

The Padmanabhaiah Committee on Police Reforms- A Critical Analysis of Some Important Recommendations

Introduction

The problems of police in this country have been examined extensively by various commissions and committees appointed since Independence. The appointment of the Kerala Police Reorganisation Committee in 1949 was followed by a succession of Police Commissions appointed by different State Governments, mainly during sixties and seventies. The Government of India also showed its interest in police reforms by setting up commissions and committees. The appointment of the Working Group on Police by the Administrative Reforms Commission in 1966 was the first sign of central government's interest in the subject. This was followed by the setting up of the Gore Committee on Police Training in 1971. Then came the most significant initiative – the appointment of the first National Police Commission (NPC) after Independence. Recently, the central government again became active. They first set up the Ribeiro Committee on Police Reforms in 1998 on the directions of the Supreme Court and last year sprang a surprise by the sudden announcement about setting up another committee- the Padmanabhaiah Committee on Police Reforms.

The Padmanabhaiah Committee on Police Reforms (The Committee) was set up by the Ministry of Home Affairs, Government of India in January 2000. In addition to the Chairman, a former Union Home Secretary, the Committee consisted of four members, who were all policemen- two retired and two serving. The Committee did not have any representation from other sections of society or public. The report was submitted by the Committee to the central government in October 2000. Till now, the report has not been released to the public. There was no consultation with public or civil society organisations when the Committee was appointed and it has not been considered necessary to publicly debate the report on a subject, which actually concerns the community.

The governments and people in other countries have realised that policing is too serious and important a business to be left to policemen alone. This is obvious from two important developments in international policing that have occurred during the last few decades- community policing and civic oversight of policing. We have yet to learn from the basic idea underlying these developments.

The Committee was given too wide a task to be completed in too short a period. It had 12 broad terms of reference, one of which alone consisted of 11 specific items. They covered almost all important problems faced as well as caused by the police. The Committee was given three months to submit its report. The fact

that the Committee finished its work in less than 8 months is praiseworthy, considering the vast ground covered and some very useful recommendations made by them.

However, there are areas of Committee's work in respect of which there can be differences of opinion. We, for instance, differ from Committee's views and recommendations contained in some chapters. We have selected three of these chapters, as the subjects discussed there are considered highly important by us. These are:

1. Chapter 9 - Politicisation and Criminalisation of Police
2. Chapter 10- Control over Police
3. Chapter 18- Accountability of Police

The Committee's ideas and recommendations on these subjects are very briefly analysed in subsequent paragraphs, while the chapters in original are reproduced in annexures to this analysis for ready reference.

Politicisation and Criminalisation of the Police

The Committee recognises that politicisation and criminalisation of the police force has been growing. According to the Committee, "Corruption is the root cause of both politicisation and criminalisation of the police."¹ If the word "corruption" had been interpreted in a wide sense, to mean decline in the public standards and value systems affecting the institutions of society and governance, this analysis could have been accepted. However, the recommendations made by the Committee "to curb the growing trend of criminalisation" clearly show that this is not what it means. These recommendations include (i) raising the status of the constabulary and improving their service and living conditions; (ii) preparing a new Departmental Inquiry Manual and a new Code of Conduct for the police; (iii) filing of property returns both by gazetted as well as non gazetted police officers; (iv) improving the in-house vigilance within the police department; (v) improving the accessibility of police officers to the public; and (vi) reviewing the record of arrests made by the police station staff².

