

Submissions by the Commonwealth Human Rights Initiative on the Questionnaire designed by the Ribeiro Committee on Police Reforms

Background

A civil writ petition was filed in the Supreme Court in 1996¹ by two retired IPS officers², praying for issue of orders to the Government to implement the recommendations made by the National Police Commission about two decades ago to reform the police organisation, particularly the recommendations which would insulate the police from wrong and illegitimate control of the politicians and bureaucrats.

In pursuance of the directives issued by the Supreme Court in this public interest litigation, the Government of India set up a Committee to examine the subject³. On a reference made by the petitioners, the Supreme Court has additionally asked the Committee to review action taken to implement the recommendations of the NPC, particularly focusing on the need, relevance and practicability of

1. setting up a Security Commission or Police Authority in each State and at the Centre on the lines suggested by the NPC, NHRC and the petitioners, and if so its functions and composition;
2. prescribing a procedure for the appointment of Police Chiefs which would be transparent and ensure that the best officers are selected and giving the senior incumbents a minimum tenure; and
3. insulating the investigative wing of the Police from its law and order functions.

Questions and Answers

The Committee has drafted a Questionnaire to elicit views on different issues relating to its terms of reference.

The CHRI's response to different questions is as follows:

Question No. 1- Do you agree that the Police Forces are less professional and more politicised?

CHRI's Comments

The positioning of the issue of the politicisation of the police as the first question is telling, as it brings into focus a problem that is central to bad policing.

¹ No.310 of 1996

² Shri Prakash Singh and Shri N.K.Singh

³ The Committee is headed by Shri J.F.Ribeiro, IPS (Retd), Ms. Nirmala Buch, IAS (Retd) and Ms. Prabha Sankarnarayan, Advocate as members. The terms of reference of the Committee is as follows:

1.To review the action to implement the recommendations of the National Police Commission, National Human Rights Commission

The Police Act of 1861 brought into existence a ruler appointed Police Force, governed by the need of the British to ensure their suzerainty over a subject population and to perpetuate their rule in the country. Policing was to be done at the minimum possible cost to the public exchequer. Major reforms in the police, requiring substantial increase in expenditure, were to be avoided.⁴

Obviously, the act failed to produce an efficient and a professional police force in the country. The Indian Police Commission appointed in July, 1902 under the chairmanship of Sir A.H.L Fraser concluded: *"The police force is far from efficient; it is defective in training and organisation; it is inadequately supervised; it is generally regarded as corrupt and oppressive; and it has utterly failed to secure the confidence and cordial co-operation of the people."*⁵

The advent of Independence did not bring about any significant change in the police system or its philosophy. It made no *"substantial difference in one of the most significant aspects of the colonial police- its public unaccountability remained unchanged."*⁶

The Police Act⁷ vests the superintendence of the State Police Force in the State Government. The manner in which superintendence has been exercised over the Police has led to gross abuses, resulting in erosion of the rule of law and failure of the police to grow as a professional organisation. Almost all the State Police Commissions and the National Police Commission (NPC) have found overwhelming evidence of misuse of Police system by politicians and bureaucrats for narrow selfish ends. Some experts in police problems have come to similar conclusions.⁸

⁴ One of the main terms of reference of the Police Commission appointed in August 1860 was "to propose a new system of Police applicable to India generally, whereby economy and efficiency might be secured".

⁵ Report of the Indian Police Commission, 1902-03, p: 150

⁶ David Arnold: Police Power and Colonial Rule in Madras 1859-1947 (1986)

⁷ Section 3 of the Police Act of 1861

⁸ The Kerala Police Reorganisation Committee (1959) observed that the greatest obstacle to efficient police administration flows from the dominance of party politics in the state administration and the result of partisan interference is often reflected in lawless enforcement of laws and inferior service.

The Punjab Police Commission (1961-62) found evidence that the members of political parties, particularly of the ruling party, interfere considerably in the working of the police for unlawful ends which has not only demoralised the police force but also affected their work considerably.

The Maharashtra Police Commission (1964) recommended isolating whole classes of decision from political interference through the promulgation of a code of conduct.

The Delhi Police Commission (1968) found that the politicians interference made it impossible for policemen to conduct themselves in a blameless manner.

In his famous book 'The Police and Political Development in India', Professor David H. Bayley found appreciable evidence of successful political intervention in police affairs, some of which has produced injustice and weakened the morale of the force.

The Tamil Nadu Police Commission (1971) felt that the problem of political interference was not a new one, but it had grown over the years.

The situation has only become worse during the last two decades. Innumerable examples can be cited from recent history to show how police action or lack of it has been governed by political considerations. The Police, at the behest of politicians or to protect their interests, have either remained silent spectators to incidents involving major violation of law, or not discharged their responsibilities in an impartial manner or committed crimes on citizens. Some relevant examples are:

- the anti-Sikh riots of 1984, when the police took no action to control the carriage or later on to book the politicians against whom there was considerable evidence not only of fomenting trouble but of participating in riots and committing other crimes⁹;

The Uttar Pradesh Commission (1971) expressed concern at the increasing interference in police work, as it felt that the result of political manipulation was reflected in a warped enforcement of law and inferior service.

The Committee on Police Training (1971) set up by the Government of India found evidence of a great deal of political interference in the administration as well as the operation of the police force, particularly at the lower level.

In a study on 'Image of the Police in India' (1978) done by the Indian Institute of Public Opinion on behalf of the Bureau of Police Research and Development, political interference was seen by the public as a major factor contributing to the poor image of the police and manifesting itself in the misuse and abuse of police powers and disregard of the law by the police.

The Shah Commission of Enquiry (1978), appointed to examine the excesses committed on the citizens by the state authorities during the Emergency, unearthed considerable evidence to prove that "some police officers behaved as though they are not accountable at all to any public authority. The decision to arrest and release certain persons were entirely on political considerations which were intended to be favourable to the ruling party. Employing the police to the advantage of any political party is a sure source of subverting the rule of law. The Government must seriously consider the feasibility and the desirability of insulating the Police from the politics of the country and employing in scrupulously on duties for which alone it is by law intended."

In a study on 'Law and Order problems of Dhanbad district with a special reference to the Bharat Coking Coal Limited', done by the BPR & D in 1979, the most important factor responsible for the deteriorating law and order situation in Dhanbad district was found to be the inability of criminal justice administration to take effective action against certain notorious criminals who wielded considerable political clout.

The subject was examined by the National Police Commission in detail in its Second Report (1979). The Commission referred to the existence of a nexus between unscrupulous elements amongst politicians and anti-social elements, which affects the enforcement of law and breeds corruption and other mal-practices by the police and politicians acting in collusion with each other. After dealing with various aspects of the problem of political interference in the working of the police, the NPC recommended some remedial measures to insulate the police system from such interference.

