

Introduction

This report has been written during the time when the police system and the judicial system have been substantially criticized in the media. Reforms in these areas are required. Normative and ideological changes are crucial, but the immediate and most pressing need is to create a comprehensive police reform.

As the Indian society advances rapidly and the nation itself becomes a major political power in the international arena, domestic institutions are lagging behind and continue to remain inadequate in terms of efficiency.

Without hesitation the Indian police is one such institution, which continues to remain a colonial legacy. The Police Act of 1861, which was drafted by the British as a direct response to the 1857 revolt, still remains as the major governing instrument for the police.

The methodology adopted for writing this paper has involved an extensive collection and analysis of information, in order to understand the existing scenario. This included a review of literature and field interviews of police officers and citizens, in order to gain a first hand understanding of the system.

This report has been written using a descriptive and analytical method. The first section describes the background of the police system today, its function and structure. The second section analyses the problems within the current system and its design defects. The third section gives a brief overview of statistical data in the field both national and international. The fourth section draws up the recommendations for a new police system.

It is crucial to understand the root of the problem, which is causing inefficiency in the current police force. Equally important is to focus on constructive solutions, which combat this inefficiency. The main purpose of this report is to explain and understand the problems, as well as to create an effective and workable alternative.

BRIEF INTRODUCTION TO THE CURRENT INDIAN POLICE SYSTEM

1. Background

The Indian Police Act (IPA) of 1861 is the current basic governing instrument of the Indian policeforce. It lays down the structure and functions of the police departments in the country. The IPA was drafted by the British colonisers as a direct consequence of the first war of independence to ensure the police system's subservience to the executive and to remain authoritarian in its contact with the public. It also established the dual control at district level as described by G.P. Joshi

“The same law introduced a system of dual control at the district level. It put police forces under the command of the district superintendents of police but subject to the “general control and direction” of district magistrates.”¹

Hence according to section 4 of the IPA the police falls under the control of *not only* their superior but *also* of the executive. This was created with the intent to maintain the British rule in the districts in India. Needless to say, the police was neither accountable to the people nor to independent institutions. The police system was designed to a strict hierarchical and military structure, based on the colonial distrust of the lower ranks. The decision making authority lays with a few high placed police officers, while the police constables merely followed orders. After independence, efforts were made to change the political system but the police system still remains almost intact.²

The current administration of the police falls under the IPA; the Indian Penal Code (IPC) of 1862(amended in 1993); the Indian Evidence Act (IEA) of 1872; and the

¹ Joshi, G.P. (2005) “Police Accountability in India: Policing Contaminated by Politics” (electronic version), *Human Rights Solidarity Vol. 15 No 05 Sep 2005* retrieved August 18, 2006, from <http://www.hrsolidarity.net/mainfile.php/2005vol15no05/2448/>

² *Ibid.* and Commonwealth Human Rights Initiative (n.d.) *Police Reforms: India – Police Structure and Organisation* (electronic source) retrieved August 18, 2006 from <http://www.humanrightsinitiative.org/programs/aj/police/india/history/default.htm> >

Code of Criminal Procedure(CrPC) of 1861 (revised in 1898 and 1973). Together they form the current, but outdated, police system in India. There have been some efforts to reform the police system at the state level, but the efforts have all been based on the IPA of 1861 leaving the colonial legacy and philosophy intact in these acts.

THE CURRENT STRUCTURE AND FUNCTIONS OF THE POLICE

According to article 246 of the Indian Constitution and section 3 of the IPA, the police force is a state subject and not dealt with at central level. Each state government has the responsibility to draw guidelines, rules and regulations for their respectively police forces. These regulations are found in the state police manuals.

A state is divided into administrative police units. Highest in the hierarchy is the Director General of Police (DGP), who is the head of the state police force and is responsible for administration in the police and for advising the government on police issues.⁸ With the DGP as highest responsible for the state police force, the state is divided into several Zones, Ranges and Districts. Further, the districts are separated into sub-divisions, circles and police stations. Each police station is responsible for a particular area, which they divide into beats and assign personnel to it. The structure of the police force can vary slightly from state to state, due to organisational and administrative convenience and depending on its area and population. Nevertheless the structure is overall, strictly hierarchical and the decision making power is centralised with a few high ranking police officers.

