

The Policing of India

~~While judicial notions regarding the protection of civil liberties have grown increasingly refined, at the grassroots level, the brute force of the police masquerades as the rule of law, says K. Balagopal in a penetrating look at the policing of India.~~

The Indian state has always been violent, but the rapidity with which, its capacity for violence and its tendency to use violence, are increasing is quite remarkable. In the last few years, the profile of the state in its violent aspect has undergone a sharp qualitative change. There was a time when the image of the policeman could and did include, as one of its dimensions, the fat stupid blundering cop. Our films made use of this image with unflinching success to raise a laugh. Today that possibility is quite dead. The only dimension that remains is that of violence, and a vicious variety of violence at that. The old-fashioned 303 rifle, more useful as a bludgeon than a gun, is no longer the symbol that it used to be of the armed strength of the police. Rapidly, the force is being equipped with semi-automatic and automatic weapons whose sophistication is fast increasing.

Increasing Domain of Policing

Parallel with this material sophistication; what may be called the relations of policing have also been undergoing rapid change. For one thing, the domain of policing has been expanding steadily; not the territorial domain, which is pre-determined, but the social domain. Many aspects of social life which we would never have dreamed of allowing the state to police, are now being increasingly brought under that dominion. Articulate residents of middle class localities in the cities may not realise how far this change has gone. All public activity - religious festivities, games and social functions; public art forms like street theatre; and political meetings, processions and demonstrations have now shifted from the domain of what people would regard as 'our culture' or 'our rights', to the category of the privileges that we may enjoy at the will and pleasure of the State, which in many cases boils down to the whim



of the local police inspector. And so has much that would be regarded as involving delicate conceptions of social justice that can be adjudicated only by an informed and civilised tribunal - statutory or otherwise. This has happened very quietly but quite surely. No law has been passed to make this possible; where the question of a law has arisen, the preventive and prohibitory sections of the Criminal Procedure Code, the Indian Police Act, and the various state police laws have sufficed. But the question of a law does not normally arise, unless some one takes the matter to court, and then only to the extent that the courts are themselves immune to this change. A certain 'culture of policing' is creeping upon us, and is imperceptibly affecting our social consciousness.

Students on strike soon discover to their humiliation that the police are simultaneously beating them up, and forcing a compromise with the authorities, with a summary disposal of the contentious matters. Their 'rights' are subjected to sneering comments, their self-respect is put to severe test, and they are treated to

lectures on the crude brand of patriotism and the crude theories of society that constitute a policeman's substitute for political awareness. Much the same is the plight of agitating workers or any other section of the underprivileged.

But not only organised protest, even matters like disputes over field channels, housing plots or the ownership of a cow or a calf, and issues involving hard-won notions of justice - class, caste and gender justice - are settled with the same crassness. Dalits protesting against the practise of untouchability, for instance, are seen up against an impossible wall of incomprehension that is armed to the teeth against disobedience; and that is the tribunal at which they must seek justice. The same is the plight of labourers, tribals, women - any of those classes or groups for whom justice is a thing that means much more than can be comprehended by the kind of understanding the Indian police gives its minions. As notions of justice get a broader and broader interpretation at the higher levels of juridical thinking, the actual dispensing of justice is done in the local police station, where no such fine notions stand any chance of penetrating.

Anti-Welfare State?

Along with this spread of the domain of policing, its relation to the rest of the polity - which reflects its role in the process of governance - is also undergoing change. The concept of a welfare state, as well as the spirit of the Preamble and Parts III and IV of the Indian Constitution, carry the implication of the subordination of the state in its aspect of force, to the state in its welfare and developmental aspects. No conceptual change has been proposed to the notion of welfare, nor has the constitutional spirit been amended, but the

Central Laws Covering the Field of "Law and Order", "Public Order" and "Security of State"

