

Therefore, not always
be on the bona fide



Therefore, the police is perfectly justified in using force while tackling a fighting drunkard who is damaging the property or assailing his fellowmen and who looks upon policemen as a malicious intruder or an armed criminal who has shown a scant regard for human life and nearly a general hatred towards the police force. Such occasions offer a legal jurisdiction for the police to use violent methods in course of their prescribed duties. They have to be rough and tough while making arrests and protecting themselves and also the community from the criminals. However, at times, the policemen surpass the legal-limits of the use of violence and adopt brutal methods to inflict pain on the arrested person with a view to extracting confession from him. The efficiency of police functioning is generally measured either on the basis of number of arrests or the rate of conviction for cases brought by the police to the courts. But none of these tests are capable of measuring the real performance of police to determine its efficiency. The ' arrest test' fails because the decision to arrest a person may not always be on the bona fide belief of suspicion and many arrest may be made simply for shielding the inefficiency.

The conviction rate may give a more realistic picture of police efficiency but again, it is not based solely upon the merit of the prosecution since appreciation of evidence by the presiding Judge is based on other factors such as changing of statements by witness or witness turning hostile and so on. The major functions which the police is lawfully required to perform are as follows:—

(1) Patrolling and Surveillance:

Patrolling is the visible police function for the purpose of general watch and ward. Excepting the traffic control police, static parties-pickets are in vogue.

There is a good amount of divergence in the patrol patterns in the urban and rural areas. In rural sectors, patrolling work is done by the village choukidars. In areas having panchayat system, able-bodied young men in the age-group of 18 to 24 are also utilised on honorary basis. But in insurgency prone areas, armed police units go about in a roving commission, generally in an unplanned manner. In all the rural police stations, the Station House Officer (S. H. O.) is held responsible for maintenance of law and order and deployment of policemen for patrolling.

In urban areas mobile patrols with wireless telecommunication are arranged for surveillance. Generally, there is no separate patrolling division in the police forces located in cities and bigger townships. Experience has, however, shown that patrolling by local civilians should not be encouraged as it results in lowering the image of the police in the eyes of the public.

Surveillance is yet another important function of the police which is based on anti-crime work. Presently, this work depends entirely on dossiers and watch-charts kept in at the Police Station. Each police station generally has a list of criminals and anti-social elements which require special watch. The information about these criminals is kept on cards arranged alphabetically in modus operandi boxes and their photographs are exhibited in the police station.

In the modern age of computers, it is advisable that all necessary information regarding notorious criminals and anti-socials should be feeded into the computer pool so that it may be readily referred to by the investigator at the police station or the sub-divisional police officer or even the C. I. D. branch.

(2) Preventive Functions:

The foremost task assigned to the police is to make arrest of law-breakers and suspected criminals and take them into custody in order to prevent crime. The preventive powers of the police are contained in the Code of Criminal Procedure. Sections 71 and 73 of the Code, further afford adequate protection to the police officials against legal action for wrongful restraint of an innocent person who was apprehended and kept in police custody under a bona fide belief that he was an offender or a law-violater.

The legal limits of arrest and detention of suspects are clearly defined in the Criminal Procedure Code. The National Police Commission has suggested that a new Section 50-A be added to Chapter V of the Code, requiring the police to give intimation about the arrest to anyone who may reasonably be named by the arrested person for sending such information, so that necessary arrangements for release on bail etc. may be made by the interested person or persons. Whenever the police feels that the investigation cannot be completed within the period of 24 hours fixed by Section 57, Cr. P. C.

and there are grounds for believing that the accusation or information is well-founded, the police officers making the investigation may seek an order

for remand from the nearest Judicial Magistrate. The law casts a heavy duty on the Magistrate and requires judicial discretion to be exercised with utmost caution. An order of remand is conditioned upon satisfaction of the Magistrate; the period of such remand shall not exceed fifteen days. The Constitution of India also provides some safeguards against the arbitrary use of preventive powers by the executive. The arrested person must be taken promptly before a Magistrate without any loss of time. The reasons for arrest must be communicated to the person arrested and he or she, as the case may be, should be given opportunity to engage the Counsel of his choice for defending his case.

