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GOVERNMENT OF KERALA

REPORT
OF
THE KERALA POLICE
REORGANISATION COMMITTEE

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REPORT OF THE KERALA POLICE REORGANISATION COMMITTEE

CHAPTER I

Introduction

Constitution of the Committee

1. The role of the police as guardians of law and order has undergone an important change after the attainment of independence. The Police Force in the country was organised nearly a century ago by a foreign Government and during the struggle for freedom by the people, the police as the coercive arm of the Government had to subserve the interests of the Government then in power. They came to be looked upon with distrust and antipathy by the people who considered them the instrument of aggression used by an alien Government.

2. After the attainment of independence and the adoption of the Constitution, greater awareness of civil liberties and rights of the people guaranteed by the Constitution changed the attitude of the public towards the police. They expect a different approach by the police towards the maintenance of law and order and want them to play a new role in a progressive and enlightened democracy. It therefore became a matter of increasing importance that the method of functioning of police which was codified in the previous regime should be examined for reorientation to enable them to function as friends and guardians of the people animated by a spirit of service towards the common people which is essential in a Welfare State.

3. The Kerala Government constituted a Committee in G.O. (Ms.) No. 71/Home (A) Department, dated 15th January 1959 for reorganisation of the Police with the following Members:—

- (1) Sri N. C. Chatterjee, Senior Chairman.
Advocate, Supreme Court,
and Vice-President, Supreme
Court Bar Association, New
Delhi
- (2) Sri S. Mohan Kumaraman- Member.
Chalam, Senior Advocate,
Supreme Court, Madras

- (3) Sri S. Guruswamy, President, All India Railway Men's Federation, Madras Member.
- (4) Sri P. N. Krishna Pillai, Personnel Manager, Indian Aluminium Company, Calcutta Member.
- (5) Sri M. Krishna Menon, I.P., Inspector-General of Police, Trivandrum Member-Secretary.

Terms of Reference

The Committee was required to enquire and report on—

- (i) the role of the police in the Welfare State ;
- (ii) whether the existing provisions of law are adequate to help, realise and secure fulfilment of the objectives laid down in the Directive Principles of the Constitution and the public aspirations, realised thereby, and in particular in the sphere of employer-employee, landlord-tenant and capital-labour relations ;
- (iii) the duties of the police in the context of :—
- (a) the free exercise of civil liberties and political rights of freedom of speech, of platform and association in a democracy consistent with the paramount security of the State ;
- (b) communal and linguistic tensions that crop up from time to time ;
- (c) demonstrations and agitations with or without the support of political parties ;
- (d) in property disputes ;
- (iv) whether in view of the public criticism in recent times against firing by the police, the use of fire arms by the police should be totally excluded ; and if not the nature of the circumstances and the conditions under which it should be allowed ;
- (v) the use of the regulatory and restrictive powers under the Police Act ; the security provisions under Chapter X and Sections 144 and 151 of Cr. P. C. ;
- (vi) operational technique of the police and the use of the following weapons :—

lathi, tear-gas and coloured water ;

(vii) provisions regarding the handling of undertrial prisoners and accused persons in matters like hand-cuffing, treatment of accused before production in Court, facilities for getting evidence in the possession of accused ;

(viii) measures for controlling meetings, demonstrations and mobs ;

(ix) measures for improving the work of investigation and detection ; the introduction of an incentive scheme, the feasibility of associating the public with the work of the police and the setting up of Police Advisory Committee for the purpose ;

(x) Village Police or at least associating Village Panchayats, in some form, with the police ;

(xi) use of modern scientific devices to help in the work of the police as in some of the advanced countries in the West ;

(xii) (a) reorganisation of the administrative set-up of the police in the State including recruitment, training (both initial and in-service training) and promotion ;

(b) special training for duty in emergencies like famine, fire, strike or sabotage relating to essential services or public utility services ;

(c) dress and uniform ;

(xiii) Women Police : Whether Women Police should be recruited, their conditions of service, specialised training for Women Police, in which departments of the police and for what specific purpose they should be posted ;

(xiv) Police and the Public : Measures for better public relations between the police and the public ;

(xv) Police and Development : How far the police could be utilised for National Development work ;

(xvi) Recreational facilities and welfare measures for the police ;

(xvii) Juvenile Delinquency : Measures for controlling juvenile delinquency ; special agencies for punishing such cases, Children's Courts and Correctional Institutions ;

(xviii) the setting up of Whitley Councils in the Police Department.

4. It was decided that in view of the wide importance of many of the terms of reference the Committee should hold

some sittings in Delhi and record evidence also at Madras, Ernakulam and Trivandrum. A comprehensive Questionnaire was drafted after a three days sittings of the Committee between 28th February 1959 and 3rd March 1959 in Trivandrum. Copies were sent to all M.Ps., officials of State Governments in India, the Attorney-General of India, Law Officers in all the States, the Supreme Court Bar Association, Bar Councils and Bar Associations in the different States, all M.L.As. in Kerala, important organisations of employers and workers and other distinguished persons.

5. The Committee held its first sitting in Delhi at the end of April 1959 when several M.Ps. of various political parties, retired High Court Judges, Senior Members of the Supreme Court Bar and Trade Unionists of all-India importance were examined.

6. The sittings of the Committee had to be adjourned on account of the unsettled conditions due to the agitation in Kerala which led ultimately to the removal of the Communist Ministry and the President's Rule. The new administration in G.O. (Ms.) 595/Home (A), dated 5th August 1959 recalled the Member-Secretary for duty as Inspector-General of Police and appointed Sri K. Ramanujam, who was formerly Assistant Secretary of the Committee, as Secretary in place of Sri Krishna Menon. The Committee was requested to proceed with their work. The Committee next held its sittings in September 1959 in Madras when Law Officers of the Government including the Advocate-General of Madras, Senior Police Officers including the Inspector-General of Police, Trade Unionists, Senior Advocates and prominent industrialists were examined. Further sittings of the Committee were held in the Kerala State at Ernakulam and Trivandrum when the Advocate-General of Kerala, the Government Pleader and Heads of Departments including the Chief Secretary, Members of State Political Parties including Sri V. R. Krishna Iyer, former Law and Home Minister, Trade Unionists and important industrialists were examined. A list of witnesses examined by the Committee is appended to the Report. Replies to questionnaire were received from 35 persons.

7. In G.O. (Ms.) No. 78 /Home (A), dated 19th November 1959 the Government in reply to a suggestion from the Committee that the time for submission of the Report may

be extended, expressed a desire to have the Report of the Committee urgently and suggested that the Committee may confine itself to items 1 to 6 and 8 of the terms of reference mentioned above.

8. Due to the interruption of the work of the Committee as the result of the agitation against the Communist Government for about three months, the necessary materials could not be completely collected for the submission of a report on all the items in the terms of reference. The Committee, therefore, decided to confine its Report to the items mentioned as more important by the Government in the G.O., dated 19th November 1959.

9. The Committee met in Delhi again between 12th and 14th December when some further witnesses were examined and preliminary discussions were held about the draft report and the drafting was commenced. Next sittings were held in Ernakulam between 24th and 28th December when the representative of the Kerala Planters' Association was examined and the Draft Report was further discussed and finalised.

CHAPTER II

The Role of the Police in a Welfare State

The Government of Kerala in appointing this Committee, emphasised the need of a fundamental transformation in the role of the police with the attainment of political independence and the emergence of a democratic system based on adult suffrage inspired by the objective of the steady uplift of the common people. When India was under foreign rule, the State was often looked upon as a Police State subservient to the policy of an alien power. The people of Free India took a solemn pledge to convert it into a Welfare State and the Constitution of India has embodied very laudable objectives to effectuate this cherished goal. The Directive Principles of State Policy, although not justiciable and not enforceable by Courts of Law, contain some wholesome principles which should be borne in mind by the organs of every State in India. The change in the nature of the State and the social philosophy animating it should be reflected in the activities of the State. Naturally the establishment of a Welfare State needs for the

progress of the people, the expansion of activities in many directions as well as progressive legislation in diverse economic spheres, especially affecting the employers and employees and the reorganisation of agriculture and industry.

2. Today there should be no question in Kerala or in any State in Independent India of utilising the police to prevent the development of any social or democratic movement or restricting the legitimate activities of any of the Parties functioning constitutionally in any State. But the emancipatory effect of democratic institutions and the adult franchise and the new social philosophy have led to a sense of awareness of their rights among large sections of the working classes and the general mass of the people. This is particularly true of the people of this State having regard to the progress of education and the acute pressure of population on the land. In view of the peculiar conditions prevailing in the State the stress and strain to which the police are subjected are much greater than what was the lot of the guardians of law and order in the States of Cochin or Travancore or the district of Malabar.

3. This Committee is not concerned with the programme or policy of any political party and there may be differences of opinion as to the method of securing justice—social, economic and political—or the objective steps to be taken to secure Freedom of Speech and Expression, Equality and other cherished rights guaranteed by the Constitution to the citizens of this country. But whichever may be the political party in power, it must be admitted that the State cannot function or realise the objectives embodied in our Constitution, unless there is a clear recognition of the fundamental fact that the State must depend on the executive machinery for the achievement of its objects. [The primary duty of the police in a democratic State is to help society, maintain law and order, tracking down crimes and bringing anti-social elements to book and to preserve an atmosphere which will help the ordered growth of a Welfare State free from violence and disorder.] We are happy to note that the impact of the new change has been appreciated by important members of the Police Force in Kerala and in some other States who have given valuable evidence. They realise that it is essential that the attitude of the people to the police should change and that should be an indication of the efficiency of the police and that the Police Force in Kerala must have a new orientation in order to meet the democratic expectations of the people at large.

4. The majority of the witnesses appearing before this Committee have emphasised that the role of the police in any Democracy, including a Welfare State, is to prevent crimes and to secure punishment for crimes and to maintain law and order, fulfilling this role faithfully without fear or favour and in conformity with law, and that is the surest and the best means by which the police may hope to eliminate popular distrust and antipathy and to create confidence and goodwill.

5. A number of witnesses have, on the other hand, put forward the theory that if the police devote themselves merely to their normal functions, that is, the maintenance of law and order, they will normally have little time for other activities. They have administered a caution that taking part in social welfare activities or mixing up with work that is unconnected with their main function as the custodians of law and order, may inevitably tend to bring the police into undesirable closeness with various local prejudices, factions and cliques. The result will be, according to these witnesses, to affect their prestige and authority and the same might bring about a marked deterioration in their general efficiency for their primary work.

6. But we are happy to note that the majority of the witnesses were definitely of the opinion that every attempt should be made to bridge the gulf between the police and the people and in Free India co-ordinated attempts should be made to remove all distrust and antipathy. They are definitely of the view that it would be useful if the members of the Police Force are given training in social welfare work and they should, as a part of their general education, be trained so as to appreciate the temper and the objectives of a progressive democratic society as well as the limits which should be placed on current social urges.

7. It is encouraging to record that among the members of the Police Force of Kerala and of some of the other States there is a steady realisation that the objectives of the police in the changed atmosphere of Free India have also to undergo radical change. The Police Force in India must realise that the day is gone for a mere emphasis on the negative or preventive role of the police and they must have the consciousness of a more positive and constructive role to play. Members of Parliament, administrators, senior lawyers and retired High Court Judges, who gave valuable evidence before us, emphasised that the role of the police should be not merely the

maintenance of law and order and investigation and checking of crimes, but the police must discharge their functions and see that conditions for good life are created under which the progress of society at large can take place. To quote the words of the first witness, Sri P. N. Saprú, M.P., "The police should be the first servants of the public". This Committee is definitely of opinion that a revaluation of the role of the police can never be effective until there is a reorientation of their method of functioning and there is also a definite change in the outlook of the people at large. The police must realise that they are not merely machines to punish or to coerce, but they are meant to function as friends and guardians of the public, animated by a spirit of service to the Nation. At the same time, the people should realise that it is impossible for the police to discharge their duties and effectively to eliminate anti-social elements unless there is a spontaneous spirit of active co-operation offered by the people at large and there must be definite recognition that the Police Force should not be demoralized by unfair propaganda or criticism actuated by party or political considerations.

8. The primary functions with which the police are charged are the protection of person and property and the preservation of law and order. The concept of police function primarily as an agency for the enforcement of law has come to be universally accepted. It was only after the establishment of British rule that a regularly organised and centrally controlled Police Force was constituted in India. Prior to this indigenous police systems were generally linked to the feudal set-up and were parts of the autocratic or military systems under local rulers and chieftains. Before the establishment of British Rule villages were responsible for the maintenance of order subject to the autocratic control of the local chieftains or Zamindars who collected taxes and dispensed justice mostly of a rough and ready nature without recourse to written or codified laws. The British system was the result of a long series of experiments. The Madras Regulation (No. XI of 1816) administered by Sir Thomas Munro marked a decisive stage in British Police administration. But it was Sir Charles Napier who reorganised the Police Force in Sind in 1843 after its annexation, on patterns which were copied by other Government and which have endured to this day. The Police Force in British India was constituted under the Police Act of 1861 and it still governs the set-up of the Police Force in the greater part of the country.

9. During British Rule the police were exclusively concerned with the detection of crimes or prevention of infringements of law. They were generally callous or harsh and on occasions ruthless in administering the law and specially in the task of investigation of crimes. Under an alien rule the main function of the Government was to administer the State from the standpoint of a Colonial pattern and the social and economic needs of the people were subordinated to the paramount interests of the ruling power. This state of affairs continued through the transitional phase of provincial autonomy until India attained independence in 1947. In the days prior to Independence agitations, uprisings and even constitutional movements for human liberties were ruthlessly suppressed with the aid of the police and hence the Force was looked upon with distrust and antipathy by large sections of the people who considered it as a mere engine of oppression. The police were frequently denounced as relentless persecutors or oppressors of the weak and helpless and the tools of vested interests. Instances of police excesses exposed by the nationalist press from time to time evoked angry outbursts and adverse criticisms and frequently the Police Force was attacked and shown up as not only inept but mercenary and rotten from the periphery to the core.

10. The emancipation of the nation came with the declaration of Independence and this was followed by the Indian Constitution with its Fundamental Rights and Directive Principles of State policy with the declared objective of establishing a Welfare State. Greater awareness of rights particularly of the peasants and working classes has been recognised by democratic State Governments who have been attempting to secure social, economic and political justice and also to maintain freedom of thought, expression, faith and belief and the dignity of the individual. To this end States have undertaken ameliorative legislation and this has created special problems for the police, specially in a State like Kerala which has a big percentage of literacy but suffers from large-scale unemployment and lack of organised industries which can afford employment to the impoverished people. Large sections of working classes and peasants fired with aspirations and new outlook are clamouring for their rights and privileges. The post-Independence Era, and particularly, the post-Republican Era has seen numerous demonstrations, strikes and satyagrahas launched not only against Government

policies but also for the establishment of democratic rights and privileges. It is in the appreciation of these political, social and economic urges and aspirations that police policy has to be evolved in new patterns acceptable to the citizen at large.

11. Though the fundamental purpose of police functions remains unchanged, the concept of police service is being broadened so as to include certain aspects of national service. In the context of changing social and economic values, the police should not be content merely with being a Law and Order Force but should play their part in the comprehensive progress of society. A more positive philosophy of service has to be laid down for the police and their attitude should be one of friendly and sympathetic approach to human problems. Every branch of the police organisation should be imbued with a spirit of service. There should be real friendliness and constant readiness at all levels to associate with the people and an endeavour to deal sympathetically with grievances and complaints. Public support is essential for the accomplishment of efficient police work. The fostering of proper police-public relations depends vitally on correct police attitude and the emphasis all along the line should be on this aspect which has assumed great importance in the altered political and economic order. The traditional fear of the police has given place to criticisms, frequently adverse and intemperate, and in many cases they spring from misunderstanding of police methods and objectives. Public hostility of this type can be minimised to a great extent and vituperative criticisms can be answered effectively by the realisation of the difficulties on both sides and by mutual discussions. No opportunity should be missed to take the public into confidence and to apprise them of police procedure and action. A positive Code of Conduct should be promoted by police association in community interests such as juvenile delinquency (both prevention and correction), traffic control, Community Project, development work, etc. It should also be reflected in the personal appearance, bearing attitude and conduct of policemen not only on ceremonial or special occasions but in all day-to-day contacts. It should be the constant endeavour of the police to build up good-will and avoid resentment and this can be achieved only by developing a friendly mental attitude and behaviour and by the recognition of the fact that the police in India must be a part of India's National Service.

12. The problems affecting the day-to-day operations of the police are complicated by public attitude towards the Police Force as a whole and by popular confusion as to desirable objectives and the means for attaining them. All these factors have to be considered in their natural setting, as viewed and applied by the policeman on his beat. It is here that one approaches the real crux of the problem because it is the individual policeman who usually determines how far popular attitude shall prevail, to what degree official instructions shall be carried into effect and what the net result shall be. All the devices for popular and administrative control—legal enactments, the policy formulated by the executive, the hierarchy of police organisation and the expenditure of large sums of public money upon men and equipment—all converge at last upon one focal point. The manner in which the policeman on duty reacts to the various stimuli applied to him is important in securing the efficiency of the police in enlisting spontaneous public co-operation and good-will.

13. As the policeman goes round his beat, his mind rarely dwells upon the Code of Criminal Procedure or the Police Act or the Penal Code. If his thoughts turn to police work, they are likely to hit upon common place aspects of the enforcement of the law. He may observe a multitude of violations involving minor regulations of public order, in the conduct of processions having some colour of public interest, infringements of traffic laws, etc. Their very number and variety are such that their requirements are largely unknown to the people to whom they apply or if known, infringements have been tolerated for long. Hence violations are very common. Warnings if issued to all such petty violations will not prove effective unless followed up by prosecutions. The policeman in a Welfare State should be trained and taught to enforce laws and regulations in such a manner that the greatest degree of security and protection will be secured. His attitude should not make for tolerance of law infringements nor should he take an unduly complacent attitude towards certain offences and offenders. He is a policy-forming Police Administrator in miniature and in a way, makes the reputation of the executive and the administrators. Hence the imperative need for raising the level of policeman's standard of performance and this object has to be achieved by emphasis on the above aspects even in the initial stages of training in the school and probationary period of practical training work.

14. A noticeable trend of the day is to associate the police in an increasing measure with community interests and welfare work and it is beyond dispute that such association would benefit both the police and the people with whom they come in contact. 'Operation Sramdan' is featured prominently in the Press and police parties working shoulder to shoulder with villagers have assisted in the development of villages such as laying roads, digging wells, building houses and community centres such as school-houses, reading rooms, etc. However, there should be constant endeavour to ensure that the employment of policemen on such duties is not at the expense of normal police work. The nature and frequency of duties of the civil branch preclude their being used for this type of work and normally the armed police have opportunities of giving 'Shramdan'. The armed police have to be kept in a constant state of training and efficiency for operation on routine or emergent calls. Employment of men for development work has to be done without impairing their efficiency. The armed police should not be converted into a pioneer or sapper wing and there should be constant assessment and evaluation of their work in this sphere. The position is different in regard to assistance in other community fields such as juvenile delinquency prevention, traffic work, etc. These have a direct bearing on police work which will improve in direct proportion to the assistance that is forthcoming from social service agencies and the general public.

15. The misuse of police authority continues to affect or influence the public mind. We regret to note that in this State as well as in some other States the tide of general opinion still runs against the police and the reasons for this condition are easily identified. Notwithstanding various legal and executive curbs on police work and conduct towards the public, popular opinion veers to the belief that "third degree" methods are still of common occurrence. This has been highlighted on occasions by extreme cases of the use of force specially during some recent agitations in this State. Third-degree practices constitute a menace to public justice and even a few well authenticated cases can cover a Police Force with a cloud of suspicion. Secrecy surrounding police methods of interrogation of suspects and investigation of offences encourage a popular belief that such routine enquiries are generally marked by the use of illegal force. The police have to be extremely jealous of the soundness of their methods and must convince the

public that they have learned to exercise restraint in the handling of prisoners or suspects.

16. We note that the police in this State as in some other States are gradually realising the imperative need of respecting civil liberties. The police and the public both should appreciate the risks in departing from accepted standards. Violations of civil liberties by the police lead to demand for the application of various restrictions upon the police. Popular distrust is not a favourable climate for the consistent development of police techniques and when they are pushed aside in favour of short-cut procedures, a lawless enforcement of the law results in provoking fresh public antipathy.

17. One feature prominently standing out in the Police Force of the country is the wide influence of corruption. It has afflicted Police Forces in variable degrees and has not been eradicated. The establishment of a special vigilance agency has curbed the malaise to some extent but the evil persists and has to be faced. No other single factor lowers the prestige of the Force than this taint and today when the people are zealous as never before to uphold public morale and condemn corruption, it is the duty of Superior Police Officers to stamp it out with an unrelenting hand. Corruption cannot flourish unless there are beneficiaries who pay for services rendered but this is no argument or justification for the acceptance or toleration of this blight. Those afflicted with it must be searched out and removed. The Advisory Committees which we are recommending (para 24 below) should make it their primary duty to weed out corruption and to eliminate the corrupting influence of unscrupulous men in public life.

