

## POLICE AND THE CONSTITUTION

By

—**TEJAVATH VENKANNA**, B.A., L.L.M.,  
Inspector of Police Shamierpet  
Cyberabad, Hyderabad, A.P.

### *Introduction:*

The power of the police forms part of the power of the State/Government. It is exercised in maintaining Law and Order situation in the country. It denotes the dominant role of the police in carrying out the day to day activities of the State in its administration in streamlining the societal living. Police power is thus only a means to an end but not an end in itself. Today police power is all pervasive. Police interference in almost all walks of life has become part of the social system and policy of the State.

Notwithstanding this all pervasive nature of the police power exercise of it is restricted only to maintain law and order situation inasmuch as the police is only an assisting machinery.

1. The Police Power is exercised to ensure that the law and order is enforced properly to achieve Public purpose.
2. The Police Power is exercised uniformly in all similar situation.
3. The Police Power is subject to scrutiny of the executive and judicial wings of the Government.
4. The Police Power originates out of legal provisions, which shall not be contrary to constitutional provisions.
5. The Police Power Provides security to the person and property.

The Indian Police system, when it was first conceived by the British Rulers, was meticulously designed, structured and honed to enforce law and public order primarily for sustaining the foreign rule. As part of the *Strait – Jacket* administration that was put in place soon after the patriotic

uprising of 1857 by some section of Indian soldiers against the British command, it had functioned as a loyal adjunct of the Government for over 140 years.

The Statutory basis for the Indian Police is the Police Act 1861 which put the Police Squarely under the control of the Government. The position has remained the same after independence. The Old Police Act continues to be law without being replaced by any fresh legislation to fit our democracy after Independence.

### *Constitutional Provisions*

Police Order and Police figure as entries Ist and IInd respectively in the State list in the Seventh Schedule of the Indian Constitution. Public order (but not including<sup>1</sup> (The use of any naval military or air force or any other armed force of the Union or of any other force subject to the control of the union or of any contingent or unit thereof in aid of the civil power)).

Police (including Railway and Village Police) subject to the provisions of Entry 2-A of List-1)<sup>2</sup> Each State has, therefore, exclusive power to legislate in regard to its Police system and also has full administrative control over the Police in the State. The Central Government can exercise. Similar power in regard to Public order and Police in the Union Territories only. The Central Government has powers to extend the jurisdiction of members of a Police force belonging to any State to any area outside the State, but not so as to enable the Police

1. Subs by the Constitution (Forty – Second Amendment) Act 1976's 57 (W.E.F.31 1977).

2. Ibid

of one State of exercise powers and jurisdiction in any are outside that State without the consent of the Government of the State in which such area is situated extension of the powers and jurisdiction of members of a Police force belonging to any State to Railway areas outside that State<sup>3</sup>.

Under Entry 2-A of the Union List the Central Government has power to deploy and armed force of the Union or any other force subject to the control of the Union or any unit thereof in any State in aid of civil power. Powers under this entry are invoked only in a serious emergency when the civil authorities in as State request the assistance of the armed forces of the Union for maintaining Public order.

Officers of the Indian Police Service, which is an All India Service constituted under Article 312 of the Constitution, provide the leadership for the police force in each State. Disciplinary control over IPS Officers is shared by the State Government concerned and the Central Government. While minor punishments can be awarded to an IPS Officer by the State Government, major punishments like dismissal or removal from service can be awarded only by the Central Government. However, in the day-to-day administration of a State all matters of promotion, posting and transfer of IPS Officers at all levels within the State are handled exclusively by the State Government concerned. The Centre exercises similar powers in regard to IPS Officers working under the Central Government.

