

Maintenance of Public Order and Police Preparedness



COMMONWEALTH HUMAN RIGHTS INITIATIVE

Working for the *practical* realisation of human rights in the countries of the Commonwealth

Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the *practical* realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

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CONTENTS

PREFACE	1
PREVENTING THE VIOLENCE	
Introduction.....	2
Code of Conduct for Police Officers.....	4
A Stitch in Time - Preventive Action by the Police.....	5
• Taking the Communities into Confidence.....	7
• Army Aid.....	8
• Prohibitory Orders.....	8
• Search and Seizure of Arms.....	10
• The Riot Scheme.....	10
Conclusion.....	14
CONTROLLING THE VIOLENCE	
Introduction.....	15
Better Late than Never - Punitive Action by the Police.....	16
• Dispersal of Rioting Mobs.....	17
Rules for Use of Force.....	18
• Curfew Orders.....	21
• Requisitioning Additional Forces.....	22
• Other Punitive Measures.....	22
EPILOGUE	23
RECOMMENDATIONS	
Police Performance: Are the Police Properly Evaluated?.....	24
Create Performance Evaluation Boards.....	24
Create Complaint Bodies.....	24
Test Riot Schemes for their Actual Functioning.....	25
Training of Supervisory Cadres.....	25
Diverse Recruitment.....	26

PREFACE ■

This document is brought out in the light of the frequent riots and communal disturbances that take place across the country and the state's response to these destructive events. It is also written in light of the often-made excuse that there are not enough powers, orders and manpower available with the police and that riots are spontaneous and it is difficult to contain them. It is meant to make more visible the roles and duties of the district administration but most particularly the police in anticipating riots, preparing for the worst and dealing with such conflagrations effectively. It is meant for diverse readership - people involved in policing, the legal fraternity and community leaderships and the public at large. In making this document we have researched several legal regimes ranging from the Criminal Procedure Code (CrPC), the Bombay Police Act, the Gujarat Police Manual, the Gujarat State specific Riot Scheme, the 1997 Union Home Ministry Guidelines for Promoting Communal Harmony, to the UN codes of conduct for good policing - all of which bind the police and indicate their sworn duty. Though we have referred extensively to Gujarat's rules and Schemes these principles apply universally across the country.

In the ordinary course of governance, prior to the enactment of the Right to Information Act, 2005 a lot of these documents have traditionally been kept away from the public. Even today many of these documents are treated as secret in the way that almost all government held information retains confidentiality. It was with great difficulty that the Riot Scheme and the Gujarat Police Manual on which this document is heavily based could be accessed. Being subordinate legislation the Police Manual, by its very nature is a public document. Nevertheless, each request to share its contents was greeted with refusal or limited permissions given on conditions of anonymity as if police regulations were themselves a deep dark secret.

The Riot Scheme, we were informed, was 'private and confidential'. No reasons were assigned. The old traditions that prevent public servants from disclosing any document in their possession without approval from higher authorities were clearly at work. Violation of these norms threaten public servants with fines, imprisonment and departmental disciplinary action. The new Right to Information Act, 2005 brings in penalties of its own for non-disclosure and overrides contrary instructions. Nevertheless, in the absence of explicit orders to the contrary, the shadow of the Official Secrets Act, 1923, continues to hang over officialdom more strongly than the compulsions of the new push for transparency in governance.

Arguably some parts of administration's schemes to contain communal conflagration may best be held in confidence - but the test now would be that those wishing to withhold particular information must show that it is more in the public interest to withhold it than to disclose it. But there appear to be no logical reasons why its procedural components should not be widely known. In fact the public interest would be best served if it were well known what steps the police need to take when riots are anticipated. It is completely possible that wrong doers and potential perpetrators would be deterred by knowledge of what may befall them when riot scheme steps are properly effectuated. The general public as well as vulnerable communities would feel a far greater sense of security and be much more cooperative with a police whose preemptive actions they understood better. Finally, the peace loving public would as well be more questioning and more challenging of a district administration that had done little to put a mandated scheme in place and so hold the administration and police to account and improve their preparedness, which is all to the good of sustainable peace and better governance.

PREVENTING THE VIOLENCE

Introduction

Communal riots are too frequent an occurrence in India. Certain states are more prone than others. Administrations have had long experience in handling them. Yet every riot leaves behind unacceptable levels of death and devastation. Thousands die, scores are injured and millions of rupees worth of property damage is sustained.

Volumes have been written to analyse the problem, to understand the causes and to suggest solutions. But much of the scholarly analysis of communal violence examines its causes in sociological terms, in terms of the relationship between communities, or the nature of the state and much of the legal examination is incidental to the struggle that ensues while bringing the guilty to book. But a deal of the practical reasons why such large scale targetted and sustained violence has not been contained effectively have not been as carefully deconstructed as they should be.

The reason why festering antagonism flares up and turns to violent conflagration has everything to do with the cumulative failure of will on the part of the district administration and law enforcement agencies to act in fulfilment of their lawful mandates in the face of clear evidence that there is grave and present danger of a breach of the peace and possible large scale violence. The performance of administration and police is less examined and barely comes to light because of the routine and irrational secrecy that shrouds the working of law enforcement and the unwillingness of the state to take law enforcement agencies and their own bureaucrats to task and hold them to the highest standards. In the absence of such rigorous and public evaluation of the causes of systemic failure of the entire administration, most particularly the police and its supervisors all citizens must live with insecurity. In the absence of acknowledgement of the internal failures - both individual and systemic and facing up to the genuine difficulties associated with law enforcement, there can be no improvement in the conditions under which the law enforcement agencies work and the police must expect to remain demoralised and doomed to repeated failure.

Every episode of communal violence and the tragedy that follows is avoidable or at least containable to the shortest time and the smallest locality so that least harm is done. Indeed there is no lack of standards laid down for preventing and containing riots and no shortage of preparatory actions and contingency plans on paper.

Whatever the causes of a riot it is the State's response that is of utmost importance for ensuring public security present and future. Indeed after every gory riot, commissions of inquiry, internal reports at state and central level make recommendations for prevention and handling of such catastrophes. But despite decades of these and the on ground experience of a police machinery that self avowedly sees its core function as 'maintaining law and order' the police have been weak at predicting outbreaks, poor at protecting the vulnerable and tardy in minimising the violence, death and destruction when communal violence is in full swing.

In its sixth report the National Police Commission (NPC) noted that communal riots escalate and continue for several days because of the lack of decisive

action on the part of the authorities. It identified adoption of lukewarm measures during the early stages of communal trouble as a proximate cause of conflagration. More importantly it identified lack of prompt preventive and punitive action, failure of leadership and communal bias as causes of police failure to prevent or effectively deal with riot situations.

The failures have been all too glaring and one could be forgiven for thinking that after the commissions and committees little thought has been given to preventing riots or dealing with them once they start. But in fact each mechanism of the state, from the administrative centre to the district administration and on to the individual police officer, has designed elaborate schemes and provided itself with extensive powers given by the law to prevent, tackle and contain unrest especially communal violence.