POSTINGS, PROMOTIONS AND TRANSFERS

In the current system of *promotions* in the Indian police force the existing scope for political interference is widely used. Subjective promotions exist and the executive is often directly involved. *Postings and transfers* on the other hand are vested in the hands of the higher ranks in the police hierarchy and apply to all levels. Even here there is scope for subjective judgments and rulings. Subsequently many police officers fall under heavy political pressure which can influence day to day police work.

PREVIOUS ATTEMPTS AT POLICE REFORMS

After independence the need for police reforms was important and many states set up their own police commissions. The first state police commission was set up in 1959 in Kerala. Most of the States had the Police Act of 1861 as a model when drafting the state acts, hence the same idea and structure is found in the State police Acts.²⁵ This sub-chapter will not analyse the former police reform attempts but merely describe briefly the reform commissions after independence. The chapter is based solely on “Report of the Review Committee on the Recommendations of National Police Commission & Other Commissions/Committees on Police Reform” (March 2005).

Gore Committee on Police Training 1971 – 1973

The Gore Committee on Police Training was set up to review the training of the state police from constabulary level to IPS level. The committee made 186 recommendations, 45 of those were related to police reforms. The recommendation that relates to the police training has mostly been implemented however the reforms relating to the structure of the police system has on the other hand been overlooked.³

National Police Commission (NPC) 1977 – 1981

The National Police Commission (NPC) was the first commission to exhaustively review the Indian police system. NPC wrote eight reports in four years. The eight reports suggested all together 291 recommendations all related to police reforms. Most of the recommendations have not been implemented.⁴

Ribeiro Committee on Police Reforms 1998

The Ribeiro Committee was set up in 1998 on the order of the Supreme Court following a Public Interest Litigation (PIL) on police reforms. The committee proposed five major recommendations related to state security, selection of DGP and complaints against the police, the recommendations have not been implemented.

³ “Report of the Review Committee on the Recommendations of National Police Commission & Other Commissions/Committees on Police Reform” (March 2005), p. 5

⁴ *Supra* note 26, p. 7, 8

Padmanabhaiah Committee on Police Reforms 2000

Former Union Home Secretary Shri K. Padmanabhaiah was appointed chairman of the Padmanabhaiah commission in 2000 by the Home Ministry of Affairs. The commission inspected the recruitment to the police force, training, duties and responsibilities, police officers behaviour, police investigations, prosecution, amongst others. The committee suggested 99 actionable recommendations, of which 54 need to be implemented by the central government and 69 needs to be implemented by the state governments.

Group of Ministers on National Security 2000 – 2001

The Group of Ministers on National Security was worked on four tasks namely a) the intelligence system b) internal security c) border management and d) the management of defence. 62 recommendations were made, 54 needs action taken by the central government and 42 by the state governments.

Malimath Committee on Reforms of Criminal Justice System 2001 – 2003

The Malimath Committee addressed the principles of the Criminal Justice System, investigation, prosecution, judiciary, crime and punishment. The report has been heavily criticised by human rights organisation for its suggestion of changing the burden of proof.³⁹ The committee made 158 observations and recommendations. There are 55 major recommendations of which 42 have to be implemented by the central government and 26 by the state governments.⁵

The Police Act Drafting Committee submits its Model Police Act, 2006

⁵ See Amnesty International "Amnesty International India: Report of the Malimath Committee on Reforms of the Criminal Justice System: Some observations" (September 19, 2003) (electronic version) retrieved August 22, 2006 from <<http://web.amnesty.org/library/Index/ENGASA200252003>> and International Commission of Jurists "Criminal Justice Reform in India: ICJ position paper Review of the Recommendations made by the Justice Malimath Committee from an international human rights perspective" (August 9-10, 2003) (electronic version) retrieved August 22, 2006 from <http://www.icj.org/IMG/pdf/India_crim_justice_reform.pdf#search=%22Criminal%20Justice%20Reform%2C%20ICJ%22>

In October 2005, the central government set up a "Police Act Drafting Committee" (PADC) - commonly known as the Soli Sorabjee Committee - tasked to draft a new model Police Act. The PADC was mandated to take into account the changing role and responsibilities of the police and the challenges before it and draft a model act that could guide states while adopting their own legislation. The constitution of the PADC was prompted by the Prime Minister's concern expressed at the Conference of District Superintendents of Police in early 2005 that: "*We need to ensure that police forces at all levels, and even more so at the grassroots, change from a feudal force to a democratic service*"⁶

After Prakash Singh v. Union of India

Ever since the Police Act was enacted in 1861, there have been few and far reforms to the police system in India. Several committees were set up by the Government to look into these reforms. One very important milestone in this regard was Prakash Singh v. Union of India in 2006.