18. The greatest obstacle to efficient Police administration flows from the domination of party politics in the State administration. Its pressure is applied in varying degrees and it often affects different branches of administration. It is exercised chiefly by the ruling class or party which is often accused of influencing the Police administration in party interests. Though there are conflicting political parties, the party which has the backing of the electorate, is in a position to dominate. The result of partisan interference is often reflected in lawless enforcement of laws, inferior service and a general decline of police prestige followed by irresponsible criticism and consequent widening of the cleavage between the police and the public affecting the confidence of the public in the integrity and

objectives of the Police Force. Police administration has not yet succeeded in extricating itself from political influence, with adverse results on law enforcement and consequent demoralisation of the Force. The concept of personal liberty in this State has been sometimes identified with the fulfilment of personal or party interests. Since popular control is exercised through the medium of political parties, the citizen who seeks to avoid the effect of police restrictions naturally turns to local party representatives for aid or succour. No matter how meritorious his complaint may be, his motives in doing so are often selfish. He wants something "fixed" and so it is fixed by a politician who often distrusts abstract justice even more than the citizen and who has an eye on party advancement. Justice under law proves to be too impersonal and too little concerned with individuals. Hence various means are attempted for assuring that Police Officers should be responsive to both political and personal influences.

19. We have considered political and popular influences which are directed at the police. There may be some justification for the charge that often pressure is put upon the police deflecting them from their proper standard. It is equally to be noted that Police Officers or men sometimes seek and accept advantages from political sources. It is not uncommon to find Police Officers and men inviting and relying upon political assistance as a means of securing appointment and promotion, as a shield against impending disciplinary action or as a means for securing or avoiding transfer of assignment. The safeguards and prohibitions usually contained in rules, regulations and statutes often prove ineffective. It must however be stated that administrators at various levels find themselves beset with influences which they cannot control without placing their official positions in peril. Unless Police Officers and the Government realise the threat implicit in political influence and fight the same with unabated vigour the situation will not improve. The effect of personal influences—as opposed to political influences—on police work is also not inconsiderable with similar results, namely, inaction, dilatoriness and lawless law enforcement. Complacency and serious lapse of supervisory functions are implicit in such state of affairs and starting disclosures and denunciations have been required to initiate strong remedial measures and effectively to deal with these evils. The only way to deal with this pervasive malady is for police administrators to react strongly to it and discipline the offending

members by stern procedures. The existing powers are adequate to deal with them but the officers concerned should be given full support in such matters. There should be no interference by instruction either written or verbal nor should suggestions or advice be tendered to moderate discipline. Officers should never be forced to overlook indiscipline or dereliction of duty on the part of the members of their command out of apprehension of incurring displeasure from persons higher in authority.

20. The distrust and antipathy towards officials as a class still remain in the post-Independence Era. Under foreign rule, the services were the mainstay of the Government. The Indian Civil Service was its steel-frame and the Police and the Army were its spearhead and strong arm. The forces released by nationalistic fervour in the fight against alien domination came to be directed towards the services in general. The Civil Services remained inside their offices and the men in uniform became to a greater extent the targets of popular envy and hatred. The army rarely came into the picture in the matter of day-to-day work on the law and order front. To the man in the street, the police was the visible embodiment of all that was oppressive in the alien regime. The conduct of individual police officers and men oftentimes fell far below the standards expected of disciplined and self-respecting members of a civilized society and that contributed to render the background darker still. The fact that the classes to which political power came had been those which had suffered most under the foreign regime aggravated the trend towards antipathy. The time has come when our people should realise that the men belonging to the Police Force constitute a cross-section of the community at large. Popular impressions die hard. To bring about a desirable re-orientation the efforts of the Police Force will not suffice. All segments of the community in general and the leaders of the parties in particular, have their cardinal responsibility.

*Measures for better relations between the Police
and the Public*

21. The fostering of police-public relations has acquired great importance in the post-Independence Era. More than in any other administrative department, it was on the Police Force that the impact of Independence was seen and felt. What was merely a coercive instrument fashioned and used for the

furtherance of alien interests took on a representative character for purposes of law enforcement under a national democratic Government. The police in a bureaucratic regime was frequently used as an engine of repression to crush the political aspirations of the people. When the totalitarian concept prevailed, the interests of the rulers were paramount. Where they came into conflict with that of the public, the coercive machinery of the police was used to ride roughshod over the nascent national upsurge. The roles changed after the attainment of Independence, for in a democracy ultimate power rests with the people and legislature. Judicial and executive curbs are imposed to ensure that Government act with a sense of responsibility and do not abuse powers vested in them. The police in a democracy are the real servants of the people and should have excellent relations with them. Bureaucratic administrative efficiency without the support and co-operation of the people will not go far and success in police work is in direct measure to the co-operation they can secure from the people.

22. The importance of co-operation with the public has been repeatedly stressed by the Prime Minister and leading statesmen in all States. Ceremonial parades, sports meets and other police functions are availed of by public leaders to remind police forces of the need for a friendly co-operative approach in their work with the public. The police are told they should be polite, they should be firm but considerate, they should not lose their head in difficult situations, at times of excitement their approach should be restrained and they must gain public co-operation. Such instruction and advice serve to underline the importance of the service role of the police in a Welfare State and focuses attention on an important aspect of police work which otherwise may go unnoticed in view of the continuity of police administrative structure and methods of work. The success of police work, specially in the State of Kerala, is contingent on the identification of police interests with public interests and this presupposes a reorientation in police outlook and approach. But without a reciprocal change in the attitude of the public towards the police, successful results cannot be expected. Recent events have affected the relations between the police and the public in this State and the establishment of stable democratic Government will, we hope, make relations normal and yield fruitful results. -

23. Diverse methods have been evolved in recent years to promote friendship between the police and the public. They can be summarised as follows :

Cordial relations with the press, stress on police-public relations in training institutions, talks by Police Officers in schools and youth organisations, radio broadcasts, police sports meets and entertainments, publicity for help to the police, celebration of police days, police exhibitions and other forms of publicity by posters, booklets, etc.

24. The press in Kerala exercises the most powerful influence on the moulding of public opinion, by the number of readers involved and by the intimacy of its entry into our lives. Modern newspapers and journals are not simply purveyors of factual news for our individual judgment but in a very real sense, they do thinking for the people, create opinions and suggest by arrangement and skilful presentation that one view is more important and correct than the other. More than any other administrative organisation, the police catch the public eye and interest and naturally the press is often on the look-out for stories and scoops. They get them through various channels. Rumours fly many-tongued on sensational happenings, the aggrieved are always ready to press their tale of victimisation and woe and partisan interests are always to the fore with coloured versions and sometimes with half truths. Improper coverage of news and distortion of facts damage the reputation of organisation. Explanations and contradictions can only arrest the spread of the mischief but cannot prevent the damage already caused. What is required therefore is to feed the press with a constant flow of information not only on controversial issues with which the police are concerned but also about their activities and methods of work. There should be no secrecy about police methods for the public have a right to know them. The co-operation of the Kerala press should be encouraged in a positive manner and facilities to the press for reporting police activities should be afforded. Weekly conferences should be held with press representatives and write-ups should be prepared on important events and distributed to the press. Articles should be prepared in collaboration with the press on various aspects of police work which will be of interest to the public. Press organs of partisan interests freely exercise their rights to adverse criticism sometimes unjustly, in conformity with the velocity of the paper. In such cases official version of correct

facts should be furnished for publicity in the columns of the paper. A Police Officer for Press Relations is a feature of police organizations in England, Australia and some other countries and this system has been advocated in some States of India. We consider that a wholetime Police-Public Relations Officer for this purpose functioning under the Inspector-General of Police is required in Kerala State. He should arrange for prompt and regular supply of authentic information regarding crime and police work. We also recommend that Advisory Committees should be set up at District levels to co-ordinate the endeavours of the police and the public in maintaining peace and performing police duties generally. Such system has been tried successfully in one State. The Superintendents of Police in the Districts should not be allergic to the press and they should be encouraged to contact local press representatives periodically or when specific occurrences warrant the communication of factual presentation of particular incidents to the public. Special press releases should be arranged when called for and normally no item of interest or importance should be withheld from the press in Kerala.

25. Stress on police-public relations in training institutions is an aspect on which considerable importance should be laid. Training techniques have come down without much alteration to the present-day and the pattern of instruction and study have not radically altered from the days of British rule. Police-public relations had little significance in those days and this important aspect for the success of present day police work was not covered in the syllabus or talks to the recruits. The period of training is an impressionable and formative stage and ideas of service which are impressed on the young recruit last a life-time. They should be impressed with the ideal of service and that first and last they are the servants of the public and that the interests of the people should rank above all others.

26. The young and adolescent should not grow up in the belief that the police are a body apart to be avoided and shunned. They should be made to realise that they are friends and helpers of the people and one of the ways of doing this is to give talks by police officers to young children in schools. Rules of the road, safety-first measures, Kerb, drill, etc., should be among the subjects for study, and practical instruction should be given to them by organising school

patrols at crossings near the schools and guiding them on correct lines. Association of this nature helps to dispel traditional feelings of unfriendliness which may have been ingrained in children and replace them by attitude and feelings of friendliness and warmth. We should not forget that the child is the father of the man and that it pays in the long run to reorientate his approach and outlook on the police.

27. Publicity which can be secured through radio transmission should also be pressed in service. Talks on ways of police-public help and association should be arranged periodically and public co-operation for the police sought. Broadcast talks should not be heavy or pompous and should be such as to arrest attention and create interest.

28. Celebration of police sports and entertainments with which the public are associated helps to promote cordial relations between police and the public. Their value is well-known and they should be utilised to the best advantage.

29. Instances of co-operation with police and good work done by members of the public should adequately be publicised. Citations of good work should be read and rewards granted on ceremonial occasions to focus public attention and stimulate others to extend co-operation. The public should also be informed of meritorious work done by the police in Kerala as nothing is more conducive to good public relations than concrete examples showing efficient service rendered to the public. Exhibition of police information, techniques and articles is another way of securing public interest. Such exhibitions have attracted the public and have proved an unfailing source of public contact and interest.

30. While the adoption of the above methods may promote public co-operation, they cannot replace efficient service to the public and should not be considered as substitutes for them. In the final analysis good police-public co-operation is the end product of efficient police service to the public and exemplary behaviour and attention on special occasions alone such as at police sports, traffic week, courtesy week, etc., will not achieve the desired end. Courteous, efficient service should be forthcoming at all levels of the police organisation and at all times and should not be the characteristic of only important or ceremonial occasions when V. I. Ps. are present.

31. Prevention of crime is more important than detection and this aspect assumes great importance in the sphere of public co-operation. Effective watch and ward and vigilance would check potential offenders from committing offences and from this point of view, uniform patrols should not be substituted by plain clothes patrols. This applies with very great force to the enforcement of minor and petty offences, road traffic laws, municipal nuisance regulation, etc. Transgressions of such laws are fairly widespread and many of them are not deemed to involve moral turpitude in the eyes of a large section of the people. Wholesale prosecutions of law violations of this type only serve to alienate the people who will look on the police not as friends and helpers but as persecutors. It often happens that derelictions are tolerated and then followed suddenly without warning by a spate of prosecutions. Nothing is more damaging to police prestige than such techniques smacking of statistical scores. The purpose of law enforcement is protection of the community. It is not to be measured by statistical comparisons of successful prosecutions but the yardstick should be the effective prevention of offences. The police in Kerala should assume the role of mentors and instructors and issue warnings before they launch prosecutions. A generous period of grace should be allowed to the public who should be instructed before any new law is enforced or the enforcement of existing law is tightened up. In regard to existing laws, breaches of which have been tolerated, a period of verbal instruction and written warnings should precede prosecutions. Police policy should be a long-run one for the protection of the community and the serving of real public interest and not the establishment of statistics or display of professional skill or the gratification of ambition.

32. It has become commonplace to cite the English police as an example not only of efficiency, courtesy and integrity but also of a Force eminently enjoying general public support. Long and cordial association with the public, the emoluments offered and the support they have been able to get, have made it possible for them to abandon the carrying of firearms. Could this be thought of in this State? The police are no longer under an alien Government but is there a reasonable standard of public behaviour to warrant police work to be carried on completely without arms? Public support and co-operation to the police which could be expected in a national democratic Government still remain to be accomplished and we are still far from the frontiers.

33. A complaint commonly voiced against the police is that of discourtesy towards the members of the public. This may be a relic of the past but there is no justification for its survival. The most efficient policeman is a failure if he is not courteous in his behaviour. This attribute should permeate the whole Force and should not be confined to the top sectors only. The reputation of a Force is built up by the behaviour of policemen in their day-to-day contacts with the people and even isolated instances of unfriendly or rude behaviour are sufficient to alienate the support and co-operation of the public. There should be insistence on civility and calmness even in the face of provocation and constant emphasis should be laid on this quality of service.

34. Corruption is another taint which deprives the Force of public esteem and co-operation. This evil is not peculiar to the Police Force alone but on that account is not less reprehensible. The integrity of the members of the Police Department should be beyond suspicion and even a breath of scandal is injuries to public relations. Endeavour should be made to ensure reasonable scale of remuneration to draw higher or better class of recruits for the Police Service. Corruption cannot be weeded out unless there is efficient supervision, and keenness to deal with complaints made to Magistrates and Superior Officers. But the economic aspect of the problem is not to be ignored. There must be improvement effected in the conditions of service in respect of pay, emoluments and other amenities. Under our present terms of reference, we have not to make specific recommendation on this subject. We have been assured that compared to Madras and some other States the Police in Kerala are better paid, yet there is scope for improvement in this sphere and we hope that arrangements will be made hereafter for the study of this problem.

35. The police should conform to the highest standards of integrity and this can be attained only by the application of a strict Code of discipline. Corruption, discourtesy, harsh treatment of suspects and misconduct should be dealt with severely and there should be no slackening of discipline in the interests of *esprit de corps* or morale of the Force. Blind support of subordinates whether they are in the right or wrong can harm police-public relations to a great degree. Allegations of police excesses and irregularities, real or supposed, should be the subject of searching and exhaustive enquiries and the

Officer at the head of the Police Force should be resolutely uncompromising in these and other matters affecting the reputation of the police. He should be given a free hand in matters of discipline and should, at no time, be forced to resort to various expedients for placating the members of his command. This state of affairs can be attained only if he enjoys the unqualified support of the Government.

36. An important quality of police work which more than any other secures public support is independence, not of authority but in the exercise of authority. The police must observe scrupulous impartiality, and wealth, position, power or vested interests should not influence their action. In a democracy, the parties in opposition to the Government have different political affiliations and it behoves the police to act with restraint and impartiality, should police action be called for against them. Nothing is more calculated to damage the reputation of the police and subvert public co-operation than identification with particular political interests and consequent ruthless procedures against the others. The Police in Kerala should be above politics and service traditions of impartial treatment should be established. They should be completely indifferent to the issues at stake and should be pre-occupied mainly with the preservation of order and enforcement of law. The policy of the Government of the day should be carried out but the police should maintain a detached, impersonal outlook in the execution of their duties, whether tackling political, industrial or communal unrest. Discretion, restraint and tact should animate their approach to wrong-doers instead of massive repression or retaliation against them. The police should not anticipate legislative action or social progress but should act strictly within the framework of existing laws, subordinating their predilection to the directives of the people as expressed through the legislature.

37. To sum up, our conclusions under this section are as below:—

(1) The objectives of the Police Organisation in Free India must undergo radical change. The emphasis on the negative or coercive aspect should be replaced by the realisation for the need of a positive and constructive role.

(2) The members of the Police Force should be given adequate training in social welfare work and they should as part of their education be trained to appreciate the temper and objectives of a democratic Welfare State.

(3) The primary function of the police, namely, the maintenance of law and order and the prevention and detection of crimes must be discharged. But they must realise that in the new set up the achievement of the objectives should be effected by a method of friendly and sympathetic approach to human problems and the days of ruthless oppression are gone for ever.

The police must be the first servants of the public.

(4) The gulf between the police and the public should be bridged by proper police-public relations and by the readiness to associate with the people and constant endeavour to deal with grievances or complaints in a sympathetic manner.

(5) The police should be encouraged to participate in social welfare activities and community development work.

(6) The Armed Police should have normally more time to take part in social welfare work.

(7) The Taluk Police should foster greater police-public relationship by associating the public in their normal fields of activity such as control of juvenile delinquency, traffic control, celebration of courtesy week, conduct of sports, talks in schools and youth organisations, police exhibitions, etc.

(8) Sramdan or other social welfare activities should not be made compulsory and should not be made pretext for neglecting primary duties of checking and investigation of crimes and the maintenance of law and order.

(9) In carrying out their duty of prevention of crime, the police should act with courtesy and firmness. Wholesale prosecutions for minor infringements of law for statistical purposes should not be resorted to. Their role should be that of mentors and instructors and warnings should be issued before such prosecutions are launched.

(10) A spirit of service should be impressed on the members of the Force in the Training Schools or Colleges: Development of proper police-public relations and instruction in social welfare activities should be part of the training curriculum. The pattern of instruction in training institutions has not radically altered from the days of British rule. A change should be effected to impress the police with the ideal of service to the public.

(11) The Press exercises a very powerful influence on the moulding of public opinion, particularly in Kerala. Improper coverage of news often causes damage to the reputation of the

entire Police Force. A whole-time Police-Public Relations Officer should function under the Inspector-General of Police. He should arrange for prompt and regular supply of authentic information regarding the activities of the police in the State.

(12) Police-public relations at the district level should be studied constantly and improved by District Advisory Committees which will consist of local M.Ps. and M.L.As. and influential members of the public and which will co-ordinate the endeavours of the police and the public in maintaining peace and educating the public about police activities.

(13) (a) Individual integrity of policemen is to be zealously guarded. Continued interest in the conditions of service and welfare of the Police Force should be maintained by the State in order to achieve the above result.

(b) Technical efficiency of the Force must be improved if it is to stand up to the strain of modern police working. The following are recommended:—

(i) *Recruitment.*—A minimum standard of education, preferably S.S.L.C., should be insisted on for regular constabulary, other than the Armed Police.

(ii) *Contentment.*—Conditions of service and treatment of subordinates by their own officers, by all other authorities and by leaders of the public should be such as to develop in the constables a high degree of self-respect.

(iii) *Fairness and impartiality.*—There should be Promotion Committees and Boards, and there should be no scope for unfairness or influence in the matter of promotions or disciplinary action and there should be neither victimisation nor shielding of Police Officers when anything goes wrong.

(iv) *Strength.*—The strength of the police is insufficient for effectiveness in prevention which needs more widespread and well-directed activity than the older method of detection and penal action.

(14) Independence in the exercise of authority which is very necessary to secure impartiality should be guaranteed to the members of the Force. Interference by outsiders should not be tolerated. The District Advisory Committee should take active part in securing such independence as well as in enabling Superior Officers to detect and put down corruption in the Department.

CHAPTER III

Role of the Police in the Context of Employer-Employee Relations

[Item (ii) in the terms of reference]

The Committee has been asked to tackle the question of employer-employee relations. In fact, a great deal of evidence recorded related to this aspect of the enquiry and the consequent law and order problems that arise from the disturbed state of industrial relations in the Kerala State.

2. The Government Order constituting this Committee lays stress on the release of social forces as manifested in labour-management relations and tenant-landlord relations after independence. The Committee is specifically asked to report on the question "whether the existing provisions of law are adequate to help to realise and secure fulfilment of the objectives laid down in the Directive Principles of the Constitution and the public aspirations released thereby and in particular, in the sphere of employer-employee, landlord-tenant and capital-labour relations". Certain trends of events immediately preceding the constitution of this Committee fully justify the assignment of this important task to the Committee. There was a large volume of industrial unrest in the State. While some of the employers complained that police protection under law was not extended to them adequately to maintain their fundamental rights of person and property, the Labour Union alleged that the Police Force in the State had been used to frustrate their right of strike and collective bargaining. In two places the police had to open fire on workers; one in a Cashewnut Factory at Chandanathoppe near Quilon and the other at Munnar during the plantation strike. Certain sections of Trade Unions and workers maintained that this was an interference of the police in industrial disputes and in the right of the men to strike and picket. It may be mentioned in this connection that judicial enquiries which followed these firings had fully justified the firings and exonerated the police of all blame. It was after these firings and the loud protest voiced by labour and employers that this Committee was constituted. So it was natural that we were asked to go into the question of the role of the police in the context of employer-employee relations.

3. One significant fact in this connection is worth mentioning. Soon after the assumption of power by the Communist Ministry, the Chief Minister, Shri E. M. Sankaran Nampoodiripad made an important statement regarding the police policy of the new Government. That statement, apart from laying down general principles regarding the police administration, specifically mentioned the role of the police in the law and order situation arising out of strikes and other forms of demonstrations resorted to by what he terms as the "Toiling Class" as against the "Owning Class". Although we were told by the representative of the Planters' Association that the Communist Government had not made discrimination against the employers in giving protection during industrial disputes, yet he was of the view that the said policy statement had an adverse effect on the morale of the police and made them uncertain about their functions and powers.

