

## **A Requiem for the NPC?**

**Seminar- 483**

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The police system in India was established by the Police Act of 1861. The act, based on the draft prepared by the first Police Commission of 1860, had a limited aim-to perpetuate British rule in this country.

The failure of the Act to produce an efficient and a professional police force in the country was even recognised by the British. The second police commission set up under the chairmanship of Sir A.H.L Fraser concluded: 'The police force is far from efficient, it is defective in training and organization, it is inadequately supervised, it is generally regarded as corrupt and oppressive, and it has utterly failed to secure the confidence and cordial cooperation of the people.'<sup>1</sup>

The advent of Independence changed the political system, but the police system remained unaltered. The Police Act of 1861 continued to govern it, laws and courts continued to distrust it, its organizational structure stayed unmodified, the politicians and bureaucrats continued to exercise control and superintendence over it, the managerial philosophy, value system and ethos remained what it was, and its public unaccountability remained unchanged. It was a ruler appointed police and it continued to remain so. Only the rulers changed, the foreign ones being replaced by the Indians.

A colonial system of policing was thus required to function effectively in an environment which became increasingly democratic. The fact that the problems of the police had become highly complex and that the system had failed to meet the challenges was realized by many, including the police themselves. The need for change and reform was expressed by the Conference of General Inspector of Police on many an occasion. The conference, organized annually by the Central Intelligence Bureau, passed resolutions from time to time, asking the government to set up a National Police Commission (NPC) to examine the problems of the police. The Ministry of Home Affairs doggedly turned down such suggestions on the ground that the police was a state subject and the central government did not consider it necessary to do so.

Though some state governments had set up police commissions after Independence, a systematic examination of the police problems at the national level had not been undertaken since the beginning of the century. The last time it was done was in 1902 by the Frazer Commission.

During the Emergency the police committed atrocities on a wide scale. The brazen manner in which the police were misused during this period provoked the Shah Commission of Inquiry to invite 'the government's attention pointedly to the manner in which the police was used and allowed themselves to be used for purposes some of which were, to say the least, questionable. Some police officers behaved as though they are not

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<sup>1</sup> Report of the Indian Police Commission, 1902-03, Government Central Printing Office, Simla, 1903,p.150

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 rule of law.<sup>2</sup>

Some Janata Party members had gathered first hand experience of police brutality during the Emergency. The decision to set up the National Police Commission was taken by the Janata government, which came to power after the revocation of the Emergency in 1977.

Thus, while the Indian Mutiny of 1857 led the colonial government to appoint the first Police Commission in 1860 to suggest an organised system of policing for the country, the total abuse and misuse of the same system by the Congress government during the Emergency led the Janata government to set up the first National Police Commission (NPC) in 1977. As Dharam Vira, Chairman of the NPC said in his presentation at a seminar held in Mumbai on 19 April 1997: 'If there had been no Emergency there would have been no Police Commission.'<sup>3</sup>

The NPC was appointed<sup>4</sup> by the Government of India to make a comprehensive review of the police system at the national level, with regard to the far-reaching changes that had taken place in the country after the enactment of the Indian Police Act, 1861, the report of the last Police Act, 1861, the report of the last Police Commission of 1902, and particularly those which had taken place since Independence. Though the commission was set up on 15 November 1977, the government took time to sanction staff and allot accommodation. The commission actually started functioning effectively only in April 1978. Its first meeting, in fact, was held on 22 December 1978.

The NPC had fairly wide and comprehensive terms of reference, involving a fresh examination of the role and performance of the police, both as a law enforcement agency and as an institution to protect the rights of the citizens enshrined in the Constitution. One of its most important terms of reference required it to recommend measures and institutional arrangements to 'prevent misuse of powers by the police and misuse of police by administrative or executive instructions, political or other pressure, or oral orders of any type, which are contrary to law.'<sup>5</sup> The Shah Commission of Inquiry had suggested that, 'The government must seriously consider the feasibility and the desirability of insulating the police from the politics of the country and employing it scrupulously on duties for which alone it is by law intended.'<sup>6</sup>

The NPC produced eight reports between February 1979 and May 1981. In its first report the commission was deeply distressed to find (i) an absence of effective and credible

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<sup>2</sup> Shah Commission of Inquiry, Interim Report, GOI, Delhi, 26 April 1978, para 15.16, p. 142

<sup>3</sup> National Police Commission: its relevance today, papers and discussions at a seminar organised by the Nehru Center and Hindustan Andolan, a Nehru Centre Publication, Mumbai.

