that order. When the country's internal security is threatened, the Central Government has a direct responsibility for taking appropriate counter measures. It has been the practice for the Central Government to come to the aid of State Governments by deputing armed forces of the Centre like CRP and BSF to aid the State police in dealing with serious public order situations. Police is at present a State subject in the 7th Schedule of the Constitution. It is for consideration of the Central Government and the State Governments whether the

Central Government should be constitutionally facilitated to coordinate and direct police operations in situations which threaten internal security. In our view, the addition of Entry 2A in the Union List of the 7th Schedule following the Constitution (Forty Second) Amendment Act, 1976 recognises this need to some extent. We understand that no law has yet been enacted and no rules or regulations have yet been laid down governing the jurisdiction, privileges and liabilities of the members of the armed forces of the Union when they are deployed in a State in accordance with Entry 2A of the Union List. We recommend that appropriate law/rules/regulations for this purpose be enacted soon.

(Para 14.42)

18.45 Under the existing law—Section 23 of the Police Act, 1861—the police are responsible for collecting intelligence affecting public peace only. We recommend that police powers for collection of intelligence should cover not only matters affecting public peace but also matters relatable to crimes in general including social and economic offences, national integrity and security. The legal provisions in this regard should be in the nature of enabling provisions which can be availed by the police to collect intelligence as and when required. Law should not place the exclusive responsibility on the police only for collection of all intelligence on these matters because we are aware that a variety of intelligence relevant to these matters may fall within the jurisdiction of some other developmental or regulatory agencies as well. We further recommend that a police agency should not have the power or facilities for collection of any intelligence other than what is specified in law, as proposed.

(Para 14.44)

18.46 There is considerable scope for exercise of discretion at various stages in the discharge of police functions, particularly in regard to preventive policing measures before a crime occurs, as distinct from investigation which starts after the occurrence of crime. We are of the view that exercise of discretion in all such situations should be based on the assessment and judgment of the police functionaries concerned only. To prevent freakish or whimsical decision in such matters some broad guidelines should be laid down to cover all such conceivable situations. Police Manuals which do not contain such guidelines at present should be appropriately amplified. These guidelines should be set out in clear terms and also made known to the public. *Ad hoc* views or policies declared on the spur of the moment and conveyed orally or otherwise from the executive hierarchy above should not be deemed equivalent to guidelines for such purposes. In the absence of a guideline, the matter should be left to the sole discretion of the police officer directly involved in the situation and should not be subject to directions from above, except where it falls within the legitimate supervisory responsibility of a higher functionary under the law.

(Para 14.45)

18.47 Counselling and warning should be deemed as legitimate police activities towards prevention of crime and recognised as such in law.

(Para 14.46)

18.48 The police should have a duly recognised service-oriented role to play in providing relief to persons in distress situations like those arising out of natural calamities like cyclones, floods, etc. The police should be trained and equipped properly to perform these service-oriented functions.

(Para 14.50)

18.49 We recommend that the new police Act may spell out the duties and responsibilities of the police to—

- (i) promote and preserve public order;
- (ii) investigate crimes, and where appropriate, to apprehend the offenders and participate in subsequent legal proceedings connected therewith;
- (iii) identify problems and situations that are likely to result in commission of crimes;
- (iv) reduce the opportunities for the commission of crimes through preventive patrol and other appropriate police measures;
- (v) aid and co-operate with other relevant agencies in implementing other appropriate measures for prevention of crimes;
- (vi) aid individuals who are in danger of physical harm;
- (vii) create and maintain a feeling of security in the community;
- (viii) facilitate orderly movement of people and vehicles;
- (ix) counsel and resolve conflicts and promote amity;
- (x) provide other appropriate services and afford relief to people in distress situations;
- (xi) collect intelligence relating to matters affecting public peace and crimes in general including social and economic offences, national integrity and security; and
- (xii) perform such other duties as may be enjoined on them by law for the time being in force.

Item (ii) above will give legal scope for police to be associated with the process of prosecution and have effective interaction with the prosecuting agency. Items (iii) and (v) will afford scope for police to be associated in a recognised manner with the other wings of the criminal justice system for preventing crime and reforming criminals. Items (ix) and (x) will facilitate the performance of service-oriented functions and will also recognise a counselling and mediating role for the police in appropriate situations.

(Para 14.51)

Interference with and misuse of police by illegal or improper orders or pressure from political, executive or other extraneous sources—Remedial measures

18.50 While steering the country towards the promised objectives of the socialist welfare State for its hundreds of millions of people, the Government have had to control and regulate in an increasing degree the conduct and business of different sections of people through progressive legislation and other related measures. This has meant increasing exercise of power by the Government through its widely spread apparatus of the executive in several matters affecting the daily life of the people. National leaders, who were at the helm in different parts of the country in the first decade after Independence, conducted the affairs of the Government with great vision and wise statesmanship and set down patterns of conduct and inter-relationship between the political leadership in Government on the one side and the civil services on the other. Though not precisely defined, their respective roles were mutually understood fairly well and followed in practice. While the civil services had the benefit of lead and guidance in policy from the political leadership having in view the expectations and aspirations of the public, the political masters had the benefit of professional advice from the civil services regarding the different dimensions of the problems they had to solve. Great leaders and statesmen like Jawaharlal Nehru, Sardar Patel, Abul Kalam Azad, Rajagopalachari, Govind Ballabh Pant, Rafi Ahmed Kidwai, K. Kamaraj, B. C. Roy and Sri Krishna Sinha provided an atmosphere of dignity and sense of direction for the civil services to function honestly and efficiently, with public interests constantly held in view. Passing years saw the entry of a large variety of people into the field of politics and increasing contact between politicians and the executive at various levels in a variety of situations, including those caused by decreasing majorities in legislatures. Scope for exercise of power through the political leadership in Government induced political functionaries outside the Government to take undue interest in the conduct of Government affairs, and gradually the spectre of 'political interference' appeared on the scene. Police, as a part of the civil services, came within the ambit of this interference. In fact the police became specially vulnerable to interference from politicians because of the immense political advantage that could be readily reaped by misuse of police powers. The quality of police performance was and continues to be adversely affected by such interference.

(Para 15.2)

18.51 After long years of tradition of law enforcement subject to executive will under the British rule, the police entered their new role in independent India in 1947. The foreign power was replaced by a political party that came up through the democratic process as laid down in our Constitution. For a time things went well without any notice of any change, because of the corrective influences that were brought to bear on the administrative structure by the enlightened political leadership. However, as years

passed by there was a qualitative change in the style of politics. The fervour of the freedom struggle and the concept of sacrifice that it implied faded out quickly, yielding place to new styles and norms of behaviour by politicians to whom politics became a career by itself. Prolonged one-party rule at the Centre and in the States for over 30 years coupled with the natural desire of ruling partymen to remain in positions of power resulted in the development of symbiotic relationship between politicians on one hand and the civil services on the other. Vested interests grew on both sides. What started as a normal interaction between the politicians and the services for the avowed objective of better administration with better awareness of public feelings and expectations, soon degenerated into different forms of intercession, intervention and interference with *mala fide* objectives unconnected with public interest.

(Para 15.4)

18.52 Consequent on the agitationist posture taken up by some political parties in opposition, protest demonstrations, public meetings, processions, politically motivated strikes in the industrial sector, dharnas, gheraos, etc. have become a recurrent feature of political activity in the country. Police have been increasingly drawn into the resultant law and order situations and are expected by the ruling party to deal with all such situations with a political eye. Putting down political dissent has become a tacitly accepted objective of the police system.

(Para 15.6)

18.53 Some typical situations or matters in which pressure is brought to bear on the police by the political, executive or other extraneous sources are listed below :

- (i) Arrest or non-arrest of a person against whom a case is taken up for investigation by the police.
- (ii) Deliberate handcuffing of a person in police custody merely to humiliate him.
- (iii) Release or non-release on bail after arrest.
- (iv) Suppression of material evidence that becomes available during searches by police.
- (v) Inclusion or non-inclusion in the charge-sheet placed in court on conclusion of investigation.
- (vi) Posting or non-posting of police force in an area of apprehended trouble to create an effect to the advantage of one party or the other.
- (vii) Taking persons into preventive custody to immobilise them from legitimate political activity in opposition to the party in power.
- (viii) Foisting false criminal cases against political functionaries for achieving political ends.
- (ix) Discretionary enforcement of law while dealing with public order situations, with

emphasis on severity and ruthlessness in regard to persons opposed to the ruling party.

- (x) Manoeuvring police intervention by exaggerating a non-cognizable offence or engineering a false complaint to gain advantage over another party in a situation which will lie outside the domain of police action in the normal course.
- (xi) Preparation of malicious and tendentious intelligence reports to facilitate action against an opponent.

(Para 15.13)

18.54 Pressure on the police takes a variety of forms, ranging from a promise of career advancement and preferential treatment in service matters if the demand is yielded to, and a threat of drastic penal action and disfavoured treatment in service matters if the pressure is resisted. While it is not possible to punish a police officer with a statutory punishment under the Discipline and Appeal Rules without adequate grounds and following a prescribed procedure, it is very easy to subject him to administrative action by way of transfer or suspension on the basis of an alleged complaint taken up for inquiry. While suspension acts as a great humiliating factor, a transfer acts as a severe economic blow and disruption of the police officers' family, children's education, etc. The threat of transfer/suspension is the most potent weapon in the hands of the politician to bend down the police to his will.

(Para 15.14)

18.55 During our tours in the States several officers brought to our notice this phenomenon of frequent and indiscriminate transfers ordered on political considerations. We analysed the frequency of transfers in different ranks in the States in the five year period 1973—77 and found the following position in many States :—

Rank	Average period of stay in the same post/same station	
I.G.	1 year & 8 months	(In one State 6 IsG were changed, in three States 5 IsG were changed in this period).
S.P.	1 year & 7 months	(In one State it is as low as 11 months).
Sub Inspector	1 year & 2 months	(In one State it is as low as 7 months and in three others it was 10 months).

In computing the above period, we have excluded the transfers arising from normal administrative reasons like promotion to a higher post, deputation to training or to a post under the Central Government, retirement, removal/dismissal from service, etc. The frequent changes of officers, particularly at the operational level

of Sub Inspectors in Police Stations and Superintendents of Police in districts coupled with frequent changes at the apex, namely, Inspector General of Police, have no doubt largely contributed to the sharp decline in the quality of police service down the line. Inspectors General in some States have been changed as often as the Chief Minister or the Home Minister changed! The interests of real professional service to the public have been sacrificed at the altar of political expediency.

(Para 15.15)

18.56 We are also aware that the unhealthy influences and pressures that are brought to bear on the police do not always originate from political sources alone. Capitalists, industrialists, businessmen, landlords and such others who form the richer and more influential sections of society have immense capacity to generate such pressures to operate at different levels in the police, either directly or indirectly through political sources, and influence the course of police action.

(Para 15.17)

18.57 Interference with the police system by extraneous sources, especially the politicians, encourages the police personnel to believe that their career advancement does not at all depend on the merits of their professional performance, but can be secured by currying favour with politicians who count. Deliberate and sustained cultivation of a few individuals on the political plane takes up all the time of a number of police personnel to the detriment of the performance of their normal professional jobs to the satisfaction of the general public at large. This process sets the system on the downward slope to decay and total ineffectiveness

(Para 15.18)

18.58 Interference at the operational level in police stations, police circles, etc. results in the total by-passing of the supervisory officers in the hierarchy. The frequent by-passing of the normal chain of command results in the atrophy of the supervisory structure. It, therefore, fails to operate effectively even in matters which do not attract any such extraneous interference. This was strikingly seen in the situation arising from the policemen's stir in certain States in May-June 1979.

(Para 15.19)

18.59 In their anxiety to ensure police performance in accordance with the appreciation of the situation by the political party in power, some State Governments are known to have issued executive instructions restricting the scope for police action even in situations where a specific line of action by police is enjoined on them by law itself.

(Para 15.20)

18.60 A police force which does not remain outside politics but is constantly subjected to influences and pressures emanating within the system from the politicised police personnel themselves will in turn seriously disturb the stability of the duly elected political leadership in the State itself and thereby cause serious damage to the fabric of our democracy. This danger has to be realised with equal seriousness and concern by the politician as well as by the police.

(Para 15.25)

18.61 The experience of several other democracies has also shown the need for evolving healthy norms in the interaction between the political leadership in Government and the executive services, to ensure that each section performs its duly recognised role and benefits by the corrective influence from the other in constantly serving the cause of public interest.

(Para 15.31)

18.62 We have already observed how in the early years after independence the political leadership provided by well-motivated administrators and statesmen had in fact enabled the services including the police to function effectively in the best interests of the public at large. We feel confident that the existing situation can certainly be corrected and we can evolve practicable remedial measures to bring about a healthy functioning of the police with helpful and wise guidance from the elected representatives of the people.

(Para 15.32)

18.63 We feel that it would be appropriate to lay down that the power of superintendence of the State Government over the police should be limited for the purpose of ensuring that police performance is in strict accordance with law.

(Para 15.38)

18.64 Police tasks may be broadly divided into three categories for the purpose of analysing the relevance of supervision by Government. They are (i) investigative; (ii) preventive and (iii) service-oriented. Investigative tasks will include all action taken by the police in the course of investigating a case under Chapter XII of the Code of Criminal Procedure. Preventive tasks will cover such actions like preventive arrests under section 151 Cr.P.C., initiation of security proceedings, arrangement of beats and patrols, collection of intelligence and maintenance of crime records to plan and execute appropriate preventive action, deployment of police force as a preventive measure when breach of peace is threatened, handling of unlawful assemblies and their dispersal, etc. Service-oriented functions will include rendering service of a general nature during fairs and festivals, rescuing children lost in crowds, providing relief in distress situations arising from natural calamities etc.

(Para 15.39)

18.65 As far as investigative tasks are concerned we have a clear ruling from the Supreme Court that the nature of action to be taken on conclusion of investigation is a matter to be decided by the police only and by no other authority—*vide* para 18 of the Supreme Court judgment in criminal appeal No. 218 of 1966 reported in AIR 1968 Supreme Court 117 (V 55 C 32). It may, therefore, be safely projected as a fundamental principle governing police work that the investigative tasks of the police are beyond any kind of intervention by the executive or non-executive. Any arrangement in which the investigative tasks of the police are sought to be brought under executive control and direction would go against this fundamental principle spelt out by the Supreme Court and hence should be deemed illegal. We would, therefore, recommend in the first place that all the executive instructions issued by the government having a bearing

TABLE II
Upper Subordinate Ranks

State	Total Strength			Leave reserve sanctioned	% of leave reserve
	Inspector	S.I.	A.S.I.		
1. Uttar Pradesh	908	7556	699 = 9163	1098 (SIs)	11.9
2. Maharashtra	796	3739	— = 4535	225 (SIs)	4.9
3. Gujarat	434	1648	— = 2082	77 (SIs)	3.7
4. Punjab	171	812	1201 = 2184	6 Insp. + 34 SIs + 135 ASIs = 175	8.0
5. Rajasthan	227	1410	934 = 2571	198 SIs + 103 ASIs = 301	11.7
6. Tamil Nadu	714	2266	822 = 3802	6 Insp. + 78 SIs + 1 ASI = 85	2.2

The above tables speak for themselves. They show that some of the leave reserves are grossly inadequate to permit leave being granted liberally upto the entitlements.

Encashment of leave on superannuation

14. The concession of encashment of leave has been sanctioned in a number of States to compensate their employees in lieu of leave which remains to their credit at the time of superannuation. In most States and Union Territories all police personnel are entitled to the cash equivalent of leave salary on account of Earned Leave/Privilege Leave at their credit on the date of superannuation subject to a maximum of 180 days. Leave salary for this period is not reduced by pension and other retirement benefits which are admissible on the date of superannuation. The cash equivalent of leave salary is also paid to the family of the Government servant who dies in harness to the extent of leave that remains to his credit at that time, subject to the maximum limit of 180 days. However, in some States encashment of leave is admissible subject to a maximum of only 120 days.

V. Group Insurance Scheme

15. Salient Features :

(1) Group Insurance Scheme is aimed at providing low cost life insurance protection to a group of employees. Under such a scheme, a large number of employees or organised groups are provided social security benefits. The Group Insurance Scheme as introduced by the Life Insurance Corporation of India makes provision for adequate compensation to the widow of an employee who dies while in service. The main object of this scheme is to avoid great hardship and suffering by the employee's family as the conventional individual insurance in the earlier years of one's career is difficult to afford and maintain to the limit one requires compensation on death.

(2) There are two types of plans covering the Group Insurance Scheme. One is the Deposit Administration Plan (DAP) and the other is one year Renewal Term Assurance Plan (OYRTA). Under the DAP the quantum of terminal benefits under the Group Insurance Scheme depends upon the contribution in respect of the concerned employee from time to time and the rate of interest allowed by the Life Insurance Corporation on these amounts. In the case of OYRTA Plan, every employee in the same age group has to contribute at a uniform rate and this scheme is renewable on year to year basis.

(3) Under the Group Insurance Scheme, the LIC issues one Master Policy to cover all the employees of one organisation. The consolidated premium is paid to the LIC by the employer after collecting contribution from the employees, but it is stipulated in the scheme that at least 25% of the total premium shall be paid by the employer himself. The premium depends on the age group of the employees.

(4) On the basis of age distribution, the cost towards insurance cover per thousand per month is worked out depending upon the amount of insurance cover.

(5) The Group Insurance Scheme does not involve any medical examination of individuals. All the employees are automatically covered. However, such a Group Insurance Scheme is workable only when it is made compulsory for all the employees.

(6) The maximum insurance cover which is provided by the LIC under the Group Insurance Scheme to any individual is restricted to Rs. 10,000 only. The cost towards group insurance depends upon the age distribution. This is worked out every year on the basis of fresh age distribution to be supplied by the employer. Accordingly, the cost towards this will vary from year to year.

16. Benefits under Group Insurance Scheme :

The benefits to the employees under an ordinary group insurance scheme and a Group Insurance Scheme with saving benefits are as under :—

- (a) *Under an ordinary Group Insurance Scheme* : The amount of insurance cover provided to the employee in the event of his death while in service of the employer is paid to the dependents of the employee.
- (b) *Benefits under Saving cum Risk Insurance Scheme* :
 - (i) The amount of insurance cover, in the event of death while in service of the employer.
 - (ii) Death benefits under the savings portion which will depend upon the duration for which the member has been covered under the scheme and the rate of interest allowed to contributions from year to year.
 - (iii) On retirement, the member will be paid the savings benefits. The savings benefits again will depend upon the contribution put to savings and the period for which the employee has been a member of the scheme and the rate of interest allowed for year to year on the contribution of the member.

17. *Central Government Ordinance :*

The Central Government had promulgated an ordinance in September, 1976 enjoining upon all Establishments covered by the P.F. Act 1952 to provide compulsory Life Insurance cover to their employees by paying a premium of 0.6% of the wage bill to the Regional Provident Fund Commissioner. The Government was to contribute further 0.3% to this amount and the P.F. authorities were required to pay to the dependents of a worker in the event of his death an amount equivalent to the average balance in the Provident Fund Account during the last three years subject to a maximum of Rs. 10,000/-. Thus the Group Insurance coverage has become more or less statutory. The provisions of this Ordinance have subsequently been enacted under the Employees' Provident Funds and Miscellaneous Provisions Act.

Insurance Scheme for Central Government Employees

18. Recently the Group Insurance Scheme has been introduced by the Central Government for all their employees including policemen in the Central Police Organisations. This Scheme is compulsory for all Central Government employees. The scheme is divided into three groups.

Group - I

Group-I relates to those employees who on the date of introduction of the scheme were below the age of 28 years. Employees covered by Group I are required to pay a uniform contribution of 50 paise per month till they attain the age of 28. In case of death of the Government servant in service during this period, his/her nominees shall be paid Rs. 5,000/- (Rupees five thousand only) in lump sum. No terminal cash benefit whatsoever shall be payable under this scheme if the employees leaves service before reaching the age of 28 or dies after leaving service and before reaching that age. On attainment of 28 years of age, these employees will come under Group-II of the Scheme.

Group - II

This group will include the employees in Group-I after they attain the age of 28 and also those who have attained the age of 28 in the month in which the Scheme came into force. These employees will be required to pay a uniform contribution of Rs. 5/- per month commencing from the month in which they attain the age of 28 years, and ending with the month preceding the month in which they attain the age of 58 years. A sum of Rs. 5,000/- (Rupees five thousand only) shall be paid to the Government servant on attainment of the age of 58 years. In case of the death while in service, the nominees of the Government servant shall be paid Rs. 5,000/- (Rupees five thousand only) in lump sum. No contribution is to be recovered for the month in which a government servant dies in service.

Group - III

All other employees will be included in this group. The rate of contribution and the benefit payable on death will be the same as applicable to employees covered by Group-II. However, the benefits available on attaining the age of 58 years will be as follows in the case of employees covered by this group :—

Age on the date of joining the Scheme	Cash sum payable
29 to 34	An amount calculated on the basis of Rs. 8.75 for each month for the period the employee was covered by the scheme.
35 to 44	An amount calculated on the basis of Rs. 6.25 for each month for the period of employee was covered by the scheme.
45 to 57	An amount calculated on the basis of Rs. 5.00 for each month for the period the employee was covered by the scheme.

No contributions will be recoverable from a Government servant on his attaining the age of 58 years. The insurance cover will accordingly be available only upto the age of 58 and not thereafter.

19. In the Border Security Force there is a scheme known as the BSF Contributory Benefit Fund. This fund is a sort of Group Insurance Scheme which covers all BSF personnel. Each member of the BSF has to contribute a sum ranging from Rs. 5/- to Rs. 45 on *pro-rata* basis. The minimum contribution for a Constable is Rs. 5/- and the maximum for the Director General is Rs. 45/-. In case of death of any member of the BSF while in service due to any reason whatsoever, an *ex gratia* grant of Rs. 5,000/- is paid from this Fund to the family of the deceased member. This amount is paid in the form of Fixed Deposit Receipt in the State Bank of India with the stipulation that the interest accruing from this amount is paid to the family of the deceased member every quarter. Similarly, this Fund provides assistance to the members of the BSF in the following contingencies :—

- (a) In case of injury received in action causing disability or discharge from service—Rs. 5,000/- in the form of Fixed Deposit receipt.
- (b) When a member of the BSF contracts any serious disease like T.B. etc. and is boarded out of service Rs. 3,000/-.
- (c) If boarded out of service due to injury received due to reasons not attributable to risk of office Rs. 1,000 to Rs. 2,500 (on *pro-rata* basis depending upon the extent of injury).
- (d) On normal superannuation Rs. 1500/-.
- (e) On leaving the BSF on deputation or otherwise :—
 - (i) with less than 7 years service—equal to 50% of contribution.
 - (ii) with 10 years or more service—75% of contribution.
- f) If a member of BSF, who has not qualified for pension, is killed in action then his family is given special financial assistance from this fund to the extent of Rs. 200 per month for 10 years.
- (g) If any BSF member dies due to ther reasons without having rendered the required years of service qualifying for pension then his family is given financial assistance to the extent of Rs. 150/- per month.

vision in the Conduct Rules does not appear to have been enforced with the required strictness and severity.

(Para 15.56)

18.79 We would recommend that the administration should take a severe view of any infringement of the above mentioned Conduct Rule and deal with erring officers in a deterrent manner. In appropriate cases resort may also be had to Article 311(2)(b) or (c) to weed out such personnel from the system. In cases where this constitutional provision is invoked, all the available material against the police personnel concerned should be scrutinised by a small Committee under the Chairmanship of the Chief of Police. Members of this Committee may be drawn from senior ranks in the prosecuting agency set up of the State and police officers of the rank of Deputy Inspector General of Police (other than the one who may have been concerned either directly or in a supervisory capacity with the situations or instances that figure in the material for consideration by the Committee)

(Para 15.56)

18.80 While we do not hold any brief for or against any political party to say that the membership thereof or association therewith should not or should act as a bar for recruitment to the police at any level, we would state emphatically that the continued involvement in political activity of any kind either directly or indirectly by any personnel after joining the police at any level should not be tolerated in any circumstances. The weeding out of such persons should receive special attention of the Chief of Police from time to time. Here again, recourse may be had to the provisions of article 311(2)(b) or (c) of the Constitution, if need be in appropriate cases.

(Para 15.57)

18.81 We feel that police officers should be effectively protected from whimsical and *mala fide* transfer/suspension orders. One step for securing this protection could be to incorporate a provision in the Police Act itself specifying the authorities competent to issue transfer/suspension orders regarding different ranks. Such a statutory provision would render null and void any transfer/suspension order passed by any authority other than those specified in the Act.

(Para 15.58)

18.82 Another step could be to lay down as a rule that every transfer/suspension order should also contain a brief paragraph indicating the reasons for the issue of the order, and making it a further rule that any transfer/suspension order which does not contain this explanatory paragraph shall not be valid order. The advantage in this arrangement would be that the recipient of the transfer/suspension order will have some material with him which he can agitate before the authorised available forums if he feels that the reasons are *mala fide* or otherwise not sustainable.

(Para 15.59)

18.83 In regard to the issue of oral orders, our recommendations are that oral orders should be avoided as far as possible and may be resorted to only in situations which call for immediate executive action and cannot wait for the issue of written orders in confirmation of the oral order; a record of every oral order be kept both by the issuing officer and the recipient officer in the relevant files; and a subordinate officer receiving oral orders from a higher ranking officer shall be entitled to ask for and get confirmatory orders in writing from the higher functionary, for record.

(Para 15.60)

18.84 We feel that if it is laid down as a code of conduct that elected representatives will interact with the police at the level of the Deputy Superintendent of Police or above only, it would avoid situations in which the executives at the operational level in police stations and circles may be overawed by the stature of the political functionary and may be inclined to accept and act upon whatever information he passes on to them without making the necessary check and verification which they might make normally.

(Para 15.61)

18.85 We would recommend that the Conduct Rules applicable to Police personnel of all ranks in the States may embody provisions similar to those in Rule 3(3) of the All India Services (Conduct) Rules which emphasise the responsibility of a member of the Service to act according to his own best judgment and not evade this responsibility by seeking instructions or approval from a higher authority, where such instruction or approval is not necessary according to normal working procedures.

(Para 15.62)

18.86 In the Government of India Department, Department of Personnel and Administrative Reforms letter No. 25/19/64-Ests(A) dated 29th April, 1975, addressed to the Chief Secretaries of all the State Governments, it was indicated that a Code of Conduct for Legislators was being separately processed by the Ministry of Home Affairs. Our enquiries reveal that this Code of Conduct for Legislators has not yet taken any shape. We recommend that the Ministry of Home Affairs complete their exercise expeditiously and have the Code issued very soon so that the elected representatives as also the general public at large may know and appreciate the requirements of ethics and propriety in this important and sensitive matter.

(Para 15.63)

18.87 We also trust that the contemplated exercise on the political plane as decided at the Chief Minister's Conference of 6th June, 1979 will be taken up in right earnest and completed soon.

(Para 15.63)

18.88 To bring home the primacy of the rule of law in a democracy and the paramount duty of every police officer to recognise this primacy and stoutly

resist any interference with the course of his duties as enjoined by law and in accordance with the Constitution, we feel it would be appropriate if every member of the police is made to swear or solemnly affirm a declaration embodying this fundamental principle, at the time of his joining the police, whatever be the rank of entry.

(Para 15.64)

18.89 Apart from the initial declaration at the time of joining the police, it would further serve the purpose and embed the principle firmly in the minds of all the police officers if this declaration is remembered and repeated by them in groups and assemblies of police personnel drawn up on an annual ceremonial occasion like the 'Police Commemoration Day' which is observed on 21st October, every year.

(Para 15.64)

18.90 The structuring of the initial training courses and the later in-service training courses for all police personnel should be suitably designed to facilitate the growth of proper attitudes and sense of values on the part of every police officer, viewing himself throughout as a servant of law to uphold and protect the dignity and rights of every individual fellow citizen of the country.