The police in particular are governed by standards, laws, policies, procedures and guidelines that set out a minutely detailed regime of riot prevention and handling. These range from the standards laid down in the Act, the rules laid down in the Police Manual, to specifically designed Riot Schemes and to the UN Code of Conduct for police officers. Even where guidelines are not justiciable in a court of law they have been adopted after due consideration and indicate the baseline policy of the policing regime and must ground policing philosophy. They recognise that the discretionary powers vested in the police and other armed forces responsible for maintaining public order provide potential for abuse of those powers. Therefore their authority needs to be exercised diligently respecting human dignity and upholding human rights.

Both state and central governments are alive to the possibility of communal flare-ups and have made clear provisions for their handling but most importantly have made clear provisions for their prevention. The Guidelines to Promote Communal Harmony reiterate that the responsibility for maintaining communal harmony within the district lies jointly with the District Magistrate and the District Superintendent of Police¹. The district administration headed by the District Magistrate has all the powers and responsibilities necessary for carrying on the day day-to-day administration of a district. The District Magistrate is vested with powers to control both civilian administration and the police force and is responsible for the maintenance of peace in his jurisdiction². At district level the police force is under the general control and direction of the District Magistrate although technically speaking the District Superintendent is its departmental head. This system of 'dual control' over the police force has been inherited from colonial times and is meant to ensure that the civilian administration of the area acting in concert with the law enforcement agency can effectively coordinate the movements and actions of the civil and armed police force to prevent and tackle emergent situations like communal violence.

¹ D.O. No. 9/42/96-CHC, Section 1. These revised guidelines were the outcome of a 1997 meeting of District Magistrates and District Superintendents of Police organised by the Union Ministry of Home Affairs under the leadership of the then Home Minister - the late Mr Indrajit Gupta. This meeting reviewed the effectiveness of the existing guidelines for tackling communal riots and recommended several measures for promoting and maintaining communal harmony.

² Rule 44, Gujarat Police Manual, p. 19.

Code of Conduct for Police Officers

In addition to what is stated in the law and rules with regard to police duties and responsibilities, the police are also bound by additional codes of conduct. The Government of India has committed itself to these codes in policing. They recognise that law enforcement officials wield great power, that the state has a duty to provide a peaceful, fear-free environment for citizens and that the manner of policing directly impacts the quality of individual and community life.

In 1960, a code of conduct was adopted at a conference of Inspector Generals of Police.³ The final version of the code as recommended by the National Police Commission was accepted by the Government of India and circulated to all state governments in 1985. According to this, the prime duty of the police is to prevent crime and disorder. They 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. This stresses the preventative aspects of policing and assumes that the occurrence of public disturbance is in fact an admission of failure. In securing the observance of the law or in maintaining order, the police should as far as practicable use methods of persuasion, advice and warning. Recognising the presence of deeply ingrained societal conditioning, the code in particular exhorts the police to recall that as members of a secular, democratic state they must strive to continually rise above personal prejudices and promote harmony and the spirit of common brotherhood among all the people of India - transcending religious, linguistic, regional and sectional diversities - and to renounce practices derogatory to the dignity of women and disadvantaged segments of society.

The 1971 UN Code Of Conduct For Law Enforcement Officers requires that: "...law enforcement officials shall fulfil all duties imposed upon them by law by serving the community and by protecting all persons against illegal acts,....."⁴ In the context of communal disturbances, those persons being hunted down need special protection and victims of violence, who have lost their relatives and friends, belong to the category that the police must provide with all assistance.

³ The Code was circulated by the Deputy Secretary, Ministry of Home Affairs vide Letter No. VI-24021/97/84-GPA.I dated July 4, 1985. Only the relevant portions of the Code are listed here. For a full text of the Code see [Compendium of Guidelines Issued by the Government of India on the Functioning of State Police](#), GOI, BPR&D, New Delhi, 1995, p. 2 or [Police Organisation in India \(Some Basic Information\)](#), Commonwealth Human Rights Initiative, New Delhi, 2002, pp. 24-26.

⁴ Article 1.

A Stitch in Time.....Preventive Action by the Police

Policy advisors and police administrators at centre and state all recognise the bitter truth of the old adage that an ounce of prevention is worth a pound of cure. The 1997 MHA guidelines urge that it is "...therefore necessary for the administration to anticipate the developments and make advance preparations..."⁵ The Gujarat Police Manual elaborates on the need for utmost vigilance so far as communal incidents are concerned and insists that adequate measures be taken at the earliest stage instead of waiting for an actual flare up.

The frequency of inter-sectarian or communal violence is so well known that special emphasis has been placed on actions to avoid it. Every locality or district has its own distinct history. The police are required to identify both riot prone localities and the nature of the likely violence. Various National Police Commission reports have suggested that all Police Commissioners and District Superintendents of Police should undertake a close study of past records of major disturbances in their areas.

The Police Manual places a great deal of emphasis on routine intelligence gathering to prevent build up of tension. In a riot prone area intelligence gathering is envisaged as both long and short-term preventive measure. It involves being able to identify and then keep a weather eye out on potential instigators. The Guidelines require that activities of organised communal groups be kept under constant watch and updates maintained at the district headquarters.

In addition, all police manuals and riot schemes (which are discussed in detail later) require every district and indeed every police station to prepare a separate list of persons with a communal bent of mind of both communities for their jurisdiction. Segregating possibles from probables, people lacking a previous conviction are not to be included in the same category as goondas and anti-social elements.

Handbills, posters, false news reports, rumours, and now cell phones and instant net communications, are the major vehicles through which communal disturbance spreads from a local incident to neighbouring areas like wild fire. The Gujarat Police Manual requires that the system of intelligence gathering be so built up and improved that activities of individuals trying to raise

Despite the presence of extensive guidelines on prevention and crowd control more than 1 million people have been killed in communal riots in India. The first ever episode of communal violence took place in Ahmedabad in 1730. Every year between 1954 and 1985 has seen incidents of communal violence and the total number of incidents during this period have been 8449 and more than 7000 people have lost their lives and 50,000 people have been seriously injured. Thereafter in 1999 there have been 626 incidents of violence with more than 200 persons killed and over 2000 people injured.

⁵ Para 1. The text of the guidelines are available on the website- http://nhrc.nic.in/guj_annex_3.htm

communal passion are under surveillance and information gathered in a timely manner about minor incidents or meetings that are likely to lead to breaches of peace.⁶

The Manual specially requires the police to keep a close watch on the objectionable activities and utterances of fanatical leaders of communal organisations and initiate action according to the law against them if their activities are likely to endanger communal harmony.⁷ This complements the prohibition at criminal law against incitement to hatred.⁸ Explaining how these elements operate, the Gujarat Manual points out that these anti-social elements are most likely to instigate and incite people against members of another community but are likely to remain operating in the background.⁹ Therefore it is imperative that prompt action be taken in order to neutralise their influence over the members of their community. Again the police are required, in consultation with the District Magistrate to keep a list of such people on their books. The police in any case maintain other lists of the usual suspects, goondas and anti-social elements who are active in their bailiwick but in addition must keep a list of people lacking a previous conviction but who may nevertheless be interested in stirring up communal trouble.