1. *Armed Forces (Punjab & Chandigarh) Special Powers Act, 1983*
2. *Armed Forces (Special Powers) Act, 1958*
3. *Arms Act, 1959*
4. *Arms (Amendment) Act, 1983*
5. *Criminal Law Amendment Act, 1908*
6. *Criminal Law Amendment Act, 1932*
7. *Criminal Law Amendment Act, 1938*
8. *Criminal Law Amendment Act, 1952*
9. *Criminal Law Amendment Act, 1961*
10. *Criminal Law Amendment Act, 1983*
11. *Criminal Procedure Code, 1973*
 - I) Chapter 8, (Security for keeping the peace and good behaviour)
 - II) Chapter 10, (Maintenance of Public Order and Tranquility)
 - III) Chapter 11, (Preventive Action of the Police)
12. *Dramatic Performance Act, 1876*
13. *Disturbed Areas (Special Courts) Act, 1976*
14. *Emblems & Names (Prevention of Improper Use) Act, 1950*
15. *Essential Services Maintenance Act, 1981*
16. *Explosives Act, 1884*
17. *Explosive Substances Act, 1908*
18. *National Security Act, 1980*
19. *National Security Amendment Act, 1984*
20. *Official Secrets Act, 1923*
21. *Police Act, 1861*
22. *Police Act, 1888*
23. *Police Act, 1949*
24. *Police Forces (Restriction of Rights) Act, 1966*
25. *Police (Incitement to Disaffection) Act, 1922*
26. *Prevention of Block Marketing and Maintenance of Supplies of Essential Commodities Act, 1980*
27. *Prevention & Damage to Public Property Act, 1984*
28. *Prevention of Insults to National Honour Act, 1971*
29. *Prevention of Seditious Meetings Act, 1911*
30. *Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974*
31. *Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1984*
32. *Punjab Disturbed Areas Act, 1983*
33. *Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982*
34. *Terrorist Affected Areas (Special Courts) Act 1984*
35. *Terrorist and Disruptive Activities (Prevention) Act, 1985*
36. *Terrorist and Disruptive Activities (Prevention) Act, 1987*
37. *Unlawful Activities Prevention Act, 1957*
38. *Indian Penal Code, 1860*

inversion of the relation — to the extent that it ever was otherwise — has been completed. This is symbolised, for instance, by the contempt with which the police treat the civil administration these days, a contempt that signifies the subversion of not only the colonial British principle of the subordination of the police to the civil administration, but also that of the post-colonial emphasis on welfare and development, the responsibility for both of which vests in significant measure in the same administration.

A classic illustration of this subversion — and its efficacy in bringing the government to order — comes from Adilabad, the most 'disturbed' district of Andhra Pradesh, whose pro-tribal and pro-welfare Collector was trans-

ferred a few months ago by the state government, in the teeth of vocal protest from the tribals, since his 'interference' was resented by the police. Adilabad is a district with a 3 lakh-strong tribal population. Today, they constitute only 17% of the population, but there was a time, hardly five decades ago, when tribals were the majority in the district. Since that time there has been a systematic dispossession of the tribals by the non-tribal landgrabbers. It is a proclaimed policy of the Indian state to prevent such land alienation, and it is one of the responsibilities of the District Collector to ensure compliance with legislation banning alienation of tribal land. But the moment a Collector comes along who tries to ensure such compliance, the non-

tribals are up in arms, and all the parliamentary political parties come out in their support. In the meantime the tribals are attracted to naxalite politics, precisely because their land problem has remained unresolved, and therefore the police step in.

Though every one says these days that problems which are social, political or economic in their origin should not be treated as mere law and order problems, the opposite is precisely the charter the police are given. And the Collector who takes the pious proclamations at face value becomes a nuisance. It is alleged by the police that by 'pampering' the tribals (by merely implementing the Scheduled Areas Land Transfer Regulation Act, 1959), he is encouraging their brazen

sympathies with the naxalites. And he is also allegedly none too happy — in his capacity as District Magistrate with the methods being employed by the police to tackle the problem: pick up tribal youth from their villages, shoot them dead, and announce that 'an unidentified naxalite has died in an encounter with the police'.

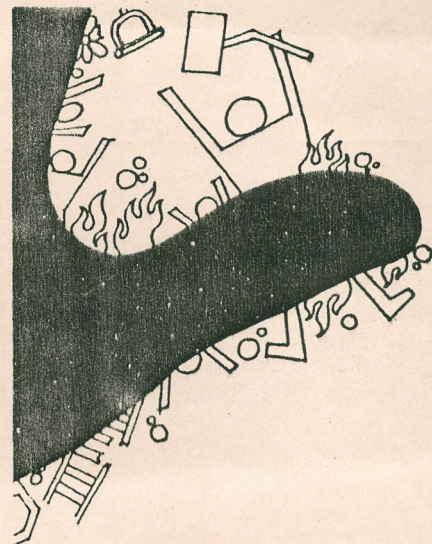
The police therefore put enormous pressure on the government, and get the Collector transferred from the district. The inversion is complete: the problem is formally acknowledged, but its constitutional resolution becomes an act of abetment of disaffection, its unconstitutional resolution becomes the accepted solution, and in the process, the formally subordinate policeman becomes the decisive arm of the government.

