

Roundtable on

**Policing and
Public Order**

New Delhi – June 10, 2006

A Report



Commonwealth Human Rights Initiative (CHRI)
B-117 (First Floor), Sarvodaya Enclave
New Delhi – 110017 INDIA
Tel: +91-11- 26528152, 26850523
Fax: +91-11 - 26864688
E-mail: chrill@nda.vsnl.net.in
Website: www.humanrightsinitiative.org

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ROUNDTABLE ON POLICING & PUBLIC ORDER

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Introduction

As part of the on-going commitment to catalyse broader debate and foster more informed discussion at the policy level on the vision of policing for 21st century democratic India, the Commonwealth Human Rights Initiative¹ (CHRI) in conjunction with the Administrative Reforms Commission (ARC) 2005 organised a Roundtable on “Policing and Public Order” in New Delhi on June 10, 2006. The delegates included 36 persons, mainly civil liberties lawyers, social activists and NGO leaders from across the country, who presented their views before the Administrative Reforms Commission, which was represented by its Chair, two Members and staff.

The Administrative Reforms Commission has been tasked by the Government of India to suggest a framework to strengthen the administrative machinery to maintain public order, in a way that is conducive to social harmony and economic development. The context for the Roundtable stemmed from the desire of the ARC to have the views of civil liberties practitioners on record, who from their experience of defending constitutional values have a deep understanding of the interface between state and society, and its impact on public order.

In seeking answers to the vexing issue of policing and public order, the meeting examined state responses to disorder. Through their experiences, participants discussed the efficacy of past and present responses and the merits of enhancing the powers of the police to deal with public order problems. Seminal issues of de-linking policing from partisan politics and simultaneously making the police accountable were also discussed.

Given the fact that some of the best minds and those with the highest levels of commitment were at the Roundtable, formal presentations were kept to a minimum, leaving enough time for discussions and informed interventions. The sessions were organised to focus sharply on finding viable solutions and settle on the best options for reform.

Though many significant points emerged from the discussions, we had to summarise and paraphrase delegates’ comments due to space constraints and the need to narrow down to suggestions directly linked to the topic of the Roundtable. In doing this, we have attempted to retain the richness and substance of the discussions. Complete transcripts of the discussions are also available.

¹ The Commonwealth Human Rights Initiative (CHRI) is an independent, international non-governmental organisation mandated to work toward the practical realisation of human rights in the countries of the Commonwealth. For the last 9 years, CHRI has advocated for the urgent need for structural reforms in policing.

DELEGATES' RECOMMENDATIONS

Recommendations to minimise the possibility of disorder

- Good and equitable governance is required to sustain public order. Laws that empower people rather than the government should be enacted. Emphasis should be placed on creating “*consensual equilibrium rather than coercive equilibrium*”.
- The reasons behind occurrences of large-scale disorder should be clearly analysed and publicly debated to prevent recurrence. The focus should be on managing state power and not on managing people.
- Instead of giving more powers to law enforcement agencies, focus should be placed on conditioning the exercise of existing powers. The police will have to be made more accountable, and stricter punishment has to be imposed. Laws that provide impunity for law enforcement agencies should be repealed.
- Administrative Reforms efforts must help marginalised sections of society – the poor, Dalits, Adivasis, and minorities – realise their rights. Existing provisions to safeguard the rights of vulnerable groups should be properly enforced.
- Every aspect of police functioning, administrative functioning and judicial functioning should be made public and transparent immediately, and on a regular basis. The institutional culture has to be changed.

Recommendations to democratise governance

- The whole culture, legal system and the manner in which government has been carried out needs to be understood, revamped, and brought in tune with modern times.
- Policing should be fashioned towards addressing the growing needs and changing face of society.
- The police should be trained on secular values.
- Instead of looking towards the recommendations of the Malimath Committee that seek to weaken fair trial guarantees, emphasis should be placed on making the state machinery more accountable.
- Space for public protest, legitimate dissent has to be zealously protected by the government.
- Constitutional discipline needs to be reinforced in the police, bureaucracy and the judiciary.
- When crimes are established by the process of law, whether by courts or commissions, then irrespective of culpability, reparation principles must be guided by rationality, justice and completeness. Reparation to victims of torture should be built into the law through the enactment of a special Act on compensation.
- A caste study should be conducted to see which castes are dominating and which are exploiting to formulate a policy on representation in the police, judiciary, medical and educational fields.
- If reform exercises are to be made meaningful, each proceeding should be widely publicised in regional language newspapers and suggestions invited from ordinary people.

Recommendations to enhance responsiveness of the police administration

- Landmark rights-affirming court directives should be incorporated into the Code of Criminal Procedure, police manuals, and rules.
- The government must exercise its control over the police in strict accordance with the law. Day to day interference in police work – particularly in transfers, postings and criminal investigations – needs to be done away with.
- The role and responsibility of the political executive and the head of the police should be clearly delineated and prescribed in law, to minimise the possibility of external influence in policing.
- There should be proper procedures to ensure merit based appointments and transfers in the police. Transfers of senior officers should not be done by the chief minister or home minister, but by a committee consisting of the chief minister, the leader of the opposition, a High Court judge and prominent citizens.
- The role of the police, in terms of public order maintenance, must be clearly defined. Things like preventing gambling should be taken out of the ambit of police duties.
- The police must reflect the composite mix of society. Efforts should be made to ensure that women, minorities and Dalits are represented in the police.
- More women should be included in the police and given key posts to bring improvements in attitude and approach towards gender issues.
- The police should be made accountable under the Right to Information Act 2005. Everyone registering an FIR should have the right to know what action has been taken on their FIR, and what is the current stage in investigations.
- There should be annual evaluation of police performance by an independent board. Parameters should include police response to crime, particularly public satisfaction, victim satisfaction and operational efficiency. A social audit of the police should be undertaken at the state, district, city, and mohalla levels.