There are two problems in accepting this narrow interpretation of the problem of increasing criminalisation of the police. Firstly, criminalisation of the police is not confined merely to corruption in the financial sense. There is ample evidence of different types of police deviance increasing in India. The newspapers everyday report incidents of brutality, murder, rape, grievous hurt and other crimes

¹ Report of Committee on Police Reforms, August 2000, p109, para 9.4

² Ibid, pp 111 to 114, para 9.7

committed by police personnel, which are not necessarily motivated by financial considerations. A couple of years ago, the CHRI did a media scan on “criminality amongst police personnel”, which revealed that over the last few years there had been an increasing involvement of police personnel in committing crimes.³ Two findings of this scan are relevant here. One, this involvement is confined not merely to flouting of departmental rules and regulations or in indulging in peccadilloes, but to committing the most heinous and sordid crimes. Two, it is not merely police personnel of lower ranks who are involved in crimes, but even the officers of higher ranks. In fact, the number of officers committing crimes is showing signs of increase.

Secondly, criminalisation of police cannot be de-linked from criminalisation of politics. It is the criminalisation of politics, which has produced and promoted a culture of impunity that allows the wrong type of policeman to get away with his sins of commission and omission. The Committee’s report does not suggest effective mechanisms to deal with these basic issues.

The Committee ascribes the growing political interference in the police administration and its work to “recruitment and transfer policies/procedures, failure of political leadership and the failure of police leadership.”⁴ The Committee is of the view that most problems of police are due to arbitrary and frequent transfers of police personnel of different ranks and once the powers in this regard are given to the departmental hierarchy, political interference in policing will be reduced. For this purpose, the Committee has recommended that a Police Establishment Board, consisting of the Director General of Police as its chairman and four other members of the police department, should be constituted “to decide the transfers of all officers of the ranks of Deputy Superintendent of Police and above”.⁵ This idea has been borrowed from the Ribiero Committee on Police Reforms, but modified by the Committee. While the Ribiero Committee had suggested the creation of the Board to decide “transfers, promotions, rewards, punishments, including suspensions and all service related matters of officers of and below the rank of Deputy Superintendent of Police,”⁶ the Committee wants the Board to deal with only transfers and that too only of officers of and above the rank of Deputy Superintendent of Police.

³ Criminality Amongst Police Personnel- A Media Scan, CHRI, New Delhi, 1998.

⁴ Ibid, p108, para 9.1

⁵ Ibid, p122, para10.12 (iv)

⁶ Report of the Committee Set up by the ministry of Home Affairs, Government of India to review and suggest ways and means for implementation of the pending recommendations of the National Police Commission, the Law Commission, the National Human rights commission and the Vohra Committee, p 14, para 35 (unpublished)

The Committee is silent how the Board should be established. The only recommendation made is that the service rules should be amended. We are of the view that it is not the rules that really promote or obstruct illegitimate interference of outsiders in the police organisation. Rules invariably leave room for discreet interpretation to suit the convenience or interests of those in power. Rules can be easily amended and even more conveniently overlooked with impunity in the absence of any opposition. The crux of the problem is that the entire organisation has become vulnerable to outside illegitimate pressures. The senior leadership in the police in majority of cases has shown itself either too weak or too willing to resist the pressures. The scheme suggested by the Committee is not likely to reduce the vulnerability of the organisation and its leadership. It is too simplistic to presume that giving fixed tenure of service to officers will result in breaking the nexus between politicians and police officers. In some cases, it may in fact promote the symbiotic relationship between the two.

To reduce political interference, the Committee has suggested⁷ that “(i) coordination with the secretariat should be the function of the DG/Commissioner of Police” or their nominee and “no one else should frequent the Secretariat”; and “(ii) any officer approaching a politician for transfers/postings, training, rewards etc. should be severely dealt with.” However, “oral/written representation to the Chief Minister, Home Minister, Minister of State for Home would be legitimate.” These suggestions are too naive to inspire confidence or even to draw analytical comments.

Political Control over the Police

The image of the police in this country has always been bad. With the passage of time, it has only become worse. Citizens are highly dissatisfied with the quality of policing.

There are many reasons for the poor quality of policing, but a major reason identified is the type of control that has been exercised over the police. Control over the police is exercised by the state government. Unfortunately, the manner in which the control is exercised has led to gross abuses. Almost all the State Police Commissions, the National Police commission and other expert bodies, which have examined police problems, have found overwhelming evidence of misuse and abuse of police system by politicians and bureaucrats for narrow selfish ends. The situation resulting from wrong control over the police has become worse during the last few decades because of increasing criminalisation of politics.

