

The best method of finding out the truth is the free exchange of opinions. The only reason to prohibit this can be the fear that the truth would come out.

- Chydenius

1.0 Introduction

The police as an institution in India is generally mistrusted by the public it is sworn to protect, working in a vacuum of a lack of goodwill and cooperation. The historical roots of this problem have been adequately discussed in numerous forums and need not be repeated here. This paper is instead more concerned with promoting solutions rather than perpetuating the cycle of wariness since the establishment of the police as subservient to the Executive in 1861.

Currently, the public lack knowledge about the police and the constraints under which they act. This in turn has not been helped by a traditionally closed police organisation. One key to refining this police-public interface is the improved disclosure of appropriate information from the police to the public, and this requires cooperation and mutual understanding between the police and the voice of the public, the media. **Both the police and the media perform vital roles in a democratic society, with a common objective of serving the general population.** This paper therefore aims to facilitate cooperation between the police and the media through enhanced legal awareness.

1.1 Objectives

The main objective is to outline the legal parameters within which the police work, particularly with respect to information held and their dealings with the media. **The police must act within the confines of the law, and it is important that the media, and indeed the police, are aware of those legal boundaries.** This provides the foundation for the broader objective of promoting understanding, awareness, and dialogue between the media and the police in the common interest of serving the public at large.

The first section summarises general provisions applicable to both the police and the media as citizens of India. The second, and more substantial section focuses on provisions relevant to the police and their rights and obligations with respect to information in their possession. The third part considers the right to and disclosure of information under the recently enacted Right to Information Act 2005 and the potential impact on police practices.

2.0 General Provisions

Article 19 of the Constitution enshrines the internationally recognised right to freedom of speech and expression. However, this right is not absolute and is subject to reasonable restrictions such as the security of the state, public order, and defamation.

¹ Research Assistant for the Police Reforms Programme, Commonwealth Human Rights Initiative:
B-117, 1st Floor
Sarvodaya Enclave
New Delhi- 110017, INDIA
Tel: +91-11-2652-0523, 2685-0523
Fax: +91-11-2686-4688
<http://www.humanrightsinitiative.org>

Indian Penal Code 1860

The Penal Code contains general offences. Some relevant provisions include:

- It is an offence to publish material that brings or attempts to bring the lawful Government into hatred or contempt or excites disaffection toward the same (s 124A).
- Further, it is a public mischief to make or publish statements that are likely to cause fear and harm to the public or that promote enmity between different classes of the community (s 505).
- The identity of victims of certain types of sexual offences is protected from any form of publication. This has some exceptions, including for the purposes of an investigation (s 228A).
- The laws relating to defamation (ss 499 – 502) are an attempt to balance the right of free expression with the private right to reputation. As such, it is a complex body of law that requires more attention than possible in this summary. Sufficient for our purposes, section 499 defines defamation as any imputation (either written or verbal) concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person.

Official Secrets Act 1923

This Act safeguards information relating to the sovereignty, integrity, and security of India.

- It is generally an offence to promulgate information calculated or intended to be useful to an enemy (s 3). This includes the wrongful communication of official information held by current and former Government employees (s 5).
- Further, it is an offence to retain any official document where there is no right to do so (s 9).
- Importantly in this context, the Court may exclude all or part of any proceedings under this Act from the public (s 14).

The Police (Incitement to Disaffection) Act 1922

According to section 3 of this Act, it is an offence to intentionally cause or attempt to cause disaffection among the police force towards the government established by law. It is also an offence to induce any member of the police force to withhold from the performance of his/her duty or to commit a breach of discipline.

National Security Act 1980

This Act empowers the appropriate government to make an order of preventive detention to prevent any person from acting in any manner prejudicial to *inter alia* the security of India and the maintenance of public order (s 3). Similarly to the Penal Code, this includes creating any kind of public insecurity.

The Civil Defence Act 1968

The Central Government may prohibit (by notification) the printing and publication of any newspaper or document containing matter prejudicial to civil defence.

3.0 Police

Constitutional Basis

Article 246 of the Constitution of India places the police, public order, courts, prisons etc in the State list. **The police is therefore a state subject and its organisation and working are governed by rules and regulations framed by the state governments.**

Police Act 1861

The Police Act governs the structure and working of the State Police Forces and is applicable in most parts of the country. **It establishes the role of the police as mere law enforcement, and is silent as to a more appropriate service-oriented role of which enforcement is only a part.** Police officers are always considered to be on duty, and their duties include (ss 22 & 23):

- Obeying and carrying out all orders and warrants lawfully issued by any competent authority;
- Collecting and communicating intelligence affecting the public peace;
- Preventing the commission of offences and public nuisances; and
- Detecting and bringing offences to justice, and apprehending all persons where there are sufficient grounds to do so.