The problem of political interference in the work of the police and its disastrous consequences on the rule of law in this country were examined by the **National Police Commission in its Second Report (August 1979)**. The Commission made the following major recommendations to deal with the problem :-

A State Security Commission should be set up in each State to:

- (i) lay down broad policy guidelines
- (ii) evaluate the performance of the State police
- (iii) function as a forum of appeal to dispose off representations from officers regarding their being subjected to illegal orders and regarding their promotion.
- (iv) generally review the functioning of the police force.

The Chief of the State Police Force should be selected from a panel of three IPS officers of that State cadre. The panel itself should be prepared by a committee headed by the Chairman of the UPSC. The Police Chief thus selected should have a fixed tenure.

⁶ http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&catid=35:police-reforms&id=600:the-police-act-drafting-committee&Itemid=98

Under the existing system, selection of the head of the State Police Force and his continuance in office are dependent on the discretion of the Chief Minister/Home Minister. This encourages a very unhealthy race amongst senior officers in the police to lobby for the top post. It leads to erosion of standards of leadership and discipline in the police, besides disrupting its organisational structure and command system.

The Police Act of 1861 should be replaced by a new Police Act, which not only changes the system of control and superintendence over the police but also enlarges the role of the police to make it function as an agency which promotes the rule of law in the country and renders impartial service to the people.

154th Report, the Law Commission highlighted that⁷ :-

- (i) reduction of executive control over police investigation as the latter would enjoy protection of the judiciary,
- (ii) better investigation owing to scrutiny of courts which will lead to successful prosecutions,
- (iii) reduction in the possibility of unjustified and unwarranted prosecutions,
- (iv) speedy investigation leading to speedy disposal of cases,

The advent of Independence changed the political system, but the police system remained more or less unaltered. However, the need for change and reform in the police had been realised widely. Throughout the 1960s, many State Governments took initiatives to set up commissions to examine the problems of the police and suggest improvements. During the 1970s, the Government of India became active and set up the Committee on Police Training in 1971, and later the National Police Commission in 1977.

In 1996, Mr Prakash Singh, a retired police officer, petitioned the Supreme Court under Article 32, urging for the issue of directions to the Government of India to frame a new Police Act on the lines of the model Act drafted by the Commission in order to ensure that the police is made accountable essentially and primarily to law of the land and the people. Supreme Court considered in 2006 that it could not further wait for the Governments to take suitable steps for police reforms and had to appropriate directions for immediate compliance.

⁷ "one fifty Fourth Report of the law Commission",

The Supreme Court referred to the recommendations made by several committees on police reforms and culled four requisite points of reform:

- (a) State Security Commission at State level;
- (b) transparent procedure for the appointment of Police Chief and the desirability of giving him a minimum fixed tenure;
- (c) separation of investigation work from law and order ;
- (d) new Police Act which should reflect the democratic aspirations of the people.

On 22-9-2006, the Supreme Court of India delivered a historic judgment in *Prakash Singh v. Union of India* instructing the Central and State Governments to comply with a set of seven directives laying down practical mechanisms to kick-start police reform. The Supreme Court required all the Governments, at the Centre and State levels, to comply with the seven directives by 31-12-2006. the Supreme Court cast away the objections raised and stated that its directions had to be complied with without any modification. The Court granted a three month extension to comply with four of its directives, while stating that the others had to be complied with immediately.

A number of States have taken the initiative to put in place special committees to draft a new Police Bill and committed to introducing it in the legislature in the coming months. It is hoped that these new pieces of legislation will be openly debated and ultimately reflect the essence of the Supreme Court judgment. The judgment is the first tangible step towards police reform in a long time but also only an initial step. What is now required is strong political will to introduce long-lasting reforms and not merely cosmetic changes.

Directions of the Supreme Court in Prakash Singh v. Union of India :

These directives can be broadly divided into two categories:

- (i) those seeking to achieve functional autonomy for the police (Part I);
- (ii) those seeking to enhance police accountability (Part II).

Directive I

State Security Commission The State Governments are directed to constitute a State Security Commission to:

- (i) ensure that the State Government does not exercise unwarranted influence or pressure on the police,
- (ii) lay down broad policy guidelines,

(iii) evaluate the performance of the State police.