Recommendations to make the police accountable for wrongdoing

- The requirement of having to obtain prior sanction before prosecuting police officers for wrongdoing should be done away with.
- Disciplinary proceedings should be completed expeditiously and swift action should be taken against errant officers.
- A District Complaints Authority to inquire into important cases, referred by the National Human Rights Commission and State Human Rights Commissions, should be considered.
- There should be an independent human rights complaints monitoring mechanism at the police station level that is accountable to the human rights commissions, but in their rejuvenated form.
- A credible external mechanism to address complaints against the police should be put in place. Either the existing human rights commissions should be adequately strengthened, or an exclusive body to deal with police related complaints should be established as in other jurisdictions.
- Human Rights Courts as mandated by the Protection of Human Rights Act, 1993 should be properly constituted and operationalised through the enactment of rules.
- The police should be rigorously made to obey Supreme Court guidelines laid down in the D.K Basu case.
- Anomalies in the Indian Evidence Act, 1872 that reject the admissibility of confessions made to police officers [Section 25], but make admissible, recoveries made by the police through the very same confessions [Section 27], should be removed by repealing Section 27.

Strong opposition to key recommendations of the Committee on Reforms of the Criminal Justice System (Malimath Committee)

The delegates were emphatic in their rejection of many key recommendations of the Malimath Committee. Some of the views expressed are reproduced below:

- The premise of the Malimath Committee is flawed because it treats the accused as guilty. It assumes that the person suspected of an offence is the person who really knows the entire truth, and the truth must be elicited from him.
- I would like the Administrative Reforms Commission to keep in mind that the Malimath Committee represents a certain mindset that has permeated into policy-making levels, and is antithetical to reality, but nevertheless a mindset that people in power always choose.
- I would like to refer to the myth of the low conviction rate, which is at the core of the Malimath Committee's premises. We need to be careful with that.
- To quote the Malimath Committee, "the accused nowadays are more educated, more informed, and use sophisticated weapons and advanced techniques to commit offences without leaving any trace of evidence" (page 19, paragraph 1.33). Certainly, if one spends more than 30 minutes in a trial court and examines the accused, a sample of any magistrate's court will reveal that there are very few accused who are educated, even fewer who use sophisticated weapons, and certainly very few who use advanced techniques without leaving traces of evidence.
- The Malimath Committee Report goes on to say, "the accused is normally represented by very competent lawyers of his choice" and, "in practice the accused on whom the burden is very little, hires a very competent lawyer, while the prosecution is represented by persons of poor competence etc" (page 125, paragraph 8.1). Again, this myth that the accused have very competent lawyers clearly comes out from a certain newspaper reading of who the accused are - so Manu Sharma becomes the epitome of accused people, or Rahul Mahajan for that matter.
- The Malimath Committee talks about making confessions to police officers admissible as evidence as routine. We started with this in extraordinary laws like the TADA. Now we want to routinise this.
- I feel it is very important not to dabble with this whole thing about confessions made to police officers having the same value as those recorded before a judicial magistrate under Section 164 CrPC. The question is not of giving more powers to the police or more powers to investigating agencies. They have enough powers.
- Coming back to the failure of the police to secure convictions. It's not insufficiency of laws but because the police either deliberately or for some other reasons misuse, abuse, or don't use the existing infrastructure. At present if any person wants to confess, all the police needs to do is take her/him before a judicial magistrate.
- The Malimath Committee seeks to make confessions to the police admissible as evidence, but the reality is that people are terrorised in custody. In 2002, I was working with Narmada Bachao Andolan and was picked up by the Madhya Pradesh Police and sent to custody. I was forced to sign a paper written in Hindi, which I did not understand but they literally forced me to sign on the paper. [Despite] being a lawyer, I did sign because they forced me to sign.
- The Malimath Committee goes carefully into demolishing fair trial safeguards that exist in the current law, whether the right to silence or the burden of proof.
- The Malimath Committee talks about lowering the standard of proof to convict from 'beyond reasonable doubt' to the 'court's conviction that it is true'. With the Malimath Committee's recommendations, prejudices will become the basis of judgement.
- The Malimath Committee seeks to convert people into criminals (if I may use a strong term) by calling for reducing the burden of proof from beyond reasonable doubt.
- Overall, I fear that the Malimath Committee is something, which a reasonable person cannot accept both in theory and in practice.
- Malimath Committee, I agree, is not even worth considering.

The Inaugural Session

Mr. B.G Verghese (senior journalist and Chair of CHRI's Executive Committee) opened the day's proceedings by delivering the welcome address. He stressed that police reforms are imperative to good governance and the restoration of a healthy system of criminal justice. Unfortunately, on account of politics, the whole apparatus of law has resulted in public order becoming synonymous with maintenance of the established order, counteracting the true role of the police, which has to be a service upholding the rule of law rather than a force used as an instrument of raw power.

In his inaugural address, Mr. Veerappa Moily, the Chair of the Administrative Reforms Commission, underlined the resolve to seek solutions to public order issues. According to the responses received by the ARC to its elaborate questionnaire on the handling of public order, only 11% of the respondents were satisfied by the government's dealing of public order issues. 79% were unhappy. 84% were dissatisfied with the legal framework and the arrangements for public order management in the country. In a democracy, unless trust and faith in the authorities is reposed, problems cannot be resolved. Therefore, meaningful dialogue should focus on what should be done to resurrect the faith of people in the state.

Explaining the ARC's role in the present context, Mr. Moily said the main cause of public disorder is the failure of governance. *"We have to see what can be done to evolve systems so that governance can be strengthened. This is how the ARC comes into the picture. We would like to see that governance is built up in such a way that [public] confidence is created"*.