(Para 15.65)

Gram Nyayalayas

18.91 The mounting pendency of cases in court in the present system of trials with emphasis on procedures and rituals rigidly spelt out in law, cannot be brought down within manageable limits except by devising a totally new system with simpler procedures to deal with ordinary crimes involving simple and straight evidence. Such a new system would not only ensure inexpensive and speedy justice but, what is more, would also help in preserving the harmonious relationships in the community which usually get affected if criminal matters are subjected to prolonged trials which might ultimately involve prison sentences also. This is particularly relevant in the rural areas where community opinion and village harmony have been and continue to be perceptible factors of life.

(Para 16.2)

18.92 During our tours in the States and discussions with a wide cross section of the public as also the services, we got the impression that the working of Nyaya Panchayats, though well conceived in principle, suffered in practice, mainly because of the lay members of the Panchayat being subjected to local influences and pressures which defeated the purpose of an objective and fair disposal of cases handled by the Panchayats. It was also pointed out that a Nyaya Panchayat solely made up of lay members was unable to handle the judicial work with requisite attention to the minimum requirements of a judicial process. It was further mentioned that Nyaya Panchayats would function far more effectively if they were manned by trained persons with a certain minimum knowledge of law, rules and procedure.

(Para 16.10)

18.93 We appreciate that if the Nyaya Panchayats are made up of knowledgeable and academically competent persons alone, they would lose their lay character and, therefore, would merely appear as an extension of the existing sophisticated court system which, for a variety of reasons, does not command the confidence of the rural folk. On the other hand, if the Nyaya Panchayats are made up only of lay men who come up through a process of election, direct or indirect, they would become susceptible to unhealthy influences and pressures which may conflict with the interests of justice. We have, therefore, to adopt a *via media* which would preserve the lay character of the Nyaya Panchayat and at the same time ensure the disposal of cases with due regard to certain minimum judicial requirements.

(Para 16.11)

18.94 The observations of Justice Bhagwati Committee on the advantages of the Nyaya Panchayat system and its recommendations regarding the composition of a Nyaya Panchayat and procedures for transaction of its business are set out in paragraphs 6.11 to 6.31 of the Committee's report which are furnished in Appendix VIII.

(Para 16.13)

18.95 We have carefully gone through Justice Bhagwati Committee's report and we find ourselves in whole-hearted agreement with it. We fully endorse the recommendations therein, subject to the modifications and refinements as spelt out in the following paragraphs, which we consider desirable in the present context.

(Para 16.14)

18.96 The new courts proposed at the grass roots level may be called "Gram Nyayalayas", avoiding any reference to Panchayat as such so that they may not be viewed as an adjunct or extension of the Panchayats which are totally executive bodies with which political functionaries are associated.

(Para 16.15)

18.97 A Gram Nyayalaya shall be made up of three Members. One shall be the Presiding Judge who will be appointed by the District Judge from retired judicial officers or other retired Government servants who, from their experience while in service, would have acquired the requisite knowledge of law and minimum requirements of judicial processes.

(Para 16.16)

18.98 Two other members of the Gram Nyayalaya shall be lay members appointed by the District Judge from a panel of names prepared by the local elected body that goes by the name of Panchayat Samiti/Panchayat Union/Block Committee or its equivalent, in the manner described below.

(Para 16.17)

18.99 One Gram Nyayalaya shall cover about 25 to 30 villages coming under 8 to 10 Panchayats. This would mean about 5 or 6 Gram Nyayalayas in the

jurisdiction of one Panchayat Union/Panchayat Samiti. The headquarters of each Gram Nyayalaya shall be fixed at some suitable place within the group of villages in its jurisdiction.

(Para 16.18)

18.100 The Presiding Judge for all the Gram Nyayalayas within the jurisdiction of a Panchayat Samiti shall be the same person appointed by the District Judge in the manner prescribed earlier. The lay members of each Gram Nyayalaya will, however, be separate for each Nyayalaya. The Panchayat Pradhans relevant to the jurisdiction of each Gram Nyayalaya will be associated in proposing the names of lay members for that Gram Nyayalaya. The Presiding Judge shall hold proceedings of each Gram Nyayalaya in the Panchayat Samiti by visiting the respective headquarters once a month by turn, or more often if required by the volume of work to be handled, and associate the two local lay members with the proceedings in each place.

(Para 16.19)

18.101 The Presiding Judge and the two lay members shall normally hold office for a term of 3 years from the date of appointment. They shall be deemed to be public servants as defined in the Indian Penal Code while they hold office.

(Para 16.20)

18.102 Gram Nyayalayas shall have exclusive criminal jurisdiction over the offences that are assigned to them in the relevant law.

(Para 16.21)

18.103 Gram Nyayalayas shall not be bound by procedural codes or laws of evidence. Their proceedings shall be in the nature of an inquisitorial inquiry which would mean that the Gram Nyayalaya would itself take a positive role in the inquiry to ascertain the facts regarding the involvement or otherwise of the person concerned instead of merely functioning as an adjudicating body to give its view on two versions put before it, one by the prosecution and the other by the defence.

(Para 16.25)

18.104 Parties to the proceedings before the Gram Nyayalayas shall not be allowed to be represented by lawyers. Exceptions may arise when a person happens to be arrested or otherwise detained in custody in connection with an offence related to the proceedings before the Gram Nyayalaya, in which case the provisions of Article 22(1) of the Constitution may get attracted. The observations of the Supreme Court in the case of State of Madhya Pradesh versus Shobharam and others (AIR 1966 SC 1910) would be relevant in this connection.

(Para 16.26)

18.105 The findings of the Gram Nyayalaya shall be based on the majority view of the component members including the Presiding Judge, subject to the provision that in any case where the two lay

members agree on a finding with which the Presiding Judge does not agree, and the Presiding Judge is clearly of the opinion that it is necessary for the ends of justice to submit the case to a higher court, he shall record the grounds of his opinion and submit the case for adjudication by the Chief Judicial Magistrate. We are recommending this procedure specially to guard against local unhealthy influences and pressures operating on the system.

(Para 16.29)

18.106 Punishment awardable by a Gram Nyayalaya shall be limited to fines not exceeding to Rs. 500. Fines shall be recoverable by processes applicable to arrears of revenue. A Gram Nyayalaya shall not be competent to award any sentence of imprisonment, even in default of payment of fine.

(Para 16.30)

18.107 If in any particular case, having regard to the circumstances thereof, the Gram Nyayalaya feels that the person found guilty by it merits a more serious punishment than is awardable by the Gram Nyayalaya, it shall remit the case to the Chief Judicial Magistrate of the district for further action on the lines indicated in section 325 Cr. P.C.

(Para 16.31)

Maintenance of crime records and statistics

18.108 Maintenance of crime records at the police station level and submission of periodic reports and returns from there to the district level and the State level should be so designed as to fit into a scheme of computerised maintenance of data/information at the State level/National level.

(Para 17.5)

18.109 Changes in the existing crime record system in different States should be minimal for the limited purpose of achieving the objective mentioned above.

(Para 17.5)

18.110 Detailed recommendations made by a Committee of DIsG set up in 1962 regarding the type of records to be maintained at police stations may be kept as model and worked upon further in States.

(Para 17.5)

18.111 A District Crime Record Bureau, State Crime Record Bureau and the National Crime Record Bureau should be set up with legal backing and adequate staff.

(Para 17.5)

18.112 The Central Finger Print Bureau which is now located in Calcutta should merge with the National Crime Record Bureau which may be located either in Delhi or Hyderabad. Hyderabad location will facilitate useful interaction with the SVP National Police Academy.

(Para 17.5)

18.113 Collection and maintenance of data for national and Interpol purposes, at present handled by the Bureau of Police Research and Development and the Central Bureau of Investigation, may be integrated with the proposed National Crime Record Bureau.

(Para 17.5)

18.114 Computerisation of Finger Prints at the State level and National level should be taken up on hand and completed within a reasonable time frame, say five years.

(Para 17.5)

18.115. Communication channels in the shape of VHF telephones and teleprinters between police stations and district headquarters, between district headquarters and State headquarters and the final link up with the headquarters of the National Crime Record Bureau should be built up to facilitate prompt exchange of data/information. This will be very necessary to aid investigational work and reduce infructuous arrests and prolonged detention of persons on mere suspicion without adequate grounds.

(Para 17.5)

18.116 One or more educated constables must be specifically designated in every police station as Collators who will be responsible for maintenance of crime records at the police station, preparation of the input forms originating from the police station in respect of all police computer applications, placing all computer outputs received in the police station before the Station House Officer for their effective utilisation, handling the P&T telephone and other technical equipment, if any, in the police station, and generally assisting the Station House Officer in all correspondence with the District Crime Records Bureau and the State Crime Records Bureau.

(Para 17.5)

18.117 The existing "Identification of Prisoners Act 1920" should be replaced by a new comprehensive law which may be called "The Crime and Offender Records Act" which would facilitate the collection of wide ranging data and information regarding crimes and criminals which would be of use not only to the police in the performance of their investigative jobs but also to the functionaries in probation services and correctional institutions besides criminologists and social scientists, in their respective fields of correctional work and analytical studies. A draft for the proposed new Act is enclosed to the report as Appendix XII.

(Para 17.7)

18.118 Government of India should continue financial aid in increasing measure to the States for installing computers in the police communication and record systems and complete a time bound computerisation plan.

(Para 17.8)

Sd/-
(DHARMA VIRA)
Chairman

Sd/-
(N. KRISHNASWAMY REDDY)
Member

Sd/-
(K. F. RUSTAMJI)
Member

Sd/-
(M. S. GORE)
Member

Sd/-
(C. V. NARASIMHAN)
Member Secretary

NEW DELHI

16th August, 1979

APPENDICES



सत्यमेव जयते

APPENDIX I

(Para 13.2—Chapter XIII)

Revenue Expenditure on State Police, Welfare of Police Personnel, Grants-in-aid/Contributions to Welfare Fund

(Rupees in thousands)

State	1972-73			1973-74		
	Police Expenditure	Exp. on Welfare of Police Personnel	Grants-in-aid/contribution to Police Welfare Fund	Police Expenditure	Exp. on Welfare of Police Personnel	Grants-in-aid/contribution to Police Welfare Fund
1	2	3	4	5	6	7
1. Andhra Pradesh	180000	58	58	201700	110	—
2. Assam	124900	723	—	134900	216	7
3. Bihar	202000	647	60	249000	593	60
4. Gujarat	170500	—	—	185800	—	—
5. Haryana	46900	—	—	62100	—	—
6. Himachal Pradesh	36600	—	—	36100	—	—
7. Jammu & Kashmir	57400	102	87	59100	90	75
8. Karnataka	115300	N.A.	N.A.	122100	47	47
9. Kerala	99200	—	—	113900	—	—
10. Madhya Pradesh	209700	—	—	247800	—	—
11. Maharashtra	365100	500	500	531800	500	500
12. Manipur	25700	—	—	31700	—	—
13. Meghalaya	14300	—	—	18300	47	2
14. Nagaland	58700	N.A.	N.A.	50200	89	—
15. Orissa	81800	501	—	101200	560	—
16. Punjab	104500	—	—	111000	294	—
17. Rajasthan	143200	—	—	154300	—	—
18. Sikkim	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
19. Tamil Nadu	208200	—	—	234200	—	—
20. Tripura	18100	97	—	32700	148	—
21. Uttar Pradesh	346100	3040	—	418800	1274	—
22. West Bengal	307400	16070	—	348200	45356	—
Total Expenditure	2915600	21738	705	3444900	49324	691

(Rupees in thousands)

State	1974-75			1975-76		
	Police Expenditure	Exp. on Welfare of Police Personnel	Grants-in-aid/contribution to Police Welfare Fund	Police Expenditure	Exp. on Welfare of Police Personnel	Grants-in-aid/contribution to Police Welfare Fund
8	9	10	11	12	13	
1. Andhra Pradesh	237500	538	100	271600	808	100
2. Assam	148600	652	3	171900	853	19
3. Bihar	270400	604	—	286500	373	—
4. Gujarat	232600	—	—	271200	964	650
5. Haryana	78300	—	—	96500	—	—
6. Himachal Pradesh	44600	—	—	46200	—	—
7. Jammu & Kashmir	57500	323	75	62500	345	75
8. Karnataka	160100	126	126	179100	223	223
9. Kerala	139100	—	—	164000	—	—
10. Madhya Pradesh	277700	2362	—	296700	3151	168
11. Maharashtra	491600	550	550	535000	850	850
12. Manipur	56500	—	—	48800	—	—
13. Meghalaya	23500	64	2	27800	60	14
14. Nagaland	65300	67	—	82100	122	—
15. Orissa	119800	542	—	157800	474	—
16. Punjab	136600	846	244	159600	995	—
17. Rajasthan	182300	200	200	205200	175	175
18. Sikkim	N.A.	N.A.	N.A.	2600	—	—
19. Tamil Nadu	252300	1228	—	263400	1473	137
20. Tripura	35100	229	50	26500	—	—
21. Uttar Pradesh	486000	4949	1275	544700	5767	N.A.
22. West Bengal	406300	56515	—	478500	—	—
Total Expenditure	3901700	69795	2625	4378200	16633	2411

(Rupees in thousands)

State	1976-77			1977-78		
	Police Expenditure	Exp. on Welfare of Police Personnel	Grants in aid/contribution to Police Welfare Fund	Police Expenditure	Exp. on Welfare of Police Personnel	Grants in aid/contribution to Police Welfare Fund
	14	15	16	17	18	19
1. Andhra Pradesh	329800	971	250	367000	1249	250
2. Assam	176300	1312	26	241800	1512	26
3. Bihar	289200	1035	—	410000	3061	—
4. Gujarat	321800	628	246	320300	1409	880
5. Haryana	103000	—	—	114500	—	—
6. Himachal Pradesh	51100	—	—	53100	—	—
7. Jammu & Kashmir	65100	355	75	91300	360	75
8. Karnataka	203300	234	234	230000	275	275
9. Kerala	181000	—	—	196800	—	—
10. Madhya Pradesh	315800	3193	176	342700	3528	200
11. Maharashtra	574300	950	950	650700	950	950
12. Manipur	98200	—	—	102800	—	—
13. Meghalaya	28800	72	7	40300	103	11
14. Nagaland	76300	183	—	82900	370	—
15. Orissa	161800	1092	—	167300	1076	—
16. Punjab	182700	1148	266	174400	1125	269
17. Rajasthan	218100	175	175	251800	500	500
18. Sikkim	4400	15	—	8200	30	—
19. Tamil Nadu	300100	1302	151	336500	1328	153
20. Tripura	27600	236	54	36700	254	48
21. Uttar Pradesh	617900	7339	747	671800	7300	388
22. West Bengal	473100	70499	—	568700	75241	—
TOTAL	4799700	90739	3357	5459600	99671	4025

(Rupees in thousands)

State	1978-79 (B.E.)		
	Police Expenditure	Exp. on Welfare of Police Personnel	Grants in aid/contribution to Police Welfare Fund
	20	21	22
1. Andhra Pradesh	391800	1268	250
2. Assam	204600	1363	26
3. Bihar	419500	3077	—
4. Gujarat	335600	1276	735
5. Haryana	118000	—	—
6. Himachal Pradesh	56200	—	—
7. Jammu & Kashmir	88900	360	75
8. Karnataka	263400	300	300
9. Kerala	205000	—	—
10. Madhya Pradesh	363500	3653	210
11. Maharashtra	706300	950	950
12. Manipur	97400	—	—
13. Meghalaya	37700	132	17
14. Nagaland	99200	400	—
15. Orissa	176700	1528	—
16. Punjab	184700	1223	274
17. Rajasthan	252100	500	500
18. Sikkim	10400	30	—
19. Tamil Nadu	333400	1439	153
20. Tripura	38700	313	60
21. Uttar Pradesh	734900	7500	388
22. West Bengal	585400	77151	—
TOTAL	5703400	102463	3938

N.A. = Not available.

Source = State Budget Documents.

Extracts from Ashwini Kumar Committee's report

1. The National Police Commission appointed a committee to study the existing welfare measures undertaken in different States/ Union Territories for Police families and to analyse the funding of such measures. After analysing all the data relevant to welfare, the Committee was to recommend measures *inter alia* for satisfactory funding of different schemes on a continuing basis. The composition of the Committee was:

- | | |
|--|----------|
| (1) Shri Ashwini Kumar, DG, BSF | Chairman |
| (2) Shri R.C. Gopal, DG, CRPF | Member |
| (3) Shri P.A. Rosha, IGP, Haryana | Member |
| (4) Shri T. Albert Manoraj, IGP, Karnataka | Member |
| (5) Shri N. Krishnaaswamy, Director of Vigilance & Anti-Corruption, Tamil Nadu | Member |
| (6) Shri T.A. Chari, Director, Police Computers, MHA. | Member |
| (7) Shri D. Ramachandran, Additional Commissioner of Police, Bombay | Member |
| (8) Shri K. Ramamurti, IG(HQ), BSF | Convener |

2. The Committee met on two occasions—23rd August, 1978 at Delhi and 23rd November, 1978 at Bombay and reviewed the welfare measures currently being extended to police personnel and their families in the States and Union Territories and makes the following recommendations:—

3. In a Democracy, enforcement of law and maintenance of order are the primary responsibility of the Police. A policeman has responsibilities and obligations peculiar to his calling and distinguishes him from other public servants. He has to act alone on his own initiative and as a member of disciplined force, is answerable for any error of judgement when acting under orders. He has to use his authority adequately and instantly but at the same time never to exceed it. This demands high moral standards besides a high sense of individual responsibility which is more onerous than that delegated to any member of a comparable profession or occupation.

4. This unique role is reflected in the extra-ordinary restrictions and limitations to which a policeman is subjected. His work involves duties at night, over week-ends and on holidays. There are also restrictions as to where he has to live. The effect of this on the policeman's domestic arrangements and disruption of his family life are indeed very serious. There is also the risk of assault and injury in the performance of his duties which are steadily increasing. The law prohibits a member of the Police force to be associated in any way with any trade union, labour union or political association. Not only that the Police (Incitement to Disaffection) Act stipulates that whoever intentionally causes or attempts to cause disaffection amongst the members of the Police force, or induces any member of the Police force to withhold his service shall be punished with imprisonment which may extend to six months.

5. A policeman has to live in the neither world of crime. His contact with humanity, in the mass, whether quelling riots in the street, or unruly students in campuses, only serves to alienate him further. His family usually back home in the village or occasionally with him in the family lines suffers from lack of adequate paternal care and some element of rejection by the community, living as he does in the twilight world of crime.

6. The conditions of the Police Force of India have been described thus: "There is perhaps no other country in the world claiming to be civilised, in which more is expected of the Police and less is given to them in the way of encouragement and material advantages. The Government periodically hands out a string of decorations . . . or issues an official eulogy of the work of the Police but the rank and file . . . still find themselves handicapped in the struggle for existence by inadequate emoluments and wretched housing". Though conditions have improved gradually, the position has to change radically. Since Independence to the Police forces have rendered yeoman service to the people of the country during natural calamities and even during external aggression.

7. It is obvious, therefore, that in the matter of amenities which a welfare State has to confer on its citizens the concept of welfare among the Police will have to be altogether different from that of other categories of public servants or citizens. Where the risk of office endangers the life and this risk is so constant, it will be meaningless to equate him with other public servants in the matter of either his emoluments or pensionary benefits for the family in the event of his death or even amenities available to him. The psychology of the policeman is entirely different in that he is completely cut-off for most of the time from his family and is always in a state of preparedness to combat crime.

8. It is a cardinal principle of man-management both in respect of a disciplined force and organised industrial labour that an employee should have a feeling of belonging to the organisation and participate in the activities of the organisation on the basis of pride in its membership in order to be able to perform his duties efficiently. Distinct from the feeling of being mere wage earners they should feel secure in the knowledge that the organisation will look after their interests as a benign guardian who lends a helping hand in making their lives more congenial by providing greater amenities in his day-to-day life.

9. The statutory functions of the police place great responsibility and burden on them which are peculiar to their calling and place them in a unique position. It is, therefore, imperative that the service conditions of the police be such that it would be possible to recruit, train and retain men and women of the right quality, to discharge the onerous law-enforcement duties entrusted to them. The Committee, therefore, recommends that the police in India be put in a special category for extending to them facilities like housing, education,

medicare, recreational facilities, vocational training, rehabilitation after retirement and financial aid in distress arising out of destitution or physical disability caused by service conditions.

10. Some of the welfare schemes which are illustrative are mentioned below for adoption and implementation :

- (a) Providing adequate living accommodation for the personnel and their families;
- (b) Provision of schools and residential schools for the children;
- (c) Sponsoring and running of correspondence courses for the personnel both in academic and technical field;
- (d) Provision of libraries both static and mobile;
- (e) Establishment of hospitals and dispensaries;
- (f) Establishment of Family Welfare Centres, Creches and Maternity Centres;
- (g) Providing spare-time employment for the members of the families to augment incomes;
- (h) Financial assistance to the families and dependents and to those who are disabled due to the rigours of service;
- (i) Rehabilitation of those who retire or are medically boarded out being no longer fit for active service;
- (j) Provision of vocational training for the handicapped;
- (k) Encouraging group insurance and savings schemes;
- (l) Provision of canteens and departmentally run grocery and allied stores;
- (m) Arranging subsidised technical and vocational training for the wards of the personnel and providing employment opportunities for them;
- (n) Provision of recreational facilities in the shape of indoor and out-door games and equipping recreation rooms with radio and television; and
- (o) To alleviate distress.

* * * *

Education

16. We are happy to note that most of the State Police Forces have some schemes by which scholarships are provided to the children of the members of the Force, both for studies in schools and in institutions of higher learning. The quantum of such assistance varies according to the availability of financial resources. It would be necessary to streamline the existing schemes and adopt a realistic standard of assistance to the children of policemen. In our view, education of the children of all policemen should be the direct responsibility of the Police Organisations. This would include, where necessary, hostel accommodation, text-books, school uniform and tuition fees. We are happy to note that funds for providing such facilities in Central Police Organisations have come out of the sale of empty cartridge cases in addition to government grants-in-aid. We realise that in the case of States' Police force, a similar provision may not be adequate and liberal grants from the Government as well as voluntary contributions from the members of the forces would be necessary.

17. We feel that reservations of seats in technical and professional colleges for the children of the members of the Force will be a great morale boosting factor. The admissions to these reserved seats for the children of Police personnel would conform to the general standards applicable to other candidates who are selected for admission to such courses. We would commend the setting up of at least one residential school for every 20,000 policemen with accommodation for 500 boarders.

Medical Care

18. At present medical care to police personnel is available only in Government hospitals including specialist treatment. We suggest that where incidence of T.B. or such like diseases is high amongst the Police personnel, a system of reservation of beds in the specialised treatment centres, should be devised. In each District HQs a 10 bedded hospital ward with supporting medical staff should be provided. We also recommend that medical treatment should be extended to retired police personnel also in all Police Hospitals.

Welfare

19. To relieve the boredom of police duties, amenities like film shows, TV and radio sets for communal viewing, Newspapers and periodicals, libraries and indoor games should be provided for the policemen and their dependents. Play fields and sports equipment are also essential. The establishment, therefore, of a Welfare Fund to provide these amenities and temporary loans in distress situations is essential. Family Welfare Centres should be established in each District HQs or in Bn. HQs to provide gainful spare time employment to family members of policemen like fabrication of uniforms and manufacture of handicrafts based on local talent and raw materials. These amenities will lighten the financial burden of the policemen and reduce the drudgery and the boredom of life in barracks. Any investments on such schemes will pay rich dividends in the form of improved efficiency and morale and also alleviate the financial burden of the policemen.

20. Vocational training and acquisition of a trade whilst in service will help policemen to sustain themselves financially after retirement.

21. Provision of sports facilities and promotion of sports amongst policemen will go a long way in improving physical fitness and morale of policemen with the added dividend of improving police-public relations through participation in matches and tournaments. Trained coaches and Sports Officers should be provided for encouraging games and sports.

22. All these activities will require considerable financial outlays. From the information received from the various States we gather that the quantum of such financial assistance varies from Rs. 3 to 10 per individual per annum which is grossly inadequate to meet the needs of various welfare measures enunciated above. In our view, though self-help will remain the mainstay of all welfare funds, the importance of welfare measures and the dividends that it will pay, in the matter of public satisfaction and a high morale among the Police personnel, generous grants-in-aid both recurring and non-recurring by the Central and State Governments will be absolutely essential. We recommend that initially every member of the Force may be required to contribute Rs. 10 per head per month for a year

for creating a corpus and thereafter a monthly contribution on a graded scale by all members of the Force from Constable to Inspector General of Police, minimum being Rs. 4 per head per month. We also recommend that financial assistance from the State Governments should be provided in the following manner:—

- (a) A one time grant of Rs. 100 per head for constituting the corpus of the Welfare Fund, and
- (b) a matching grant calculated at the rate of Rs. 48 say Rs. 50 per head per annum to match the subscription made by the members of the forces.

Added to the income from the corpus, it should yield approximately Rs. 100 per head per annum to support and sustain the welfare schemes enunciated above.

23. In terms of per capita allotment the Central/State Governments' contribution on the basis suggested above would work out roughly to Rs. 100 per head as a one-time grant and Rs. 50 per head per annum as a recurring grant thereafter. The Force personnel themselves would be contributing Rs. 120 in the first year and Rs. 50 per annum thereafter. The success of these funds and welfare schemes will depend on the imagination, drive and initiative of the senior officers of the Force. It is recommended that the funds be administered by committees consisting of representatives of all ranks.

24. In working out the scales of assistance from the Government we have largely gone by the experience of the BSF. It is likely that some marginal adjustments may be necessary to make various schemes viable in the States and other CPOs.

Benevolent Fund

27. Under the existing rules the personnel of the Police Forces who die whilst on duty or in service are entitled to special rates of pension and gratuity. While Government assistance in this regard cannot be raised without repercussion on other civilian employees we feel that the State should still have a responsibility for looking after the families of the deceased personnel of the Police Forces in a special way in view of the fact that Police work is not only arduous in nature but carries a risk to the lives of the personnel. A scheme by which special grants ranging from Rs. 1,000 to Rs. 10,000 are provided by Government is in vogue in a few of the States at present. We would recommend that there should be a uniform scale of assistance to the families of deceased personnel. We have studied the Benevolent Fund and Contributory Benevolent Fund Schemes in vogue in the BSF and would commend the adoption of the same scales of relief for the Police personnel all over the country. The rules may require slight modification in respect of the Police Forces serving in the country and those who are exposed to special risk of office in dealing with internal security. Perhaps both the Contributory Benevolent Fund and the Benevolent Fund Schemes may be combined into one fund to which a substantial sum of money should be contributed by the State Governments.

Recurring Deposit Scheme

28. To augment the pension and gratuity assistance on retirement a Recurring Deposit Scheme would make available a sizeable sum of money to retiring personnel and will help in their rehabilitation. In BSF members of the Force contribute multiples of Rs. 10 every month in a cumulative deposit at compound interest and are insured against death due to accident under the Accident Insurance Scheme at no extra cost which entitles the family of the deceased to a sum of Rs. 5,000 to Rs. 17,000 depending on the amount of Recurring Deposit. It is recommended that the State Police Forces should organise similar Savings Schemes for the personnel in their respective Forces.

Modernisation

29. Now that most of the State Police Forces have gone in for use of computers for building up crime records, we are of the view that computers should also be utilised to compute pay, GP Fund, pension and welfare accounts. Inordinate delays in dealing with pension cases and payment of GP Fund and gratuity etc. cause considerable hardship. A separate accounts office for police departments with EDP facilities of its own to deal with settlement of claims monthly will go a long way in ameliorating hardships. Prompt payment of pay, grant of leave, pension, GP Fund etc. can, therefore, be achieved by resorting to use of computers.

