

## **Policing in India – Challenges of the Future**

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It is generally recognized that India is facing a grave crisis of governance today. The manifestation of this crisis—the all pervasive, inefficient state, increasing lawlessness, competitive populism, criminalization of polity, ever-growing nexus between money power, crime, and political power, excessive centralization, serious erosion of legitimacy of authority and extremely tardy and inefficient justice system—all these are only too evident to all of us. Perhaps the most visible manifestation of this crisis is the failure of police in enforcing rule of law, maintaining public order or controlling crime.

### **Crisis in Policing**

2. For a variety of reasons collapse of public order, ineffective policing and delays in justice affect society in an extremely adverse way. Police, by the very nature of their functioning, are the most visible arm of the state. While we keep complaining against the police forces for many acts of commission or omission, the fact is we cannot do without an efficient and well-functioning police force even for a short period of time. In a fundamental sense, the first and most vital function of the state is maintenance of public order and peace in society and ensuring protection of citizens. The role of the police is critical in any society, and particularly in a society with a remarkable monopoly power of the state in most human endeavours. The importance of policing stems from the fact that in the ultimate analysis the sanction behind state power is the use of force. As police are the agency to enforce the will of the state, the way the police function is an index of liberty and rule of law in a democratic society. When police powers are abused, the weak tend to be more oppressed. Whether it is corruption in the police forces or indeed in the general run of the administration, or criminalization of polity, it is always the poor, under-privileged, weak, and disadvantaged sections of society that are at the receiving end.
3. Rule of law is the cornerstone of any democracy. Rule of law essentially means equality before law, and all individuals being subjected to the same laws in the same measure. The ultimate test of rule of law is the way the police and criminal justice system enforce law, protect innocent citizens, and use coercive power to ensure compliance of law. Given our colonial legacy, the police in India have for long exercised enormous power and prestige. It is not uncommon even today for mothers to frighten young children in the name of the police. The fear of police force is extremely common in most parts of India, particularly in

the middle and lower strata of society. A policeman is seen as a symbol of state power and as an agent of coercion and retribution; and not as a friend and protector of the people. This image was largely a creation of the colonial era, when the police force was used essentially to protect the empire from within and to suppress all rebellion or even dissent. In a country in which even today nearly half the people are functionally illiterate, any person with a modicum of education is vastly superior to the bulk of the population. When we consider that only 2.7% of Indian population is engaged in organized sector jobs with a regular monthly wage, it is easy to recognize that every one of these employees is socially, educationally, and politically more influential than 90% of the population. In particular when the employment is in the state sector, with all the colonial hangover and undue prestige and fear evoked by government, such employees wield disproportionate power in the society. When that employment is with the police force, with the uniform as a symbol of authority and prestige, with the habitual use of force which is almost entirely unchecked, with hardly any instruments of accountability, this awesome power of an ordinary constable has to be seen to be believed.

4. This situation is further complicated by an increasingly illegitimate political and electoral system, which is largely based on abuse of unaccountable money power, regular deployment of criminal muscle power and many distortions in the electoral arena. Obviously such an illegitimate political system is inclined to use the police force illegally to buttress itself. In a democratic governance system, willing compliance with the law, respect for authority, and governance by consent are the norms. When the rules of the power game are so distorted that honesty and survival in elective public office are no longer compatible, governance can only be sustained by illegitimate use of coercive power. The police as the ultimate agents of coercion are therefore perceived by the general public as instruments of oppression and abuse of power.
5. Such a situation is undesirable in any society. It is particularly distressing in a society which is rapidly getting urbanized, with organized crime and trans-national syndicates on the rise. On the one hand with increasing urbanization there is breakdown of tradition. The old-fashioned communitarian village society is increasingly replaced by the impersonal atomized urban individuals and families. As religion and other social controls have weakened, there is an increasing resort to law enforcement to ensure desirable behavior. On the other hand as the police forces are largely ineffective, based as they are on primitive methods and antiquated laws, their capacity to enforce public order or to control crime is significantly eroded. As the police are still largely controlled by the political executive, the tendency to abuse the police force for partisan and personal ends is irresistible in an otherwise immature polity. In a society in which power is always regarded as a personal attribute, abuse of

power is the norm rather than the exception. Public servants are rarely regarded in India as servants of the public. Instead they are seen as powerful individuals with access to state resources and influence over decision making. If power is defined as the ability to influence events, resources or human behavior for the larger public good, such power is extremely restricted in the hands of state functionaries in India. If power is however defined in a negative sense as the ability to use state resources and influence for personal aggrandisement and private benefit, then such power is unlimited in the hands of our state functionaries. The police are no exception to this general rule. However as the police are the visible symbol of authority and are arguably the most important agency of state entrusted with the vital responsibility of maintenance of public order and control of crime, abuse of police powers have far more profound and grievous consequences in every society.