4. The statement at the same time makes it clear that the Government had no intention of weakening the role of the police in "rendering protection and assistance to the person and property of the owning classes to which they are entitled as the "citizens of the State". It also recognised that direct action should not do violence either to the person or property of the individuals and families of the owning class.

5. Some employers complained that even when their life and property were in danger prompt or even belated police protection was not forthcoming. At the same time there was a great volume of complaint from labour, even from the section belonging to the Unions affiliated to Central Organisation with which the then ruling party was identified. Soon after the above statement was issued, the police had to use force to disperse a crowd that successfully detained a cashewnut factory owner in his office, not allowing him to go out, in Kilikolloor near Quilon. The Union in this dispute owed allegiance to the ruling political party. This was followed by the alleged use of force against workers belonging to the United Trade Union Congress in another cashewnut factory at Quilon. The incidents in Chandanathoppe which resulted in firing on workers also led to the allegation that the police were interfering in strikes and picketing to suppress the agitation by the "toiling class" to use the expression of the Chief Minister. Again, the events in Munnar culminated in firing on the workers of the union led by the All-India Trade Union Congress. There were other occasions when law and order situation, due to strikes, etc.,

was in jeopardy and the policy statement of the Chief Minister and the way in which it was implemented was the target of attack both by employers and workmen.

6. One of the specific questions put by the Committee on this aspect of the enquiry to which a large number of witnesses have replied is as follows :

“Do you consider that the existence of rival unions leads to such types of conflict as may result in breach of peace? Do you consider that legislative provision should be made for recognition of only one union in each industry or industrial unit?”

It has been admitted by different witnesses that a large amount of industrial unrest in Kerala in the recent past owed its origin to rivalry between trade unions. Most of these unions owed allegiance to one or other of the four central trade union organisations which in turn were virtually controlled by different political parties. In the struggle between the various political parties, the unions became powerful weapons wielded by one party or the other to achieve political dominance. This resulted in weak, unstable, political trade unionism which is the bane of industrial life in the country. In Kerala, we were informed that the number of weak unions was large. Though the State is yet backward industrially, it has relatively the largest number of trade unions registered under the Trade Union Act. The Labour Commissioner stated before us that he had 1960 trade unions on the register and that most of the unions were weak in organisational strength and financial capacity. The rivalry among unions led to conflicts in industrial relations and often to acts of violence.

7. The majority of witnesses who gave evidence before us as well as others who sent replies to our questionnaire were of the view that rivalry among unions leads to conflicts and undesirable developments in industry and that there should be some legislation to recognise only a majority union in an industry or an industrial establishment. One important employer who appeared before us indicated that rivalry among trade unions is sometimes to the advantage of the employer and that there should be free competition among unions as among individual establishments. He was, however, not against recognising only one union in an industry or an industrial unit if the workers themselves are capable of managing it. This lends colour to the allegation that apart from the rivalry among

unions created by political parties, at least in a few instances the employers also encourage it or at least they are pleased about it.

8. Any seven workers in an industrial establishment can apply for and obtain registration of a trade union under the Trade Union Act as it stands at present. There is no limit to the number of unions that can be registered in an industrial unit. If certain simple requirements are fulfilled, registration is easy and it can be cancelled only for the non-submission of annual returns. As the law stands at present the Registrar of Trade Unions has no effective powers to supervise and inspect the expenditure of funds of unions or to have any control over the way in which union affairs are managed. This is fully in accord with the democratic concept that unions are autonomous bodies to be managed by their members without any interference by the State or the employers. This policy is fast giving place to one of reasonable control of affairs of the union in the interests of members as well as of society at large as is revealed in the recent trend of legislation even in the United States of America after the recommendations of John L. McClellan Committee. The "Labour-Management Reporting and Disclosure Act of 1959" of the U.S.A.—enacted in order to provide for the reporting and disclosure of certain financial transactions and administrative practices of labour organisations and employers, to prevent abuses in the administration of trusteeships by labour organisations and to provide standards with respect to election of officers of labour organisations shows that where there are proven abuses in the administration of trade unions, countries like the U.S.A. have not hesitated to legislate for reasonable control over them. It is encouraging to note that even in India the trend of thought is veering round to the idea of some such control over trade unions to ensure safe administration of funds and proper democratic election of office bearers. Recently in the Bihar Labour Advisory Board a unanimous recommendation was made by employers, employees and State representatives to amend the Trade Union Law as far as the State was concerned in order to afford proper control over unions by the Trade Union Registrar and to provide for recognition of only one representative union in an industry or industrial unit. Hence we are of opinion that before giving the right of compulsory recognition to trade unions by employers it is necessary to amend the Trade Union Law in order to confer

adequate authority on the Registrar of Trade Unions to ensure proper supervision over the expenditure of the funds of the union and also to ensure free and democratic periodical elections to choose the office bearers of the union. This legislation should in no way interfere with the unfettered right of the union members to conduct the union affairs in the manner they want. The legislation should only aim at safeguarding the funds of the union subscribed by the members and also to secure that unions do not become the rendezvous of despotic leaders who attempt to keep themselves in positions of office by hindering the holding of elections.

9. Now, we will deal with the question whether there should be legislation to compel employers to recognise only one union in an industry or industrial unit. As already stated, the majority of witnesses favour recognition of only one union in a bargaining unit, though opinion is divided among them as to whether legislation is desirable in this regard. Some of them even fear that such legislation may offend the provisions of the Constitution regarding the right to freedom of association. Before dealing with the legal and industrial relations aspect of the problem, we wish to point out that even in 1947 the Indian Legislature passed an amending Act to the Indian Trade Unions Act of 1926 to afford compulsory recognition to the most representative union. That amendment Act was not implemented by the Government of India. Again, in 1950 two new Bills had been drafted by Government. They were designed as comprehensive pieces of legislation which would replace completely all existing labour relations legislation. They reinstated the 1947 amendment to the Trade Unions Act which provided for compulsory recognition and basic protection against unfair employer practices. Recognised unions acquired certain special rights such as collecting dues and holding meeting on employer premises. These bills were referred to select committee which studied them, made minor alterations and reported them back to Parliament in December 1950. No action was taken on them, however, and the bills lapsed along with the Parliament prior to the 1951-52 General Elections. No further attempt was made in the Parliament to enact such a legislation. It appears that the present view of the Central Ministry of Labour is that recognition of unions is to be secured not by legislation but by the adoption of Code of Conduct by employers' and employees' organisations. Such a Code for recognising unions in factories and industries was

adopted at the Indian Labour Conference and was subscribed to by the All India Employers' Organisations and the four Central Trade Union Organisations.

10. So far as the States are concerned, the Bombay Industrial Relations Act, 1946, provides for recognising representative unions. In the State of Madras, the Government drafted a bill for recognition of only one representative union in an establishment. They did not proceed with the legislation. In the State of Bihar though no legislation was resorted to the Labour Advisory Board, a State Tripartite Body, from 1952 adopted a convention to afford recognition only to a representative union in a factory. A sub-committee of the Board enquired into the claims of rival unions when disputes arose among them regarding recognition and settled them even sometimes resorting to secret ballot. Recently, after the Code for recognition of trade unions was adopted by the Indian Labour Conference, the Bihar Government in their resolution, dated 11th March 1959 have formulated a new procedure regarding the recognition of representative unions based on the unanimous recommendations of the Labour Advisory Board. This procedure lays down that when there is more than one union in an industry or establishment, the one with the largest membership should be recognised. It is also stated in para 7 of the resolution that only in extreme cases will ballot of the members of the unions be taken to determine the claims of rival unions. A tripartite committee appointed by the Bihar Government on 31st March 1959 to recommend the amendments to be made in the Trade Union Act has unanimously pleaded for giving statutory enforcement to the above resolution regarding recognition of unions. The Kerala Government of Sri Nampoodiripad also provided for recognition of representative unions as the sole collective bargaining agent in the draft Kerala Industrial Relations Bill. After the dismissal of the Government, the bill has lapsed.

11. So far we have endeavoured to examine the trend of legislation as well as administrative action in the Centre and various States in India on this question of multiplicity of trade unions in a bargaining unit. As early as 1947 Government of India thought it necessary to legislate for recognising only one representative union in an industry or in an establishment but they did not go ahead with it. The various States also followed the same line but they also have not so far taken up any bold and clear cut legislation in this regard. From the trend of

events surveyed hitherto, it is evident that everyone realised that no progress in smooth industrial relations was possible without making provision for recognising a majority union as the sole collective bargaining agent in a bargaining unit. Now endeavour is being made to implement this recognition of unions through the Nainital Code agreed to by employers and employees. While the superiority of voluntary recognition through the implementation of the Code cannot be over-emphasised, it is doubtful whether this will achieve the desired effect, considering the attitude of employers and trade unions in the country.

12. It is admitted by employees and employers that rival unions embitter labour-management relations and hinder production in industry more than anything else. The unions tend to be weak and the employers find it difficult to negotiate with rival unions even if they want to do so. Any group of seven employees can register a trade union in a factory under the present law and they get thereby the right to participate in conciliation proceedings and also to be represented before tribunals constituted under the Industrial Disputes Act for compulsory adjudication. Since these legal rights are extended to weak mushroom unions there is no incentive to strengthen the organisational structure of unions. It happens sometimes that political parties or even union leaders will subsidise these so-called trade unions and there is no need for them to collect union dues from the men or even to enrol them as members. The State Governments endeavour to prop up unions owing allegiance to their parties by favoured treatment in the matter of conciliation and acceding to demands for reference of disputes of such unions for adjudication. The reactionary or conservative employers who have not yet appreciated the value of healthy collective bargaining always find their excuse for not recognising unions on the ground of rivalry among them. Trade unions become strong and responsible after proper recognition and consequent collective bargaining strength. The present state of weak unionism and the consequent absence of healthy collective bargaining in many areas will embitter industrial relations so long as the State does not boldly face the problem of rival unionism and solve it by legislation or other method so that only one trade union may be recognised as a collective bargaining agent in a collective bargaining unit. The Central Ministry of Labour always proclaims that they are for promoting direct joint negotiations and collective bargaining in

preference to compulsory adjudication. In Chapter on labour in the First Five-Year Plan it was observed: "The endeavour of the State has all along been to encourage mutual settlement, collective bargaining and voluntary arbitration to the utmost extent and thereby reduce to the minimum, occasion for its intervention. The workers' right of association, organisation and collective bargaining is to be accepted without reservation as the fundamental basis of the mutual relationship." Similarly, the Second Five-Year Plan reiterated this labour relations policy and further stated that "the best solutions to common problems, however, can be found by mutual agreement" between employers and employees. In spite of declaration of this democratic and fundamentally sound industrial relations policy, the great impediment in developing collective bargaining, namely, the problem posed by multiplicity of unions, has not yet been removed by legislative action. On the other hand, provision is made in industrial relations law of the land conferring on even weak and unrepresentative unions the right to represent labour in compulsory adjudication. The unions can become strong only by encouraging collective bargaining. Even in U.S.A. Trade Unions achieved their present strength only after the Wagner Act of 1935 providing for recognising only the most representative union as the sole bargaining agent and also by making it an unfair labour practice to refuse to bargain *bona fide* with union declared to be the sole bargaining agent by the National Labour Relations Board. In India while faith is proclaimed in collective bargaining, weak unions are encouraged as a result of failure to legislate for recognising the most representative union and for compulsory collective bargaining with the representative union and by legislation for compulsory adjudication in which even unrepresentative and weak unions are parties.

13. One of the objections raised in certain quarters to legislate for recognition of only one union in a bargaining unit is that it will in a way offend the provision of the Constitution giving the citizens the right to form organisations of their choosing. In effect the Bombay Industrial Relations Act which makes provision for this has not been challenged or impugned. It is never suggested that the right to form association should be denied to any section of the work people. While the workers should have the unfettered right to form organisations of their choosing, they cannot claim as a fundamental right to have their organisations recognised by

employers. There is only a fundamental right of association but not one of recognition. It is urged that if the right of recognition is denied to minority unions they become ineffective and virtually the right to organise itself is denied. In other words, the argument is that denial of the right of recognition to certain minority unions, is *de facto* denial of the right of organisation to be members of these unions. If this argument is to be accepted the exercise of every right of association should be automatically followed by conferring the right of effective functioning by recognition by some one or other. At present, there is no obligation on the part of the employers to recognise any union even though the work people have the right to organise in any union. These unrecognised unions in a way are ineffective. So, is it to be presumed that even at present there is denial of the right of organisation of work people because their organisations when formed do not automatically secure recognition? Conferring the right of recognition only on the most representative union in order to secure orderly industrial relations does not constitute the denial of the right of association to any section of the workers. Under the legislation we are recommending there will be provision for even a minority union to achieve the position of the majority union, thus securing recognition at a future date by effective constructive organisational work. Thus it is not our intention to deny the right of recognition to any section of labour. What we recommend is only certain regulations regarding recognition of unions in the interests of industry and the State. Once a majority union is recognised, in the interests of peace and order it should remain the sole collective bargaining agent for two or three years. After the lapse of that period it should be open for any other union to challenge the representative character of the recognised union and to call for a repetitive scrutiny of the respective strength of unions. It should at the same time be declared an unfair labour practice to refuse to negotiate with the representative union. If the position is thus stabilised unions will become stronger organisationally and financially. Strong unions after undergoing the experience of joint negotiation to settle the terms and conditions of employment will inevitably tend to become more realistic—particularly when there is no rival union to raise demands calculated only to mislead and confuse the workers. The employer will also learn to develop faith in mutual negotiation and joint consultation, and in the conception that a strong healthy union is the best guarantee of industrial peace and efficient production.

Thus it can be hoped that stable industrial relations are bound to prevail as a result of this policy and law and order situation will improve.

14. Even if it is resolved that a representative union alone should have the sole bargaining right, there are many steps to be taken before such a policy can be effectively implemented. What is the method of determining the representative character of unions? There is difference of opinion on this. One school of thought believes that verification of membership of the contesting unions by the Officers of the Labour Department is the best method to determine the question as to which union is more representative of workmen. This is the method followed in Bombay State under the State Industrial Relations Act. This is objected to on various grounds. At the outset, it has to be admitted that where Government action in the field of trade unionism is often suspect, verification of membership by a department of Government will not command the confidence of the parties concerned. The political parties that come to power in various States have trade union organisations of their own and it is feared in certain quarters that the executive will not be a fair agency to assess the respective strength of membership of various unions. Whether this fear expressed by some is based on facts or not, it is not for us to express our opinion. But it is highly essential that the method of determining the representative character of the unions should not only be fair but should also appear to be fair. Another objection to the verification of membership register is that the respective strength of unions is not always reflected by the membership of these unions. There had been instances of unions having only one or two per cent membership of the workers commanding the complete allegiance of work people in a dispute with employers, though with the development of unionism, such examples are becoming increasingly rare. Instances are not rare where the same workers enrol themselves as members of more than one union paying initiation fees and dues to both of them. Workers are shrewd and are mindful primarily of furthering their economic needs in the industry. They know under one particular political climate loyalty to a particular union might be economically beneficial to them and that under a different political set up it would be more paying to transfer their loyalty to another union. In this sense, though it may sound strange, it is true to say that workers are exploiting the trade union political leaders as much as the leaders of political parties are

exploiting the workers. Therefore, so long as the trade union membership is not stable as stated above, it is not safe to rely on the membership register of unions to ascertain their respective representative character among the workers. There is a fourth objection to this method which is of a more serious nature. Leaders of political parties or professional trade unionists or employers sponsoring company unions sometimes pay the subscriptions of workers to their trade unions so as to artificially inflate the membership for their own ends. In such cases too it has to be admitted that the verification of membership register of unions cannot reveal the true state of affairs regarding their representative character. So, for all these reasons we are of the view that verification of membership registers of various contesting unions for ascertaining their representative character is not a sure and safe method.

15. Now we are left only with one alternative method to ascertain the representative character of the various unions in a bargaining unit; that is, by ascertaining the representative character of the unions by a secret ballot of the workers concerned. This is an acceptable democratic method of ascertaining the following that each union in a unit has got. The Wagner Act and subsequently the Taft-Hartly Law in the U.S.A., have adopted this method. In some States in India like Bihar, though there is no statutory sanction for it, labour departments were forced to resort to this method by compelling circumstances. Recently in the Jumna Thread Mills in this State, this method was resorted to in order to solve a long-existing dispute between two unions. Since the membership of the unions does not reflect their real strength as already explained, it is better to organise a ballot of all eligible workers to determine the relative following of unions. At the same time, it should be insisted that any union to qualify itself as the sole representative bargaining agent of the work people should obtain at least a minimum proportion of votes of all the workers in the unit. In the Code for determining the criteria for recognition of unions adopted by the Indian Labour Conference, it is laid down that a union claiming to be recognised as a representative union for an industry in an area should have at least 25 per cent of the workers of that industry in the area as its members. We think it will be advisable, taking the conditions in the State into consideration, to recommend that only a union which obtains the majority of votes in the secret ballot and which also obtains a minimum of 25 per cent of

votes of all workers in the bargaining unit should be certified as the sole bargaining agent. We know that there are acute differences of opinion on this point, namely, whether workers who are not members of any registered union, should be allowed to participate in the ballot. But we are recommending this measure as an experiment having regard to the peculiar conditions in Kerala and we should advise that this experiment be tried in the interest of law and order and the maintenance of peace, for a period of five years. Further as it is laid down in the Code a union should also have a standing of at least one year to qualify itself to be certified as the sole bargaining agent. When once a union is so certified it should continue in that position at least for a period of two years. There need not be an automatic repetitive ballot after every two years. If any union other than the certified bargaining agent challenges the representative character of that agent at the end of the two years by enlisting the support of at least twenty five per cent of the workers, then a repetitive election should be conducted. As provided in the Trade Union Amendment Act of 1947, a list of unfair labour and employer practices should also be adopted and any infringement of these rules should be made punishable.

16. Before leaving the subject of rival trade unions in an industry or industrial establishment, one other aspect to which proper attention is not always paid deserves special mention. It is often stated by leaders in industry, trade unions and members of the public that there should be only one union in an industry. It is seldom realised that this is not always feasible. Even though stable recognition of trade unions and collective bargaining have not so far developed in the country, industrial relations have developed in a particular pattern in many places. There had been traditions created by the pattern of conciliation or adjudication. In India through craft unions have not developed except in a few instances, by tradition more than one does exist even in a single industrial establishment and is recognised and dealt with by the employer as the bargaining agent of different sections. It is not uncommon to find that in a single establishment there are separate organisations of work people and clerical and supervisory staff and out of this a tradition might have developed in many of them to have separate negotiations and arbitration with these respective organisations. In contrast, in industries like Cotton Textiles in Bombay and Ahmedabad, Jute Textile in West Bengal, and

plantations in certain areas, industrial relations had always been settled by and large on industry-wide basis. In Kerala itself the coir mats and matting, plantations and cashewnut had a tradition of industry-wide industrial relation pattern evolved by joint negotiation, conciliation or adjudication. This occurs where employers and work-people are well organised on their respective sides. From what has been already stated it is clear that while in some cases, industries had been the basis of industrial relations set-up, in other cases separate industrial establishments or even separate units in a single establishment had been the basis of collective bargaining, conciliation, arbitration or adjudication. It is not wise to disturb this traditional set up and to insist that one industry should have one union and that union alone should be the bargaining agent. Realising this, the Wagner Act and the Taft Hartly Act in the U.S.A. authorised the National Labour Relations Board not only to determine which should be the representative union to bargain but also to resolve disputes regarding the bargaining unit. This will be necessary in Indian legislation as well if we are to develop orderly collective bargaining. Thus, the agency to be created to determine by ballot the most representative union for bargaining purposes should also be empowered to determine the bargaining unit.

17. Then we face the question as to what should be the agency to determine by ballot the bargaining agent as well as the bargaining unit. This agency should command the confidence of all concerned. It should be a high-powered quasi-judicial body constituted by the State like the National Labour Relations Board. The Chairman should be a person possessing the qualifications necessary for appointment as a High Court Judge and the members should be those having at least the status of District Court Judges.

18. Before summarising our main recommendation for solving the problems of multiplicity of unions and for strengthening proper trade unionism in the country, we wish to examine a view put forward by one industrialist in Madras regarding this problem. According to him there is no doubt there should be only one union in an industry or industrial unit. Instead of allowing more than one union to contest for a representative position, he would like to have all the workers in a unit to constitute a union and to conduct periodical elections. The employer should be asked to recognise such a union. There should not be any other union allowed to be

formed to work in rivalry with the one union so formed. We are afraid that if this view is accepted the right of forming associations of their free choice for the work-people will be violated. In totalitarian countries only one union is allowed to function in an industry or industrial unit and no right of association is freely allowed to be exercised by the men. Moreover, if this pattern of union formation is statutorily enforced, it is feared that in many instances they will turn out to be company unions.

19. One possible objection that will be advanced to the legislation we have suggested above, is that even workers belonging to unions other than certified representative unions will be bound by the terms and conditions for employment negotiated by the majority union. This objection cannot stand scrutiny in the very nature of collective bargaining that is prevalent in industries. Even at present the terms of settlement arrived at in the course of conciliation proceedings with unions or the decisions of awards in compulsory adjudication are binding on all workers concerned irrespective of the fact that they are members of the union or unions participating in conciliation or adjudication. These terms and conditions are not only binding on the workers at present employed but even on those to be recruited in future. This is inherent in the very nature of collective bargaining. So we are of the view that the members of minority unions or the workers who are not members of any union cannot legitimately object to the position that terms and conditions of employment mutually agreed to by the representative union with the employer will be applicable to them.