<sup>4</sup> Vide Government of India's resolution number VI-24021/36/77-GP.A.I, 15 November 1977. The commission consisted of Dharam Vira (retired Governor) as Chairman, N.K. Reddy (retired Judge, Madras High Court), K.F. Rustamji (ex DG, BSF and Special Secretary, Home Ministry), N.S. Saksena, (ex DG, CRPF and Member UPSC) and M.S. Gore (Professor, Tata Institute of Social Sciences, Bombay) as members and C.V. Narasimhan (Director CBI) as Member Secretary.

<sup>5</sup> Government of India's resolution no. VI-24021/36/77-GP.A.I, 15 November 1977; Term of Reference No. 10(i) and (ii).

<sup>6</sup> Shah Commission of Inquiry, Interim Report, op cit.

police accountability mechanisms and (ii) very low police morale resulting from serious deficiencies in the living, working and service conditions of the police, particularly of the constabulary. The commission, in its first report, dealt with these two subjects.

On the advice of the commission, the Government of India organized a Conference of Chief Ministers of States on 6 June 1979 to discuss the recommendations made in the first report of the NPC. The move was prompted by the widespread agitation by police forces, which occurred the same year in many parts of the country. Despite all the fanfare and noise made about the need to adopt the recommendations of the first report, most of them are yet to be implemented. The following are some examples:

The abolition of the orderly system was one of the major demands of the police agitators. The chief ministers conference decided that the system should be abolished. It continues to exist even now.

Inadequate housing facilities has been a major complaint of the policemen. The NPC had recommended 100% level of housing satisfaction for policemen.<sup>7</sup> The chief ministers conference decided to make efforts to provide at least 75 % over a five-year period. This target was never achieved. By 1985, there was only one state, i.e. Gujarat, which had succeeded in providing family accommodation to even 50 % of its constabulary.<sup>8</sup> By 1990, the all-India level of satisfaction achieved in respect of family accommodation for non-gazetted police personnel had reached only the 36.3% mark.<sup>9</sup> The 1996 data compiled by the Bureau of Police Research and Development reveals an equally dismal picture.<sup>10</sup>

The chief ministers agreed that the status of the constabulary should be improved. The NPC had recommended that the constable should be rated as a skilled worker for determining his pay structure vis-a-vis other public services in the states.<sup>11</sup> The recommendation is yet to be accepted.

The illegitimate interference of politicians in the police organization and its work had not been discussed by the NPC in its first report. However, the police agitators had expressed considerable resentment against interference. The conference of chief ministers, therefore, discussed this subject and agreed that the problem should be dealt with at the political level. The chief ministers at the state and the prime minister at the national level should initiate appropriate steps in this regard. Nothing was done. In fact, the situation continued to deteriorate with the passage of time.

Regarding the second to eighth reports, the commission had finished only the first two reports when the government changed at the centre. With Indira Gandhi's return to power

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<sup>7</sup> The National Police Commission: First Report, GOI, Delhi, February 1979, chapter IV, P. 32

<sup>8</sup> G.P. Joshi and J.C. Arora, *A Survey of Welfare Facilities Available to Police Personnel in the Country*, Bureau of Police Research and Development Publication (BPR&D), New Delhi, 1986, p.11.

<sup>9</sup> G.P. Joshi, *Upgradation of Standards of Police Administration-Suggestions and Views About Problems and Priority Areas for Consideration of the 10<sup>th</sup> Finance Commission*, BPR&D Publication, New Delhi, p.6.

<sup>10</sup> G.S. Pandher and K.D. Sharma, *Data on Police Organisation in India as on 1.1.1996*, BPR&D Publication, New Delhi, p.56.