Bayley, who has been a long time student of the Indian Police system, wrote on the subject again in 1982; "The past decade has been a time of unprecedented stress for the Indian police. Briefly, they have become deeply involved in partisan politics: they are preoccupied with it, penetrated by it, and now participate individually and collectively in it. This politicisation has contributed to what is generally recognised as a decline in the rule of law."

⁹ This was revealed by the reports of Justice Ranganath Mishra Commission which was appointed to enquire into the riots and the two Committees appointed on the Commission's recommendations - Kapoor

- the demolition of Babri Masjid on December 6, 1992, when a huge police force remained a silent spectator to the desecration and destruction of a religious structure;
- communal riots in Bombay and other places in December, 1992 and January, 1993 in which the police took sides and allowed the massacre of innocent citizens to take place¹⁰;
- excesses on Uttarakhand agitators in Mujjafarnagar in U.P in October 1994 when crimes including rapes were committed by police personnel on innocent citizens, solely to prevent them from reaching Delhi to participate in an agitation, which was their fundamental right¹¹.

Police performance has been equally bad, if not worse, on the crime front. Actually, it is their record in dealing with crimes involving persons in positions of power that is largely responsible for the widespread public perception that the primary agency for law enforcement can not uphold the rule of law on which the independent Republic is founded.

The police have either not taken cognisance of such crimes or deliberately delayed or mishandled the investigation. Even the CBI, whose investigative skills are rated superior to those of the State Police Forces, no longer enjoys the image of a professional investigating agency.

There are innumerable examples to prove that the CBI has shown reluctance to take up cases against ruling party politicians or their henchmen and, when forced to do so, adopted dilatory tactics. Cases have also been instituted only to harass and intimidate political opponents.

The way the CBI was manipulated and misused during the Emergency is now a part of history, but the record since then has been no better. The CBI's handling of various cases, like those relating to Bofors, HDW Submarine, Airbus 320, Czech Pistol, Nusli Wadia, S.Gurumurthy, St.Kitts, Chandraswamy, Lalloo Bhai Pathak, JMM, Mumbai Port Trust, Havala etc has been suspect or controversial.

In the Havala case, the Supreme Court castigated the CBI for dragging its feet while investigating cases against persons in positions of power:

Mittal committee and the Jain Aggarwal Committee. The Committee identified a large number of officers and men of Delhi Police who were derelict in performing their duties.

¹⁰ Srikrishna Commission of Enquiry appointed to enquire into communal riots which occurred at Mumbai during December 1992 and January 1993 has castigated the performance and behaviour of the Police Force: "Even the registered riot related offences were most unsatisfactorily investigated. The investigation showed lack of enthusiasm, lackadaisical approach and utter cynicism. Despite clear clues and miscreants were not pursued, arrested and interrogated, particularly when the suspected accused happened to be Hindus with connections to Shiv Sena or were Shiv Sainiks." The Commission further observed: "The evidence before the Commission indicates that the police personnel were found actively participating in riots, communal incidents or incidents of looting, arson and so on."

¹¹ The CBI investigated the incidents on the directions of the High Court and found enough evidence against police personnel.

"Even after the matter was brought to the court complaining of the inertia of the CBI and the other agencies to investigate into offences because of the alleged involvement of several persons holding high offices in the executive, for quite some time the disinclination of the agencies to proceed with the investigation was apparent... The continuing inertia of the agencies to even commence a proper investigation could not be tolerated any longer."¹²

Official statistics indicate that the quality of investigation work done by the State Police Forces has been declining. There has been a consistent fall in the conviction rate during the last few decades. While in 1961, 64.8% of the IPC cases ended in conviction, by 1971, the conviction rate had declined to 62.0%, by 1981 to 52.5%, by 1991 to 47.8% and by 1995 to 42.09%¹³. This can be ascribed to a decline in the quantity of criminal investigations done by the police, though conviction rate does depend on other factors too.

'Professionalism', they say, consists of two 'Es' - efficiency and ethics i.e., efficiency in performance and a code of conduct or behaviour governed by professional ethics. If the efficiency of the police is suspect, their ethics leaves no one in doubt.

The available data shows that there has been an increasing involvement of police personnel in committing crimes over the last few years. As many as 228 police personnel were involved in cases of custodial deaths and 331 in cases of custodial rapes during the period 1991-93. During 1994, 182 cases of rapes, 112 of 'deaths', 33 of 'hurt', 41 of 'illegal detention', 674 of 'extortion' and 1047 'other offences' were registered against police personnel.¹⁴

The National Human Rights Commission's data shows that the number of case of 'deaths in police custody' increased from 136 in 1995-96 to 188 in 1996-97, cases of 'disappearance' from 39 to 175, 'illegal detention' from 112 to 282, 'false implication' from 64 to 237 and 'other police excesses' from 1115 to 1643 during the same period.¹⁵

Thus there is considerable evidence to believe that the police force have become less professional and more politicised.

Surprisingly, the decline in professional standards of the police has occurred when there has been considerable expansion of the Police forces, including improvement in their resources¹⁶. Undoubtedly, the police are now larger in size, better equipped, better educated

¹² From the judgement of the Supreme Court of India in Writ Petition (Criminal) Nos. 340-343 of 1993, commonly known as the Havala case.

¹³ Compiled from the annual reports of *Crime in India*, National Crime Records Bureau, Ministry of Home Affairs, government of India.

¹⁴ Provisional and unpublished data-collected from the records of the National Crime records Bureau, Ministry of Home Affairs, Government of India.

¹⁵ Compiled from the Annual Reports of the National Human Rights Commission for the years 1995-96 and 1996-97.

¹⁶ The total strength of the police in India in 1947 was 3.81 lakhs. By 1.1.1998, the strength of the State Police Forces alone had increased to 13.74 lakhs. In addition, the Central Para Military Forces, mostly raised since Independence, had a combined strength of 5.81 lakhs on this date.

In 1947, the police forces were ill-equipped and not having adequate means of transport and communication facilities. On 1.1.1998, about 70,000 vehicles of different types were available with the

and presumably better trained than they were earlier. However, the returns to the public in terms of benefit have been in inverse proportion to large sums invested.

Question No. 2- If the answer is yes, do you agree that this is because a symbiotic relationship has developed between some politicians and police officers who have taken undue advantage of this relationship for their personnel ends?

Question No. 3- If the answer to Question No. 2 is yes, then do you feel that this trend is increasing and there is urgent need to curb this trend to ensure that public confidence is restored.

CHRI's Comments

"The alliance between a police officer and a politician is as much an arrangement for mutual exploitation as it is for mutual support. They nourish themselves on each other."¹⁷

The existence of the symbiotic relationship between politicians, particularly those in power, and the police officers is evidenced by the changes that take place in police postings following a change in government. Changes in the top post are almost inevitable and are invariably followed by changes at other levels in the hierarchy.