Professor T.K Oommen (eminent social scientist and former President of the International Sociological Association) set the tone for the day's discussions. His key note address, "Public Order: A Democratic Perspective", emphasised that public order should not be perceived as a mere instrumentality or a means to achieve a goal, however important that goal might be. He went on to say, *"Public order should be seen as a value, as an end in itself, because it is a prerequisite to lead a peaceful and harmonious life in any society. Even if we abandon our dream of becoming a global power through rapid economic development, we need public order. Public order has a minima and a maxima. Minimally, it is the absence of threat to the state, economic institutions, and civil society. Maximally, public order should ensure security of everyday life and facilitate harmonious coexistence of all citizens in the polity. Thus viewed, public order is a prerequisite for the exercise of citizens' civil, political, economic, social and cultural rights."*

Professor Oommen further stated that efficient, impartial and professional policing is a prerequisite for good governance. Good governance itself, he explained, is possible only when four conditions are met: (a) informing the process of recruiting the administrative elite, including the police, with legitimacy; (b) achieving proportionate representation of all segments of society; (c) ensuring respect for the "dominated" by the "dominant" as fellow citizens; and (d) instituting an authentic reward-punishment mechanism, reward for excellence and punishment for non-performance. Professor Oomen concluded by emphasising that: *"Overall, public order is a process of creating consensual equilibrium and not perpetuating coercive equilibrium"*.

MORNING PLENARY: PUBLIC ORDER EXPERIENCES

Sub-Session I: State Responses and Victim Realities

Extracts from the agenda: Large scale unrest, whether sustained resistance to authority or sporadic protest, is a manifestation of growing discontent and anger at discrimination, exclusion, deprivation, injustice, and overall bad governance. Also, frequently 'public disorder' is orchestrated by powerful societal actors - including those at the helm of affairs - to achieve political ends, leaving innocent bystanders victimised by the effects of disorder and the state's response to it. Solutions to what is perceived as public disorder cannot be found without an examination of the state's response to various types of unrest. Present and past responses have favoured the authoritarian impulse, which ranges from enacting special laws, declaring whole areas as disturbed, proscription, externment, preventive detention, riot schemes, and routine and unregulated use of force in police handling of breaches of public order.

Discussion: This sub-session heard those closely associated with the fall out of state responses to public order, and examined from the victims' point of view whether present legal and policy solutions have worked, are adequate, or pose obstacles to achieving a sense of justice. At the beginning of this session, the delegates were given a list of four questions. These are:

- What should the government be doing to minimise the possibility of large-scale public disorder?
- What are the required administrative reforms to protect ordinary people from becoming victims of public disorder?
- Is government support for state sponsored militias / special police officers a justifiable solution to dealing with the impending problems created by terrorism, insurgency or violent extremism?
- To what extent is the government justified in derogating from the basic human rights of people to deal with situations of large-scale public disorder?

Extracts from the responses given by the delegates follow below:

Justice Rajinder Sachar (former Chief Justice Delhi High Court, associated with the People's Union for Civil Liberties)

What should the government be doing to minimise the possibility of large-scale public disorder? The one answer would be good and equitable governance. It has nothing to do with what the people have to do, it is what the government has to do, because the disorder arises after a feeling of dissatisfaction and discontentment by the people and evidently in a democratic set-up they all have to respond in the ways that are available to them. *Stopgap measures like creating vigilante groups or derogating basic human rights are not even worth considering.* It is a question that can never be conceived in a democratic set-up. In Chhattisgarh, I have read reports of this happening. The very concept of a state becoming a party to terrorism is abhorrent. *Terror laws being applied to ordinary civil rights of individuals, detention centres that cannot be visited, are the outcome of a psychological build-up where the public are told that there is a wave of terrorism; a tornado is coming; a flood is overwhelming us, and therefore what we need to do is to get out of it.*

Ms. Teesta Seetalvad (Advocate, Mumbai, associated with Citizens for Justice and Peace)

Every aspect of police functioning, administrative functioning, and judicial functioning has to be made public and transparent immediately, and on a regular basis. This requires putting in place a monitoring mechanism, which should also be a complaint mechanism for citizens.

Additionally, complaints need to be made public on a monthly or tri-monthly basis. Victims need to be empowered. Since the 1980's, there has been a whole slew of legislation to protect the rights of victims like the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 that allows civil society to hold the hand of the victim. However, the Indian Penal Code and Code of Criminal Procedure do not provide similar levels of protection to victims. At present, there is much talk of replacing statements recorded before a judicial magistrate, under Section 164 of the Code of Criminal Procedure, with police statements. Before doing this, the quality of police recording of statements needs to be improved and strengthened. If the police are not recording statements properly, then we need to examine this. In a nutshell, I think our administrative reforms effort and our police reforms effort needs to look at how a voiceless people feel that they are up against a very hostile system, and within this how marginalized sections, be they Dalits, be they Adivasis, be they poor, or be they Muslims or Christians in particular contexts, feel that much more disempowered. *I think by and large the ordinary Indian feels extremely disempowered vis-à-vis this huge system of government, administration, police and even the judiciary. So I think we need to talk about how some of our reforms can actually make the system more people friendly.*

Mr. Imtiyaz Ahmed (Social Activist, Delhi)

We often forget that India is a very large country. Therefore, if at one time there is disorder in Tamil Nadu, it is more easily absorbed because there is no disorder in other parts of the country. Such disorder is a normal function of the process of democratisation in a society and India is going through a process, haltingly and slowly, but definitely towards democratisation. When public statements about the impending threat from Naxal terror are made, it orients the political system to adopt more repressive laws, and as a result of such repression, the law and order situation deteriorates.

The ARC should focus a part of the study on where the society is heading in the next 20 years. Hence if we were to have an "x" type of society, the police should be fashioned in those ways. If you really want to have a sensitive police force, the area to address is where is Indian society heading? What are the implications of the increasing democratisation of society? What are the implications of the new groups that are coming into existence? What are the implications of the new technology and science that is becoming available to the common man? These are the kinds of questions on the basis of which a decision about a reformed police force or a revamped police force should be taken.