6. In addition to these systemic problems, the resources, technology weapons and procedures available to the police have not kept pace with the times. Today the criminals and crime syndicates have access to much greater fire power, faster transport, better communications, and in general far superior technology and speed in decision making. The police forces are not in a position to match these criminal gangs given the many inadequacies in their functioning. Given the fact that our justice system is archaic, ponderous, excruciatingly slow and inefficient and the conviction rate in criminal cases is as low as 3 to 6%, the pressure on the police forces to produce results by hook or crook is always mounting. With most cases taking abnormally long time for adjudication, the police are seen as ineffective and incompetent. Worst still, in order to produce short term results, the police are often compelled to resort to third degree and extra-judicial torture and punishments.

### **Politicization of crime investigation**

7. Any serious effort to improve the functioning of police forces and to make them effective tools of human happiness in a modern society must take into account the fundamental failings of policing in India today. The most important feature of the police in India is the high degree of centralization of functions in a single police force. In almost all states there is a common police force for crime investigation, riot control, intelligence gathering, security of state properties, and protection of important citizens. Once all these of functions are concentrated in a single police force, many distortions have inevitably crept in. Firstly, the police functioning has become increasingly complicated and highly specialized. Each function requires a degree of training, knowledge base, skill, and sophistication which are not possible to sustain when many functions are concentrated in the same force. Secondly, in the absence of specialization, the police forces have to deploy more resources

and time to achieve the same results in any given area of work. Thirdly, certain areas of functioning have to be necessarily under political control and monitoring whereas certain other functions have to be independent of political supervision and are in fact quasi-judicial in nature. Since the functions are all clubbed in one police force, it is impossible to separate control of one function from another. As a net result the politician has been playing a very prominent role in influencing crime investigation, crime control and such other functions. Given the centralized polity and distortions in electoral politics, abuse of police powers has become an integral part of our governance crisis.

8. The legislative office theoretically gives the incumbent the power to make laws, and keep the errant executive under check through various parliamentary procedures. However, in reality, the legislators as well as the general public do not perceive the legislative office as one of law making and keeping the executive under check. Legislators are seen by the people and themselves as disguised executives. As the government is entirely dependent for survival on the support of the majority of the legislators on a given day, most of the time, energy, attention and efforts of governments are concentrated on mere survival. As huge investments in money are made to get elected, there is a natural propensity on the part of the legislators to seek patronage and share the spoils. There is an implicit understanding that the support of the legislators to the government is contingent upon the political executive doling out favours to them. Rarely is this support based on principles, ideology or public opinion. Invariably there is a price extracted for such support in many forms. Appointment of public servants in key public offices, transfer of inconvenient employees, licensing, distribution of patronage in the form of subsidies and benefits to the poor, public distribution system, government contracts and tenders, mining licences, permissions to exploit the forest produce, maintenance of law and order, crime control, crime investigation and prosecution, execution of public works - all these are often at the mercy of legislators. Even a well-meaning and honest political executive is helpless in enforcing high standards of probity, fairness and competence as it is at the mercy of the legislators on whose continued goodwill and support its survival depends. As a consequence, integrity in public office at the political executive level and survival in power are increasingly incompatible.
9. In such a climate, all governance is then reduced to patronage, and transfers and postings of bureaucrats. As Robert Wade pointed out, there is a well-developed market for public office in India. Money habitually changes hands for placement and continuity of public servants at various levels. These public servants in turn have to collect 'rent' from the public. The hafta paid to a policeman, the mamool charged by the excise official, the bribe collected by the revenue functionary or the corruption of a transport officer are all part of a

well-integrated, well-organized structure. This vicious cycle of money power, bureaucratic placements, political power, muscle power and election battles based on these is extremely well-entrenched and resilient and cannot be dismantled by a few good deeds of a few good people or by incremental reform or tinkering with the system. It is this vicious cycle that leads to the pervasive corruption that large sections of citizenry in all walks of life are disenchanted with, and which is enfeebling ordinary citizens.