IPC SECTION	OFFENCE	PUNISHMENT
153	Wantonly giving provocation, with intent to cause riot if rioting be committed	1 year in prison or fine or both
153A	Promoting enmity between classes	3 years in prison or fine or both
153A	Promoting enmity between classes in a place of worship	5 years in prison or fine or both
504	Insult intended to provoke breach of peace	2 year prison term or fine or both
505	False statement, rumour etc. circulated with intent to cause offence against public peace	3 years prison term or fine or both
505	False statement, rumour etc. with intent to create enmity, hatred or ill will between different classes	3 years prison term or fine or both
505	False statements, rumour etc. made in a place of worship etc. with intent to create enmity, hatred or ill- will	5 years prison term and fine

⁶ Rule 53(2)(i), p. 23.

⁷ Rule 53(8)(d), Gujarat Police Manual, p. 25.

⁸ Incitement of hatred is a crime punishable with 1-5 years imprisonment and/or fine under the Indian Penal Code. A list of these crimes and the punishment involved is given in the box.

⁹ Rule 53(5)(b), Gujarat Police Manual, p. 24.

Taking the communities into confidence

Official notice has been taken of the tendency of communities to stereotype one another. Illustratively the majority community has a tendency to brand the entire minority community as 'violent' and 'communal,' based on the actions of a few frustrated elements while minority perceptions are informed by a strong sense of persecution and injustice done to them by governmental agencies, particularly the police force.¹⁰ Prevention requires building confidence between communities and between the police and communities. The Manual requires senior police officers to act proactively to ameliorate communal sentiment before it can build up into conflagration in such situations by contacting influential leaders of both communities and trying to avert trouble with their assistance.¹¹

In districts with a history of communal violence, the Police Manual requires the District Magistrate to set up Zilla Qaumi Ekta Samitis at the district level to bring community leaders together. The police, the administration, local MPs, MLAs and prominent citizens such as teachers, social workers and leaders of political parties belonging to the district make up the committee. Its main function is to work continuously for communal harmony by scrutinising factors responsible for creating tensions and helping the district administration to maintain harmony between different communities and castes.¹² The total strength of these committees should not exceed 30.

Similarly the district administration has to set up Mohalla¹³ Committees in areas with substantially mixed populations to ensure that conditions are not created which will disrupt harmony and that no large scale failure of social and communal harmony occurs. These are smaller committees with a maximum of five members. Respectable individuals who wield influence over their communities and whose advice is likely to be heeded by their respective communities must be appointed members of these committees

In addition the 1997 MHA guidelines enjoin the district administration in all communally sensitive towns to set up Peace Committees or Mohalla Committees comprising of well-known citizens, representatives of political parties, public representatives and office bearers of prominent associations and unions. Their primary functions are to hold regular meetings when communal tension is apprehended and send members to persuade leaders of different communities to settle their problems amicably and defuse tension¹⁴. The guidelines add that care must be taken to keep communal and anti-social forces out and ensure that women have fair representation on these committees as they are among the worst affected whenever communal violence breaks out.

¹⁰D.O. No. 9/42/96-CHC, para 2(a).

¹¹Rule 98(1)(v), Gujarat Police Manual, p. 99. Sec 149 of the Criminal Procedure Code also requires that senior officers interpose in the interest of preventing the occurrence of any cognisable offence.

¹²Rule 54 (1)(c)(i), Gujarat Police Manual, p. 27.

¹³A Mohalla is a commonly used term for locality.

¹⁴Para 10-11.

Army Aid

In case the police force including the paramilitary force anticipate any violence to spiral out of control, as part of preventive measures the District Magistrate or the Commissioner of Police can get in touch with the Area Commander of the army and requisition assistance as a stand by to deal with any eventuality. However the government (Home Department) has to be approached/informed of such action whenever and wherever necessary.

Prohibitory Orders

It is the District Magistrate's duty as head of the civilian administration to gather intelligence and assess the risk about any likely breach of peace in the area. However he does not have his own intelligence gathering machinery and depends on the Local Intelligence Bureau through the police¹⁵. Participants at the 1997 meeting organised by the MHA to revise the existing guidelines pointed out that gathering of intelligence by the uniformed services had its own limitations. Therefore the guidelines should enable District Magistrates to develop their independent sources of intelligence. The participants went as far as suggesting the setting up of a special fund under the control of the District magistrate to finance such intelligence gathering, but this part of the proposal was not included in the subsequent guidelines. The practice of the District Magistrate, the District Superintendent of Police and the Head of District Intelligence holding a monthly meeting to review the intelligence gathered by the police and other sources continues and a report of the same is submitted to the State Government.

In addition to the preventive measures mandated by the Police Manual and enjoined on the district administration there is a mechanism for cooperation between the police and administration. It is the District Magistrate who is primarily tasked with maintaining peace in his area. It is his duty to gather intelligence consistently, assess the risk and keep the government well informed about any breaches of peace. He is vested with powers to control both civilian administration and the police force. The District Magistrate's powers, if properly exercised and implemented, in coordination with the District Superintendent are ample for preventing communal outbursts or quickly nipping them in the bud at the first signs of tension. This is the core rationale for vesting so much discretion in the hands of the Magistrate as head of the district administration.

The Bombay Police Act, 1951 which governs the functioning of both, the Maharashtra and the Gujarat police also vest powers in the District Magistrate that enable him to take action for preventing riots. In order to keep a district peaceful while there have been provocative incidents elsewhere and there is a palpable risk of spread the District Magistrate can promulgate prohibitory orders to restrict certain acts of individuals within the jurisdiction.¹⁶

¹⁵ Every police station has a unit of the Local Intelligence Bureau responsible for gathering intelligence within its jurisdiction.

¹⁶ Sec. 37(1) & (3) Bombay Police Act 1951

When prohibitory orders are passed people in that area may not be allowed to:

- Carry arms, cudgels, swords, spears, bludgeons, guns, knives, sticks or lathis or any other article which is capable of causing physical violence;
- Carry corrosive substances such as acids etc. or any explosive materials;
- Carry or collect stones or other missiles or instruments or means which can be used to throw missile-like objects;
- Carry burning or lighted torches;
- Make public utterances such as cries, singing or playing of music; and
- Deliver harangues, use gestures or mimetic representation, which may in their opinion offend decency or morality.

Residents are to be informed of the prohibitory orders through posters pasted in public places or announcements made using public address systems. Prohibitory orders can be in place for a maximum of 15 days. Any extension requires sanction of the State Government.

The District Magistrate has similar powers to issue prohibitory orders under the Criminal Procedure Code.¹⁷ As soon as tension develops the District Superintendent of Police can ask the Magistrate to issue orders that prohibit more than four people from assembling together. Entry of undesirable persons in a city/town can also be prevented under this section. There should be no hesitation in detaining goondas, troublemakers and other anti-social elements at the first sign of trouble, as they are most likely to use the circumstances to foment trouble or settle personal scores.¹⁸

Preventive Detention

The law provides for preventive detention of certain persons likely to cause trouble. This is often misused. But is justified in risk areas as a useful means of curbing the activities of known troublemakers in times of tension as a means of preventing incitement and provocative behaviour. If there is reasonable grounds to believe that a person has designs to commit a cognisable offence the police officer can arrest him without an order from the magistrate or without a warrant. However the police cannot detain such a person in custody for more than 24 hours from the time of his arrest unless he is likely to continue the design to commit the offence and his being at large is prejudicial to the maintenance of public order. Permission of a Judicial Magistrate for the continued detention of such person is a must and the Magistrate if he deems fit may order remand of such a person from time to time.¹⁹

Search and Seizure of Arms and Explosive Substances

Reasonable apprehension of danger to public peace and tranquillity is sufficient cause for an Executive Magistrate or police officer to conduct search

¹⁷ Sec. 144 Criminal Procedure Code

¹⁸ Sec 151 Criminal Procedure Code allows the police to arrest any person without order from a Magistrate and without a warrant in order to prevent the commission of cognisable offences.