Directive 2.

Director General of Police The State Government is to ensure that the Director General of Police is appointed through a merit based, transparent process and enjoys a minimum tenure of two years.

Directive 3.

Minimum tenure for other police officers The State Government is to ensure that other police officers on operational duties (including Superintendents of Police in charge of a district and Station House Officers in charge of a police station) also have a minimum tenure of two years.

Directive 4.

Police Establishment Board The State Government is to set up a Police Establishment Board, which will decide all transfers, postings, promotions and other service related matters of police officers of and below the rank of Deputy Superintendent of Police and make recommendations on postings and transfers of officers above the rank of Deputy Superintendent of Police.

Directive 5.

National Security Commission The State Government is to set up a National Security Commission at the Union level to prepare a panel for selection and placement of Chiefs of the Central Police Organisations (CPO), who should also be given a minimum tenure of two years.

Directive 6.

Police Complaints Authority The State Government is to set up independent Police Complaints Authorities at the State and district levels to look into public complaints against police officers in cases of serious misconduct, including custodial death, grievous hurt or rape in police custody.

Directive 7.

Separation of investigation and law and order police The State Government is to separate the investigation and law and order functions of the police. Separation of investigation and law and order police The State Government is to separate the investigation and law and order functions of the police.

COMPLIANCE OF DIRECTIONS BY STATES

Compliance with *Prakash Singh* case Reforms by States in India; An evaluative and analytical study On 11-1-2007, the States submitted affidavits to the Supreme Court setting out the steps that they had taken to comply with the judgment.

States and the Union filed fresh affidavits to update the Court on compliance. Only around 15% have been compliant (have reported taking steps to implement all directives like Sikkim, Nagaland, Meghalaya, Arunachal Pradesh) while 63% have been partially compliant (have taken steps to comply with one or more directives, may have registered objections to some directives like Himachal Pradesh, Daman and Diu, Orissa, Jharkhand) while the rest have completely ignored them (have registered strong objections to some or all directives and do not indicate any steps for implementing or have stated that new police legislation is in the process of being drafted therefore no steps have been taken to implement directives or; have sought extensions with no details on concrete steps towards compliance like West Bengal, Tamil Nadu, Uttar Pradesh)⁸.

Problems contended by states :-

Gujarat and Nagaland :- Political interference in police administration is minimal. The need for a State Security Commission is questioned, as there is no unwarranted influence over the police.

Andhra Pradesh, Gujarat, Karnataka and Uttar Pradesh :- Undermines the power of the elected Government. Setting up a State Security Commission with binding powers is likely to undermine the power of a constitutionally established State over

⁸ State Crime Records Bureau, "Crime in Andhra Pradesh 2004" (Crime Investigation Department, 2004) p. 165

the State police, lead to the creation of a parallel body which is not accountable to the people of the State and would infringe the rights of the State.

Andhra Pradesh, Gujarat, Nagaland and Uttar Pradesh:- Fixed tenure will demoralise officers and limit the Government. A fixed two-year tenure for the DGP, irrespective of their superannuation date, will block opportunities for other eligible senior officers, who will be demoralised. Further, the directives take away the right of the Government to transfer police officers to meet administrative exigencies. Similar arguments have been levelled against a fixed tenure for the IG, DIG, SP and SHO.

Gujarat and Karnataka:- Involvement of the UPSC is neither practical nor necessary Under the existing law, there is no provision for empanelling three officers by the Union Public Service Commission to provide three names of candidates for DGP to the State Government to appoint. The involvement of the UPSC in this is neither practical nor necessary.

Gujarat, Uttar Pradesh:- Police Establishment Board will duplicate existing systems A Police Establishment Board would run contrary to the democratic functions of the Government and result in the creation of a separate power centre, comprising bureaucrats who are not answerable to the people, while also duplicating existing systems.

Gujarat, Uttar Pradesh, Andhra Pradesh, Karnataka and Tamil Nadu :- Complaints Authorities will duplicate existing efforts and be a financial burden National and State Human Rights Commissions, the Minorities Commission, the Scheduled Castes and Schedules Tribes Commission, the Central Vigilance Commission, the State Vigilance Commissions and Lok Ayuktas are already in place to deal with complaints about the police. Creating new District and State Complaints Authorities would duplicate the work of existing fora and would be a financial burden.