10. The elections are largely plebiscitary and the people vote for a platform or a leader or a promise or, as is seen more often, vote to reject the incumbent government or party in power. The individual candidate's ability is rarely an issue in our electoral politics. At the same time party workers and local oligarchies do not regard election as an opportunity to vindicate their policies or ideologies. In most cases, election of their chosen candidate is merely an opportunity to have control of state power and resources, to extend patronage selectively to people of their choice, to get pliant local bureaucrats appointed in plum postings, to humiliate and harass the inconvenient employees who would not do their bidding, and increasingly to interfere in crime investigation and prosecution by doctoring evidence, influencing investigation and letting criminals loyal to them go scot free and implicating people opposed to them in criminal cases. In the midst of this, governance is an irrelevant, and often inconvenient ritual without any meaning to those in power and without any positive impact on the people.

### **Independent crime investigation**

11. Given this complex political and governance scenario, the horizontal fusion of all functions in a single police force has proved to be very damaging to our governance process. There is almost no single police station which is not subjected to pressure from the political class on any given day in its discharge of crime investigation functions. As criminalization of politics, and politicization of crime have both become the order of the day, increasingly criminals have greater and greater influence in governance. The election commission has gone on record that more than 700 of the 4072 legislators in all the states of India have a record of crime against them. Once the electoral process throws up such undesirable elements into public office, it is inevitable that the police force is subjected to unwarranted pressure in crime investigation. Infact most criminals are tempted to enter the electoral fray only in order to be able to influence the police through public office. Given this, the most important reform measure to be undertaken in the police forces is the separation of crime investigation from other branches of policing. Crime investigation is a serious quasi-judicial function to be exercised entirely independent of partisan politics. By law the police officials are supposed to be

independent in discharging this function. However once the police officials can be controlled by their bosses and elected politicians through a mechanism of transfers, postings, promotions and disciplinary action, it is impossible to insulate this function from the rest. As the government of the day has complete powers over the police machinery as well as the legal authority to drop criminal charges against the accused, crime investigation has become a plaything of partisan politics.

12. It is therefore vital to create an independent wing of police force fully in charge of crime investigation, which should obviously be controlled by, and be accountable to, an independent constitutional machinery. Several mechanisms and models have been suggested by various committees and commissions. Whatever may be the nomenclature, such a crime investigation wing should be under the supervision and control of a colligium at the state level headed by a chairperson drawn from the judiciary. Once a high court judge becomes the head of prosecutions, s/he shall cease to be member of judiciary forever. The other members could be jurists, independent prosecutors, serving police officials at the highest levels, former police and civil officials and eminent citizens from various walks of life. The appointment of this prosecution wing itself should be by a committee comprising of the members of the government, the leaders of the opposition, speaker of the legislature, and judges of the high court. Such a body, be it called the state security commission or the state board of prosecutions or the state police board, should be fully in control of all matters of appointment, promotions, transfers, postings and disciplinary action relating to crime investigation wing. The crime investigation police should be permanently insulated from other wings of police with no possibility of transfer from this wing to others or vice versa. Only when such fool-proof institutions are evolved is it possible to make sure that crime investigation is a truly professional, independent exercise in search of justice rather than making it a partisan tool in the hands of those in power.

### **Local policing**

13. There are several functions which ought to be discharged at the local level on a day to day basis, for instance, traffic regulations, patrolling, controlling offences of a minor nature, prosecution of minor offences like eve teasing, public nuisances etc. can only be handled locally. There should be a local force accountable to the local government at the panchayat or municipal level to discharge these functions. This local police should be organised as small, mobile, effective units under local control. However there should be effective institutional mechanisms for integrating these local forces with the state police forces. The local police should be attached to a local court which has

jurisdiction over the territory as well as over the petty offences handled by such a police force.

14. There is still a vast area of police functioning including riot control, security of state properties, protection of important citizens and intelligence gathering. By the very nature of things, all these functions have to be under political supervision and control. Therefore these should be entrusted to a separate police force controlled by, and accountable to, the political executive under overall legislative supervision. There should be no movement however between such a police force and the crime investigation wing. The vertical mobility of the local police into the state level police force can be permitted subject to certain norms and procedures. Such separation of functions will ensure that there will be no undue political interference in areas related to crime investigation, while the legitimate political intervention in areas of public order, riot control and intelligence-gathering can be ensured.