¹⁹ Sec 151(3)(a)(i)(ii)(iii) Criminal Procedure Code Maharashtra State Amendment.

and seizure operations at the premises of a suspect or to stop and search any vehicle on the road and seize any arms or ammunition that may be found in them. A mere suspicion of breach of peace or that the provisions of the Arms Act are being violated is sufficient ground for conducting these search and seize operations.²⁰ The Magistrate has the power to seize licensed arms and ammunition if he has reason to believe that they are likely to be used for disturbing public peace. If past experience with violence creates any apprehension that arms and ammunition with authorised dealers or of the licensees may be handed over to potential miscreants or the rioters it would be expedient to freeze the stock and prevent dealers from selling and illegally distributing the same.²¹ The Bombay Police Act empowers every police officer to confiscate corrosive or explosive substances from individuals who are carrying them in an area, which has been placed under prohibitory orders.²² At the same time the Manual and Scheme enjoin the administration to be particularly mindful to ensure that minorities in the respective areas are afforded full protection or else they would be otherwise rendered helpless to even defend themselves.

The Arms Act 1959

Section 2 of the Arms Act 1959, defines 'arms' as articles of any description designed or adapted as weapons for offence or defence and include firearms, sharp-edged weapons and other deadly weapons or their parts. Articles solely designed for domestic or agricultural uses such as lathis or ordinary walking sticks are excluded from this category.

The Riot Scheme

States that have a history of communal conflict operate a 'Riot Scheme'. The elements of recommendations over the years, the duties laid down in the law, in the police manuals and central government guidelines have come to be distilled in such riot schemes. The Scheme is directed at the police and kept in each police station. It exists precisely to fend off communal discord before it turns into large-scale violence. The Scheme is a comprehensive compilation of guidelines, procedures, and crucial information and instructions, designed to prevent or control communal disturbances effectively without having to wait for orders from superior officers. It consists of a detailed set of rules to be observed by the police when a breach of peace is suspected or when law and order are not under control and even when law and order have been restored but tension continues to prevail. The Riot Scheme requires the police to do several things that will ensure they are more than prepared to meet any contingency. As soon as it is decided to deal with an impending riot situation the Scheme is required to be put into operation.

²⁰ Sec 22-23, The Arms Act, 1959.

²¹ Sec 4, Ibid.

²² Sec 37(1).

The Riot Scheme is first and foremost a practical procedural drill that is designed to ensure effective handling of communal disturbance if properly complied with. As such it is a living document, which must be kept current and updated. Moreover it must be well rehearsed so that every officer is aware of the strategy for preventing or containing communal violence and performs his/her role dutifully. Officers should be earmarked for various duties and informed about the same. As far as possible officers that have been deployed in communal riot related duties in the past or during rehearsals should be allocated the same duties so that they can work with greater confidence.

i) Study of Topography:

Officers in charge of police stations should be fully aware of both the demography of their area or jurisdiction and well versed with the topography of the town/city, lane by every lane. Maps demarcating purely Hindu, purely Muslim and mixed localities must be available with the district headquarters and at every police station.

ii) Mobilisation of Man Power and Resources:

The Scheme lists out the strength of the force available at the police station, details each person's responsibilities and provides a compilation of emergency services such as ambulance, hospital and fire station and their contacts. At the first sign of tension the police force in the area is required to be on standby for an eruption. This means that men and machines must be at the ready. All leaves of absence are cancelled and the District Superintendent of Police is expected to request the Inspector General of Police in charge of the range for additional manpower. Mobilisation of vehicles, wireless, arms and ammunition, tear gas requirements and *bandobast* arrangements well before any trouble commences.

iii) Record of Bad Elements:

The Riot Scheme requires the listing of local goondas, history sheeters and radical elements. The Scheme also requires the police to gather and update intelligence continuously on potential troublemakers and at the onset of tension to warn them off or even round them up, thus reducing the likelihood of their fishing in troubled waters.

iv) Arms and Ammunition:

Importantly, the Riot Scheme requires the police to keep a record of all arms and ammunition present in the local police station and at headquarters, as well as identify all individuals in their jurisdiction who possess licensed arms. This allows the police to seize all arms if there is a possibility that they will be wrongfully used.

v) Deployment of Forces and Patrolling:

The Scheme requires that the state government should identify riot-prone areas for making necessary administrative arrangements to deal with communal riots. Additional police stations and outposts should be set up particularly in these sensitive areas and the state government should provide adequate personnel, weaponry, communication links and equipment including video-graphing facilities and transport vehicles. The Commissioner of Police or the District Superintendent of Police should decide upon the immediate deployment of forces to sensitive as well as non-sensitive areas. For purely Hindu or purely Muslim localities minimal forces may be deployed however access to outsiders who are likely to instigate trouble must be strictly prevented under all circumstances. Insiders should be also prevented from moving outside their localities. Strong pickets or *nakabandi* should be set up at all suitable places and as far as possible people must be contained within their areas. If needed prohibitory orders could be issued and strictly enforced.

Patrolling of towns and villages identified as sensitive areas must be intensified and carried out all through the day and night in order to allow for quicker action as soon as a breach of peace is suspected. The town/city maybe divided up into convenient number of sectors and these sectors should be small if the same requires close attention. Constant patrolling by police officers supported by adequate strength of force duly armed and carrying enough ammunition is the most effective weapon to deal with mischief mongers. Strategic reserves should be available at nearby places.

Control rooms manned by competent personnel should be set up permanently in riot-prone districts and, at the slightest indication of communal trouble, contingency plans should be implemented without hesitation. Armed police should be positioned in a manner that will facilitate their quick deployment to troubled spots.

vi) Blockade Clearance:

A well-known ploy of troublemakers is to deliberately set up road-blocks to prevent police from approaching the troubled-spot to assist and rescue victims. Police are warned to ensure they are assisted by civil defence authorities are fully acquainted with possible locations and always keep roads leading to all trouble spots clear for police reinforcements and emergency vehicles to rush to the area.

vii) Close Contact with Revenue Authorities:

The District Magistrate has to be kept informed of all happenings right from the beginning. The District Superintendent of Police has joint responsibility with the District Magistrate for the maintenance of peace and public order in a district. They are required to work in close cooperation and harmony with each other. Services of Executive Magistrates should be made available for dispersal of unlawful assemblies, for circulation of prohibitory orders under the Criminal Procedure Code and the Bombay Police Act and accompanying armed or paramilitary forces when called out for duties.

