

**IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)**

**WRIT PETITION (CIVIL) No. 310 OF 1996
I. A. No. 3 of 1999**

IN THE MATTER OF:

MR. PRAKASH SINGH AND OTHERS

PETITIONERS

VERSUS

UNION OF INDIA AND OTHERS

RESPONDENTS

**SUBMISSIONS ON BEHALF OF
COMMONWEALTH HUMAN RIGHTS INITIATIVE**

The submissions being made hereunder deal with some very important issues pertaining to policing and police reforms in India that have not been highlighted either through written submissions or oral arguments.

**1. Police in a democracy: From being a “Force” to a
“Service”**

Experts¹ have pointed out correctly that police do the same things under an authoritarian regime and a democracy – patrol the streets, detect crime, enforce regulations, arrest and interrogate suspects, control demonstrations, and use force in the course of their duties.

Thereby, it is the values and practices that distinguish policing in democracies that have salience for the police reform process in India. Democratic nations need democratic policing. During its 1996 mission to assist in police reform in Bosnia-Herzegovina, the Commission on Policing Structures of the UN International Police Task Force defined ***democratic policing*** in the following way:

In a democratic society, the police serve to protect, rather than to impede freedoms. The very purpose of the police is

¹ *Democratic Policing: A Framework for Action* by Christopher E. Stone and Heather H. Ward in *Policing and Society*, 2000, Vol. 10, pp. 11-45 at p.14

to provide a safe, orderly environment in which these freedoms can be exercised. A democratic police force is not concerned with people's beliefs or associates, their movements or conformity to state ideology. It is not even primarily concerned with the enforcement of regulations or bureaucratic regimens. Instead, the police force of a democracy is concerned strictly with the preservation of safe communities and the application of criminal law equally to all people, without fear or favour².

The Commission also set out seven basic principles of policing in a democracy, from which policing standards and behaviours can be inferred:

1. Police must be oriented and operate in accord with the principles of democracy, consistent with the constitution and with laws;
2. Police, as recipients of public trust, are professional whose conduct must be governed by a professional code of conduct.
3. Police must have as their priority the protection of life, a fundamental human right.
4. Police must serve the public and are accountable to the public they serve. Police must act in such a way so that public knows, understands, and accepts the police measures which are being undertaken to provide for public safety.
5. Protection of life and property is the primary function of police operations, and a central focus of police activity must be to prevent crime.
6. Police must conduct their activities with respect for human rights of all persons.
7. Police must discharge their duties in a non-discriminatory manner. Law enforcement, public safety, and protection of human rights must be handled in a manner which is fair and equal for all persons.

2. **Why talk of police reforms** when it is only one part of the entire governance structure and criminal justice system?

This is one of the first points raised in any discussion on police reforms. Undoubtedly, the entire criminal justice system needs overhauling but because police remain the first point of contact with the public and face of government, the reforms must begin with them. Reform of the police

² United Nations International Police Task Force (1996) 'Commissioner's Guidance for Democratic Policing in the Federation of Bosnia-Herzegovina', Sarajevo: United Nations, May, pp. 1-2, 2-19.

to imbibe better investigative and crime prevention techniques will lead to a more efficient criminal justice system.

Accountability remains at the heart of police reforms. As the only agency of the State empowered to use force against citizens, police must be accountable, much more so than any other department of the government. An accountable police builds public faith in governance and strengthens democracy, as citizens are able to see that powers given to the government will be used in their interests and will not be abused to their detriment.

3. Removing political interference: Is it taking away powers or interpreting the law so as to delineate powers of the political executive and the police?

Accountability implies responsibility for actions, which can be imputed only if there is autonomy for functioning within the parameters of law, without extraneous interference. At present, in India, there is a deal of confusion with respect to matters where police hierarchy has absolute autonomy. This remains despite the judgement of this Hon'ble Court in *Vineet Narian v/s Union of India* [1998 (1) SCC 226] where the court accepted and applied the principle of “operational independence” of the police to the CBI.