31. Canteens and grocery shops should be opened in places where there is a large concentration of Police personnel and exempted from sales tax as in the case of the Army to enable them to obtain consumer goods at reasonable rates.

Resources for Meeting Welfare Requirements of State Police Forces

36. The Government of India gives grants-in-aid to the needy States for maintaining Armed Police Battalions, housing schemes for the police and for modernisation programmes. To maintain the morale of the police in the discharge of its role to maintain order, which is fundamental to a Parliamentary democracy, we are of the view that the Central Government should assist each of the State Governments initially by a matching grant of Rs. 50 lakhs to provide the corpus for welfare funds and thereafter a grant of Rs. 10 lakhs annually towards sustaining these welfare activities on a recurring basis.

A Brief Assessment of Welfare Measures Available to Police Personnel in the States

Introduction

Information received from various States and the reports of the States Study Groups indicate that the existing police welfare measures generally cover the following items :—

- (1) Pensionary benefits including extraordinary pension, gratuity and compensation in special situations.
- (2) Medical facilities.
- (3) Educational facilities.
- (4) Special entitlement for leave.
- (5) Group Insurance Scheme.
- (6) Family welfare-cum-work Centres.
- (7) Canteens and Co-operative Stores.
- (8) Welfare Fund.
- (9) Welfare Officers.

I. Pensionary Benefits

2. Pensionary benefits differ from State to State and cover different situations or contingencies enumerated below:—

- (i) Pension admissible on retirement in the normal course on superannuation.
- (ii) Pension admissible on voluntary retirement earlier than the date of superannuation.
- (iii) Pension admissible on compulsory retirement under the 50-55 year rule or earlier.
- (iv) Extraordinary pension/gratuity/compensation admissible to the policeman when he suffers injury/disability attributable to the risk of office, and continues to remain in service after suffering the injury/disability.
- (v) Extraordinary pension/gratuity/compensation admissible to the policeman when he suffers injury/disability attributable to the risk of office, and he is discharged from service since he cannot be utilised on any duty at all.
- (vi) Extraordinary family pension/gratuity/compensation admissible when the policeman dies while undergoing the risk of office.
- (vii) Extraordinary pension/gratuity/compensation admissible to the policeman when he suffers injury/disability not attributable to the risk of office, and continues to remain in service after suffering the injury/disability.
- (viii) Extraordinary pension/gratuity/compensation admissible to the policeman when he suffers injury/disability not attributable to risk of office, and he is discharged from service since he cannot be utilised on any duty at all.
- (ix) Extraordinary family pension/gratuity/compensation admissible when the policeman dies in circumstances not attributable to risk of office.

3. The following paragraphs give an overall picture of the benefits generally available under the above nine heads in the State Police/Central Police Organisations :

(i) Retirement on normal superannuation :

The pensionary benefits admissible to police personnel on retirement in the normal course of superannuation are at par with other Government servants in their respective States/Central Government. The most common formula is 30/80 of average emoluments. Recently the Central Government has revised the pensionary rules in favour of the Government servants and these are better than those available in States. On completion of 33 years of service, a Government servant drawing pay up to Rs. 1,000 can expect to get 50% of his pay as pension.

(ii) Voluntary Retirement :

For Police personnel who want to proceed on voluntary retirement earlier than on superannuation, the pensionary benefits granted by the Central Government are quite attractive. The formula under Central Government rules on completion of 20 years of service is as under :—

$$\frac{25}{80} \times \text{Average monthly emoluments.} \\ \text{(based on 10 months' pay)}$$

(iii) Compulsory Retirement :

Pensionary benefits admissible to police personnel on compulsory retirement under the 50-55 years group or earlier are generally calculated on the basis of completed six-monthly periods. In one State the formula is 25/80 on completion of 50 such periods. It is $\frac{2}{3} \times \frac{25}{80}$ in the Central Police Organisations.

(iv) *When Injury/Disability is attributable to the risk of office :*

When any policeman suffers injury/disability while in service and continues to remain in service after suffering the injury/disability which is attributable to the risk of office, the compensation in the form of gratuity is more advantageous in one State as compared to lumpsum compensation (in proportion to the percentage of disability) admissible in the Central Police Organisations.

The formula evolved by that State is :—

For basic pay below Rs. 200 = 4 months' pay as gratuity.

For basic pay over Rs. 200 = 3 months' pay as gratuity subject to minimum of Rs. 800.

(v) *In respect of injury/disability attributable to risk of office, suffered by police personnel while in service as a result of which they are not retained in service but are discharged, extraordinary pension/gratuity/compensation is admissible in several States and Central Police Organisations.*

The most favourable benefits are :—

<i>Pay</i>	<i>Minimum</i>	<i>Maximum</i>
Under Rs. 200	1/5th of pay subject to minimum of Rs. 4 per month	1/3rd of pay subject to a minimum of Rs. 8 per month
Between Rs. 200—350	Rs. 50	Rs. 67
„ Rs. 350—400	Rs. 70	Rs. 85
„ Rs. 400—900	Rs. 84	Rs. 100
„ Rs. 900—1000	Rs. 125	Rs. 150
„ Rs. 1000—1500	Rs. 150	Rs. 200
„ Rs. 1500—2000	Rs. 200	Rs. 275
„ Rs. 2000—and above	Rs. 225	Rs. 300

The disability pension admissible to Army personnel is based on the length of service, qualifying rank and the percentage of disablement and covers causes not only attributable to risk of office but get aggravated by service.

(vi) *As regards extraordinary pension/gratuity compensation admissible to a policeman when his death is attributable to risk of his office the most advantageous benefits offered to the widow in one State are mentioned below :—*

(a) *Gratuity* : Equivalent to 8 months' pay last drawn by the deceased;

(b) *Monthly pension* to the family equal to the last pay drawn by the deceased till the date on which the deceased policeman would have normally reached the age of superannuation and thereafter a monthly pension equal to the amount of pension which the deceased would have been entitled to if he had continued to be in service till the date of his superannuation;

(c) *Ex-gratia* grant of Rs. 5,000 as an immediate financial assistance.

(vii) *When injury/disability is not attributable to the risk of office :*

It seems that no special compensation is admissible from Government to serving police personnel suffering injury/disability not attributable to the risk of office, who continue to remain in service. However, some State Governments and Central Government sanction generous advances to police personnel for meeting the expenses towards their medical treatment and recuperation.

(viii) *When serving police personnel suffer injury/disability not attributable to the risk of office and are not retained in service but are discharged then invalid pension is admissible to them on the formula—*

average emoluments × length of service

80

subject to a prescribed upper limit.

(ix) *In case of police personnel who die while in service and the death is not attributable to risk of office, the family pension benefits depend upon the length of service put in by the deceased and the pay last drawn by him. Some States provide a pension to the surviving children also. These pensions range from Rs. 8 to Rs. 250 per month.*II. *Health and Medical Facilities*

4. Various States have provided different types of medical facilities to their police personnel. Practically all major States have provided police hospitals in all district headquarters. Where police hospitals or dispensaries are not located, medical facilities to police personnel are provided in Government hospitals. Besides, arrangements have been made in a number of States for specialized medical treatment for certain complicated diseases. Many State Governments have made arrangements in sanatorium for a special free ward or free treatment for police personnel suffering from T.B. Some State Governments have reserved a number of beds for police personnel in T.B. hospitals in their respective States. Generally T.B. patients are also given a special diet allowance till they have fully recuperated.

5. In case certain medicines are not available in police or general hospitals, the cost of such medicines is fully reimbursed to police personnel in several States.

6. Some State Police forces provide certain other special medical facilities for their police personnel as a welfare measure. One State has arranged a Women Hospital with a maternity ward at the State headquarters. The facility of maternity ward has been provided at a number of other places also in the same State. Such maternity wards exist in some other States also.

7. Police personnel admitted in hospitals as indoor patients are provided milk, diet etc., at the cost of the Government. In one State, medical facilities have been made available to the retired police personnel and the members of their families also at par with the serving men. In yet another State two mobile police hospital vehicles have been provided to carry patients for hospitalisation and to provide medical attendance on the spot where no medical facilities exist. If the patient becomes ill outside the headquarters of the Authorised Medical Attendant, then he is paid travelling allowance for the journey to and from such headquarters. In case the patient is too ill to be moved, the Authorised Medical Attendant attends on him at the place of the patient. Similarly, in one State, where medical treatment is not available and it is found necessary to get the patient treated in any specialised hospital outside the State, the Police personnel are permitted to avail of such a specialised treatment and the expenditure incurred on such treatment is reimbursed by the Government on the admissible items.

8. Some States sanction advances liberally for the non-gazetted police personnel who suffer from prolonged and serious diseases like Cancer, Leprosy, poliomyelitis etc. and need specialised treatment. In such cases an advance of upto Rs. 1,000 inside the State and Rs. 3,500 outside the State for the purpose of medical treatment of police personnel and their family members is sanctioned. Besides, a programme for annual medical check up has also been introduced in most of the States to detect ailments and arrange for prompt treatment.

9. Central Government employees are provided medical facilities under the (i) Central Government Health Scheme (CGHS); (ii) Medical Reimbursement Scheme under the Central Services (Medical Attendance) Rules, 1944. The CGHS provides free medical aid including outdoor treatment, supply of drugs and hospitalised and specialised treatment by whole-time medical staff mostly at hospitals and dispensaries maintained exclusively for the beneficiaries. This scheme is, however, contributory in the sense that every beneficiary Central Government employee has to contribute an amount according to his pay range. Under this scheme, domiciliary visits to attend to the employee and his family members are free.

10. Medical Reimbursement Scheme covers those Central Government employees who are not covered by the CGHS. The medical coverage under the reimbursement scheme is broadly comparable to that available under the CGHS except that no separate medical institution or medical staff are maintained for the employees governed by the reimbursement scheme and they depend on the State Government or recognised hospitals for indoor treatment and all State Government medical officers, who are declared as Authorised Medical Attendants, for out-door treatment. The expenditure incurred initially by the employees on the purpose of medicine as well as for medical examination etc. are reimbursed later. Class III and Class IV staff are entitled to receive medical treatment from private medical practitioners also (allopaths only) who are recognised as AMA for this purpose. The CGHS has also Homoeopath and Ayurvedic dispensaries. It makes special arrangements for the treatment of T.B. patients and it gives preventive inoculation and vaccination.

III. Educational facilities

11. In BSF a separate fund known as the BSF Education Fund has been established for the benefits of all BSF personnel. All serving members of the BSF personnel are required to contribute from Rs. 1 to Rs. 3 on *pro rata* basis. The other sources of income for this fund are the sale proceeds of the scrap which fetch approximately rupees 20 lakhs per year and grants-in-aid from the Central Government for running BSF schools. Out of this Fund, 7 educational institutions (2 higher secondary and 5 secondary) and 2 vocational institutions are run to impart training equivalent to diploma course in electronics, mechanical and electrical courses. Admission is through a competitive test and annual intake in each School is 25 except in Diploma courses where it is 9. Besides, arrangements have been made to provide free primary schools upto V standard in all BSF colonies. The BSF educational institutions are affiliated to the Central Board of Higher Secondary Education and Directorate of Technical Education respectively. The Education Fund also provides financial assistance to the children of serving personnel for studying in residential schools or other institutions. This financial assistance is given in addition to the Children Educational Allowance which is normally granted to the BSF personnel under the Central Government rules. Another important feature of this Fund is that financial assistance is given to the children of deceased BSF personnel also.

12. Some State Police forces have also built up funds to give scholarships to meritorious children of Police personnel especially when they are receiving technical education. But the assistance which they are able to give is usually meagre because of lack of resources.

IV. Special Leave Entitlements

13. Policemen have been entitled to the leave facilities available to other Government servants. However, as they have to work almost on all Sundays and other Gazetted holidays, certain State Governments have made provision for additional casual leave. For example, the Constabulary in one State are entitled to 30 days' casual leave as against 14 days to which other Government servants are entitled. Due to constant law and order problems and pressure of work, it is generally not possible to sanction the entitled leave to all members of the police force. Adequate leave reserve has not been provided in the police strength in many States. This will be clear from the following tables which give the comparative position of leave reserve in some States :

TABLE I
Constabulary Ranks

State	Total strength		Leave reserve sanctioned	% of leave reserve
	H.C.	P.C.		
1	2	3	4	5
1. Uttar Pradesh	16412	83387 = 99799	13909 (PC)	13.9
2. Maharashtra	21198	58818 = 80016	3124 (HC & PCs)	3.9
3. Gujarat	9891	31670 = 41561	2395 (PC)	5.5
4. Punjab	3615	21069 = 24684	435 + 2427 = 2862	11.6
5. Rajasthan	4313	28369 = 32682	3730 (PCs)	11.4
6. Tamil Nadu	5058	32579 = 37637	868 (PCs)	2.3

TABLE II

Upper Subordinate Ranks

State	Total Strength			Leave reserve sanctioned	% of leave reserve
	Inspector	S.I.	A.S.I.		
1. Uttar Pradesh	908	7556	699 = 9163	1098 (SIs)	11.9
2. Maharashtra	796	3739	— = 4535	225 (SIs)	4.9
3. Gujarat	434	1648	— = 2082	77 (SIs)	3.7
4. Punjab	171	812	1201 = 2184	6 Insp. + 34 SIs + 135 ASIs = 175	8.0
5. Rajasthan	227	1410	934 = 2571	198 SIs + 103 ASIs = 301	11.7
6. Tamil Nadu	714	2266	822 = 3802	6 Insp. + 78 SIs + 1 ASI = 85	2.2

The above tables speak for themselves. They show that some of the leave reserves are grossly inadequate to permit leave being granted liberally upto the entitlements.

Encashment of leave on superannuation

14. The concession of encashment of leave has been sanctioned in a number of States to compensate their employees in lieu of leave which remains to their credit at the time of superannuation. In most States and Union Territories all police personnel are entitled to the cash equivalent of leave salary on account of Earned Leave/Privilege Leave at their credit on the date of superannuation subject to a maximum of 180 days. Leave salary for this period is not reduced by pension and other retirement benefits which are admissible on the date of superannuation. The cash equivalent of leave salary is also paid to the family of the Government servant who dies in harness to the extent of leave that remains to his credit at that time, subject to the maximum limit of 180 days. However, in some States encashment of leave is admissible subject to a maximum of only 120 days.

*V. Group Insurance Scheme**15. Salient Features :*

(1) Group Insurance Scheme is aimed at providing low cost life insurance protection to a group of employees. Under such a scheme, a large number of employees or organised groups are provided social security benefits. The Group Insurance Scheme as introduced by the Life Insurance Corporation of India makes provision for adequate compensation to the widow of an employee who dies while in service. The main object of this scheme is to avoid great hardship and suffering by the employee's family as the conventional individual insurance in the earlier years of one's career is difficult to afford and maintain to the limit one requires compensation on death.

(2) There are two types of plans covering the Group Insurance Scheme. One is the Deposit Administration Plan (DAP) and the other is one year Renewal Term Assurance Plan (OYRTA). Under the DAP the quantum of terminal benefits under the Group Insurance Scheme depends upon the contribution in respect of the concerned employee from time to time and the rate of interest allowed by the Life Insurance Corporation on these amounts. In the case of OYRTA Plan, every employee in the same age group has to contribute at a uniform rate and this scheme is renewable on year to year basis.

(3) Under the Group Insurance Scheme, the LIC issues one Master Policy to cover all the employees of one organisation. The consolidated premium is paid to the LIC by the employer after collecting contribution from the employees, but it is stipulated in the scheme that at least 25% of the total premium shall be paid by the employer himself. The premium depends on the age group of the employees.

(4) On the basis of age distribution, the cost towards insurance cover per thousand per month is worked out depending upon the amount of insurance cover.

(5) The Group Insurance Scheme does not involve any medical examination of individuals. All the employees are automatically covered. However, such a Group Insurance Scheme is workable only when it is made compulsory for all the employees.

(6) The maximum insurance cover which is provided by the LIC under the Group Insurance Scheme to any individual is restricted to Rs. 10,000 only. The cost towards group insurance depends upon the age distribution. This is worked out every year on the basis of fresh age distribution to be supplied by the employer. Accordingly, the cost towards this will vary from year to year.

16. Benefits under Group Insurance Scheme :

The benefits to the employees under an ordinary group insurance scheme and a Group Insurance Scheme with saving benefits are as under :—

(a) *Under an ordinary Group Insurance Scheme :* The amount of insurance cover provided to the employee in the event of his death while in service of the employer is paid to the dependents of the employee.

(b) *Benefits under Saving cum Risk Insurance Scheme :*

(i) The amount of insurance cover, in the event of death while in service of the employer.

(ii) Death benefits under the savings portion which will depend upon the duration for which the member has been covered under the scheme and the rate of interest allowed to contributions from year to year.

(iii) On retirement, the member will be paid the savings benefits. The savings benefits again will depend upon the contribution put to savings and the period for which the employee has been a member of the scheme and the rate of interest allowed for year to year on the contribution of the member.

17. *Central Government Ordinance :*

The Central Government had promulgated an ordinance in September, 1976 enjoining upon all Establishments covered by the P.F. Act 1952 to provide compulsory Life Insurance cover to their employees by paying a premium of 0.6% of the wage bill to the Regional Provident Fund Commissioner. The Government was to contribute further 0.3% to this amount and the P.F. authorities were required to pay to the dependents of a worker in the event of his death an amount equivalent to the average balance in the Provident Fund Account during the last three years subject to a maximum of Rs. 10,000/-. Thus the Group Insurance coverage has become more or less statutory. The provisions of this Ordinance have subsequently been enacted under the Employees' Provident Funds and Miscellaneous Provisions Act.

Insurance Scheme for Central Government Employees

18. Recently the Group Insurance Scheme has been introduced by the Central Government for all their employees including policemen in the Central Police Organisations. This Scheme is compulsory for all Central Government employees. The scheme is divided into three groups.

Group - I

Group-I relates to those employees who on the date of introduction of the scheme were below the age of 28 years. Employees covered by Group I are required to pay a uniform contribution of 50 paise per month till they attain the age of 28. In case of death of the Government servant in service during this period, his/her nominees shall be paid Rs. 5,000/- (Rupees five thousand only) in lump sum. No terminal cash benefit whatsoever shall be payable under this scheme if the employee leaves service before reaching the age of 28 or dies after leaving service and before reaching that age. On attainment of 28 years of age, these employees will come under Group-II of the Scheme.

Group - II

This group will include the employees in Group-I after they attain the age of 28 and also those who have attained the age of 28 in the month in which the Scheme came into force. These employees will be required to pay a uniform contribution of Rs. 5/- per month commencing from the month in which they attain the age of 28 years, and ending with the month preceding the month in which they attain the age of 58 years. A sum of Rs. 5,000/- (Rupees five thousand only) shall be paid to the Government servant on attainment of the age of 58 years. In case of the death while in service, the nominees of the Government servant shall be paid Rs. 5,000/- (Rupees five thousand only) in lump sum. No contribution is to be recovered for the month in which a government servant dies in service.

Group - III

All other employees will be included in this group. The rate of contribution and the benefit payable on death will be the same as applicable to employees covered by Group-II. However, the benefits available on attaining the age of 58 years will be as follows in the case of employees covered by this group :-

Age on the date of joining the Scheme	Cash sum payable
29 to 34	An amount calculated on the basis of Rs. 8.75 for each month for the period the employee was covered by the scheme.
35 to 44	An amount calculated on the basis of Rs. 6.25 for each month for the period of employee was covered by the scheme.
45 to 57	An amount calculated on the basis of Rs. 5.00 for each month for the period the employee was covered by the scheme.

No contributions will be recoverable from a Government servant on his attaining the age of 58 years. The insurance cover will accordingly be available only upto the age of 58 and not thereafter.

19. In the Border Security Force there is a scheme known as the BSF Contributory Benefit Fund. This fund is a sort of Group Insurance Scheme which covers all BSF personnel. Each member of the BSF has to contribute a sum ranging from Rs. 5/- to Rs. 45 on *pro-rata* basis. The minimum contribution for a Constable is Rs. 5/- and the maximum for the Director General is Rs. 45/-. In case of death of any member of the BSF while in service due to any reason whatsoever, an *ex gratia* grant of Rs. 5,000/- is paid from this Fund to the family of the deceased member. This amount is paid in the form of Fixed Deposit Receipt in the State Bank of India with the stipulation that the interest accruing from this amount is paid to the family of the deceased member every quarter. Similarly, this Fund provides assistance to the members of the BSF in the following contingencies :-

- (a) In case of injury received in action causing disability or discharge from service—Rs. 5,000/- in the form of Fixed Deposit receipt.
- (b) When a member of the BSF contracts any serious disease like T.B. etc. and is boarded out of service Rs. 3,000/-.
- (c) If boarded out of service due to injury received due to reasons not attributable to risk of office Rs. 1,000 to Rs. 2,500 (on *pro-rata* basis depending upon the extent of injury).
- (d) On normal superannuation Rs. 1500/-.
- (e) On leaving the BSF on deputation or otherwise :-
 - (i) with less than 7 years service—equal to 50% of contribution.
 - (ii) with 10 years or more service—75% of contribution.
- (f) If a member of BSF, who has not qualified for pension, is killed in action then his family is given special financial assistance from this fund to the extent of Rs. 200 per month for 10 years.
- (g) If any BSF member dies due to other reasons without having rendered the required years of service qualifying for pension then his family is given financial assistance to the extent of Rs. 150/- per month.

Insurance Scheme in various States

20. One State has introduced a Government Servants Family Benefit Fund Scheme, which covers all Government servants in the State including police personnel and village establishments also. It is purely a family benefit scheme with a token monthly recovery of one rupee only from the Government servant. According to this scheme, a lump sum amount of Rs. 10,000 is given to the nominee of the employee if he dies while in service.

21. In another State two Group Insurance-cum-Savings Schemes for the employees of the State Government have been introduced. The first scheme covers all State Government employees, including gazetted police officers. The second scheme covers only non-gazetted police personnel of the rank of Inspector and below. Each employee is covered for Rs. 12,000 under One Year Renewable Term Assurance (OYRTA) plan.

22. The contributions and benefits under the two schemes are as follows:—

I. Contributions :

Employee	Rs. 8 per month
State Govt.	Rs. 1.65 per month (Rs. 3.75 per month for non-gazetted police ranks).

II. Allocation of the above Contributions :

	Risk Plan	Deposit Administration Plan (DAP)
Employee	Rs. 3.05 per month.	Rs. 4.95
State Govt.	Rs. 1.65 per month (for each Gazetted Police Officer), Rs. 3.75 per month (for each non-gazetted policeman).	—

III. Benefits :

The benefits available to the employee under these schemes are:—

- (a) On death He will get Rs. 12,000 plus accumulated value of the contribution allocated under D.A.P. as indicated in Col. 6 of the Table below.
- (b) On retirement or premature retirement (other than death). He will get the accumulated value of the monthly contribution allocated under D.A.P. as indicated in Col. 6 of the Table below.

It is further provided that the benefit that would accrue to an employee will in no case be less than the employee's contribution. This means that on retirement or premature retirement (other than death) the employee will get either the amount in Col. 4 or Col. 6 whichever is more advantageous to him.

TABLE

Completed year of service before retirement	Contribution made by the employees	Benefit on		Retirement Benefit Expressed as % of contributions	Accumulated value of monthly contribution of Rs. 5 payable in advance under DAP
		Death	Normal Retirement		
1	2	3	4	5	6
Rs	Rs	Rs	Rs	Rs	Rs
1	96	12,061	96	100	61.93
5	480	12,343	480	100	349.12
10	960	12,804	960	100	816.32
15	1440	13,420	1440	100	1,441.54
20	1920	14,244	2244	117	2,278.23
25	2400	15,347	3347	139	3,397.90
30	2880	16,823	4823	167	4,896.28
35	3360	18,799	6799	202	6,901.45
40	3840	21,443	9443	246	9,584.82

23. A number of other States and Union Territories have already taken suitable steps to introduce group Insurance Schemes for their police personnel.

VI. Family Welfare-cum-Work Centres

24. In some States and also in the Central Police Organisations, family welfare-cum-work centres have been established with a view to providing subsidiary and spare time employment to the members of the family of police personnel. These centres help police personnel to supplement their income. These welfare centres undertake activities like stitching of uniforms, knitting, manufacture of handicrafts based on local talent and raw materials etc. The labour charges paid to the family members of policemen working at these centres are however found to be lower than market rates.

VII. Canteens and Co-operative Stores

25. In several States and Central Police Organisations the facility of providing canteens and cooperative stores for the benefit of police personnel has been provided. Refreshments at reasonable and competitive rates are provided at such departmental canteens. These canteens are generally run on no-profit-no-loss basis. Besides, departmental cooperative stores have also been established in some States where rates of the commodities are fixed at reasonable levels as compared to market rates.

VIII. Police Welfare Fund

26. In most States and also in the Central Police Organisations, police welfare funds have been established. The benefits of the police welfare fund have been extended to all members of the police force. These funds are mainly built up by contributions from the members of the police force. The rates of subscription have been fixed at stages depending upon the various rates of pay of the members of the police force. Other sources of income for these funds are *ad hoc* special grants given by the Government, income from unit activities such as sale proceeds on tickets for tournaments, entertainment shows, money accruing from police bands, profits from canteens and cultivation of land, etc.

27. The police welfare funds are mainly utilised for the following purposes:—

- (i) to finance welfare measures for the benefit of police personnel;
- (ii) to provide amenities in the police messes for all police personnel;
- (iii) to purchase books and periodicals;
- (iv) to provide various recreational facilities like indoor and out-door games, dramas, dance, concerts etc.
- (v) to arrange film shows, T.V. and radio sets;
- (vi) promotion of sports;
- (vii) purchase of sewing machines, knitting machines and such other equipment for the welfare-cum-work Centres; and
- (viii) financial assistance in case of serious prolonged illness like T.B., paralysis and cancer.

IX. Police Welfare Officers

28. In a number of States and Central Police Organisations Police Welfare Officers have been appointed for the execution of various welfare schemes aimed at providing welfare amenities and facilities to the police personnel. These welfare officers serve as a link between the police personnel, especially the subordinate ranks, and the Superintendent of Police of the district. Their main responsibility is to arrange for prompt relief to the family of a policeman who is killed while in service or is otherwise disabled, or in a distress situation.



SYNDICATE BANK SAVING SCHEME FOR BSF

Salient features of the Scheme

- (a) The minimum rate of contribution to the scheme is Rs. 10 per month. However, individuals desirous of contributing higher amounts can do so in multiples of Rs. 10.
- (b) Individual recurring deposit accounts are being opened with Syndicate Bank at Delhi.
- (c) The bank will issue a Pass Book to each contributor. He will get a statement of account showing the credit balance twice in a year; as on the first of January and July. The statement will be sent to the contributor for the verification of his balance.
- (d) The contribution will be deducted at source from the salary by the EDP Cell, HQ BSF and remitted to the Bank.
- (e) The amount will be payable to the Depositor at the time of his retirement or resignation or boarding out. The payment will be made by means of a pay order made out in his name. In the event of death the amount would be paid by way of pay order in the name of a nominee who should be a joint account holder. These pay orders will be sent to the unit for handing over to the beneficiaries.
- (f) The contributor can continue with his Recurring Deposit Account even after leaving the force by dealing directly with the Bank, if he so desires.

Rate of Interest

The depositors will be paid interest at the rate of 10% to be worked out on a monthly basis. At this rate of interest a contribution of Rs. 10 per month will increase as per table given below. For example, a person contributing Rs. 30 a month will collect over Re. 1 lac after 35 years. It will be observed that after 35 years the amount deposited increases by over 9 times. The rate of interest is liable to increase/decrease as per Reserve Bank of India directives:

Period	Actual amount paid at Rs. 10	Amount payable at maturity inclusive of interest
5—1 month	610.00	797.50
10	1200.00	2065.50
15	1800.00	4179.50
20	2400.00	7658.00
25	3000.00	13380.00
30	3600.00	22793.00
35	4200.00	38283.00

Penalty for late payment

In case any individual fails to contribute towards his Recurring Deposit Account, penalty of 1% delayed subscription per month will be charged for the delayed instalment. This penalty will be recovered at the time of making final payment.