<sup>11</sup> The National Police Commission: First Report, GOI, Delhi, February 1979, chapter III, p.26.

in January 1980, the very existence of the National Police Commission came under threat. First, the commission had been appointed by her opponents, the Janata Party. Second, the commission had committed the unpardonable error of quoting from the Shah Commission's report, criticizing the way the police was used during her regime. Third, the commission's secretariat was headed by C.V. Narasimhan, who was Director of the CBI when Indira Gandhi was arrested by that organization during the Janata regime. He was relieved of his duties on 19 April 1980 and nobody was appointed in his place. The commission functioned without a regular member-secretary till it closed in May 1981.

The commission itself had become somewhat uncertain about the government's response to its work. It is significant that the commission's reports did not contain the chairman's forwarding letter to the government after the third report. The last such letter dated 1 February 1980, with which the third report was forwarded to the government, regretted that the earlier reports had not been released to the public despite the commission's request to the government to do so. The chairman of the commission, while writing to Giani Zail Singh, then Home Minister, stressed the need for early release of the reports so that there could be public debate on the 'proposed reforms in police, some of which are very fundamental and mark a departure from the old Imperial system which has continued even after Independence.'<sup>12</sup>

Indeed, it is the reforms aimed at changing the Imperial system, spelt out mostly in the second report,<sup>13</sup> which have consistently blocked the implementation of the NPC's recommendations. Dharam Vira, Chairman of the NPC, later stated: 'The basic recommendations of the Police Commission which were activated towards giving a different direction to the police and creating a force that was in tune with democracy and that was totally the servant of the law and not of any individual howsoever high he may be in stature in the country, was lost (sic). The rulers had got used to using the police force for their own purpose, according to their will. In fact, when I presented this report to the then Home Minister Sardar Zail Singh, he said, "Dharamji, what sort of report have you produced? I can't even ask the sub-inspector what to do."<sup>14</sup>

An eminent police officer, K.F. Rustamji, who was also a member of the commission, had a similar and, indeed, worse experience. According to him: 'When the report came out Mrs. Gandhi asked me to go and see Mr. Zail Singh who was then the Home Minister. He made me sit down and entertained several visitors, one after another. Then he said we could meet again, but he never asked me to meet him again. He issued a statement that the report was undemocratic.'<sup>15</sup>

The result was obvious. The commission was asked to finish its work and disband itself by 31 May 1981. Some of the officers who had worked in the commission became

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<sup>12</sup> The National Police Commission's D.O., letter no. 10/30/80-NPC (Ch) Pt. II, 1 February 1980

<sup>13</sup> This report deals with the problem of political interference and suggests institutional and other arrangements to insulate the police from illegitimate outside interference.

<sup>14</sup> National Police Commission: its relevance today, op cit., pp.8-9.

<sup>15</sup> Ibid., p.13

victims of the government's hostility. For instance, Ved Marwah was not given any posting for about a year after the NPC was disbanded.

The seven reports (second to eight) were released to the public only in March 1983. When the reports were forwarded to the state governments, they were not asked to merely take appropriate follow-up action. The state governments were specifically informed that, 'at some places in the 2<sup>nd</sup> report (paras 15.24,15.35 and 15.55) the commission has relied on the observations and findings of the Shah Commission to arrive at certain conclusions. Government strongly repudiate all such conclusions. At several other places (such as paras 15.2,15.4,15.6,15.7,15.18,15.19 and 15.26 of the 2<sup>nd</sup> report; para 22.3 of the 3<sup>rd</sup> report; para 32.7 of the 4<sup>th</sup> report; para 44.9 of the 6<sup>th</sup> report; paras 59.10, 59.19 and 59.25 of the 7<sup>th</sup> report and para 6.18 of the 8<sup>th</sup> report), the commission has been unduly critical of the political system or of the functioning of the police force in general. Such general criticism is hardly in keeping with an objective and rational approach to problems and reveals a biased attitude. Government are of the view that no note should be taken of such observations.<sup>16</sup>

The message was loud and clear and after such advice it was not surprising that the state governments conveniently put the major recommendations of the NPC in cold storage.