The National Police Commission of India had observed way back in 1979 that the “phenomenon of ‘interference’ with police is ... linked with the existing system of control over the police by the political executive...”³ Among other things, the power to appoint and remove the head of the police who does not enjoy security of tenure allows governments to control police organisations. In 1979, the NPC observed that the “Pressure on the police takes a variety of forms.... it is very easy to subject him [a police officer] to administrative action by way of transfer or suspension on the basis of an alleged complaint taken up for inquiry.”⁴

³ National Police Commission (1979) *Second Report*, August, Government of India, p. 29.

⁴ *Ibid* at p. 23.

The concept of *operational independence* of police has been firmly established in democracies that pride themselves on having a democratic police service. Though the scope of “operational independence” has varied in different jurisdictions, at a minimum, it signifies that the head of the police enjoys autonomy with respect to decisions on investigations, arrests and prosecution in individual cases. However, at the same time, the policy and strategy of the organisation to ensure safety and security of the public is to be decided by the political head (who might then also have some say in setting priorities of the organisation) in line with public input. But actual decisions on how to conduct police work at the ground level will be taken by the chief of police without any political interference.

Many express fear that application of this principle to policing in India would imply taking away existing powers of the political executive. That is not that case.

The Police Act, 1861 and the state laws modelled on the same clearly specify that while the *superintendence* of the police vests with the political executive, the *administration* of the police is with the chief of the police. One of the major problems with the implementation of this law is that since the words “superintendence” and “administration” are not defined, the political executive has on many occasions tread on the functions of the police. **It is thus imperative for this Hon'ble Court to interpret the law and define the words “superintendence” and “administration”** used in Sections 3 and 4 of the Police Act in light of the principle accepted by it in *Vineet Narain's* case (supra) so that roles and responsibilities of both the political executive and the police are clearly delineated in law.

At present, there is much confusion as well as resistance to changes because the political executive feel that to fulfil government's role of providing safety and security to the people, they must have absolute control over the public. Over a period of time, this has ebbed into a level of interference that has completely blurred the delineation between the roles and responsibilities of the police and the executive. Police functioning must remain subordinated and accountable to the political executive in a democracy. However, political control must be conditioned and tempered in a way to ensure that each – the police

establishment and the political executive – has distinct roles and responsibilities that are directly linked to their particular duties.

The act of this Hon'ble Court in defining the meaning and scope of the term “superintendence” will ensure that there is no conflict: nor diminish the powers of the political executive. It will merely clarify the legitimate limits of both and signal clearly what amounts to illegitimate interference. The police, it must be noted, would equally be made solely responsible for entertaining or being amenable or pliant to any extraneous influences, and consequences for allowing themselves to be so used shall and must flow immediately.

4. What does a proper delineation of powers entail?

In interpreting the law and delineating the powers, this Hon'ble Court may be assisted by the definitions provided in the draft Police Act prepared by the Police Act Drafting Committee of the Ministry of Home Affairs, under the chairpersonship of Mr. Soli Sorabjee.

Section 3.1 (3): The state government shall also [sic] exercise its superintendence over the police service in such manner and to such extent so as to promote the professional efficiency of the police and to ensure that the police performance is at all times in accordance with the law. This shall be achieved through laying down policies and guidelines, setting standards for quality policing, facilitating their implementation and ensuring that the police perform their task in a professional manner with functional autonomy.

Section 3.14 (3): Administration will mean the management of the police service, subject to law, rules and regulations; and will include framing of regulation; supervising the functioning of the police service at all levels; appointment to subordinate ranks of the police; deployment of the police; posting; transfers and the requisite disciplinary action up to and including the rank of Inspector of Police; advising the Government on the placement of officers of the rank of Assistant/Deputy Superintendent of Police and above.

