

Round Table Conference on Police Reforms

Background Note

Introduction

For the past 4 years, CHRI has been strongly advocating the urgent need for police reform. It has been urging the state governments to recognise this need and take serious steps to introduce police reform. It has also been trying to persuade the government at the centre to set an example by reforming the police forces under its control that would inspire the state governments to follow suit.

Without police reform, the State's authority is getting eroded and consequently it is becoming increasingly difficult to counter or quell corruption, terrorism and other anti-social activities. Rule of law is getting undermined and the process of economic development is being impeded. Private armies, conflict, vigilantism, and terrorism are being fostered in the shadow of a police force that is seen as ineffective and inefficient. Habits of impunity and the presence of political patronage and interference have become so deep rooted in the service that the best cannot function without impediments while the worst find themselves protected in a way that presents an all too successful role model for the rank and file. This demoralises ordinary good police people from working with honesty and commitment.

As long ago as 1979, the National Police Commission [NPC] set out a road map for reform. In their comprehensive and still relevant recommendations the NPC indicated what reforms were vital if misuse of power was to be prevented; misuse of police by administrative or executive instructions, political or other pressures was to be avoided; and the tendency for following oral orders or those contrary to law was to be curbed. They recognised that illegitimate political interference in police functioning had eroded the control and command structures within police forces and damaged its ability to function autonomously without fear and favour.

In the 23 years since then, the situation has only got worse. The police in India have been cited again and again in international fora as being the locus of egregious human rights violations. The courts in the country have indicated their displeasure with the functioning of the police at every level and laid down standards that are followed more in the breach than in obedience. Conviction rates for serious crimes are at an all time low. The National Human Rights Commissions and the State human rights commissions are overwhelmed with complaints against the police. Public security and personal safety especially that of vulnerable groups has been severely compromised and recent events have highlighted the need for police reform more dramatically and more tragically than ever before.

These events have brought to the fore the need to attend to the most important of the National Police Commission's recommendations - and the one that CHRI lays most emphasis on - the need to insulate the police from illegitimate political interference, while being held accountable for their misconduct and dereliction of duty.

Over the last four years, CHRI has been organising consultations on these issues at various levels and in different States. During these consultations in the shape of seminars, discussions, brainstorming sessions etc., it has emerged that the public at large feel helpless against the might of the police and yet feel a desperate dependence on the force. The police themselves feel

suffocated and constrained in their work and want to act responsibly but find themselves thrown back into working in unacceptable ways merely to survive a subverted system. Everywhere there is a cry for change but little response.

Most importantly our earlier work has confirmed the belief that the recommendations of the National Police Commission remain relevant and cover nearly all the important facets of policing and police management issues. However, none is more important than matters concerning supervision, control and accountability. The reports of the NPC and those that have come after, again and again project these areas as being at the heart of reform and in need of urgent and vital attention from the point of view of addressing public needs and sustaining the constitutional system and rule of law. We have particularly sensed a need for the citizens of the country to be reassured of a non-partisan and reliable police befitting our democratic and secular credentials.

The Round Table

As part of the on-going commitment to catalyse broader debate and foster more informed discussion at policy level, CHRI in collaboration with FICCI and the Editors Guild have arranged this Roundtable on the need for police reform.

The Roundtable has been designed to be a dialogue amongst equals. It brings together politicians, media, civil society groups, policemen, bureaucrats, lawyers, human rights commissioners, members of the business community, activists and concerned citizens.

The Roundtable is intended to be forward-looking. It will refrain from merely reiterating instances of police bad behaviour. Nor is it meant to be a platform for finger pointing and apportioning blame amongst the different agencies of governance in the country however tempting this may be. In the belief that some of the best minds and most committed hearts are at the meeting, the sessions have been organised to focus sharply at finding viable solutions, settle on the best options for reform and finally come up with practical courses for immediate action.

Though not all police reform requires legislation and much of the improvement to do with the sub-culture of the police could be brought about by changing attitudes and better and more courageous leadership, CHRI believes that all sustainable improvement and good practice will flow from: a) a legal articulation that redefines what constitutes proper and legitimate control to be exercised over the police so that it can perform efficiently in service of the citizenry and in strict accordance with requirements of law; and b) putting in place structures that ensure that the police are insulated from illegal and unwarranted interference.

There are many interconnected aspects of police functioning that cry out for reform. However in order to do it justice, this present one day consultation will address only the seminal areas of de-linking police functioning from illegitimate political interference, while simultaneously holding them accountable to the law of the land and discuss how best this may be achieved.

The first two working sessions will specifically address: the various models and structures that could insulate the police from extraneous influences; and arrangements that are needed to ensure greater police accountability.

