

A Democratic Police Act for India

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Dating from 1979, successive governments have promised police reform to the people of India. Numerous high level Commissions have carried out extensive analysis of the problems in policing, identified key areas of concern, and most importantly provided specific recommendations to realise *systemic* reform of the police – none of which have been implemented. Complementing these government driven reform plans, individuals and communities across the country are constantly experimenting in more informal ways to bring the police closer to the public at the community level. In spite of these initiatives and India's democratic ethos, the police remain a feudal, coercive force rather than a democratic, responsive public service. The simple answer for this is the absence of political will to truly transform the police into an accountable, transparent, rights-affirming law enforcement agency.

Another opportunity for reform is upon us. In September 2005, the Government of India formed a Police Act Drafting Committee to draft a new Police Act. Policing continues to be governed by the antiquated Police Act of 1861, which falls exceedingly short as a legislative basis to establish the kind of policing system the people of India are entitled to. As the world's largest democracy, India deserves "democratic policing". The concept of democratic policing implies an approach based on norms and values derived from democratic principles. A Police Act that is shaped by democratic norms and human rights standards can lay a firm foundation for democratic policing.

In effect, it is the Police Act that creates the structure and hierarchy of the police organisation, and generally defines the scope of police responsibilities and powers. Writing in an explicit reference to human rights in the police's legal mandate can help shape an orientation towards rights-focused policework in practice. The 1861 Act, pre-dating the Universal Declaration of Human Rights and the end of imperialism, makes no reference to the protection of human rights and civil liberties but focuses on the functions of the police related to colonial-style "maintenance of law and order". More progressive police legislation from other countries do contain specific human rights mandates – Section 1 of the 1990 Police Services Act of the Ontario Provincial Police (Canada) states that in the course of carrying out its functions, the police service must recognise the importance of safeguarding the fundamental rights guaranteed by Canadian laws, the need for sensitivity to the multicultural and multiracial character of the society, and the need to ensure that the police are representative of the community. It is imperative that a new Police Act contains an elaborate charter of duties and responsibilities, based on constitutional values and attuned to upholding the rule of law. In 1981, the National Police Commission drafted a model Police Act whose preamble stresses that "*the police has a paramount obligation and duty to function according to the requirements of the Constitution, law and the democratic aspirations of the people*", and requires it "*to be professional and service-oriented and free from extraneous influences and yet accountable to the people*". An elaborate list of relevant duties has been prescribed by the NPC, which can be taken into consideration. In India's context, including routine violations of human rights by the police, such as arbitrary arrest, illegal detention, and excessive use of force to name a few, as offences against police officers in the Police Act, may also be a necessary tool to stamp out impunity and enforce greater police adherence to human rights standards.

Critical to the success of democratic policing is the principle that the police should be held accountable: not just by government, but by a wider network of agencies and organisations, working on behalf of the interests of the people, within a human rights framework. The 1861 Act barely addresses police accountability and relies almost exclusively on internal police disciplinary systems to investigate police misconduct. The lack of public faith in the impartiality of internal processes, the instinctive tendency of the police to protect its staff and image, and the lack of meaningful external oversight over the police often swings the balance towards impunity and away from accountability. Other countries, including South Africa and Northern Ireland, have set

up independent civilian oversight bodies with powers to investigate cases of serious police misconduct in their Police Acts. This makes the police directly accountable to civilian dominated agencies and broadens the levels of oversight over the police. In a proper democratic system, police accountability solely or even primarily to the law is not sufficient – police must also account to communities, governments and independent oversight bodies.

One another vital area where the 1861 Act falls short is in forging active ties and consultation channels between the police and the public they serve. As policing in a democracy essentially involves serving communities, it is vital that police organisations be required by law to understand and respond to community needs. In England and Wales, the Police Act of 1996 requires the police to gather the views of local communities in matters concerning the police, and also to involve them in cooperating with the police to prevent crime. In South Africa, provincial governments are charged with the constitutional responsibility “to promote good relations between the police and the community”. The South African Police Service Act of 1995 establishes Community Police Forums at the police station level to act as the liaison between the police and the community. This link helps establish and maintain community – police partnerships; promotes communication and co-operation; improves the rendering of services by the police in the community; increases transparency in police functioning; and promotes joint problem identification and problem solving. In fact, policing a vast country like India will be aided by enlisting the help of the public and will help to generate greater public trust in the police. Various experiments in community policing are being attempted in different states, including Punjab and Chattisgarh, providing a ready reservoir of practical experience for the Drafting Committee to feed into its law and policy-making.

The Police Act Drafting Committee was created by the present national government due to its stated commitment to police reform. Policing must evolve into a responsible public service for the people of India rather than remain mired in corruption and brutality. It is imperative that a new legislative basis creates an accountable, transparent and democratic police organisation, suitable for a vibrant democracy like India, in the interest of good governance and most importantly human rights.