But it is in the north-eastern part of the country that this process has been taken the farthest. In a wholly tribal area, populated by a people whom it is the state's proclaimed duty to protect from exploitation by outsiders, the abdication of the responsibility of civilian rule has gone the whole way. The army has frequently taken over that responsibility, and the contempt with which it treats the civilian administration and even the judiciary, is a little-known fact of recent Indian history. The most recent example is the *Oinam* case (see *The Lawyers*, February 1989), where on 17 July 1987, the Assam Rifles went on a rampage in and around Oinam village in Senapati district of Manipur, killing about 30 men, women and children, the molestation of 10 women, torture of a large number of people and destruction of more than a hundred houses and churches. The Assam Rifles at that time prevented even the Collector and Superintendent of Police of Senapati district from entering the area! Subsequently the Guwahati High Court has directed the Sessions Court, Imphal, to record evidence in the matter. The Sessions Court is at its job, but so is Assam Rifles: abducting witnesses, threatening lawyers, raiding their residences, etc. And there is nothing anyone can do to stop them. It is no longer even imagined by anybody that the government will or can discipline Assam Rifles, and stop them from interfering such a sacred thing as the process justice.

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Government Attitude

Indeed, the inversion that we have been speaking about demands a certain attitude of the government towards its police and other armed forces. This attitude is encapsulated by the expression 'free hand' that is commonly used by its critics, provided that one understands that the expression is vitiated by the blandness characteristic of such polemical terms. The giving of a 'free hand' carries connotations of the freedom to give, and the subordination of the receiver to the giver; but the truth is that the rulers have few pangs of gratitude. Civil liberties groups, while campaigning for legal action against the police or other armed forces for indulging in unlawful actions, quickly discover that the governments of this country are as helpless as they are unwilling to provide justice. Even in left-ruled West Bengal, former school teacher Archana Guha has finally lost her 11 year long battle for justice against police officer Runu Guha Neogi who was instrumental in torturing her to the point of paralysing the lower part of her body. In a tragically perverse order, the Calcutta High Court construed the very prolongation of her struggle as a 'delay' that justified quashing of the proceedings against the police officer. And the government, for its part, has refused again and again to initiate action on its own against the officer, even to the extent



of putting him under suspension. For all the sympathy that Archana Guha ever got from the West Bengal government, she might as well have been fighting the military rulers of neighbouring Bangladesh.

Policemen indulging in unlawful acts get encouragement in the form of cash rewards and quick promotions, which is once again an indication of how indispensable they and their violence have become for the process of governance. There is a police officer by name K. S. Vyas in Andhra Pradesh, presently in sole charge of anti-naxalite operations as D.I.G. (Special Task Force). He is today one of the most powerful persons in the state's administration. His claim to that status is that, after the lifting of the Emergency and the short interval of freedom from 'encounter' killings during 1978-80, teenagers in their school-final or first year intermediate class in Nalgonda district, were picked up and killed, and announced as 'encounter' victims. After that, his progress in the police administration has been rapid, and the immunity that he and any protege of his possesses is total. But it is not just the higher ranks that are so favoured. Even at the level of sub-inspector of police, the lack of any inhibitions in employing violence against the people is the surest passport to progress in the eyes of the government.

This attitude on the part of the

political government has the result of inducing a certain helplessness in the other wings of the state that are nominally supposed to possess some authority to discipline/control/punish the police. This helplessness can be seen in the visage of any magistrate listening to an undertrial's complaint of torture; or a commission of enquiry taking down depositions concerning police atrocities in the full knowledge that its report will find its place of rest in a dust-bin; and it can be seen refracted in the platitudinous and gratuitous but operationally useless comments passed against the police by the higher courts (the most commonly quoted comment being that of a judge of the Allahabad High Court: "The Indian police are the most organised group of law-breakers in the country").

History of State Violence

These changes in the profile of the Indian state's violence are marked by a series of points of tension and crises in our post-colonial history; tensions and crises that are accompanied by insurgency, rebellion or sustained agitation on the part of the people, and a variety of counter-insurgency and pacification measures undertaken by the Indian state. The calm is soon restored, and by all formal indicators the crisis is resolved; but two things remain as sediments, rather like the muck that is precipitated by the receding tides. One — the 'root cause'

of the crisis as analysts like to call it; the root cause is the heightened presence and intensity of policing. Long after all the details of the crisis are forgotten, the new habits that the state has acquired in the course of putting it down are all very much there. And so is the repressive legislation, the 'black laws' that the state enacts in the name of handling the crisis, which nevertheless long outlive the proclaimed need. The Emergency is a landmark in this regard. It taught the police — and ourselves, for that matter many new habits of policing, and indeed many of the inroads that policing has made into our public and private lives began then; the process that was then initiated has had a thriving career even as the formal apparatus of repression that was set in motion by the Emergency was dismantled and democracy was 'restored'.