Our system of government separates executive, judicial, and legislative functions.²³ Each has its own powers and there are arrangements for coordination especially in matters concerned with public safety and security and keeping the peace. The District Magistrate has overall charge of the civilian administration of the locality. The police and the district administration have to work in close cooperation with each other and maintenance of public order is their joint responsibility. Whilst the District Magistrate has overall responsibility of his district there are other Magistrates - Additional, Sub-Divisional, Executive and Special that are appointed and made responsible for specific smaller localities, or to meet the special needs of an area or to perform certain functions in any specified area.

These Magistrates are responsible for district revenue collection, development and also ensuring the peace of the locality. Towards ensuring peace they have powers to command unlawful assemblies to disperse and also use force to disperse such assemblies, take securities from persons to keep the peace and pass prohibitory orders when any breach of peace is likely. Functions which are essentially "police" or administrative in nature are the concern of Executive Magistrates.

²³ Art 50 of the Constitution of India has directed that the State shall take steps to separate the Judiciary from the Executive in the public services of the State.

Conclusion

From the preceding sections it is clear that the rules and orders in place lay down a very strict and clearly defined system for gathering intelligence to prevent crime - and even more clear-cut procedures for the prevention, containment and management of large-scale disturbances.

There are precise instructions about how to gather information widely from everywhere at community level and report it horizontally and vertically on a regular basis. Responsibility for each stage of this operation and for every action to be taken as a consequence has been carefully assigned to particular officers at all levels. Responsibility for knowing who the trouble makers in any area are or where larger disturbances may be brewing - risk assessment measures have been prescribed and there are systems for recording and evaluating action so that liability for their happening and handling can be established and errant officers can be brought to book.

Such complete regimes for the maintenance of public order imply that the government has anticipated their happening and that any breakdown when it happens, can be reasonably well anticipated, prevented or immediately managed if everyone is doing their duty even in a very average way. With diligence, even the most sudden and spontaneous breakdowns can be quickly brought under control. But the system on paper can only work in practice if, there is a genuine attention from the leadership that ensures preventive measures are well known, well rehearsed, well implemented and well supervised. The absence of riots in sensitive locations is an indication that the police and civil administration are performing. Future peace and performance will be ensured only if responsibility is fixed where there has been negligence and apathy and both law breakers and negligent officers are brought to book for acts of omission as much as for acts of commission.

CONTROLLING THE VIOLENCE

Introduction

Average adherence to preventive measures should prevent any breaches of peace. However, once the possibility of public unrest, especially communal violence, becomes a probability, the administration has enormous powers to nip anti social activities in the bud, quickly quell it and prevent unrest from mushrooming from a localized disturbance into much more widespread carnage. Communal riots are officially recognised as being different from other kinds of disturbances such as industrial unrest, strikes or processions, election-related violence and are therefore afforded more specific attention in official literature including statutory orders.

But again and again failure to take timely action to prevent imminent trouble has encouraged miscreants to the most ghastly extremes of violence. There are far too many instances where despite knowing that trouble is imminent administrations have failed to take the preventive measures, which has resulted in outbreaks of large-scale violence. The reasons for failure may range from poor risk assessment, failure of intelligence, lack of information about evolving situations or non-adherence to mandated procedures that are aimed at ensuring that brewing trouble is detected early on and nipped in the bud. All these merely point to a complete lack of administrative competence.

The legal tools needed for the administration to maintain public order do exist. The civil administration may have adequate manpower, resources but of course deployment/mobilisation at point of need is a different matter.

All Police Manuals urge police officers to be ever vigilant, not adopt an attitude of complacency when dealing with communal incidents even on a minor scale and be non-partisan whilst carrying out their responsibility of maintaining law and order. Their sole aim should be to ease tensions and not to create them or try to take punitive action outside the lawful procedure. However examining police behaviour in the context of communal violence, in 1981, the National Police Commission²⁴ analysed the reports of several inquiry commissions set up in the aftermath of communal violence that occurred in different parts of the country since independence. The Commission noted that communal riots escalate and continue for several days because of the lack of decisive action on the part of the authorities. Adoption of half-hearted measures during the early stages of communal trouble only push the situation beyond a point of no return. The Commission drew attention to an already existing order communicated by the Secretary, Union Ministry of Home Affairs to all state governments where a clear distinction was drawn between ordinary law and order situations and communal riots.²⁵ Emphasis was laid on the need for taking the most stringent action at the first sign of communal trouble as they

²⁴ Sixth Report of the National Police Commission, Government of India, 1981 pp. 24ff.

²⁵ D.O. letter No. 19/69/70-Poll. I (A) dated June 10, 1970 vide NPC Sixth Report, op.cit., para 47.34, p. 30.

always have the potential to cause widespread loss of lives and damage to property both public and private.

The Commission also observed that preventive action undertaken by the police is often restricted to preventive arrests of anti-social elements or those likely to cause disturbance or incite others to commit violence. There is much more to preventive action in both qualitative and quantitative terms. Keeping up normal police duties such as regulation of crowds, traffic control and direction, increasing beat patrols have the effect of an antidote to communal tension as it creates a climate of confidence in the law-abiding citizenry. If not, a law-abiding citizen is likely to doubt the capability of the police to protect him and is likely to seek other avenues for protection which might even force him to participate in the violence to ensure his own safety.²⁶

²⁶ *Ibid.*, para 47.24, p. 28.

Better Late than Never.....Punitive Action by the Police

India has a long history of street protest. Tolerance for dissent, peaceful protest and different views is the hallmark of democracy. It allows disgruntled people voice and is a vent for public resentment. But the law requires that protest have limits and be confined to peaceful demonstrations. The police have all the powers to ensure that street action does not descend into fracas between disagreeing segments or a bonanza for criminal or fanatical elements to create mayhem. It is a fine line to tread but one expected of a force whose primary function is to ensure law and order while ensuring that citizens can exercise their democratic rights. Nevertheless experience indicates that all too often instead there is temptation either to disallow all protest by slapping prohibitory orders on legitimate expressions of dissent or demand and so invite disobedience or to let crowd control disintegrate into confrontation between citizen and state and then suppress it harshly with questionable use of force. Striking the right balance between individual rights to freedom of speech/assembly and the rights of others to go about their daily lives unhindered, requires good legal grounding and support but the knowledge of the law relating to public order and the ability/support to write enforceable legal orders in the executive magistracy is weak. There is little sensitivity to human rights among the lower rungs of the police force and the two coupled sometimes lead to escalation of large-scale violence.

Commissioners of Police/District Superintendents of Police and all their subordinate staff are expected to exercise maximum vigilance within their jurisdiction. The smallest incident of a communal nature needs to be reported to the Commissioner/Superintendent in order to avoid any escalation of trouble. All efforts must be made to localise the incident without allowing it to spread in surrounding areas or have its repercussions elsewhere. This can be done by promptly bringing the wrong doers to book, preventive arrests of communally minded persons, goondas and mischief mongers being made and affording protection to the communities that are being targeted.