The most important recommendations of the NPC centre around the problem of insulating the police from illegitimate political and bureaucratic interference. It is these recommendations which rally perturbed the entrenched elite at the prospect of losing control over an organisation which they misused for so long. Five of such major recommendations are important:

1. The investigative tasks of the police are beyond any kind of intervention by the executive or non-executive. It is only in respect of preventive and service oriented functions that the government should lay down broad policies for adoption. There should, however, be no instructions with regard to actual operations in the field. Policy directions should be openly given and made known to the state legislatures.
2. To help the state governments discharge their superintending responsibility in an open manner under the framework of law, a state security commission should be established statutorily in each state. The state security commission should: (a) lay down broad policy guidelines for the performance of preventive and service oriented functions by the police; (b) evaluate the performance of the state police every year; (c) function as a forum of appeal to dispose representations from officers regarding their being subjected to illegal orders and regarding their promotion; and (d) generally review the functioning of the state police force.
3. The chief of police should be assured of a fixed tenure of office. The tenure may be for four years or for a period extending up to the period of retirement, whichever is earlier. The removal of the chief of police from his post before the expiry of the tenure should require approval of the state security commission.

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<sup>16</sup> The Government of India's letter no. 11013/11/83-NPC Cell, 31 March 1983

4. The chief of the state police force should be selected from a panel of three IPS officers of that state's cadre. The panel should be prepared by a committee headed by the chairman of the UPSC.
5. The Police Act of 1861 should be replaced by a new police act, which would not only change the system of superintendence and control over the police but also enlarge the role of the police to make it function as an agency which promotes the rule of law in the country and renders impartial service to the community.

There have been a few positive developments recently. Some significant initiatives have been taken, questioning the lack of will on the part of the government to introduce reforms on the lines recommended by the NPC and pressurizing them to do so. Three of these initiatives deserve notice.

1. A civil writ petition<sup>17</sup> was filed in the Supreme Court by two retired IPS officers, praying for issue of orders to the government to implement the recommendations of the NPC. In pursuance of the directions issued by the court in this case, the central government recently set up a committee on police reforms<sup>18</sup> under the chairmanship of J.F. Ribeiro, a retired IPS officer, to review action taken to implement the recommendations of the National Police Commission, National Human Rights Commission and the Vohra Committee and suggest ways and means of implementing the recommendations of the above commissions / committees. The Ribeiro committee has completed its work and submitted two reports.

The committee's reports have not been well received, in police as well as non-police circles. Two main objections have been raised. One, that the committee has exceeded its brief and revised the recommendations of the NPC instead of merely reviewing them, which it was required to do under its terms of reference. Second, it has diluted important recommendations of the NPC, like the one regarding the establishment of the SSC.

The NPC had recommended that the SSC should be a statutory body. In the committee's view, the 'possibility of a statutory SSC as envisaged by the NPC seems a far-fetched dream.'<sup>19</sup> Reason-the NPC's recommendations in their original form would not be acceptable to the political executive. The committee, against its own convictions, has recommended that the SSC should be a non-statutory body, forgetting in the process that it is not enough to establish the SSC. It is necessary to ensure that it continues to exist and function independently, objectively and effectively to prevent the misuse of police force by politicians and bureaucrats and abuse of power by police personnel. A commission established by administrative instruction and not backed by the authority of law will always be hostage to the very power it seeks to check.

The committee also recommended that the SSC need not have a secretariat of its own. 'The DGP of the state would be the ex-officio secretary and convenor of the commission

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<sup>17</sup> Writ petition (civil) no. 310 of 1996.

<sup>18</sup> Vide Government of India's office memorandum no. 11018/1/98-PMA, 25 May 1998

<sup>19</sup> First report of the Ribeiro Committee on Police Reforms, p.9, (unpublished).

and would provide secretarial assistance from time to time from his own establishment.’<sup>20</sup> It is not known how a commission, whose secretary and convenor is the head of the state police force and who provide the police staff to function as the secretariat of the commission, can really be expected to monitor the functioning of that police force effectively and ensure its accountability. In the public eye, it would not be anything more than an adjunct of the police department.