This has often meant superseding some senior officers. This shatters the morale of honest officers and creates a general impression that the wrong ones always win the race. This impression percolates down the line and undercuts the will of men at various levels to act courageously and vigorously in conformity with law. It, therefore, no longer remains a question of a symbiotic relationship between some politicians and police officers. The effects of the relationship are felt by the entire organisation.

State Police Forces, along with a large network of Police Wireless Stations and other communication facilities.

At the time of Independence, there was not a single full-fledged forensic science laboratory, while now there are 4 Central and 19 State Forensic Science Laboratories to provide scientific aids to investigation. At that time, the educational standards of the police were low: Most of constabulary consisted of either illiterate or semi-literate personnel. Now Matriculation is the minimum qualification for recruitment as a Constable and Graduation for entry as a Sub-Inspector. The exposure to new ideas and techniques has also increased.

The expansion of the Police Forces and improvement in their resources has led to considerable increase in expenditure on Police. In 1951-52, the revenue expenditure incurred by the Central and the State Governments on Police was Rs.58.73 crores only. In 1997-98, on the other hand, the expenditure incurred on the Police Forces in States/Union Territory was as high as Rs.9899.20 crores.

¹⁷ P.R. Rajgopal: *Violence and Response-A Critique Of The Indian Criminal Justice System*, Uppal Publishing House, New Delhi, 1988, p53. The chapter on 'Political Interference and Police' in this book authored by a very eminent IPS officer after retirement gives many examples of the symbiotic relationship between politicians and police officers.

When senior officers are seen to improve their career by courting favour of politicians, their moral authority to command and control their juniors is jeopardised. Officers and men at lower levels develop their own nexus with local leaders of influence and start feathering their nests. They know fully well that they will succeed in getting away with their misdeeds under the system of patronage that the nexus between politicians and police personnel establishes.

In the words of an experienced police officer " *It needs to be reiterated that when the police at different levels are used by the people in authority to break or even to bend the law to sub serve doubtful ends, those concerned will have set the police on the high road to many more serious violations of the law and in more important areas. Once this happens, there is no stopping the police from helping themselves in diverse devious ways. In short, those in positions of responsibility are contributing to enlarging the areas of disrespect and disregard for law by the very instruments for enforcing them.*

*The wrong type of relationship police officers: " It needs to be reiterated that when the police at different levels are used by the people in authority to break or even to bend the law to subserve doubtful ends, those concerned will have set the police on the high road to many more serious violations of the law and in more important areas. Once this happens, there is no stopping the police from helping themselves in diverse devious ways. In short, those in positions of responsibility are contributing to enlarging the areas of disrespect and disregard for law by the very instruments for enforcing them."*¹⁸

The wrong type of relationship that develops between some police officers and politicians results in distorting the command structure of the police, erodes discipline, promotes impunity, breeds corruption and leads to the abuse of police authority and miscarriage of justice. It ultimately shakes the confidence of the public not only in the police but also in the entire system of governance. This is exactly what has happened in this country.

Increasing criminalisation of politics is both a cause and an effect of poor and politicised policing, leading to the erosion in the effectiveness of the police leadership and promoting a tendency at different levels in the police to seek outside patronage for rewards as well as for being shielded against punishment.

An important factor responsible for increasing incidence of police lawlessness is the impunity enjoyed by the policemen even in proven misdeeds. This happens not necessarily because of symbiotic relationship between wrong ones on both sides but also because of the need to protect the larger interests of party in power or of politicians as a group.

The most recent example of assurance of protection of guilty politicians and policemen is found in the Maharashtra Government's reaction to the findings of Sri Krishna Commission Report on communal riots of December 1992 and January 1993 in Mumbai. There is an outright rejection of all those findings of the Commission, which indict the politicians and the policemen. One example of this rejection is as follows: "*The Commission blames the police for not having been able to control the riots effectively. However, the Government feels that although the police suffered from the paucity of numbers and resources, they brought the riots under control in minimum time and handled the riots effectively... Barring some exceptions, the Government cannot agree with the conclusion of*

¹⁸ Ibid, p57

the Commission that police assumed the role of mute spectators during the riots or that they took part in the riots or that they had lost moral authority to control the riots...¹⁹

This is not a solitary instance, as other State Governments have reacted similarly in the past. For instance, the behaviour of the Uttar Pradesh Provincial Armed Constabulary (PAC) was condemned in 1978 in Aligarh; in 1980 in Moradabad; in 1982 in Meerut; in 1986 in Barabanki; in 1987 again in Meerut and in 1990 in Aligarh. The UP Governments on some occasions during this period were headed by Chief Ministers like V.P.Singh, N.D. Tiwari, Mulayam Singh Yadav- all having secular credentials. Despite clear indictment of the behaviour of the police during high level enquiries, no action was ever taken against them. In some cases even the enquiry reports were not released to the public. *"The one safe conclusion from the failure to make these reports public is that these reports contain material, which is highly damaging to the political execution and their vote banks. The PAC escapes punishment because Chief Ministers want to save leaders of their Muslim vote banks."²⁰*

The symbiotic relationship is confined not only to politicians and Policeman. Others, like criminals and bureaucrats, also form important links in the chain of relationships. The nexus exists at various levels.

No less a person than Director CBI reported to the Vohra Committee. *".. all over India crime syndicates have become a law unto themselves. Even in the smaller towns and rural areas, muscle men have become the order of the day. Hired assassins have become a part of these organisations. The nexus between the criminal gangs, police, bureaucracy and politicians has come out clearly in various parts of the country."²¹ The report also mentions that the nexus is "virtually running a parallel government, pushing the state apparatus into irrelevance."²²*

The urgent need to curb this trend is self-evident. The scale of the problem and its all round repercussions must surely prompt us to take concerted action to reverse the trend.

Question No. 4- If the answer to Question No. 3 is yes, then do you agree that we should evolve a system by which the police is insulated from political and other pressures to do what they are required to do according to law. At the same time, the Police should not refrain from doing something which they are bound to do by the law of the land. Do you agree that the Police should be made accountable to the Law through a more foolproof system of controls?

CHRI's Comments

The CHRI believes that the rule of law is a constitutional imperative. The primacy of law and the accountability of execution to the people are the pillars on which a democratic structure rests.

¹⁹ The Government of Maharashtra: *Memorandum of Action To Be Taken On The Report Of The Commission of Enquiry Appointed For Making Enquiries Into The Incidents of Communal Riots Which Occurred In The Police Commissionerate of Mumbai Area During December 1992 And January 1993 And Serial Bomb Blasts Which Occurred ON 12th March 1993*, pp19-20.

