

Head: The forgotten police agenda

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At the plenary session of the Congress party held in January this year, Prime Minister Manmohan Singh, spoke of creating a new India with hard work, determination, selflessness and commitment. He underlined the need to secure a bright future for farmers, workers, weavers, minorities and weaker sections.

But economic opportunity is meaningless if physical safety and security are not assured to ordinary people, particularly the vulnerable. Recently, in Orissa, twelve people from a tribal community were gunned down while protesting the loss of their lands and livelihoods to big corporations. In Meerut, the police roughed up college students in a public park in full view of journalists' cameras. In New Delhi, the rising number of rape cases each year is a serious cause for concern especially to women who commute daily to work. The accountability of the police is at a new low.

Currently there is considerable talk about replacing the archaic Police Act of 1861. A Police Act Drafting Committee, comprising of jurists, police officers and administrators, has been set up by the union government to replace the existing law. In addition, the Parliamentary Affairs Committee on Home Affairs is looking at police reforms as an important area. The Administrative Reforms Commission has also evinced similar interest.

Police forces across India are facing a serious crisis of credibility. Reports of endemic corruption, bias, brutality and a general failure to respect the rights of citizens have undermined public confidence in the police and in the rule of law. Over the years, routine and unconscionable failures by the police establishment to account for acts of omission and commission have led to the proliferation of private armies, conflict, vigilantism, and systemic outbreaks of violence. Habits of impunity and patronage have become so deep rooted in the police, that the opinion in many quarters is that the only way to reform is to disband the existing state police forces and restructure them with a freshly drawn pool of officers.

At international forums the performance of the police and their abysmal human rights record is a consistent source of embarrassment for the government. Within the country, too, the courts have indicated their displeasure with the functioning of the police at every level and laid down standards that are followed more in breach than in obedience. Detection rates are seriously low and cases often fail in court because of shoddy investigation and poor record keeping when extraneous considerations are not involved. The National Human Rights Commission (NHRC) and the state human rights commissions are overwhelmed with complaints against the police.

Recent events highlight the need for police reform through multiple levels of accountability. This begs the question, **what do we make the police accountable for?**

The police must be accountable both at an individual and organisational level for:

Acts of misconduct: The types and degrees of acts of misconduct - many of which happen to be criminal offences - vary. The most serious types are extra judicial killings, custodial rape, torture, and excess of force in a given situation, causing physical injury to the victim. In certain instances, misconduct may involve impairment of individual freedom through illegal detention or unwarranted arrest. In yet other situations, misconduct could involve rights violations through extortion and intimidation, registration of false cases, failure to register genuine complaints, improper or biased investigations, unnecessary surveillance and failure to protect life and property. Then there are instances of general misbehaviour such as abrasive conduct or use of derogatory language.

Disregard of legal standards and operating procedures: Standard operating procedures to handle different kinds of situations are laid out in the law, court directives, police manuals, departmental rules and regulations. These are followed more in breach than obedience. For instance, the procedure for the use of force to deal with unlawful assemblies is meticulously laid down in all state police manuals. They state that use of force must be progressive and firing should be carried out only as a last resort and in controlled circumstances. Yet instances of the excess use of force in dealing with public protests stare us in the face every other day. The Supreme Court has laid down procedures, which have the force of law for registering First Information Reports, carrying out arrests, handcuffing suspects, granting bail, which are routinely disregarded by the rank and file of the police.

Failure to assure public safety and security: The primary task of the police in a democracy is to create an enabling environment for the unhindered exercise of rights. Rising crime levels and perceptions of increasing criminality in society indicate a failure of the police to perform its core duty. Too often, the police are blamed for inadequately responding to crime situations and of being insensitive to the plight of victims. It is essential to make the police accountable not only for the results it is delivering but also for the manner in which it is delivering. Low public perceptions of safety and security point towards serious professional incompetence for which the police must be held accountable.

Failure to adhere to government policy: Democratically elected governments are required to frame policies in public interest. Just like any other agency of the state, the police are also bound by government policies as long as they are lawful and within the constitutional framework of rights. Depending on particular situations, governments decide policing priorities from time to time. For instance, the government may, as a policy matter, decide to lay greater thrust on curbing crime against women. Failure of the police to follow government policy indicates a serious lack of accountability. But the ruse of allegiance to government policy cannot be used to undermine the rule of law and the police's duty to uphold the rights and physical safety of all.