The weakness of the Ribeiro Committee’s recommendations lies in the fact that while the problem of unlawful interference in the work of the police, or that of a nexus developing between crooked politicians and dishonest policemen at various levels, is worse than what it was at the time of the NPC’s study, yet it recommends an institutional arrangement which is weak and vulnerable because it feels that the entrenched power elite will resist.

2. In 1997, Inderjit Gupta, then Union Home Minister, wrote a letter to the chief ministers.<sup>21</sup> Stressing the need to accomplish ‘a very difficult but nationally significant task,’ he urged the chief ministers to bring about urgently needed reforms of the police system in the country by taking action on the recommendations of the NPC, particularly those relating to the problem of political interference in the work of the service.

He never received a response to his letter. Later, during a workshop on police reforms, he informed the participants that ‘he did not even receive any acknowledgement to the letter. He said that he was highly anguished, but not surprised at the lack of any response to his letter. The politicians and bureaucrats have a great vested interest in retaining control and superintendence over the police organisation, so that they can continue to use it to further their interests. They would not easily relinquish their control over the organisation.’<sup>22</sup>

The Supreme Court delivered a judgement on 18 December 1997 on writ petitions (criminal) nos. 340-343 of 1996, commonly known as the hawala case. The judgement aimed at insulating the CBI and the Directorate of Enforcement from outside influences so that they could function efficiently and impartially to serve the rule of law. It also declared the single directive, which required the CBI to seek permission from the government before undertaking any inquiry or investigation against senior civil servants of the rank of joint secretary and above, null and void.

Once again, the bureaucrats showed great resistance to introducing reforms in police organisations like the CBI. Deliberate attempts were made to thwart the judgement of the Supreme Court by promulgating the Central Vigilance Ordinance, 1998. The ordinance even brought the infamous single directive back and this time gave it legal sanctity. It required another intervention from the apex court to undo the wrongs. The ordinance was amended and then a bill was legislated. The bill is yet to become law, as the Rajya Sabha could not ratify it, even though the 12<sup>th</sup> Lok Sabha had passed it.

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<sup>20</sup> Ibid., p.9

<sup>21</sup> No. 11018/5/96-PMA, 3 April 1997.

<sup>22</sup> A Report of the Workshop on Police Reforms, CHRI, New Delhi, p.14.

The judgement of the highest court in the country, in one of the most important criminal cases decided by it since Independence, remains unimplemented almost two years since it was delivered. The CVC remains deprived of a statutory basis and is functioning under a resolution of the Government of India, which was notified in 1964.

This shows how deep-seated is the resistance to the idea of change and reform and how this resistance is born out of the narrow interests of a select few.

An attempt has been made to create the impression that while the central government has been keen to implement the recommendations of the NPC, state governments have not been interested. This impression is ill-founded. While the state governments have been stoically and consistently indifferent towards the recommendations, and even of their own state police commissions, the central government, except for occasional outbursts of enthusiasm, has been equally lackadaisical in pursuing the subject with the states.

The central government has always had the option of implementing the important recommendations of the NPC by introducing the model police act as drafted by the NPC in the union territories. The model act incorporates all the major recommendations of the NPC. If the central government had done so, it would have acquired the moral authority to ask the state governments to follow suit. It never did that and failed to convince the states that the centre was really and genuinely interested in implementing the NPC's recommendations.

The NPC had observed that in making their recommendations about insulating the police from illegitimate political interference, they were hoping that the politicians and the police would look at these measures objectively and see in them a mechanism for rendering genuine public service. Obviously the expectations of the NPC have been belied. One lingering hope is that the judiciary will some day force police reforms 'down the throat of the political executives.'<sup>23</sup>

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<sup>23</sup> Inderjit Gupta's letter no. 11018/5/96-PMA, 3 April 1997 addressed to the chief ministers of all states and union territories.