The Police may arrest a person on a warrant issued by a competent Court. An arrest made on a warrant is in fact a case of arrest made by the Court through police. But at times, the circumstances may require the police to make an arrest without warrant. The police may arrest without warrant when they apprehend the commission of a crime or when they have reason to believe that crime has been committed by the suspected person.

The police can arrest and take into custody vagabonds, habitual rogues, persons with doubtful antecedents, or those who are conditionally released from jail or prison for the sake of maintenance of law and order within their territorial jurisdiction. As regards police power to handcuff the undertrial for escorting and preventing his escape, the Supreme Court in *Prem Shankar Shukla v. Delhi Administration*, observed, “handcuffing is prima facie inhuman and therefore, unreasonable and at the first blush arbitrary.” The Court further held that even in cases where in extreme circumstances, handcuffs have to be put on the prisoner; the escorting officer must record

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reasons for doing so and get the approval of the Presiding Judge. And once the court directs that handcuffs shall be off, no escorting authority can overrule judicial direction. This is implicit in Article 21 which insists upon fairness, reasonableness and justice in the very procedure which authorises stringent deprivation of life and liberty.

(3) Conditional Release of Accused on Bond etc:

The police also has the power to release an accused on a bond with or without sureties in case there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate. The provisions contained in Section 437 of the Code of Criminal Procedure relating to grant of anticipatory bail to the accused are intended to ensure rule of law although it hinders police work in the following ways: (i)

Anticipatory bail may enable the accused to tamper with evidence against him. (ii) The police cannot get remand under Section 167, Cr. PC., if the offence is related to property. (iii) It has a demoralising effect on the victim who feels unsafe and insecure with the free movements of the accused.

(iv) It obstructs impartial investigation by the police. The arrested person can apply for bail even in non-bailable offences. The officer incharge of a police station and the Magistrate have power to grant bail in all such cases except those punishable with death or imprisonment for life. The Magistrate at his discretion, has the power to grant bail even in those cases where the accused is a minor below 16 years of age, a woman or a sick or infirm person.

(4) Investigation by Police:

The purpose of investigation is to collect evidence and apprehend the culprit. It is the duty of everyone concerned to assist the police in their work.

The police can question any person supposed to be acquainted with the facts and circumstances of the case, and any such person shall be bound to answer truly all questions relating to such case. A witness may, however, avoid to give those answers which will expose him to any criminal charge. The police may write down the answer orally given by the witness. The witness has neither to give answers in writing nor sign those recorded by the police. In investigation, a police officer can call in writing a person to be a witness who appears to have some knowledge of the crime being investigated and who is within the jurisdiction of such police officer or in an adjoining police station. The witness so called has to appear before the police officer but a woman or a child below 15 years of age cannot be required by the police officer for such investigation to go to any place other than their own residence.

A witness appearing in police investigation may take help of a -lawyer in answering written question put to him/her. Political interference at the stage of investigation has become a routine affair. The National Police Commission has expressed concern about the political parties irrespective of their views, using their power and authority regarding promotions and transfers to compel the force to serve their interest. This liaison between the police and the politician is vitiating the impartiality and objectivity of the police investigation.

This invariably happens at the stage of submission of charge-sheet under Section 173 of Cr. P. C.

Though it is the sole discretion of the investigating officer to submit or not to submit the charge-sheet and even the Magistrate cannot order him to do so contrary to the former's own honest assessment of evidence⁵ in the case, the politicians more often than not enter into an unholy alliance with the investigating officers to get things done in their favour. In order to eradicate this evil, the Law Commission in its 14th Report (1958) had suggested that investigating staff should be separated from the law and order staff to enable the investigating officer to devote undivided attention to investigation work. It will bring investigating police under the protection of judiciary which will greatly reduce the possibility of political or other types of interference with police investigation by invoking law of contempt, if necessary. The separation will also increase the expertise of the investigating police, as in the case of CID by relieving them from other duties and would result in more successful detection and prosecution. That apart, separation of 'investigating police' from 'law police' will also result in speedier investigation and overall quick disposal of investigation cases.