Entry 8 of the Union List mentions 'Central Bureau of Intelligence and investigation' Acting under this entry, the Central Government runs the Intelligence Bureau and the Central Bureau of Investigation under its full administrative control and direction. While Officers of the Intelligence Bureau have no police powers

and are solely concerned with collection and analysis of intelligence relating to National Security, Officers of the Central Bureau of Investigation exercise police powers to make regular inquires and open investigations into certain specified offences, notified by the Central Government. They get these powers under the provisions of the Delhi Special Police Establishment Act of 1946 which is the statutory base for the Central Bureau of Investigation. Since it acquires the character of a police agency under this Act, the jurisdiction of the Central Bureau of Investigation normally extends to the Union Territories only. It can exercise its powers in the States also, but that will require the concurrence of the State Government concerned, as stipulated in Entry 80 of the Union List. At present, the Central Bureau of Investigation face difficulties whenever some State Governments show reluctance to give concurrence for the CBI to function within the State in respect of some sensational cases which have political significance in the State.

### *Internal subversion*

With the sprouting of democratic instincts and urges in mankind in modern times, conquests of nations by war and ruling them by force have become almost impossible. Hegemony is at present sought in trade and commerce. Threat to national security will now emanate from sources which seek commercial dominance over a nation. The threat will be not so much to overrun and rule the nation but to render it economically weak and make it a debt or nation in the world market. The developed nations depend upon the large market in the developing nations to sustain their industry. Their object will be to make the developing nations develop just enough to be good buyers but not rich sellers. A developing nation will become economically weak and financially anaemic if its society and its governance are not sufficiently stable to plan and work for sustained development. The race for leadership among the forward nations will therefore

3. Entry 80 of the Union List of the Indian Constitution.

motivate efforts to destabilize the developing nations be subversive forces activated within the nations. This is most likely to be the underlying strategy in all international relations in future. National security will now be threatened more by internal subversion than by external aggression. It is important to note that while external aggression will involve overt militant activities, internal subversion will involve covert and subtle measures which may go unnoticed by the people at large. This is the real danger in present times.

Our defence forces cannot possibly operate inside the country to deal with internal subversive activities abetted by the enemy's intelligence agencies. This is essentially the job of the police Volunteer groups of civilians should be specially constituted and briefed to remain vigilant with regard to such subversive activities in different areas of community life, and co-operate with the police to nip in the bud any act of internal subversion.

Disturbances to public peace and public order have acquired new and complex dimensions in the recent decades. All political parties have increasingly taken to agitationist politics and frequently organize aggressive demonstrations on various issues from time to time impinging on public life. Sometimes issues of all India significance are also taken up for such agitations. The resulting public order situation in the States concerned poses serious problems and requires to be handled under co-ordinated and controlled directions from a Central authority. The need for such co-ordinated control becomes greater when State Governments happen to be run by different political parties with different ideologies which induce different approaches to the issues involved. The very integrity of the country may get threatened if the agitations in a State tend to have a secessionist dimension. Terrorist groups and militant extremists operating at present in some States pose a serious threat of this nature. In such situations it is very necessary for the Centre to have a

statutory role and responsibility to give directions to the police in the State. At present, with 'Police' remaining in the State List, the Centre has no powers at all to make such an intervention, except when the entire State Administration is taken over by the Central Government and put under President's Rule under Article 356. The Constitution does not provide for Central intervention in regard to the police in serious situations which may fall short of requiring a proclamation by the Centre but may pose a potential threat to the security and the very integrity of the nation.

### *Centre's Role*

The nexus between terrorists on the one hand and smugglers and drug traffickers on the other has added a new dimension to the internal security situation. Internal drug traffic involves big business and high stakes. While terrorists may have political objectives, smugglers and drug traffickers do not, and need not, have a political label. They are out and out unscrupulous groups with the sole aim of making money. Therefore, a smuggler's network, once established, will continue to flourish irrespective of political changes in the country. The administration gets systematically corrupted by them at various levels. It will require a specially trained and well – motivated task force with officers and men drawn from Police, Excise, Customs and Enforcement Directorate to tackle this menace. Command, control and direction of this tasks forcement directorate to tackle this menace. Command, control and direction of this task force should be in the hands of a specially chosen officer who should have full access to all this intelligence that may become available to different enforcement agencies in the field. The officer should preferably work directly under the Prime Minister in the Cabinet Secretariat in Delhi. A legal framework for such a set – up will be possible only if there is a constitutional provision that recognizes Central Government's role in this important and sensitive matter.