Mr. Ram Narayan Kumar (Social Activist, Delhi, associated with the South Asia Forum for Human Rights)

When a situation which some people call public disorder is created around issues of economic justice, we need to go into the unfulfilled promises of those leading the government, of those contesting elections. Questioning and analysis of the reasons for failing to live up to promises can be very complicated. But after all, discontent and disorder should not be viewed in terms of defects and the failures of the negotiations that constantly occurred between those who want to command the authority or inform the authority, and those who seek to gain something from the authority in terms of enhancement of the democratic rights and aspirations, whether it is question of decentralisation of power, or there is a question of economic rights or self-determination rights. *In Punjab, the whole discontent and unrest was more or less forced on the people not just by the state, but also by those who were part of the political process in very legitimate terms. Unless we can debate these issues publicly, how can we possibly talk about minimising discontent?* When it has been proven that the state has taken life, no matter what the compulsion, what is the law that you apply? What is the principle that you apply? When you talk about reparation, where is the reparation, is the reparation just an amount of money? Where are the principles? If you don't raise these issues now, I think you will contribute to the problematisation of not just the way we debate issues, the difference between the way people understand them, but also I believe to manifestations of all kinds of what you have termed here as public disorder.

Mr. Suhel Tirmizi (Advocate, Ahmedabad)

To define public order, the Supreme Court has said that one has to imagine three concentric circles. Law and order represents the largest circle, within which the next circle represents public order, and the smallest circle represents the security of the state. It is then easy to see that an act may affect law and order, but not public order; just as an act may affect public order, but not security of the state. So far as disturbance of public order is concerned, it is a matter of human perception. If an act is isolated and does not affect people at large, then it is a law and order problem. But the happenings in Gujarat in 2002 certainly affected public order. During the Gujarat riots, an MLA of the ruling party was responsible for the shooting of two people. When those two people were being taken to the hospital, the mob chased the jeep and set it on fire. One person died in the jeep itself. The post mortem report clearly showed the cause of death, but the police filed the charge sheet only for ransacking properties and stated that the two people died in police firing. Hence when we are talking about accountability of the police and their discretionary powers, it should be ensured that First Information Reports (FIRs) given by the relatives of the deceased are filed. If these screws are not tightened, the police will continue to behave like they behaved during the Gujarat Riots. Instead of recording statements, let affidavits be accepted from other witnesses so problems like witnesses turning hostile will be reduced considerably. *Incidents in Gujarat clearly show that the mindset of the police is becoming more favourable towards a particular problem or with a particular ideology. To minimise disturbance of public order, the police will have to be made more accountable, and stricter punishment has to be imposed. Human values cannot be overlooked, there is no question of justifying derogations from basic human values because ultimately giving more powers to police would certainly lead to killing innocent people, and that has already happened.*

Mr. Suhas Chakma (Social Activist, Delhi, associated with the Asian Centre for Human Rights)

One of the key issues of this debate is accountability. An issue intrinsically linked with the issue of public order is unlawful assembly. The laws differ regarding this issue in mainland India and the Northeast. The maximum punishment for disturbance of public order is six months. In the Northeast, this issue comes under the purview of the Armed Forces Special Powers Act (AFSPA) as has been the practice since 1958. Under this law, if an unlawful assembly is perceived to pose some kind of threat, then a non-commissioned officer can exercise the power to shoot. This is a great problem, since there is no distinction between civilians and combatants. Even though the committee that was set up to look in to this issue submitted its report, it is yet to see the light of the day. Section 6 of AFSPA prohibits the courts from prosecuting army officials. Hence there is little remedy to hold an officer accountable. *So you have a system in which plenty of laws in this country promote impunity. If you cannot establish accountability, violence will continue to take place. The argument that this will affect the morale of the police and other law enforcing officials does not hold, because at the end of the day, if you cannot establish accountability, people will resort to their own methods.* They will take the law into their own hands, and then we have a vicious cycle. I think the critical issue for any commission looking at reform – administrative or judicial – is that of accountability. If you cannot hold people accountable for violations of the law, you are basically accentuating the problem and that is the biggest problem at the moment.

Mr. Vineet Narain (Journalist, Delhi)

The statistics quoted by the ARC show that people continue to distrust the system, despite repeated recommendations by various commissions. All of us want to shy away from the realities and when they are thrown before us, we do not want to stand up and speak. Even the established intellectuals and opinion makers comment and react and get agitated only when it suits their political godfathers. In the *Jain Hawala Scandal* of 1993, both the ruling and the opposition party were involved, and not a single Member of Parliament ever questioned the Parliament or asked the Prime Minister about the investigation. *Justice SP Bharucha admitted that there was corruption in the judiciary and that existing laws are insufficient to deal with that situation, but no intellectual ever picked up that issue and wrote editorials.* If a dishonest judge is presiding over my case, then I am bound to be provoked and there is bound to be public disorder.

In all this, what is the remedy available to a concerned citizen or a crusading journalist like me if I have to bear with a judge who is corrupt? *We want to bring public order without addressing disorder at the ruling elite level.* Directions were issued in the Jain Hawala case about the post of the Chief Vigilance Commissioner (CVC), but these were ignored by the Parliamentary Standing Committee. Who wants transparency in the system? We only want to bring order, as many speakers have rightly said, to suppress the unrest of people who are deprived, who are denied their basic rights.

Mr. Sanjoy Hazarika (Social Activist, Delhi, associated with the Centre for Northeast Studies and Policy Research)

The north eastern part of India is subjected to the crude Armed Forces Special Powers Act (AFSPA) 1958, which allows any non-commissioned officer to take the life and liberty of any individual, and not be punished, as punishment requires the sanction of the Central Government. The report of the committee appointed by the Prime Minister to review the AFSPA was submitted one year ago, but it has not gone beyond discussions within government.