20. We recommend the following measures with a view to solve the problems arising out of rival unionism and also to stabilise trade unions in the country specially having regard to their impact on law and order situation. It is also our view that these recommendations will strengthen collective bargaining resulting in mutual confidence between the trade unions and managements :—

(1) The Indian Trade Union Act should be amended so as to confer additional powers on the Trade Union Registrars to supervise the expenditure of funds as well as to ensure democratic periodical election of the executive without at the same time encroaching on the independence of union functioning and organisation.

(2) Only one representative union should be recognised as the sole bargaining agent in a bargaining unit.

(3) Where there is only one union claiming representation in a bargaining unit, that union should be compulsorily recognised.

(4) Where there are more than one union claiming recognition the one with the following of the majority of workers should be certified as the bargaining agent.

(5) In case of rival claims advanced by unions for certification as sole bargaining agent, the issue should be settled by secret ballot.

(6) All permanent workers with a service of one year or more should have the right to vote.

Note.—These recommendations No. 5 and 6 should be tried as an experimental measure for a period of five years.

(7) Any union obtaining the majority of votes in a secret ballot should have secured at least 25 per cent of the votes of the total number of workers concerned in order to qualify for being certified as the sole collective bargaining agent.

(8) Any union to be qualified for being certified as the bargaining agent should have at least one year's standing.

(9) A State Labour Relations Board should be created as a high power authority to settle the claims of unions regarding their eligibility for being certified as sole bargaining agents. That body should be authorised to conduct elections to determine the respective following of the unions wherever necessary.

(10) The State Labour Relations Board should also hear and decide disputes regarding the bargaining unit, as to whether it should be a craft, a section in a factory, an industrial unit or an industry.

(11) Refusal to bargain with a certified representative union should be an unfair labour practice.

(12) Other unfair labour practices and employer practices listed in the Trade Unions Amendment Act, 1947, should be included in the new law.

21. Next we come to the question whether the allegation often raised in the State of Kerala and elsewhere that police are interfering in industrial disputes is true or not. This complaint is most often raised by workmen and trade unions. In

the Industrial Disputes Act, 1947 the term "Industrial Dispute" is defined as follows:—

"'Industrial Disputes' means any dispute or difference between employers and employees, or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person."

Though there are slight variations of the term as defined in the State Acts like the Bombay Industrial Relations Act it is not very material for the purposes of our discussion here. The above definition in substance clearly lays down the concept of industrial dispute as is universally understood. Though the definition is wide it is a dispute mainly between employers and employees or their organisation regarding the terms and conditions of employment or regarding employment or non-employment of personnel. Do the police in Kerala or elsewhere, at present, interfere in the settlement of these disputes above-mentioned? The volume of evidence before us with regard to the industrial relations in the State does not support the allegation made by the workers and the unions. We questioned witnesses who appeared before us both on behalf of the employers and the trade unions specifically on this point and we have not come across any instance where police have interfered in settling the terms and conditions of employment which were in dispute. The Deputy Labour Commissioner who appeared before us and gave evidence stated that the Government had given instructions that the police had no business in settling industrial disputes and further that it was only for the conciliation staff of the Labour Department to mediate in employer-employee disputes.

22. Even though police did not interfere in industrial disputes, they had to interfere when the law of the land was violated consequent on action taken by work-people during strikes, picketing and demonstrations arising out of industrial disputes. We however wish to point out that in the pre-Independence days and to some extent even after attainment of freedom, police force was quite often used in such a way as to stifle the right of the workers to organise and agitate for their rights. Security proceedings under Section 107 of the Criminal Procedure Code were sometimes resorted to against labour leaders. In pre-Independence days the Government generally supported the employer. Since the labour movement was identified with the freedom struggle in those days, the then rulers always did not look upon the Trade Union Movement

with favour. Even after Independence the administration in many States had a hang over from the past tradition, though the executive on many occasions had tried to protect the interests of labour as against management. In order to meet labour agitation, promulgation of Section 144 orders under the Criminal Procedure Code had been resorted to on many occasions. Security proceedings were also launched against trade union leaders.

Removal of goods during strike and picketing

23. In the prevailing conditions in the State of Kerala we had to focus our attention on certain specific questions like the removal of goods from the factories during strike and the protection to be given to willing workers to go to work during strikes. In the Chandanathope Cashewnut Factory, police had to open fire on the striking workers who physically prevented the removal of processed cashewnuts from the factory premises, by the employer. Such incidents are not rare in the State. Under the existing law the employer has to be given protection to remove goods and materials from his concern irrespective of the fact whether there is strike or picketing. The unions often obstruct such removal. They say that if such unfettered right of removal is allowed their strike will be broken and it will be difficult for them to achieve their demands. The employers insist on their rights to remove their goods from their factories. The police when requested to protect these rights find themselves in a difficult situation. If they try to enforce the provisions of law and give protection to employers to remove the goods, it is alleged that they are interfering with the right of the workmen to strike and picket. The situation becomes worse when women picketers obstruct removal of goods from factory premises by lying down in front of lorries carrying those goods and prevent transport. In fact the Chandanathope firing was preceded by this type of picketing by women workers.

24. The trade union witnesses, with certain important exceptions, insist that removal of goods by managements during strikes should be completely banned. Some of them would rather have this ban imposed only in case the majority of the men are on strike. Some of them would insist that this should be allowed only in the case of legal strikes. The employers and their organisations on the other hand firmly stand for continuing their present right to remove their goods irrespective of strikes or picketing. The complaint of some witnesses was that this

right was not protected at present by the guardians of law and order. They protest against the discrimination shown between employers and employees, sometimes at the instance of the Government, by the police in affording protection to them, in the exercise of their present right. Between these two extreme views it is gratifying to note that some of the responsible trade unionists and some of the employers' representatives hold constructive and helpful views in this matter. A prominent spokesman of the All India Trade Union Congress in his evidence has stated that unless the workers would be deprived of their dues from the employer concerned by such removal of goods, there should not be restriction in the exercise of this right by employers. A spokesman of the Hind Mazdoor Sabha went further and stated that the restriction of the right of the employers to remove their goods during strikes, etc., in order to force agreement would be giving an artificial prop to inefficient trade unionism.

25. Some of the employers with good record of industrial relations have stated in their evidence that the employers should not in ordinary cases endeavour to remove goods from factory premises while the majority of men are on strike. In their opinion it would not be prudent on the part of employers to remove goods in such instances since their action would aggravate tension. An instance has also been brought to our notice where employers had tried to remove even machinery while the men were on strike. The Committee has to consider whether there should be any change made in the existing law conferring absolute right on the employers to remove goods from the factory premises during strike and picketing.

26. After giving serious thought to the subject and carefully weighing the evidence and considering the statements submitted before us, we are of the opinion that any change in the existing law would lead not only to give prop to inefficient trade unionism but will also lead to national loss in a number of concerns, specially in food processing concerns like cashew-nut factories, etc. If the goods are not continuously processed and packed for export they would perish causing incalculable loss to the employers and the country. The half processed cashewnuts would decay if they are not allowed to be removed for further processing in other works. Similarly, the goods produced in one factory, not only in cashewnut but in many other industries, would be the raw material further to be processed or fabricated in other various units in the State or

outside. If there is a strike in a factory where this raw material is manufactured and if the raw material is not allowed to be transported for further processing there would be widespread unemployment in the factories where those goods are to be further processed. There are also other instances where such manufactured goods as fertilisers, etc., would be urgently required for production of more food in the country, and if the removal of those processed goods is obstructed by striking men it will result in national loss. As stated by the representative of the Hind Mazdoor Sabha, if police do not give protection to the employers to remove the goods from their factory premises during strikes or picketing it will give a premium on minority unions or even a few individual workers to obstruct and cause complete stoppage of working of any industrial concern. The strike should succeed or fail on the strength of the organisation of workers without encroaching on the rights of the employers and the consumers. It should similarly succeed or fail on the strength of public opinion depending on the support that the men are able to muster. As stated above some trade unionists demand the right of obstruction only in case of strikes by majority of workers in a concern. Even if the majority of workers have resorted to stoppage of work it does not necessarily mean that their demands are just. Such demands may ultimately be rejected by arbitrators or adjudicators. To give any artificial support to such strikes by denying the right to the employers to remove goods from their factory premises simply because the strike is supported by the majority of workers, would render injustice to the society at large. Then there are others who would urge that this right of obstruction and denial of protection to the employers to remove goods should be extended only in case of legal strikes. Everyone who knows anything about industrial relations law in the country is fully aware of the fact that the technically legal strike need not necessarily be a justifiable strike and that a technically illegal strike need not necessarily be an unjustifiable one. Therefore the distinction sought to be made in this regard between legal and illegal strikes is somewhat artificial and unjustifiable. The strike is nothing but a trial of strength between the employers and employees organisations. As such it would be discriminating one against the other if the ordinary right under law as understood in civilised countries is denied to one party in order to give artificial support to the other.

27. In certain instances it might be true that the employer's may try to remove even equipment and other materials

malafide in order to defeat the demands of the strikers. It might also be true in cases of very small factories, as stated by the spokesman of the A.I.T.U.C. that if the goods are allowed to be removed the workers might lose even their dues which the employer owes to them. Such instances are extremely rare and they should be dealt with by the Government by proper executive action.

In our opinion the existing law conferring the right on employers to remove the goods should continue.

Giving protection to continue work during strikes

28. One of the causes for conflict and subsequent defiance of law and order in the State centres round the question of giving protection to new recruits or to the existing workers who are willing to report for work during strikes and picketing. Most of the trade union representatives who gave evidence have urged the amendment of the existing law which compels the police to give such protection in order to help the employer to continue the working of the factory even while men are on strike. The situation arising out of recruitment of new labour from outside in order to continue work in a factory on strike, is to be treated separately from that of affording protection to that section of the existing labour which wants to continue to work. The trade unionists bitterly protest against the importation of new labour in a factory on strike. Some of the progressive employers who gave evidence before us have stated that it would not be prudent to attempt to work factories on strike by recruitment of new labour. In a country where unemployment is rampant it is easy to get such recruits. In the majority of cases we should have no hesitation to say that the employers should not resort to this method to continue production thereby creating tense situation. The real question which we have however to deal with is whether the law conferring absolute right on the employer to recruit new labour in such situation should be continued. We have also to consider whether the police have to afford protection to the new recruits who may be obstructed by the strikers and the volunteers who picket the factories during strike. If we completely deny this right to the employers by amending the existing law and by denying them the right to recruit new labour, certain situations of a far reaching character may arise. If the men on essential services and the watch and ward go on strike, the employers should have the right to recruit new men to run those essential

services and protect their lives and property. Instead of recommending the amendment of amending the existing law we strongly urge that a Code of Conduct should be evolved under the auspices of the Government between the employers' organisations and the employees' organisations to the effect that the employers should not recruit new labour in order to continue the normal process of work when the workers are on strike and a clear majority supports the same. The unions should give an undertaking in that Code of Conduct that the essential service men as well as the watch and ward would never be called upon to stop work in the event of strikes and other disputes. Wherever the trade unions commit breach of this undertaking the employers should have the right to recruit sufficient new men to run such essential services and to protect the factory.

29. We come to the next question whether the existing workers who are already on the rolls and who are willing to work during strike should be afforded protection. We do understand the approach of the trade unions to this problem. It is true that when a good majority of the workers are on strike if a few men defying the mandate of the union endeavour to break the strike, it will cause heart-burning to those who have abstained from work for achieving the common economic demands. Nevertheless it should be remembered that as the striking workers have the right to abstain from work, the willing workers have the right to work. While there is nothing wrong in persuading them peacefully not to enter the factory for work, it will be infringing the personal rights of the willing workers if they are obstructed by violence. It is not uncommon in the State for the striking workers to lie down prostrate at the factory gate in order to prevent the willing workers from entering the factory. Instances have also occurred when willing workers have been violently assaulted while endeavouring to proceed to their place of work. Proper picketing as it is understood in industrially advanced countries, does not give sanction to such violent actions. Picketing in countries where industrial relations are in a mature stage is done by union volunteers at a distance from the factory gate. They only peacefully persuade the men from entering the place of work and if the men still cross the picket line they do not resort to acts of violence. If the strategy of obstructing forcibly the willing workers is to continue, it will be putting premium on inefficient trade unionism as has been expressed

by some prominent trade unionists in their evidence before us. As in the case of removal of goods during strike, in this case also the strike should succeed or fail on the organisational strength of the men and also on their loyalty to the union.

30. Even if the majority of workers as determined by a ballot have resolved to abstain from work it would not be prudent for the State to deny protection to the willing men to enter the factory for work for reasons already stated. However certain prominent employers have stated before us that as a matter of prudence when a substantial majority of workers have gone on strike they would not attempt to continue working of the factory with a minority of the workers who may be prepared to work. They have expressed the view that an attempt to work a factory under such conditions only leads to greater bitterness and hampers future cordial relations.

Hence though we do not recommend any change in the existing law, we are of the view that a Code of Conduct should be evolved between employers organisations and employees organisations both regarding employment of new labour as well as continuance of production by minority of workers during a strike period.

Special agency to guide the police

31. One of the specific subjects regarding which the Committee had the views of witnesses related to the creation of a Special Agency to regulate and guide the police on the course of action to be taken by them in law and order situations arising out of strikes, picketing and demonstrations. We have already observed that we do not think there is any need to amend the existing law and that the development of a proper Code of Conduct would be the best method to avoid breaches of law and order. In this view we also consider that there is no need for creating a Special Agency which alone will have power to decide what should be the action to be taken by the police when an industrial conflict breaks out. In contrast it is the duty of the police alone to decide as to when the law is being violated and there is need for them to intervene for its enforcement.

32. The officials of the Labour Department of this State have stated that it would not be proper to saddle the Labour Department with the responsibility for anything to do with the maintenance of law and order and that charging them with such responsibility would in fact only reduce their capacity as conciliators in industrial disputes.

33. In practice also it is well known that whenever a strike or lock-out occurs, the police always are in touch with the officials of the Labour Department as well as the Collector and administrative officials and act in respect of maintenance of law and order only after getting a full idea of the situation. We are of the opinion that this practice is a salutary one and should continue.

34. We, therefore, consider that there is no need for setting up any Special Agency of the character mentioned above and the existing division of functions between the various Departments of Government should continue.

35. A summary of our conclusions on this subject is furnished below :—

(1) In order to enable the police to tackle effectively law and order problems arising out of rival unionism in industry, steps should be taken to recognise a single bargaining agency in a bargaining unit on the lines mentioned in paragraph 20 of this Chapter.

(2) There is no need to modify or restrict the powers of owners of factory to remove goods during strike. Rare instances where such removal is malafide in order to break a strike or to deprive the workers of their dues should be dealt with by Government by proper executive action.

(3) There is no need to change the existing law under which willing workers either outsiders or persons already on the rolls of the factory, have a right to work when a strike is in progress. A Code of Conduct should however be evolved by which such employment during a strike is restricted to necessary minimum such as maintenance of essential services, protection of lives and property, etc.

(4) There is no need for setting up any special agency to direct or advise the police about their course of action during an industrial dispute when violations of law and order take place.

CHAPTER IV

Duties of the Police in the context of exercise of Civil Liberties

Item (iii) in the terms of reference appointing the Committee runs as follows ;—

“ the duties of the police in the conduct of—

(a) the free exercise of civil liberties and political rights of freedom of speech, of platform and association in a democracy consistent with the paramount security of the State ;

(b) communal and linguistic tensions that crop up from time to time ;

(c) demonstrations and agitations with or without the support of political parties ;

(d) in property disputes. "

2. Traditionally in India ever since the first civil disobedience movement we have seen the spectacle of thousands of persons participating in meetings and processions organised in support of certain political and economic objectives. Inevitably therefore during the period of British rule a number of restrictive laws were promulgated by which the might of the police and even at times that of the armed forces could be relied on to suppress the growing movement of the nation.

3. With the attainment of Independence and the consequent rise in the political understanding and awareness of the millions such gatherings and processions became far greater. There have been continuous participation of thousands in the political, trade union or peasant movement in this country. Even ordinary political meetings in small towns attract the participation of thousands of persons particularly in Kerala where the political awareness of the masses seems to be high. The task of the police has been necessarily difficult and arduous in many respects.

4. We have also the great increase in the participation of hundreds of thousands of workers and peasants in the trade union and peasant movements. After the attainment of independence and with the acknowledgment on all sides that the task of Independent India is to provide decent living conditions for the people of our country, the trade union and peasant movements have attained far wider scope and intensity than during the British days. This has expressed itself in vast processions, meetings and on quite a number of occasions which sometimes lead to violence and breaches of law and order.

5. In this background, the task of controlling and regulating the exercise of the right of freedom of assembly now guaranteed under our Republican Constitution has obviously

become far more difficult and complex than in the days of British rule. While the widest opportunity is given for the exercise of this fundamental rights by the citizens, there should also be a recognition by the citizens that the exercise of these fundamental rights should be carried on in such a manner as not to lead to a breakdown of law and order and social peace. Fundamental rights should be exercised to the full, but at the same time they should not be abused.

6. A number of witnesses who have deposed before the Committee have stated that from political platforms and during the conduct of processions the language used by speakers or slogans that were shouted by the procession were of such a vulgar and provocative character as to arouse immediately the anger of the opposing political party. So also ugly, crude and provocative posters are quite often used by different political parties.

7. It is our opinion that if we are to make really effective use of the fundamental rights guaranteed to us by the Constitution and to see that those rights are not abused, it is necessary that there should be certain definite conventions to be adopted by all political parties and public organisations in our country.

8. Firstly, violent and defamatory slogans couched in abusive and vulgar language should be avoided entirely. Secondly, in general, while allowing complete and absolute freedom of criticism, responsible political leaders must see that the criticism, is made in such a way as not to arouse feelings of violence and thus avoid a situation in which one section of people will clash with another. Thirdly there must be an emphasis on the maintenance of peace and the adoption of constitutional methods for the attainment of the objective for which the procession or the public meeting has been called.

9. It is our opinion that the Government in power should take certain definite steps to discuss with the representatives of the leading political parties how best these conventions could be laid down and also how they can be enforced.

10. We are encouraged in this recommendation by the results of the formation of the Code of Discipline enunciated by the Nainital Conference which has been referred to earlier in our report. If such a Code of Discipline and Conduct could be arrived at and serious attempts could be made to enforce that Code in labour-management relations, then we

do not see why in the sphere of civil liberties a similar convention regarding conduct of political parties and agitations should not be arrived at by means of discussions and agreements.

11. Freedom to organise public meetings and conduct processions is available in democratic countries. But if such freedom is not abused so as to present a continuous threat to the maintenance of law and order, it is because of the consciousness among the people and even more among the leaders of the people that such freedom should not be so abused. In our country we have to develop that consciousness among the people and this can best be done by attempting to establish a convention regarding a Code of Conduct by political parties and public organisations, governing the manner in which they should exercise their fundamental rights guaranteed to every citizen of India under our Constitution.

12: From the point of view of the maintenance of law and order the greatest difficulty arises in the case of—

(a) big public meetings and processions on specific and particular occasions, and

(b) mass agitations supported either by political parties or by trade unions and Kisan organisations for their economic demands.

The problem of maintenance of law and order in such situations has become far more difficult in present times, particularly because of the isolation of the police from the public. In the days of the British, no real difficulty arose since the general attitude was to impose restrictions whenever any 'trouble' was apprehended and long afterwards to think about whether really such restrictions were necessary or not. Today, however, this approach cannot obviously stand. We feel that the police must today not allow themselves easily to be stampeded into misusing powers which would have the effect of curtailing unnecessarily and without proper recourse the fundamental rights of the citizens. It should be their attempt always to control a situation without resorting to any restrictive measures. For this purpose it is vitally necessary that the police should not adopt an attitude of aloofness and isolation from the people but should have an intimate knowledge of what is going on in the political and social life of the people from the point of view of the possibility of developments that might affect the maintenance of law and order.

13. For instance, when the possibility of a clash between two rival political parties is apparent, it should be the duty of the Police Officer to make every effort to contact the leaders of the rival political parties and attempt to persuade them to adopt such a course as would not lead to a clash between the different groups. So also when communal passions are aroused and when there is a possibility of a clash between different communities, the Police Officer must command such a position in the local area of which he is in charge, as to be able effectively to intervene and establish peace between the two communities. This, of course, does not mean that the Police Officer himself by his own influence and the individual intervention is able to bring about such a happy condition of affairs. On the contrary, it will be his duty to contact public leaders and men of influence whose word will carry weight among the masses and whose assistance will prevent further deterioration of the situation.