The Hon'ble Court may also be guided by The Pakistan Police Order of 2002 as amended in 2004. It clearly defines “superintendence” to mean “**supervision of Police through policy, oversight and guidance** and specifies that while exercising it, the government must ensure “**total autonomy**” of the police in “**operational, administrative and financial matters**”.⁵ It also states that the power of **superintendence** “**shall be so exercised as to ensure that police performs its duties efficiently and strictly in accordance with law**”.⁶

5. Institutionalising operational independence

One of the most commonly expressed fears by the political executive in accepting the principle of “operational independence” is that this might allow the police to become extremely powerful without being accountable to them, as the elected representatives of the people. This fear is unfounded.

The NPC recognised the fact that “while attempting to insulate the police from unauthorised interference from political and other extraneous sources, we should not confer a totally independent status on the police which would then make it function as a ‘State within a State’.” It, therefore advised devising “a system in which police will have operational independence, particularly in matters in which their duties and responsibilities are categorically specified in law with little or no room for discretion and at the same time their overall performance can be effectively monitored and kept within the framework of law by an agency which will involve the Government also.”⁷ Hence the birth of the concept of a State Security Commission.

In other Commonwealth jurisdictions such as England and Wales and Canada, Police Authorities or Boards that act as buffers between the police and the executive have been established. The Authorities and Boards are independent public bodies, made up of both political members as well as members of the public. These agencies seek to protect the police from direct political control and interference by ensuring that they provide policy directions and approve police budgets.

⁵ Article 1 (xxvi-a), *Police Order 2002* as amended by *Police Order (amendment) Ordinance 2004* (Pakistan).

⁶ Article 9 (2), *Police Order 2002* (Pakistan).

⁷ NPC (1979) *Second Report*, August, Government of India, p. 29.

Importantly, these bodies are only empowered to provide policy guidance and the police retain operational independence.

In England and Wales, all the 43 police organisations are governed by what is commonly known as the *tripartite structure* that distributes responsibilities between the Home Office, the local police authority, and the chief constable of the organisation. It provides accountability to Parliament through the Home Secretary (who has responsibility for policing policy including centrally-imposed 'key priorities' that are formalised within a National Policing Plan), and to local communities through the local police authorities, which comprise of elected local councillors, magistrates and members of the public. These authorities frame local policing priorities and determine the arrangements for consultation between the police and public. It is these authorities that are responsible for appointment and dismissal of the chief constable (subject to ratification by the Secretary of State). They also advise on budgeting and resource allocation, and produce a three-year strategic plan consistent with the National Policing Plan. In practice, Chief Constables are also expected to respond to policies and circulars set by the central government (the Home Office and Her Majesty's Inspectorate of Constabulary), which can create interesting dynamics between local and national policy imperatives.

The Independent Commission for Policing on Northern Ireland put forth the concept of operational responsibility as a better alternative to operational independence. ***The Commission*** stated:

“Operational responsibility means that it is the Chief Constable’s right and duty to take operational decisions, and that neither the government nor the Policing Board [a civilian oversight structure] should have the right to direct the Chief Constable as to how to conduct an operation. It does not mean, however, that the Chief Constable’s conduct of an operational matter should be exempted from inquiry or review after the event by anyone. That should never be the case. But the term “operational independence” suggests that it might be, and invocation of the concept by a recalcitrant chief constable could have the effect that it was. ***It is important to be clear that a chief constable, like any other public official, must be both free to exercise his or her responsibilities but also capable of being held to***

account afterwards for the manner in which he/she exercises them. We recommend that the Chief Constable should be deemed to have operational responsibility for the exercise of his or her functions and the activities of the police officers and civilian staff under his or her direction and control.⁸

6. Autonomy to be tempered with accountability: No State within a State

Indeed, the concept of accountability has changed tremendously since 1979 when the NPC gave its reports. The basics of sound accountability requires that the police are ensured operational independence/responsibility, and held accountable – both for their performance and misconduct – to various stakeholders including the Legislature, Political Executive, Law, Judiciary, Independent Oversight Agencies and the People. Without this, the unsuccessful experiment of the State of Kerala would be repeated.