⁷ Report of the Committee on Police Reforms, August 2000. P109, para 9.3

The fact that the rule of law is gradually being replaced by the rule of politics is a cause of concern to all who are interested in establishing good governance in the country. The Pdmabhaiah Committee too has shown this concern.

The Committee studied different models of control⁸ over police and narrowed its inquiry to three - State Security Commission recommended by the National Police Commission (NPC), the UK and the Japanese models. The treatment of the NPC's recommendations is rather cursory and the Committee gives no reason for rejecting them. It merely refers to its discussions with the Chief Ministers of some States, who opposed the recommendations of the NPC.⁹

The reason given for discarding the British model is very interesting: "We feel that the present position of police-public relations need to be improved substantially before involving legislators or councilors to control the working of the police as in the British pattern. The present need further is to avoid any greater politicisation of the police force which, inevitably, is bound to happen in such an experiment. As such, we do not propose the UK pattern for adoption."¹⁰

One cannot wish away the control of the political executive over police in a democratic society. What is required is to make necessary institutional arrangements to ensure that control is exercised legitimately and for the public good. If the quality of control exercised is wrong and results in abuse of police power, police-public relations will never improve. One important reason for poor image of the police is the public perception that the police are partisan, biased in favour of the rich and powerful and when asked by their political masters to bend are generally willing to crawl.

It appears that the Committee has missed the basic idea underlying the British model of policing. The legislators or councillors do not "control the working of the police" in Britain, at least not the way it is done here. The success of British model in their own country is essentially due to a very fine distinction which they have made and maintained between police as an organisation and policing as a set of functional activities. It is for the Home Secretary and the Police Authority, which is a local body consisting of elected councillors and the magistrates, to see that the police as an organisation is manned, equipped, trained and led well. It is however for the Chief Constable to decide how police operations should be conducted. No directions can be given to him by anyone. He is free to exercise his operational responsibilities, but this, as the Patton

⁸ Ibid, pp116 to118, paras 10.3 to 10.7

⁹ Ibid, p 119, pqrq 10.10

¹⁰ Ibid, p 119, para 10.9

Commission on Policing said, does not mean that he cannot be “held to account afterwards for the manner in which he/she exercises them.”¹¹

The Committee feels that “there is a strong case for adopting the Japanese pattern with suitable modifications to suit Indian conditions.”¹² What however the Committee has finally recommended is far from the Japanese or any other model.

According to the Committee, the major reason “for the politicisation of the police is the lack of a proper tenure policy for posting of officers at different levels and the arbitrary transfers and postings which have been used for political interest.”¹³ The main recommendations¹⁴ made by the Committee are as follows: (i) A body headed by the Chief Justice of the State High Court as Chairman, State Chief Secretary and an eminent public person as members should be constituted to recommend a panel of two names for appointment to the post of the Director General of Police. (ii) A Police Establishment Board, consisting of DGP and three other members of the police force selected by him, should be constituted to decide transfers of all officers of the rank of Deputy Superintendent of Police and above. (iii) The minimum tenure of all officers should be 2 years. (iv) There should be another Committee under the Chief Secretary and with the Home Secretary and the DGP as members to hear representations from police officers of the rank of Superintendent of Police and above alleging violation of rules in the matter of postings and transfers.

There are three major problems with the recommendations made by the Committee. Firstly, there is considerable confusion about some recommendations. For instance, while at one place, it has been recommended that the body headed by the Chief Justice will “act as an appellate body when arbitrary transfers come to its notice”¹⁵, at another place, the report gives this power to the Committee headed by the Chief Secretary¹⁶.