14. So also in property disputes the same approach is necessary. Whether it is in cases of Management-Labour conflict or of Landlord-Cultivator conflict, it is for the Police Officer to be armed long before the trouble reaches the climax, with the knowledge that the trouble is brewing. It is for him to have recourse to the authorities of the Labour Department and the Revenue authorities, so that even before an industrial or agrarian dispute takes an ugly turn, the authorities who have power under Law to intervene and effect settlements, do so intervene. The Police Officer should be moved to act in matters like this long before an actual threat to law and order develops, for he should have the foresight to anticipate possible developments and act in such a way by moving into action the appropriate authorities, so that ultimately very often it will become unnecessary for any police intervention in the name of law and order.

15. To sum up, the approach of the police should not be one of resorting to restrictive provisions as soon as any danger to law and order becomes apparent. The police should first attempt to meet and discuss with the leaders of the different warring sections and attempt to bring about such a course of conduct as would avoid any break down of law and order and resort to violence and only when this fails should the police fall back on the restrictive powers which they possess today.

16. It is this change in attitude which is most important. The police must not put unnecessary restrictions on the exercise of fundamental rights. In fact it must be their duty to try their very best to avoid imposing such restrictions. This cannot be achieved by a mere sudden intervention, at the time when law and order is menaced by an agitation or by the possibility of a clash between rival political groups or trade union organisations or employer or employees, etc. This can only be done if even when everything is peaceful and things are going on smoothly, the local police are able to establish relations with all sections of the people as would enable them to get a hearing when they give their advice at a time when bitter feelings develop and clashes become possible or likely.

17. To put it in another way, it will be the duty of the police to anticipate a possible break-down in law and order arising out of political or communal tensions or demonstrations and agitations in property matters (industrial or agrarian) and to intervene early enough in an attempt to avoid such developments and to maintain peace and not immediately to resort to restrictive measures.

18. For this purpose it is also necessary that there should not be too frequent transfers of Police Officers, since it will take time to win the confidence of the public in the locality in which they are working. Except for disciplinary reasons transfers should only be after a particular individual has worked in a particular place for a period, say of three years or five years. The Police Officer should be encouraged to remain in the same place and develop a position of confidence and influence in the community unless the Government feels that he is misusing his position and identifying himself with one section or another.

19. We are told that though there is a general principle that transfers should not be effected too frequently, there is no set rule framed from the point of view that we have suggested above. It is our recommendation that as far as possible no Police Officer should be transferred from one post to another except after a period of three years; further if a Superintendent of Police is due for transfer, arrangement should be made in such a way as to see that he is transferred at a time when the Deputy Superintendents of Police serving under him in that district are men with at least one year's experience of the District at the time of transfer of the Superintendent of

Police. This would enable the Deputy Superintendent of Police effectively to help the newly posted Superintendent of Police to settle down and get a grip on affairs in his district.

20. The same principle should apply to Deputy Superintendent of Police and Circle Inspectors working under the Deputy Superintendent and to Circle Inspectors of Police and Station House Officers working under that Circle Inspector.

21. One more aspect of the difficult problem that faces the police in their role as guardians of law and order has been brought to our notice sharply in the course of evidence recorded by us. This aspect is the duty of the police when Courts have passed *ex-parte* orders and injunctions in property disputes. The police are often called upon to help to execute such orders and are faced by hostile demonstrations and picketing which may sometimes be morally justified, in that *ex-parte* order has been obtained either by the making of incorrect statements or more often by tactics which may be summed up *supressio veri suggestio falsi*.

22. Of course we must emphasise that if the prestige of the Courts has to be upheld, and it must be upheld, it is the duty of the police to enforce any orders of the Court. But there are really two ways of improving the existing state of affairs so far as the harm caused by such *ex-parte* orders is concerned; one is for the Court to be very chary of passing *ex-parte* orders and to pass orders only as far as possible after hearing both sides. Secondly, it is for the legislature to consider in what manner in property disputes involving land and particularly landlord-tenant relations, the power of the Court to pass *ex-parte* orders should be limited or circumscribed. But so far as the law remains what it is to-day, there can be no two views on the question that the police must support those authorities who seek to execute legal orders validly passed by Courts.

23. To sum up, so far as our recommendations under this item of reference are concerned, they are as follows:—

(1) Government should seriously attempt to bring the Political Parties together to evolve a Code of Conduct regarding the manner in which the fundamental rights of freedom of assembly and association should be exercised, particularly regarding the manner of organisation of meetings and processions, the use of slogans, posters, etc.

(2) The Police Officer must regard it as his first task to win the confidence of the public in the area where he is serving. He must be looked upon by all sections of the people, as a man of integrity and impartiality possessing the confidence of all.

(3) The duty of the Police Officer must be to intervene in cases of trouble long before the trouble actually erupts into violence or even danger to law and order. He must be in a position to do this by virtue of his standing among the people which would enable him to anticipate and locate trouble at its most incipient stage.

() In order to enable the Police Officer to attain such a position in the area where he is posted, transfers must not be frequent and must be arranged in such a way as to subserve this aim.

(5) Regarding the matter of enforcing *ex-parte* orders of Courts, the police must rigorously enforce such orders, but Courts should be careful about passing *ex-parte* orders and legislation should take into account any landlord-peasant relations where there is necessity for circumscribing the power of the Court to pass *ex-parte* orders.

CHAPTER V

Control of large assemblies by Police

1. Measures for controlling meetings, demonstrations and mobs [item (viii) of terms of reference].
2. Operational technique of the police and the use of the following weapons, lathi, tear-gas and coloured water [item (vi) of terms of reference].
3. Whether, in view of the public criticism in recent times against firing, by the police the use of fire-arms by the police should be totally excluded and, if not, the nature of the circumstances and the conditions under which it should be allowed [item (iv) of terms of reference].

The above three subjects in the terms of reference to the Committee are interconnected and can be conveniently taken together. In order to avoid overlapping and repetition, they have been considered together and dealt with in a single Chapter of the Report.

2. The principal problems that face the police of to-day under these three items relate to the utilisation of the Police Forces, firstly at large meetings, and secondly, to regulate large demonstrations or processions where thousands or tens of thousands of men and women gather together in a single place and march together dislocating traffic and interfering with the normal movement of the public. Ordinarily nothing untoward takes place on such occasions, and huge mass processions have been held where fiery political slogans are given out and everything passes off perfectly peacefully. Equally on occasions when only a small number participates in a procession or meeting, owing to some stray incident, there have occurred breaches of law and order and resort to force by police had become necessary. It is therefore not the mere largeness of a crowd that leads to the resort of force by the police but the objective conditions which exist at the time, namely, the object for which the meeting is called, the proclaimed aim of the organisers of the meeting and so on. Hence what is far more important than making adequate provision for police intervention is the need to assess and appreciate correctly the objective of the organisers of the meeting or procession and the participants therein. If the police are quite confident that the organisers are going to act in a strictly constitutional manner, then the police should assist the organisers of the procession or meeting in order to maintain peace and prevent a breach of law and order. If however the proclaimed objective of the organisers is one thing while the unproclaimed objective is to provoke clashes and break the peace, then the attitude of the police must be much more severe and they must be ready to use force, if such force become necessary, to protect peace and the safety of life and property.

3. The dispositions to be made and the precautions to be taken differ on various occasions. They may be classified as follows:—

(i) Occasions in connection with the visit of important personages.

(ii) Entertainments such as fairs, dramatic performances, large sports meets, social gatherings and festivals.

(iii) Political and religious meetings and processions.

4. Crowds which gather on occasions falling in the first two categories are generally peaceful and law-abiding, and they can be successfully regulated by careful pre-planning of

man-power and resources. The cardinal principles to be observed in making arrangements at public meetings addressed by important personages are given below :-

(a) The audience who sit facing the rostrum should be contained in sectors which are divided by strong barricades put up for the purpose. Rectangular or preferably gaint horse-shoe pattern is preferred. Semi-circular concentric barricades should be provided and these should be manned by policemen to break up the possible pressure of the crowd. Radial gangways should also be erected for the entrance and exit of the audience and use by the Police Staff. The concentric barriers are however far more important as experience has shown that large concentrations of humanity cannot be held in check by a thin khaki line. It is necessary to reduce pressures by breaking them up by barriers manned by adequate police strengths.

(b) The route taken by the V.I.P. should be carefully surveyed beforehand and conditions and locations requiring special police attention should be noted. The entire route should be divided into convenient sectors and each sector assigned to an officer for bandobust purposes.

(c) The Traffic Branch should be responsible for arrangements at intersections on the line of the route and intersections within 100 yards on either side of the route. It will also be responsible for the policing of car parks. It would be preferable to have two entrances to each park. The angular parking of vehicles which enables any vehicle to be taken out without disturbing the others should be preferred. Closure of traffic a few minutes before the arrival of the motorcade which usually synchronises with the arrival of the motor cycle detail, diversion of traffic from the approach roads, provision of a breakdown vehicle accompanied by a radio car, the location of fire engines at suitable places, interconnection of car parks, advance units of the motorcade, etc., by two-way radios, switching of police parties by radio from one sector to another and availability of radio and patrol cars on call are procedures which should be planned in advance and executed to the last detail, if arrangements should go smoothly and without any hitch.

(d) The task of controlling the crowds on the route should receive special attention. It is in experience that spectators who throng the sidewalks or streets overflow into the crown of the road sometimes without provocation but more

often due to the overwhelming crowd thrust from behind. No attempt is made to solve this problem or efforts made are half-hearted. Democracy and popular Government do not mean that the barriers of rule and decency should be violated, and until we attain self-restraint and self-discipline arrangements should aim at preventing the all-too frequent rush of spectators to the centre of the road to greet V.I.Ps. and see them at close quarters. Security considerations also demand strict adherence to pre-planned procedures. One way adopted in some States to keep back spectators to sidewalks is to barricade dense areas with thick strong ropes stretched across. This does prove effective to some extent but it can easily be circumvented and does not serve more than a symbolic purpose. What we would suggest is the setting up of stout barriers along the edge of the pavement. The erection of tabular steel barriers which are light, portable and extremely easy to erect is favoured by the police authorities of Great Britain for this purpose. We have not come across this type of barriers in India but would strongly recommend their adoption for bandobust purposes in this country. It should not be difficult for engineers to fabricate them.

(e) Enough policemen should be assigned on the sidewalk behind the spectators to assist pedestrians who wish to pass through and to prevent pushing and shoving which may endanger or break the police lines. When any particular sidewalk sector is crowded with spectators to its maximum carrying capacity, more should not be allowed to come from behind and exert pressure which will have the effect of breaking up the line and spilling persons on to the road. If arrangements are made to prevent this last-minute jam, much of the unseemly behaviour of crowds can be avoided.

(f) Adequate publicity of arrangements should be made through the Press, radio and the public-address system and helpful instructions should be broadcast from time to time to prevent jams of traffic or men. The co-operation of the public should be enlisted through wide publicity.

(g) The positions to be taken up by policemen assigned to the periphery of the route vis-a-vis motorcade were originally ordered to be with their backs to the spectators. Later, they were all made to face the spectators on the ground that vigilance can only be exercised thereby. This has given rise to criticism from some visiting personages who did not like to see the backs of policemen. This, no doubt, presents a

drab appearance. In France, the uniformed police face the motorcade with their backs to the spectators but the Security Police stand facing the spectators though one man out of every five turns his face to the procession when it passes. In London the practice is for every alternate constable lining the route to face the crowd while his neighbour faces the procession. Standing instructions in this country for the visit of V.I.Ps. are that uniformed men lining the route should face the procession. After considering all aspects of this matter, we are of opinion that the policemen lining the procession route should be instructed to make a half-turn, always facing the crowd towards the direction of approach or retreat of the procession and to keep the crowd under close observation. This method will ensure that policemen do not show their backs to the V.I.P., but at the same time have an eye on the crowd.

(h) Policing of festivals is sometimes beset with different problems. The Kumbha Mela disaster of 1954 has highlighted the serious defects caused by defective planning and traffic arrangements; important among them were:—

(i) There was only one entry route and one exit route. More should have been provided for ingress and an equal number for egress. Arrangements did not take into consideration the volume of crowd to be regulated.

(ii) The stream of pedestrian traffic came into contact with processions at more than one place.

(iii) Traffic arrangements particularly in respect of the outgoing crowd broke down due to the vast concentration of humanity.

(iv) Control stations were not set up on the main routes of moving traffic nor were barriers put up on the roads to ease the pressure at a number of points enroute. The latter was done only after the disaster.

5. These defects which are of frequent occurrence in big festivals, while they may not have led to major disasters as in the Kumbha Mela, detract considerably from the efficiency of arrangements. Careful advance planning will help to eliminate bottlenecks and opening of new roads if necessary, restriction of traffic to prescribed routes, communication by radios and control of crowd pressures, etc., will go a long way to avoid untoward occurrences.

6. *Mounted Police.*—Adequate use is not being made of the mounted police, at present. They would be very useful for

controlling large crowds and processions and during festivals and public meetings and should be used in a greater measure than is now being done. They are now used merely for decorative purposes and are found only in the vanguard of V.I.P. processions as outriders. They are valuable for controlling traffic as well as for dealing with unlawful assemblies not armed with fire-arms. The mounted man is always in an advantageous position to size up a situation and make his way quickly to a particular spot. He can be easily seen and recognised and can give advice and direction to the crowds. It is also possible for the mounted police to make way for V.I.Ps. when encircled by crowds. In fact a single mounted policeman is more effective than a number of foot constables for crowd control.

7. The Kumbha Mela Disaster (1954) Enquiry Committee made the following observations about the use of the mounted police :—“It is perhaps a pity that as a result of mechanisation, the strength of mounted police has been reduced everywhere. It admits of no doubt however that for controlling large crowds, mounted men are far more effective than those standing on the ground. In his report on the 1906 Kumbha, Mr. Lovett emphasises more than once “the priceless value of mounted men on such occasions”. He goes on to say “—while the foot police were lost among the crowd confused by the din and pressure and therefore largely useless, the mounted police and cavalry sowars under considerate and intelligent leadership did splendid service. It appears to me that conditions on Amavasya Day in the 1st Kumbha would have been much better than they were, if more mounted police had been available and such ‘breakwaters’ had been arranged at suitable intervals.

“Mounted police is absolutely necessary for the control of crowds. On the occasion like the last Kumbha Mela, the strength of the Mounted Police Force should be about four hundred. Police sowars should be borrowed on such occasions from the neighbouring States.”

8. The report of the Singapore Riots Inquiry Commission, 1951 contains the following observations in regard to the mounted police :—

“The usefulness of well trained mounted police in handling large crowds whether peaceful or riotous, has been proved in a number of cities and large towns in many parts of the world, including the East. They have the great advantage

over foot police of being able to see over the heads of a crowd to observe any incipient trouble, to get to the scene of it quickly and to deal effectively with it. Their ability to get round or over obstacles gives them an advantage over the police in motor vans or cars, with or without armour. Moreover experience has shown that their mere presence often has a sobering effect on a crowd. The situation in front of the Supreme Court at Singapore on the morning of 11th December 1950 was one for which mounted police would have been ideally suited and we have little doubt that a dozen policemen on well-trained horses could have dealt effectively with the whole situation in a few minutes, for the simple reason that they could have seen the stone-throwers and could have quickly rounded them up. Moreover, they could have kept in touch with the riotous elements which moved towards the area of the Sultan Mosque and they would have been most effective in dealing with the 'tip and run' tactics."

9. Mounted police has been retained in the highly mechanised countries of the West. Extracts from an article "The Jersey City Police Department Mounted Squad" which appeared in the F.B.I. Law Enforcement Bulletin for May 1955 are reproduced below:—

"Use of Mounted Patrols.—They are useful in controlling large gathering of people and are unsurpassed in policing large crowds or mobs, particularly in tense situations. At such events, it has been estimated that one mounted patrolman is equal to approximately 20 foot patrolmen. In so far as patrolling strike area is concerned, three mounted patrolmen can replace 30 foot patrolmen and perform a more efficient job. The mounted patrolmen can quickly bear down on individuals who may resort to acts of violence or quell a disturbance before it has chance to develop into a riot."

10. *"Handling Traffic.*—On some occasions of large gatherings such as boxing bouts, football games, auto races, etc., at the Roosevelt Stadium in Jersey City, as many as 8,000 automobiles are quickly parked without difficulty with the aid of mounted patrolmen..... Here again, one can realise the great advantage the mounted patrolman has over a foot patrolman..... He is in a position to observe better and quickly make any necessary moves. Although horses are fast fading from the City's streets, the mounted patrolman remains an important part of the modern Police Department."

11. Mounted police have been found invaluable both for regulating large crowds at parades, celebrations, athletic events and other peaceful gatherings as well as for dealing with strikes, riots and mob misdemeanour. We are of opinion that there should be no hesitation in using them on these occasions. There is a very small detachment of mounted police in Kerala. This force must be expanded and properly organised. The mounted policemen should be trained in the rudiments of mob psychology and control. The horses should also be properly trained. If roads in towns are slippery or macadamized, the shoes of horses before leaving the stables should be "cogged", i.e., small projecting studs should be screwed into the nail holes of the horses' shoe plates, thus enabling the animals to grip the road at a charge. Broken bottles or nails are found strewn on the roads in riot localities to hinder mounted operations. This difficulty can be overcome by fitting the horses with felt overshoes of a reasonable thickness. However, the animals must be trained in the wearing of these overshoes, otherwise if they are fitted at the time of a disturbance, panic will result among the mounted Police Force.

12. The post-independence era in our country has been marked by considerable step-up of agitations and demonstrations for the achievement of demands which people consider to be legitimate. These have become almost a daily feature in Kerala State and never a day passes without a demonstration or procession accompanied by the rhythmic shouting of slogans which are frequently vituperative or provocative.

Earlier in dealing with item 3 of the terms of reference, we have recommended that attempts should be made to evolve a Code of Conduct for political parties which will at least reduce if not eliminate the resort to abuses and provocations at the time of organising meetings and demonstrations. We reiterate here also that this is an important task which all persons, who wish to improve the character of the political life of State will approve.

These processions and demonstrations are taken out under the auspices of political parties and public organisations like trade unions or peasant associations. The processionists usually wend their way through important roads, streets or thoroughfares, shouting slogans, to meetings, where speeches are delivered denouncing rival parties or opponents. Not

infrequently such processions, when they are on a large scale, completely obstruct every traffic and prevent the effective use of the road by others. Traffic hold-ups for more than an hour have been reported during these occasions and since all parties resort to this, it presents a very serious problem. Furthermore occasionally, even without provocation, the demonstrators and processionists take the law into their own hands and resort to violence against shopowners who do not close shops or even innocent passers-by do not join them in their cause.

13. Demonstrations are organised, processions are taken out and crowds collect mainly to agitate for a cause or ventilate a grievance. Congregation of persons may be for lawful purposes, for sight-seeing or for the purpose of disobeying restrictive orders. We shall first deal with processions and demonstrations which are lawful and crowds which are in a holiday mood or are merely inquisitive. Such congregations are capable of being easily controlled but precautionary measures are necessary even for them as they might easily transform themselves into an unlawful assembly due to emotional disturbances caused by pressures—suggestions, rumours, taunts and provocations—even the slightest—from outside. Leadership, unless outstanding, is not able to control the members and keep them within lawful bounds. Crowds, en-masse, are not prone to acts of violence, the majority shrink from danger and it is only a small core of determined agitators which attempts to keep the pot of mischief boiling. But under the stimulus of intense excitement and emotion whipped up by leaders, even the meek and the timid lose their powers of reasoning and respect for law, and a rampage of senseless attacks and wanton destruction follows. The following are the broad principles which should govern treatment of crowds and mobs :—

(i) Police action in regard to a procession or crowd should depend on the extent of disorder that is likely to be caused. If the procession or crowd is peaceful, precautions should be taken to see that they are not subjected to provocations which may result in a flare-up. Areas of potential trouble should be neutralised by strong police pickets who should unhesitatingly take strong action to nip trouble in the bud. There have been instances of peaceful processions being set on by goondas and unsocial elements en-route at the instance of rival parties. Protection should be given to such processions by

adequate police parties who should accompany them to stem expected trouble. All these lead to the need for an efficient intelligence system for, without it, operational planning will be ineffective and can at best be theoretical and unrelated to realities. Minor incidents such as an assault on a student by a transport worker or irresponsible pulling of railway alarm chain, often set up a train of events explosive in character and timely precautionary measures and effective action can be taken only if a reliable intelligence system is in operation. This is perhaps stating the obvious but often police authorities have been caught napping and unprepared to deal with events due to ignorance of happenings minor in themselves but potentially dangerous and explosive in its after-effects. Information pinpointed on the sources and foci of trouble will help to plan police arrangements to meet it. The value of efficient intelligence organisation cannot be overemphasised and makes all the differences between scotching trouble in an incipient stage and protracted large-scale operations later over a wide area.