If prohibitory orders issued under the Bombay Police Act and/or the Criminal Procedure Code have failed to prevent the formation of an assembly of five or more persons intent upon committing violence, all executive magistrates, or station officers-in charge, or in their absence any police officer of the rank of Sub Inspector and above have the power to declare such an assembly unlawful and command it to disperse.²⁷ If mob formation takes place within the jurisdiction of an outpost or chowki on the spot officers from Sub Inspector to head constable can command the mob to disperse. If an officer of Sub Inspector rank or above is not available on the spot, the head constable (Jamadar) in-charge has the power to command the mob to disperse.

According to the Gujarat Police Manual, when an executive magistrate directs the police to disperse an unlawful assembly of persons under Sec. 129 of the Criminal Procedure Code, it is his responsibility to decide the kind and degree of

²⁷ Sec 129(1) & (2), Criminal Procedure Code.

force to be used to achieve the desired result. Although police officers may offer the Executive Magistrate advice they are required to act under the latter's orders only.²⁸

Dispersal of Rioting Mobs

There is a stated procedure about the amount of force to be used when dispersing unruly mobs. When dealing with breaches of public peace of a non-communal nature, the police are expected to use the minimum amount of force necessary to disperse the unlawful assembly and exercise the greatest degree of self-restraint even at the cost of some suffering to themselves.²⁹

Rules for Use of Force

Force should only be used when it is absolutely necessary, it should be minimum and proportional to the situation and its use should be discontinued as soon as the danger to life and property subsides. This is the principle governing the use of force as explained in the law and in police procedures. This principle reiterated in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, to which India is a signatory states that the use of force in dispersing non-violent unlawful assemblies should be avoided and if that is not possible, then minimum force should be used. In the case of violent unlawful assemblies, firearms should only be used if less dangerous means are not available and only to the minimum extent necessary.³⁰ The police must invariably secure the presence of a magistrate when it anticipates a breach of peace. As a first measure, warnings to the mob should be given over the loud speaker to disperse. If this does not yield any result then the use of tear gas is to be resorted to, but only if the direction of the wind is favourable. If not or the mood of the mob suggests that tear gas may not be effective the senior officer or the Executive Magistrate present can decide on *lathi* (baton) charge.³¹ *Lathi* charge can only begin if the crowd refuses to disperse only after suitable warning has been issued. Clear warning of the intention to carry out a *lathi* charge should be given in a language understood by the crowd. If the police officer in-charge is satisfied that it is not practical to give a warning, s/he may order a *lathi* charge without warning. *Lathi* blows should be aimed below the waist at soft parts of the body and contact with the head should be avoided as far as possible. The *lathi* blows must not cease until the crowd is completely dispersed.³²

²⁸ Rule 60(3), Gujarat Police Manual, p. 33.

²⁹ Rule 60(2), Gujarat Police Manual, p. 32.

³⁰ These Basic Principles were approved at the Eighth UN Congress on the Prevention of Crime and Treatment of Offenders convened in 1990 at Havana. All signatories are required to draw up legislation or their own guidelines in the light of these principles and educate the police by updating their training programme accordingly. The governments are also required to inform judges, prosecutors, lawyers and members of the executive branch about these principles so that they are respected and adhered to. For a full text visit http://www.unhcr.ch/html/menu3/b/h_comp43.htm

³¹ Rule 60(2)(iv), Gujarat Police Manual, p. 32.

³² Rule 60(2)(iii)(a), Gujarat Police Manual, p. 33.

It is only as a very last resort that deadly force in the form of police firing into a crowd can be resorted to. This only when all other means to disperse an unlawful assembly have failed. Even then there is a carefully graduated procedure to be followed. Firing can only take place with the permission of the Magistrate. Before resorting to actual firing the Magistrate or police officer present should give sufficient and clear warning to the mob through loud speakers.³³ Rioters should be warned that no blanks will be used and that firing will be effective. But it is also important to emphasise here that firing should be well controlled and kept at a minimum. It is the responsibility of the senior most police officer present to decide whether in the first instance firing will be in the air and only then on the unruly crowd.³⁴ Three warnings must be given in sequence before force is used.

If the mob has not dispersed, despite repeated warnings and firing, only then can armed police direct fire at the mob, and even then it must only be at the most threatening part of the mob and aimed low to avoid fatalities. The object of the firing is not to kill anyone but to incapacitate temporarily. Therefore, the police are required to aim at the legs and never at the head or the torso.³⁵ However, firing is required to be with live ammunition and not with blanks.³⁶ When giving the order to fire, the Magistrate/police officer ordering the firing must indicate the number of rounds to be fired at a particular time.³⁷

An accurate diary of all incidents, orders and action along with the time of occurrence has to be maintained by the police. This will include individual reports by all officers involved in the firing. When police firing has taken place under the orders of the Magistrate then no magisterial enquiry needs to be instituted unless specially ordered by the government.

Paying the Price of Trouble

On 25th July 1997 Mr Bhailalbhai Ganatra and several others wrote a letter to the Chief Justice of the Gujarat High Court complaining about an unfortunate event in which four people had been killed and three injured on account of police firing. Friends and relatives of the victims who signed the petition wanted the entire matter to be investigated by the High Court.

The Court used its powers to intervene in cases of possible violation of fundamental rights and treated the letter as a writ petition and issued notices to the State of Gujarat, the DSP and the Commissioner of Police. The Government told the court that the local magistrate was already inquiring into the circumstances in which the police had resorted to firing and whether the extent of firing reported was just and proper.

After looking at all the reports the Court verdict was that the police had failed to anticipate the trouble; preventive measures were not resorted to and the rules relating to police firing and use of force had not been followed. Their clear violation was evidenced by the bullet injuries, which were on the upper half of the bodies of the dead. The Court said the intention of the police must never be to kill members of the mob.

The Court ordered compensation of Rs 1 lakh to be paid to the legal heirs of those who had died and Rs 50,000 to each of the injured. It criticised the action of the police and suggested that the State design modern methods of crowd control and give due training to the armed police to ensure that police firings did not result in loss of life.³⁸

³³ Rule 60(2)(vi)(a), Gujarat Police Manual, p. 32.

³⁴ Firing in air has been the topic of debate and disagreement amongst police officers of various states as such acts unintentionally cause the death of innocent people in crowded localities especially those standing on roof tops.

The Gujarat Police Manual recommends against firing in the air in residential areas or crowded localities. However firing in air as a warning has become fairly common practice in several states before orders are given to fire upon the rioting mobs.

³⁵ Rule 60(2)(v), Gujarat Police Manual, p. 32.

³⁶ Rule 60(2)(vii)(a), Gujarat Police Manual, p. 32.

³⁷ Rule 60(2)(viii), Gujarat Police Manual, p. 33.

³⁸ *Bhailalbhai Vitthaladas Ganatra v/s State of Gujarat*, 1999 (2) GLR 1699

Immediately after any police firing the District Superintendent of Police must make an internal inquiry about the incident to gauge whether the firing was warranted or not. He has to send his report to his superiors and to the District Magistrate. The District Magistrate in turn will send a report of the same to the Home Department in the Government. Every detail of the circumstances of the firing must be mentioned: the cause of the incident, the nature of force used, whether the presence of a Magistrate was secured at the scene, the number of rounds fired, who ordered the firing, the persons who fired, the strength of the police and the size of the mob at the spot, whether tear gas or lathi charge were resorted to before firing and were adequate warnings given to the mob to disperse. The District Magistrate must also mention whether a Judicial or Magisterial enquiry was ordered and if not the reasons for not holding it. If the firing has been resorted to without orders from a Magistrate then an enquiry becomes absolutely necessary. Copies of the report are to be sent to the Inspector General and Deputy Inspector General of Police.