#### **Constable – a mindless tool or a thinking policeman?**

15. A second fundamental problem plaguing the police force is the high degree of vertical centralization. The police force in India is in fact organized on military lines as units and formations with a single central command and control. This leads to several undesirable consequences. The constable has become merely a mindless tool in the hands of police bosses and politicians without the experience, opportunity or the capacity to judge a situation and to take rational decisions independently. Excessive bossism has also stunted the morale of the police forces and blunted their sensitivity. As a result, even very intelligent and sensitive policemen have tended to become increasingly arbitrary in their functioning and dependent on their bosses for decision making. The police have become over a period of time very coarse and brutal in their functioning.

An official lacking in self-esteem and dignity is unlikely to recognize that he is the servant of the people and his function is to promote public good. It is easy for a policeman who is dominated by his bosses to in turn become a dominant and brutal functionary oppressing the ordinary citizens on a day-to-day basis.

16. The earlier police commissions before 1947 felt that an ordinary constable is not meant to think and take decisions. In modern times the functioning of the police has become more and more complex and highly professional and specialized. Most of the constables recruited are well-qualified in educational terms and the training facilities also have improved to some extent. However even today a constable is treated with scant respect and is given little autonomy or opportunity for creative functioning. The police commission and other expert groups have approached the problem from the

pay structure and rank point of view. However while the creature comforts and salaries and allowances should be commensurate with the tasks entrusted and responsibilities discharged, the real issue is centralization of police functioning. It is high time that the police forces are decentralized and small groups of constables are entrusted with crime investigation. Similarly, other police functions under political control including patrolling, intelligence gathering etc. should be entrusted to small groups of two or three policemen. They should be accountable to the station house officer for the overall discharge of their functions with adequate autonomy of functioning. Such a reorganization will improve their skills, promote their sense of self worth, and will engender competition among the personnel to achieve best results.

17. Obviously some of the more humiliating duties discharged by the ordinary constables must be stopped forthwith. For instance the orderly system which is practised in most police forces in India is extremely humiliating and it depresses the morale of the constabulary. It is absurd to use policemen for such menial duties under senior officers. The orderly system should be abolished forthwith and policemen should be deployed only for legitimate functions, which have a bearing on public good. Similarly the personal security provided by the police force to the so-called VIPs should be altogether removed or significantly reduced. Today it is well known that VIP security has become a status symbol and police constables are often reduced to being personal servants of those whom they are supposed to guard, or worse still they become the hired hoodlums of those in office. Very often we find people with criminal record moving about with gun-toting policemen in attendance. There is nothing more disgraceful to a democratic polity and nothing more calculated to undermine the dignity and prestige of the police force or its credibility in the eyes of the public.
18. These basic approaches of decentralization of functioning and command and control involve not merely cosmetic changes but a fundamental restructuring of the police forces and the consequent change of the mindsets of the political bosses, police officials and the constabulary. Any attempt to merely tinker will not yield dividends. Certainly the issues of salaries, amenities such as housing etc. are important. But no amount of creature comforts will be a substitute for the complete restructuring of the police force. Coupled with restructuring, there should be effective training for each police force to suit its special needs. In addition the mobility of the police forces, their communications and weapons and technology available to them should be vastly improved to meet the challenges of policing in modern society.



## **Recovery of stolen property**

19. There are also certain public perceptions, which ought to be corrected. Being largely feudal, Indian society still regards recovery of stolen property as the fundamental duty of the police. However in most modern police forces, theft is not regarded as a high priority item for police investigation. Recovery of stolen property is hardly an important police duty and the modern insurance sector has largely taken care of the security of movable property in such societies. However in India the pressure exerted by citizens to recover stolen property by hook or crook is one of the main reasons why police are compelled to resort to extra-judicial detentions, illegal tortures and other third degree methods and sometimes custodial deaths. A twin strategy of educating the public about the basic functioning of the police forces and reducing the importance of recovery of stolen property in police duties is necessary to ensure that there is a change in this respect.