Commencement of the Scheme

The Scheme has commenced from pay for January, 1976 in BSF.

Accounting

A recurring deposit cell has been established under Deputy Director (Admn) HQ BSF for operating the scheme.

Nominee

Nominee for this Scheme may be the same as for different from the nominee for the Benevolent Fund Scheme. The name of the nominee should be reviewed on 1st January every year and changes, if any, reported to EDP Cell. Since under the Banking Act nominations are not being allowed, the nominee should be made a joint account holder.

Loans

In case of requirement of loan by the subscribers a loan upto 75% of the individual's balance with the bank or as laid down in RBI directives, will be paid by the Bank on receipt of recommendations from HQ BSF. The rate of interest charged on such loans will be 2% in excess of the interest being earned by that account.

Withdrawal

The Bank will make the payment to the depositor on receiving advice from HQ BSF by pay order in the name of the depositor/joint account holder. The bank will not insist on a death certificate in such cases. If it is desired to withdraw the balances earlier than the normal maturity period, on account of death, invalidation or reversion of a depositor, the amount standing to the credit of the depositor at that time will be paid, without any penalty, subject to approval of Reserve Bank of India. In other cases of foreclosure of accounts a penalty as per RBI directives which at present is 2% of the interest due will be charged.

The Scheme represents one of the largest single small savings efforts of its kind. It is expected to help all the members of the Force and their families in planning their savings profitably.

(The Scheme is voluntary. It is expected that the entire force will join it. At the end of 25 years when the Scheme is in full force it is expected to generate small saving of the BSF to the tune of nearly Rs. 80 crores).

AIR 1968 CALCUTTA 407 (V 55 C 84)

SPECIAL BENCH

B. N. SINHA C. J., B. N. BANERJEE

A. N. RAY, AMARESH ROY AND

B. C. MITRA JJ.

In Matter No. 343 of 1967.

Jay Engineering Works Ltd., and others	<i>Petitioners</i>
V	
State of West Bengal and others	<i>Respondents</i>
In Civil Revision No. 726 (W) of 1967 :	
Indian Oxygen Ltd., and others	<i>Petitioners</i>
V	
State of W.B. and others	<i>Respondents</i>
In Civil Revision No. 733(W) of 1967 :	
Bengal Enamel Works.	<i>Petitioner</i>
V	
State of W.B. and others.	<i>Respondents.</i>

Matter No. 343 of 1967, Civil Revision Nos. 726 (W) and 733(W) of 1967 D/29-9-1967 and 4-12-1967 respectively.

(A) Words and Phrases --- "Gherao".

Per Sinha C.J. The word "Gherao" is a physical blockade of a target, either by encirclement intended to blockade the ingress and egress from and to a particular office, workshop, factory or even residence or forcible occupation. The "target" may be a place or a person or persons, usually the managerial or supervisory staff of an industrial establishment. The blockade may be complete or partial and is invariably accompanied by wrongful restraint, and/or wrongful confinement and occasionally accompanied by assault, criminal trespass, mischief to person and property, unlawful assembly and various other criminal offences. Some of the offences are cruel and inhuman like confinement in a small space without lights or fans and for long periods without food or communication with the outside world. The persons confined are beaten, humiliated by abuses and not allowed even to answer calls of nature and subjected to various other forms of torture, and are completely at the mercy of the besiegers. The object is to compel those who control industry to submit to the demands of the workers, without recourse to the machinery provided for by law and in wanton disregard of it, in short to achieve their object, not by peaceful means, but by violence. Such a Gherao invariably involves the commission of offences.

(Paras 1, 10, 11, 13, 18 and 37)

Per Banerji J : Etymologically, "Gherao" means encirclement. Encirclement by a crowd may be due to various reasons, say for example, there may be encirclement of a popular leader by an admiring crowd, the leader himself enjoying this form of demonstration. Encirclement may also be made by a hostile crowd, say of workmen, who elect wrongfully to confine the management, so as to coerce them to concede to their demands. "Gherao" as such that is to say simple encirclement is no offence under the Criminal law of this country. But a "Gherao" accompanied by violence and diverse forms of crimes resulting in wrongful confinement or wrongful restraint of the encircled person or persons is a criminal activity not because it is encirclement but it is encirclement "with more".

(Para 94)

Per Amaresh Roy J : "Gherao" means collective action by large number of persons surrounding, encircling or besetting some other person or place for the purposes of using coercive methods to compel acceptance of demands or claims generally resorted to by workers and employees against the authority or employers or their officers and staff. That collective action may be by Union of workers or by a group of employees who are not a registered Trade Union. It may be a strike as defined in labour laws or it may not be so. Even when it is a strike so defined, it may be a lawful and peaceful strike or it may be unlawful and violent involving criminal offence. Surrounding or encircling or besetting and thereby putting the subject of that act under restraint, may or may not be by committing an act of trespass on property, but inevitably it results in wrongful restraint and even wrongful confinement, which are offences defined and punishable by Indian Penal Code. Coercive method may be attended with violence and it may result in degrees of assault even without actual assault, show of force or putting the subject to fear of injury may amount to intimidation or extortion depending on the purpose for which that coercive method is employed. Other unlawful acts and other offences of mischief or theft may result from such coercive methods though that need not happen in every instance of Gherao. Distinctive character of Gherao is existence in it of coercive method in one form or other. Without coercive method Gherao does not exist. Such coercive method in Gherao may take many forms and fabrications. It may be by shouts and noises raised by slogans. Not only encirclement of person and place attended with slogans and shouts or noise and clamour, but also crowding of public places and roads may be of a degree which is nuisance in law but not an offence defined in Indian

Penal Code or any other special law. In some cases the congregation may be peaceful or it may be disorderly and violent to the extent of disturbing public order causing breach of public peace, and thereby it may cause disturbance of law and order, or even may amount to serious offences punishable under Indian Penal Code or one or more special laws.

(Paras 119 to 122, 128, 148)

Per B.C. Mitra J : Gherao is encirclement by the workers of the employers and their managerial staff followed by various hostile manifestations. Such manifestations invariably take crude and obnoxious forms and involve physical and mental torture. 'Gherao' also includes the blockade of a target from inside by the workers with the object of ousting and evicting the employers and their managerial and supervisory staff. The object of a 'Gherao' invariably is to compel the employers to accept the demands of the employees by threats and coercive methods. It may involve violation of the laws of the land and commission of cognizable offences under the Indian Penal Code and also other statutes.

(Para 283)

(B) Trade Unions Act (1926) Ss. 17 and 18 — Applicability—Exemptions apply only to peaceful strikes—Strikes accompanied by violence—No exemption is available.

Sections 17 and 18 of the Indian Trade Unions Act grant certain exemption to members of a trade union. But there is no exemption against either an agreement to commit an offence or intimidation, molestation or violence, where they amount to an offence. Members of a trade union may resort to a peaceful strike, that is to say, cessation of work with the common object of enforcing their claims. A concerted movement by workmen by gathering together either outside the industrial establishment or inside within the working hours is permissible, when it is peaceful and does not violate the provisions of law. But when such a gathering is unlawful or commits an offence then the exemption is lost. Thus, where it resorts to unlawful confinement of persons, criminal trespass or where it becomes violent and indulges in criminal force or criminal assault or mischief to person or property or molestation or intimidation, the exemption can no longer be claimed. (1966) 2 AIR ER 133 and (1938) 306 US 240 and AIR 1939 Sind 256 and All 1957 SC 82 and AIR 1960 SC 160 and AIR 1962 SC 1166 and AIR 1963 SC 812 and 1964 AC 1129. Rel. on (English law compared).

(Paras 31, 63, 136, 136 A, 244, 245)

There are no express provisions in the Trade Unions Act regulating strikes or picketing. But these are recognised weapons in the armoury of labour. The word 'strike' in its broad significance has reference to a dispute between employer and his workers, in the course of which there is concerted suspension of employment. In a strike employment relations continue but there is a state of belligerent suspension. There are many varieties of strikes e.g. stay in strike, tool down strike, pen-down strike etc. But there is no provision in law which exempts a workman taking part in a strike, from the criminal laws of the land. Neither Section 17 nor 18 of the Trade Unions Act, exempts a workman, if he commits an offence, which means an offence under the criminal laws of the country, save and except the limited ground upon which he is exempted from being charged with criminal conspiracy under Section 17. An agreement to commit an offence being expressly excluded from the purview of Section 17.

(Para 37)

(C) Constitution of India Arts. 14, 21, 256, 166(3)—"Gheraos" in industrial establishments—Confinement of managerial staff—Administrative circulars based on cabinet decision—Police officers and District Officers directed to obtain labour Minister's direction before discharging their statutory duties—Validity—Circulars violate Arts. 14, p 56 and 166(3) of the Constitution and Ss. 54, 127, 100, 151, 154, 157 of Criminal P.C. and are invalid.

A limited company carrying on the business of manufacturing fans and machines retrenched some of its workmen. Consequent on such retrenchment, the retrenched workmen along with some others, blockaded the company's premises completely obstructing the passage of personnel and goods, including food-stuffs for the barricaded persons inside, who were wrongfully confined therein. The blockade was lifted after about 14 hours after police intervention. Consequent on the new Government taking office in West Bengal the retrenched workers, together with other employees numbering about 200 persons gheraoed the manager and other officers at the office premises and the gherao continued for 33 hours. It was alleged that beside confining the officers, the workmen tampered with the company's property spoil the walls and continuously shouted insulting and humiliating slogans against the confined persons. Supply of food to those confined was not permitted except for a nominal quantity at the will of the besiegers. Information was given to the police authorities but no action was taken. Similar actions by the retrenched workmen along with other followed on different dates, the confinement in each case carrying in duration and rescue being effected through a search warrant issued by Presidency Magistrate. A writ petition was filed challenging *inter alia* the validity of the circulars issued by the State Government through its joint secretary in its Home and Political Department being No. 513 P.C. dt. 28th March, 1967, addressed to all District Officers and the Commissioner of Police, Calcutta and No. P-914 P.S. dt. 12th June, 1967. These circulars were based on cabinet decision. It was alleged that by reason of these two circulars the police had been reduced to total inaction. The first circular dated 27-3-1967 superseded a previous circular dealing with Gherao, Stay in strike, etc. and directed *inter alia* that, in cases of Gherao of Industrial establishments by their workers, resulting in confinement of managerial and other staff, the matter be immediately referred to the Labour Minister and no police intervention for the rescue of the confined personnel should be decided upon without obtaining his direction. An interim injunction from the High Court having been obtained restraining the State Government from giving effect to the circular, the second circular dated 12-6-1967 was issued and was to the following effect. It was to be followed by all authorities connected with the maintenance of law and order, particularly the police and the magistracy. (2) The Police ought not to intervene in 'legitimate labour movements', which was admitted to mean 'legitimate Trade Union rights'. (3) when a complaint was made to the police regarding unlawful activities in connection with any legitimate labour movements, the police, instead of following the procedure prescribed by law, ought to first investigate the facts and if they were satisfied that the complaint has basis in fact, then alone could any action in law be taken. This circular did not by itself refer to the High Court's injunction. On the question of the validity of these circulars.

Held : (i) that the circulars were contrary to law, without jurisdiction and were invalid. The circulars, dated March 27 and June 12, 1967, and the cabinet decisions upon which they were based were unlawful. There was no legislative authority behind the executive action. The action was discriminatory in so far as it denied to wrongfully confined or wrongfully restrained managerial staff of industrial establishments, prompt police intervention as provided for by the law of the land. In so doing, the executive violated its duties under Article 256 of the Constitution. Neither the Council of Ministers nor individual Minister in charge of any department had any power or authority under any statute law. The State Government being the executive authority, the exercise of that authority in law could only be in the manner directed by Art. 166(1) of the Constitution. The Council of Ministers or its Committee called the Cabinet could only sanction policy, due execution of which was the responsibility of the Secretary or the Joint Secretary in charge of the department concerned, with the subject matter. It was not for Minister in charge of the department, far less Minister in charge of another like labour to give directions on any particular subject. Police being under Home Department it was violation of the Rules of Business to direct Police or Magistrate to take directions from Labour Minister. It was more so, not less, when that violation was by a cabinet decision. The Cabinet decisions insofar as they put those matters under direction of Labour Minister over the head of the Home Minister clearly violated the Rules of Business which are constitutional rules not amenable to change or modification by Cabinet or Council of Ministers.

(Paras 37, 94, 187 to 189 and 266)

(ii) that the circulars laid down the procedure which was violative of Ss. 54 and 127, 154, 157, 151 and 100 of Criminal P. C. Further the circulars added burdens which were not found in the Code and therefore invalid. There was no special procedure that ought to be adopted when an offence was committed by members of a Trade Union, even in an attempted enforcement of their power to collective bargaining. The procedure applicable was the ordinary procedure to be adopted in the case of such infraction outside the Trade Unions Act. The executive government had no power, jurisdiction or authority to add to or detract from such laws or give executive directions that the procedure ought to consist of any kind of special investigations, which ought to be done, at a stage not contemplated by the Criminal Procedure Code. The second circular of June 12, 1967, in so far as it prohibited the police from taking any action provided by law before completing a careful investigation, interfered with the duties of the police, which the executive had no jurisdiction or competency to do. In effect those two circulars by their language and emphasis had interdicted any police action in performance of their duties enjoined by law. The first, dated 27th March 1967, showed awareness and acknowledged that Gherao resulted in confinement yet directed that before deciding upon police intervention for rescue of confined personnel the matter ought to be immediately referred to the Labour Minister and his direction obtained. On the face of it this circular countermanded all that law enjoined on police as imperative duty on receiving information of wrongful confinement which was a cognisable offence. It was against the provision of statutes and the action was undoubtedly unlawful. It had also interfered with Magistrate's judicial function under Section 100, Cr. P. C. in so far as it directed that before deciding upon police intervention for rescue of confined persons, the matter should be referred to a particular Minister and his directions obtained. No louder interference by executive with judicial function of the court of Magistrate could be imagined. AIR 1955 SC 196 and (1907) 11 Cal WN 554 and AIR 1962 Cal 135 (FB), Ref., AIR 1928 Mad 791 and AIR 1935 Cal 403, Dist.

(Paras 31, 37, 85, 87, 165 and 257)

(iii) that the circulars violated Art. 14 of the Constitution. The executive government by an executive fiat, had determined that the managerial and other staff of an industrial establishment when subjected to a gherao, which involved the commission of several cognizable offences like wrongful restraint, wrongful confinement, criminal trespass, assault etc. would be subjected to a different procedure in law than any other person or persons subjected to the same. While, in all other cases, the police were to act in accordance with the Cr. P. C. and the relative Police Acts applicable, in their case no action was possible except under the direction of the Labour Minister. There was therefore a clear discrimination because such persons who had been illegally gheraoed did not constitute a separate class, to whom the ordinary law ought not to be applied. The effect of the circulars was that arbitrary powers were conferred upon the District Officers and the police whereby the petitioners had been deprived of the equality before the law and equal protection of law. As these were cases where substantial discrimination was made, which was not justified by any law, the question of reasonable classification did not prevent the operation or the protection given by Article 14 of the Constitution. AIR 1956 SC 479 and AIR 1967 SC 1836 and AIR 1963 SC 222 and AIR 1959 SC 149 and AIR 957 SC 397 and AIR 1955 SC 191, Rel. on.

(Paras 34, 77, 81 and 261)

(iv) that the circulars did not violate Art. 21 of the Constitution. By the impugned circulars, the Government was not proceeding against the life or personal liberty of the petitioners. If they were deprived of their personal liberty, it was by the persons who staged a gherao and not by the circulars. The circulars might have affected the promptness or effectiveness of the rescue by the police but they were not the proximate cause of any deprivation of life or personal liberty of the petitioners. AIR 1950 SC 27. Dist. AIR 1963 SC 1295 Rel. on.

(Paras 35, 82, 264)

GOVERNMENT OF WEST BENGAL
HOME DEPARTMENT
POLITICAL

From

Shri M. M. Basu, I.C.S.
Secretary to the Govt. of
West Bengal.

To

1. The District Officer.
2. The Commissioner of Police,
Calcutta.

Memorandum No. 138-PS dated, Calcutta, the 7th February, 1956.

SUBJECT : *Action to be taken in cases of stay-in-strikes and "Gherao" or Coercive and Confinement tactics resorted to by the employees of commercial and industrial undertakings.*

Cases of stay-in-strikes and "Gherao" or wrongful confinement of officers by employees of commercial and industrial undertakings in order to coerce the management to concede to their demands have often come to the notice of Government. It is considered necessary to indicate in broad lines the action to be taken in dealing with such occurrences. It is appreciated that each occurrence will have its own peculiar features and that District Officers will have to use their discretion in dealing with the situation as it develops. The instructions outlined below are therefore meant to indicate the broad lines of policy in dealing with such occurrences. They are not intended in any way to fetter the discretion of the local officers in using their lawful powers according to the needs of the situation they are called upon to deal with.

"Gherao" or wrongful confinement and criminal trespass.

2. Though workers may go on peaceful strikes which are not illegal they have no right to resort to coercive methods like wrongful restraint, wrongful confinement and criminal trespass which are all cognizable offences. Such methods are also unwarranted as there is a machinery set up by law to deal with all industrial disputes.

3. It is necessary to emphasise that the police should never lay themselves open to the charge of inaction. When the police receive information from any source whatsoever regarding such occurrences or any apprehension of such occurrences they should immediately seek confirmation thereof and proceed to the scene of occurrence particularly if police help is asked for by the management. A responsible police officer not below the rank of Sub-Inspector should be in charge of the party. On arrival at the place, the officer should contact the management to find out if police intervention is necessary.

In a case where the management asks for police intervention, the police should :—

- (a) disperse the demonstrators if it be found that they are an unlawful assembly;
- (b) arrest those who have committed or are committing cognizable offences; and
- (c) take such other action as may be called for.

4. When however the demonstration is found to be peaceful and/or police intervention is not asked for by the management the police should withdraw from the premises concerned. If in such case the officer-in-charge of the police party considers that there is apprehension of serious trouble, he should withdraw with his force to a suitable place within reasonable distance but not within sight of the demonstrators, after intimating the fact to the management and making arrangements for establishing quick contact in case the demonstration takes an untoward turn involving lawlessness.

5. The above instructions will apply to cases where coercive methods are adopted by labourers at places other than a factory, e.g., an office or any other place of business.

6. In all such cases the police should immediately on getting information of any such occurrence or as soon thereafter as possible send an intimation to the nearest District Magistrate, Sub-Divisional Magistrate or any other Magistrate having jurisdiction.

Stay-in-strikes.

7. Strikes are governed by the Industrial Disputes Act (Central Act XIV of 1947). The Act defines legal and illegal strikes. The District Officers' main concern will be the law and order aspect of the affairs, the industrial dispute itself being that of the Labour Department. There is provision in the Industrial Disputes Act itself for dealing with an illegal strike. The District Magistrate comes into the picture only where there is an apprehension of a breach of the peace over a strike of the stay-in-variety.

8. Factory workers have a right to enter the factory. Their staying in, however, becomes criminal trespass under Sec. 447 I.P.C. when it appears that they intend to intimidate insult or annoy the management or to commit any other offence. It follows, therefore, that staying-in-peacefully for the purpose of appealing to the management to grant some concessions would not be an offence under the I.P.C. It would be advisable to avoid police action in such cases.

9. Peaceful stay-in-strike rarely remains peaceful for long. The workers get restive and frequently take law in their own hands. Often then, a serious threat to life and property results. In such circumstances, action suggested in paras 3 to 6 above should be taken. But District Officers where possible should ascertain before-hand from the local representative of the Labour Directorate whether the strike is legal or not—

10.
11.

Sd/- M. M. BASU,
Secretary to the Govt. of West Bengal.

Calcutta

The 17th March 1967.

No. 513 P.C. Confidential.

Dt. 27th March, 1967

West Bengal Home Deptt., Political

To

1. The District Officer,
2. The Commissioner of Police,
Calcutta.

REF. : Government Memo No. 138 P.S. dated 7th February, 1956.

In supersession of the instructions contained in the above mentioned memo, the undersigned is directed to state that it has now been decided that in cases of gherao of industrial establishments by their workers resulting in the confinement of managerial and other staff, the matter should be immediately referred to the Labour Minister and his directions obtained before deciding upon Police intervention for the rescue of the confined personnel.

Sd/- A. K. DUTT,
Joint Secretary to the
Government of West Bengal

GOVERNMENT OF WEST BENGAL
HOME DEPARTMENT
POLITICAL

No. P 914-P.S.

Calcutta, the 12th June, 1967.

From : Shri A. K. Dutt, I.A.S.,
Joint Secretary to the Govt. of
West Bengal.

To

1. The District Officer,
2. The Commissioner of Police, Calcutta.

SUBJECT : Police action in labour movements.

Government would like to impress upon all officers, specially those connected with maintenance of law and order that the police must not intervene in legitimate labour movements and that, in case of any complaint regarding unlawful activities in connection with tush (sic) movements the police must first investigate carefully whether the complaint has any basis in fact before proceeding to take any action provided under the law.

Sd/- A. K. DUTT,
Joint Secretary to the
Government of West Bengal.

AIR 1968 Supreme Court 117 (V 55 C 32)

(From Patna)*

M. HIDAYATULLAH AND C. A. VAIDIALINGAM JJ.

Criminal Appeal No. 218 of 1966
Abhinandan Jha and others, Appellants v. Dinesh Mishra, Respondent

Criminal Appeal No. 238 of 1966
Roopchand Lal and another, Appellants v. State of Bihar and another, Respondents

The following judgement of the Court was delivered by VAIDIALINGAM, J.—The common question, that arises for consideration, in these two criminal appeals, by special leave, is as to whether a Magistrate can direct the police to submit a charge-sheet, when the police, after investigation into a cognizable offence, had submitted a final report, under section 173 of the Code of Criminal Procedure (hereinafter called the Code). There is a conflict of opinion, on this point, between the various High Courts in India. The High Courts of Madras, Calcutta, Madhya Pradesh, Assam and Gujarat have taken the view that the Magistrate has no such power, whereas the Patna and Bombay High Courts have held a contrary view.

(2) In Criminal Appeal No. 218 of 1966, the respondent, Dinesh Mishra, lodged a first information report, on June 3, 1965, at the Rajoun Police Station, that he saw a thatched house, of one Uma Kant Misra, situated on the northern side of his house, burning, and the petitioners herein, running away from the scene. The police made an investigation and submitted what is called a 'final report', under Section 173(1) of the Code, to the effect that the offence complained of, was false. The Sub-divisional Magistrate received this report on July 13, 1965, but in the meanwhile, the respondent had filed what is termed 'a protest petition', challenging the correctness of the report submitted by the police. The Magistrate appears to have perused the police diary, and, after hearing the counsel for the respondent and the Public Prosecutor, passed an order on Oct. 27, 1965, directing the police to submit a charge-sheet, against the petitioners, herein. The petitioners challenged this order, without success, both before the learned Sessions Judge, Bhagalpur, and the Patna High Court. It was held by the High Court, following its previous decision that the Magistrate has jurisdiction to call for a charge-sheet, when he disagrees with the report submitted by the police under section 173(1) of the Code. The petitioners in this appeal challenge these orders.

(3) Similarly, in Criminal Appeal No. 238 of 1966, the second respondent therein, had lodged a written report on Feb. 24, 1964, before the police, at Malasalami police station, that his daughter, Heramani, was missing from February 21, 1964, and that the appellants in that appeal had kidnapped her. A case, under Section 366 I.P.C. was registered against them. The police, after investigation, submitted a final report to the Magistrate, to the effect that the girl concerned, had been recovered and that she had stated that she had, of her own accord, eloped; and therefore the police stated that the case might be treated as closed.

(4) The second respondent filed a 'protest petition' in Court, challenging the statements of the police and he also filed a complaint, under Sec. 498 I.P.C. The Magistrate after a perusal of the case diary of the police, and hearing the lawyer for the appellants and the second respondent, as also the Public Prosecutor, passed an order directing the Investigating Officer to submit a charge-sheet against the accused persons, under Section 366 I.P.C. This order has been confirmed by the learned Sessions Judge as well as the Patna High Court. Here also, the Patna High Court, in accordance with its previous decision held that the Magistrate had jurisdiction to pass the order in question. All these orders are challenged by the appellants in this appeal.

(5) On behalf of the appellants, in Criminal Appeal No. 218 of 1966, Mr. Jha, learned counsel, pointed out that when a final report is submitted by the police, under section 173(1) of the Code, stating that no case is made out, the Magistrate has no jurisdiction to direct the police to file a charge-sheet. It may be open, counsel points out, to the Magistrate, to direct further investigation to be made by the police, or to treat the protest petition filed by the second respondent, as a complaint and take cognizance of the offence and proceed, according to law. The scheme of Chap. XIV of the Code, counsel points out, clearly indicates that the formation of an opinion, as to whether or not there is a case to place the accused on trial, is that of the investigating officers and the Magistrate cannot compel the police to form a particular opinion on the investigation and to submit a report, according to such opinion. In this case there is nothing to show that the protest petition, filed by the second respondent, has been treated as a complaint, in which case, it may be open to the Magistrate to take cognizance of the offence; but in the absence of any such procedure being adopted, according to counsel, the order of the Magistrate directing a charge-sheet to be filed, is illegal and not warranted by the provisions of the Code. These contentions have been adopted, and reiterated by Mr. Nuruddin Ahmed, on behalf of the appellants, in Criminal Appeal No. 238 of 1966.

(6) Both the learned counsel pressed before us, for acceptance, the views, as expressed by the Gujarat High Court in its Full Bench judgement, reported as State of Gujarat v. Shah Lakhamsi, AIR 1966 Guj. 283 (FB). On the other hand, Mr. U. P. Singh, learned counsel for the respondent, in Criminal Appeal No. 218 of 1966, has pointed out that the Magistrate has jurisdiction, in proper cases, when he does not agree with the final report submitted by the police to direct them to submit a charge-sheet. Otherwise, counsel points out, the position will be that the entire matter is left to the discretion of the police authorities, and the Courts will be powerless, even when they feel that the action of the police is not justified. Quite naturally, counsel prays for acceptance of the views expressed by the dissenting judges, in A. K. Roy v. State of W.B. AIR 1962 Cal. 135 (FB), and by the Bombay and Patna High Courts, in the decisions reported as State v. Murlidhar Govardhan, AIR 1960 Bom. 240 and Ram Nandan v. State AIR 1966 Pat. 438, respectively.