You have a situation in Manipur where the entire system has collapsed. Can police organisations do anything about such a situation? They are basically incapable of dealing with insurgencies - some of which have basically become criminal movements in extortion and intimidation.

Dr. V. Suresh (Advocate, Chennai, associated with the People's Union for Civil Liberties)

Public order has different connotations in different parts of the country. It is a general tendency to look at dramatic experiences, but it is imperative that we also keep in mind the issue of public order, or the manner in which the law relating to public order is abused in day-to-day circumstances that are not exactly dramatic. This caveat is very important because in the pretext of dramatic situations, the reality is forgotten - the reality of everyday abuse of the law and everyday victimisation of ordinary people that never catches either the attention of the media or activists. Additionally, we need to keep in mind that the law defines the offence but the state defines the offender. Tamil Nadu has the highest number of public disorder cases in the country and the public disorder provisions are used against Dalits; they are used against the lower rung people especially on questions of economic and social justice. *When we are looking at administrative reforms, I request that we look at it at different levels. One level is changes in the law relating to issues of transparency and openness. Accountability of institutions is a second realm that we need to look at. Thirdly, changes in the institutional culture.* People think that if you change the law, people are suddenly going to change. Fifty years of a certain type of culture is not going to change by tinkering with the laws.

Justice H. Suresh (Former Judge, Bombay High Court)

In all large public disorders in the country, the government is plainly responsible in every state. In Karnataka, it was the ruling party government that called the state-wide bandh that led to large-scale killings and riots; in Mumbai, the government chose to keep quiet during the 1992 communal riots; during the Gujarat and Delhi riots, the government was mainly responsible for what happened. Hence, the government has to seriously consider what it should do.

As far as socio-economic rights are concerned, unfortunately the judiciary has completely let us down. What happened to the tribal people of the Narmada? In Mumbai and all over the country, slum dwellers are being thrown out. All those judgements that we had in the time of Justice Krishna Iyer are just being ignored. *Again in the case of large-scale atrocities by the police in controlling public disorder, everyone goes free.* In Tirunelveli, workers were demanding their wages. A huge procession, mostly Dalits, had come to meet the collector to make a representation. But they were assaulted. With no place to run, they ran to the Tamiraparani River with the police chasing them. Where is the need for the police to chase when the crowd turns its back? Police must be told that they can't do that and it is an offence. They must be trained, and

there has to be a proper legal provision that says when every such incident takes place, there has to be an effective inquiry machinery followed by due action.

Today courts have become anti-democratic. I openly say that it is a very sad thing that our judiciary is letting down the cause of Human Rights and the cause of democratic rights.

Mr. Pradip Prabhu (Social Activist, Thane, associated with the Kashtakari Sangathana)

We have to understand that the police in most situations have the power to make or unmake justice, and so therefore they also have the power to create public disorder because the public will respond where injustice is played out. Quite often it is the police who decide whether you should be convicted or not. If they decide that you should be convicted, they prepare records and statements in a particular manner. If they decide that you need not be convicted, they will record evidence in another manner. In the case of most common people – whether they are slum dwellers or anybody else – the police are also the arbiter of riots. They do this by refusing to take action or by acting on behalf of one side or the other. *Naxalite violence is actually a failure of governance. How do we address this issue where a failure of governance is a public disorder? What is its merit in law? How do we understand it in law and what is the place of the police in that situation?*

SUMMING UP

Public Order Experiences: State Responses and Victim Realities

Many delegates identified failed governance, government highhandedness, and curtailed rights as causes of large-scale public disorder. Looking to Punjab, Gujarat 2002, and the Northeast, delegates illustrated outright state complicity in violence and repression of ordinary people in dealing with some of the most pressing large-scale public order situations India has experienced in recent times. At the same time, delegates pointed to the necessity to end the habitual illegality characteristic of police when tending to public order – arbitrary arrest, class/caste/religious bias, brutality. The discussions touched on the need to attend to “public disorder” within the context of societal change rather than strictly in the realm of law enforcement. On the question of required administrative reforms, there was an overwhelming call for invigorated and “equitable” governance, as well as strengthened accountability of the police first and foremost, the judiciary, and the administration. Fully opposed to cutting back basic human rights, delegates advocated for increased transparency of police, administrative, and judicial functioning, creating monitoring and complaints mechanisms for citizens, and an end to police impunity by imbuing humane, rights-based policing.

MORNING PLENARY: PUBLIC ORDER EXPERIENCES

Sub-Session II: More Powers?

Extracts from the agenda: Given the public outcry at the failure of the police and the prosecution in bringing offenders to justice, especially in high profile cases and the recent upsurge in naxalite and terrorist violence, there is strong support in establishment circles to implement certain recommendations made by the Malimath Committee in relation to policing. Key among these are: making confessions made to police officers admissible as evidence in court; making it mandatory to sign statements made to the police in the course of an investigation; increasing the period of police remand; and having the prosecution service headed by a senior police officer.

Discussion: This sub-session critically examined whether the above suggestions of the Malimath Committee are solutions to entrench public order, or occasions for miscarriage of justice that will fuel further disorder in society. At the beginning of this session, the delegates were given a list of four questions. These are:

- Is the conviction rate the proper way to judge the efficacy of the Criminal Justice System?
- What is the best way to ensure truthful depositions by witnesses in court? Also what needs to be done to protect witnesses before and after they depose?
- If the recommendations of the Malimath Committee in relation to policing were to be accepted, what would be the impact on public order?
- What kind of policing does the country require today to guarantee peace and security to communities?

Extracts from the responses given by the delegates follow below:

Mr. Asghar Ali Engineer (Social Activist, Mumbai, associated with the Centre for Study of Society and Secularism)

The basic premise in a democracy is that you have to empower people and not the government. But all the laws here basically empower the government. When it comes to law and order, it means giving more powers to the police, which allows them to commit more and more atrocities.