## **Checks against abuse of office**

20. The police commission in its first report stated “one of the fundamental requisites of good government in a democracy is an institutionalized arrangement for effectively guarding against excesses or omissions by the executive in the exercise of their powers or discharge of their mandatory duties which cause injury, harm, annoyance or undue hardship to any individual citizen”. This check against abuse of authority is particularly vital in case of the police who have abundant power over citizens affecting their rights including life and liberty. As the police commission pointed out, “Powers of arrest, search, seizure, institution of a criminal case in court, preparation of reports on the alleged anti-social conduct of any specific individual etc. mark several stages in the executive police action which afford large scope for misconduct by the police personnel in different ranks, particularly at the operational level causing harm and harassment to the citizens. Equally important are the acts of omission or non performance of mandatory duties in a variety of situations. Non registration of complaints is one of the commonest grievances of citizens in a police station. Even when cases are registered, slackness and indifference in follow up action are another cause of public complaint”. In a democratic society every public functionary is merely a public servant whose primary duty is to discharge the functions entrusted to him and to promote public good. However a society in which abuse of power is the norm, it is vital to institute effective safeguards against such abuse of public office. Particularly it is necessary to have effective checks in relation to the functioning of the police.

21. Keeping in view these facts the police commission suggested several mechanisms to investigate complaints against police. Obviously once the police forces are functionally segregated, the inquiry and redress mechanisms must also be separate for each wing of the police. The district inquiring authority and the police complaints board, as suggested by the police commission, should be in place and they should function independent of political executive and insulated from peer pressure. An important check in case of crime investigation is that all charge sheets are filed only upon the independent prosecutors' clearance. Similarly no case shall be dropped or closed without a directive from the independent prosecutor with appropriate institutional checks within the prosecution wing. The most despicable acts of the police are brutal torture of persons detained leading to custodial deaths. All such cases, irrespective of the wing in which they are detected, should be entrusted to the prosecution wing. All custodial deaths should be investigated by a special cell directly reporting to the judicial head of the prosecution wing. Only when such independent and impartial quasi-judicial mechanisms are in place can confidence in police functioning be restored.

### **Selection and tenure of key officials**

22. One of the important steps to improve the police functioning is the selection of the key functionaries in various police forces. In case of the crime investigation wing, in the model suggested above, the police force would be directly controlled by the state prosecution board headed by a person drawn from the judiciary. This body alone should have the power of selection of all the key functionaries and all transfers and placements must be according to the decisions of such a collective body. In respect of the police force in charge of public order and other duties under political supervision, there has to be an impartial mechanism by which the chief of police and other key functionaries are selected by a collegium from time to time. Once a key functionary is appointed in any office, a tenure of three years shall be ensured by law unless there is proven incompetence, corruption or abuse of office.

### **Speedy and efficient justice**

23. An independent and impartial judiciary, and a speedy and efficient system are the very essence of civilization. However, our judiciary, by its very nature, has become ponderous, excruciatingly slow and inefficient. Imposition of an alien system, with archaic and dilatory procedures, proved to be extremely damaging to our governance and society. As Nani

Palkhiwala observed once, the progress of a civil suit in our courts of law is the closest thing to eternity we can experience! Our laws and their interpretation and adjudication led to enormous misery for the litigants and forced people to look for extra-legal alternatives. Any one, who is even remotely exposed to the problem of land grabbing in our cities, or a house owner who finds it virtually impossible to evict a tenant after due notice even for self-occupation, can easily understand how the justice system failed. In the process, a whole new industry of administering rough and ready justice by using strong-arm tactics to achieve the desired goals has been set up by local hoodlums in almost all of our cities and towns, and increasingly in recent years in rural areas. The clout and money these hoodlums acquire makes sure that they are the ones who later enter political parties, and eventually acquire state power. There are countless examples in almost every state in India of slum-lords, faction leaders, and hired hoodlums acquiring political legitimacy. Most of them started their careers attempting to fill the vacuum created by judicial failure through extra-legal, and often brutal methods. In addition, the courts have tended to condone delays and encourage litigation and a spate of appeals even on relatively trivial matters.