(7) In order, properly to appreciate the duties of the police, in the matter of investigation of offences, as well as their powers, it is necessary to refer to the provisions contained in Chapter XIV of the Code. That chapter deals with 'Information to the Police and their Powers to investigate; and it contains the group of sections beginning from section 154, and ending with section 176. Section 154 deals with information relating to the commission of a cognizable offence, and the procedure to be adopted in respect of the same. Section 155, similarly deals with information in respect of non-cognizable offences. Sub-section (2) of this section, prohibits a police officer from investigating a non-cognizable case, without the order of a Magistrate. Section 156 authorises a police officer, in-charge of a police station, to investigate any cognizable case, without the order of a Magistrate. Therefore, it will be seen that large powers are conferred on the police, in the matter of investigation into a cognizable offence. Sub-section (3), of section 156, provides for any Magistrate, empowered under section 190 to order an investigation. In cases where a cognizable offence is suspected to have been committed, the

officer in-charge of a police station, after sending a report to the Magistrate, is entitled under section 157 to investigate the facts and circumstances of the case and also to take steps for the discovery and arrest of the offender. Clause (b), of the proviso to section 157(1), gives a discretion to the police-officer not to investigate the case, if it appears to him that there is no sufficient ground for entering on an investigation. Section 158 deals with the procedure to be adopted in the matter of report to be sent, under section 157. Section 159 gives power to a Magistrate, on receiving a report under section 157 either to direct an investigation or, himself or through another Magistrate subordinate to him, to hold a preliminary enquiry into the matter, or otherwise dispose of the case, in accordance with the Code. Sections 160 to 163 deal with the power of the police to require attendance of witnesses, examine witnesses and record statements. Sections 165 and 166 deal with the power of police officers, in the matter of conducting searches during an investigation, in the circumstances, mentioned therein. Section 167 provides for the procedure to be adopted by the police, when investigation cannot be completed in 24 hours. Section 168 provides for a report being sent to the officer, in-charge of a police station, about the result of an investigation, when such investigation has been made by a subordinate police-officer, under Chapter XIV. Section 169 authorises a police-officer to release a person from custody, on his executing a bond, to appear, if and when so required before a Magistrate, in cases when, on investigation under Chapter XIV, it appears to the officer, in-charge of the police station, or to the police-officer making the investigation, that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate. Section 170 empowers the officer, in-charge of a police station, after investigation under Chapter XIV, and if it appears to him that there is sufficient evidence, to forward the accused, under custody, to a competent Magistrate or to take security from the accused for his appearance before the Magistrate, in cases where the offence is bailable. Section 172 makes it obligatory on the police-officer making an investigation, to maintain a diary recording the various particulars therein and in the manner indicated in that section. Section 173 provides for an investigation, under Chapter XIV, to be completed, without unnecessary delay and also makes it obligatory, on the officer in-charge of the police station to send a report to the Magistrate concerned in the manner provided for therein, containing the necessary particulars.

(8) It is now only necessary to refer to section 190, occurring in Chapter XV, relating to jurisdiction of Criminal Courts in inquiries and trials. That section is to be found under the heading 'Conditions requisite for initiation of proceedings' and sub-section (1) is as follows:—

“(1) Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Sub-Divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence—

- (a) upon receiving a complaint of facts which constitute such offence;
- (b) upon a report in writing of such facts made by any police-officer;
- (c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.”

(9) From the foregoing sections, occurring in Chapter XIV, it will be seen that very elaborate provisions have been made for securing that an investigation does take place into a reported offence and the investigation is carried out within the limits of the law, without causing any harassment to the accused and is also completed without unnecessary or undue delay. But the point to be noted is that the manner and method of conducting the investigation, are left entirely to the police, and the Magistrate, so far as we can see, has no power under any of these provisions, to interfere with the same. If, on investigation, it appears to the officer, in-charge of a police station, or to the officer making an investigation, that there is no sufficient evidence or reasonable grounds of suspicion justifying the forwarding of an accused to a Magistrate, Section 169 says that the officer shall release the accused, if in custody, on his executing a bond to appear before the Magistrate. Similarly, if on the other hand, it appears to the officer in-charge of a police station, or to the officer making the investigation, under Chapter XIV, that there is sufficient evidence or reasonable ground to justify the forwarding of an accused, under Section 170, to forward the accused to a Magistrate; or if the offence is bailable to take security from him for his appearance before such Magistrate. But, whether a case comes under Section 169, or under Section 170 of the Code, on the completion of the investigation, the police-officer has to submit a report to the Magistrate, under Section 173, in the manner indicated therein, containing the various details. The question as to whether the Magistrate has got power to direct the police to file a charge-sheet on receipt of a report under Sec. 173 really depends upon the nature of the jurisdiction exercised by a Magistrate, on receiving a report.

(10) In this connection, we may refer to certain observations, made by the Judicial Committee in *King Emperor v. Nazir Ahmed*, 71 Ind App 203 = (AIR 1945 PC 18) and by this Court in *H. N. Rishbud v. State of Delhi*, (1955) 1 SCR 1150 = (AIR 1955 SC 196). In *Nazir Ahmed's case*, 71 Ind App 203 = (AIR 1945 PC 18), Lord Porter observes, at p. 212 (of Ind App) = (at p. 22 of AIR) as follows:

“Just as it is essential that every one accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. In India as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course, subject to the right of the court to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the court's function begins when a charge is preferred before it, and not until then.”

These observations have been quoted with approval, by this Court, in *State of West Bengal v. S. H. Basak*, AIR 1963 SC 447. This court in *Rishbud and Inder Singh's case*, 1955 (1) SCR 1150 = (AIR 1955 SC 196), observes at p. 1156 (of SCR) = (at p. 201 of AIR) as follows:

“Investigation usually starts on information relating to the commission of an offence given to an officer in-charge of a police station and recorded under Section 154 of the Code. If from information so received or otherwise, the officer in-charge of the police station has reason to suspect the commission of an offence, he or some other subordinate officer deputed by him, has to proceed to the spot to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender. Thus investigation primarily consists in the ascertainment of the facts and circumstances of the case. By definition, it includes all the proceedings under the Code for the collection of evidence conducted by a police-officer”.

Again, after a reference to some of the provisions in Chapter XIV of the Code, it is observed at p. 1157 (of SCR) = (at p. 201 of AIR):

“Thus, under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of

their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary of the investigation and to be produced at the trial and (5) Formation of the opinion as to whether on the material collected there is case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by filing of a charge-sheet under section 173... It is also clear that the final step in the investigation, *viz.*, the formation of the opinion as to whether or not there is a case to place the accused on trial is to be that of the Officer in-charge of the police station."

(11) We are referring to these observations for the purpose of emphasising that the scheme of Chapter XIV, clearly shows that the formation of an opinion as to whether or not there is case to place the accused on trial, has been left to the officer in-charge of a police station. Bearing in mind these principles referred to above, we have to consider the question that arises for consideration in this case. The High Courts, which have held that the Magistrate has no jurisdiction to call upon the police to file a charge-sheet, under such circumstances, have rested their decision on two principles *viz.*, (a) that there is no express provision on the Code empowering a Magistrate to pass such an order; and (b) such a power, in view of the scheme of Chapter XIV, cannot be inferred *vide Venkata Subba v. Anjanayulu*, AIR 1932 Mad 673; *Abdul Rahim v. Abdul Mukhtadia*, AIR 1953 Assam 112; *Amar Pramanand v. State*, AIR 1960 Madh Pra 12; the majority view in AIR 1962 Cal 135 and ILR (1966) Guj 285 = (AIR 1966 Guj 283) (FB). On the other hand, the High Courts which have recognised such a power, rest their decision again on two grounds *viz.* (a) when a report is submitted by the police, after investigation, the Magistrate has to deal with it judicially, which will mean that when the report is not accepted, the Magistrate can give suitable directions to the police; and (b) the Magistrate is given supervision over the conduct of investigation by the police and therefore, such a power can be recognised in the Magistrate *vide* AIR 1960 Bom 240; and AIR 1966 Pat 438.

(12) Though it may be that a report submitted by the police may have to be dealt with judicially, by a Magistrate, and although the Magistrate may have certain supervisory powers, nevertheless, we are not inclined to agree with the further view that from these considerations alone it can be said that when the police submit a report that no case has been made out for sending up an accused for trial, it is open to the Magistrate to direct the police to file a charge-sheet. But, we may take it clear, that this is not to say that the Magistrate is absolutely powerless, because, as will be indicated later, it is open to him to take cognizance of an offence and proceed, according to law. We do not also find any such power under Section 173(3), as is sought to be inferred, in some of the decisions cited above. As we have indicated broadly the approach made by the various High Courts in coming to different conclusions, we do not think it necessary to refer to those decisions in detail.

(13) It will be seen that the Code as such does not use the expression 'charge-sheet' or 'final report'. But it is understood in the Police Manual containing Rules and Regulations, that a report by the police, filed under Section 170 of the Code, is referred to as a 'charge-sheet'. But in respect of the reports sent under Section 169 *i.e.*, when there is no sufficient evidence to justify the forwarding of the accused to a Magistrate, it is termed variously, in different States, as either 'referred charge', 'final report', or 'Summary'.

(14) In these two appeals, which are from the State of Bihar, the reports, under Section 169, are referred to as 'final report'. Now, the question as to what exactly is to be done by a Magistrate, on receiving a report, under Section 173, will have to be considered. That report may be in respect of a case, coming under Section 170, or one coming under Section 169. We have already referred to Section 190, which is the first section in the group of sections headed 'Conditions requisite for Initiation of Proceedings'. Sub-section (1), of this section, will cover a report sent, under Section 173. The use of the words 'may take cognizance of any offence', in sub-section (1) of section 190, in our opinion, imports the exercise of a 'judicial discretion', and the Magistrate, who receives the report, under Section 173 will have to consider the said report and judicially take a decision, whether or not to take cognizance of the offence. From this it follows, that it is not as if, that the Magistrate is bound to accept the opinion of the police that there is a case for placing the accused, on trial. It is open to the Magistrate to take the view that the facts, disclosed in the report do not make out an offence for taking cognizance or he may take the view that there is no sufficient evidence to justify an accused being put on trial. On either of these grounds, the Magistrate will be perfectly justified in declining to take cognizance of an offence, irrespective of the opinion of the police. On the other hand, if the Magistrate agrees with the report, which is a charge-sheet submitted by the police, no difficulty whatsoever is caused, because he will have full jurisdiction to take cognizance of the offence, under Section 190(1) (b) of the Code. This will be the position, when the report, under Section 173, is a charge-sheet.

(15) Then the question is, what is the position, when the Magistrate is dealing with a report submitted by the police, under Section 173, that no case is made out for sending up an accused for trial, which report, as we have already indicated, is called, in the area in a question, as a 'final report'? Even in those cases, if the Magistrate agrees with the said report, he may accept the final report and close the proceedings. But there may be instances when the Magistrate may take the view, on a consideration of the final report, that the opinion formed by the police is not based on a full and complete investigation, in which case, in our opinion, the Magistrate will have ample jurisdiction to give directions to the police, under S. 156(3) to make a further investigation. That is, if the Magistrate feels after considering the final report, that the investigation is unsatisfactory, or incomplete, or that there is scope for further investigation, it will be open to the Magistrate to decline to accept the final report and directed the police to make further investigation, under Section 156(3). The police, after such further investigation, may submit a charge-sheet, or, again submit a final report, depending upon the further investigation made by them. If ultimately, the Magistrate forms the opinion that the facts, set out in the final report, constitute an offence, he can take cognizance of the offence, under Section 190(1)(b), notwithstanding the contrary opinion of police, expressed in the final report.

(16) In this connection, the provisions of section 169 of the Code, are relevant. They specifically provide that even though, on investigation, a police-officer, or other investigating officer, is of the opinion that there is no case for proceeding against the accused, he is bound while releasing the accused, to take bond from him to appear, if and when required, before a Magistrate. This provision is obviously to meet a contingency of the Magistrate, when he considers the report of the investigating officer, and judicially takes a view different from the police.

(17) We have to approach the question, arising for consideration in this case, in the light of the circumstances pointed out above. We have already referred to the scheme of Chapter XIV, as well as the observations of this Court in *Rishbud and Inder Singh's case* AIR 1955 SC 196 that the formation of the opinion as to whether or not there is a case to place the accused on trial before a Magistrate, is left to the officer in-charge of the police station. There is no express power, so far as we can see, which gives jurisdiction to pass an order of the nature under attack nor can any such powers be implied. There is certainly no obligation, on the Magistrate, to accept the report, if he does not agree with the opinion formed by the police. Under those circumstances, if he still suspects that an offence has been committed, he is entitled, notwithstanding the opinion of the police, to take cognizance, under section 190(1)(c) of the Code. That provision in our opinion, is obviously intended to secure that offences may not go unpunished and justice may be invoked even where persons individually aggrieved are unwilling or unable to prosecute, or the police, either wantonly or through *bona fide* error, fail to submit a report, setting out the facts constituting the offence. Therefore, a very wide power is conferred on the Magistrate to take cognizance of an offence, not only when he receives information about the commission of an offence from a third person, but also there he has knowledge or even suspicion that the offence has been committed. It is open to the Magistrate to take cognizance of the offence, under Section 190 (1)(c), on the ground that, after having due regard to the final report and the police records placed before him, he has reason to suspect that an offence has been committed. Therefore, these circumstances will also clearly negative the power of a Magistrate to call for a charge-sheet from the police, when they have submitted a final report. The entire scheme of Chapter XIV clearly indicates

that the formation of the opinion, as to whether or not there is a case to place the accused for trial, is that of the officer in-charge of the police station and that opinion determines whether the report is to be under section 170, being a 'charge-sheet', or under section 169, 'a final report'. It is no doubt open to the Magistrate, as we have already pointed out, to accept or disagree with the opinion of the police and, if he disagrees, he is entitled to adopt any one of the courses indicated by us. But he cannot direct the police to submit a charge-sheet, because the submission of the report depends upon the opinion formed by the police, and not on the opinion of the Magistrate. The Magistrate cannot compel the police to form a particular opinion, on the investigation, and to submit a report, according to such opinion. That will be really encroaching on the sphere of the police and compelling the police to form an opinion so as to accord with the decision of the Magistrate and send a report either under S. 169, or under section 170, depending upon the nature of the decision. Such a function has been left to the police under the Code.

(18) We have already pointed out that the investigation, under the Code, takes in several aspects, and stages, ending ultimately with the formation of an opinion by the police as to whether, on the material covered and collected a case is made out to place the accused before the Magistrate for trial, and the submission of either a charge-sheet, or a final report is dependent on the nature of the opinion, so formed. The formation of the said opinion, by the police, as pointed out earlier, is the final step in the investigation, and that final step is to be taken only by the police and by no other authority.

(19) The question can also be considered from another point of view. Supposing the police send a report, viz. a charge-sheet, under Section 170 of the Code. As we have already pointed out the Magistrate is not bound to accept that report, when he considers the matter judicially. But can he differ from the police and call upon them to submit a final report, under section 169? In our opinion, the Magistrate has no such power. If he has no such power, in law, it also follows that the magistrate has no power to direct the police to submit a charge-sheet, when the police have submitted a final report that no case is made out for sending the accused for trial. The functions of the Magistracy and the police, are entirely different, and though, in the circumstances mentioned earlier, the Magistrate may or may not accept the report, and take suitable action, according to law, he cannot certainly infringe (sic. impinge?) upon the jurisdiction of the police, by compelling them to change their opinion, so as to accord with his view.

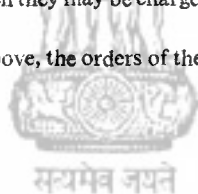
(20) Therefore, to conclude, there is no power, expressly or impliedly conferred, under the Code, on a Magistrate to call upon the police to submit a charge-sheet, when they have sent a report under section 169 of the Code, that there is no case made out for sending up an accused for trial.

(21) In these two appeals one other fact will have to be taken note of. It is not very clear as to whether the Magistrate, in each of those cases, has chosen to treat the protest petitions, filed by the respective respondents, as complaints, because, we do not find that the Magistrate has adopted the suitable procedure indicated in the Code, when he takes cognizance of an offence, on a complaint made to him. Therefore, while holding that the orders of the Magistrate, in each of these cases, directing the police to file charge-sheets, is without jurisdiction, we make it clear that it is open to the Magistrate to treat the respective protest petitions, as complaints and take further proceedings, according to law, and, in the light of the views expressed by us, in this judgment.

(22) Mr. Nuruiddin Ahmed, learned counsel for the appellants, in Criminal Appeal No. 238 of 1966, particularly urged that it is unnecessary to direct further proceedings to be continued, so far as his clients are concerned. Learned counsel pointed out that the police report before the Magistrate, clearly show that the girl, in question, who is stated to be above 19 years of age has herself stated that she had eloped, of her own accord and that if that is so, further proceedings against his clients, are absolutely unnecessary, to be continued. We are not inclined to accept these contentions of the learned counsel. As to whether an offence is made out or whether any of the appellants or both of them are guilty of the offences, with which they may be charged, are all matters which do not require to be considered, by this Court, at this stage.

(23) In the result, subject to the directions contained above, the orders of the Magistrate, directing the police to file a charge, will be set aside, and the appeals allowed, to that extent.

Appeals allowed.



APPENDIX VII
(Para 16.2 Chapter XVI)

Statement showing the Disposal of Cognizable Crime Cases (I.P.C. Cases Only) By Courts

(Figures are in Lakhs)

Sl. No.	Year	Cases Instituted or cases in which charge-sheet was laid or cases sent for trial during the year	Disposal (cases in which trials were completed)	Cases pending trial at the end of the year	Remarks
1	2	3	4	5	6
1.	1953	Not available	2.34	1.92	Including investigation cases
2.	1954	Not available	2.18	Not available	-do-
3.	1955	Not available	2.03	-do-	-do-
4.	1956	2.35	2.04	1.40	Excluding investigation cases
5.	1957	2.42	2.05	1.49	-do-
6.	1958	2.56	2.16	1.57	-do-
7.	1959	2.64	2.23	1.68	-do-
8.	1960	2.87	2.42	1.75	-do-
9.	1961	2.85	2.43	1.86	-do-
10.	1962	2.94	2.52	1.97	-do-
11.	1963	2.79	2.36	2.13	-do-
12.	1964	3.28	2.78	2.38	-do-
13.	1965	3.42	2.89	2.60	-do-
14.	1966	3.56	2.95	2.92	-do-
15.	1967	3.45	2.85	3.50	-do-
16.	1968	3.47	2.89	4.06	-do-
17.	1969	3.48	2.89	4.53	-do-
18.	1970	3.44	2.85	5.15	-do-
19.	1971	4.28	3.02	5.74	-do-
20.	1972	4.49	3.13	6.34	-do-
21.	1973	5.06	3.31	7.50	-do-
22.	1974	5.60	3.64	8.69	-do-
23.	1975	5.89	3.96	9.80	-do-
24.	1976	5.84	4.26	10.43	-do-

NOTE:

1. The figures indicate the number of cognizable crime cases in which police filed charge-sheets.
2. The private complaints and challans filed by police in respect of offences under Local and Special Acts are not included.
3. The pending investigation cases (from 1956 and onwards), the disposal of cases otherwise (viz. compounding, withdrawn etc.) are not included.

SOURCE : CRIME IN INDIA (ANNUAL).

Statement showing the Disposal of Cognizable Crime Cases (Under Local & Special Laws) By Courts

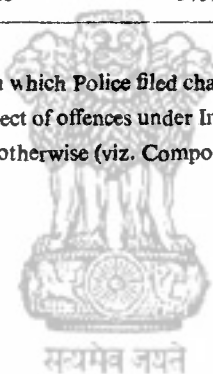
(Figures are in Lakhs)

Sl. No.	Year	Cases Instituted or cases in which charge-sheet was laid or cases sent for trial during the year	Disposal (cases in which trials were completed)	Cases pending trial or investigation at the end of the year	Remarks
1	2	3	4	5	6
1.	1966	18.27	17.88	5.21	Including investigation cases.
2.	1967	25.50	25.36	5.72	-do-
3.	1968	28.34	27.85	6.72	-do-
4.	1969	26.73	26.38	6.70	-do-
5.	1970	27.35	26.96	7.53	-do-
6.	1971	28.33	28.41	5.77	Cases under investigation are not included. -
7.	1972	23.08	21.83	6.74	-do-
8.	1973	24.58	23.18	7.95	-do-
9.	1974	24.67	23.16	9.10	-do-
10.	1975	31.04	29.84	9.91	-do-
11.	1976	31.19	30.68	9.59	-do-

Note:

1. The figures indicate the number of Cognizable cases in which Police filed charge-sheets.
2. The private complaints, challans filed by police in respect of offences under Indian Penal Code are not included.
3. The pending investigation cases, the disposal of cases otherwise (viz. Compounding, Withdrawn, etc.) are not included.

SOURCE: CRIME IN INDIA (ANNUAL).



*Extracts from Chapter Six of the Bhagawati Committee Report on National Juridicare (Nyaya Panchayats)**Advantages of Nyaya Panchayats*

6.11 The institution of Nyaya Panchayats would not only be in conformity with the ideal of democratic decentralisation and ensure public participation in the administration of justice at the lowest level but it would also help in delivering justice to the poor and the backward in rural areas without any delay and at practically no cost. It would save them from the inconvenience and expense to which they would necessarily be subjected, if they have to approach the regular court of law situated in taluka or tehsil and sometimes, even district town. If they have to go to a regular court of law, they would be required to travel quite a long distance—sometimes as much as 30 or 40 miles—to go to the court from their village and there they would have to engage a lawyer and then they would have to waste considerable time in going to and from their village to the court whenever any date is fixed by the court—and this happens several times because notoriously enough, there are frequent adjournments—and they would also have to take their witnesses to the court and back on every date fixed by the court for hearing of the case. This would involve considerable waste of time and money which the poor can ill-afford. The delay in disposal of litigation in the court may also be ruinous, because the poor have no staying power and with their back broken by poverty and suffering they cannot wait for justice. It must be given to them promptly and speedily. Moreover, they would also suffer loss of wages and income on each occasion on which they have to go to the court and this may happen quite often. The institution of Nyaya Panchayats would, indeed, be a great boon to them, because it would bring justice to their door-steps and make it cheaply, easily and expeditiously available to them. The Nyaya Panchayats would also inspire confidence in the poor because they would be informal, their proceedings would be in a language which the common man can understand and they would not be encumbered by intricate and sophisticated rules of procedure. The establishment of Nyaya Panchayats would considerably assist the poor villager in asserting his legal rights against those who are inclined to violate them. Where court are far away and difficult of access, villagers who are poor and low in the social scale are denied an opportunity of fighting injustice through resort to the legal process. Not having the means and the opportunity to obtain redress of their grievances by reason of want of financial resources and also helplessness and lack of assertiveness arising on account of social disabilities and economic impoverishment, they suffer silently injustice done to them without taking any action. If Nyaya Panchayats are established in villages so that access to the legal process becomes easily available to them, the poor villagers would be able to take necessary proceedings for redressing the wrong done to them.

6.12 Nyaya Panchayats would be able to remove many of the defects of the British system of administration of justice since they would be manned by people who would have knowledge of local customs and habits, attitudes and values and who would be familiar with the ways of thought and living of the parties before them. Drastically low cost, informal atmosphere, absence of technicalities, nearness—both geographical and psychological—community of shared attitudes and values and a greater scope for compromise would be some of the definite advantages of the system of Nyaya Panchayats and they would make the system of administration of justice more relevant and meaningful to the poor masses and thereby generate greater confidence in them. The poor would feel that the authority which is administering justice to them is their own and it is not part of an alien system which they neither understand nor trust.

Moreover, Nyaya Panchayats would be able to discover the truth much more easily than ordinary courts. It is self-evident that the possibility of perjury is largely reduced if the venue of the inquiry is nearer the place of the occurrence and in the presence of the fellow-citizens. The witness may, without such reluctance, perjure himself in the witness-box in a court some distance away from his village but he would hesitate considerably to tell an untruth in the presence of his fellow citizens who all know what in fact has happened. Untruthfulness often springs from difficulty in detection and distant trial, both in time and place, and is inhibited by on-the-spot and instant hearing by men who know the thoughtways and mores of the local folk.

6.13 More than all, in an ordinary court, the parties join issue and the fight becomes fiercer at the end of the litigation. However, in the Nyaya Panchayats, the whole emphasis is on conciliation and promotion of better relations. Footprints of good-will are left behind, not stains of blood feud. Parties come as foes but return as friends. And not the least of the benefits would be the educative influence of the Nyaya Panchayats on the villagers. As the administrative panchayats would gradually train them in the area of self-government and enable them to look after the affairs of their village, so would Nyaya Panchayats, where they would be doing justice between their fellow citizens in the village, instill in them a growing sense of fairness and responsibility.

6.14 We are, therefore, definitely of the view that Nyaya Panchayats should be established at the grass roots level for administering justice in the rural areas.

Composition of Nyaya Panchayats

6.15 The question then arises as to what should be the composition of the Nyaya Panchayats. Should they consist of elected members as at present in some of the States? We do not think it would be advisable to have Nyaya Panchayats composed wholly of elected representatives of the village. We issued a questionnaire in regard to Nyaya Panchayats to the State Governments, High Courts, Bar Councils and Bar Associations of various States in the country and the uniform answer which we got from them in regard to the composition of the Nyaya Panchayats was that it would be dangerous to adopt the elective principle in the constitution of Nyaya Panchayats. They pointed out that if Nyaya Panchayats were to be elected, they would become highly politicised and lead to factionalism and groupism and the village people would have no confidence in their capacity to do justice. The Maharashtra and the Rajasthan Governments stated in no uncertain terms that the experiment of Nyaya Panchayats had failed in their respective States because of the elective principle. The State of Maharashtra, in fact, abolished Nyaya Panchayats with effect from 1st August, 1975 on the basis of the recommendation contained in the report made by the Evaluation Committee on Panchayati Raj, set up by the State Government. We think there is force in this point of view and it cannot be said to be outside the realm of probability that if Nyaya Panchayats were to be elected, party politics would enter in the constitution of Nyaya Panchayats and that would seriously cripple its credibility in rendering justice to the people. It is also possible that factionalism and groupism, which vitiate the life in the village, would be reflected in Nyaya Panchayats and Nyaya Panchayats may also come to be dominated by caste and communal considerations. The elective process may also result in the stronger and more powerful sections of the community or the rich and well-to-do or vested interests or anti-social elements acquiring control over Nyaya Panchayats. And if that happens, there will be no hope for the poor and weaker sections of the community to get justice.

6.16 It would not, therefore, be advisable, in the present social and economic conditions prevailing in the villages, to adopt the elective principle in the composition of Nyaya Panchayats. The Study Team under the chairmanship of Shri G. R. Rajagopalan also expressed the same opinion:

"The method of indirect election seems to afford for the time being the best solution and of the various possible methods of indirect elections, the best seems to be the type in which each of the gram panchayat in the Nyaya Panchayat circle elects a specified number of persons to serve on the Nyaya Panchayats".

The Bhagawati Committee in Gujarat also reached the conclusion that "Nyaya Panchayats should not be composed wholly of elected representatives of the village". We endorse the same opinion.

6.17 We are of the view that having regard to considerations of geographical contiguity and administrative convenience, five or more villages should be grouped together and a Nyaya Panchayat should be constituted for each such group of villages. The Nyaya Panchayat should consist of three members. One of them should be a person having knowledge of law. He would be the chairman of the Nyaya Panchayat and he may be called the Panchayat Judge. The Panchayat Judge, who will be the legal member, must be regarded as absolutely indispensable to the constitution of the Nyaya Panchayat. The advantage of having a person trained in law as chairman of the Nyaya Panchayat would be that it would eliminate the possibility of arbitrary or irrational decision and ensure that justice is done objectively and dispassionately, without any predilections or prejudices. There may be one Panchayat Judge for each taluk or tehsil or even a Block and he would preside over all Nyaya Panchayats within the taluk, tehsil or Block. The State Government may constitute a new cadre of Panchayat Judges and the Panchayat Judge for each taluk, tehsil or Block may be drawn from this cadre. If it is found inexpedient to form a new cadre of Panchayat Judges or for some reason or other it is not possible to appoint a Panchayat Judge from such cadre, the State Government may appoint a retired judicial officer or where a retired judicial officer is not available, a social service minded senior practising lawyer who is prepared to devote a part of his time to this work, as Panchayat Judge in a particular area. The remuneration and conditions of service of a Panchayat Judge may be such as may be fixed by the State Government. It would be desirable to assimilate the cadre of Panchayat Judges to that of the junior most judicial officers in the State so that Panchayat Judges have the same avenues of promotion in the judicial hierarchy.