It should be noted that under section 44, it is the duty of every officer in charge of a police station to keep a general diary for the purpose of recording complaints and other detailed information.

Indian Evidence Act 1872

There are three important provisions relating to the disclosure of information under this Act:

- Evidence cannot be given from unofficial public documents relating to any affairs of State, which includes information held by the police, without the permission of the head of the relevant department (s 123).
- No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure (s 124).
- No police officer can be compelled to reveal any sources of information relating to the commission of any offence (s 125).

All India Services (Conduct) Rules 1968

The Indian Police Service is established under Article 312 of the Constitution. These rules set out the conduct expectations for the Indian Police Service, as stipulated by the Government. **The Indian Police Service, trained and managed by the Central Government, provides the bulk of senior officers to the State Police Forces. Generally, every member of the Service must maintain absolute integrity and devotion to duty, acting at all times in a courteous and timely manner toward the public** (Rule 3). Other important provisions include:

- Members of the Service cannot publish articles in the journals *etc* of political parties (Rule 5);
- Service members may participate in public media in the bona-fide exercise of their duties, provided that it is clear any views expressed are personal and not of the Government. This does not require the previous sanction of the Government, particularly where the publication or broadcast relates to sports, or if it is of purely literary, artistic, or scientific value. However, the Conduct Rules must be observed, and any resultant remuneration must have the sanction of the Government (Rules 6 & 13);
- Service members cannot make any statement of fact or opinion that is critical of or embarrassing to the Government or relations between Central Government and State/foreign governments. This does not apply to a Service member acting in an official capacity in the due performance of duties (Rule 7); and
- Service members are restricted from the unauthorized communication of official documents (Rule 9).

Code of Criminal Procedure 1973

The Criminal Code mostly relates to the procedural aspect of police work, and thus contains some important provisions relating to information gathered by police in the course of their duties. Section 2 defines the terms used in the Code. "Investigation"

includes all the proceedings under this Code for the collection of evidence by an authorised police officer. This definition becomes important when considering exemptions under the Right to Information discussed below. Further directions as to investigations are prescribed in Chapter 12 of the Code:

- All information relating to a cognizable offence must be reduced to writing and signed by the person giving such information, a copy of which must be given to the informant (First Information Report – FIR). Information relating to non-cognizable offences must be entered into the appropriate book and referred to the Magistrate.
- A police officer of appropriate rank may proceed to the spot of the crime and investigate the facts and circumstances of the case, in the interest of discovering and arresting the offender. **The informant must be notified of any deviations from the normal procedures of investigations.**
- The power of investigation includes the power to require attendance of witnesses acquainted with the facts and circumstances of the case. **(However, for the purposes of investigation, women or males under the age of 15 cannot be compelled to attend any place other than their place of residence.)** Any statements made to police by witnesses may be reduced to writing, but must not be signed. Such written statements may not be used as evidence at any hearing or trial, except by the accused with the permission of the Court.
- Any Metropolitan or Judicial Magistrate may record any confession or statement of the accused, within the prescribed limits. However, no police officer who has been conferred any power of Magistrate may record a confession or statement of the accused.
- An officer in charge of a police station (or designated subordinate) may search any place within the area of the police station where there are reasonable grounds for believing such a search is necessary. The reasons for a search must be recorded in writing.
- Where an accused is detained, and the investigation cannot be completed within 24 hours, the police must provide a copy of all relevant diary entries to the Magistrate, who then has the discretion to authorise continued detention.
- Every police officer making an investigation must record the day-to-day details of the investigation in a diary. These may be used as an aid to an inquiry or trial, but not as evidence before the Court. **The accused is not entitled to see the diary merely if it is referred to by the Court, but may use it where the investigating officer uses it as a memory aid or if the Court uses it to contradict evidence of the investigating officer.**
- The details of complete investigations must be forwarded as a report to the Magistrate. Where an accused is then committed for trial, the police officer must include all relevant documents and statements relied on during the course of the investigation. These may then be passed onto the accused **at the discretion of the police officer**, who may also request the Magistrate to exclude parts that are not essential in the interest of justice and inexpedient in the public interest.
- However, at the commencement of proceedings before the Magistrate, the accused must be furnished with copies of the police report; the FIR; witness statements relied on by the police, with the right to seek permission to see any parts excluded by the police officer; any confessions or statements recorded; and any other relevant document submitted by the police.
- **Generally, inquiries and trials and all information considered are open to the public.** This does not include trials of rape or other sexual offences, where it is not lawful to record any part of the proceedings without permission of the Court (s 327).
- Importantly, an arrested person has the right to know the full particulars of the offence for which they are arrested (s 50). All arrests without warrant must be reported to the District Magistrate (s 58).