But to go back to the beginning, the first major deployment of the army to suppress a political movement within the country was in Telangana soon after independence. That was also when the Suppression of Disturbances Act (the 'Disturbed Areas Act' as it is more commonly known) was put on the statute, enabling an assistant sub-inspector of police to shoot down any person on the slightest suspicion that he/she is likely to disturb peace. At that time it was said that the communists had taken to arms to destroy the country's newly won independence, and stringent measures were required to safeguard the independence. The communists themselves called off their struggle in 1951, but the Disturbed Areas Act is still very much there, the statute as well as its promulgation in about a dozen talukas of Andhra Pradesh, and has been re-enacted for Punjab in 1983. After Telangana, it was the north-east where the army was sent after 1956, to put down the tribal 'insurgency'; simultaneously the Armed Forces (Special Powers) Act was enacted, being the army's equivalent of the Disturbed Areas Act. At that time it was said that foreign interests were inciting the tribals to subvert the nation's existence; indeed, that was the import of describing the unrest as an 'insurgency'. Much of that unrest has now officially been set at rest through various accords and agreements as well as administrative

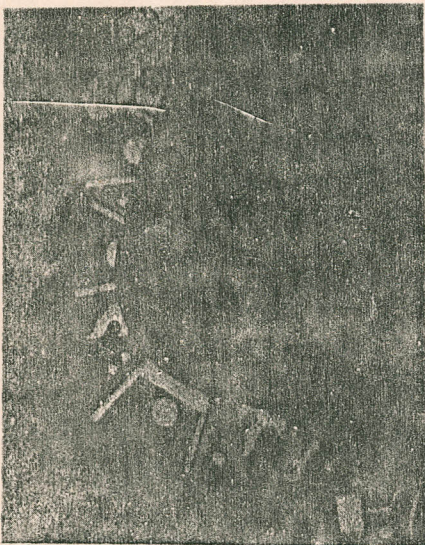
measures, but both the army and the Act are still very much there, and this Act too has been recreated for Punjab. No matter that a person like V. R. Krishna Iyer has publicly gone on record saying that such Acts are a violation of Article 21, they continue to exist and flourish.

In the meanwhile the deployment of the army to tackle political problems and civil strife has become such an acceptable thing that today no such big excuses need be given, nor are any questions asked. The most recent example is the deployment of the army against the agitation of the Bodo students in Assam; such is the power of habituation that there is nobody to raise the obvious objection that the small and weak community of the Bodos are in no position to threaten the country's independence or sovereignty.

It must be added that the employment of the army to confront political movements or civil strife is not merely an extreme manifestation of the bad habit of treating social and political problems as problems of law and order. It amounts to treating a section of the people as aliens, as enemies. The police, even when they are handling a 'law and order' problem, are expected to honour people's rights. They are to use as little force — not merely physical force but also restrictions of any sort as is compatible with the execution of their job. It requires no exegesis of Article 21 to arrive at this conclusion: this is the letter and spirit of even the Criminal Procedure Code evolved by our colonial masters more than a century ago, long before anybody thought of fundamental rights for Indians. Sections 46 and 130 of Cr.P.C. make this restriction explicit.

But the army's duties and culture are different. It is expected to recognise no rights of those it is fighting, and its standard is not the use of minimal force but efficient force; it aims to conserve its effort, not the number of dead bodies it leaves behind. Its culture, its training and its weaponry are devised to further this task and this outlook.

In all civilised countries, therefore, even as the army is being provided with weapons of ever greater mass-killing power, the police are being given weapons — like rubber or plas-



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tic bullets, for instance, or water hoses — which conform to the requirement of minimal force. It is only in India that the police are also being given weapons of greater mass-killing power, borrowing from the army. As we said in the beginning, automatic weapons of increasing sophistication are becoming the common weapons of the Indian police. They were first given to the police on a large scale in Punjab, with the argument that the terrorists possess sophisticated weapons, but soon enough these weapons have become the norm for the police, even in areas where the agitation or the unrest that the police are supposed to control is armed with only traditional weapons, or no weapons at all. So much so that it is no longer an odd sight to find policemen routinely accompanying a peaceful procession of workers or peasants carrying sten guns.

The terrorism in Punjab that constitutes the excuse for this kind of weaponry will probably die out one day or the other, but this weaponry, which has already spread far beyond the boundaries of the alleged 'original cause', has come to stay. And if it, in turn, causes political militants till now innocent of sophisticated arms to start supplying themselves with automatic weapons, then that will on the one hand be used as a retroactive justification for the obnoxious practice, and on the other, increase the general level of civil violence.