²⁰ N.S. Saksena: *"Riots in UP: the Questions"*, The Indian Express dated January 2, 1991.

²¹ Vohra Committee Report, Government of India (Ministry of Home Affairs), 1993, p2 para 3.3

²² Ibid

The existing state of relationship between politics and policing is unacceptable. It undermines the legitimacy of the State and hence its authority and right to govern. Any form of illegitimate political and other pressures on the police itself contravenes the law. The police must be insulated from undesirable and illegitimate pressures and be required to function according to law of the land.

Acting according to law and upholding the rule of law itself requires that laws themselves be fair and just. In other words, they must be in conformity with and give expression to the internationally accepted norms and standards of human rights.

Sometimes, for controlling crimes, curbing terrorism or upholding public order, the State enacts oppressive laws, arming the police with powers. In principle, the CHRI does not agree to the presence of emergency legislation. However, where such legislation exists, there must be enough cross checks and balances to ensure that there is no misuse of extra power given to the police. A close scrutiny of the implementation of such laws should not be avoided merely on the ground that it would demoralise the police force. The emergency legislation, if unavoidable, must be for a short period, which should be specified in law itself. The experience of countries like South Africa tells us that the emergency legislation must be ended if the police force has to be converted into a service that is respectful of the rights of citizens and is sensitive to the requirements of the community.

Provisions in law must make it explicitly clear that supervision may be under any authority but that the policeman is answerable only to the law and bound to uphold that in preference to any other master. Punishment for breaching public trust by the police must be severe. This, in fact, has frequently been the principle under which highly punitive sentences and exemplary damage have been handed down by courts in other jurisdictions.

To ensure a foolproof system of controls, the law must set up a visible and transparent machinery which is set in motion immediately on receiving a complaint of wrong-doing by police personnel. This machinery must be seen to carry out its work openly, quickly and thoroughly and with patent impartiality. Unlike at present, arrangements must ensure that the guilty officials are not allowed to get away.

Question No. 5- If the answer to the question is yes, then do you feel that the National Police Commission's recommendations to bring the superintendence of the Police Department under a State Security Commission headed by the State Home Minister with six other members including a representative of the Opposition and respected apolitical citizens should be implemented?

CHRI's Comments

The CHRI would first like to make it clear that the National Police Commission has nowhere recommended that the superintendence of the Police Department should be brought under the State Security Commission (SSC). All that the NPC has done is to "*lay*

down that the power of superintendence of the State Government over the Police should be limited for the purpose of ensuring that police performance is in strict accordance with law.”²³

The functions prescribed for the SSC by the NPC do not include exercising superintendence over the Police and are as follows:

1. Laying down broad policy guidelines and directions for the performance of preventive tasks and service-oriented functions by the police;
2. *evaluating the performance* of the State Police every year and presenting a report to the State Legislature;
3. functioning as a *forum of appeal* for disposing of representations from any police officer of the rank of Superintendent of the Police and above regarding his *being subjected to illegal or irregular orders in the performance of his duties*;
4. functioning as a *forum of appeal* for disposing of representations from police officers *regarding promotion to the rank of Superintendent of Police and above*; and
5. generally *keeping in review* the functioning of the police in the State.²⁴

It is to help the State Government discharge their superintending responsibilities in an open manner under the framework of law that the NPC has recommended the constitution of a State Security Commission in every State.

Before we comment on the composition of the SSC, we consider it extremely important to define the principles, which should govern the establishment and composition of the SSC. Some of these principles could be as follows:

- The SSC must be established by law.
- It should be completely independent from the government of the day and this should be reflected in its mandate and methods of work.
- The composition should reflect the plurality of experiences and perspectives existing in the civil society. The members should be drawn from a variety of different backgrounds, including relevant professional groups and the non-governmental sector.
- Selection of members should be done on the basis of their record and reputation. They should be eminent persons known for their integrity and having the capability to decide about matters in an impartial, fair and objective manner unaffected by inducements, pressures, interference or threats of any kind.
- The method of selection of members should be clearly specified in law.
- The selection of members should not depend on whims, preferences and predilections of individuals. In fact, a Committee formed specifically for this purpose and headed by the member of the National Human rights Commission/ State Human Rights Commission should do the selection.
- The process of selection should be open and transparent.

²³ National Police Commission: *Second Report (August, 1979)*, p30, para 15.38

²⁴ National Police Commission: *Second Report (August, 1979)*, pp31-32, para 15-48.

- The terms of appointment, tenure and removal of members of the Commission should be clearly prescribed, so as to guarantee that it functions impartially, independently and competently.
- The Commission should have the authority to select its staff and be assured of required resources, including its budget.
- The mandate of the Commission should be laid down after wide consultations to be effective enough to insulate the police from illegitimate pressures and influences.
- The Commission's reports and major decisions must be made known to the public at the earliest possible opportunity, definitely within a maximum period of three months after their finalisation.

The CHRI is of the view that the NPC's recommendations about the constitution of SSC need to be reviewed in the light of the principles enunciated above. We feel that neither the composition nor the selection procedure recommended by the NPC are such as to guarantee the entry of suitable people in the SSC, its future effective functioning or its credibility with the police or public at large.

According to the NPC, the SSC should be set up statutorily, having the Minister in-charge of the Police as its chairman and six more members. Two of these should be from the State Legislation (one from the ruling and the other from the Speaker of the State Legislature) and four should be appointed by the Chief Minister, subject to the approval of the State Legislature, from amongst the retired judges of the High Court, retired senior government officers and eminent social scientists or academicians.

Besides the fact that such composition does not reflect the pluralist representatives of social forces, selection or appointment of members is to be done by or on the advice of politicians only. Considering the fact that the need to set up SSC has been felt because of illegitimate influences exerted on the police by politicians, the SSC formed on such lines would obviously lack public credibility.

The NPC has divided police tasks into three categories- (i) investigative; (ii) preventive; and (iii) service-oriented.

The charter prescribed for the SSC by the NPC includes laying down broad guidelines and policies for the performance of only the preventive and service-oriented tasks of the police. Even here, policy directions are to be openly given and made known to the State Legislatures. "*There should, however, be no instructions in regard to actual operations on the field.*"²⁵

The investigative functions of the Police are solely within their own domain and do not brook any outside interference. It is, to quote NPC, "*a fundamental principle governing police work that the investigative tasks of the police are beyond any kind of intervention by the executive or non-executive.*"²⁶ Thus, in the scheme recommended by the NPC, the SSC has no jurisdiction in so far as investigative functions are concerned. The SSC can not even

²⁵ National Police Commission: Second Report, p30. para 15.42

²⁶ National Police Commission: Second Report, p30, para 15.40

prescribe broad policy directions for police investigation work, which it can for other two categories of functions.