There is confusion about the mandate of the Committee headed by the Chief Secretary. According to the main recommendation, this Committee is to be constituted “to look into grievances of police officers alleging that there is a violation of the rules in the matter of postings and transfers.”¹⁷ However, the Rules drafted by the Committee suggest that the Committee headed by the Chief

¹¹ Report of the Independent Commission on Policing in Northern Ireland, para 6.21

¹² Report of the Committee on Police Reforms, August 2000, p 119, para 10.9

¹³ Ibid, p 120, para 10.11 pages 111 to 114

¹⁴ Ibid, pp121 to 124, para 10.12

¹⁵ Ibid, pp 120-121, para 10.11 (iii)

¹⁶ Ibid, p126, Rule 6

¹⁷ Ibid, p124, para10.12(xi)

Secretary “should be constituted for hearing of representations from any police officer of the rank of Superintendent of Police and above regarding his being subjected to illegal or irregular orders in the performance of his duties.”¹⁸ The mandate laid down by the Rule is thus much wider than what the main recommendation prescribes. Besides the confusion about the charter, it is not clear as to how it will be implemented in practice. Even under existing arrangements, representations of police officers against their postings or transfers or against being asked to obey illegal or irregular orders are to be sent to the Chief Secretary through the departmental head and the Home Secretary. An anomaly is inherent in these recommendations. The Committee has recommended that the transfer decisions will be taken by the Police Establishment Board headed by the DGP. While dealing with representations of officers against the transfer orders, the DGP as a member of the Committee headed by the Chief Secretary will be required to sit in judgement over his own orders. This is likely to deter the officers from representing against the orders.

Secondly, the Committee is under the notion that the suggested institutions can be established and become viable merely by amending the service rules. The point that it is not the presence or absence of rules which promote or obstruct political interference in police work has already been discussed above. What is required is to suggest effective institutional mechanisms that can insulate the police from outside illegitimate pressures, which has not been done.

Thirdly, the problem of illegitimate control over the police cannot be interpreted merely in terms of postings, transfers and securing the tenure of police posts. The problem is broader in its ramifications. Wrong politicians have as much vested interest in retaining the existing system as the wrong police officers. The remedies suggested by the Committee are not likely to break the nexus between the politicians, criminals and some police officers or to stip illegitimate political interference in police work. One requires stronger institutional arrangements supported by statutory backing to achieve this than what the Padmanabhaiah Committee has recommended.

The National Police Commission’s recommendations about insulating the police against illegitimate political control and interference were shaped by the conditions prevailing at that time i.e. in the late seventies. Politics has been increasingly criminalised during the last two decades and the problem of wrong and abusive political control over the police has become worse since then. What is therefore necessary is to devise measures and institutional arrangements, which are stronger and more effective than what was recommended by the NPC. Instead of that, whatever recommendations were made by the NPC are being

¹⁸ Ibid, p 126, Rule 6 (first para)

abraded or sidetracked and much weaker arrangements are being recommended in their place. The Ribeiro Committee had recommended the adoption of such arrangements on practical considerations. The Padmanabhaiah Committee has not even done that.

Police Accountability

There is ample evidence of increasing police deviance in India. The newspapers everyday report incidents of brutality, extortion and other crimes committed by police personnel in different parts of the country. The annual reports of the National Human Rights Commission (NHRC) contain details of police atrocities investigated by them. The majority of complaints received by the NHRC are against police personnel. Even the official statistics show that during the year 1997, as many as 1,23,523 complaints against police were received from the public.¹⁹

What happens to public complaints against police personnel? In other words, Who polices the police and how is it done?

In India, the police are policed mostly by themselves. The existing system has two major faults. One, it does not allow the entire dirt in the police department to come to the surface. Lack of transparency in the working of the system lets some of the muck remain under the carpet. Two, even where an inquiry into a citizen's complaint against the police is made, it lacks credibility. The public distrust the police and feel that the department is incapable of conducting inquiries into public complaints in a fair and effective manner.