As the twin themes flow into each other, a watertight separation will be difficult to arrive at. However, panelists would pin-point themes and set the tone for the discussion so that, keeping in mind the tyranny of time, the day long consultation remains focussed around the singular objectives of working through the central issues with precision and move toward practical strategic ways of assuring police reform in the very near future.

The third working session will address how best political will can be catalysed to bring about urgently needed reforms in the police.

Despite the demonstrated need for insulation and accountability that has been illustrated so recently in Gujarat the political will to go toward change has not manifest itself. Nor will it do so unless there is greater public opinion on the issue and more focused debate within policy circles of ways and means of ensuring better policing. Though there is a great awareness and disapproval of the police and its way of functioning there is not sufficient knowledge of what changes can be made to ensure that the police are made both accountable and efficient in service of the public. The recommendations of the NPC are not widely known; the models existing in other jurisdictions are not known and discussion within opinion making classes and affinity groups such as the police, bureaucrats and politicians is not broad-based or widely informed. More than all of these, the greatest obstacle to police reform is perceived to be the lack of political will.

The general questions before participants are:

how can resistance to police reform be broken down and political will to reform the police be fostered? and,
what steps need to be taken by each of us to work actively toward reform from their own locations in society and not rest merely with prescriptions to government or expectations from others?

Partnerships are essential if police reform is to become a reality. The organisers hope that concrete commitments to work for police reform will emerge from this exercise.

The sessions have been designed to keep formal presentations to a minimum while providing participants with an immediate overview of the subject in hand and leaving them with enough time for discussions and informed interventions. The background papers provide: a) short notes to assist in the discussions for each session; b) comprehensive information for participants, which will assist in formulating ideas prior to the conference.

DISCUSSION POINTS

SESSION II

Insulating the Police from External Pressures

“a distressing situation which must be cured if the rule of law is to prevail.”¹

POINT 1

The meaning of “superintendence” exercised by government

According to Section 3 of the Police Act of 1861, **superintendence** over the police force is exercised by the state government, which in effect means the ruling party of that area. The word ‘superintendence’ has not been defined in the Police Act or in any other law. Over the years, this has resulted in the exercise of unlimited discretionary powers, directions and orders to the police, by those who are ostensibly exercising ‘superintendence.’ There is considerable evidence to show that superintending powers are not always exercised judiciously. Almost all State Police Commissions and the NPC have found overwhelming evidence of misuse of police system by politicians and bureaucrats for narrow selfish ends. Obedience to often-illegitimate directives is guaranteed by the threat of transfer and arbitrary use of powers to appoint, promote and punish.

To address this situation, the NPC had recommended 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”*

The word ‘superintendence’ has been interpreted by the Supreme Court in what is known as the Hawala Case judgement of 1998². Here, the Supreme Court was examining the functioning of the CBI, which is the premier investigating agency in the country. The Court’s interpretation of the word ‘Superintendence’ was confined to defining the limits to superintendence. According to the judgement, the general superintendence over the functioning of the department does not include within it the control of the initiation and actual process of investigation. The process of investigation, including initiation, is not an area that can be included within the meaning of “superintendence” and cannot be construed to permit the supervision of the actual investigation of an offence by the CBI contrary to the manner provided by the statutory provisions.

This interpretation however is not helpful in limiting the government’s control over the functioning of police in other areas, like law and order or over the internal administration of the police.

The court also took sharp note of the fact that the situation had become alarmingly worse since the NPC made its recommendations. The Court made strong recommendations that state governments should implement the long overdue recommendations of the NPC. It particularly asked the central government to pursue the matter with state governments.

The Court specifically mentioned that transfers of police officers were very often arbitrary and very frequent and resulted in demoralizing and politicizing the police force. This interferes with police functioning and should be done according to laid down rules. It urged that each state government put in place proper mechanisms for the selection, appointment, tenure, transfer and posting of all police officers of the rank of Superintendent of Police and above.

In making these recommendations the Supreme Court in particular enjoined the Central Government to take “prompt” measures to impress upon the state government that such practices

¹ Justice Verma’s judgement in the Hawala case referring to the desperation revealed in the letter of the Union Home Minister, Mr Indrajit Gupta to the State government which had been placed before the court and which had not received even a single reply.

²Judgement of the Supreme Court of India in Writ Petition (Criminal) Nos. 340-343 of 1993, pp 66-67

are alien to the envisaged constitutional machinery and that no action within the constitutional scheme found necessary to remedy it was too stringent in these circumstances.

Focus for Discussion

- The Supreme Court's interpretations reiterate the general proposition that all discretions and authorities vested in government are exercisable only to the extent these are in keeping with constitutional norms and that where statutory jurisdiction has been explicitly given it cannot be subject to executive control. This is clearly in keeping with overall jurisprudential principles but spoken in the context of the CBI only. These interpretations have not taken the matter of ensuring police independence from extraneous forces in the performance of its duty much further, because the statutory laws governing the police in the States still remain silent on what the term "*superintendence*" means and no mechanisms have been put in place to ensure that there is a shield between police functioning and political expediency.