(ii) At the earliest stage responsible Police Officers should make an on-the-spot study and assessment of the situation and bring in reinforcements if necessary. Heavy police dispositions, it should be remembered, normally acts as a healthy check on lawlessness and it is safer to keep a strong power at the trouble spot rather than not to move at all. However it has also to be remembered that in cases of strikes and lock-outs in the industrial sector or in agrarian troubles, it does happen that in many cases the crowd of participants is peaceful both in action and objective and has no aim of acting violently at all. In such situations the appearance of armed police, particularly police armed with rifles, does tend to act as a provocation and lead to the opposite reaction to that which is expected and desired. The crowd instead of continuing peacefully gets provoked into using violence. Understanding this we would recommend that Police Officers should have the discretion first to send only unarmed forces to be present on the spot and restrain the crowd by persuasive means; at the same time they should be vigilant and keep armed police in the background ready to be brought in if necessary. In fact it may be said that unless the Police Officer concerned thinks it is impossible to control the situation except by the show of arms, policemen armed with rifles or armed police should not be sent to the spot of the trouble but should be kept in reserve to be sent only when the Police Officer is convinced that there is no other way out except to bring them in. Instead of

policemen armed with rifles, those merely with lathi or cane should be there in sufficient numbers to make the crowd understand that there is a strong detachment who mean business but who certainly will not interfere if the crowd continues to be peaceful.

(iii) The possibility of clashes and break-down of law and order due to processionists carrying weapons has troubled seriously many persons as can be seen from the answers to our questionnaire. In particular, the question has been raised by many that one of the methods by which a procession can be kept under control is by prohibiting totally the carrying of sticks or dangerous weapons such as bill hooks, knives or even sticks. As to whether the carrying of such weapons should be totally prohibited, there are two definite views which have been expressed by various witnesses who appeared before us. One is that such weapons should be totally prohibited extending even to a ban on carrying of sticks. Witnesses who have suggested this have stated that they do not see why a participant in any procession should be permitted to carry a stick or any other weapon since no purpose would be served by carrying of such sticks or other weapons, the object of the processionists obviously not being to overthrow the Government or to attack any section of the people.

The other view is that if such a ban is imposed then it will inevitably put a premium on the person who wishes to resort to violence, hiding his weapon and obviously in the case of huge processions it is impossible to search each and every person and pin down the individuals who are carrying the weapons. Further there is also the difficulty pointed out by certain witnesses that peaceful processions are sometimes attacked with violence by crowds of rowdies or even political opponents who are armed.

We have to understand that in Kerala no procession is deemed to be complete unless hundreds or thousands of flags are carried on sticks. We feel that it is possible to maintain law and order effectively if the Police Force is properly organised and public opinion is vigilant as can be seen from the example of the procession conducted by the Anti-Education Bill Demonstrations in Kerala in October 1957. On that occasion a procession of about 20,000 persons most of whom were carrying flags on sticks, marched through the streets of Trivandrum to protest against the education policy of the then Kerala Government. The Government of that day appears to

have decided to permit the procession while at the same time adopting effective police precautions to prevent any clash between the processionists and those who support the Government. The result was that though there were some moments of doubt and strain, nothing untoward happened on that day.

The Committee therefore recommends that it is not necessary to amend the existing law so as to ban totally the carrying of weapons in processions in general.

At the same time if certain clashes do take place and feelings are running very high among rival sections of the people then it should be open to the Government to ban in particular places and for particular periods of time the carrying of weapons by any individual.

The existing provisions under section 144, Cr. P.C. and under section 30 of the Indian Police Act are adequate to enable such preventive action to be taken when necessary.

The Committee however would like to emphasise that as far as possible such bans should not be resorted to and that the greater the use of such prohibitions or restrictive orders upon the exercise of basic human rights, the greater will be the risk of untoward reactions. Such restrictions should be imposed only when it is absolutely clear that unless such a ban is imposed violent clashes are bound to develop between one section and another.

(iv) The practice of lying down picketing en-masse, and resorting to satyagraha, including hunger satyagraha—are becoming common in the agitational life of political and communal groups and are usually forms of publicity stunts. Such actions result in violations of law and people are prevented from exercising their legal right of free use of thoroughfares and public places. Obstructions of this nature which curtail the legal rights of members of the public are tolerated far more frequently than they should be, and transgressors of law are very often removed and let off being none the worse for their obstructive tactics. Soft handling of such situations is interpreted as weakness rather than of consideration, but this reaction could be ignored if it were not for the fact that weak or negative treatment induces repetition of law violations. Arrests at discretion followed by removal and sometimes prosecutions should be the way of dealing with such lawless agitations.

14. Hunger satyagrahas have come to be accepted in our public life as a mode of focusing public attention to grievances.

These satyagrahis receive much publicity and satyagraha usually starts off with a lot of fanfare. A band of followers is in close attendance on the satyagrahi who is usually in a public place. Fasting brings about a deterioration in health and followers and sympathisers at or near the spot go on increasing and excitement prevails. The customary way of dealing with such situations is to make a quiet arrest of the weak satyagrahi and remove him to the hospital. A case under section 309, I.P.C. is also registered. This procedure has come in for adverse criticism at the hands of a Magistrate who has justified this type of satyagraha as an exercise of fundamental right to be respected under the Constitution. Failure to remove the satyagrahi to the hospital at a critical stage where he could be forcibly fed, if necessary, is liable to result in loss of life and consequent widespread agitation and trouble. Police should therefore, have powers to arrest and remove such persons, hospitalise them and arrange for their being fed under compulsion and force, if they are advised there is no other way of saving their lives or avoiding public disorder.

15. Crowds intent on violence are called mobs. They have lost all respect for law and have no fear of the consequences of their lawless action. Swayed by powerful emotions and deprived of all powers of reasoning, trivial occurrences spur them on to violence. The action, attitude or mere presence of their adherents or of the opposite group or the police are sufficient to rouse mob fury. The police, faced by a mob, should act with tact and circumspection, intervene at the proper time firmly and effectively and maintain public order. Some measures found useful in dealing with them are given below :

(i) Leaders of acknowledged influence in the mob should be called out for discussions and persuaded to exhort their followers to keep within law and disperse.

(ii) Police parties which intercept mobs from reaching their objectives may keep them halted for a prolonged period till excitement subsides and reason returns. Mild police action may later suffice to clear the stubborn and the determined lot. This course may be possible only in certain circumstances.

(iii) Mob dispersals can be done by various methods by the police, depending on the resistance offered by the mob

when called upon by authority to disperse. Tear smoke, cane charge and lathi action are processes employed for mob dispersal and though in this order they represent an ascending scale of severity of police action, there is no guarantee that the subsequent method will be used only after the preceding has proved ineffective. Mob actions do not follow any set pattern and the severity of circumstances may force the earliest use of the more powerful weapons in the police armoury. Even the use of firearms may be forced on the police before the milder methods could be tried out. The choice of venue and the instrument of action are determined to a large extent by the turn of mob violence. Police techniques employed against mobs vary according to conditions, and procedures usually adopted are dealt with below as also the legal powers under which police can disperse an unlawful assembly.

16. *The ethics of force.*—Law without the sanction of force would be ineffective and therefore void and abstract and for this reason justice is represented by the sword as well as the scales. Apart from the theoretical relationship between force and law based on historical experience and confirmed by legal experts, law without the backing of force could not be conceived. Force is the mainstay of law and this in turn is the defence and guarantee of social liberty.

17. Social laws were evolved out of the largest common measure of agreement of people but a moral force and majority opinion have not always prevented a small minority from violating laws. Hence force is necessary to prevent and punish the transgressors of law. The State, representing the majority has to enforce the laws and their executive instrument of action for this purpose is the police. The strength and striking power of the police would depend not only on the extent of law violations but also on how effective they should prove as deterrence can be achieved only if the police have maximum striking power and their use is backed by law.

18. The organisation of the armed police, its functions and responsibilities are ultimately related to the civic sense, the standard of consciousness and the discipline of the people. The greater the degree of law consciousness, the lesser the need for the use of physical force. Arrests and prosecutions would alone be sufficient and possible. The United Kingdom is perhaps unique in this respect. Respect for law and authority is strong and well developed and their traditions have fostered discipline and discouraged irresponsible acts of violence. It is

perhaps the only country in the world, the police of which do not carry firearms. In most of the other countries, there are three clear categories of police, namely, the judicial police for investigation and detection of crime, the uniform police for traffic and public order and the gendarmerie which is the equivalent of the armed police. In countries like France, Germany or Italy, the gendarmerie or the armed police is better equipped than the armed police in India and are comparable to army units. In the Union of Soviet Socialist Republic and other socialist countries, the police divisions are equipped on the lines of the army divisions and the armed police in Soviet Russia is supposed to number over half a million men. Experience in these countries has shown that the use of force often becomes necessary and the Police Force is trained and equipped for such contingencies. There is always provision for the calling out of troops to aid civil power in emergencies.

19. *Unlawful assemblies and their control by law.*—Unlawful assembly is defined in section 141, I.P.C. as an assembly of five or more persons if the common object of the persons composing that assembly is:

First.—To overawe, by criminal force or show of criminal force, the Central or any State Government or Parliament or the legislature of any State or any public servant in the exercise of the lawful power of such public servant.

Second.—To resist the execution of any law or of any legal process; or

Third.—To commit any mischief or criminal trespass or other offence; or

Fourth.—By means of criminal force or show of criminal force to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or the use of water or other incorporeal right of which he is in possession or in enjoyment, or to enforce any right or supposed right; or

Fifth.—By means of criminal force or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled may subsequently become an unlawful assembly.

20. Section 142 of the I.P.C. defines a member of an unlawful assembly as follows: "Whoever being aware of facts

which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly."

21. Sections 144, 145, 146, 147 and 148 of the I.P.C. prescribe the punishments for the offence of being a member of an unlawful assembly of joining an unlawful assembly with arms or deadly weapons or continuing in an unlawful assembly after it has been commanded to disperse, for using force or violence by an unlawful assembly, *i.e.*, for rioting and rioting armed with deadly weapons. Members of an unlawful assembly are jointly and severally responsible for the specific unlawful acts or offences like murder, looting, theft, assault, etc., which are committed in pursuance of the common object of the assembly.

22. The duty of the police in respect of the prevention of the commission of all offences, both cognizable, and non-cognizable, and this applies to the case of forming an unlawful assembly and to offences committed by the members of an assembly unlawful, is laid down in section 23 of the Police Act. It says that 'it shall be the duty of every Police Officer..... to prevent the commission of offences and public nuisances.....' Section 140 of the Cr.P.C. lays down that "every police officer may interpose for the purpose of preventing and shall to the best of his ability, prevent the commission of any cognizable offence". Section 152 of the Cr.P.C. authorises any police officer to interpose to prevent any injury attempted to be committed in his view to any public property.

23. Sections 151 and 153, Cr.P.C. as well as sections 46 to 58 of the same Code define the powers of the police whilst performing their legal duty of preventing the commission of an offence. Sections 97 to 106 of the Indian Penal Code define the universal right of private defence of the body and property which is enjoyed by every citizen and which every police officer also enjoys in the performance of his duty. In addition, section 99 of the I.P.C. lays down that there is no private defence of the individual against the action of a public servant if that action does not cause the apprehension of death or grievous hurt even though the act itself may not be strictly justifiable in law.

24. The above are the general provisions under which the police can always intervene to prevent the commission of

any offence and the law gives the police power to arrest and use force and use all other means possible to protect the life and property of others or to prevent the breach of public order.

25. In addition to this, the Cr.P.C. has made special provisions for dealing with unlawful assemblies. Section 127 of the Cr. P.C. lays down that "Any Magistrate or Officer in charge of a Police Station may command any unlawful assembly or any assembly of five or more persons likely to cause disturbance of the public peace, to disperse; and it *shall* therefore be the duty of the members of such assembly to disperse accordingly". Section 128 of the Cr. P.C. lays down that "if, upon being commanded, any such assembly does not disperse, or if, when being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or Officer in charge of a Police Station, may proceed to disperse such assembly by force....." Part of section 128, Cr.P.C and sections 129, 130 and 131, Cr.P.C. also provide for use of troops in aid of civil power to disperse unlawful assemblies. Section 132 indemnifies all Magistrates or Police Officers or others acting in good faith under this Chapter by providing that no prosecution can be instituted against them for any act purporting to be done under this Chapter except with the sanction of the Government.

26. The law as it exists now not only imposes the duty on the police to prevent the commission of any specific offence by any member of an assembly, whether it is duly declared as an unlawful assembly or is technically an unlawful assembly, but it also empowers a Magistrate or an Officer in charge of a Police Station to disperse that assembly by using force, if necessary, even though members of that assembly have committed no other specific offence except disobeying the order to disperse.

27. When the Magistrate or the Officer in charge of a Police Station or any Police Officer higher in rank to the latter, orders the opening of fire to disperse the crowd, he does so under the provisions of sections 127 and 128, Cr. P.C. The Police Officer subordinate in rank to the Officer in charge of the Police Station has no power to declare an assembly to be unlawful or to order it to disperse but he has the duty as well as the power to prevent members of such an assembly, either collectively or severally, from committing any specific offence

and under the provisions of the right of private defence he can also order the opening of fire to protect the lives and, in some circumstances, properties of other persons.

Dispersal of unlawful assemblies

28. Instructions on the use of force in the different States in India are based on the provisions of law discussed above. The general principles governing the same are summarised below :

(i) Dispersal of unlawful assemblies should be done strictly according to the provisions of law.

(ii) If a stipendiary Magistrate is present, the order must come from him about the use of force. Otherwise an Officer in charge of a Police Station can give the order.

(iii) The actual disposition of the police and the extent of the force necessary should be left to the discretion of the senior Police Officer even if a Magistrate is present.

(iv) All attempts must be made to persuade the crowd to disperse voluntarily before force is used.

(v) Before firing is opened, other forms of force like arrest, tear gas attacks, lathi charge, etc., should be tried if possible. Special circumstances may arise when it may not be possible to adopt the graded use of force and even the ultimate weapon will have to be used before recourse could be had to the others.

(vi) However, when it is decided to use force, the force must be effective because hesitant use of force excites the mob and makes subsequent control more difficult.

(vii) If firing is opened, the aim should be low but effective and should be directed at the most threatening part of the crowd and at its centre and not towards the flanks.

(viii) There should be no firing over the heads of the crowds because there is danger of innocent persons being killed nor should there be use of blank fire because this further excites the crowd or the use of buckshot because it is ineffective.

29. Fire is opened as a last resort when all other means have failed to restore order or to check the crowd from carrying on its illegal activities. Therefore this last weapon must be immediately effective; otherwise the crowd will become still more violent. Numerous occasions could be pointed out where the use of ineffective force at the initial stages has necessitated

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29. Fire is opened as a last resort when all other means have failed to restore order or to check the crowd from carrying on its illegal activities. Therefore this last weapon must be immediately effective; otherwise the crowd will become still more violent. Numerous occasions could be pointed out where the use of ineffective force at the initial stages has necessitated

the ultimate use of very much greater force for dispersal or bringing the crowd under control.

30. There is a general feeling growing in the country that the use of firearms should be completely eschewed from Police law enforcement techniques and that the authorities should devise other methods of controlling lawlessness and restoring public order. This criticism is easily understood. Human life is precious and is not to be taken away on the slightest panic or excited actions of a mob. Nobody is more conscious of this than police authorities and trigger-happy police officers are to-day the exception rather than the rule. The use of firearms however cannot be avoided entirely. They are necessary to subdue armed dacoits and other violent criminals who lie in wait for the police or attack them without provocation. Nor can its use be ruled out in situations when police are cornered and their lives endangered and the only way to save lives is by the opening of fire. There can be no two opinions that critical situations like these justify the opening of fire but these apart, their use in civil unrest has been condemned as avoidable. We shall now discuss the alternatives to the use of extreme force, the techniques of such methods and how situations should be tackled to avoid the opening of fire.

31. It has been suggested in some quarters that water under pressure can be used to disperse crowds and that this method, beyond causing temporary inconvenience, is harmless and therefore desirable. Fire-hoses have been used to disperse crowds in some countries but their use is limited by the availability of water and the accessibility of the place for fire service vehicles. Mere dousing with water would be a deterrent only in cold countries but in this country, in particular in Kerala State, drenching as such is not likely to turn crowds back. Water, at pressure however, can be effective deterrents to passion and excitement. A trailer pump working at a pressure of 25 lb per square inch can throw a jet of water with a force enough to stagger a man at a distance of 25 yards. More powerful pumps can be effective for longer distances. The use of pressure jets of water for dispersing mobs is practically unknown in our country. This can be explained by the non-availability of copious water supply and pumps to work the same. Fire service vehicles are not numerous and in times of disorder they may be required for the purpose for which they are intended and in any case have to stand by in readiness.

Once Fire Service vehicles begin to be used for this purpose, they are likely to be the subject of mob-fury and may have to be given special protection. It would indeed be a sorry state of affairs if Fire Service vehicles, having come to be associated in the public mind as an instrument for mob dispersal, cannot be driven about the streets of a town for fear that they would be attacked by unsocial elements. There is intrinsically nothing to be said against their use, but the difficulties mentioned above would preclude the use of Fire Service vehicles. The provision of special vehicles for this purpose would not only be costly but it may not always be possible for these vehicles to be taken to trouble spots. The paucity of water sources is a determining factor. We are therefore not in favour of this method of mob dispersal.

32. The use of tear-smoke is a well-known method of mob dispersal. This should be used at the earliest stage on the principle that only minimum force should be used. Its effect is purely temporary, there is no risk of bodily injury and it is very effective in good weather conditions. The direction of the wind, its velocity, the area occupied by the mob, its distance from the police party and the terrain should be carefully studied to determine the direction of release of the smoke, its concentration, the type of smoke shells to be used, etc. The advantages of the tear-smoke have been summarised as follows :—

(i) " It can be directed against any portion of mob. It is particularly effective when the leaders deliberately leave women in the front ranks.

(ii) It can be used without fear of criticism against peaceful law-breakers including women, under circumstances in which the use of other forms of force would be objectionable.

(iii) Tear-smoke imposes minimum strain on the police who are not unnecessarily spread over a large area.

(iv) The use of tear-smoke leads to a considerable saving of man-power.

(v) Every person in a gassed area thinks of his physical discomfort to the exclusion of all else. Hence tear-smoke rapidly breaks down the common object of a mob and lowers its morale."

33. In Kerala State, there is one Tear Smoke Squad attached to the Armed Reserve Unit in each District but the

Squads at Palghat and Ernakulam Districts are not up to strength. These units should be kept in a constant state of readiness and training. The Malabar Special Police Units do not at present have tear-smoke squads. It would be advantageous to have one squad for each Company so that they can supplement the District Squads, when called out on duty.

34. The stock position of tear-smoke material is far from satisfactory and its quality is also reported to be below standard. Indents should be sent well in advance and every effort should be taken to ensure adequate supplies of good quality of tear-smoke shells and hand grenades. Prices of tear-smoke material are high and it is a pity that they are not manufactured in India. But until then, it should be ensured that an emergency does not catch the police with depleted stock or without stock.

35. A Sub-Committee was formed at the Conference of Inspectors-General of Police in 1954, to investigate the use of tear-smoke for the dispersal of crowds and to suggest whether any better substitute could be found. The Sub-Committee went into the matter thoroughly and have various experiments conducted and came to the conclusion that tear-smoke was one of the most useful means of dispersing crowds. They found that the shortcomings which had come to notice in its practical application were not due to any inherent defects in tear-smoke itself but because of insufficient training and practice by tear-smoke squads and insufficient experience in using tear-smoke in various situations especially when the wind was not favourable. The Sub-Committee observed that this want of practice and experience was partially due to high cost of tear-smoke shells which were being sparingly used. They therefore recommended : -

(i) that there should be more tear-smoke squads in every police organisation;

(ii) that the squad should be thoroughly trained in the use of tear-smoke in various situations and various conditions of wind; and

(iii) that there should be regular changing of tear-smoke shells and that the consideration of cost should not weigh with the free use of tear-smoke in the dispersal of crowds.

These recommendations have received the unanimous agreement of Inspectors-General of Police. The Government of India have also supported them and suggested that early

steps may be taken to implement them. It is regrettable that these suggestions have not received serious attention. The stock of teargas smoke ammunition in the districts is reported to be low, there has been no rotation of stocks and training of tear-smoke squads is not thorough in the manner indicated above. These defects in training and stock position have to be urgently remedied, so that the use of tear-smoke for the dispersal of unlawful assemblies can be relied upon as an effective weapon.

36. *Use of canes.*—Tear-smoke action should be followed up by a cane charge if the mob does not disperse. Tear-smoke will generally break up and disperse the less hardy elements in a mob. The hard core of agitators who remain unaffected by tear-smoke could be dealt with by cane charge. Cane charge should be resorted to if tear-smoke fails to dislodge the mob. In any case tear-smoke should first be used before cane charge is ordered.

37. Canes have not become the official equipment of Armed Reserves in Kerala State though they are being stocked in recent times. The specifications of cane have not been laid down. Unless they conform to specified length and thickness, the object of using canes as a lighter weapon instead of lathis would be defeated. The number of canes on stock should be limited to twenty per cent of armed police units in each district. A percentage of armed police going on bundobust duty should be armed with canes.

38. The cane in use in Bombay State is between 3' and 3' 6" in length and not more than 1" in diameter. A leather thong or webbing tape is bound at one end to go round the wrist. The cane is held with 2 or 3 inches to spare at the handle.