Kerala experiment on police reforms: Lessons to be learnt

Kerala is the only state in India where express executive instructions ensured that the police were allowed to function without any political interference for over three years from 2000 to 2003. Complaints of increased corruption and police abuse in the absence of any forum to appeal (with the politicians not available to the public to intercede on their behalf), prompted the Kerala Government to set up the Police Performance and Accountability Commission in 2003.

The Police Performance and Accountability Commission noted that although many officers were for the first time emboldened to act according to the dictates of their conscience, there were others who felt that autonomy was a license to misuse vast police powers. The *Commission* also pointed out that the common people lost the political conduit to reach the police without fear of ill-treatment or intimidation, a function which the politicians were discharging rather effectively by accompanying complainants to the police station and interceding with the police, and protecting the citizen from police ill-treatment. The

⁸ The Independent Commission on Policing for Northern Ireland (1999) *A New Beginning: Policing in Northern Ireland; The Report of the Independent Commission on Policing for Northern Ireland*, September: Chapter 6, “Accountability II: A New Beginning”, para 6.21, p.33.

Commission noted that ***“autonomy to the police is the ideal, but it should be tempered with measures to prevent its misuse”***.

7. Realising police accountability

As an agency empowered to use force, it is imperative to ensure that that the police function in accordance with law. To reiterate, this can be ensured by making the police accountable not only to one body but to different stakeholders at different levels - and ideally to civilian dominated bodies as well. Oversight needs to be localised and where possible, focused solely on complaints against the police.

Some countries have established agencies dedicated solely to the investigation and oversight of complaints against the police. Others have given this responsibility to existing oversight bodies with a wider mandate, such as Ombudsmen or National Human Rights Institutions. Much of how complaints authorities, ombudsman’s offices and human rights commissions perform their functions, once again, relies on how separate they are from police and executive influence, and how autonomous and well embedded their status is in the country’s legal framework. It also depends upon the width and clarity of their mandate; the scope of their investigative powers; the composition of their leadership and competence of staff; the adequacy and sources of financing; and most importantly their ability to compel obedience to their recommendations and the attention or support their reports and findings get at the hands of the government and police. Summing this up, *the factors that determine success are the same: independence, adequate powers, sufficient resources and the authority to follow up on recommendations or pass binding decisions.*

Won’t a strengthened Human Rights Commission suffice? Many argue that the existing civilian oversight structure, the Human Rights Commissions (HRC), should be strengthened rather than creating another mechanism. However, it must be kept in mind that across the world, it is civilian agencies dedicated to deal exclusively with complaints against the police that have been the most successful in holding the police to account. Such an agency is more likely to develop the necessary expertise in policing issues and investigative techniques.

Unlike a body with a wide human rights mandate like the HRC, its focus will not be diverted to other areas and it will have greater ability to analyse patterns of police conduct and performance. However, if resources do not permit the establishment of a dedicated agency to focus only on the police, HRC can play a valuable role in improving overall police accountability. In such a case, a specialist division must be created within the HRC, which is solely dedicated to dealing with the police. Nevertheless, it must be kept in mind that the NHRC at the national level has not been able to do justice to the issue because of the volume of complaints it receives and limited resources. ***Since policing is a state subject, in order to make the complaint mechanism accessible to the public, it is imperative to take it to the district and the state level.***

8. Evaluating Police Performance

People of India are convinced that the police must go beyond being a force to being a public service. In its special role of performing a service for the good of citizens with the citizen's money, police are answerable, not only to the state, but also to the public. Like any other public service, police must account not only for the services that they are expected to provide but also for the public money that they spend.