It has been the general experience of the police forces that most situations in which illegitimate pressures are exerted on the police officers involve investigative tasks. The NPC's list of typical situations or matters in which pressure is brought to bear on the police by political, executive or other extraneous sources illustrates the point.²⁷

The CHRI feels that it is a weakness in the NPC's scheme that it offers no solutions to the problem of insulating the police force from undesirable outside influences in an area of operations where such interference is at its most and worst.

In our view, the role envisaged for the SSC by the NPC is rather effete. The SSC has been conceived of merely as an advisory body to the Government and not as a mechanism which would provide the type of insulation required by the police if they have to function effectively as an instrument of law and not of the Government.

One of the factors responsible for decline in the rule of law in the country is the complete failure on the part of the police forces to successfully pursue offences involving people in positions of power.

If people's faith in the rule of law has to be built, it is important to take steps to enhance the capability of the police to register cases against powerful people and to successfully prosecute them in the court of law. It is in building this capability of the police that the SSC has to play an effective role. The Commission's charter should aim at ensuring that the police do not develop cold feet while registering or investigating offences involving people in positions of power and that they do not take recourse to short cut or third degree methods during investigation work.

The Supreme Court, in the Havala case, decreed that superintendence over the CBI's work should be exercised by the Central Vigilance Commission. Director CBI should

²⁷ This list is given in para 15.13 of the Second Report of the NPC and includes the following situations:

- Arrest or non-arrest of a person against whom a case is taken up for investigation by the police.
- Deliberate handcuffing of a person in police custody merely to humiliate him.
- Release or non-release on bail after arrest.
- Suppression of material evidence that becomes available during searches by police.
- Inclusion or non-inclusion in the charge sheet placed in court on conclusion of investigation.
- Posting or non-posting of police force in an area of apprehended trouble to create an effect to the advantage of one party or the other.
- Taking persons into preventive custody to immobilise them from legitimate political activity in opposition to the party in power.
- Foisting false criminal cases against political functionaries for achieving political ends.
- Discretionary enforcement of law while dealing with public order situations, with emphasis on severity and ruthlessness in regard to persons opposed to the ruling party.
- Manoeuvring police intervention by exaggerating a non-cognizable offence or engineering a false complaint to gain advantage over another party in a situation that will lie outside the domain of police action in the normal course.
- Preparation of malicious and tendentious intelligence reports to facilitate action against an opponent.

have a fixed tenure of two years and a Committee headed by the Central Vigilance Commissioner should recommend the selection of an officer to the post. In fact, selection/extension of tenure of officers up to the level of Joint Director in the CBI should be decided by this Committee. The Court further suggested that a similar mechanism should be set up in States for the selection/appointment, tenure, transfer and posting of not merely the chief of the State police but also all police officers of the rank of Superintendent of Police and above. The SSC's charter should include this responsibility.

Question No 6- If the answer is no, could you suggest the composition of the Security Commission for the States. The Commission could perhaps comprise of the following:-

- 1. Leader of the Opposition***
- 2. A retired Judge of the High Court***
- 3. A representative from the Educational field, for example, the vice-chancellor of the major university or important universities by rotation.***
- 4. A representative from the social work field like the President of the State Women's Commission.***
- 5. A nominee of the Lok Ayukta of the State of the status of a High Court Judge***
- 6. Home secretary, ex-officio member***
- 7. DGP of the State - an ex-officio Member Secretary.***

Question No 7- If you do not agree with the above could you suggest any alternate composition for the State Security Commission keeping in mind public interests?

CHRI's Comments

We do not agree with the composition suggested above, as it does not meet the criteria prescribed by us in response to Question No. 5. An illustrative composition of the Commission may be as follows:

1. Minister in charge of the Police.
2. A retired Chief Justice of the High Court or an eminent member from the legal fraternity
3. An eminent academician, like the vice-chancellor of a university.
4. A representative of the State Human Rights Commission, if any.
5. A representative from an active human rights NGO.
6. A representative from a women's organisation.
7. An eminent and a senior journalist.
8. An eminent labour leader.
9. A respected medical practitioner.
10. Representative of the State Chamber of Commerce and Industry.
11. DGP of the State - an ex-officio Member Secretary.

Question No. 8- If you feel that such Security Commission is not at all necessary then what would you suggest to ensure that the Police is more public friendly and accountable to the law?

CHRI's Comments

A Security Commission, which is effective enough to insulate the police from illegitimate pressures and influences, is definitely required. As already stated, its charter would have to be much wider than what is envisaged in the recommendations of the National Police Commission.

However, the establishment of the State Security Commission itself would not be enough to rid the country of the scourge of bad policing. As mentioned by the National Human Rights Commission: *"In place of pressure from political or extra-legal sources, other inducements, blandishments and even corrupt motives may obfuscate the purity of the process. It is also necessary to ensure that an investigating officer will not become a law unto himself."*²⁸

To ensure this, legal accountability of the police must be combined with democratic accountability. Besides tightly regulating police powers by law, effective accountability structures need to be established. Accountability mechanisms adopted in democratic countries vary considerably, depending upon the differences in their constitutional, political, cultural, social, historic and economic circumstances. Most of the mechanisms provide for civic oversight of policing and community inputs into policing matters.

There are various examples of oversight mechanisms set up in different countries. Police Complaints Authorities represent one system of oversight. The functions of such Authorities include reception of complaints from the public against police personnel; investigation/supervision of serious complaints; certification that the complaints have been referred for prosecution; requiring disciplinary charges to be preferred; participating in disciplinary tribunals; approving suspension of senior police officers etc.²⁹

The oversight mechanism is required to meet some of the principles we have suggested above for SSC. For an oversight mechanism to be effective, it must be independent, so that it has public confidence and the community sees it as unbiased. There should be openness in regard to matters such as membership, method of appointment, work procedures, taking of decisions etc. Members should be drawn from as broad a section of the community as possible and should be capable of making fair and honest judgements. The oversight agency must take speedy action and provide quick redress.

The English model of control over the police provides for a tripartite structure consisting of the Home Secretary, the local Chief Constable and the Police Authority. For each provincial force, there is a Police Authority, which, under the Police Act of 1964, is responsible for maintaining an adequate police force for the area. Till 1994, two thirds of the members of the Authority were local councillors and the remaining one thirds were Magistrates. Though the Police and Magistrates Courts Act, 1994 changed the composition, the elected councillors are still in majority. This ensures that people's representatives exercise the local

²⁸ From the Counter Affidavit filed by the National Human Rights Commission in the Supreme Court in the Writ Petition No. 310 of 1996.