39. The cane is used to hit, jab, push and to form a barrier or parry a blow. Cane hits are less severe than lathi hits or baton hits (Bombay). Cane charges should not result in fatal or permanent injuries and the men should undergo special training with this object in view. Hits on the head should be avoided. They should fall between the shoulder and the ankle and the aim always should be at the softer parts of the body as hits on bones may result in fractures. Armed policemen should be well-trained in cane drill so that they can use it effectively to disperse a mob. It should be possible to disperse most unlawful assemblies by the use of tear-smoke followed up, when required, by cane charge.

40. The lathi is another well-known weapon in the armoury of the police and lathi action should be ordered only if the two preceding methods fail. The lathi is 2' 8" long and 2" in diameter and has a sling threaded through a hole about 3" from the end. All policemen are armed with lathis and they are taught the drill. The corresponding weapon used by the police of some other States, e.g., Bombay, is the baton. Lathi charge being capable of inflicting more serious damage than cane charge, should never precede it. It should be resorted to only if cane charge proves ineffective and mob dispersal is called for by the use of greater force. The modus of a lathi charge is well-known and it is not necessary to describe it at length here. The only point meriting emphasis is to see that the charge is stopped as soon as the mob begins to disperse. Lathi action should not continue for a moment longer than necessary and the men should be well trained to desist and disengage on the order of the Officer-in-charge.

41. The above methods, if properly used by a body of well-trained Police Force, should result in the dispersal of an unlawful assembly. Police Officers should be given intensive training to enable them to meet all difficult situations. The Bombay Police have drawn up special training programme for this purpose for their officers. The object of this training is to develop courage, morale and self-confidence. The intention is not to produce a team of boxers or wrestlers or supermen but a well-balanced group which can be relied upon to deal with disorders with understanding, and resort to force only when necessary. Even when resorting to force, men thus trained will use the minimum force to achieve the maximum effect.

42. The next question is whether, if in spite of all the above methods the unlawful assembly does not disperse, and its attitude becomes menacing to the safety of the police or the preservation of life and property of the public, the police should be permitted to resort to the use of firearms. The use of firearms has been the most vigorously discussed question in the course of the evidence given before us. We have found that though we have taken evidence from a wide cross-section of public opinion as well as Police Officers and officials, there is no single person who has stated that it is possible to avoid resorting to the use of firearms under certain conditions. The only question therefore is what are the circumstances under which firing should be permitted.

One of the questionnaire issued by the Committee runs as follows :—

A Committee of which Shri H. V. Kamath was the Convener was appointed by the Praja Socialist Party to make recommendations as to the use of force by the police to maintain public peace especially in relation to conditions under which firing by the police can be justified. That Committee was appointed after the police [firing at Marthandam near Nagercoil in the then State of Travancore-Cochin.

“ The Committee reported that the Police should not be allowed to use force merely to disperse a crowd, an assembly or a procession, however illegal or unlawful it may be, unless (i) such a crowd or assembly or procession causes so much obstruction to movement and to convenience as would make it impossible for the public to carry on their ordinary normal avocations of life and a diversion of traffic is not possible and the crowd or the procession cannot be dispersed by any other method ; or (ii) unless their action causes serious damage to public or private property ; or (iii) unless the crowd, assembly or the procession or any of its members are armed with deadly weapons and there is clear and imminent danger of their being used ; or (iv) unless there are two contending groups one opposed to the other, and adopting such aggressive and bellicose attitude to one another that a riot is inevitable if they are not immediately dispersed and every other means of dispersal has failed.” Do you agree with the recommendation ? If not what are your suggestions in this regard ?

Many witnesses were in broad agreement with the recommendations of the Kamath Committee but some of them have felt that if a crowd or assembly is peaceful and only cause obstruction to movement so as to make it impossible for the public to carry on their normal avocations of life, it would not be proper to resort to the use of firearms to disperse them. On the contrary the very fact that the crowd is peaceful does leave room for methods of persuasion to be utilised by the police, and hence it would be both inappropriate and imprudent to permit the use of firearms on such occasions.

However, so far as the other three conditions mentioned by the Kamath Committee are concerned, we are in substantial agreement with them and we may say that almost all witnesses who have dealt with the question before us have expressed their agreement.

So far as the conduct of a judicial enquiry in such cases is concerned, there has been a substantial body of opinion among the witnesses who gave evidence before us that there should be a judicial enquiry into every incident where firing is resorted to.

The objection to this however has been on behalf of the police. Senior officers of the police feel that it would lead to demoralisation of the Police Force and bring about a certain amount of paralysis of the mind if a police officer always has hanging above him the Damocles' sword of a judicial enquiry, if he resorts to firing. This every fear may prevent him from resorting to firing under conditions which warrant and demand it. By and large however we consider that a judicial enquiry is a salutary provision and should be insisted upon. The only limitation we would lay down is as follows :—

(1) Whenever there is a loss of life there must be a judicial enquiry held, if possible by a High Court Judge and definitely by a person not below the rank of a District Judge.

(2) When the firing has resulted in no loss of life, there should first be an enquiry by a senior executive officer appointed by Government and if his report shows that prima facie there is need for a deeper probe into the matter, then, a judicial enquiry should be held.

43. So far as the type of arms used by police parties is concerned, the following is the present position. The Police Force today is supplied with two types of weapons, namely the '410 bore musket and the '303 bore rifle. The men of all police stations are equipped with the former while the Reserve Police in districts and the Special Armed Police and the Malabar Special Police are equipped with '303 rifles. The latter are also equipped with a small number of automatic weapons such as the Thomson Machine Carbine and the Bren Gun and Grenades for use with '303 rifles.

44. It is the use of the '303 and '410 bore weapons with which we are vitally concerned as they are used in the quelling of disturbances and to preserve lives. The police has closely followed the army in the choice of their weapons. When the army was armed with the Martini Henry '450 bore rifle, the Special Armed Police forces were equipped with them and the Civil Police used a smooth bore weapon, namely the '476 bore musket, adapted from it. When the army switched over to '303 bore magazine rifle, the Special Police Units followed suit

and the Civil Police were equipped with .410 bore musket, which also was adapted from the .303 weapon. The use of the army weapons or adaptation of the same was forced on the police due to dependence on the Army Ordnance Depots for weapons. Various types of arms available in United Kingdom were found superior as police weapons to the .410 musket but reliance on foreign sources for supplies cancelled all the advantages as in that case, the police would be forced to maintain reserve stocks of arms and ammunition and also arrange for periodical expert inspections. It was made clear both by the Government of India and the Army authorities that if the police authorities decided to equip their forces with arms manufactured by private firms, the police must also make their own arrangements for maintaining reserve stock of arms and ammunition, component parts and tools and their own machinery for periodical inspection. It was also seen that the cost of .410 musket and ammunition was considerably below the prices quoted by British firms. The proposal to design and equip the police with arms suitable to police requirements, i.e., effective stopping power and causing minimum damage, had therefore to be dropped.

45. There is a consensus of opinion that the .33 rifle is not suitable for dealing with unarmed mobs at close quarters. The bullet has a destructive effect due to its high muzzle velocity (2,300—2,500 feet per second) and it causes severe and fatal wounds. It causes unnecessarily severe injuries and even persons far from the mob are occasionally hit, sometimes fatally. The question of replacing the .303 rifle with a more suitable weapon was considered by a Sub-Committee appointed in 1954 by Inspectors-General of Police in Conference. They obtained the views of Inspectors-General of Police of the States in India and from experts in foreign countries about the use of different types of firearms for the dispersal of crowds and came to the conclusion that the .410 musket is the most suitable type of weapon for the purpose. They were of opinion that the use of .303 rifle will be necessary only when a crowd is armed with firearms. They recommended that .410 muskets should replace .303 rifles for dispersal of mobs, the ammunition used being the ball cartridge with a range of 75—100 yards. They also recommended that the .410 musket should be fitted with a magazine, a recommendation made in 1950 in the Conference of Inspectors-General of Police and which was experimented upon and found to be suitable by the

Ordnance authorities. These recommendations received the approval of all State Inspectors-General of Police and the Government of India agreed that '410 musket fitted with a magazine is the most suitable weapon for the dispersal of unlawful assemblies. However, the Government of India was advised that it was not feasible in practice to fit a magazine to the '410 musket. This proposal was therefore dropped. The Government of India however reiterated the desirability of using '410 muskets for the dispersal of unlawful assemblies or riotous mobs, should firing become unavoidable. We have therefore to rely on '410 muskets to deal with such situations.

46. Armed Police Reserves in districts, the Special Armed Police and Malabar Special Police who are equipped only with '303 magazine rifles carry them when they are called out for suppressing disorder. Though standing instructions provide that firing should be opened from a distance and that mobs should not be allowed to close on police parties, it usually happens that unless the mob attacks the police with brick-bats which means a distance of about 20-30 yards, the police do not open fire. At this range, a '303 rifle can be very destructive. Even if a shot misses its immediate objective, it may kill a person at some distance from the place of firing. We therefore suggest that a proportion of the armed police should be equipped with the '410 muskets and those detailed for duties in connection with public disorder should be armed only with '410 muskets.

47. The Government orders in force in this State giving detailed instructions about the dispersal of unlawful assemblies which are based on the provisions of law on the subject, discussed earlier, are extracted below:—

(1) " In a division the Executive First Class Magistrate (Revenue Divisional Officer) functions as an Assistant to the Collector and is responsible to him for the maintenance of law and order. The Criminal Procedure Code confers on him certain powers over the Police Force so far as the maintenance of law and order is concerned. The Deputy Superintendent of Police who has jurisdiction over a Sub-division or a Deputy Superintendent of Police of the nearest territorial jurisdiction is expected to keep in personal contact with the Executive First Class Magistrate in all matters affecting the law and order situation in the division. The orders of the Collector in

respect of law and order are binding on the Deputy Superintendent of Police and these orders will be communicated to him through the District Superintendent of Police."

(2) "The position in an emergency will, however, be somewhat different and the Government consider it desirable to lay down the relative responsibilities and powers of the magistracy and the police in the event of an emergency."

(3) "Under sections 127 and 128 of the Criminal Procedure Code, it is open to a Magistrate, or to an officer-in-charge of a Police Station to disperse by force an unlawful assembly or a riotous mob. The force which may be used on such occasions may be any kind of force appropriate to the occasion and will include the use of firearms. But it should only be the minimum force necessary under the circumstances. According to the instructions contained in the Police Manual, the presence of the local Magistrate should be secured, if possible, and firing should be done only with his permission and in situations of extreme necessity. It, therefore, follows that it is only on those occasions when it may not be possible to secure the presence of a Magistrate that an officer-in-charge of a Police Station is authorised to disperse the assembly, using such force as he considers necessary for so doing including the use of firearms. In such cases, the responsibility will clearly and entirely be that of the Police Officer concerned."

(4) "But where the Magistrate is present, the exercise by the Police Officer of independent powers will be inconsistent with the powers vested in the Magistrate by the Criminal Procedure Code, especially by sections 127 and 128 of the Code. Therefore, when both the Magistrate and the Police Officer are present on the spot, the Police Officer is to be guided only by the orders of the Magistrate, and is expected to comply with them to the best of his ability. In law, the Magistrate shall be in complete charge of such a situation. The responsibility for the decision to order firing will, therefore, clearly vest in the Magistrate and not in the Police Officer. Thus whenever the Magistrate is present on the scene, it is for him to decide whether any, and if so what sort of force should be used for dispersing an assembly. If the Magistrate directs that force short of use of firearms should be used, the Police Officer should carry out the directions. The exact amount of force to be used, the manner of using it, and all the details of the operations will be exclusively under the direction of the Police Officer who should of course bear in mind the

principle that no more force than is necessary should be used. Similarly if the Magistrate directs that firearms should be used for dispersing an assembly, the Police Officer to whom the direction is given is bound to carry it out. The actual extent and the manner of using the firearms and the entire direction and technique of the operations will, of course, be left to the Police Officer. But it shall again, of course, be open to the Magistrate to order that firing should be stopped at any particular stage if he feels that the contemplated object has been achieved. In actual practice, there is not likely to be any conflicting opinion about the stage at which firing will have to be discontinued."

(5) " There should thus be no doubt as to the position of the police force when a Magistrate is present at such critical situation. The fact that a Senior Police Officer, such as the District Superintendent of Police, and only a Junior Magistrate may be, present, will not alter position, but on such occasions, the Junior Magistrate is generally likely to act under the advice of the Senior Police official who may have greater experience and who may consider it necessary, on good ground to advise the Magistrate if he is likely to be at fault. The decision however shall always rest with the Magistrate, and the Police Officer will be bound to carry out the Magistrate's orders."

(6) " Thus, in accordance with the general principles outlined above :

(i) (a) Where an actual situation arises and an Executive First Class Magistrate is present at the spot, in the absence of the District Magistrate, he should be in complete charge of the situation and he has in law, all the necessary legal powers to order any Police Officer, including a Deputy Superintendent of Police, or a Superintendent of Police who may be present to assist him in handling the situation ;

(b) The seniormost Police Officer present is bound to assist the Executive First Class Magistrate by mobilising the available police force and utilising them as best as possible ;

(c) The Executive First Class Magistrate is responsible for taking a decision as to when an unlawful assembly has to be dispersed by force and also as to the kind of force to be used ;

(d) Having decided on the kind of force to be used, the officer in charge of the police is to be responsible for deciding as to the exact amount of force to be used, the manner

of using it and settling of the details of the operations connected with the use of the force, the Police Officer should, of course, bear in mind the principle that no more force than is necessary should be used ;

(ii) In the absence of the Executive First Class Magistrate any other Magistrate present, or called upon to handle a similar situation will have similar powers as in (i) (a) to (c) above and the Police Officer present will be bound to carry out the orders of the Magistrate."

(7) "The Government desire that the above instructions should be clearly understood and that the responsibilities and duties cast on the Magistracy and the police should be discharged with good-will and co-operation."

Instructions in Police Manual about dispersal of unlawful assemblies and use of fire-arms.

(1) "As far as possible the presence of the Executive First Class Magistrate or other local Magistrate should be secured when police have to deal with unlawful assemblies and the relevant provisions will be complied with.

(2) (a) When a police party is formed for dispersing an unlawful assembly, it should be numbered and told off into two or more sections, if the size of the party and the time available admit it. Bayonets must be fixed as soon as possible.

(b) All commands to the police are to be given by the officer-in-command of the party. The police are not, on any account, to fire excepting by word of command of their officer, who is to exercise a humane discretion respecting the extent or the line of fire.

(c) As soon as a decision is taken to resort to the use of fire-arms, the officer-in-command will give the order to the files to load with ball and will bring the men to the loading position. This will prevent the party from being rushed while the crowd is being warned.

(d) In order to guard against all misunderstanding, officers commanding police parties are on every occasion, when employed in the suppression of a riot or enforcement of the law, to ensure that the fullest warning is given to the mob in a clear and distinct manner before any order is given to fire, and to take the most effectual means to explain beforehand to the people opposed to them, that in the event of the police party being ordered to fire, the fire will be effective.

(e) If after being warned, the mob refused to disperse, the order to fire may be given. If the officer-in-command of the party is of opinion that it will suffice, he will give the order to fire to one or two specified files only. If however, he considers that this will be insufficient, he will give the word of command to one of the sections told off as above, the fire of other sections being held in reserve until necessary. The fire of each section will be given by the regular word of command of the officer-in-charge of the party.

(f) Under no circumstances should a warning shot be fired in the air, nor should the fire be directed over the heads of the crowd. Firing should cease the instant that it is no longer necessary.

(g) Files or sections ordered to fire shall reload immediately after firing without further word of command until the order to cease firing is finally given.

(h) Firing should be ceased the moment the rioters show signs of dispersing, and all help should immediately be rendered to tend and convey the wounded to the hospital.

(i) An armed force should never be brought so close to a large and dangerous mob as to risk its either being overwhelmed by numbers or being forced to inflict heavy casualties. Firing should be carried out from a distance sufficient to obviate the risk of being rushed and to enable strict fire control to be maintained. Aim should be kept low and directed at the most threatening part of the crowd.

(j) A Police Officer below the rank of a Station House Officer has no power to disperse such assembly himself but he may arrest any person without a warrant for being member of an unlawful assembly.

(3) Blank cartridges and buckshot shall never be issued to police employed to suppress a riot.

(4) To improve mob dispersal work under the direction of Sub-divisional officers, Inspectors and Station House Officers, District Superintendents of Police should ensure that officers of these ranks from time to time, during their visits to the District Headquarters, see demonstrations by the Armed Reserve. Such demonstrations, should invariably be given on occasions when meetings of Inspectors are held.

48. The above extract from the Police Standing Orders gives clearly the existing instructions that have been given to Police Officers regarding the question of dispersal of unlawful

assemblies. Nobody can have any quarrel with these instructions which lay down many desirable pre-conditions to the use of firearms, particularly the instructions for securing the presence of the local Magistrate, to resort to firing only with the permission of the Magistrate when available and in situations of extreme necessity and the use of only the minimum force. The difficulty, however, arises not so much from the character of the instructions as from the manner in which they have been understood and implemented. Once a state of affairs has come into being which renders firing inevitable there is no difficulty about the various steps that should be enjoined upon the police before they resort to firing. The question, however, is not so much as to what should be done at the time firing has to be resorted to as to what should be done in order to avoid any resort to firing at all. This is where the matters which have been emphasised in the earlier sections of our report become important, *viz.*, the need for the Police Officer to keep himself abreast with the latest developments in the area under his control and to achieve a position in that area which will enable him to intervene and prevent any breaches of the peace, etc. It must be understood that not only is resort to firing in defence of the civil power morally indefensible but the measure of democratic maturity and advancement of a country can be seen from the manner in which citizens respect the law and the Government is able to enforce respect for the law without resort to the use of armed force.

49. Further, preventive action by means of firing must only be resorted to when the conditions that have been referred to above are present. If the damage likely to be caused to property is small or negligible and there is no danger to life then it would be wrong to resort to firing. In these circumstances it is our view that once more it has to be made very clear to the Police Force that the responsible Police Officer of the area should be in a position to intervene at an earlier stage, so that necessity to resort to firing does not at all arise, firing should be resorted to only as a last resort and finally that if firing is resorted to, every Police Officer must be ready to justify his action.

50. Our conclusions on these topics are summarised below.—

(1) Meetings and large assemblies which are gathered on the occasions of visit of important personages and for

entertainments such as festivals are generally peaceful. Their control should be effected by careful previous planning about the disposition of man-power, the division of meeting place and routes into convenient sectors, the arrangement of sufficient number of routes for use by pedestrians, and vehicular traffic, setting up of control stations for arranging transport and disposition of forces and wide publicity by press and radio talks about the arrangements made.

(2) The use of mounted police for controlling large assemblies has to be resorted to in increasing measure.

(3) Political meetings and other assemblies gathered for purposes of demonstration should be studied carefully for their objectives. If they are peaceful the police should give them protection and ensure that they are not disturbed by unruly elements. In other cases the police should have useful intelligence measures to spot out trouble-mongers and send for influential leaders of the movement in order to discuss and ensure peaceful behaviour of their followers.

(4) Sufficient police force should be mobilised and posted to act as a healthy check on lawlessness.

(5) Unless it is impossible to control the situation, armed policemen should not be displayed in the first instance. They should be kept in reserve to be available at very short notice.

(6) It is not necessary to make legal provision to ban totally the carrying of sticks or other weapons in processions. The existing provisions in law are adequate to enable preventive action in cases where feelings run high among rival sections of the public and clashes are likely to occur.

(7) Lying down picketing should be handled with firmness by arrests at discretion followed by removal. Kid glove handling of such situations is looked upon as weakness and induces repetition of law violations.

(8) Police should have power to arrest and remove hunger satyagrahis and have them forcibly fed if there is risk to their lives.

(9) The use of coloured water or water under pressure for dispersal of unlawful assemblies is not feasible in this State.

(10) Use of tear smoke is a well known and effective method of mob dispersal. The stock position of tear smoke shells is however reported to be unsatisfactory. There should be regular changing and replacement of tear smoke shells and

consideration of cost should not weigh in the matter. More tear smoke squads should be formed in each District Headquarters and training should be intensified.

(11) A section of Armed Police going on bandobust duty limited to about 20 per cent should be armed with canes not more than 1" in diameter and 3 ft. long. It would be possible to disperse most unlawful assemblies by a cane charge if tear smoke is not effective.

(12) The lathi which is 2' 8" long and 2" in diameter is a powerful weapon and should be resorted to only if a cane charge proves ineffective and use of greater force is indicated.

(13) It is not possible completely to eschew the use of firearms in dispersing mobs in cases where other forms of forces have proved ineffective.

(14) Force culminating in the use of firearms should not be resorted to for dispersing an unlawful assembly unless—

(a) Their action causes serious damage to public or private property; or

(b) The crowd, assembly or procession is armed with deadly weapons and there is clear and imminent danger of the deadly weapons being used; or

(c) There are two contending groups one opposed to the other and adopting such aggressive and bellicose attitude to each other that a riot is inevitable if they are not immediately dispersed.

(15) It is necessary that police detailed on duties in connection with public disorder should be armed only with .410 muskets as they are less deadly than .303 rifles.

(16) The existing orders by Government and in the Police Manual which lay down that police should secure the presence of local Magistrates and resort to firing only with his permission when available and the need for use of only the minimum force are adequate.