While demands for police accountability may be fuelled by non-state actors such as the media, civil society, political parties, religious and social groups, local communities, the intelligentsia or ordinary citizens, the responsibility for making the police accountable lies with the state. In a democratic framework, the police are made accountable for misconduct and failure to perform by a variety of state structures and through multiple mechanisms. The **institutional mechanisms** by which police accountability is enforced are:

Internal departmental inquiries: The most commonly used mechanism to address individual acts of police misconduct is a departmental inquiry conducted by senior police officers. An internal inquiry may be conducted on receiving a complaint from the public or by the police department on its own volition. Departmental inquiries follow the principles of natural justice. It allows officers under inquiry adequate opportunity to defend the charges against them. If guilt is established, inquiry officers can make a recommendation for punishment with censure, loss of service, reduction in pay and allowances, suspension and even dismissal.

Though internal disciplinary inquiries are swifter and cheaper than other accountability mechanisms, they inspire little public confidence. The reasons for the lack of public faith in internal inquiries by the police are: an innate desire within the department to protect its image; some questionable practices finding widespread acceptance in the department; apprehension that strict action may demoralise the force; camaraderie within the department; and the likelihood of the officer inquired into being personally acquainted with the inquiry officer/s.

Courts: Police officers are liable to punishment by the courts for violating the law. Breaches of law invite punishment under criminal law and suits for compensation under civil law. Even under criminal law, fines may be imposed on offenders at the time of conviction. In addition to general legal provisions, perhaps because the police are vested with extraordinary coercive powers, certain provisions of the Indian Penal Code provide punishment for specific acts of police misconduct such as custodial rape, causing hurt to extort a confession; compel restoration of property; and malicious arrest.

In practice, however the task of holding officers to account is beset with problems. The greatest impediment before the courts is Section 197 of the Code of Criminal Procedure, 1973 (CrPC). This provision prevents prosecution of public servants without prior sanction of the appointing authority for any offence alleged to have been committed in the discharge of official duty. Quite often this sanction is not forthcoming or significantly delayed, thereby defeating the ends of justice. Despite recommendations by the Law Commission and the National Police Commission to repeal this section, it continues to be retained.

Commissions of inquiry: Commissions of Inquiry are set up on a resolution by the legislature to ascertain facts surrounding a matter of public importance and to make relevant recommendations. In the past Commissions of Inquiry headed by serving and retired judges have been appointed to look into a particular incident or a series of incidents involving allegations of police misconduct like the Kannur firing in Kerala, torture chambers in Punjab, Delhi riots, Mumbai riots, Gujarat riots, Gurgaon *lathi* charge and the Kalinga Nagar police firing. Commissions are vested, by law, with the powers of a civil court to summon witnesses and documents but they do not have the power to enforce action on their recommendations. In many instances, where Commissions have indicted police officers for misconduct, governments have been slack in taking action because of political compulsions. On the other hand, despite outstanding examples of judicial conscientiousness, several Commissions of Inquiry have been manipulated by governments to deflect blame from their own complicity in sanctioning police misconduct.

Human Rights Commissions: Established for the “better protection and promotion of human rights”, there are sixteen state human rights commissions apart from the National Human Rights Commission (NHRC) which is situated in New Delhi. Though human rights commissions have a wide remit, the maximum complaints received by them are against the police. After scrutinising individual complaints, commissions make recommendations to the government for registration of criminal cases against individual officers; immediate compensation for victims, to be recovered from salary and other dues of guilty officers; and initiation of disciplinary proceedings.

Commissions also analyse patterns of police misconduct and lay down guidelines to enhance accountability of the police. The NHRC has issued guidelines for encounter deaths; administration of lie detector tests; arrest; police-public relations; and mandatory reporting of custodial death and rape. The national and state human rights commissions are required by law to have their annual reports tabled in parliament and state legislatures. These reports contain statistics of complaints of police misconduct, including custody deaths, summaries of illustrative/significant complaints and some times, prescriptions for systemic improvement in policing.