6.18 So far as the other two members of the Nyaya Panchayat are concerned, they should be laymen but, as pointed out above, their appointment should not be based on the elective principle. There are two possible methods of appointment of lay-members of the Nyaya Panchayat and either of them may be adopted. One method is that a panel of qualified persons for the group of villages in question may be prepared by the District Judge in consultation with the Collector or Deputy Commissioner and out of that panel, four persons for each village comprised in the group, may be chosen by majority vote of the *gram* or village panchayats or *gaon sabhas* acting together as the electoral college. The persons so chosen would constitute the Nyaya Panchayat panel. The other method is that each gram panchayat or *gaon sabha* may elect eight members from amongst the residents of the village who are not members of the gram panchayat or *gaon sabha* and out of them, four persons may be selected by the District Judge in consultation with the Collector or Deputy Commissioner and the persons so selected from each village may constitute the Nyaya Panchayat panel for the group of villages in question. It would be advisable to prescribe certain minimum qualifications for membership of the Nyaya Panchayat panel. Literacy must be an indispensable qualification except perhaps in the case of Scheduled Castes and Scheduled Tribes. The persons selected on the Nyaya Panchayat panel must also possess reputation for integrity and impartiality and they must enjoy the confidence of the people. There must also be a provision that at least one of the persons selected on the Nyaya Panchayat panel from a village should be a member of Scheduled Caste or Scheduled Tribe and two should, as far as possible, be drawn from women and the working class, from actual tillers or marginal farmers. It must be insisted that no member on the Nyaya Panchayat panel should have been guilty of conviction for moral turpitude and as far as possible, he must have background of social service. We would consider holding of considerable wealth and property as a disqualification for being on the Nyaya Panchayat panel. This last consideration becomes necessary because village justice is often times the resolution of a conflict between the little landless, casteless villager *versus* the village chief, the high-caste, boss or member of the proprietariat or anti-social element, and it would be impossible to hold the scales of justice even between the tiny timorous dalit and oppressed people and the big and overbearing vested interests, by making the latter judges in their own class cause. These are some of the considerations which would have to be borne in mind if we want Nyaya Panchayats to succeed as organs of justice at village level. It is from the Nyaya Panchayat panel so constituted that the other two members of the Nyaya Panchayat would be drawn. The Panchayat Judge would have power to select two persons from out of the Nyaya Panchayat panel to act as lay-members of the Nyaya Panchayat in respect of any particular dispute which may come up for decision before the Nyaya Panchayat. Where one of the parties to the dispute is a member of a Scheduled Caste or Scheduled Tribe, one of the lay-members of the Nyaya Panchayat should, as far as possible, be a person falling within that category; and so also in a case where a woman is a party to the dispute, one of the lay-members on the Nyaya Panchayat should be a woman. The Panchayat Judge, of course, will have to take care to see that neither of the two lay-members selected to act on the Nyaya Panchayat is in any way related to or personally connected with any of the parties to the dispute or is in any manner hostile or antagonistic to him.

6.19 The advantage of this mode of constitution of Nyaya Panchayat is that the Nyaya Panchayat would have, as its chairman, a person trained in law and this will ensure that nothing grossly illegal is done on account of innocence of law of the members. The other two members of the Nyaya Panchayat, being selected according to a method which reconciles the elective principle with the anxiety to have competent members on the Nyaya Panchayat, would almost invariably be respected members of the community and hence there would be popular element in the Nyaya Panchayat as well and this popular element would invest the Nyaya Panchayat with an air of informality which would go a long way towards removing the psychological barrier between the litigant and the adjudicating authorities and it would also considerably assist the Nyaya Panchayat in properly understanding the true nature of the dispute before it and resolving such dispute in a manner satisfactory to both parties. The presence of two lay-members, who have their roots in the community, would also help in bringing about amicable settlement of the dispute between the parties. In fact, the whole emphasis in the proceedings before the Nyaya Panchayat should be on conciliation and settlement rather than on adjudication. It is common experience that whichever party wins or loses in a litigation, it leaves a trail of bitterness and enmity apart from bringing about financial ruination of both and the object of panchayati justice must, therefore, be to bring about conciliation so that the litigants part as friends in an atmosphere of harmony and good relations. The advice of Abraham Lincoln bears repetition in this connection. He said: "Discourage litigation, persuade your neighbours to compromise whenever you can, point out to them how the nominal winner is often the real loser in fees, expense and waste of time". It may be noted that Mahatma Gandhi throughout his career as a lawyer tried to promote settlement between parties. This would be easy to accomplish on account of the presence of lay-members on the Nyaya Panchayat. The Nyaya Panchayat would also provide good training ground for the people of the village and this training will not be at the cost of justice, because Panchayat Judge would always be there to guide the lay-members to see that no injustice results to anyone. We are hopeful that, in course of time, once traditions are established and administration of justice by Nyaya Panchayat becomes a way of life, it will be possible to do away with the presence of Panchayat Judge and to have our panchayats manned wholly by lay-members.

Orientation course to lay-members of Nyaya Panchayat

6.20 It would be advisable that in the interest of proper functioning of Nyaya Panchayat, the lay-members on the Nyaya Panchayat panel in the district should have some training in the rudiments of judicial procedure, judicial objectivity, judicial reasoning and the like. They should be given orientation course and some idea of the law—substantive and procedural. A short period of training and orientation of about 15 days might be regarded as sufficient.

Office and procedure of Nyaya Panchayat

6.21 Every group of villages which is formed for the purpose of constitution of Nyaya Panchayat must have an office of the Nyaya Panchayat at a central place which is easily accessible to the residents of the villages. Whenever any person comes to the office of the Nyaya Panchayat with a grievance, he may give a statement in writing of his grievance to the officer incharge who may be a Sarpanch or other panchayat officer or some other Government officer stationed there or he may narrate his grievance orally in which case the officer must record it in writing and give a copy of such writing to the person concerned. The original of the statement must be kept by the officer at the Nyaya Panchayat office and a copy of it must be immediately forwarded by him to the Panchayat Judge at his headquarters. The Panchayat Judge would then visit the centre, once a week or once in 10 days according to the exigencies of work, after giving previous intimation in writing to the office of the Nyaya Panchayat and also requiring the officer incharge to give intimation of the date appointed for his visit to the persons who have lodged their grievances with the Nyaya Panchayat as also to the opposite parties requesting them to remain present on the date. The Panchayat Judge would then select two persons out of the Nyaya Panchayat panel to be lay-members of the Nyaya Panchayat and the Nyaya Panchayat so constituted would hear the two parties on the appointed date. The Nyaya Panchayat would first try to bring about settlement between the parties and if they find it necessary, they may decide to shift the venue of the hearing to the village from which the dispute comes and hear the dispute in the presence of the residents of that village. The Nyaya Panchayat may also visit the site in respect of which the dispute has arisen between the parties and try to bring about settlement on the spot. And it is only if the efforts at settlement fail that the dispute should be adjudicated. The administration of justice by Nyaya Panchayat should not suffer from the same vice of frequent adjournments which has been the ruination of the system of administration of justice by our regular courts. Of course, if it is necessary to have a short adjournment in order to bring about settlement between the parties, the Nyaya Panchayat may not grudge it. But in any event not more than one adjournment should be granted. We are anxious that the case should be disposed of on the date which is fixed for hearing and it should not be adjourned except for the most compelling and unavoidable reasons.

6.22 So far as the procedure of Nyaya Panchayat is concerned, it should not be governed by the Code of Civil Procedure or the Code of Criminal Procedure. The Nyaya Panchayat may follow a procedure of its own so long as it conforms with the basis of natural justice and rules of fair play. There should be no formal prescription of procedure for the Nyaya Panchayat except perhaps laying down some broad guidelines and within such broad guidelines, it should be left free to comply with the rules of conscience, fairness and natural justice with an amount of flexibility depending on the circumstances of each case. The Nyaya Panchayat need not adopt an adversary system of administration of justice which characterises Anglo-Saxon jurisprudence. It may follow an informal procedure of questioning both parties and their witnesses without any set rules of procedure except requirements of natural justice. The only guiding factor in the inquiry must be the search for truth. The Nyaya Panchayat may take all such steps as it may consider necessary for the purpose of finding out the truth and for this inquiry, there should be no procedural fetter on its power. The Nyaya Panchayat should not confine itself to playing the passive role which a judge does in Anglo-Saxon courts, but it should adopt a more activist approach in its operations. If available evidence which bears on the truth and helps the happy solution is not produced by either party, the Nyaya Panchayat may try and get such material on its own initiative. It must adopt an inquisitorial approach and no technicality should be allowed to stand in its way in discovering the truth.

6.23 The rules of evidence contained in the Indian Evidence Act need not apply in relation to a proceeding before Nyaya Panchayat, although the search for truth will not be any the less serious. It is not unusual to find the Anglo-American obsession with technical rules of evidence defeating the cause of truth and justice. Nor is the exclusion of the sophisticated law of evidence a calamity. Administrative Tribunals, which handle subject matter, immensely more significant in terms of persons and property, do not act according to the technical rules of the Indian Evidence Act and still their decisions do not offend fair play and justice. In the European countries the accent is more on being convinced on the materials rather than on the exclusionary rules of evidence. While care should certainly be taken to see that verdicts are not swayed by prejudices and polluted by irrelevances, surrender to technicalities of proof and artificial canons may prove counter-productive to the cause of truth. The Nyaya Panchayat would be entitled to take into account all produced material, unfettered by technical rules of evidence, and decide the matter on the basis of free evaluation of the entire material placed before it. This procedure may appear to be radical and unorthodox and lawyers accustomed to traditional mode of justice may not favour it, but we do not apprehend any danger in its adoption by Nyaya Panchayat, because the cases which come before the Nyaya Panchayat would be small cases affecting the rural poor and the Panchayat Judge who is a trained person with a judicial outlook would always be there to see that justice is not prejudiced. The decision of the Nyaya Panchayat should be the decision of the Chairman as well as the other two members and if there is difference of opinion, the decision of the majority should prevail. It would be advisable that brief reasons may be given by the Nyaya Panchayat in support of the decision taken by it, so that the parties know what are the main considerations which have weighed with the Nyaya Panchayat in giving its decision.

Lawyer not to appear before Nyaya Panchayat

6.24 We may then consider the question whether representation should be allowed to parties in cases before the Nyaya Panchayat. We are of the view that the parties may appear before the Nyaya Panchayat either themselves or through relations or friends but they should not be allowed to be represented by a lawyer. If legal representation is permitted, many of the evils which to-day exist in administration of justice by our regular courts of law would enter the administration of justice by Nyaya Panchayats. Justice would cease to be cheap and expeditious, parties would have to pay the fees of the lawyers and once lawyers are engaged, they would indulge in legal gymnastics, wholly unworthy of the small nature of the case, and try to protect the litigation in a misguided attempt to protect the interests of their clients. We are, therefore, firmly of the opinion that no lawyer should be allowed to appear before the Nyaya Panchayat. If any question of law is involved and having regard to the nature of the dispute, it is bound to be a simple question the Panchayat Judge who is trained in law can always decide it. And if the Panchayat Judge goes wrong in the decision of such question, the District Judge in revision can set it right.

Nyaya Panchayat to have wider view of village harmony

6.25 It is also necessary to emphasise that the Nyaya Panchayat should not confine itself to the actual dispute as in an ordinary court of law; but it should also go into the social, economic and family circumstances which have given rise to the dispute the socio-economic pathology which has manifested itself in the particular dispute. It must be remembered that Nyaya Panchayats are intended to be promoters of justice individual and social and must therefore have a wider view of village harmony rather than a narrow focus on actual legal dispute. The Nyaya Panchayat must, therefore, inquire into other features of the case, the circumstances of the victim and the causes which have led to the litigation and collect all material which bears not only upon the resolution of the individual conflict but also upon the promotion or satisfaction of social justice. It should like the People's Courts in the socialist countries, have the power to issue supplemental direction in addition to giving judgments on issues directly arising in the case. Where a case has revealed shortcomings on the part of parents, public organisations or other institutions, the person or organisation responsible may be ordered to take appropriate steps to prevent their recurrence. The Nyaya Panchayat may be clothed with the power to satisfy itself that such supplemental directions are not neglected.

Civil and criminal jurisdiction may be exercised in the same proceedings

6.26 There may be a class of cases which have both civil and criminal aspects. For instance, the victim of an offence may be entitled to claim damages from the offender and in such a case, jurisdiction can be given to the Nyaya Panchayat while convicting the accused also to award damages. This will reduce litigation and mitigate the injury. Such flexibility may also be applicable in cases where a man's property has been stolen. It may well be that the alleged thief is acquitted but the articles may still be stolen ones and in such a case, even if the thief is not punished, the victim may be given back the property by the Nyaya Panchayat. Similarly, a prosecution may be malicious and where it is found to do so, it need not be necessary to file a civil suit later for damages, but the Nyaya Panchayat can itself award compensation.

Jurisdiction of Nyaya Panchayats

6.27 If faith in the commonsense of the common people furnishes the rationale for Nyaya Panchayats, there is no reason why civil and criminal jurisdiction up to a certain level should not be granted to these rural organs of judicial power. But to start with, the jurisdiction conferred upon Nyaya Panchayats may be a limited one and it may extend to those types of civil and criminal cases which are at present broadly within the jurisdiction of Nyaya Panchayats under different State legislation, with this difference that, since under the present recommendation a professional judge is to be the chairman of the Nyaya Panchayat, the pecuniary limit of the jurisdiction in civil cases may be raised to Rs. 1,000 and in criminal cases, the Nyaya Panchayats may have the same powers as those of a Third Class Magistrate. The Nyaya Panchayats should, in addition, be given jurisdiction to try and dispose of land reforms litigation as also cases arising out of legislation in regard to small cultivators and farm labour, rural artisans and backward classes such as Minimum Wages Act, Untouchability (Offences) Act, 1975 and other local laws having limited rural impact. The Nyaya Panchayats should also have jurisdiction to hear applications or suits for maintenance by destitute women and children so that quick and expeditious relief can be granted to them. We would also suggest that there should be no court-fee payable in respect of civil actions in Nyaya Panchayats. If it is found, as a result of experience gained from the working of this new type of Nyaya Panchayats, that the Nyaya Panchayats are functioning efficiently and the jurisdiction of the Nyaya Panchayats can be increased without jeopardising the interest of justice, the State Government may suitably increase the jurisdiction both in civil and criminal cases. That would go a long way towards lifting a sizeable portion of the workload—civil and criminal—which is at present overburdening the regular courts of law. There are some State statutes which give option to a litigant to approach either the Nyaya Panchayat or the regular court of law but we are of the view that no such option should be given and the Nyaya Panchayats should not be allowed to be by-passed and they must have exclusive authority in regard to cases legislatively entrusted to their jurisdiction.

No appeal from decision of Nyaya Panchayat—but revision to District Judge

6.28 There should be no appeal against the decision of the Nyaya Panchayat as that would be incompatible with the informal nature of the inquiry and would also have the ill-effect of protracting the proceedings. But there may be a provision for exercise of revisional jurisdiction by the District Judge. The District Judge may *suo motu* or on application of the aggrieved party, call for the record of the case before the Nyaya Panchayat and revise the decision of the Nyaya Panchayat if he finds that it is contrary to law. There should be a District Registrar of Panchayat Courts of the status of Sub-Judge or Civil Judge, Senior Division, who would periodically visit some villages within the district for the purpose of finding out how the Nyaya Panchayats are functioning and carry out audit on the working of the Nyaya Panchayats and where he finds any problems or difficulties, drawbacks or deficiencies, he would draw the attention of the District Judge to the same. He would also inspect, at random records of Nyaya Panchayats and if he finds that in any case, gross injustice has been done, he would report the matter to the District Judge so that the District Judge can *suo motu* take action, if he so thinks fit.

Nyaya Panchayats to have power to execute their orders, decrees and sentences—but where they involve immovable property or imprisonment, power of execution to be with District Registrar of Panchayat Courts

6.29 In none of the present statutes relating to Panchayat Courts, the power to execute decrees and orders in civil and criminal cases is given to the Nyaya Panchayats, as if the common people could not have the competence to enforce their own verdicts. This serious omission makes panchayati justice ineffective. There is absolutely no justification why the power to execute their own orders and decrees and the necessary mechanism in that behalf should not be made available to Nyaya Panchayats. We are of the view that execution of decrees and orders and sentences must be made by the Nyaya Panchayat itself, except where immovable property on the civil side and imprisonment on the criminal side are involved, in which case the District Registrar of Panchayat Courts may be given the power to execute the same.

Nyaya Panchayats to bring justice to door-steps of poor and under-privileged

6.30 This is the broad structure and jurisdiction of Nyaya Panchayats which we strongly recommend to the Government of India. We think it would carry out the objective of democratic decentralisation and bring an element of popular participation in the adjudicatory process and at the same time ensure that justice is done fairly and objectively to people generally and to the poor and the disadvantaged in particular. The institution of Nyaya Panchayats can be a veritable blessing to the poor and the under-privileged, for it would bring justice to their door-steps, and equal justice under law would no longer remain a distant dream or a teasing illusion but would become a promise of reality.

Criticism of Nyaya Panchayats answered

6.31 It is true that there are quite a few lawyers and judges in our country who are critical of the system of administration of justice by Nyaya Panchayats on the ground that those who sit on Nyaya Panchayats are often motivated by extraneous considerations and it would be unsafe to entrust the administration of justice in their hands. This criticism is more often elitist and impressionistic and empirical observations have proved the contrary. The system of honorary magistrate prevalent in England and of People's Courts in the Soviet Union and other Socialist countries shows that laymen can be entrusted with dispensing legal justice provided certain safeguards are written into the scheme. We have great faith in the innate commonsense of our people and we have no doubt that our people can be trusted to do what is right and just. We have an ancient tradition of panchayati justice and we do not see why we cannot make the Gandhian vision of self-supporting village communities a reality and actualise his ideal of village justice. It is a matter of great satisfaction that after a break of about 30 years we are once again beginning to realize the importance and relevance of Gandhian thought and way of life and no greater magic can be paid to him by the nation than to translate his teachings into action.

Panchayati Raj Institutions, Police Stations and Courts in different States/UTs

Sl. No.	Name of State/U.T.	Total No. of villages covered by Gram Panchayats	Total No. of CD blocks	Total No. of Gram Panchayats	Total No. of panchayat Samitis	Total No. of Police Stations	No. of Magisterial Courts now available for criminal work
1	2	3	4	5	6	7	8
1.	Andhra Pradesh	29092†	324*	16137†	324	902	258
2.	Assam	19733	130	663	—	127	64
3.	Bihar	77967	587	10778	210	642	433
4.	Gujarat	18697	250*	12663†	182	377	194
5.	Haryana	6690	87	5250†	87	114	72
6.	Himachal Pradesh	16916	69	2034	69	64	37
7.	Jammu & Kashmir	6723†	75*	1483†	—	84	65
8.	Karnataka	29117	175	8411	175	553	161
9.	Kerala	1334	144	974	—	301	111
10.	Madhya Pradesh	70214	457	12770	390	873	288
11.	Maharashtra	38515†	442*	23950†	296	717	352
12.	Manipur	581	14	221	—	44	NA
13.	Meghalaya	—	24	—	—	15	NA
14.	Nagaland	—	21	—	—	17	29
15.	Orissa	50854	314	3830	314	330	153
16.	Punjab	12188†	117	10612†	117	192	154
17.	Rajasthan	35795	232	7292†	232	536	246
18.	Sikkim	413†	—	215	—	12	9
19.	Tamil Nadu	16633	374	12591†	374	873	225
20.	Tripura	871	17	476	—	32	25
21.	Uttar Pradesh	112624	876*	72853	876	1031	746
22.	West Bengal	38047	335	19662	325	338	185
23.	Andaman & Nicobar Islands	163	5	38	—	10	4
24.	Arunachal Pradesh	2776	43	701	45	12	28
25.	Chandigarh	22	1	22	1	4	4
26.	Delhi	258	5	204	—	60	51
27.	Goa, Daman & Diu	443	12	189	—	21	15
28.	Lakshadweep	—	4	—	—	9	3
29.	Mizoram	—	20	—	—	23	19
30.	Pondicherry	—	4	—	11	22	7
31.	Dadra & Nagar Haveli	72	2	10	1	2	1
All India		586738	5160	224029	4029	8337	3939

Col. (4) shows the position as on 31-3-1976 except figures marked * which indicate the position as on 31-3-1977.

Cols. (3), (5) and (6) show the position as on 31-3-1977 except figures marked † which indicate the position as on 31-3-1978.

Col. (7) shows the position as on 1-1-1979.

Col. (8) shows the position as on 31-3-1978.

Source : Col. 3 to 6—Deppt. of Rural Development.

Col. 7—Directorate of Coordination, Police Wireless.

Col. 8—Ministry of Law, justice & Company Affairs.

No. 32/22/75-GPA-I
GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

New Delhi - 110001
The 21 February, 1978.

ORDER

The Study Group on Modernisation of Police Forces has recommended that for achieving optimum results from the Police Computerisation Programme, there is a need for setting up of Control Records Offices at State Hqrs. and at the national level. The Study Group has also recommended the setting up of a separate Committee to examine this issue in detail with reference to the evaluation of the national crime information centre and also to go into the legal requirements in this regard. The recommendation has been considered in this Ministry and it has been decided to set up a Central Records Committee in this regard. The composition of the Committee will be as follows :—

- | | |
|---|----------|
| (1) The Director, Bureau of Police Research and Development | Chairman |
| (2) The Director, Central Fingerprints Bureau, Calcutta | Member |
| (3) Sri N. Krishnaswamy, Director, Vig. & Anti-Corruption, Tamil Nadu, Madras | —do— |
| (4) Shri P. G. Nawani, DIG, CID, Gujarat, Ahmedabad | —do— |
| (5) Shri B. Lahiri, DIG, CID, West Bengal | —do— |
| (6) Shri V. D. Mehta, DIG, CID, Madhya Pradesh | —do— |
| (7) Shri B. B. Upadhyay, Dy. Director (Coord.), CBI, New Delhi | —do— |
| (8) Shri T. Anantha Chari, Director, DCPC | —do— |

The terms of reference of the Committee will be :—

- (1) Examine methods of maintaining crime records and statistics and suggest methods for making them uniform and systematic.
 - (2) Examine the need and feasibility of setting up a Central Records Office in each of the States and a coordinating set up at the Centre for this purpose.
 - (3) Determine the type of records that should be kept by the Central Records Office at the State and Central level and how they could be integrated with the records maintained at the State, District and Police Station level.
 - (4) Determine the statutory powers, if any, that have to be bestowed on the crime records offices and related issues including amendments to existing legislations and enactment of new legislations to ensure supply of accurate and relevant information by Courts, jails and other relevant agencies to the crime records offices regarding crimes and criminals.
 - (5) Examine existing arrangements for computerisation of crime records and statistics and methods for communication of the computerised data among police stations, districts, States and the Centre and suggest modifications and improvements wherever called for.
3. It has also been decided that :
- (a) A Law Officer of the Ministry of Law, Justice and C.A. with Criminal Law background may also be associated to act as an Adviser to this Committee. He will be co-opted as and when necessary.
 - (b) The Committee will work under the guidance of Shri N. S. Saksena, Member, National Police Commission and route its report through the National Police Commission.

Sd/-
C. S. CHADHA
Deputy Secretary to the Govt. of India

Copy to :—

1. All States Government.
2. All Members of the Central Records Committee.
3. Directorate of Coordination Police Computers.
4. National Police Commission, New Delhi.
5. Shri N. S. Saksena, Member, National Police Commission.

Extracts from the report of the Tandon Committee

CHAPTER 2

Crime Records — Existing System

2.1 The term "Crime Records" is generally understood to embrace a specified range of factual, numerical or pictorial data recorded in various ways like forms, registers, cards, charts, graphs, maps, history sheets, finger-print slips, photographs, etc. The main object of maintaining these records, as set out in the Delhi Police Crime Record Manual, 1957, are :—

- (a) to study the general incidence and distribution of crime;
- (b) to understand the crime problem as it exists and to some extent also indicate the success or failure of the police in dealing with it; and
- (c) to aid Police Officers in the investigation of crime.

2.2 To fulfil such objectives as the above, crime records are maintained by the police in the country in different forms and degrees of detail at the police station, the district, the State and the National levels. Basic data in respect of every crime and criminal originates in the police station level, where these are primarily handled. This data is collated and analysed at the higher levels in a perspective appropriate to each level. A limited range of data in respect of all crimes is aggregated into statistical compilations to fulfil the objectives of study and understanding by higher levels of the crime problem; and a wide range of data in respect of socially significant crimes, is aggregated into compilations to provide information helpful to police officers in the field operations of prevention and detection of crime.

2.3 Statistical compilations bring out among other things, what forms of crime are taking place, with their distribution over place and time, what sort of crime opportunities are presenting themselves in society, and what sort of persons are getting involved in crime. Operational compilations help field officers with information such as :

- (i) Who, on the basis of information of *modus operandi* or current potential, are the offenders on record, who could be possibly responsible for a newly reported crime?
- (ii) What are the earlier crimes with which the newly reported crime is possibly linked as the work of the same offender?
- (iii) What is the identity and previous criminal record of a person whose finger-prints and description have been obtained either on arrest, or from a scene of crime?
- (iv) Is the property seized in a case, or noticed in field enquiries (e.g. cycle checks) concerned in any reported crime?
- (v) What could be the possible channels of disposal of property stolen in a case?

2.4 The first attempt to bring about some measures of national uniformity in the range and pattern of crime records, was by the Indian Police Commission 1902-03. Recognizing the operational advantage to the police of a common nomenclature and form for police records throughout the country, the Commission, in para 185, Chapter X of its report, stated as follows :—

"There are certain police records in respect of which it is both possible and desirable to prescribe a common form and a common name for the whole of India. In this, as in many other details of administration, there are unnecessary divergences of practice which cause confusion and put obstacles in the way of mutual understanding by police officers of different provinces. The recommendations of the Commission on the subject of these records is given in Appendix IX, while Appendix XI contains proposals for abolition of certain records and returns which are now prescribed. These proposals were, in each instance, framed in consultation with the local member of the Commission."

2.5 Relevant extracts of Appendices IX and XI of the Report of the Indian Police Commission 1902-03, referred to above, are reproduced in Annexure 2(1). It will be seen therefrom that the Commission recommended maintenance of the following records on a uniform basis throughout India :

- (i) FIR, (ii) Case Diary, (iii) Charge Sheet and Final Report, (iv) General Diary, (v) Police Station Crime Register, and (vi) Superintendent's Register of Crime.

It will also be seen that detailed recommendations were made in respect of police records and returns in the provinces of Madras, Bombay, Bengal, Assam and United Province and Central Provinces.

2.6 Crime records systems continued to grow in subsequent years, in isolation in each region of the country, largely on an *ad-hoc* basis in response to local need. In the period following Independence, two important developments occurred at the national level. The Central Finger-print Bureau, Calcutta was formed in the year 1956, and the Crime Records Division of the Central Bureau of Investigation was formed in the year 1964. These two organisations embodied record systems on a limited range of crime in order to provide at the national level, data in respect of inter-State and inter-national crimes and criminals. This data had to be generated from field units of all police forces in the country, and this naturally meant standard forms for the needed uniform range of data. These developments mark the beginning of a National Crime Record System.

2.7 In the meanwhile, the growth in the volume and complexity of crime problems in different parts of the country, emphasised the need for a common coordinated approach to police handling of those problems. The 1962 conference of DIsG CID felt it was necessary to carry forward the principle of uniformity of crime records in the State Police forces at the State, District and Police Station levels and

hence appointed a Committee to go into this matter. This Committee (referred to hereinafter for convenience as the 1962 Committee) reviewed the crime records system obtaining in all States and recommended adoption of a uniform system comprised of 11 cards, 10 registers and 10 forms at the State and District levels, and 4 registers and 8 forms at the Police Station level, apart from the forms and registers prescribed by law like the F.I.R., General Diary etc. Details of the records recommended by the 1962 Committee are set out in Annexure 2 (2).