24. Essentially, the failure of the civil and criminal justice system is manifesting in abnormal delays in litigation and huge pendency in courts. While accurate statistics are not available, it is estimated that approximately 38 million cases are pending in various law courts all over the country. While 20 million cases are pending in district courts, High Courts and Supreme Court, about 18 million cases are said to be pending in lower courts. At the end of 1995 it was estimated that around 58 lakh criminal cases were pending trial, while 17.3 lakh cases have been disposed of during the year accounting for 23 percent. In 1994 for example, disposal of cases in our courts was around 17 percent. The conviction rate is abnormally low with only 6 percent cases resulting in conviction. Even in cases involving extremely grave offences with direct impact on public order and national security, there are abnormal delays. For instance, it took our criminal justice system more than seven years to convict the murderers of Rajiv Gandhi in Sriperumpudur in 1991. There are harrowing tales of innocent citizens accused of petty offences languishing in jails as under-trial prisoners for decades. Most often, the time spent in prison during trial exceeds the maximum punishment permissible under law even if the person is proved guilty!
25. The delays, the habitual use of English as language of discourse even in trial courts and the extreme complexity and the tortuous nature of our legal process made justice highly inaccessible to a vast majority of the people. It

is estimated that India has only about 11 judges per million population, which is among the lowest ratios in the world. The cases pending exceed about 30 thousand per million population. Obviously it is unrealistic to expect the law courts to deal with this abnormal case-load or to be accessible to people. The delays, the complexity and the unending appeals make litigation inordinately expensive in India. While astronomical fees are charged for legal consultation by high-priced lawyers practicing in the higher courts, even in the lower courts cost of litigation is prohibitive and beyond the reach of most citizens.

26. The failure of the justice system has several disastrous implications in society. As Gladstone observed, the proper function of a government is to make it easy for the people to do good and difficult for them to do evil. The only sanction to ensure good conduct and to prevent bad behavior in society is swift punishment. In the absence of the state's capacity to enforce law and to mete out justice, rule of law has all but collapsed. Even in civil matters, the sanctity of contracts and agreements has lost its relevance because of the courts incapacity to adjudicate in time. Equality before law, though constitutionally guaranteed, has remained a notional concept on paper. In reality the vast masses of the poor and illiterate people are relegated to the margins of society in the absence of a fair and effective justice system which is accessible to all. As a result, extra-legal mechanisms for redress of grievances and for providing rough and ready justice has sprung up all over the country. The foremost cause for increasing criminalisation of society and politics is the failure of the justice system. Even if heroic and successful efforts are made to disqualify all these persons with criminal record from contesting, the problem will continue to grow unless justice administration improves dramatically. While a section of criminal gangs indulges in violent crime and graduates into politics using the money power so acquired, most organised crime in recent years is involved in informal adjudication of disputes backed by a threat of brute force and violence. As the courts have failed to deliver justice, there is a growing demand for such gangs which can enforce rough and ready justice.

### **Rural courts for speedy justice**

27. Perhaps the most important practical reform would be constitution of rural courts for speedy justice. As already stated, the number of judges in our society is slightly over 10 per million population. This density is roughly ten percent of the density of judges (per unit population) in more advanced and law-abiding societies. Even this low number is highly skewed with pitiful shortages in subordinate judiciary and ridiculously large numbers in higher courts. Obviously what is needed is a substantial increase in the number of

judges at the local level giving access to the ordinary people. In addition to the number and access, the procedures of these local courts should be simple and uncomplicated giving room for sufficient flexibility to render justice. These courts should use only the local language and they should be empowered to visit the villages and hear the cases and record evidence locally. Above all they should be duty bound to deliver the verdict within the specified time frame. There could be several models like the 'gram nyayalaya' advocated by the Law Commission in its 114th report. Essentially, there should be such rural courts with special magistrates with jurisdiction over a town, or a part of a city or a group of villages. These special magistrates should be appointed by District Judge for a term of 3 years. They should have exclusive civil and criminal jurisdiction of, say all civil disputes up to Rs one lakh in civil cases and up to an imprisonment of one year in criminal cases. In addition, certain civil disputes arising out of implementation of agrarian reforms and allied statutes, property disputes, family disputes and other disputes as recommended by the Law Commission could be entrusted to these rural courts. In civil cases there should be only a provision for revision by the District Judge on grounds of improper application of law and on no other ground. In criminal cases where imprisonment is awarded, there could be a provision for appeal to the Sessions Judge. The procedures must be simplified and these courts should be duty bound to deliver a verdict within 90 days from the date of complaint.