If the Magistrate present authorised the firing an enquiry need not be conducted but even then if there have been too many deaths or injuries then a judicial enquiry can be instituted upon the orders of the Government.

Communal disturbances are not to be treated on par with other unlawful assemblies, riots or breaches of public order. The virulence of communal violence has prompted government to formulate special rules in regard to use of force. The magistracy and the police are required to act with the greatest sense of urgency and decisiveness in dealing with mobs that attempt to attack the persons and property belonging to the minority community. Protection of life and property is of paramount importance and there should be no hesitation in resorting to use of firearms. All police officers are to be made to understand beforehand that any hesitation or failure to take such action during communal disturbance will be punished as a grave dereliction of duty.³⁹ In order to ensure that authorities do not feel hesitant to use adequate force, the Gujarat Police Manual specifically states that all bonafide action taken by any official against communal disturbance will receive the full support of the government.⁴⁰ In other words they would not be penalised for taking such action.

Although the decision to open fire is taken by the senior most police officer or Magistrate after giving sufficient warning to the mobs to disperse, the police have a duty to ensure that firing is effective but not excessive. Police are required to dispense with the high degree of restraint prescribed for the use of force or firearms to disperse unlawful assemblies.⁴¹ The overall justification for the amount of force used must be in conformity with international standards laid down by the UN regarding use of force. The UN Basic Principles on the use of Force and Firearms clearly lay down that intentional lethal use of firearms may be resorted to when strictly unavoidable in order to protect life.

³⁹ Rule 55(2)(f), Gujarat Police Manual, p. 28.

⁴⁰ Rule 55(1)(vi), Gujarat Police Manual, p. 28.

⁴¹ Rule 55(2)(ii), Gujarat Police Manual, p. 28.

Curfew Orders

The District Magistrate, Sub Divisional Magistrate or Executive Magistrate empowered by the State Government has the power to order curfew when violence is imminent or present. Whenever it appears to the Magistrate that an immediate prevention of a public nuisance or speedy remedy of an apprehended danger is desirable he can issue a written curfew order setting forth the facts of the case.⁴² Such an order can be issued if public safety, peace and tranquillity and law and order are in danger. It is noticed that in most instances of communal violence curfew is often resorted to without adequate thought and preparation. Curfew should be imposed only when there is a need to curb the movement of people to abate incidents of violence. Once clamped it should be given wide publicity so that law-abiding citizens stay within their homes and should be strictly enforced without any exceptions. Together with checkpoints, pickets and spot checks of vehicular traffic, curfews are most effective in tamping down violence and preventing small groups to come to move about or meet to conspire at mischief. Nevertheless they do cause hardship, disrupt labour, commerce and the delivery of essential services and are therefore required to be of short duration and lifted as soon as normalcy is restored.

A Curfew order can remain valid for no more than two months unless it is absolutely necessary to do so to prevent human life and safety or preventing a riot.⁴³ However unnecessary prolonging of curfew once normalcy is restored should be avoided to prevent inconvenience to the public.

Requisitioning Additional Forces

The district administration must maintain law and order using the existing civilian police resources. Each state has its local unarmed constabulary as well as an armed reserve police. Central government forces are nevertheless available to augment state forces if requested.⁴⁴ If the civilian authorities are unable to control the situation, despite the deployment of paramilitary forces such as the Central Reserve Police Force or the Border Security Forces it can request the assistance of the Army. Traditionally this is a move of the last resort. Since maintaining law and order is the function of the civil authority even when troops are called in for suppression of violence, control remains with the civil authority. The deployment of armed force from center to state does not imply any suspension or abrogation of civil authority. The local armed and unarmed constabulary does not come under the orders or authority of the military commanding officer. The civil authorities when asking for military aid will

⁴² Sec 144(1), Criminal Procedure Code.

⁴³ Sec 144(4), Criminal Procedure Code.

⁴⁴ Rule 57(1), Gujarat Police Manual, p. 30.

indicate the nature of duties, which are likely to be required, as well as the objective to be achieved, but after that there will be no interference in the formation or details of the force from the civil authority.

Even in the most difficult situations of internal disturbance the principle remains that civilian authority is paramount. The army is required to assist in containing emergency situations but within strictly prescribed bounds. While operationally autonomous at that moment, paramilitary and army formations must have the services of Executive Magistrates of the highest rank at the spot of disturbance to sanction the use of force in dispersing a rioting mob. While the military force may arrest or detain rioters they must be handed over to the civil authority immediately so that they can be punished according to the law.⁴⁵

Other Punitive Measures

The State has an obligation to protect every person and ensure the safety and security of all. If the State government is, for good reason, of the opinion that some or all inhabitants of a town, village or any area are continuously causing danger to public peace it has the power to declare it a 'disturbance area' through a gazette notification and deploy additional police to maintain peace. No time frame has been prescribed for this action.⁴⁶ The State government may resort to this move if an unlawful assembly of people has caused death or grievous injury to persons or loss or damage to property in pursuit of a common object.

In disturbance areas the District Collector or Municipal Commissioner has the power to collect a 'riot tax' for paying compensation to victims, additional costs for deploying the police and 3% of the compensation amount levied as municipal recovery costs. This levy is on inhabitants of the area who own immovable property and the dues are collected in the same way as property tax or land revenue. The District Magistrate has the discretionary powers to determine the compensation amount after holding an inquiry. The rate will depend on this amount fixed by him. These measures are expected to act as a deterrent against those intent upon creating trouble and is meant to ensure that the community will act as a check on them. It also has the effect of a fine on common folk who joined the rioting as in any communal riot it is nearly impossible to identify and apprehend every individual participant.

⁴⁵ Gujarat Police Manual, also see Sec. 130-133, Criminal Procedure Code.

⁴⁶ Sec. 50-51, Bombay Police Act, 1951.

EPILOGUE

With every bout of violence that spreads over days as many people on both sides are killed. A large number are also injured. Property worth millions is destroyed and the already ragged social fabric that brought on the conflict is further rent and torn. Both communities return to their lives in more distrust and greater fear of future violence and crime. Is enough being done to ensure calm? Can the administration ensure it in the future? Does being prepared for violence merely mean having men at the ready to stamp it out when mobs have already gathered or preventing it and having a sustainable system in place to ensure that it will not happen in the first place.