I work in the field of communal harmony and have very disturbing experiences. The police killed 34 youths in Hashimpura in 1987 and threw their bodies into a canal. Till date not a single police officer has been held up for that ghastly crime. *The police have been horribly communalised. With very few secular police officers left, what will happen if you further empower the police?* There is no training to sensitise the police to secular values. Their mindset is deeply influenced by what appears in the media. Can we ever have security for the people in our country when our society has been polarised by the politicians? *If laws are made to protect privileged people - those who incite violence can still become prime ministers and home ministers - we cannot have peace and harmony in society.*

The root lies in the education system. If it makes you casteist or patriarchal, how can we have equality of all citizens, equality of gender, equality of castes and communities - which is our commitment in the Constitution and yet remains a mere piece of paper.

Ms. Usha Ramanathan (Advocate, Delhi, associated with the India Advisory Council of the International Environmental Law Research Centre)

It is not that there are whole hosts of people out there going on a rampage in our country. In fact, the problems that are increasing are excesses by the police. There has to be a reintroduction of

the value of personal liberty. Laws coming in now deny the importance of personal liberty. They deal with how they are going to control people, and how they are going to manage people. Hence, repression becomes an acceptable phenomenon. It is not just that such a course of action is antidemocratic, but experience has shown that accretions of power have led to all kinds of abuses.

The Malimath Committee doesn't address the issue of holding the state machinery accountable, despite the fact that increasingly, we are reading cases of hostage taking by the police where families of persons wanted by the police are picked up and kept in police stations. The National Human Rights Commission every year documents large numbers of deaths in custody on account of torture. *Other than Section 330 of the Indian Penal Code that makes voluntarily causing hurt to get a confession or compel restoration of property an offence, there is no other understanding of torture per se in our system.* Custody deaths and encounter killings in fake encounters are not even part of our law. *If we want to bring in accountability, how we define a crime and what constitutes a crime is going to be significant.*

Impunity for wrongdoing has come to stay, and every institution of the state seems to be imbued with it. Any change that comes in now has to break these practises. There is a presumption of good faith for acts committed by public servants, which is a colonial creation. *Even when there is a clear abuse of powers - custodial death or torture in the precincts of a police station - it is not possible to launch a prosecution without governmental sanction.* Another important factor that needs to be taken into consideration is the extent of corruption that exists when you go to file a FIR.

The Malimath Committee talks about making confessions to police officers admissible as evidence as routine. We started with this in extraordinary laws like the TADA. Now we want to routinise this, and we want to do it in a context where custodial killings are the norm, where torture is taken for granted. Another thing that the Malimath Committee is talking about is lowering the standard of proof to convict from 'beyond reasonable doubt' to the 'court's conviction that it is true'. *The whole problem with the court system has been the extent of class and communal prejudice. With the Malimath Committee's recommendations, all the prejudices will then become the basis of judgement.*

The focus should not be on managing people, but on managing state power. The use of Section 144 of the Code of Criminal Procedure (CrPC) has become indiscriminate. Public spaces are now being taken over. If there is going to be a protest, demonstration, or any kind of democratic movement in an area, Section 144 is immediately imposed by the authorities, and there is no answerability for the use of excessive powers. It is important to build something into the system where every use of Section 144 – the extent and consequences – are analysed, so that the provision is invoked sparingly and not as a matter of routine.

Mr. K.S Dhillon (Former Director General of Punjab Police)

In making recommendations on policing and public order, the whole culture, legal system and the manner in which government has been carried out, needs to be understood and changed. In Hashimpura, Gujarat and in the case of the custody deaths in Punjab, the establishment has not said that it was something wrong. What happened in Punjab was common knowledge and it would be naive to believe that the police alone was responsible for what was happening. The establishment was complicit. *The police have consistently been used as a tool of the establishment and this is because they are working under an instrument that was created in 1861 – the Police Act. The Indian Penal Code 1860 and the Indian Evidence Act 1872 are over one hundred years old. Improvements cannot come about unless the whole legal system is changed, revamped, and brought in tune with modern times.* Many things that are wrong with the police are not only accepted by the establishment, but they are encouraged and promoted sometimes. If police violence has increased all over the country, there is a reason. During the years of violence in the Punjab (1984 – 1990), successive batches of IPS officers were attached to the Punjab Police for learning how to deal with extremism. Those officers are now holding positions of Superintendents of Police and Deputy Inspector Generals all over the country. That is the culture, which has spread, because the establishment thought that it was the best way to deal with extremism. *There is an implicit acceptance at the highest level that the only way to deal with crime is authoritarianism.*

Mr. Mihir Desai (Advocate, Mumbai, associated with the India Centre for Human Rights and Law)

The answer to the question of whether the conviction rate is the proper way to judge the efficacy of the criminal justice system is both yes and no. It is a proper way of judging the efficacy of the system where white-collar crimes are concerned. Similarly, if there are more convictions under the Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act 1989, then one would definitely think the system is working more effectively. *On the other hand, I believe that ultimately those people get convicted whom the police want to convict.* Take the example of Mumbai. If you have a robbery and the police have no clue who has committed the robbery, they pick up people from the Pardi community who are treated as criminal tribes, and beat the hell out of them to make them confess. *Quite often, statements taken by the police are extracted through coercion on the pain of torture.* When witnesses retract from these in court, they are declared hostile and charged under perjury provisions. *I feel it is very important not to dabble with this whole thing about confessions made to police officers having the same value as those recorded before a judicial magistrate under Section 164 CrPC.* The question is not of giving more powers to the police or more powers to investigating agencies. They have enough powers. Whenever they want to convict, they get a conviction. So the problem today, I feel more and more, is how to ensure that police have less powers.