## **Judicial procedures**

28. The civil and criminal procedure codes and the laws of evidence have to be substantially revised to meet the requirements of modern judicial administration. While the principles underlying the procedural law are valid even to day, in actual practice several procedures have become cumbersome, dilatory, and often counter-productive. Simultaneously in all trial courts the local language should be the only language used. There should be time limits prescribed for adjudication. The stays, and endless adjournments should be firmly curbed. The right to get justice within one year in a criminal case and 2 years in a civil case should be constitutionally guaranteed. All the procedural laws should be suitably amended to ensure that such a constitutional right is enforced. There should be strict limitation of appeals and only one appeal should be permitted in civil cases. The appeal should be heard and verdict delivered within 3 months in a criminal case and within 6 months in a civil case. All stays should be prohibited except in exceptional circumstance for reasons specifically recorded in writing and no stay should exceed 15 days. The time limits for adjudication should be strictly adhered to even in cases involving stay orders.

## **Combating terrorism**

- 29.** One of the most critical challenges faced by the modern state is terrorism. India which has largely been spared of terrorist threats until the 1970s is now unfortunately a target of several terrorist groups. In dealing with modern terrorism the archaic methods and old technologies are wholly inadequate. Highly motivated and trained groups, often with cross-border connections and support, play havoc with the life of a modern nation. Indian security forces have been finding it extremely difficult to face the challenge of rising terrorism in many parts of the country. On the one hand there are not enough trained personnel who are conversant with the sophisticated techniques of combating terrorism. On the other hand the technology, weapons and other tools required to combat terrorism effectively are not available to most police forces in India. Given these limitations, several terrorist groups have been successful in creating disorder, fomenting trouble, and undermining public confidence. Often the police forces take recourse to extremely brutal torture and custodial killings. The net result is while terrorism continues unchecked, the people lose faith in the police forces and state machinery. Often the rigors of state violence make the police forces as guilty as the terrorist groups in the eyes of the public.
- 30.** Given this a four-pronged strategy is necessary to combat terrorism effectively. Firstly, under no circumstances should custodial deaths be allowed in the name of false encounters. Every custodial death or every death in “encounters” should be investigated rigorously and a very firm message should go down that under no circumstances will the Indian state permit the killing of a captured unarmed person. Secondly, where necessary the laws should be strengthened to make it easy for the police forces to combat modern forms of terrorism. In-camera hearings, protection of witnesses, shifting the burden of proof to the accused, accepting the confessional statements given to police officers and other such changes in law should be incorporated to meet with specific terrorist situations. All legally necessary steps to control terrorists should be taken including raiding the terrorist strongholds, legitimate ambushes and encounters, returning fire when fired upon, preventing infiltration of terrorists, hot pursuit of terrorists, and use of force to ensure their surrender or to prevent their escape. There must be massive education campaign about the need for legitimate use of force in combating crime and terrorism so that the public is well informed and the policemen are not brought into disrepute for their lawful actions.
- 31.** Thirdly one of the most difficult and unsuccessful areas of our fight against terrorism is our inability to handle abductions by terrorist groups. In the absence of appropriate guidelines and policy framework the Indian state has

often been surrendering in the face of pressure mounted by terrorists in the form of abductions, hijacks and kidnappings. There must be unequivocal declaration by the state that no terrorist will be released from captivity under duress on account of abductions and kidnaps. Such a firm policy declaration can be made only before an abduction and not after that. Once the lives of citizens are actually at stake, it is difficult for any democratic government to take a tough stand. The incapacity of the Indian state to evolve a firm policy framework to control the situation in this respect has had grievous consequences. The 1987 abduction of several officials by a group of naxalites in Gurthedu in East Godavari District in Andhra Pradesh, the 1990 abduction of Rubina Syed by Kashmiri terrorists and several subsequent abductions and hijacks and kidnaps have only exposed the weakness of the Indian state. It is high time that we took unequivocal and categorical stand as did many western nations in our combat against terrorism so that the police forces' hands can be strengthened. In the long run many more lives can be saved by such firm and unequivocal stand rather than weak, vacillating, ad hoc measures in the face of terrorist threats and abduction. Finally, certain offences including terrorist offences, organized crime, and offences with interstate ramifications or cross border connections should not be treated in isolation by the state police. These are obviously threats to the nation's integrity and should be treated as federal offences. Constitutionally, unfortunately there is no mechanism to declare an offence as a federal offence. Therefore appropriate constitutional mechanisms should be evolved by which all such offences would automatically be under the jurisdiction of federal investigative agencies.