Investigating authorities should focus their attention on the following aspects of the case so as to reach the perpetrator of the crime:— (1) A criminal act may involve lot of motives therefore; the investigation officer should carefully examine each and every possible motive of the offender adopting the method of elimination. It may be honour killing, extreme personal attachment, failure in love affairs, suicidal or accidental, etc. (2) The job of police as a part of investigating official has right to suspect anyone but he

should move ahead only if there is possibility of substantial evidence being available against the suspected person. (3) In order to find out whether the victim was administered poison or intoxicants for facilitating the commission of crime, ' Basura test' should be resorted to. (4) While handling murder cases, the interrogation of the near relatives of the deceased person (victim) should be done in a humanitarian manner keeping in view their sentiments and avoiding undue stiffness with them, unless there are valid reasons to be tough with them. (5) In case of murder or suicide, last telephone or mobile call, the person who was last seen with the deceased (victim), interrogating the family members, neighbours etc. may provide useful clues to proceed ahead with the investigation process.

(5) Interrogation of Offenders & Suspects:

Another important function that devolves on police is to “ frisk” and interrogate the criminals or suspects. Frisking implies searching the pockets and clothing's of the suspect as a measure of safety and security while enforcing law against him. It differs from a ' search' which is a legal process meant for collecting evidence against the offender.

The police power to frisk the suspects are contained in Section 52 of the Code of Criminal Procedure, 1973. The police also have the power to interrogate and question the person suspected of having committed a non-cognizable offence. But the police power to interrogate the suspect is subject to certain limitations contained in Section 156 of the Code.

The police must observe certain civilities while interrogating a suspect. The questioning must not be 'coercive' or too intimidating. They should not extract admission or confession by coercive or "third degree" methods.

It is significant to note that the suspect is under no obligation to speak or answer questions, and anything done or said by the police officials to make him feel that he is under an obligation, will be transgression of the legal limits of the power to interrogate by the police. The restriction as to inadmissibility of confession made to a police officer is intended to protect the accused person against third degree methods by the police. Though a confession made to a police official is not admissible in trial, it can however, be used in evidence of anything recovered as a result of the confession made to a police officer by the accused. Thus, if a weapon used in a murder case is recovered by the police as a result of confession made by an accused person, the recovery is a relevant piece of evidence.

(6) Search and Seizure:

The police also conducts search and seizure. The search and seizure should not be unreasonable. They may be conducted by police with or without a warrant.

In case a search is conducted on a warrant issued by a Magistrate, it must invariably contain the following details:— (i) The information as to the statement of facts showing probable cause that a crime has been committed. (ii) A specification of a place or places to be searched. (iii) A reasonable time-limit within which it must be conducted.

The police can also conduct a search without warrant when it is incidental to a lawful arrest or where the object of search is a mobile vehicle which can quickly be removed out of the police jurisdiction or when the accused has consented to it. The burden of proving the ' consent', however, lies upon the prosecution. Absence of coercion or duress is sufficient to establish that the suspect freely consented to the search. In case the search involves interference with the privacy of person concerned, the police must obtain a search-warrant from a competent court.

Ordinarily, search must be made in day-time in presence of two independent witnesses of the locality who are not connected with the police. An illegal search may lead to two serious consequences, namely, it may either lead to a civil or a criminal action against the police or it may result into acquittal of the accused. The legal provisions relating to search and seizure are so framed as to maintain a balance between the security of persons on the one hand and the protection to police in discharging its duty properly on the other. Thus, during the course of investigation, the police is empowered to make search, order production of documents, seize any suspicious property, call witnesses, require them to attend court and arrest persons suspected or having committed crime without warrant. After the investigation, a police report is prepared upon which proceedings are instituted before a Magistrate. The law requires that every investigation should be completed without undue delay but in actual practice it is generally noticed that delays do occur in the process of investigation for one reason or the other.

(7) Maintain Inquest Register:

The police is to record information in the Inquest-Register in case a person dies under unnatural or suspicious circumstances. The law relating to Inquest-investigation is contained in Section 174 of the Code of Criminal Procedure and only the Magistrates are empowered to hold Inquest in order to find out whether death was homicidal, suicidal or accidental. In other words, inquest signifies judicial inquiry to determine the cause of death.