Police reform requires that new Police Acts be formulated, which contain a definition of what superintendence means: How best should 'superintendence' be defined: how best can its limits be articulated; what principles should inform this articulation.

POINT 2

What possible mechanisms and institutional arrangements need to be put in place to insulate police from outside pressures?

Several kinds of institutional arrangements exist that ensure that the police is shielded from direction from any outside agency and yet remains within the overall governance of the executive. Committees looking at the issue have recommended several models and many innovative models are in successful operation in other jurisdictions. Detailed notes on these are in the materials provided. We give below a short summary.

The NPC Model:

The model recommended by the NPC involves mainly the following arrangements:

- Setting up of the State Security Commission
- Providing a mechanism that would help in selecting the best man for the top post.
- Providing a fixed minimum service tenure to him
- Authorities empowered to transfer officers of different ranks to be specified in the Police Act and transfer by non-authorized persons not to be treated as valid.
- The Police Act of 1861 to be replaced by a new Police Act, which not changes the system of superintendence and control over the police but also enlarges the role of the police to make it function as an agency of law.

The Rebeiro Committee

- The Ribeiro Committee accepted the need to set up the State Security Commission. However, while the NPC recommended that the State Security Commission [SSC] should be a statutory body, the Rebeiro Committee recommended that it should be a non-statutory, advisory and recommendatory body. The Committee made this recommendation because they encountered from the political executive stiff opposition to the idea of any monitoring body or to the concept of an institution to supervise the superintendence of the political executive over the police force.

- The Rebeiro Committee felt that transfers, promotions, rewards, punishments, including suspensions and all service related matters of officers of and below the rank of Deputy Superintendent of Police should be the sole prerogative of the police hierarchy. To ensure this, the Rebeiro Committee recommended the establishment of a Police Establishment Board consisting of the Director General of Police [DGP] as chairman and four senior most police officers to monitor transfers, promotions and other related matters
- The Police Act of 1861 to be replaced by a new Police Act.

The Padmanabhaiah Committee

It suggested:

- A body headed by the Chief Justice of the High Court as chairman with Chief Secretary and an eminent public person as members to recommend a panel of two names for appointment to the post of the Director General of Police to head up the State force;
- A Police Establishment Board headed by Director General of Police and three other members who would decide transfers of all ranks from DYSP and above;
- A minimum tenure of two years for all officers in their postings and positions
- A Committee under the Chief Secretary, with the Home Secretary and the Director General of Police as members to decide representations from police officers about violation of rules regarding postings and transfers;
- All powers of transferring officers to be with departmental authorities alone; and
- Police Act of 1861 should be repealed and a new Police Act should be legislated.

Focus for Discussion

Given the situation as it is today and with an eye to establishing an efficient and effective policing that will further Constitutional norms in the future, what are the merits of alternative models and which is the most valuable? In what manner can the police be ensured protection for refusal to deviate from strict functioning according to rule of law and constitutional norms?

SESSION III

Mechanisms and Procedures for Police Accountability

POINT 1

Assuring police accountability to law

Ensuring that the police have functional autonomy does not mean there is no accountability. In fact, greater responsibility and independence of action requires assured means of accountability, clear lines of responsibility, and unequivocal commitment that accountability is to the law alone.

The British, whose colonial formulations of police law we continue to follow, required a force that was designed to suppress and subjugate on command of the master. A democratic nation committed to the rule of law and having a bill of rights such as in the Constitution places a fundamental duty on the elected government to ensure the rights of citizens and ensure the safety of life and property. This fundamental duty requires that the state establish an efficient and effective police system. It also requires that the police act always only in accordance with the law and are answerable only to the law and not to any person.

While the Police Acts in other countries make it a statutory responsibility of the government to set up an efficient and effective police service in an area, the Police Act of 1861 and the other State Police Acts in India are silent on this issue. The Indian laws merely talk of state government's

superintendence over the police force and not of its responsibility to establish an efficient and an effective police system. Police Acts elsewhere have also set up mechanisms to assess the performance of the police service in an on-going manner and others to inquire into police misconduct and bad performance so that there is accountability to citizens locally and at national level.

In India the biggest complaint against the present system is that the police act in a biased manner in favour of the powerful and that police brutality gets state encouragement and protection. The perception is that impunity is the reward of obedience to masters and that no account will ever be required for abuse of power or dereliction of duty such as has been commented upon extensively in the Gujarat situation.