²⁹ From the report on the proceedings of the XI International Course of Higher Specialisation for Police Forces on "Internal and External Oversight of the Police" held at the International Centre of Sociological Penal and Penitentiary Research and Studies, Messina, Italy, Oct. 1988, p222.

democratic control over the police forces. The Police Authorities have the power to appoint, discipline and fire senior officers, including the head of the police force, subject to the approval of the Home Secretary. The Chief Constable thus becomes accountable to the Authority for the competence and conduct of the police force. Under the Police and Criminal Evidence Act, 1984 the Authorities have a responsibility to consult with the local community on policing. Formal police-community consultative committees have been established all over the country.

The South African Constitution provides for community-police fora to be established by the Police Stations. It is legally mandatory for the Police to participate in these fora. However, law delineates the functions but not the powers of fora. They are, therefore, regarded as consultative committees, more a source of providing information to the police what the community wants and less a means of making the police accountable. Similar community consultative committees have been set up in the other countries too.

Experience shows that these experiments succeed only when the consultative committees are representative of the people in the area, including minorities and vulnerable sections; are accountable for their activities to those who appoint them and the police are legally obliged to give proper consideration to the community's views and needs.

The CHRI believes that it is important for the local fora to be established to provide information to the police and also feed back to the SSC about the community's policing problems. The SSC must have a formal mechanism to get such reports and also to know about the action taken to bring about the improvement.

Question No 9- Would you agree that one of the reasons why senior police officers are vulnerable to outside pressure is the apprehension of transfers if they do not succumb to such pressures?

Transfer and suspension are two weapons frequently used by the politicians to bend the police down to his will. It is not always easy to take statutory punitive action against police personnel under the disciplinary rules, but transfers can be affected on grounds of administrative expediency without difficulty.

This, however, is not the only reason for whimsical and arbitrary transfers. Postings and transfers are done to reward people too. In fact, the moment somebody is appointed as the Chief Minister, he brings a person of his choice as the head of the police force. This imports into the system a personal factor, sends a message that the Chief of police is the Chief Minister's man and increases the vulnerability of the organisation to pressures.

Superintendents of the Police are posted in the districts less on grounds of merit and more on considerations of caste and communal politics or on the basis of estimation of being amenable to pressures. The Supreme Court recently observed: *"It is shocking to hear, a matter of common knowledge, that in some States the tenure of Superintendent of police is on an average only a few months and transfers are made for whimsical reasons."*³⁰

³⁰ Supreme Court's Judgement in Writ Petition (Criminal) Nos. 340-343 of 1993, commonly known as the Havala case.

Transfers are also used by corrupt politicians as a means of making money. There are certain postings, which are considered lucrative as they offer opportunities to make money, while others are regarded as 'dry'. Then there are postings, which are known to be hard, either in terms of absence of even basic facilities in places of postings or on account of arduous and perilous nature of the new job. Transfer orders to some places or jobs and cancellation of orders in other cases fetch handsome illicit gains. As Shri Madhav Godbole, the former Union Home Secretary has pointed out: “ *The transfer mela gets converted into a wholesale market where posts often go to the highest bidder.*”³¹

The NPC had considered this subject. Even at that time, when the situation was somewhat better than what it is now, the NPC was appalled by the fact that “*transfers were too frequent, ad hoc and arbitrary in nature, and were mostly ordered as a means of punishment and harassment, sometimes due to the influence of local politicians.*”³² The NPC cited figures and cases, including that of Sub-Inspector of police, who was subjected to 96 transfers in 28 years of service, to prove that frequent and arbitrary transfers badly damaged the professional health of the police organisation.

Bihar saw eleven heads of the Police Force during 1977 to 1981. U.P Police was headed by as many as 18 different persons since independence till 1986.³³ In Uttar Pradesh, during the recent regimes of Mulayam Singh Yadav and Mayawati, 3000 IAS, IPS & PCS officers were transferred during the short period of 1993 to 1995.³⁴ Mayawati set an all-time record by transferring as many as 250 of the 310 IPS officers in the State in a short span of 100 days. Some officers were transferred as many as six times in this period.³⁵

Frequent and arbitrary transfers damage the growth of the police organisation on professional lines in many ways. Firstly, they introduce an element of instability in the police organisation. This happens not only due to the change in politics and programmes of the police organisation at different levels, but also because the short period of stay of incumbents hardly equips them with the knowledge of the new place to perform effectively. Secondly, they invariably result in putting the wrong man at the right place and the right man at the wrong place. Since postings are not governed by merit, honest men are assigned comparatively inconsequential postings and wrong men are given crucially important assignments. This demoralises those who deliver. Thirdly, they encourage the system of patronage and impunity, which in turn promotes the police deviance.

According to the Supreme Court, frequent and whimsical transfers, besides “demoralising the police force” and “ politicising the personnel,” constitute a practice that is “alien to the envisaged constitutional machinery.”³⁶

³¹ Vide his essay: 'Corruption, Political Interference and the Civil Service' in *Corruption in India-Agenda for Action* (editors- S.Guhan & Samuel Paul), Vision Books, New Delhi, 1997, p70.

³² National Police Commission: Second Report august, 1979, p24, para 15.15.

³³ P.R. Rajgopal: *Violence and Response- A Critique of the Indian Justice System*, Uppal Publishing House, New Delhi, 1988, p56.

³⁴ Prakash Singh: *Tarnishing Khaki*, The Times of India, May 5, 1996.

³⁵ Figures cited by Shri Madhav Godbole in his essay referred to above.

³⁶ Supreme Court's judgement in Writ Petition (Criminal) Nos. 340-343 of 1993, commonly known as the Havala case.

If the police has to grow as a healthy professional organisation, a clear policy of appointments, transfers and postings should be laid down. There should be statutory provisions specifying the policy, which should be strictly followed. In response to Question No. 5, we have suggested that this responsibility should be assigned to the State Security Commission.

Question Nos. 10 & 11- If you agree with this supposition, then do you agree that the DG(P), the Commissioner of Police and senior officers should have a fixed tenure of appointment, e.g. three years in the case of DG(P) and the Commissioner and two years for junior posts?

CHRI's Comments

The two questions are similar and have been combined.

We are of the view that only the Director General of Police of the State/ Commissioner of Police of the City and the Superintendent of Police in-charge of the District should have a fixed minimum tenure as these are the most crucial assignments in the police hierarchy. It is not considered necessary to extend the system to cover all posts in the police department. It may, in fact, not be feasible to do so.

A feeling of security provided by such a system to police officers heading the State/ City and District would help in reducing their vulnerability to outside pressures and give them confidence to do their jobs without fear or favour.

Premature termination of tenure should be permissible in exceptional circumstances, which should be clearly stated in law.

Under no circumstances should the tenure of service be extended beyond retirement.

The success of scheme of fixed tenure would depend on the policies and procedures designed for selecting officers for appointment to these crucially important assignments.