In practice, human rights commissions often face resistance in their efforts to make the police accountable. Because they are vested only with powers of recommendation, state governments are often tardy in taking action recommended by the commissions against errant police officers. Additionally, the capacity of commissions to fully tackle police misconduct is restricted by their bureaucratic style of functioning and close links with the executive branch of government. A persistent criticism against human rights commissions is that the appointment of commissioners reflects political patronage rather than suitability of candidates for the job. Many state commissions are functioning below the prescribed strength and are facing a resource crunch.

The state government: The Police Act of 1861, which governs most police forces in India, vests the superintendence of the police in the hands of the state government. This means that the police organisation of a state is placed under the control and supervision of the home ministry usually headed by the chief minister who sets policy directions for the police and holds the state police chief in whose hands the administration of the police rests, accountable for failure to perform.

Under the Police Act of 1861, police chiefs can be appointed and removed at the discretion of the chief minister who heads the government. The instability of tenure and lack of merit based appointment procedure for the police chief has eroded police accountability and contributed to the police being utilised to fulfill the political agenda of the ruling party.

Concerned that the police’s investigative and law and order functions were being marred by illegitimate political interference, the National Police Commission (1979-81) noted that its object was “to devise a system in which the police will have professional and operational independence, particularly in matters in which their duties and responsibilities are categorically specified in law with little or no room for discretion and at the same time their overall performance can be monitored and kept within the framework of law by an agency which will involve the government also.”

Sadly, the National Police Commission's recommendation to set up a specialised body - called the State Security Commission - for overseeing the police, remains unimplemented to date. Nor has its recommendation of a fixed tenure of four years for the police chief and to make him/her ineligible for further public appointments been paid heed to.

Parliament/ state legislatures: The most significant accountability function of the legislature is that of law making. New laws or amendments to existing laws that increase penalties for misconduct or reduce the scope for arbitrary exercise of power or establish institutions to oversee the police, set both the standards and the direction of accountability. In addition, the minister in charge of the police is required to answer to the people's representatives in the house questions in respect of police performance; acts of misconduct, systemic abuse of power, and use of allocated resources. Many times, the reports of commissions of inquiry indicting the police are debated and action demanded on their recommendations by the house.

Yet endemic patterns of misconduct, occurring with the complicity of political forces are often ignored or pursued to the extent of achieving political objectives and no more. There is persistent criticism that reports of human rights commissions which do point out patterns of police misconduct are rarely discussed in parliament and in legislatures of states which have human rights commissions.

Police misconduct and mal-performance continue to plague all corners of the country despite multiple forums of accountability. It is undisputable that the failing of the existing institutions to fully address police accountability have contributed to the present state of affairs. However, the lack of effective accountability also stems from the fact that certain vital elements are missing from the accountability structure. **The missing elements in institutional accountability** are:

Direct accountability to local communities

There is no institutional responsibility on police forces to be accountable to local communities. The idea that the police are part of the community and therefore accountable to it has not taken root largely due to the colonial origins of the Police Act of 1861, which is conspicuously silent on the issue. Nowhere in the Act is it written that the police must work in partnership with communities, take them into confidence while developing local policing strategies, and account to them for failure to perform. Because of this vital omission in the law, policing in India has largely remained a one sided affair with communities having little or no say in an activity that affects them the most. This contrasts sharply with progressive police legislation in other countries.

The South African Police Act mandates the establishment of community police forums, broadly representative of the local community at the police station level. The law also sets up community police boards at area and provincial levels. The area police boards consist of representatives of community police forums in each area, while provincial community police boards include representatives of all community police boards in the province. The avowed objectives of the police forums and boards are to establish and maintain community-police partnerships; promote communication and co-operation; improve the rendering of services by the police in the community;

increase transparency in police functioning and strengthen accountability to the local community; and promote joint problem identification and problem solving.

In England and Wales, Police Authorities, consisting of local magistrates, councilors and members of the community have been set up to help maintain effective and efficient police forces. The Authorities, which set objectives for policing in consultation with the chief constable, are required by law to find out the views of local people about matters concerning the police and to enlist their cooperation in preventing crime.

Scientific evaluation of police performance

Standard setting and scientific monitoring of performance on a recurring basis are missing elements from Indian policing. The sole indicator used to judge police performance are crime statistics, which often lead to undesirable practices such as non-registration of first information reports and carrying out of indiscriminate preventive arrests. Police response to criminality, victim satisfaction and public perceptions of safety, security and integrity of the police are notably absent from any kind of performance evaluation by police departments. The rising public dissatisfaction with the quality of policing and the dismal performance on crime control and human rights highlight the necessity of institutional evaluation of performance.