There is a tendency to never go beyond apportioning immediate blame for a situation to looking beyond it at the system, which consistently fails to perform in given situations. Manpower and resource shortages are frequently trotted out to justify inaction and under performance during riots. But these conditions, if they genuinely exist are often caused by poor and improper deployment. A willingness to let standards slide sends clear signals to rank and file that the leadership is weak. In any case these conditions are chronic and constant at the cutting edge police station level but coming as they do riot after riot they hold no water. They provide poor cover under which to hide a much deeper malaise of low standards, lack of accountability and under performance all of which government administrations have become comfortable with and the consequences of which are for the insecure public to bear. Unless otherwise proved the presence of large-scale public disturbances that occur all too frequently must be taken as a failure of the administration. Ideally consequences and correctives must follow. However, past experience indicates that in fact few consequences follow. Certainly few systemic improvements have followed when the National Police Commission was set up to review the role and function of the police and suggested wide ranging changes. Even if the changes have not come about a quick perusal of the eight volumes of analysis and recommendations remain strikingly relevant to today's policing and compel chagrin that had the recommendations been embraced policing would not be in the parlous condition it is in today.

RECOMMENDATIONS

Police Performance: Are the Police Properly Evaluated?

Police in India account to the executive and the legislature through their annual administrative reports and to their own department through periodical inspections. However over time the systems of civilian oversight have weakened considerably. Performance evaluation of individual police personnel is opaque and often prey to personalities and patronage while evaluation of the police establishment as a whole over-emphasises the number of complaints registered, the number of arrests and the rate of convictions. Even here the policy to be adopted across the establishment or in a particular region will often be decided by political considerations of the ruling regime or powerful ministers rather than by any steady long-term vision of policing and objectives to be achieved. Through the years recommendations aimed at insulating the police establishment from political interference, increasing both their ability to work within a known frame, and improving police performance to act efficiently and objectively without bias or corruption have been thwarted and ignored.

The need of the hour is an independent mechanism to consistently monitor, evaluate, and report upon the police's performance to the legislature. Such a mechanism should gauge whether resources and powers are being properly utilised by the police to fulfill their duties and achieve preset objectives. Performance is to be evaluated against an annual policing plan laid down by the state government, as well as against pre-determined holistic criteria such as operational efficiency, public satisfaction, victim satisfaction and optimum utilisation of resources.

Create Performance Evaluation Boards

A new body created solely for the purpose of evaluating yearly internal police systems and management practices would be able to suggest measures to improve future performance. These boards would evaluate the performance of individual police officers. Effective riot control could be included as an indicator of police performance. Results of such an evaluation should be kept in mind when promotions are being made. Effective performance in riotous situations should be criteria when postings are to be made in sensitive areas.

Create Complaint Bodies

Mechanisms other than and stronger than inquiry commissions, which take years to submit their reports, need to be created. Individuals that have serious

complaints/grievances against the police should be able to approach this body and a quick and just disposal of their complaint should be made available. Such complaints agencies would be an additional channel of redress for riot victims, who feel the police were complacent or not effective in their duty to contain a riot or for any excessive use of force or criminal activities by police officers during a riot.

Effective reform will have to take into account appropriate political direction to the police, which would essentially mean no interference by politicians in police operations.

Test Riot Schemes for their Actual Functioning

Though several Riot Schemes prepared by the police are in existence across the country, most of them are impracticable. These schemes though meant to deal with a specific area are designed in a rote manner without real application of mind or often designed for a particular area in a routine manner without taking into consideration the fact that communal riots have a tendency to spread far and wide within a short span of time. Manpower requirements to properly implement the Riot Scheme are not calculated in a realistic manner. The schemes are not rehearsed from time to time so that those who have to implement them would know what action they are required to take during a crisis.

These schemes need to be redesigned to ensure that they are practicable and effective on the ground. Specialised training and frequent practice of their implementation also needs to be mandated.

Training of Supervisory Cadres

Training and retraining of all levels of police officers needs to be done with particular attention paid to prevention of breaches of peace and maintaining communal harmony. Special training and orientation programmes should be organised for the State police with a view to maintaining communal harmony. These should be aimed at inculcating attitudes of secularism among the personnel. Long standing biases within the system that are so commonplace need the more deliberate and scrutinising eye to recognise and appropriately address them.

Diverse Recruitment

There is a virtual absence of representation to the minorities in police forces. This needs to be remedied. Recruitment of members belonging to the minority community in the police force deployed in riot-prone areas goes a long way in winning the confidence of these communities. State governments must make conscious efforts to recruit more members of minorities in the police force and as a long term measure create composite battalions of armed police comprising members of all religious communities including Scheduled Castes and Scheduled tribes for exclusive use in maintaining communal peace and amity.

CHRI Programmes

CHRI's work is based on the belief that for human rights, genuine democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. In addition to its broad human rights advocacy programme, CHRI advocates for access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

Human Rights Advocacy: CHRI makes regular submissions to official Commonwealth bodies and member governments and when needed, conducts fact finding missions. Since 1995, CHRI has sent missions to Nigeria, Zambia, Fiji Islands and Sierra Leone. CHRI also coordinates the Commonwealth Human Rights Network, which brings together diverse groups to build their collective power to advocate for human rights. CHRI's Media Unit also ensures that human rights issues are in the public consciousness.

ACCESS TO INFORMATION

Right to Information: CHRI catalyses civil society and governments to take action, acts as a hub of technical expertise in support of strong legislation, and assists partners with implementation of good practice. CHRI works collaboratively with local groups and officials, building government and civil society capacity, as well as advocating with policy makers. CHRI is active in South Asia, most recently supporting the successful campaign for a national law in India and provides legal drafting support and inputs in Africa. In the Pacific, CHRI works with regional and national organisations to catalyse interest in access legislation.

Constitutionalism: CHRI believes that constitutions must be made and owned by the people and has developed guidelines for the making and review of constitutions through a consultative process. CHRI also promotes knowledge of constitutional rights and values through public education and has developed web-based human rights modules for the Commonwealth Parliamentary Association. In the run up to elections, CHRI has created networks of citizen's groups that monitor elections, protest the fielding of criminal candidates, conduct voter education, and monitor the performance of representatives.

ACCESS TO JUSTICE

Police Reforms: In too many countries the police are seen as oppressive instruments of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In East Africa and Ghana, CHRI is examining police accountability issues and political interference.

Prison Reforms: The closed nature of prisons makes them prime centres of violations. CHRI aims to open up prisons to public scrutiny by ensuring that the near defunct lay visiting system is revived.

Judicial Colloquia: In collaboration with INTERIGHTS, CHRI has held a series of colloquia for judges in South Asia on issues related to access to justice, particularly for the most marginalised sections of the community.

Breaches of public order especially communal disturbances cause massive losses to life and property. The responsibility for maintaining law and order rests with the civil administration of which the police are an important component. However after every bout of violence the administration claims that it lacks adequate powers and that it was caught unawares in a bid to explain its inability to maintain public peace.

Careful analysis of the law, rules and guidelines which inform good policing reveals that there is no dearth of clear cut instructions that need to be followed to prevent breaches of public peace or stem the violence before it escalates. The police and district administration have enormous powers to take punitive action including the use of legitimate force.

This book intends to draw attention to the clearly laid down roles and responsibilities of duty holders in the administration in particular the police in dealing with maintenance of law and order. Drawing from several legal regimes and the rules and guidelines that bind the police we hope that this book will serve as a ready reckoner for those involved in policing. We also hope that the book proves to be a useful tool for civil society, the legal fraternity, the media and the public at large acting as a compilation of standards against which to measure police performance.

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