2.8 Apart from suggesting the range of crime records to be maintained at different levels, the 1962 Committee made the following recommendations to secure a rational and uniform record system :—

- (a) The State and District level *Modus Operandi* Bureaux or Crime Record Offices as they were variously called in the different States should bear the uniform nomenclature of State (or District) Crime Record Bureaux.
- (b) The various records prescribed for in the State/District Crime Record Bureaux should be maintained in English, and in addition, if necessary, in the regional languages, so that there is no problem of inter-State communication of information; headings in all forms should be both in English and the regional language.
- (c) Records should be maintained for all convicted persons and also for persons not convicted, but strongly suspected.
- (d) History sheets should be maintained at State level for Inter-State and Inter-District criminals and at District level for inter-District and inter-Police Station criminals.
- (e) Data should be submitted promptly by Police Stations to District and State Bureaux for record, in initial, continuation and final reports in prescribed proforma.
- (f) Adequate staffing should be provided for the District Crime Bureaux; the scale should be one S.I. and 4 H.Cs for small districts, one S.I. and 6 H.Cs for medium districts and one S.I. and 8 H.Cs for large districts. There should be the provision for one typist for small districts and two typists for medium or large districts.

2.9 The present Committee undertook a detailed review of the existing crime record system on a country-wide basis, and also had detailed discussions with representatives of all State Police forces on the subject. The Committee discovered persistence of considerable variance in the formats and names of Crime Records of different States of the country, though some measure of uniformity was noticeable within zonal groupings of States, broadly of the Northern, Eastern, Western and Southern regions. States with a long administrative tradition like West Bengal, Gujarat, Maharashtra, Tamil Nadu etc. had well developed record systems which influenced the record systems of their neighbouring States. States with a short administrative tradition like those covered by the North Eastern Council had virtually no crime records.

2.10 The Committee also discovered that not much progress had been made in the adoption by the States of the uniform records system proposed by the 1962 Committee. This was found to be due to the following reasons :—

- (a) The existing pattern of records in most States covered more or less the same range of data or at any rate what was considered adequate for local needs and hence the State forces were not moved by any sense of dire need to change over to the formats and names proposed by the 1962 Committee, especially as it meant a considerable volume of scriptory work in all their Police Stations, and their District and State Crime Records Bureaux.
- (b) The new formats and names were not incorporated in State Police Manuals or appropriate administrative orders directing the change over; nor were any arrangements made to monitor and ensure the change-over.
- (c) There was no organised attempt to reorient the staff at the different levels to an understanding of the new formats.
- (d) And finally, staff on the recommended scales was not sanctioned, so that no change should be accomplished with existing meagre staff resources.

2.11 Meanwhile new features and factors in the crime situation were already highlighting certain inadequacies in the existing crime records system. Criminals were getting more varied and sophisticated in their *modus operandi*, with their operations cutting across Police Stations, District and State boundaries thanks to facilities of modern transport and communications. And much of this new information was escaping records, because individual Police Stations did not have a complete picture of activities of criminals on their records, nor did such information possessed in bits and pieces by different Police Stations get shared or get pooled in the District or State Crime Bureaux for collection, analysis and feedback. This neglect was compounded by Police Stations neglecting their records because of preoccupation with law and order duties, and by the inadequate and unsuitable staff who manned the District and State Crime Bureaux.

2.12 It was at this point that computerisation was seen to provide the answer to these inadequacies in the existing crime record systems. Police Stations could remit all data as and when available, in simple input forms, to a central computer record and from this record, the computer could furnish a full range of information more rapidly to the Police Station, District and State levels, while greatly reducing the enormous manual effort needed to build and maintain a massive physical record system at these levels. The need for and the direction of change is elaborated in the next Chapter.

CHAPTER 3

The need for and the direction of change

3.1 It has been seen that want of adequate administrative follow-up action resulted in the States largely continuing to maintain their traditional crime records systems, without reorienting them to the uniform system recommended by the 1962 Committee. At the same time, however, more basic changes were occurring in the nature and extent of crime problems in the country, which rendered even the traditional crime records system extremely inadequate to the needs of the new situation.

3.2 The sharp increase in the population, the massive movement of the population from rural to urban areas, the rising but unfulfilled economic expectations of the people, and the mounting social and political tensions were all contributing to new dimensions in the crime problem. In absolute numbers crime was on the increase. New forms of crime, like white-collar crime, economic crime, crimes of vice and violence, and crimes involving women and children were becoming established and information relating to these was not getting incorporated into the crime record system which had been designed basically to cover traditional predatory crime.

3.3 Modern transport and communications added a new dimension to the range and speed of criminal activity. Knowledge about criminal remained confined to the records, or more often, to the personal knowledge of personnel of the Police Station in whose jurisdiction the criminal lived, or had come to notice. Knowledge about his current capabilities and movements remained unknown to distant police stations, in or outside the district or the State, to which he now extended his operations with greater ease and safety. Inadequacies in existing procedures and in the quality and number of staff at all levels, resulted in all such knowledge not only being dispersed over individual Police Stations or police officers, but also in its not being collected, analysed and disseminated by district level or State-level record systems. In any case, the criminals capable of inter-police station, inter-district, or inter-State operational potential were becoming so numerous and the range and volume of information about them so enormous, that the collection, collation, analysis or dissemination of such information was clearly getting beyond the capacity of manually-maintained record systems at the district and the State level.

3.4 This breakdown in the record system at the district and State levels resulted not only in these higher levels not getting a proper perspective and understanding of the crime problem, but, far worse, they were not in a position to give Police Stations a feedback of enough or timely information needed for the effective prevention of crime. Without such information of identity, past criminality and current criminal potential of persons arrested, police investigations could not uncover their involvement in current crimes, while prosecutions could not even get them deterrent sentences based upon their past records. During the Committee's deliberations, numerous instances came to notice where criminals with numerous previous convictions were not given enhanced punishment. In a number of cases persons with four or five previous convictions were let off with comparatively lesser punishment, even including imprisonment till the rising of the Court. In numerous instances, properties recovered could not be traced to cases where they were stolen. In most metropolitan areas for instance, hundreds of cycles were being recovered every year, but were being ultimately auctioned as unclaimed, simply because they could not be linked to cases through records. In Delhi alone, as many as 1185 cycles were recently reported to be lying with the police unidentified. Due to the shortcomings of the existing record system, establishing identity of these cycles and linking up with the cases in which they were stolen has become extremely difficult. Instances of this kind came to the notice of the committee in several other States also.

3.5 A new system of crime records, that could be handled by a machine or more specifically, the computer, held promise, not only of overcoming these shortcomings, but also conferring a number of additional important advantages. In the first place data headings that were significant to the handling of crime could be listed, standardized and prescribed for submission to a central data bank in very simple input forms from the Police Stations. Standardized input forms would guarantee that all relevant information was neither lost nor lost sight of. Such data could be remitted, updated, and corrected in these forms whenever and from wherever information became available. Once limited input effort was over, all effort needed at any subsequent stage for recording, collating, indexing, analysing or information would be mechanised and foolproof; there would be no inadequacies arising out of the manual processes, i.e. inadequacy of number or quality of staff. The information needs of all levels—operational, analytical, statistical—could be generated at high speed from the central data bank in a far wider range and greater depth of detail, and in the desired output formats. In particular, where communications facilities with access to a computer are available, complete information would be available within hours, if not minutes, to investigating officers on the identity of suspects or properties held on suspicion, or of the offenders likely to be concerned in the crime. The more rapidly such information is available, the greater the impact on the prevention and detection of crime. In Tamil Nadu, where a computerised finger-print system is in operation, identity of arrested persons through this finger-print system is reported back within a day of arrest, while under the old manual system this took 10 to 15 days. This has drastically put down on needless detention of arrested persons in remand pending identification.

3.6 Even more far-reaching possibilities open out if the other agencies of the Criminal Justice System, like the Courts, Probation Officers, Penal and Correctional Institutions etc., join the police by contributing related data to building up a comprehensive integrated, and computerised information system. Each of these agencies would then draw from the system, a far richer range of information than is available to them, at present, that would help them to make a more effective contribution to the overall common objective of prevention of crime. More specifically they could contribute data and receive processed information as follows:—

- (a) Courts : Case pendency, data relevant to sentences in individual cases, and case statistics.
- (b) Probation Officers: Social, economic and personal factors influencing criminal behaviour, supervision and rehabilitation in each case.
- (c) Penal and Correctional Institutions : Factors effecting classification and treatment.

It is to be noted that the absence of such a system at present in India and the need for it has been specifically brought out in a recent Study Report of the United Nations Social Defence Research Institute. In this Report the need for classification centres to help in pre-trial classification of non-adult offenders has been particularly emphasised.

3.7 Two other basic inadequacies were also becoming increasingly evident in the working of the existing crime record system. In the first place new techniques of forensic science were opening up many new information areas which could aid in the identification of criminals and establish their involvement in crimes. These new information areas were clearly beyond the scope of the existing crime record system and obviously rendered it out-of-date. In the second place, the law of which the existing crime record system was based was also equally out of date, insofar as it conferred powers to collect and retain too limited a range of information to be really effective in the prevention and detection of crime in the new situation.

3.8 It is thus clear that change in the existing crime record system has to be in the direction of centralised pooling of information and use of modern technological aids for the rapid storage and retrieval of data and at the same time the law has to be amended to give power to collect and retain the widest possible range of data that is significant for the prevention and detection of crime. Change in the direction of computerisation has already begun and what has been done so far is more appropriately delineated in the next Chapter, where details of the proposed Crime Records system are fully spelt out. The inadequacies in the law and changes that are needed are detailed in the Chapter thereafter.

CHAPTER 4

Crime Records—Proposed System

4.1 The first major step into the future, towards building a country-wide, uniform computerised system of crime records was taken by a Committee set up by the 1970 Conference of DIsG CID. This Committee (referred to hereafter for convenience as the 1970 Committee) in its Report put forth the objective that, "every State Police force should develop a modern data processing facility for its crime records, that will primarily provide operational data for the investigating officer at the Police Station level and incidentally, the necessary operational or statistical data needed at the State level, or at the national level, for inter-State, National and International purposes."

4.2 Proceeding to explain how the above objective should be achieved, the 1970 Committee went on to say, ".....the Committee was actually conscious that the structure, content and operational efficiency of the existing crime record system showed a great range of variation from State to State. For this reason, the Committee felt that in evolving a common computer-oriented system it should address itself to a minimal model that would be both necessary and acceptable to all States. The Committee agreed, however, that this should not fetter any State in elaborating on the minimal model with such additional range of data as it desired, provided that this did not come in the way of ready inter-State access to the range of information covered by the minimal model".

4.3 The 1970 Committee went on to strongly recommend that "irrespective of when an individual State may take to the computer facility, every State should forthwith review its crime record system at the Police Station level and reorient it to bring it in the line with the data requirements of the minimal model that the Committee has proposed."

4.4 The 1970 Committee recommended adoption of a Crime Record system in all States, covering a comprehensive list of 40 Crime heads, with a specified range of data headings in respect of each head. These data headings are dispersed over 6 input forms containing 16 punchcard formats (including finger-prints). These forms are reproduced in Annexure 4(1) Standard codes are also prescribed for data details under each data heading. These codes are recorded against the data in each input form in a manner that admits of easy carry over into punchcards that can be read by a computer. The standard input form and codes for the computerised crime—criminal—finger-print record system to be adopted uniformly throughout the country has been prescribed and circulated to Inspectors General of Police in all States in letter No. V-12011/1/76-DCPC, dated 31-5-76 of the Directorate of Coordination, Police Computer, MHA, Government of India.

4.5 In 1975-76, the Ministry of Home Affairs took the next major step to implement the computerisation programme on a national basis, by arranging for the supply of computers to the State Police Forces with the aid of funds provided under the Police Modernisation Scheme. Provision was also made for a computer at Delhi to serve the Delhi Police and the Central Police Organisations. Arrangements were made with Messrs Electronics Corporation of India Ltd., Hyderabad, to supply 12 TDC-316 computers on a phased programme and in accordance with this programme, computers have been supplied so far to Delhi, Tamil Nadu, Maharashtra, Karnataka, Andhra Pradesh, West Bengal, Gujarat, Rajasthan, Kerala and Madhya Pradesh.

4.6 The national computerisation programme envisaged, as a first priority application, that the crime records system of each State would be operated by the computer located at the State Headquarters. Teleprinter terminals at the headquarter of each district would be linked by suitable communication channels with the computer at the State headquarters and the District Communication network would enable Police Stations to get access through the District terminals to the computerised crime record system. And finally the computers of all States would be linked by suitable communication channels to enable inter-se access between the crime records system of all States and also access to a crime records system to be set up at the national level. In 1976, the Directorate of Coordination Police Computers was established in the Ministry of Home Affairs, New Delhi to direct and coordinate this national police computerisation programme.

4.7 It is important at this point to take note of the changes in the existing crime record system that will result from the national computerisation programme. Both in its own deliberations and in its discussions with representatives of State Police Forces this Committee found that it was neither possible nor desirable to attempt national uniformity in the pattern of crime records especially at the Police Station level. Such an attempt was made by the 1962 Committee, but for reasons already discussed, the attempt ended in failure. The present Committee is clear in its mind that changes in the existing crime record system should be minimal; they should reduce, or at any rate, not add to work-loads; and till computerised operations are established, changes in Police Station records should be limited to just what is needed to facilitate computerisation and to just what is needed for ready reference for operational purposes at Police Stations.

4.8 At the outset it may be stated that the range of data to be recorded and submitted by Police stations in the new input formats of the computerised system correspond largely to the range of data being even now recorded in the existing crime records in most of the States (except in some of the newly formed ones). This is clearly brought out in the tabular statement set out in Annexure 4(2). The Committee, therefore, specifically recommends that :—

- (a) Police Station copies of the new computer input formats in Forms I, I-A, II, III and IV should be accumulated in casewise order and will be maintained as a new set of additional basic crime records at the Police station level;
- (b) All existing crime records at the Police Station level may continue, preferably on the model proposed by the 1962 Committee, subject to periodic review, modification or elimination in the light of progress of computerisation in each State, by a Study Group in each State comprised of experienced field officers and headed by the DIG CID (Crime) or the DIG (Police Computer) of the State. A new model which has attempted a further rationalisation of the 1962 Committee model is set out in Annexure 4(3), 4(3A), 4(3B), 4(3C).
- (c) In Police Stations of States which do not have any crime records at all, e.g. in States of the North-Eastern Council, the accumulated computer input forms referred to above will provide an adequate basis crime record to start with.

4.9 The existing physical record system consists of a large number of registers, forms, indexes etc. maintained at the Police station, District, State and National levels. The data originates at the first level and gets selectively recorded at the higher levels. A computerised record takes in most of the data from the physical records of the Police Station level and can supply the information needed at the District, State and National level. A physical record system at these levels (except to the extent proposed hereafter for the District, State and National Crime Record Bureaux) will, therefore, become superfluous once they obtain rapid access to the computerised crime record, either direct or through remote on-line terminals. In such a case, the Committee recommends that :—

- (a) the records to be maintained at the district level should be those recommended by the 1962 Committee with suitable modifications of data items, wherever necessary;
- (b) these records may, with advantage, be generated by the computer itself from the State level computerised record.

4.10 Crime records at the national level for operational and statistical purposes are at present maintained respectively by the Central Bureau of Investigation and the Bureau of Police Research and Development, Government of India, New Delhi (Fingerprint records maintained at various levels are dealt with later). The operational records maintained by the CBI contain a limited range of data in respect of cases involving counterfeiting of currency and coins, firearms, explosives, motor vehicles, cultural property etc. reported from all States. It also contains data circulated by Interpol on international crimes and criminals. A list of these records is set out in Annexure 4 (4). It is clear that once crime records of all States are computerised, they can be integrated in their entirety to provide a comprehensive computerised crime record at the National level. To this can be added the Interpol data and the total record will be readily accessible for handling crime in a national or international context.

4.11 In regard to the statistical data now being compiled manually at the State level and also remitted to the Bureau of Police Research and Development, to be aggregated into National statistics, the analytical tables in Annexure 4(5) show that the bulk of these compilations can be generated from the computerised record of every State. In fact the computerised crime record will admit of statistical analysis in greater depth than is now obtaining at the State or the National level. Some of the shortcomings include non-availability of some data elements regarding juveniles and of information regarding non-property offences. Also information relating to correctional services and Court data which are required by the BPR & D are not available in the input forms of the computerized Crime-Criminal/Fingerprint Information System. The Committee has been informed that the DCPC are currently engaged in devising a computerised Crime-Criminal statistical system which will take care of these new requirements. Some of the important outputs of the system are mentioned below :—

OUTPUT OF CRIME STATISTICS SYSTEM

Output	Periodicity	Level	Coverage
1. Review of Crime under major heads	Monthly	S.P.	Police Stationwise
(a) Reported cases			
(b) Arrests reported by sex	Monthly	IGP	Districtwise
2. Review of Crime under major heads	Qtly.	I.G.P.	Districtwise
(a) Police disposal — cases	Qtly:	Home Miny.	Statewise
(b) Court disposal — cases	Annual		-do-
3. Review of crime under major heads	2. Same as above.		
(a) Disposal of arrests by police	3. Same as above.		
(b) Disposal of arrests by Courts			
4. Juvenile Delinquency			
(a) Above outputs.			
(b) Socio-economic background of juveniles.			
5. Violent crimes (Dacoity & Robbery) Reported—by important place of occurrence.			
6. Crime against persons by motive, age and type of victim—	(Murder and culpable homicide not amounting to murder, sexual crimes etc.)		
7. Thefts by minor heads — Reported.			
8. Property stolen and recovered — by value.			
9. Important types of property stolen — Reported.			
10. Recidivism—new offenders, convicted once, twice, thrice and above.			

4.12 The foregoing discussion shows that from the limited number of computer input formats generated at the Police Station level, the computer will be virtually generating a uniform crime records system in the country at the District, State and National levels.

4.13 Two important elements in the crime records system have not been dealt with so far, viz. photographs and fingerprints. The 1962 Committee envisaged albums at the District and State levels of photographs of criminals, arranged *modus operandi* wise. The present Committee recommends that albums should be maintained as follows :

Police station level	:	Criminals with local operation.
District level	:	Criminals with inter-police station operational capability.
State level	:	Criminals with inter-district operational capability.
National level	:	Criminals with inter-State and international operational capability.

The albums should be maintained *modus operandi* wise. The photographs should be numbered serially so that a cross-reference these may be recorded in the computerised crime-criminal fingerprint information system.

4.14 Fingerprints of criminals originate from Police stations or other specialised investigation units and are maintained in Ten-digit classification records at the State and National levels and in single digit classification records at the District or State levels in some States and also at the National level. At the outset, in view of the conclusive proof of identity of criminals that is afforded by fingerprints (whether taken on arrest or lifted from scene of crime), this Committee strongly recommends the establishment of Bureaux maintaining single digit records and ten digit records in those Districts and States respectively of the country where they do not exist now. At present, Himachal Pradesh, J & K, and Union Territories of Delhi and Goa have no Fingerprint Bureau of their own. Goa is sharing the facility at Pune in Maharashtra and the rest are served by the FPB at Phillaur in Punjab. In the case of North Eastern States, they share the common facility at Gauhati. Computerisation of fingerprint records, as will be explained below, will not dispense with the need for maintenance of physical fingerprint records.

4.15 The rules as to whose fingerprints can be retained on record in a State Fingerprint Bureau, taking an example, say from Tamil Nadu, are reproduced in Annexure 4(6). These rules, which conform to the Identification of Prisoners' Act 1920 (Central Act XXXIII of 1920) forbid the Police (except with the permission of Court) from retaining fingerprints of persons not convicted but who have been merely arrested in cases. Assuming that this disability is removed, the need for which is discussed later, the Committee would recommend adoption of the following system of fingerprint records :—

- | | |
|--------------------|---|
| (a) District level | (i) Record of house-breakers, house thieves, car thieves and other appropriate categories whether convicted or arrested, classified under Battley's Single Digit system; this record is to aid in the Identification of scene of crime fingerprints. |
| | (ii) Records of all persons arrested during each year and the four preceding calendar years in the districts, for involvement or on suspicion of involvement in professional cases under all the crime types covered by the computerised crime record. Cross-check of scene of crime fingerprints with these records has been seen to produce valuable results in the detection of crimes by criminals whose fingerprints are not on record in the State Bureaux. |
| (b) State level | Record of all offenders who have been convicted, or arrested in professional cases under all the crime types covered by the computerised crime record; this is intended to help in identification and locate conviction or involvement in previous crimes. |

4.16 The rules as to whose fingerprints are to be recorded in the Central Fingerprint Bureau are reproduced in Annexure 4(7). It is seen that they are largely identical with the rules reproduced in Annexure 4(6) except in regard to some features *e.g.* records of offenders under local and special laws. A basic question that arises is whether the CFPB's records should be a complete duplicate of the records of all the State Bureaux or a selective record, say of criminals with Inter-District, Inter-State and international operational capability. The Committee had earlier recommended (*vide* para 4.10) that computerised crime record system at the National level should be derived by integrating the computerised crime records of all the States in their entirety. So too, the Committee recommends that the national record of fingerprints should be a complete duplicate of the records at the State level.

4.17 The national computerisation programme also envisages computerisation of the fingerprint record system at the State and National level. To begin with, all fingerprint slips on record in the State Fingerprint bureaux must be coded and put on computer record. When a person is arrested or convicted, his fingerprints are taken on a fingerprint slip and referred to the State Fingerprint Bureau for search or for record. These fingerprints are coded by fingerprint experts at the District or State level and the coded data are submitted to the computer centre in a standard input form, Form V which is reproduced in Annexure 4(1). The coded data are searched against, or added to the coded total record by the computer. Computerised search may yield no matching record or may yield references to one or more possibly matching records.

4.18 The national computerisation programme in relation to fingerprint can best to be accomplished in the following manner. Each State Fingerprint Bureau will progressively encode its entire fingerprint record and put the encoded data on magnetic tape which can be duplicated easily by the computer. The duplicate tapes will be sent to the CFPB from time to time from all the State Bureaux along with duplicates of the corresponding physical fingerprint slips. At the CFPB a special task force will check computer classification and the Henry Classification and progressively develop an integrated computer and a physical record. Periodic weeding and elimination of useless data from both the Central and State Bureau records can be effected not only by special input forms from the field reporting such events as death, but also by the computer scanning the records to remove those qualifying for removal under existing rules by reason of age, prolonged inaction etc. Detailed norms will have to be worked out with reference to local conditions on State-wide basis.

4.19 The Committee considers it important to complete the computerisation of fingerprints at the National and State levels within a reasonably short time frames say of 5 years. In order to accomplish this, the Committee would recommend that each State should attempt to computerise the record at the rate of 1 lakh fingerprint slips per year for the larger Bureaux. At a recording rate of 5,000 slips per year per expert, the larger Bureaux would need an additional staff of 20 experts and the smaller Bureaux would need an additional staff of 10 experts. For effective supervision and control there should be one supervisory officer for every four experts. The Supervisors and experts would be at the Inspector and Sub-Inspector level respectively in the State Bureaux. At the National level, for checking and integrating the record coming in at the National level from the State Bureaux, the Committee recommends a task force of 4 DSsP and 20 Inspector level officers.

4.20 Apart from computerisation, one other important technological aid for handling fingerprint record system has become available in recent years. This is the Miracode microfilm record system which has been introduced in the Tamil Nadu Police. Under this system a 10-digit fingerprint slip and its corresponding codes are recorded as adjacent images on microfilm, with the aid of a special camera. The coding is finger-by-finger for the 10 fingers. A spool of 100 ft. of film can carry around 350 sets of such images and around 100 spools can carry the complete fingerprint record of a State Fingerprint Bureaux. When a 10-digit arrest slip or a single digit scene of crime print is received for search, its codes can be keyed into a special reader which can scan all the spools very rapidly to locate possible matching prints and project them in succession on the reader's screen. This enables the operator to compare them with the arrest slip or scene of crime fingerprint and locate the exact match. The reader also has the facility of quickly producing a hard photocopy of the matching image, in any size, to be used in evidence in court.

4.21 Apart from the fact that the Miracode record can be accessed on the code of a single finger or codes of all the ten fingers, it has several other important operational advantages. The reader can locate matching record wherever they may occur on the microfilm spools and hence there is no need to build the microfilm record in any classified sequence. Such random access is also accomplished at such high speeds. A single spool of 100 feet can be scanned in 10 seconds, assuming that it contains no matching record. And finally, the scanning can be done simultaneously in respect of several 10-digit search slips or single digit scene of crime prints. A whole day's search work by dozens of experts in the Fingerprint Bureau under the manual system can be completed on a Miracode reader in a couple of hours. While intra-district record searches can be done manually at the District where the record size is small, inter-district and inter-State searches cannot be done manually at the State and National level where the record size is enormous. Hence the Miracode system becomes very valuable at these levels. The Committee has, therefore, no hesitation in recommending the adoption of the Miracode Microfilm record system in all Fingerprint Bureaux both at the State and Central levels, on a phased programme to be completed in 5 years.

4.22 The present approach to computerising fingerprint records is based on manual codification. In due course when advanced facilities involving image processing techniques become available they will have to be extended to this area in order to make the fullest use of computer capabilities for maximising the speed and accuracy of classification, record and identification of fingerprints. The Committee recommends that these developments should be systematically studied and pursued.

CHAPTER 5

Legal Requirement

5.1 The ultimate objective of the law, and of the criminal justice system which enforces and administers the law, is the prevention of crime. When a crime does occur, the law provides for its investigation, for establishing the guilt of the offender and for his punishment correction and supervision in such a manner that not only will he not commit a crime again but others too will be deterred from doing so.

5.2 Though the basic objective of prevention of crime is common to the different agencies of the Criminal Justice System *viz.* the police, probation, Court, Prison and Correctional agencies, they have tended to function in mutual isolation. It should be quite obvious that if their record systems were integrated into a common comprehensive record, each of them would have access to a more reliable and comprehensive range of data which would aid better fulfilment not only of their individual functions but also their collective objective *viz.* the prevention of crime.

5.3 It is in this broad perspective that crime record systems must be built by the different agencies of the Criminal Justice System. Specifically in respect of Police agency, the more effective the provisions of law and organisational arrangement for the collection and record of data of value to the detection of crime, the more effective will be the police contribution to the overall objective of prevention of crime. Existing provisions and arrangements are clearly inadequate, especially in regard to the many powerful and speedy capabilities that have become possible due to modern science and technology.

5.4 Broadly speaking, identification data provides a crucial determinant in the detection of crime. In the basic criminal law as it stood in the Indian Penal Code, 1871, there were references to the evidence of experts. Powers for the collection and record of materials on which experts could testify were left to be inferred instead of being specifically conferred by these enactments. Hence these enactments had to be supplemented by the Identification of Prisoners Act, 1920.

5.5 The Identification of Prisoners Act, 1920 provides for:—

- (a) the taking by the police of measurements, including fingerprint impressions, footprints and photographs of a person convicted of an offence punishable with rigorous imprisonment for one year or over or an offence where a subsequent conviction entails enhanced punishment or of a person bound over for good behaviour under Section 118 Cr. P.C.
- (b) the taking by a police officer of measurements including fingerprints and footprints only of a person arrested for an offence punishable with rigorous imprisonment of one year and above;
- (c) the taking by the police, under orders of a Magistrate of measurements, fingerprints, footprints and photographs of any person arrested in, or for the purposes of any investigation or proceeding under Cr. P.C.;
- (d) the taking by force, by the police, of measurements etc. and any resistance thereto being punishable under section 186-IF
- (e) the destruction of measurements of fingerprints, footprints and photographs in the event of release of the person without trial or on discharge or acquittal by court, unless otherwise directed by the court, or the District Magistrate or Sub-Divisional Officer for reasons to be recorded; and
- (f) the framing of rules under the Act by the State Governments.