There is ample evidence of increasing police deviance. Everyday the newspapers report incidents of brutality, extortion and other crimes from all parts of the country. The majority of complaints received by the National Human Rights Commission are against police personnel and its data indicates that the graph is rising. Official police statistics confirm that the number of public complaints is very high and the National Crime Records Bureau (NCRB) of the Ministry of Home affairs, Government of India shows that during the year 1997, there were as many as 1,23,523 public complaints.

Growing criminalisation in the force is undermining State authority. The Padmanabhaiah Committee speaks of "police personnel hobnobbing with individual criminal elements or with people operating in the grey areas of law" and "reported linkages between the policemen and the organised criminal gangs is most pernicious and threatens the national security". No less a person than Director, Central Bureau of Investigation reporting to the Vohra Committee explained "The nexus between the criminal gangs, police, bureaucracy and politicians has come out clearly in various parts of the country" and is "virtually running a parallel government, pushing the state apparatus into irrelevance."

External mechanisms like courts, human rights and other commissions, NGOS and media have to struggle against heavy odds to ensure accountability and the police department's internal mechanisms for dealing with the problem of misconduct by their own has not inspired public confidence. Sometimes the department tries to suppress incidents of misconduct by individual policemen under the apprehension that revelation will demoralise the force and bring the organisation a bad name. Even where citizens' complaints are inquired into and action taken, they inspire no public credibility because they are conducted by the police themselves, are opaque, dilatory and difficult to follow. Recently, the Prime Minister's Office itself has felt it necessary to pull up the Delhi Police for treating public complaints against police personnel referred by it, shoddily: "The field reports prepared at the district level are generally evasive, there is a lack of sensitivity, lapses of police are concealed and emphasis is mainly on statistical disposal."³

The NPC and the Padmanabhaiah Committee have recommended that there should be a Directorate of Police Evaluation (DOPE) independent of the police organization in every state. The Directorate would carry out annual inspections of the district police forces as well as of the specialised units functioning in the State Police. It should also carry out thematic inspections periodically. The independent inspection reports would help in monitoring the performance of the police force, identifying the areas of weaknesses and shortcomings and ensuring that standards are maintained. It would function like a watchdog. Since the Unit would have specialised knowledge, it will provide government a means of getting an independent, objective and professional assessment on the working of the police force in the state and enable it to take measures to improve the efficiency and effectiveness of the police force continuously. It will also provide the head of the police force with an independent assessment of performance by experts and community who are not involved in the operations. The Inspectorate can draw its members from retired heads of the police force and outsiders with a mix of different skills and backgrounds.

³ Reported in the The I.Express, June 9, 2002

These suggestions take account of internal systemic oversight but do not address the issue of public complaints against the police. Different models of civilian oversight of policing exist in foreign countries. The best managed jurisdictions across the world have vibrant independent complaints authorities that have contributed to enhancing the police image.

Focus for Discussion

- **Should the responsibility of the state government to set up an efficient and effective system of policing in an area be recognized statutorily?**
- **Is there a need to set up an independent Police Complaints Authority and how this can be done?**
- **What changes in procedures governing internal accountability mechanisms would improve the credibility of the system?**
- **Is there a need to set up an agency that will continuously monitor and evaluate the functioning of the police agency and suggest measures for reforms in different areas of their work?**
- **What immediate measures can be taken to curb the increasing criminalisation of the force?**

SESSION IV *Valedictory*

Point 1

Defeating resistance

Resistance to police reform comes from many quarters. Despite international commitments to good governance, assurances in political party manifestos, clear statements in opposition, the exhortations of human rights commissions within the country and international condemnation outside, and the evidence of damage to political party's own image wrought by police misbehavior, politicians in power have steadfastly refused to take forward the agenda of reform.

Within the police, while there are vociferous complaints about service conditions, there is less willing discussion about the existing semi-feudal sub-culture which subverts rule of law and perpetuates a rigid unquestioning hierarchy. Engrafted onto this is the skein of patronage and favours given and taken, through which individual career paths are smoothed or retarded. Both these phenomena are well known but have become so much a part of the culture that merit and morality are seen as either luxuries or unrealistic foibles. Though there are police officers who want a change in the subverted system, there is a natural reluctance to bell the cat by individuals, for fear of taking on too well entrenched a system.

Within society, vested interests have learned to 'play' the system to their advantage. Immediate benefits to such elements as tax evaders, corrupt officials, crooked contractors, and the underworld also create part of the resistance to reform. In sum, though a majority of the population would like to see a police geared to protecting rights and maintaining law and order within the confines of the Constitution and accountable only to the law, they are discouraged from being active in promoting the issue.

Focus for Discussion

- **What needs to be done to catalyse reform?**

- **What aspects of the reform agenda need to be prioritised?**
- **How can political will be cultivated and reform become a practical reality in the very short term?**
- **What immediate next steps and actions can be taken individually and collectively by concerned individuals and representative groups to work for reform from within and outside the police?**