Madyha Pradesh Police Regulations 1979

The police force of Madyha Pradesh is enrolled under section 2 of the Police Act 1861. These regulations outline the duties of the varying ranks of police officers in Madyha Pradesh and set out extensive provisions relating to the flow of information both within and the police and its dissemination to the public. As such, it is vital to understand these provisions when seeking information from the police.

- The Deputy Inspector-General (D.I.G.) receives a monthly analysis of crime from districts in their range. Reports on officers are confidential (r 18).
- The Superintendent (S.P.) submits to the D.I.G. a concise diary every fortnight detailing all matters of interest such as serious crime. **The S.P. thus provides a general bird's eye view of the affairs of the district** (r 20).
- The following reports are submitted by the police through the District Magistrate: special reports of heinous crime; the S.P.'s fortnightly diary; the monthly analysis of crime; confidential reports on officers and diaries; the annual report. The District Magistrate is to be kept fully informed of all important matters relating to the police (rr 22 & 23).
- The S.P., as head of the police force for the district, is responsible for the internal economy, management, efficiency, and discipline of the police force. **To keep abreast with all that is going on in the district, the S.P. should be familiar with the general diaries of the police station** (r 878). The S.P. should also be in touch with the people and have good knowledge of the district, encouraging sources of information from without the police force (r 34). **Moreover, the S.P. must make every effort to be a friend of the people** (r 866).

Part III of these regulations sets out the functions, powers, and duties of police officers when conducting investigations and dealing with the public:

- These regulations provide a broad basis for investigations, recognising that the methods of a successful investigation are too intricate and elaborate to be laid down in a few words and depend to a great extent on practical experience (r 323).
- There is also explicit recognition of the importance of maintaining cordial relations with the public. **"Politeness costs nothing but repays itself many times over"** (r 329). Further, the police officer on beat duty has no right to interfere with any individual not breaking the law (r 431).
- Police officers are empowered to search and seize any material that promotes or is intended to promote feelings of enmity or hatred between different classes of citizens or religions of India (r 338).
- The Police have every right to attend and take notes at any public meeting, but no right of admission to a public meeting on private premises and no right of admission to private meetings (r 445). Any notes taken of intemperate or seditious speeches made must be written up as a detailed report and forwarded to the SI.

Part V of these regulations sets out the operating procedures and practices of the police stations. This includes outlining who is responsible for the various registers, diaries, journals and the details required to be recorded and methods of recording in each. Regulation 633 lists the various registers that are kept by the police. Each register *etc* must be kept for a certain length of time. **The most important provisions regarding the dissemination of these documents comes in Section III of Part V:**

- Regulation 706 provides that **no document or record belonging to or in the custody of the police shall be furnished to any private individual without a court order.**
- All registers maintained by the police under regulation 633, apart from the FIR, are designated "unpublished official records relating to affairs of State". The registers are therefore privileged documents covered by section 123 of the Indian Evidence Act 1872, and no person can give any evidence derived

from them without the discretionary permission of the Minister-in-charge or the Secretary of the Home Department. Further, under regulation 707, **the S.P. must ensure that no extracts of registers are given to private parties.** All documents, including the FIR, become public documents when filed with the Court.

- With some prescribed exceptions, a police officer may not disclose any information that may lead to the discovery of the identity of any source of secret information (r 709A). The identity of police officers obtaining secret information is also protected (r 709B). **Secret information in these cases may not be communicated by a police officer to any person other than a member of the police force.**

Part VI of these Regulations details the information required to be collected and recorded by the police while investigating crimes, including the details required to be entered into the case diary. This Part expands and implements the equivalent investigation procedures of the Criminal Code.

Regulations 904 and 905 set out the main principles for the compilation of the annual report of the S.P. and the information it should contain. Generally, it should be concise, containing only the important statistics, and in narrative form not exceeding 5,000 words.