The National Police Commission (NPC) had called for the establishment of a State Security Commission to oversee police functioning in each state. Its functions would include evaluating and review of police functioning. It would also submit an annual report on the performance of the police and the work done by it. The NPC also recommended the creation of a directorate of police inspection in each state to assist in evaluating performance. Successive commissions and committees on police reforms, most notably the Ribeiro Committee and Padmanabhaiah Committee have also reiterated the need for performance evaluation. Except for a nascent initiative in Kerala where the state government set up a time-bound Police Performance & Accountability Commission, there has been no progress towards institutional evaluation of police performance.

In Northern Ireland, the Policing Board which is an independent public body made up of legislators and members of the public selected on merit, sets objectives and targets for police performance following a consultation with the police chief and uses these to monitor progress. The Board established the Police Act and publishes an annual report of performance against these objectives. In addition, the Board monitors trends and patterns in crime and devises ways for the public to cooperate with the police to prevent crime.

In England and Wales, the performance of different forces is measured and compared by a Police Standards Unit, which grounds its evaluation in the Police Performance Assessment Framework (PPAF) prepared each year by the Home Office. The PPAF assesses police performance on a number of factors, including: satisfaction of victims with police handling of their cases; people's perception about their local police doing a good job; satisfaction of victims of racist incidents to the service provided by the police; representation of women and minorities in the force; delivery of internal

efficiency targets; time lost due to sickness of police officers; and the incidence of crime among other things.

Dedicated police complaints authorities

Despite the growing number of complaints against the police, there is no specialised agency to exclusively address police related complaints and to make recommendations for systemic improvements. In the absence of police complaints agencies/ authorities, human rights commissions have assumed the role of exercising civilian oversight but they are beset with their own problems as discussed earlier. There is an urgent need to set up accessible institutions to address public complaints of police misconduct both at the district and state level.

The National Police Commission (NPC) in its very first report had recommended that an Additional Sessions Judge designated as the District Inquiry Authority should conduct a mandatory judicial inquiry into complaints of rape, death or grievous hurt in police custody; and death of two or more persons in police firing to disperse unlawful assemblies. The NPC recommended that the District Inquiry Authority should oversee disposal of complaints against police officers that are dealt with departmentally. In addition, the NPC recommended the setting up of a Police Complaints Board at the state level to oversee satisfactory implementation of the entire scheme. To examine complaints of police excesses, arbitrary arrest and detention, particularly where the complainant is dissatisfied by the action taken by the police, the Padmanabhaiah Committee on Police Reforms recommended the creation of a non-statutory District Police Complaints Authority.

While the need to put in place independent police complaints authorities at the district and state level cannot be over emphasised, it is equally important for such authorities to enjoy public confidence through a transparent and streamlined process of appointment that gives due weight to integrity, experience and diversity. To be effective, the authorities must be vested with powers to call for documents and records; summon witnesses; take evidence; and oversee internal police investigations into public complaints. Effective redressal of complaints can be ensured by making the government duty bound to implement their findings. An independent budget and requisite investigation staff are vital for their success. It is essential that complaints authorities are grounded in the Police Act. The Independent Police Complaints Commission in the UK, the Independent Complaints Directorate in South Africa and the Police Integrity Commission of New South Wales, Australia have their basis in law.

Police misconduct and mal-performance are rife in India because of structural deficiencies in the system. The law governing the police is antiquated and colonial in its approach. By not recognising the value of accountability to local communities, the need to improve performance on public safety and to have accessible forums to redress public complaints, the Police Act of 1861 contributes to widespread police-public alienation. It is vital that missing elements from the existing accountability structure are put in place at the earliest.

For too long, well-entrenched power structures within the political elite and the bureaucracy, have ensured that calls to widen the web of police accountability remain

a pipe dream. The argument that the existing accountability framework is wide enough and simply needs to be tuned to perform better, cannot be used any longer to discount demands for setting up additional institutions and mechanisms in accordance with international best practice. Countries where police reform efforts have been made, offer invaluable lessons for replication in the Indian context. Let's hope we learn and adapt from these experiences before people lose faith in the state completely.

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