(17) It is to be made very clear to the Police Force that firing should be resorted to only as a last resort, that responsible Police Officers of the area should be in a position to intervene at an earlier stage and avoid the necessity to resort to use of firearms.

(18) Whenever the use of firearms by police results in loss of life there must be a judicial enquiry held if possible by

a High Court Judge and definitely by a person not below the rank of a District Judge.

(19) When the firing has not resulted in the loss of life there should first be an enquiry by a senior executive officer appointed by the Government and if his report shows the need for a deeper probe a judicial enquiry should be held.

CHAPTER VI

The use of regulatory and restrictive powers under the Police Act ; the security provisions and Sections 144 and 151 of Cr. P. C.

[Item (v) of the terms of reference]

These various restrictive and regulatory powers given to the Executive and Police have come in for very strong criticism as not at all justifiable after the attainment of independence and coming into force of the Constitution of India.

2. There can be no doubt that these provisions in the Cr. P.C. and Police Acts were used by the British Government in order to suppress the growing nationalist movement and that is why they are regarded as an odium of democracy and freedom-loving people.

3. At the same time looked at objectively, there is no doubt that some powers of this character must be made available for use rarely and on critical occasions.

4. Section 144 of the Cr. P.C. reads as follows :—

“ 144. (1) In cases where in the opinion of a District Magistrate, a Chief Presidency Magistrate, Sub-divisional Magistrate or of any other Magistrate not being a Magistrate of the Third Class, specially empowered by the State Government or the Chief Presidency Magistrate or the District Magistrate to act under this section, there is sufficient ground for proceeding this section and immediate prevention or speedy remedy is desirable ; such Magistrate may by written order state the material facts of the case and served in a manner provided by section 134, direct any person to abstain from a certain act or to take a certain order with a certain property in his possession or under his management if such Magistrate considers that such direction is likely to prevent or tends to

prevent the obstruction, annoyance or injury or risk of obstruction, annoyance or injury to any person lawfully employed or danger to human life, health or safety or a disturbance of the public tranquillity or a riot or affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time, a notice upon the person against whom the order is directed, be passed ex-parte.

(3) An order under this section may be directed to a particular individual or to the public generally when frequenting or visiting a particular place.

(4) Any Magistrate may either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section by himself or any Magistrate subordinate to him or by his predecessor in office.

(5) Where such an application is received, the Magistrate shall afford to the applicant an early opportunity to appear before him either in person or by pleader and show cause against the order, and if the Magistrate rejects the application wholly or in part he shall record in writing his reasons for so doing.

(6) No order under this section shall remain in force for more than two months from the making thereof unless in cases of danger to human life, health or safety or likelihood of a riot or affray, the State Government by notification in the Official Gazette, otherwise directs."

5. It would be seen from the terms of the section that the responsibility for issuing such an order rests squarely upon the Magistrate and not upon the police. In the days of the British when there was no separation of the judiciary from the executive, the fact that the Magistrate alone had the power to issue order under section 144 and not the police was of no great significance, since Magistrates themselves were usually part of the executive and hence one with the police. The practice, therefore, used to be that whenever the police approached the Executive Magistrate with request that an order under section 144 should be passed, the Magistrate was ready to oblige and on almost any and every occasion passed the order without any independent exercise of his mind to the question whether a real necessity existed for the passing of that order.

6. Though the objective laid down by the Constitution has been that there should be a separation of the Judiciary

from the Executive, in practice so far as the passing of an order under section 1-4 is concerned, it is often the Executive Magistrate who actually passes such orders and who is approached with requests by the police that such an order should be passed. We consider that the result of this continuance of the position as it stood in the days of British rule results in the same situation continuing, and an order under section 144 is often passed by an Executive Magistrate as and when he is requested by the police.

7. We, therefore, consider that such orders also should be passed only by Judicial Magistrates who are independent of the Executive and who can therefore be relied upon to exercise their mind before passing such an order. However there is a practical difficulty that at present Judicial Magistrates can only conduct their Court proceedings when sitting in Court and in times of emergency when an order under section 144 has to be passed, they will not be available and they will have no power to pass such an order either when they are in their house or if they go to the spot. We recommend that Judicial Magistrates also should be empowered by the High Court with powers to pass orders of this character either in their houses or wherever they happen to be when the necessity arises. This would both enable them to act promptly when the need is there and also avoid the danger of Executive Magistrates doing what the police demand of them.

8. It is for the police, if they consider that an order under section 144 of the Cr. P. C. is necessary to place the information they have in their possession before the Magistrate and it is for the Magistrate to decide whether the information is correct and more than anything else whether on such ex-parte information an order should be passed. Naturally a heavy responsibility rests on the Magistrate and that is inevitably inherent in the terms of the section itself.

9. It must also be emphasised that the marginal note of the section is clear that the order under this section is temporary and not absolute and is passed in urgent cases of imminent or apprehended danger. The rationale behind the section therefore obviously is to permit the use of power granted only when there is a clear and imminent danger of outbreak of violence which needs speedy intervention of the Police Force and the restriction of the rights enjoyed by the citizen under the Constitution. Persons who have had experience as

Magistrates had come before us and stated that the abuse of this section by the police must be traced more to the weakness of Magistrates in refusing to exercise their minds on the matter before them and being willing to act virtually as tools of the police. If a Magistrate refuses to act virtually as tools of the police and is independent and strong enough to take action only on being satisfied in law and fact that what the police is asking for is reasonable and proper in the situation facing them, then the possibility of abuse of section 144 will be reduced to the absolute minimum.

10. It is also necessary to emphasise that there can be no question of general executive direction regarding the imposition of section 144 Cr. P.C. The Criminal Procedure Code clearly lays down that it is the duty of the appropriate Magistrate to decide whether or not to issue an order under section 144. It is therefore obviously illegal for Government to issue any direction either regarding the issuing or non-imposition of an order under section 144. It is of course within the province of Government and Executive to issue instructions to the police about the circumstances under which an application may be made to the appropriate Magistrate for an order under section 144. Those are the limits of the powers of the Government and its arm, the police. We must emphasise that it is for the Magistrate and Magistrate alone to decide whether an order under section 144 should be issued at all.

11. We must also emphasise that the promulgation of an order under section 144 restricting the assemblies of more than five persons for a certain period is not an effective method of maintaining peace even when there is a great danger to the maintenance of law and order. A senior Police Officer of the Government of Kerala giving evidence before us has said that quite often the promulgation of an order under section 144, though it may prevent the law-abiding citizens from going into the streets, may also act as a provocation for law-breakers and ultimately the enforcement of law and order will depend on the mobilising and using the armed might of the Police Force.

12. That is why we consider that the promulgation of such orders should be done only after the exercise of the utmost care and vigilance by the Magistrate concerned. If it is only a minor section of the people who are affected or who are likely to act in such a way as to endanger law and order

then a resort to an order under section 144 would probably be provocative and an easier method would be to mobilise sufficient Police Force to control the activities of the menacing section. Only when there is a possibility of a large-scale riot and a large number of people are involved, it would be reasonable and proper to resort to the promulgation of an order under section 144 restricting the assembly of more than five persons. Recent experience, we think, also tends to support this view.

13. In the above discussion of the scope of section 144 we have not dealt with other aspects of the power under section 144 as in respect of issuing orders in urgent cases of nuisance. It is not necessary for us to spend much time on this aspect since it is very rarely that section 144 has been misused in respect of matters of this character. All that we wish to observe is that it would be preferable in cases of this character also that the power should be granted only to Judicial Magistrates to act under this section and not to Executive Magistrates.

14. Section 30 of the Police Act vests power in the police to regulate public assemblies and processions and it runs as follows :—

“ 30. The District Superintendent or Assistant District Superintendent of Police may, as occasion requires, direct the conduct of assemblies and processions on the public roads or in the public streets or thoroughfares and prescribe the routes by which and times at which such processions may pass.

(2) He may also, on being satisfied that it is intended by any person or class of persons to convene or collect an assembly in any such road, street or thoroughfare or to form a procession, which would in the judgment of the Magistrate or the District or the Sub-Divisional Magistrate of the District, if uncontrolled, be likely to cause a breach of peace, require by general or special notice that the persons convening or collecting such assembly or directing or promoting such procession, shall apply for a licence.

(3) On such application being made, he can issue a licence specifying the names of the licensees and defining the conditions on which alone such assembly or such processions is to be permitted to take place and otherwise giving effect to this section; provided that no fee shall be charged on the application for or grant of any such licence.

(4) He may also regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies."

15. This section has also been vigorously criticised as being very wide and in its wording liable to be abused by the police. On the other hand it is held that if the provision is properly used then it can be very useful, though it can also on occasions be misused.

16. In Kerala in particular where the possibility of processions or meetings by rival political parties in the same town or area is almost an order of the day, unless powers under section 30 is available to the police, it may be very difficult to control routes of processions or the holding of meetings so as to avoid clashes between rival political parties.

17. The difficulty really arises when the party in power resorts to use section 30 in order to prevent the exercise of the right of freedom of assembly and procession by rival political parties in the opposition. It is our view that this criticism can be easily met by inserting a provision by which an appeal against any order of the District Superintendent of Police or Assistant Superintendent of Police should lie to a judicial authority or local Magistrate, who would have the right to set aside or modify any order made by the police under this section.

18. One valid criticism is that the power under section 30, in contrast to the power under section 144 of the Criminal Procedure Code places no restriction on the time limit for which a notification could be in force. Under section 30, the period under which the general notification of the Superintendent of Police requiring all persons to apply to him for a licence can be mentioned in the same manner as an order under section 144 can be enforced only for two months. The notification under section 30 must also be limited in time.

19. The present position regarding the operation of the Police Act is somewhat unsatisfactory because whereas in the Malabar area (formerly a part of British India), the Police Act, i.e., Central Act V of 1861 is in operation, in that part of Kerala which formed the Princely States of Travancore and Cochin, the Travancore-Cochin Police Act, 1951 (II of 1952) is in operation. Many of the provisions found in the Indian Police Act are also found in the Travancore-Cochin Police Act. But we think that it would be far better if a single Police Act is

applied to the entire State and we would recommend therefore the extension of the Indian Police Act to the Travancore-Cochin part of Kerala and the repeal of the redundant provisions of the Travancore-Cochin Police Act of 1952.

20. The further set of restrictive provisions under Criminal Procedure Code which we must consider are the provisions under Chapter VIII of the Code. Earlier in dealing with management-labour disputes and conflicts arising out of them, we have observed that the Security Sections under Chapter VIII were being resorted to as an aid to control the law and order situation in cases of conflict between management and labour. In particular we would like to observe that section 107 should not be lightly invoked in cases of management-labour conflicts. If any Trade Union leader is likely to commit a breach of the peace, the ordinary law as far as possible should be set in motion in order to deal with him. Resort to section 107 under such circumstances, even if justified, would only act as a provocation to the workers. In some cases where it is not justified and is resorted to by the police, it becomes a ground in the hands of the workers to point out the pro-management character of the actions of the police. It is, therefore, our definite view that section 107 should not normally be resorted to in dealing with law and order situations which essentially arise out of labour-management or landlord-cultivator disputes. Section 107 should be confined to be used sparingly when, for instance, there is a possibility of breach of the peace and hooligans are imported by rival parties or preparations made for a serious clash. This is not common and hence resort to section 107 in such circumstances would not be common but rare.

21. The presence of section 108 in the Criminal Procedure Code cannot be justified after the passing of the Constitution. This is probably why it has not been used at all for many years in this State. It was utilised by the British for purely political purposes. Clearly it has no place and it should be repealed.

22. Our recommendations therefore under this section may be summed up as follows:—

(1) Section 144 should not be deleted from the Criminal Procedure Code.

(2) Power to pass orders under section 144 should be confined solely to Judicial Magistrates and should be taken away from the Executive Magistrates.

(3) Judicial Magistrates should be given powers to pass orders under section 144 in their houses or in places where they may happen to be at the time when the passing of such an order becomes necessary.

(4) The most effective safeguard against the abuse of section 144 would be to inculcate a spirit of vigilance and independence among Judicial Magistrates so that they act purely on the basis of the material that is placed before them and appreciate that the responsibility for passing that largely rests only on them.

(5) It is illegal for the Government to issue any direction either regarding the issuing or non-imposition of an order under section 144. Government may issue instructions to police about the circumstances under which an application may be made to the appropriate Magistrate, but they cannot issue any instruction to the Judicial Magistrates.

(6) The resort to section 144 should be rare and only when there is a possibility of large-scale riots with the participation of considerable sections of people likely to be affected by the passing of such an order.

(7) Section 30 of the Police Act should continue in force. An appeal should lie against any order of the District Superintendent of Police under section 30 of the Police Act to the District Judge who should have power to set aside or modify any order made by the police under this section. The period for which an order can be passed under section 30 should be limited to two months.

(8) The Indian Police Act should be extended to the whole of Kerala and as a consequence the redundant provisions of the Travancore-Cochin Police Act should be repealed.

(9) Section 108 of the Criminal Procedure Code should be repealed.

CHAPTER VII

We are concluding our enquiry and report with reference to items 1 to 6 and 8 of the terms of reference as suggested in G.O. (Ms.) No. 787/Home (A), dated 19th November 1959.

We, however, feel that a report on police reorganisation should include the subject of recruitment and training [item 12 (a) of the terms of reference] and measures for improving the work of investigation, etc. (item 9 of the terms of reference).

2. We understand that in this State facilities for training of Sub-Inspectors have not been good. It was only recently that an Officer of the rank of Superintendent of Police was appointed solely as the Principal of the Training College. Previously Sub-Inspectors were being sent to the Police Training College in Vellore in Madras State for training. The pattern of instruction in training institutions has not changed much from the days of the British regime. It is necessary that young police officers should be imbued with a sense of service and a proper spirit of co-operation with the public even while they are under training. The curriculum of the training institution should be reviewed to achieve this purpose.

3. Measures for improving standard of work will include questions of separation of the investigating staff from law and order staff at least in large urban areas and the functioning of an efficient prosecuting agency independently of the police.

4. It is necessary that an efficient Police Force should consist of properly trained police officers and the functional division in the Department is established on sound lines.

5. The Law Commission has remarked that the system of reporting of crime is not satisfactory as there is no agency for reporting crime in the large villages particularly in Travancore area. The steps to be taken to improve this state of affairs have to be examined.

6. We have not been able to investigate the above aspects and make our recommendations as the work of the Committee was interrupted for about three months by unforeseen circumstances and due to limitation of time. We trust that the State Government will take suitable action on the above subjects.

7. The Committee records its appreciation of the service of Sri Krishna Menon, Inspector-General of Police who, as Member-Secretary, prepared exhaustive material for a comprehensive questionnaire. His Notes based on wide study of technical aspects for the terms of reference were of valuable help to the Committee in their deliberations. We should also

place on record the valuable work rendered by Sri Ramanujam former Assistant Inspector-General of Police who acted as our Secretary under the orders of the present Kerala Administration.

Trivandrum, 29th January 1960.

(Sd.)

N. C. CHATTERJEE,

Chairman

(Sd.)

S. MOHAN KUMARAMANGALAM,

Member

(Sd.)

S. GURUSWAMY,

Member

(Sd.)

P. N. KRISHNA PILLAI,

Member

(Sd.)

M. KRISHNA MENON,

Member

APPENDIX

(List of witnesses examined by the Committee)

1. Shri P. N. Saprú, Retired High Court Judge
2. „ B. B. Tawakley, Senior Advocate, Supreme Court
3. Dr. Waman Sheodas Barlingay, Member, Rajya Sabha
4. Shri S. A. Dange, Member, Lok Sabha
5. „ R. Thyagarajan, Advocate, Supreme Court
6. „ Janardhana Sarma, Advocate, Supreme Court
7. „ Syed Mohammed, Advocate, Supreme Court
8. „ D. P. Singh, Advocate, Supreme Court
9. Miss Varma, Advocate, Supreme Court
10. Shri M. R. Krishna Pillai, Advocate, Supreme Court
11. „ R. Patnaik, Advocate, Supreme Court
12. „ T. S. Venkataraman, Advocate, Supreme Court
13. „ Jagannatha Rao, Member, Lok Sabha
14. „ R. K. Khadilkar, Member, Lok Sabha
15. „ S. Easwara Iyer, Member, Lok Sabha
16. „ Bhupesh Gupta, Member, Rajya Sabha
17. „ H. V. Kamath, P. S. P. Leader
18. „ Lakshmi Kantha Jha, Retired Chief Justice of Patna High Court
19. „ Nuruddin Ahmed, Advocate, Supreme Court
20. „ Daulat Ram Prem, Senior Advocate, Supreme Court
21. „ Madan, Senior Advocate, Supreme Court
22. „ R. V. S. Mani, Advocate, Supreme Court
23. Mrs. E. U. Krishna, Advocate, Supreme Court
24. Shri Tridib Kumar Choudhuri, Member, Lok Sabha
25. Sardar Bahadur Singh, Advocate, Supreme Court
26. Shri V. K. Dhange, Member, Rajya Sabha
27. „ S. M. Banerjee, Member, Lok Sabha
28. „ I. M. Lall, I.C.S. (Retd.), Advocate, Supreme Court
29. „ V. G. Ramachandran, Project Director, Indian Law Institute, Delhi
30. „ S. Govindaswaminathan, Advocate and former State Prosecutor, Madras
31. Smt. Mary Clubwala Jadhav, M.L.C. (Madras)
32. Shri Balakrishna Shetty, Inspector-General of Police, Madras
33. R. M. Mahadevan, Commissioner of Police, Madras

34. Shri R. Ramanathan, Secretary of the United Trade Union Congress, Madras
35. „ T. R. Ganesan, Secretary, Madras Trade Union Congress
36. „ C. K. Venkatanarasimhan, Advocate, Madras
37. „ V. P. Raman, Advocate, Madras
38. „ V. K. Thiruvenkatachari, Advocate-General, Madras
39. „ P. S. Kailasan, Public Prosecutor, Madras
40. „ S. C. C. Anthoni Pillai, President of the All India Hind Mazdoor Sangh
41. „ S. Anantharamkrishnan, Chairman, The Amalgamations, Ltd., Madras and party
42. „ Gurumoorthi, President, Simpson Labour Union, Madras
43. „ Narasimhan, Secretary-General of the Indian Federation of Working Journalists
44. „ Chittaranjan, Convener of the Express Employees Action Committee
45. „ Thycaud Subramonia Iyer, President, High Court Bar Association, Ernakulam
46. „ M. S. Venkataraman, Administrative Officer, Cochin Port
47. „ K. M. Seethi Sahib, Secretary, Kerala Muslim League
48. „ Balagangadhara Menon, Government Pleader, Ernakulam
49. „ Mathai Manjooran, Member, Polit Bureau, Kerala Socialist Party
50. „ K. V. Suriyanarayana Iyer, Advocate-General, Kerala
51. Mr. Northey, Secretary, The West Coast Employers' Federation and party
52. Shri T. C. N. Menon, M. P., Ernakulam
53. „ K. A. Rajan, President, District Council, A.I.T.U.C.
54. „ M. K. Raghavan, Chairman, Mattancherry Municipality
55. „ G. R. Sankara Pillai, Personnel Officer, Indian Aluminium Company, Alwaye
56. „ M. P. Menon, Advocate and Labour Leader, Ernakulam
57. „ G. L. Kilikkar, President, Indian Chamber of Commerce, Cochin
58. „ T. A. K. Nair, Manager, Tata Oil Mills, Ernakulam
59. „ V. R. Krishna Iyer, Ex-Minister, Kerala
60. „ S. C. S. Menon, President, F.A.C.T. Union, Alwaye
61. „ G. S. Pillai, Personnel Officer, F.A.C.T., Alwaye
62. „ R. Sankaranarayana Iyer, Retired High Court Judge, Trivandrum
63. „ P. Balachandra Menon, General Secretary, Kerala State Trade Union Congress (A.I.T.U.C.)
64. „ K. S. Menon, I.A.S., Secretary to Government, Kerala

65. Shri V. G. J. Nair, General Manager, Aluminium Industries, Kundera
66. N. Kochukrishnan, Deputy Labour Commissioner, Kerala
67. " K. Balakrishna Panicker, District Labour Officer, Alleppey
68. " A. Kunjukrishna Pillai, I.A.S., Labour Commissioner, Kerala
69. " N. E. S. Raghavachari, I.C.S., Chief Secretary, Government of Kerala
70. " N. R. Srinivasa Iyer, I.P.S., Inspector-General of Police (Special), Kerala
71. " P. S. Nataraja Pillai, Former Minister, Travancore-Cochin, Trivandrum
72. " N. Srikantan Nair, President, R.S.P., Kerala
73. " K. Balakrishnan, Vice President, Rubber Factory Workers Union, Trivandrum
74. " V. Mariarputham, I.P.S., Principal, Police Training College, Trivandrum
75. " Tridib Kumar Choudhuri, M.P. (Further examined)
76. " N. S. Mani, Advocate, Supreme Court, Delhi
77. Mr. R. Storey Dickson, Staff and Labour Officer, K.D.H.P. Co., Ltd., Munnar, and Member of the Executive Committee, The Association of Planters of Kerala



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