5.6 These provisions, enacted as long ago as 1920 are totally inadequate to meet the complex problems of the present day. Some States like Maharashtra, have found it necessary to expand on them. They cover a very limited range of persons. They do not take account of the range of crimes and the high speed and wide sphere of operation of criminals in modern conditions and the limited time and resources at the disposal of the police to collect the needed data. A few examples will illustrate the inadequacy of these provisions.

5.7 Crimes are committed everyday by large number of persons, many of whom escape detection by the police. Some who are detected escape conviction in courts for want of satisfactory evidence. Many potential or active criminals are also arrested by the police on suspicion, as for instance, while on the prowl at night. Fingerprints are taken when arrests are made in such cases. In many cases no prior convictions are traced, and in many cases convictions do not follow. Under the law as it exists, their fingerprints cannot be retained. But it is a matter of frequent experience that these fingerprints are found identical with fingerprints developed at scenes of crime or crime weapons, much later. A similar thing happens in the case of photographs of arrested persons which are identified by eyewitnesses in later crimes. There could be no more convincing argument for the permanent retention of fingerprints and photographs taken at the time of arrests, irrespective of the subsequent course of the cases in which they were arrested. It is clear that the law must be amended to permit this.

5.8 Modern forensic science has thrown up a whole new range of investigation and identification techniques. Materials, stains, marks etc. on the person of the suspect, the victim of the crime, on the weapon or at the scene of crime, lend themselves to sophisticated laboratory analysis and provide powerful evidence to establish or support the guilt or innocence of a suspect. The materials may include strands of hair, fibre, specks of mud, glass, paint etc. Stains may arise from blood, semen, urine, saliva, sweat, oil cosmetics, ink etc. and urine from an offender or from weapons, nails, teeth, shoes etc. Blood and urine from an offender or from a victim can show the presence of alcohol, or a poison respectively. Psychiatric, medical and other tests can show a suspect telling lies or suffering from abnormalities which affect criminal liability or show the type of environment and activity that should be emphasised in the sentence imposed upon a convicted person in order to retrieve him from criminality. And finally a comprehensive centralised record or data would be most valuable for analysis and research which will enable a better understanding of handling of crime and criminality in their various facets.

5.9 The law as it exists does not give a specific power to the authorities to collect and retain the whole range of such materials specially those needed from the person of a suspect. It is of the greatest importance to the effective prevention and detection of crime that powers to collect and retain selectively this range of materials and should be available in addition to fingerprints, footprints, measurements and photographs. These powers should arise once an arrest is made on any type of crime or situation. Refusal of an arrested person to submit to examination for the purpose of collection of such materials should not only constitute an offence but should also invite an adverse inference and against him in evidence in the case in which such examination is sought.

5.10 The Committee has formulated a new draft enactment called, the Crime and Offender Records Act which should replace the Identification of Prisoners Act, 1920, to fulfil the above purposes. A copy of this draft Act is enclosed in Annexure 5(1). It brings all materials that could aid in the prevention and detection of crime within the ambit of the term, "Crime and Offender Data" which is covered by a wide definition. It authorises the taking of crime prevention data in respect of an arrested person by police, medical, court, jail, probation or other officers who are declared as, "Authorised officers" for the purpose. It requires that such officers shall submit such data for retention in Crime Record Bureaux to be set up at the national and State levels. And finally it provides for issue of certificates by the Crime Records Bureaux in respect of data in its records which will dispense with the need for courts to examine witnesses to prove whatever is certified.

5.11 The Committee believes that this approach will break new ground and put not only the police, but all agencies of the Criminal Justice System into an operational frame-work of modern science. This Committee believes that these arrangements will greatly enhance the certainty of detection of crime and the scientific treatment of offenders and thus contribute ultimately to the more effective prevention of crime. The shift from the existing Identification of Prisoners Act to the proposed, Crime and Offender Records Act will mark a basic change in our perspective and also a big step forward in our handling of the Crime problem.

5.12 The terms of reference of the Committee as already indicated have provided that a law officer of the Ministry of Law, Justice and Company Affairs, Government of India, may be associated with it as an Adviser. The Committee had the benefit of the advice of Shri V. V. Vaze, Joint Secretary of the Ministry who was seconded to this Committee as its Advisor. The Committee has in particular been advised that its proposed draft, Crime and Offender Records Act is basically sound. Such legislation is within the legislative competence of the Government of India with reference to the Entry 2, List III, Schedule VII of the Constitution. The Advisor has also opined that the proposed provisions also do not offend Art 20(3) or any other related provisions of the Constitution or Constitutional case law built up so far.

CHAPTER 6

Organisational Arrangements

6.1 The establishment of the Crime records system as proposed in Chapter 3 will call for considerable organisational and administrative arrangements at the Police Stations and the District and State and National levels. These arrangements are broadly spelt out in this Chapter.

6.2 At the outset it must be noted that all crime data originate in Police Stations. It is, therefore, vital that fool proof arrangements are made in Police Stations so that such data are collected fully and accurately and submitted promptly to higher level units where they are processed and recorded.

6.3 The Committee, therefore, propose that following the example of some States like Andhra Pradesh, Karnataka, Delhi, Tamil Nadu, Maharashtra etc., one or more educated police-men (to the extent possible from the existing strength) should be named, trained and posted as Collators in every Police Station. The number and rank of collators to be so posted may be on the following scale and pattern.

Sl. No.	Nos. of FIR's registered in the Police Station	Rank and number of Collators
(i)	Upto 300 FIRs	1 PC
(ii)	Upto 600 FIRs	1 HC and 1 PC
(iii)	Upto 900 FIRs	1 HC and 2 PC
(iv)	Over 1000 FIRs	1 ASI, 1 HC and 2 PCs.

All Police Stations must have one or more trained constables in reserve to fill up collator vacancies arising out of leave, sickness or absence due to other causes. Collators, additional callators and reserve collators must be named and posted as such to the Police stations under the personal orders of the Superintendent of Police. They must be given one or two weeks special intensive training in the District Crime Bureau so that they become proficient in the functions assigned to them. These personnel should have a term of at least 3—5 years in a particular Police Station.

6.4 The functions of the Collator must be incorporated in the Police Manual. These will include:—

- (a) Maintenance of crime records of the Police station;
- (b) Preparation of the input forms originating from the Police station in respect of all Police computer applications;
- (c) Placing all computer outputs received in the Police station before the Station House Officer for their effective utilisation;
- (d) Taking of finger-prints of person on arrest or conviction, and submitting them to the District Crime Bureau or State Crime Records Bureau;
- (e) Generally assisting the Station House Officer in all correspondence with the District Crime Bureau or State Crime Records Bureau;
- (f) Handling the P & T Telephone and VHF telephone and other technical equipment, if any, in the Police station.

to be adopted. The Committee also recommends that the District Crime Bureau should be headed by a Dy. Superintendent of Police and should be comprised of the following sections with staff noted against each :—

- (a) The Records Section with a staff of 1 Inspector and 6 to 10 H.Cs. (depending on the size of the district) will be responsible for:—
 - (i) Maintenance of Crime records at the district level including statistical and other compilations;
 - (ii) Monitoring submission of computer inputs and utilisation of computer outputs in respect of all computer applications by all field units of the district;
 - (iii) Training and monitoring the work of all Collators in the district; and
 - (iv) Handling all correspondence with State and National Crime Records Bureau.
- (b) The Finger-print Section with a staff of 1 Senior Expert (Inspector level) and 2 to 4 Finger-print Experts (S.I. level) and 2 to 4 Searchers (depending on the size of the district) which will be responsible for:—
 - (i) Maintaining a single-digit classified record of appropriate classes of criminals of the district;
 - (ii) Maintaining a collection of 10-digit finger-print slips of all persons arrested in the district in the last 5 years for cross check with scene of crime finger-prints or with subsequent 10-digit arrest slips; and
 - (iii) Attending to scene of crime finger-print work.
- (c) The Forensic Section with a staff of 1 Scientific Assistant, 1 Photographer and 1 Laboratory Assistant, with a fully equipped Mobile Laboratory Unit and a Photographic dark room with all equipment.

6.6 It will thus be seen that the District Crime Bureau will provide all the specialised expert services at the District level so as to be able to handle the entire range of crime data originating from Police stations, in the most effective manner. The Committee feels that these arrangements at the District level are the best guarantee not only of scientific style of functioning of Police stations, but also the most fruitful interaction between the Police Stations and the Crime Record Bureau at the State and National levels. The Committee has been confirmed in this view by the fact that such arrangements have been instituted in Tamil Nadu with striking results.

6.7 We now come to a detailed consideration of the set up of the State and the National Crime Records Bureau. Basically the Records maintained in these Bureaux would fall into three broad Divisions covering Descriptive Records, Finger-print and Photo records. The set up of a State Crime Records Bureau would be broadly as discussed below.

6.8 The Descriptive Records Division would maintain a dossier for each criminal containing original records received in respect of him from all "Authorised Officers" of the Police, Courts, Probation Deptt., Correctional Institutions, Prisons, Medical Department, Forensic laboratories etc. Such data will be available in these records as convictions, sentences, personal or environmental factors affecting his criminality, his responses to institutional or other classification, discipline, training and rehabilitation etc. as will be relevant to future investigations, prosecutions or type of treatment. Different agencies of the Criminal Justice System would be entitled to draw on the records for information needed by them, duly certified by the Head of the Division. Information so certified would not be required to be proved by witnesses in courts. Dossiers of criminals in this section would be arranged in the order of criminal numbers assigned to them.

6.9 The Descriptive Records Division would require adequate staff and accommodation. The Division should be headed by a Superintendent of Police and should have staff at the minimal scale of one SI for every 10,000 criminal records with Supervisory staff of 1 Inspector for every 3 SIs and 1 DSP for every 3 Inspectors. Special furniture and floor accommodation for the Division will have to be determined by actual needs.

6.10 The existing State Fingerprint Bureau would become the Fingerprint Records Division of the State Crime Records Bureau. The Fingerprint staff are civilians in some States and Police officers in some States. On consideration of security, discipline and cohesion within the Police Department, the staff in all the States should be embodied as specialist category of Police officers under the Police Act. The Fingerprint Records Division should be headed by a Superintendent of Police and should have staff on minimal scale of 1 SI for every 5,000 Fingerprint Records, with a Supervisory staff of 1 Inspector for every 3 SIs and 1 DSP for every 3 Inspectors. Here again, furniture and floor accommodation will be determined by actual needs.

6.11 The Photo Records Division will provide a new modern dimension to the Crime Records Bureau. It will maintain five basic sets of photographic records viz.,

- (a) Photographs of all criminals maintained in such indexed sequence as to be accessible by the Criminal number or name or *modus operandi*;
- (b) Photographs of all scenes of crime, material objects seized, stains, marks, vehicles involved in accidents, weapons and weapon marks, unidentified dead bodies;
- (c) Photographs of fingerprints lifted from scenes of crime, weapons, crime vehicles etc. ;
- (d) Microfilm counterparts in the form of microfiche jackets of the physical records maintained in the Descriptive Records Division; and
- (e) Miracode microfilm counterparts of the physical finger-print records maintained in the Fingerprint Records Division.

6.12 The Photo Records Division may be manned by Police officers trained in photography. It may be headed by a Superintendent of Police with a staff of DSsP, Inspectors and S.Is. Furniture and floor accommodation should be provided according to need. The accommodation must be airconditioned against temperature, humidity and dust. The Division should have adequate dark room facilities and equipment to handle black and white and colour photography, photomicrography and microfilm work, including the Miracode record. Special furniture should be provided for storage of the photo records in their different forms in appropriate indexed sequence.

6.13 A great part of the data borne by the Crime Records Bureaux in physical files will also be borne on computer record which will meet a good part of the operational or statistical needs of the different agencies of the Criminal Justice System. However, it will be necessary to go back to official physical records like fingerprints, photographs, conviction reports from courts etc. in order to 'conclusively' establish identity or provide authentic and certified information or photo copies of original records to the different agencies of the Criminal Justice System. Hence it will be important to build up effective coordination arrangements between the computer centre and the Crime Records Bureau as also within the three Divisions of the latter.

6.14 The Crime Records Bureau of the States should be headed by a Director of the rank of DIG in the larger States. The Head of the State Crime Records Bureau should not have any field responsibility and should be directly under the Inspector General of Police so that the Bureau is insulated from the field hierarchy of the Police Force. The Crime Records Bureau should preferably be located in the same building or in the vicinity of the Police Computer Centre and the State Forensic Science Laboratory and the ideal arrangement will be for all these units to be under the unified command of a Special I.G. of Police who will have no field responsibilities.

6.15 The arrangements in regard to the National Crime Records Bureau would broadly follow the arrangements at the State level. At the outset it will be obvious that the National Crime Records Bureau will have to be located in an appropriate and central place in the country preferably in the same place as the National Police Computer Centre. Two possible locations suggested are New Delhi and Hyderabad. Land is available in the campus of the SVP National Police Academy, Hyderabad, and inter-action with this premier training institution makes the Hyderabad location for both the National Crime Record Bureau and the National Police Computer Centre, a particularly attractive proposition. But whether the choice ultimately falls on New Delhi or Hyderabad, it is clear that the Central Fingerprint Bureau has to merge in the National Crime Records Bureau wherever it is located.

6.16 One important point is that the personnel who are drawn into specialist responsibilities for the crime record system from the Collators of Police Stations to the staff of District, State and National Crime Records Bureau should be given an incentive of a substantial special pay in recognition of the technical and complex nature of these responsibilities and for acquiring technical knowledge and special skills in addition to their normal police skills. The scales of special pay for the different categories should be among the best available in Police Departments and should be such as to attract the best talent.

6.17 The Director of the National Crime Records Bureau should be an I.G. level officer, working directly under the MHA. The Heads of its Divisions should be DIG or Superintendent level officers and staffing lower down should follow the scales suggested at the State level, except that at the Supervisory levels, there may be one DSP level supervisor for every 3 Inspector level supervisors in each Division. Accommodation, furniture and equipment may also follow the same pattern as suggested for the State Crime Records.

6.18 The establishment of CRBS at the National and State levels will involve non-recurring expenditure on buildings, vehicles and equipment and recurring expenditure on staff, maintenance and contingencies. The Committee specially recommends that the Government of India provide the funds.

- (a) Under the MHA budget in respect of the recurring and non-recurring expenditure in respect of the CRB of UTs and in respect of the National CRB. Non-recurring expenditure for the National Crime Records Bureau may be of the order of Rs. 50 lakhs (Rs. 25 lakhs for building and Rs. 25 lakhs for equipment and vehicles).
- (b) Under the Police Modernisation Scheme in respect of non-recurring expenditure in the States which may on an average be of the order of Rs. 30 lakhs per State (Rs. 10 lakhs for buildings and Rs. 20 lakhs for equipment and vehicles). Of course, States would be expected to provide the recurring expenditure from their own resources.

6.19 It remains to be added, however, that on consideration of geographical contiguity, operational viability and economy, small States and Union Territories may share a common Crime Records Bureau. Delhi could, of course, have a separate Crime Records Bureau in view of the size and problem of the Metropolitan city. But Union Territories like Chandigarh, Goa or Pondicherry could logically be served by the Crime Record Bureaux of Punjab, Maharashtra and Tamil Nadu respectively. And the small States covered by the North Eastern Council could obviously have a common Crime Records Bureau located at Gauhati.

6.20 One major element in the objective operation of the proposed Crime Records System from the Police Station level upto the National level is an adequate communication network which will enable speedy transmission of data for speedy updating of records at all levels and speedy feed back of upto date data, to field operational levels. Field formations should, in particular, be able to get such feed back within minutes where a person or a vehicle or property is detained on suspicion or within hours in the case of investigations and especially in the case of arrests where persons arrested cannot be held for more than 24 hours by the Police. Detentions of arrested persons on remand pending investigation should also be minimised. In practical experience prior criminal records are traced in around twenty to twenty-five per cent of police arrests in the country. A quick feed back of absence of a previous criminal record would facilitate prompt release on bail instead of person being held in detention pending verification. It is, therefore, imperative that communications facilities be built in the Police Department enabling the Police officials to have access to data required in connection with arrests. After discussion with the Director of Police Telecommunications, Ministry of Home Affairs, and others the Committee considered that the following communications infra-structure was essential to the effective use of the Crime Records System.

- (a) VHF telephones in all Police stations linked by District VHF network which will give immediate access to field officers to one another and to the District Crime Bureaux;
- (b) Telephones, teleprinters and Facsimile Transreceivers in all District Headquarters, which will enable exchange of information between the District Crime Bureau and the State Crime Bureau and the State Police Computer Centres; this will require multi-channel Microwave or UHF trunk lines linking all State Headquarters; and
- (c) A linkage of the Microwave or VHF trunk lines of the States into a national grid to enable exchange of information between the National and State Police Computer Centres and the National and State Crime Record Bureaux.

The Committee is given to understand that the building of such communications facilities on a countrywide basis is being projected in full detail by the Committee on Police Modernisation set up by the National Police Commission and hence recommends that this matter may be pursued further on the basis of that Committee's Report.

6.21 In order to ensure systematic implementation of the arrangements proposed at the various levels on a time-bound countrywide integrated programme, the Committee recommends the appointment of an I.G. level officer at the National level and DIG level officers at the State level as officers on Special Duty to formulate the detailed proposals for administrative sanction by the Central and State Governments respectively. These officers may also form a Working Group from among themselves in order to ensure that the formulation of proposals and their implementation proceeds in a uniform and systematic manner throughout the country. The Committee would suggest that the establishment of the National and State Crime Records Bureau should be completed within a few years to correspond with the commencement of operations of the Police Computer network on a national basis.

CHAPTER 7

Summary of Recommendations

- 7.1 The recommendations emerging from the foregoing Chapters are now summarised below :—
- 7.2 The Crime Records System at the Police Station and the District, State and National levels should be reoriented to enable it to be operated by Police Computers installed at the State and Central levels under the National Police Computerisation programme. (Paras 4.7 and 4.12)
- 7.3 In consequence the crime records at different levels will be as follows :—
- (a) *Police stations level*—The Police station copy of the computer input forms viz Forms I, IA, II, III and IV will be accumulated in case-wise order and maintained as a new set of basic crime records at the Police station level. These may be supplemented by such other of the existing crime records with modifications on lines suggested, as will be determined by a study group to be formed in each State. (Para 4.8)
 - (b) *District level*—Physical records here may follow the uniform pattern suggested by the 1962 Committee of DIsG CID with the stipulation that they may be generated by the computer from the State level computerised records. (Para 4.9)
 - (c) *State level*—This will be in part, a computerised record as already envisaged and initiated under the national computerisation programme (4.9) and in part a physical record system as processed for the State Crime Record Bureau. (Paras 6.8 to 6.13)
 - (d) *National level*—This will be partly a computerised record adding to it records circulated by Interpol in respect of international crime (para 3.10) and partly a physical record system as proposed for the National Crime Record Bureau. (Para 6.15)
- 7.4 Statistical data at the State and National levels can be generated from the computerised records at the District and State levels.
- 7.5 Photographic records should be maintained at the Police station and the District, State and National levels. (Para 4.13)
- 7.6 Physical finger-print records, classified by single digits and by 10 digits should be maintained respectively in the District and State levels in all States. (Para 4.14)
- 7.7 These single-digit or 10-digit finger-print records should cover criminals who have been convicted or arrested. In addition, 10-digit finger-prints should be retained at the District level of all persons who have been arrested in the last 5 years. (Para 4.15)
- 7.8 The physical finger-print records at the National level should be a complete duplicate of the records in all the States.
- 7.9 Computerisation of finger-prints at the State and National level cannot dispense with the retention of corresponding physical records. (Para 4.17)
- 7.10 The computerised and physical finger-print record at the National level may be created by the computer by integrating the computerised and physical records for all States. Staffing at State and National levels should be as proposed. (Paras 4.18 and 4.19)
- 7.11 Special input forms to be devised for weeding out useless data. (Para 4.18)
- 7.12 The Miracode microfilm record system for handling the finger-print records should be introduced at the State and National levels in a phased programme. (Paras 4.20 and 4.21)
- 7.13 The powers to collect and retain data for the crime record system should be within the framework of powers to collect and retain the whole range of data that modern science and technology has made available for the prevention and detection of crime. (Para 5.9)
- 7.14 The building of a system of crime records should be within the framework of comprehensive records of data contributed by all agencies of the criminal justice system. (Paras 5.2 and 5.3)
- 7.15 The existing Identification of Prisoners Act, 1920 should be replaced by a new enactment called the "Crime and Offender Records Act" which provides the power needed for collection and retention of the widest possible range of data and for the establishment of Crime Records Bureaux at the State and National levels. (Para 5.10)
- 7.16 A suggested draft of the proposed "Crime and Offender Records Act" is enclosed in Annexure 5(1).
- 7.17 One or more educated constables must be specifically designated in every Police station as Collators whose duties should be as defined. (Paras 6.3 and 6.4)

- 7.18 The unit handling Crime Records at the District level should be uniformly called the "District Crime Bureau". Its composition, staffing and functions should be as detailed.
- 7.19 The Crime Records Bureaux at the State and National levels should be organised and functions should be as detailed.
(Paras 6.7 and 6.18)
- 6.20 Where necessary a common Crime Records Bureau could serve small contiguous States and Union Territories.
- 7.21 The Crime records system from the Police station to the National level should be supported by communication facilities as described.
(Para 6.20)
- 7.22 Officers on Special Duty should be appointed at the National and State levels to formulate and implement proposals based on the above recommendations, within an integrated, time-bound, countrywide programme. These officers may also form a Working Group to ensure uniformity and systematic implementation to coincide with the commencement of operations of the Police Computer network on a national basis.



DRAFT

The Crime and Offender Records Act, 1979

PREAMBLE

WHEREAS it is expedient to authorise the recording and retaining of identity and other data and information in regard to crimes and persons involved in them, and use such data and information to aid the prevention and detection of crime, and aid the treatment and control of such persons as aforesaid with a view to reforming them, it is hereby enacted as follows :—

1. *Short title and extent*

- (1) This Act may be called the Crime and Offender Records Act, 1979;
- (2) It extends to the whole of India; and
- (3) It shall come into force at once.

2. *Definitions*

In this Act, unless there is anything repugnant, in the subject or context :

- (a) "Crime and Offender Data" shall include all data in respect of crimes and, in respect of persons involved in crimes, all data relating to their age, family background, educational qualifications, physical measurements, finger-prints, footprints, lip prints, voice prints, dental castings, ordinary photographs, X-ray photographs, samples of hair, sweat, saliva, urine, blood, semen, fibre, dust and any other material produced by or deposited on and removable from any part of the body; and data arising from medical, psychiatric and other similar tests.
- (b) "Authorised Officer" includes an officer of the Police, Probation, Judicial, Correctional Institutions, Prison, Medical or other Department or Agency of the Government and not below such rank, as may be notified by the Central or State Government to exercise powers under this Act.
- (c) "Prescribed" means prescribed by this Act or by Rules made under this Act.

3. Every person whose conduct is the subject-matter of an enquiry, investigation or trial, under the provisions of the Code of Criminal Procedure;

Every person regarding whom a Probation Officer is required to submit a report under the Probation of Offenders Act, 1958;

Every person held in custody in a jail or correctional institution or protective home, set up under the provisions of the Prisons Act, the Children's Act, the Suppression of Immoral Traffic Act, or any such law as may be notified by the Central or State Government for the purposes of this Section; and

Every person who undergoes a medical or psychiatric test or any other similar test under orders from a Court, shall, if so required, allow all or any crime and offender data to be taken by an authorised officer in the circumstances and manner prescribed.

4. *Resistance to the taking of Crime and Offender Data*

- (1) If any person who is required under this Act, to allow crime and offender data to be taken, resists the taking of such data or refuses to allow the same to be taken, it shall be lawful to use all means necessary to secure the taking thereof, provided that samples of blood and semen alone shall not be taken against any person's consent.
- (2) Resistance to the taking of crime and offender data or refusal to allow such data to be taken, subject to the above proviso, shall be deemed to be an offence under Section 186 of the Indian Penal Code.

5. *Recording, Retention and Obtaining of Crime and Offender Data*

- (1) The Central and State Governments shall establish a Central or State Crime Records Bureau, as the case may be, in order to record, retain, collate, analyse and process Crime and Offender data submitted to these bureaus by Authorised Officers.
- (2) Authorised officers shall submit crime and offender data collected by them to the Central or State Crime Records Bureaus in such forms and at such points of time as may be prescribed.
- (3) Authorised officers may seek such crime and offender data as they may need for the effective performance of their functions from the Central or State Crime Records Bureau in such manner as may be prescribed.

6. *Mode of Proof of Crime and Offender Data*

- (1) Subject to the provisions of this Act and the rules made thereunder, a certified copy of any entry in the records of the Central or State Crime Records Bureau, shall in all legal proceedings be received as prima facie evidence of the existence of such an entry and shall be admitted as evidence of the matters therein recorded in every case where, and to the same extent as, the original entry is by law admissible.

- (2) For purposes of this Section, "certified copy" means a copy of any entry in the records of the Central or State Crime Records Bureau together with a certificate written at the foot of such copy that it is a true copy of such entry and that such entry is contained in the records of the Central or State Crime Records Bureau, such certificate being dated and subscribed by the officer in charge of the Bureau, with his name, official designation and the seal.
- (3) No officer of the Central or State Crime Records Bureau shall in any legal proceedings be compellable to produce in original any record of the Crime Records Bureau, the contents of which can be proved under this Act, or to appear as a witness to prove the matters therein recorded, unless by order of the Court made for special reasons.

7. *Protection of Crime and Offender Data from Inaccuracy, Exposure or Misuse*

- (1) All crime and offender data shall be protected from inaccuracy and misuse by Central and State Crime Records Bureaus, and by Authorised Officers in possession of such data. Such data shall be used solely for the purposes prescribed and personal data on an offender shall not be exposed to public view except to the extent incidental to his trial in Court.
- (2) It shall be open to any person to inspect and request correction in the manner prescribed, of any crime and offender data relating to him as may be held by the Central or State Crime Records Bureaus, and the onus shall be on such person to prove the accuracy of the correction desired.
- (3) Any person who has access to or custody of crime and offender data, and suffers personal data on any offender to be exposed to public view, save as provided in this Act, shall, on conviction, on the complaint of the offender in question, be punished with imprisonment of either description for a term which may extend to six months and shall also be liable to fine.

8. *Power to Make Rules*

Without prejudice to the generality of the foregoing provisions, the Central or State Governments may make rules to prescribe—

- (a) the procedures and forms for the taking of crime and offender data by the authorised officers and for the recording, retention, destruction and disposal of such data and also supply of the same to Authorised Officers by the Central or State Crime Records Bureaus,
- (b) procedures to enable persons to seek inspection and seek correction of crime and offender data in respect of them, held by the Central or State Crime Records Bureaus, and
- (c) such other matters as will further the purposes of the Act.

9. *Rules to be Laid Before the Lok Sabha and the State Legislative Assembly*

Every Rule made by the Central or State Government for this Act shall be laid, as soon as may be, after it is made, before the Lok Sabha or the State Legislative Assembly, as the case may be while it is in session for a total period of thirty days, which may be comprised in one session or any two successive sessions and if before expiry of the session in which it is so laid or the session immediately following, the Lok Sabha or the State Legislative Assembly as case may be, desires the making of any modification in the Rule or that the Rule should not be made, the Rule shall thereafter have been made such modified form or be of no effect, as the case may be; so however any such modification or annulment shall be with prejudice to the validity of anything previously done under that Rule.

10. *Repeal*

- (1) The Identification of Prisoners Act, 1920 (Act 33 of 1920) is hereby repealed.
- (2) All crime and offender data recorded under provisions of that Act shall be deemed to have been recorded under the present Act.