On the public's right to peaceful protest: Section 144 CrPC is a statutory power, while the right to demonstrate is a fundamental right in the Constitution, which should override a statutory power. But if you want to demonstrate about anything in Mumbai, you have to go to the designated space called Azad Maidan where you can shout yourself hoarse and nobody will listen to you. Anywhere beyond that, Section 144 is imposed. Why? Because every 14 days there has been an automatic extension of Section 144 for 20 years. Increasingly, the space for public protest is being restricted by the courts. The Supreme Court has cautioned against the right to strike. Bandhs have been declared illegal.

Mr. S.R Sankaran (Former Secretary to the Government of India)

The process of arresting, detaining, and keeping a person in jail as an undertrial, has to be seen from the perspectives of how laws are made, and how they are enforced. The premise of the Malimath Committee is flawed because it treats the accused as guilty. It assumes that the person suspected of an offence is the person who really knows the entire truth, and the truth must be elicited from him. Malimath really seeks to convert people into criminals (if I may use a strong term) by calling for reducing the burden of proof from beyond reasonable doubt. Overall, I fear that Malimath is something that a reasonable person cannot accept both in theory and in practice.

There is some over emphasis on the Police Act of 1861 and how it is outmoded. Many of our laws are old and need to be refashioned, but I fear that putting all the blame on the Police Act for the actual policing is not correct.

Mr. Umakant (Social Activist, Delhi, associated with the National Campaign on Dalit Human Rights)

If India needs to become a police state then yes certainly we need to give more powers to the police, but India is a democratic state. The existing powers vested in the police as per the SC/ST Prevention of Atrocities Act 1989 and other laws have not been used to protect Dalits and Adivasis. If the objective is not to implement the law, then I really wonder how peace and security can be ensured. Take the example of Gohana in Haryana. Sixty houses of Balmikis were burnt in front of the police and the administration – who were silent spectators. The police officer present on the spot said that if the police had started firing, they would have killed people as if firing is the only means to control a mob. When Dalit groups asked the Deputy Commissioner why no action was taken, and why compensation was being delayed, he said that the victims are demanding excessive compensation by trumping up the value of their burnt properties. Till date, no person responsible for burning up Dalit houses in Gohana has been arrested. The government has responded merely by constructing the houses and giving compensation, as if giving compensation is justice. In the name of ensuring peace and security, can we sacrifice the question of justice?

Justice Rajinder Sachar (former Chief Justice Delhi High Court, associated with the People's Union for Civil Liberties)

In a free India, a police killing is impermissible. Somebody has to pay for it, and all that we have now is killing in Haryana, killing in UP, killing in Bengal. Let's not deceive ourselves, every political party makes use of the police, and therefore when we are thinking of a reformed police, first let us de-link them from the political masters.

Malimath Committee, I agree, is not even worth considering.

Mr. B.N Jagdish (Advocate, Bangalore, associated with the Alternate Law Forum)

My answer to the question whether the conviction rate is the proper way to judge the efficiency of the criminal justice system is no. I will illustrate this with a study of sex workers convicted under the Immoral Trafficking Prevention Act. We found that the conviction rate was as high as 98%, not because they had committed a crime but because the police coerced them to plead guilty. We represent sex workers in Bangalore, and in one case a woman came to me and said that she did not want to contest the case because the woman police inspector had told her that she would pour acid on her if she did not plead guilty. *The Malimath Committee is seeking to make confessions to the police admissible as evidence, but the reality is that people are terrorised in custody.* In 2002, I was working with Narmada Bachao Andolan and was picked up by the Madhya Pradesh Police and sent to custody. I was forced to sign a paper written in Hindi, which I did not understand but they literally forced me to sign on the paper. [Despite] being a lawyer, I did sign because they forced me to sign.

Mr. Bikramjeet Batra (Advocate, Delhi)

I would like to refer to the myth of the low conviction rate, which is at the core of the Malimath Committee's premises. We need to be careful with that. At a recent seminar on criminal justice reform, speeches by participants (including Supreme Court judges) quoted single digit conviction rates. Thankfully, they were corrected by a delegate who had a copy of the official figures listed in Crime in India, which shows the conviction rate for Indian Penal Code (IPC) offences as 42%. While I admit that this is not a high conviction rate, it is certainly not 6%, or single digit. When we delve further and see who gets convicted, a 42% conviction rate does not mean 42% of all accused persons. Anecdotal and experiential research suggests that there is a clear class bias that operates within the criminal justice system. This will become clearer if studies are done on the class, caste and socio-economic conditions of those who get convicted.

To quote the Malimath Committee, "the accused nowadays are more educated, more informed, and use sophisticated weapons and advanced techniques to commit offences without leaving any trace of evidence" (page 19, paragraph 1.33). *Certainly, if one spends more than 30 minutes in a trial court and examines the accused, a sample of any magistrate's court will reveal that there are very few accused who are educated, even fewer who use sophisticated weapons, and certainly very few who use advanced techniques without leaving traces of evidence.*

The Malimath Committee Report goes on to say, "the accused is normally represented by very competent lawyers of his choice" and, "in practice the accused on whom the burden is very little, hires a very competent lawyer, while the prosecution is represented by persons of poor competence etc" (page 125, paragraph 8.1). Again, this myth that the accused have very competent lawyers clearly comes out from a certain newspaper reading of who the accused are - so Manu Sharma becomes the epitome of accused people, or Rahul Mahajan for that matter. I think it is very dangerous to look at law reforms evolving from newspaper coverage of high profile cases, because once again we fail to establish that the law operates completely differently for different classes of people.