As soon as intimation regarding death in 'unnatural' or 'suspicious' circumstances is received at the police station, it has to be recorded and forwarded to a competent Magistrate as in the case of cognizable offence. The Magistrate would hold the inquiry himself or in addition to police-investigation. Inquest-investigation is a preliminary on-the-spot enquiry by a police officer into cases of unnatural or suspicious death with a view to recording a finding as to the apparent cause of death. The presence of respectable local inhabitants lends an air of formality and solemnity to the purpose.

After investigation, Inquest-report is prepared which is duly signed by the Investigator and attesting witnesses and forwarded to the District or Sub-Divisional Magistrate forthwith. However, the police has a discretion not to send the dead body for post-mortem examination only when there can be no doubt about the cause of death. But this discretion has to be exercised honestly and prudently.

(8) To Assist the Prosecutor:

Besides making arrests, the police must also actively assist the prosecutor to conduct prosecution of cases in law courts. The success in prosecution largely depends on the promptness and ability with which the investigation is conducted by the police. It is therefore, necessary that the police and the prosecutor should have a thorough knowledge of substantive and procedural law of crime. The prosecution must come forward with all material evidence complete in all respects to prove the charge against the accused. The witnesses should be appraised of the points on which the prosecutor desires to examine them before they are actually brought in the witness-box. An informal or preliminary interview with witnesses would not only save the prosecutor from embarrassment before the Court but also save the witnesses from putting a blank face or giving unfavourable answers in the witness-box owing to an honest lapse of memory.

As far as possible, unwilling witnesses should be avoided unless it is absolutely necessary, so also multiplicity of witness should be avoided. This will save valuable evidence being lost to the prosecution. Greater care should be exercised by the prosecutor while examining an accomplice or an approver in case of confession by the accused. Another important step in the conduct of a criminal trial is “ framing of a charge.” Although it is for the Court to frame a correct charge but the prosecutor should be vigilant to assist the Court in framing the charge correctly.

It is preferable to frame a few more charges so as to minimise chances of offender’s escape on the plea that a proper charge has not been framed.

(9) Identification etc:

In addition to the usual functions of protecting life and liberty of persons and apprehending criminals, the police also have to deal with special activities such as identification and laboratory technical research. There are special divisions of police for finger printing, photography and otherwise identifying criminals, and for filing records. More recently, tremendous increase in vehicular traffic in urban areas has burdened the police with relatively new responsibility of regulating traffic flow in the interest of public safety.

(10) Control of Juvenile Delinquency:

Since child care is a developmental function of the welfare State, the police has an important role to play in controlling juvenile delinquency.

The Police is involved with the administration of child-delinquency in all the three important stages, namely, preventive stage, trial stage and the rehabilitation stage. Although other agencies such as the voluntary organisation, juvenile courts and social welfare Homes etc., help and assist the police with their specialised services, it is only the police organisation which is duty-bound to prevent and control ever-increasing quantum of juvenile crime in India. The National Police Commission has recommended setting up of special police squads for tackling juvenile delinquents.

A Police Juvenile Bureau in each State Police Headquarter may also be established for this purpose.

(11) General Welfare Functions:

As a part of welfare measure, the police is entrusted with yet more important function of helping public in tracing out the missing persons. Special Missing Persons Squads have been set up in metropolitan areas and other important cities as a part of police personnel who are exclusively to deal with missing persons and owe a responsibility to restore them to their families. This is indeed a laudable scheme of social welfare entrusted to police force. From the foregoing discussion it is evident the efficiency of the police reflects upon the law and order situation of a country which in turn leaves an impression about the general progress of the community.

It is encouraging to note that the Government of India have been striving to improve the quality of Indian police through a phased strategy of intensive training and research in modern techniques of crime detection. The Home Guard Voluntary Organisation was started after the Indian Independence to cope up with the additional work of the police. These volunteers can be utilised to assist the regular police force in maintaining law and order in times of emergency. They also help in protecting people from flood, fire, famine or disease etc. Attempts have also been made to popularise this scheme in rural areas through intensive propaganda.