The most important post is that of the head of the Police Force of the State. Under the existing system, selection of the head of the State Police Force and its continuance in office are dependent on discretion of the Chief Minister/ Home Minister. This encourages a very unhealthy race amongst senior officers in police to lobby for the top post. It leads to erosion in the standards of leadership and discipline in police, besides sending wrong signals down the hierarchy. This system must change.

The Chief of the State Police Force, as recommended by the NPC, should be selected from a panel of three IPS officers of the State cadre. A committee headed by the Chairman of the Union Public Service Commission, with the Union Home Secretary, the senior most DGP in the Central Police Organisations, the Chief Secretary of the State and the head of the State Police Force as members should prepare the panel.³⁷

³⁷ National Police Commission: *Second Report*, p31, para 15.45

Once the selection procedures bring the right man to the top post, he should have the full authority to manage the force according to his judgement. Transfer of the other officers in the state should be his responsibility. He knows better than anyone else the capabilities and the integrity of the various officers in the State and should be depended upon to select the right man for the right post. At present, the heads of the Central Police Organisations are fully competent to transfer their officers and staff anywhere within their jurisdictions. The same powers should be extended to the heads of the State Police Forces.

Question No12- Do you think that the investigative branch of the Police should be separated from the law and order wing to ensure that investigation of crime is given exclusive and undiluted attention?

Question No 13- If the answer is yes, do you agree that in such Police Stations in the district and at State level there should be separate personnel earmarked for these duties? If such arrangements exist such personnel would be precluded from law and order or any other duty by making changes in the Police Manuals.

CHRI's Comments

The suggestion that the investigative work of the Police should be separated from the law and order work, with separate personnel earmarked for the two types of functions is supported on two grounds. Firstly, law and order and security work or always given overriding priority over investigation work. The requirements of deployment of force in case of a law and order disturbance result in withdrawal of personnel engaged in investigating crimes. Consequently, investigation suffers, not only in terms of quality of work but also time taken in completing investigation. It is felt that if work is functionally divided and staff is bifurcated, it would be possible for the investigating staff to concentrate on case-work and produce better results. Secondly, it would help Police personnel to specialise in two important areas of Police work.

However, there are arguments against the proposal and that is why it has not received unreserved or total acceptance. It is felt that it is not really possible to categorise the Police work at the Police Station level into separate watertight compartments. The Two functions are interrelated and completely separating them is not always feasible and sometimes not even desirable. The NPC has made similar observations . “... *If the separation is very rigid then at the Police Station level the law and order staff lose their authority and become less effective in controlling disorder. Besides, crime situations develop very rapidly into law and order situations and vice-versa.*”³⁸

Functional division of work to be effective is dependent on the provision of additional manpower, which the State Governments do not sanction. The proposed system definitely proves costly and has often failed because of the reluctance to spare additional funds for the scheme.

Specialisation is not seen to be an unmixed blessing, as it tends to limit the usefulness of the personnel of the specialised branches and limit their career development. In any case, specialisation is for a temporary period. The organisation does not have separate cadres for

³⁸ National Police Commission: *Sixth Report*, March 1981, p40,para 48.15

two types of work. Anyone posted on crime work may on transfer be deployed on law and order work.

Expert opinion on the subject is divided, though most are in favour of implementing the scheme but in a somewhat partial form, confined to the level of the Police Station only and that also in some urban areas.³⁹

The scheme of separation in a partial form has been tried in many States. It was tried in U.P. way back in 1948 on the recommendation of the Police Reorganisation Committee. It was started on an experimental basis in seven large cities of the State but given up, as it did not function satisfactorily. Though the first U.P. Police Commission of 1960-61 felt that the experiment was not given a fair trial, the Second U.P. Commission of 1970-71 expressed itself clearly against the idea of separation of staff.

³⁹ A summary of expert opinion is given below:

The Law Commission of India, in its 14th Report (1958) had recommended that the investigative staff should be separated from the law and order staff to enable the investigating officer to devote undivided attention to investigation work.

The West Bengal Police Commission (1960-61) recommended that wherever possible there should be specific staff for investigation work. Though the two types of work cannot be kept in watertight compartments, there should not be lack of cooperation wherever separation can be secured.

The Punjab Police Commission (1961-62) recommended partial separation of investigation from law and order staff. There should be separate investigating Sub-Inspector who should not be removed from their work except with the permission of the DIG. A Dy. SP trained in investigation work should be in control of the investigation work in the district under the overall control of the District SP.

The Bihar Police Commission (1961) was against separation of staff on the ground that the integrity and authority of the officer in charge of the Police Station as defined in the Code of Criminal Procedure has to be preserved.

The Maharashtra Police Commission (1964) recommended that a beginning should be made by bifurcating staff in big cities where the strength of Police Stations was adequate.

The Working Group on Police Administration (1967) set up by the Administrative Reforms Commission, Department of Personnel and Training, Government of India recommended that the investigation staff should be separated from the law and order staff at the level of Sub-Inspectors in towns with a population of one lakh and above.

The Delhi Police Commission (1968) recommended separation of law and order and crime investigation work in Police Stations in Delhi.

The Police Commission of Uttar Pradesh (1971-72) felt that preventive and investigative functions were closely interrelated and real separation between the two was desirable as it would deprive both of their effectiveness.

The Committee on Police Training (1973) recommended that there should be effective separation of the investigation from law and order staff in urban police stations. The investigative staff should be in plain clothes to prevent their mobilisation for law and order duty and to be more welcome to the people also.

Since then it has been tried at many places in other States, like Tamil Nadu, Kerala, Karnataka, Punjab etc. A study of the system of the functional division of work in the sample Police Stations of Tamil Nadu, Karnataka & Punjab was done by the Bureau of Police research and development, Ministry of Home Affairs, Government of India in 1981. The study revealed that the system suffered from many defects, like shortage of staff, withdrawal of staff from crime branch in emergency situation, lack of co-operation between the two; investigating branch lacking in resources etc. The study concluded that complete separation of work between the two was not feasible at police station level and not desirable at higher levels.⁴⁰

We are of the view that the scheme to be successful cannot be confined to police station level only and has to be implemented at other levels too. This would, however, require changes in the organisational structure of the police, in its strength and in its policies relating to recruitment, training, promotions, transfers, cadre development and management.

Some of the advantages of the scheme can be obtained by strengthening the existing and establishing additional specialised units for investigating different types of offences.

Question No. 14- How will it be ensured that the investigative arm functions without outside interference or extraneous influence and pressure?

In the United Kingdom, there is almost an unstated distinction between the Police as an institution and policing as a set of functional activities. The Secretary of State and the Police Authorities are responsible for establishing and maintaining an efficient Police Force, but they have no authority to issue directions to the Police as to how law enforcement operations should be conducted. In other words, the Police in the U.K. enjoy functional independence.