One of the terms of reference of the Padmanabhaiah Committee on Police Reforms (The Committee) was to examine and suggest changes in the existing system of police accountability.

The Committee's examination of the subject, particularly about handling of public complaints against police, has been highly disappointing. According to the Committee, "Because of the nature of the working of the police department, a large number of complaints are received every year against police personnel."²⁰ Thus complaints originate from the nature of police job, not from the manner in which that job is done. "Recognising the particular vulnerability of police officers", the Committee recommends that "all complaints against police personnel should in the first instance be handled by the superior formations in

¹⁹ Crime in India, 1998, an annual publication of the National Crime Records Bureau, Ministry of Home Affairs, Government of India.

²⁰ Report of the Committee on Police Reforms, August 2000, p213, para 18.12

the department itself.”²¹ The senior police hierarchy will first decide if the complaints can be resolved informally and then go in for formal investigation by police officers. If action taken does not satisfy the complainant, he can have access to a “non-statutory District Police Complaints Authority.” This Authority will be headed by the District Magistrate (DM) and have the Senior Additional Sessions Judge and District Superintendent of Police and an eminent citizen nominated by the DM as members²².

The report is silent about the secretariat of the Authority and the procedure to be followed for informal resolution of, or formal investigation into, complaints. Two of the four members composing the Authority are a part of the existing executive set-up of the district. The District Police Force, despite being headed by the SP, is subject, according to Section 4 of the Police Act of 1861, to the “general control and direction” of the District Magistrate. The way the system is functioning, the public can not be expected to repose its trust and confidence in either of the two functionaries. The public can hardly be expected to approach with confidence the very persons who are now being asked to sit in judgement over themselves. This set up is similar to what the Ribeiro Committee had recommended. Ribeiro had suggested that the Authority should be headed by the District Sessions Judge, while this Committee recommends the DM to head the institution.

The credibility of the proposed institution will be further reduced because the Authority is not being provided with an independent investigation agency of its own. It will depend upon the police force to inquire into public complaints against police personnel. This is precisely the reason why the existing system lacks credibility. No police accountability mechanism can be considered successful if it fails to inspire public confidence

The trend all over the world is to set up complaint mechanisms under law and invest them with resources and authority to guarantee independent and fair investigations into public complaints against police. In the USA, for instance, Civilian Complaint Review Boards have been set up in about seventy jurisdictions. These are independent non-police civilian agencies, which are empowered to receive, investigate, hear, make findings and recommend action on complaints against police officers. There is an increasing demand from the public that the Boards should be given some powers to discipline the delinquent officers.

²¹ Ibid, p213, para 18.12

²² Ibid, p 214, para 18.13

Even in the United Kingdom, there is considerable unhappiness with the system of inquiring into complaints against the police. As the Macpherson Committee, which inquired into Stephens Lawrence murder case, said: "Investigation of police officers by their own or another Police service is widely regarded as unjust, and does not inspire public confidence."²³ The Macpherson Committee recommended that serious complaints against police officers should be independently investigated. The government has accepted the recommendations and has formulated a scheme.

The Independent Commission on Policing known as the Patton Commission set up to prescribe a new system of policing for Northern Ireland has recommended the establishment of a Police Ombudsman, besides other accountability structures, which will ensure a fair, impartial and independent investigation into citizens' complaints against the police in that troubled land.²⁴

In most parts of democratic world, multiple mechanisms have been set up to ensure the existence of an effective system of police accountability. Civic oversight of policing is increasingly being accepted as the most essential requirement of democratic policing.

Judged against the present trend and against the definite need to regulate and control police powers by establishing accountability structures, which work openly, quickly, effectively and impartially and have public credibility, the Committee's recommendations on this issue of major public concern do not inspire confidence.

²³ The Stephens Lawrence Inquiry- Report by Sir William Macpherson, February 1999, p 333, Recommendation No. 58

²⁴ Report of the Independent Commission on Policing in Northern Ireland, para 6.41