Uttar Pradesh argued against the need for State and District Complaints Authorities based on a statistical argument comparing the current number of complaints against the police and the number found to be incorrect or unsubstantiated. ***Nagaland*** maintained that the commission of excesses by the police is a very rare occurrence.

ATTEMPTS TO REFORM

In fact, reports from Kerala indicated that the Home Minister of that State has written to the Union Home Minister to convene a meeting of the Home Ministers of different States to discuss the directives of the Supreme Court and has taken steps to move the Supreme Court for a review. This was nothing short of the proverbial bolt from the blue. In fact it was earnestly hoped by the people at large, that the Communist Party (Marxist) led Ministry with a Home Minister from the CPM would show the way by hastening to implement the directives of the Supreme Court. The Minister himself had given strong indications that he was very receptive to the demand for police reforms.⁹

It may be recalled that Kerala was the first among the States (reorganised on linguistic basis) in India, under a Communist Party led ministry, with Shri E.M.S Nambuthripad as Chief Minister and Shri V.R. Krishna Iyer (later Justice V.R. Krishna Iyer) as Home Minister which launched the very first initiative aimed to reform the police. A Kerala Police Reorganisation Committee was constituted with such eminent jurists and public men like N.C. Chatterjee, S. Mohan Kumarmangalam, S. Guru Swami and P.N. Krishna Pillai, on 15-1-1959. The Terms of Reference were quite ahead of the times. The Committee submitted their Report, rather abruptly, on 29-1-1960 with recommendations on some items of the Terms of Reference. Most of the recommendations were progressive and forward looking. The Communist Party (Marxist) led ministries had come into office, not less than for four spells after 1960 but no steps were taken to implement at least selectively, any of the recommendations. The Report of the National Police Commission was with the State Government when they appointed on 30-7-1982 a Police Reorganisation Commission.

The Reports of the National Police Commission or the Commission mentioned above were also not acted upon. Despite such callous indifference to Police Commissions and their Reports, another Commission, Police Performance and Accountability Commission with no less a person than Justice K.T. Thomas, formerly of the Supreme Court, was appointed in 2004 by the then Chief Minister who held the Home portfolio. The Report of this Commission is also gathering dust in the morgue of police reforms efforts. The present Home Minister had stated on several occasions that he is having the recommendations of the various Commissions, including the Chatterjee Commission of 1960 vintage examined for implementation. He had also generally welcomed the directives issued by the Apex Court. It was therefore absolutely shocking and disturbing to find the very same

⁹ *Committee on Reforms of Criminal Justice System Report Volume 1* (Government of India, Ministry of Home Affairs, March 2003)

Minister spearheading a move to abort the police reforms process kick-started by the Apex Court.¹⁰

In some States, Police Complaints Authorities have already been set up to inquire into allegations of serious misconduct against police personnel. In Tripura, the official notification of the constitution of the Police Accountability Commission, its functions, the procedure for making complaints and its physical location was published in the Dainik Samvad on 4-5-2008, informing the public that the Commission would be functional from 2-6-2008. It is positive that the State Governments are choosing to draft new police legislation. It is also a cause for enormous concern that the community is not involved and is not aware of the process. The State Governments must publicise their initiatives to redraft police legislation widely, using a range of methods. Publishing this information will educate the public and strengthen democracy.

¹⁰ "Committee on Reforms of Criminal Justice System Report Volume 1" (Government of India, Ministry of Home Affairs, March 2003) p. 102, 103 and The Forensic Science Service (FSS) UK Homepage (n.d.) (electronic source) retrieved August 24, 2006 from <http://www.forensic.gov.uk/forensic_t/inside/about/index.htm>

Conclusion

The crux of the police reform is to secure professional independence for the police to function truly and efficiently as an impartial agent of law of the land and, at the same time, to enable the Government to oversee the police performance to ensure its conformity to law. A supervisory mechanism without scope for illegal, irregular or mala fide interference with police functions has to be devised. It was earnestly hoped that the Government would examine and publish the report expeditiously so that the process for implementation of various recommendations made therein could start right away.

It is thus a strong, formidable array of interests that have lined up against the very tentative steps towards police reforms. This is thus the most crucial moment for all well-meaning people of this country to make their voice heard; to come to the open and press their case for a clean and efficient police; a police accountable to law and respecting the rule of law. Educating the public through debates and discussions features and talk shows in the media and by all other means is the first priority. The struggle for police reforms should not be given up at this stage.

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