

## **Holding the Police to Account**

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The Ministry of Home Affairs instituted a committee last September to draft a new Police Act that would replace the archaic colonial Act of 1861. This followed the Prime Minister's emphasis on the need for police reforms and humane policing. On 1<sup>st</sup> September 2005, in the national conference of superintendents of police, the PM again underlined the need for the police to adhere 'to professional codes of conduct' and called upon them to change themselves from a feudal force to a democratic service at all levels so that they are 'seen as a friend of the citizen'.

While all this may sound encouraging; however the recent police firing in Kalinga Nagar killing over 10 tribal people demonstrated once again how easy it is for the police to literally get away with murder. Gauged against the national and international standards, it is clear that these firings were against the norms laid down, and yet - despite the state government setting up a judicial commission of inquiry - it is widely believed that no consequences would flow. The guilty officers may be transferred or at the most face some disciplinary action, but they will certainly not be tried for culpable homicide. Courts in India might have stressed that 'Be you ever so high, the law is above you' and the National Human Rights Commission may have cried itself hoarse by emphasising the need to register First Information Reports (FIRs) and investigate all cases where death is caused by police action, but the law is certainly applied differently to the law enforcers.

Perhaps the greatest resentment against bad policing in India is reserved for impunity - the protection given by supervisors and authorities to errant police. The law that governs the police was enacted in 1861, soon after the revolt of 1857 to establish a force that would be politically useful. Independence and the adoption of constitution did not convince the political elite of the need to adopt a new law for a democratic society. The archaic police act makes no pretensions of being concerned with holding the police to account. Consequently, as the law stands, a victim of police abuse must approach the police to complain. Apart from the logical fear that the victims may have of approaching their tormentors, it is extremely difficult to get the cases registered. If this was not enough, a provision in the Criminal Procedure Code bars the courts from taking cognisance of "any offence alleged to have been committed" by a police officer "while acting or purporting to act in the discharge of his official duty", unless sanctioned by the concerned government.

A victim of police misconduct, if lucky, has to be satisfied with departmental disciplinary proceeding against the perpetrator. These opaque proceedings conducted by senior police officers require the complainant to be pitted against the police officer, who usually has better skills and greater experience in law and procedure, and very often a stronger personality. The efforts needed to produce witnesses and the ability required to examine them are also often beyond the resources of the complainant. On the conclusion of the formal proceedings, the enquiry officer submits a report to the disciplinary authority, which finally decides whether the evidence is sufficient to warrant a punishment. Once again, the disciplinary authority exercises discretionary powers in deciding whether to punish or not and also the quantum of punishment. At the stage of decision-making, the suspect gets the benefit of a second stage of defence against the penalty proposed while the complainant has no such opportunity. Avenues of acquittal are still open to the suspect whereas the complainant gets no opportunity to seek enhanced punishment. The cumulative result of these adverse circumstances is that the suspect gets away with an acquittal or a light punishment even after having been found guilty by the internal inquiry and the complainant has no recourse to appeal against this. Additionally, threats to the complaint / witness and the subculture of police brotherhood make the situation pretty dismal for the complainants who allege widespread bias in favour of the police personnel in these proceedings.

Undoubtedly, internal management mechanisms – if well implemented – can be a powerful way of holding police organisations to account. But on their own, they are not enough, and even the best-managed systems never command the full confidence of the public. Recognising this reality, many countries including U.K., Canada, Australia, South Africa and Sri Lanka have sought to balance internal accountability mechanisms with some system of external, non-police (civilian) oversight. Across the globe, increasingly, bodies dominated by civilians - and independent of the state and the police - investigate cases of serious police abuse. Even in cases that not very serious, these bodies have the power to oversee internal police investigations to check bias and increase transparency. No particular type of civilian oversight agency is appropriate for all situations – much will depend on local conditions. However, no matter the structure, there are four features which are common to all effective oversight agencies, and which are critical for their success: independence, adequate powers, sufficient resources and the authority to follow up on recommendations.

In India, the National Human Rights Commission function as a civilian oversight agency over the police. However, the volume of complaints against the police has resulted in a huge backlog and the Commission is

unable to look at all complaints against the police. It would be preferable for us to have an agency dedicated to investigate complaints against the police, as it is more likely to develop the necessary expertise in policing issues and investigative techniques. Unlike a body with a wide human rights mandate like the NHRC, the focus of a body dedicated to looking into complaints against the police will not be diverted to other areas and it will have greater ability to analyse patterns of police conduct and performance. Also, since policing is a state subject, it is imperative that this body be created at the district and the state level to make it accessible to the majority of the people.

Clearly, it is important that there is a larger debate within the society on this and many other policing issues. The Union Government that has already initiated the process of reforms should provide for a civilian oversight agency while drafting the new Police Act. But then given the fact that numerous Committees since 1979 have suggested reforms to no avail, it is for the public and the civil society to work closely with the new Committee and ensure that the policy makers accept the recommendations. For unless there is a broad domestic constituency that supports and understands policing and police accountability, there will be no political support for reforms.