When evaluating police performance for a given period, certain indicators or determinants must be devised against which the performance would be judged. At present the commonly used parameters for assessing performance in India are crime and "preventive measures" statistics. The most commonly used parameter relates to assessment of police efficiency by comparison of crime-statistics of the period under review with those of previous years. "If the number of offences registered in the period under review is more than the preceding years, a facile conclusion is drawn that the police of the area has failed to control crime."⁹ The NPC recognised the futility of using such parameters that lead to the large-scale non-registration of cases at the police station level, sometimes with the consent of the supervisors. In order to check criticism in the state legislatures, the State Government and the senior police officers frequently connive at

⁹ National Police Commission (1981) *Eighth Report of the National Police Commission* at p. 8, May, Government of India

under-reporting of cases. The other commonly used parameter is the preventive measures taken under Local and Special laws like the Police Act, Arms Act, Excise Act, and Gambling Act, etc. The “adoption of this determinant of evaluating police performance leads to large-scale and unwarranted arrests, and the initiation by police of false cases against innocent persons”.¹⁰

In England and Wales, the PPAF provides measures of satisfaction, overall trust and confidence in the police, as well as measures that put performance into context in terms of efficiency and organisational capability. Each year, the Police Standards Unit reviews its indicators on the basis of policing plans and identifies priority areas.

England and Wales: Police Authorities (Best Value) Performance Indicators for 2005

- Satisfaction of victims of domestic burglary, violent crime, vehicle crime and road traffic collisions with respect to police handling of their cases;
- People’s perception about their local police doing a good job in the British Crime Survey;
- Satisfaction of victims of racist incidents to the service provided by the police;
- Representation of women and minorities in the force;
- Incidence (per 1000 population) of domestic burglaries, violent crime, robberies, vehicle crime, life threatening and gun crime;
- Number and percentage of offences brought to justice;
- Action taken in domestic violence incidents;
- Statistics regarding fatalities or serious injuries in road accidents;
- People’s perception about the fear of crime, anti-social behaviour, local drug use/selling in the British Crime Survey;
- Percentage of officer time spent in frontline duties;
- Delivery of internal efficiency targets; and
- Time lost due to sickness of police officers.

Best practice shows that these indicators cannot relate only to crime prevention or detection, but must also gauge public satisfaction with the services. Furthermore, they must determine whether the huge amount

¹⁰ National Police Commission (1981) *Eighth Report of the National Police Commission* at p. 9, May, Government of India

of money, and other resources used by the police, are utilised in the manner that the legislature intended, and used in a way that serves the public interest. It is important to review these indicators periodically to ensure they are in tune with the actual tasks that the police perform. It is equally important that each member of the police hierarchy is aware of the indicators against which the organisation's performance would be evaluated so that every one down the line is working towards achieving the same goals. It would be best if an independent body outside of the police were to evaluate the police performance on the basis of these indicators.

PRAYER

Keeping in mind the principles and practices mentioned in the foregoing paragraphs, it is humbly urged that this Hon'ble Court, in the interests of protecting the fundamental rights of the people, and strengthening democracy, pass appropriate writ, or orders:

1. Articulating a vision of a **democratic police** service;
2. Defining clearly the terms *superintendence* and *administration* used in the Police Act so that the roles, responsibilities and accountability of both the police and the political executive are clearly delineated;
3. Directing the Government of India and the State Governments to discharge their primary responsibility of providing safety and security to the people of India by providing an efficient, effective, responsive and accountable police service – in line with the report of Police Act Drafting Committee set up by the Ministry of Home Affairs – *inter alia*, by:
 - a. By statutorily defining the terms “superintendence” and “administration” in the light of interpretation given by this Hon'ble Court in this judgement;
 - b. Putting in place statutory mechanisms – to realise the concept of operational independence/responsibility of the police – that ensure:
 - (i) security of tenure to the Chief of police, as well as other officers who come in direct contact with the people including the District Superintendent of Police and the Station House Officer; and

- (ii) that powers of appointments, transfers, promotions and disciplinary sanction are exercised in a transparent manner so as to encourage the meritorious and discourage patronage.
- c. Setting up strong and easily accessible independent statutory institutions to hold the police accountable, both for their misconduct and their performance; and
4. Putting in place a mechanism under the supervision of this Hon'ble Court to monitor government compliance with the directions and orders of this court in view of the heavy public discontent with policing, especially given the wide public perception of police bias and impunity.

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DATED: 11 SEPTEMBER 2006

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