A police officer in the U.K. is an “officer of justice “ or an “officer of peace” and not a servant of the crown. His authority is original, not delegated and, in its exercise, he is answerable to law alone and not to any public authority. Lord Denning’s observations are relevant “ *I hold it to be the duty of the Commissioner of Police as it is of every Chief Constable to enforce the law of the land... but... he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must or mustn’t prosecute this man or that one. Nor can the police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone.*”⁴¹

The Royal Commission on Police, UK, in their report in 1962, recommended that the independent status of the police officer must continue. The Commission rejected any arrangements under which the police would be placed under the control of the Government, as an arrangement, of this kind would jeopardise their impartiality by bringing them within a hierarchy or chain of command leading ultimately to a Minister who was himself not required to be impartial.

Even in our own country, the idea of functional independence of the police in respect of its investigative tasks has been recognised by the Supreme Court in its earlier as well as the

⁴⁰ Bureau of Police Research and Development: "A review of the System of Functional Division of Work in the Sample Police Stations of Tamil Nadu, Karnataka and Punjab," 1981, pp43-47.

⁴¹ Quoted by John A Rind in his paper " The Need for Police Accountability" in *Modern Policing* ed. By David Watts Pope and Norman L. Weiner, Croom Helm, London, 1981, p44.

recent Havala case. It is in the light of the Supreme Court's judgement⁴² that the NPC projected it as a fundamental principle governing police work that the investigative tasks of the police are beyond any kind of intervention by the executive or the non-executive. Enunciation of a principle is one thing; its implementation by the concerned parties is another. In the UK, the principle has been accepted and implemented because the standards of leadership, both in the politics and in the police, have been comparatively of a high order. The police as an organisation and policing as a set of functional activities have evolved on healthy lines. The existence of an alert and enlightened citizenry has combined with the growth of healthy democratic institutions to ensure the prescribed boundaries are not crossed by the concerned parties.

Unfortunately, in our country, we have not been able to set up healthy traditions and practices of good governance. It, therefore, becomes essential to establish institutional and other arrangements, which would ensure that the police are able to attend their investigative functions without illegitimate interference. As already suggested by us, the State Security Commission must play an active role in ensuring this by closely monitoring police performance. The Commission must build up capabilities in the police to take cognisance of, and pursue cases involving politicians and other influential people. It was this consideration which led the Supreme Court to decide in the Havala case that a statutorily established Central Vigilance Commission exercise superintendence over the CBI. If the superintendence of the Central Government over the CBI can be terminated, there is no reason why the control of the State Government over the investigation work of the police should not be similarly dealt with, at least in respect of cases involving politicians and others in positions of power.

Question No 15- Would you say that the Police Act of 1861 is outdated and needs to be replaced to meet the rising expectations of the people and their grievance about the existing system which has given rise to the non-professional Police Forces?

The Police Act of 1861 had a limited purpose. It was enacted mainly to “*Reorganise the Police and to make it a more efficient instrument for the prevention and detection of crime*”.⁴³ This objective can not be regarded as adequate for the police force of a modern democratic country.

Enormous changes have occurred in this country since independence, which, as pointed out by the National Police Commission of 1979, cast a paramount obligation and duty on the Police to function according to the requirements of the Constitution, law and the democratic aspirations of the people. They also suggest the need for the Police to be professional, service oriented and free from extraneous influence and yet remain accountable to the people.

As already stated, the 1861 act provides for the control over the police force but not for its accountability to the community. This is its biggest shortcoming in the present context.

The charter of functions⁴⁴ prescribed in the Police Act of 1861 requires the policeman to obey and execute all orders issued by a competent authority, collect and communicate

⁴² Supreme Court judgement in Criminal Appeal No. 218 of 1966 reported in AIR 1968 Supreme Court 117.

⁴³ Preamble to the Police Act of 1861.

⁴⁴ Section 23, Police Act, 1861.

intelligence affecting public nuisances, detect and bring the offenders to justice, and apprehend persons whom he is legally authorised to apprehend. This charter does not include even some basic functions associated with the police, like preserving public order, controlling traffic etc. In addition, the preventive and service oriented functions are missing from the charter.

The National Police Commission has removed the inadequacies and redefined the role of the police.⁴⁵ The preventive and service oriented role of the police has been stressed, requiring the police, *inter alia*, to identify problems and situations that are likely to result in commission of crimes, reduce opportunities for commission of crimes, aid individuals who are in danger of physical harm, counsel and resolve conflicts and promote amity, provide necessary services and afford relief to people in distress situations; assist in preventing the poor from being exploited, prevent harassment of women and children in public places, refrain from causing needless inconvenience to the members of public, arrange for the provision of prompt medical aid to the injured persons etc.

It is not merely the Police Act of 1861, but certain State Police Acts too, which need to be replaced. There is an impression in certain quarters that it is the Police Act of 1861 which is governing the Police Forces all over the country. This impression is wrong. A number of States have enacted their own laws since Independence to regulate the functioning of their Police Forces. For instance, the Police Forces in Maharashtra and Gujarat are governed by the Bombay Police Act of 1951, in Kerala by the Kerala Police Act of 1960, in Karnataka by the Karnataka Police Act of 1963, in Delhi by the Delhi Police Act of 1978 etc. Some State Governments have also framed separate legislation to regulate the working of their State Armed Police Forces.⁴⁶

The enactment of these laws after Independence has not brought about any significant improvement in the performance or behaviour of their Police Forces. The new pieces of legislation have been as silent and remiss as the Police Act of 1861 in so far as ensuring police accountability to the community is concerned. It only proves once again that there has through out been a resistance, covert or overt, to the idea of reforming the police in the country.

It is necessary to discard the outdated Police Act of 1861 as well as some State Acts introduced after Independence and replace them with new legislation.

All new legislations introduced to govern the working of the Police Forces must be measured against the following criteria as a minimum:

- Incorporate reference to international and domestic rights standards relevant to policing;
- Establish institutional and other arrangements to insulate the police from undesirable and illegitimate outside control, pressures and influences;
- Outline the nature, philosophy and practices expected of the police;
- Prescribe mechanisms to ensure police accountability;

⁴⁵ Sections 43 &44 of the draft Police Bill given in the Eighth Report fo the National Police Commission.

⁴⁶ Like the Bombay State Reserve Police Act, 1951 in Maharashtra and Gujarat; State Armed Police Forces Act, 1952 in Andhra Pradesh; Madhya Pradesh Special Armed Forces Act, 1958 in Madhya Pradesh; Sikkim Armed Police Forces Act, 1981 in Sikkim; Tripura State Rifles Act, 1983 in Tripura, Nagaland Police Act, 1985 in Nagaland etc.

- Delineate powers as well as functions;
- Impose a statutory requirement on the police to consult with and be influenced by the community and provide appropriate guidelines for such consultations.

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