32. All these reforms, vital as they are, are however not adequate in isolation. Ultimately the police force does not function in a vacuum. If the state structure itself is seen to be illegitimate, if the criminals are habitually elevated to public office through a distorted electoral process, and if money power is the determinant of political power, then the illegitimacy of the political system is bound to influence the functioning of the police forces. Similarly if the governance is highly centralized and autocratic, then legal plunder and anonymous tyranny become the norm. In such an event it is impossible to decentralize the functioning of the police forces and to make them accountable to the public. Therefore electoral reforms and effective local self-governance are critical requirements for a better functioning of police force.
33. In electoral reforms there are three key areas requiring urgent attention. Firstly far too many criminals are able to enter the electoral fray and indeed get elected to legislative office. Many of them end up as ministers and occasionally they even head governments. Obviously the existing provisions of sections 8, 8A and 9 of Representation of People Act 1951 are inadequate.

The present electoral law only ensures that persons convicted of specified offences listed shall be disqualified from contesting. However even with the best implementation, this law is inadequate. When we recognize that hundreds of thousands of criminal cases are pending trial in various courts for years and sometimes decades, it is easy to understand that mere disqualification upon conviction is not sufficient to deter criminals from entering the election fray. It is necessary to ensure that all those who are charged with serious offences by a magistrate in a court of law are disqualified from contesting until they are cleared of the charges. In addition, we have a large number of rowdy sheeters, history sheeters or persons called by other names in various states who are known for their criminal record and yet have not been charged with any specific offence before a court of law. The norms of classifying them as rowdy sheeters and history sheeters are objective and well established in the various manuals. Therefore it is incumbent that such persons who are a menace to society should be disqualified from contesting elections. However in order to ensure that there is no mala fide exercise of authority by the police while including their names as rowdy sheeters or history sheeters, we must have a mechanism for judicial scrutiny before they are denied nomination in elections. All such persons who are listed as rowdy sheeters and history sheeters could be given an opportunity to appeal to a sessions judge for deletion of their names should they wish to contest elections. A law could be made to facilitate a sessions judge giving a verdict in such cases within 30 days. The verdict of the sessions judge should be binding on the police force.

- 34.** Similarly there must be effective mechanisms for accountable use of money power. The cycle of violence, money power, political power, abuse of office and interference in crime investigation has become endemic in our governance processes. Many healthy democracies have strong campaign funding laws. The recent episode in Germany forcing the resignation of the elder statesman and former chancellor Helmut Kohl from his party position on account of his failure to disclose the sources of funds received while he was chancellor is a case in point. In India we simply do not have appropriate funding and disclosure laws. It is high time that we had similar provisions strictly enforced with severe penalties in place in order to transform the electoral process and governance.
- 35.** Finally several procedural improvements to correct and improve the electoral rolls and to ensure fair voting would make a significant difference to our political process and therefore policing. In urban areas there is evidence to show that up to 40% of the entries in electoral rolls are flawed. Even as the right names do not find place, the wrong names are entered. While the law is perfectly satisfactory, the procedures are extremely complex and the citizens have no real access to electoral rolls or statutory applications for additions and



deletions. The post office should be made a nodal agency for electoral registration and there must be easy access to electoral rolls and statutory forms for all citizens with wide public education. Similarly compulsory voter identity cards which are being talked about for a long time should be introduced forthwith all over the country as a precondition for voting. Effective voter identity and certain other checks will ensure that electoral malpractices are a thing of the past. Only when honorable citizens can successfully aspire for elective public office can we be truly sure that policing is fair, impartial and in public interest.

- 36.** Policing, being possible the most vital area of public service, will be improved only in a genuine local governance system backed by electoral reforms and police reforms. In a malfunctioning governing system public order is the first casualty and criminals will rule the roost. In India we see increasing evidence of lawlessness and rise in crime. Politicization of crime and criminalisation of politics are the inevitable consequences of our governance crisis. In the interest of the public, our police force certainly requires to be reformed and improved to ensure rule of law. However mere tinkering is of no use. Serious and far reaching institutional changes based on sound principles alone can ensure that the police will function as public servants. These far-reaching police reforms combined with electoral reforms and local self-governance will make sure we have a public administration which is sensitive to the needs of the people and which acts as a servant to the people and not as their master. In the ultimate analysis, good, humane, honest and effective policing is the very essence of civilization. It is incumbent that we undertake police and governance reforms in right earnest to ensure that our democracy is real, our liberty is meaningful, and our society is peaceful and orderly.

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**Lok Satta** is a non-partisan people's movement for democratic governance reforms. Readers who wish to know more about the movement, or seek clarification may please contact:

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