In Andhra Pradesh, for example, the arming of the policeman engaged

in anti-naxalite operations with automatic weapons has already had the consequence of the naxalites also acquiring automatic weapons. And now one finds that the policemen patrolling the communally sensitive areas of the old city of Hyderabad, where no more sophisticated weapons have ever been used by rioters than daggers, are carrying sten guns in their hands. If this meaningless practice encourages the hoodlums of Hyderabad to arm themselves with equal sophistication, the consequences can only be imagined.

People's Aspirations Frustrated

To get back to our theme, each of the points of crisis which mark the unfolding of the culture of policing is in fact a failure of the system to handle a genuine aspiration of the people in a satisfactory manner. Alternatively, since the Preamble and Parts III and IV of the Constitution contain all that the people can ever hope for, it can be said that each of the crises is a failure to realise the constitutional promises, a failure to rule by the spirit of Constitution.

Each such failure necessitates an increase in the repressive strength of the state. The failure to satisfy the nationality aspirations of the north-eastern people leads to the untold brutalities perpetrated by the army on those people, from forcible grouping and surveillance of villages to burning, looting, raping and killing. The total failure of the structure of the economy devised in the early fifties results in the kind of conditions of misery that make the naxalite movement possible, and that in turn is met with the uniquely Indian form of extra-legal killing: the 'encounter'.

And what of the attempts to 'open up' the economy as a solution to the crisis? The period of the opening up of the economy coincides with the enactment of the National Security Act (1980) and the Essential Services Maintenance Act (1981), the latter followed up subsequently as the process of opening up of the economy progresses further, with the Trade Unions and Industrial Disputes (Amendment) Bill and the Hospitals and Other Institutions (Redressal of Grievances) Bill. With the inability of the economy to expand sufficiently

rapidly and sufficiently uniformly, it becomes impossible to tolerate even the slightest self-assertion of any nationality; and hence the assertion itself, even if it be no more than the expression of a wish or a hope, has to be defined as a new crime called "Disruptive Activity" in the Terrorist and Disruptive Activities (Prevention) Act (TADA), punishable with life imprisonment.

The general disgust with the establishment is such that broad enactments like the National Security Act are not sufficient. Even trivial offences like stoning of public transport must be punished severely (Prevention of Damage to Public Property Act, 1984), and it is not thought shameful to be forced to punish abuse of the revered symbols of this young republic! (Prevention of Insults to National Honour Act). And where the disaffection against the state takes militant form, it is no longer possible to honour even the nominal rights contained in the colonial Criminal Procedure Code: every little feature of that ancient Code that contains anything resembling a safeguard for the person in the dock has been thrown out in the TADA. All the obnoxious dreams of despots — secret trials, forcible self-incrimination, presumption of guilt, denial of appeal, prosecution without a complete charge sheet — all of them have been written into the TADA, under which nearly 8,000 persons are already facing trial in Punjab, Gujarat, Andhra Pradesh, Haryana, Jammu and Kashmir, and other states.

It is this combination of these formal abominations with the murderous culture of policing that constitutes today's Indian state. Everything else that it promised to be is no more, if it ever was anything more than a promise. But, and not paradoxically, this culmination coincides with an unprecedented awareness and self assertion on the part of the wide spectrum of the masses. While it is truly a matter of regret that the assertion is badly disorganised, it is nevertheless substantial in quantity and quality. People have been fighting for wages, for land, for adequate prices, for equality; they have been fighting irrigation projects that will submerge their lands, nuclear power plants that can endanger them and their progeny,

and deforestation that can devastate their lives. They have been fighting under all kinds of leadership — political and apolitical, violent and non-violent, parliamentary and extra-parliamentary, good and bad. Not even the most brutal repression is able to destroy their enthusiasm entirely; indeed, the state is fast realising that the more brutal it gets and the more it kills, burns, loots and jails them, the more the disaffection per-

sists. A good example, is the north-east, where a handful of ill-equipped tribal 'insurgents' have succeeded in thwarting the infinitely better armed Indian army for about 35 years now. But such examples can be found in many places - Bihar and Andhra Pradesh, for instance, or even Punjab, where neither the unprecedented 'encounter' killings nor the natural revulsion against mindless terrorism, has been able to assuage the sense of

injury. The day the resistance is able to overcome its disorganisation and form itself into a powerful democratic movement, the limits of the state's capacity to suppress the people will be exposed and defeated.

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