4.0 The Right to Information (RTI)

India, as a democracy, requires an informed citizenry and transparency of information; this is vital to its functioning and also aids containing corruption and holding authorities accountable to the governed. With this in mind, the Central Government recently passed the Right to Information Act 2005, and it becomes operational by mid-October 2005. It has far-reaching implications for the distribution of information held by governmental authorities, including the police (s 2). It is broader than the Madhya Pradesh RTI Act 2003: for example, the time limitation for seeking information is 20 years under the 2005 Act compared with 3 years under the MP Act. This is not a threatening development. Indeed, the stated purpose of this legislation accords with the aims of this paper, that is, to promote transparency and accountability. **This is an Act that promotes a vibrant democracy through the principles of maximum disclosure of information with minimum exemptions. It therefore has the potential to reform and revitalise the often-tenuous relationship between police and the public.** It will help facilitate the flow of information from the police to the public, particularly through the media. Importantly, this Act overrides any other inconsistent legislation (s 22).

- The “right to information” is the right to right to information accessible under this Act which is held by or under the control of any public authority, including inspection of documents and taking notes and copies *etc* (s 2). ALL citizens can exercise the right to information (s 3) and no reasons or personal details are required (s 6). The authority must provide reasonable assistance, and a request for information must be met with the provision of that information or rejected for a statutory reason within 30 days, or 48 hours in cases involving the life or liberty of another person (ss 5 & 7).
- Particularly important in this context are the **proactive disclosure** requirements under section 4 of the Act. All public authorities must maintain information in a manner that facilitates the right to information, including a legislative directive to modernise information through computerisation. Specific information must be made available, (for example, the powers and duties of officers and employees and procedures followed in decision-making processes) and must be disseminated widely in an easily accessible manner. **This is so the public has minimum resort to using the Act.**
- Requests for information may be rejected for any of the reasons specified under section 8. These include requests that prejudicially affect the sovereignty and security of India. In the context of the Police, the exemptions include: “information, the disclosure of which would endanger the life or

physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes”; and “information which would impede the process of investigation or apprehension or prosecution of offenders”. In the media context, information that relates to personal information of no public interest, or is an unwarranted invasion of privacy, is not allowed. However, all exemptions are subject to a public interest override. Thus, **if the public interest outweighs the harm to the protected interests, information must be disclosed.**

5.0 Conclusion

The police already have a substantial flow of information within the ranks. Under the legislation reviewed, much of this information is controlled internally, with little legislative direction as to its wider dissemination. This fits with the inherited rationale of the police as a mere law enforcement agency. Information flow is internal, generally passed on to superiors in a hierarchical fashion: **information flows upwards and not outwards.** However, there is also statutory recognition that maintaining a good relationship with the public is important for effective policing; this requires recognition that good relationship requires good communication. The polite and courteous police officer is therefore one who engages with the media. While there are legitimate restrictions on this interaction, the media is a forum with which the police should be encouraged to interact with. Particularly given information such as serious crimes and various statistics fall within the public interest and is the sort of information that the media are likely to pursue on their own terms if no others are offered.

Under the new Right to Information Act, the police have an opportunity to redress some of the problems of withholding information from the public through proactive disclosure: allowing the maximum disclosure of information with minimum exemptions. **The Police should therefore establish a system where important facts relating to crime and the workings of the police can be efficiently and effectively passed on to the media. On the other hand, the media must be aware that there are certain legitimate and legal limitations on the information that the police may provide, particularly with respect to ongoing investigations and identities of sources, officers, accused, and victims.**

Along with Dr T S Gangte, this paper suggests that **“every district S.P. should be permitted to deal with the press, and the police stations be allowed to give statistical details of number of crimes registered, under investigation, arrests made, cases convicted, etc. When important or sensational cases occur, brief details can be given by the police stations”**,² subject to the legal limitations discussed. The Madyha Pradesh Police Force should be congratulated for already implementing some of these initiatives through its website: <http://www.mppolice.gov.in/>.

The promotion of a good police-public relationship is imperative. It must be strengthened in order to bring about public involvement and cooperation in the continuing day-to-day functioning of the police. Awareness of the legal limits that the police operate within is vital to this process. It aids understanding, which in turn promotes realistic expectations, leading to improved communication, returning to an increased understanding: a positive cycle is thus created.

² Dr T S Gangte, “Radical Change Required” Courtesy: The Imphal Free Press (2001), <http://www.manipuronline.com/Features/Dec2001/radicalchange27.htm>