Coming back to the failure of the police to secure convictions, it's not insufficiency of laws but because the police either deliberately, or for some other reasons misuse, abuse, or don't use the existing infrastructure. At present if any person wants to confess, all the police needs to do is take her/him before a judicial magistrate. The Malimath Committee report states, "that the aim of the

criminal justice system is to reduce the level of criminality in society by ensuring maximum detection of reported crimes, conviction of the accused person without delay, awarding appropriate punishment to the convict to meet the ends of justice” (page 21). The Committee has gone from detection of crimes to “conviction of the accused person without delay”. This is not a Freudian slip. *The fact is that this committee goes carefully into demolishing fair trial safeguards that exist in the current law, whether the right to silence or the burden of proof.*

Dr. V. Suresh (Advocate, Chennai, associated with the People’s Union for Civil Liberties)

I would like the Administrative Reforms Commission to keep in mind that the Malimath Committee represents a certain mindset that has permeated into policy-making levels, and is antithetical to reality, but nevertheless a mindset that people in power always choose. Before recommending changes, we need to see whether there is a flaw in the law or whether there is a flaw in the administration of the law. *One thing is clear, if the police want to do a good investigation, they can do so very well under the existing laws, in a manner that will stand up in court.*

Mr. K.G Kannabiran (Advocate, Hyderabad, associated with the People’s Union for Civil Liberties)

Public order is inversely related to people’s well being. If people’s well being is taken care of by governance, public order will not be a problem. It is the government that will restore public order - not the police with their force and their powers - that has to be understood. There is a need to stress the requirement of constitutional discipline, which is sadly lacking, in the police, the bureaucracy, and the judiciary. Unfortunately, judges are passing judgments, which do not represent the constitution. Judges have become strike-breakers, which they are not entitled to. Judges argue against reservation, which they are not entitled to. The Constitution is a document that has evolved by a consensus. We have all agreed to reservation. We have all agreed to right to liberty. We have agreed to see that life and liberty are not forfeited without the authority of law.

Of all the public servants, the police directly deal with life and liberty of people. They have the power to use force and interrogate people. What the police need is not autonomy but responsibility. The impunity that the police enjoy is something that has to be done away with. There has to be accountability for killings and assaults by the police, and only then can there be constitutional discipline.

SUMMING UP

Public Order Experiences: More Powers?

Concerns were voiced on the repressive tone of recently enacted laws related to public order and the manner in which these laws are enforced. Delegates expressed that there was no need to enact laws giving more powers to law enforcement agencies. In fact, there was consensus that whenever state power has been expanded, abuses and infringement of human rights have followed. Lawyers and civil liberties practitioners asserted that the police already have enough powers to effectively and legally carry out their duties. The lacuna does not lie in insufficient laws, but in flagrant police abuse or neglect in implementation.

The Malimath Committee’s recommendations – as well as the premises on which they are based – were severely criticised on several fronts: for advocating what would amount to the cutting back of fair trial and constitutional safeguards for the accused; for weakening key legal precepts such as the presumption of innocence and the standard of proof; and for leaving out accountability altogether.

AFTERNOON PLENARY: DEMOCRATIC SOLUTIONS

Extracts from the agenda: Heavy handed handling of legitimate protests has exacerbated manageable situations into long term problems while biased policing has left festering bitterness which promises future public order problems. The afternoon plenary sought to examine practical ways to create a democratic and effective police service by identifying priority areas for reforms and addressing related dilemmas.

Discussion: Inputs were sought from the delegates on reducing outside influences in policing which are marring its efficiency and impartiality. Additionally, it was discussed how best police accountability can be enforced through mechanisms that are responsive, accessible, and visible to the public.

CHRI presentation

CHRI's Director, Ms. Maja Daruwala, gave a presentation on an envisioned legal schema for democratic policing in India. In seeking to create an efficient, effective, responsive and accountable police service, the presentation focused on five major areas. These are:

➤ **Operational autonomy coupled with appropriate executive direction:**

The way to reduce illegitimate interference in police functioning would be a clear delineation of the roles and responsibilities of the political executive and the head of police. The role of the political executive would be to lay down broad policy guidelines for policing, while the head of police would be responsible for day-to-day administration. This would allow the political executive to set and monitor policy directions for the police, while giving the department a certain degree of autonomy and flexibility to implement government policies on the ground.

➤ **Institutionalised role for the community:**

The chances of disorder can be minimised by reducing the distance between the people and the police. Therefore, it is important that communities are provided an institutionalised role in policing and a say in the making of policing plans and strategies at the station house level.

➤ **Effective accountability for institutional performance and individual behaviour:**

Dismal performance on crime control and public safety, as well as the high incidence of police misconduct, necessitate multiple levels of accountability. Enhanced police performance can be achieved through scientific standard setting and police performance monitoring by an independent body in light of holistic parameters. Additionally, given the fact that the public have little faith in the existing internal accountability mechanisms of the police, an effective web of accountability is urgently required. This will involve not only strengthening the internal disciplinary systems but also the building of external systems to address wrongdoings by police officers.

➤ **Charter of duties and responsibilities:**

It is important that the charter of police duties and responsibilities is updated and attuned to upholding constitutional values and citizens' rights.

➤ **Specific criminal and disciplinary offences:**

To enhance the web of accountability, offences specific to the police should be included in the Police Act.

Extracts from the responses given by the delegates follow below:

Mr. G.P Joshi (Consultant CHRI and former Director Research and Development, Bureau of Police Research and Development)

In a democracy, it is not possible to delink policing from politics. The police have tremendous powers, which have to be controlled by the executive. But control over the police, itself, becomes a source of tremendous powers that can be misused for partisan purposes. The dilemma is to control police powers in a way that does not lead to misuse. *If the police can be a threat to the democratic system, they can also be a great support to it. This requires institutional arrangements to be put in place to properly exercise superintendence over the police; proper appointment and removal of the head of the police; and proper transfer and posting of officers.*

The National Police Commission recommended the establishment of a State Security Commission to act as a buffer between the politician and the police, but the idea did not find favour with the politicians and even some sections of the police. Some suggestions for incorporation in the Police Act are:

- 1) The government's superintendence over the police should be exercised in accordance with law and public interest
- 2) A distinction should be made between policy formulation and operational directions. The government should formulate policies, set standards, lay down performance indicators, assess the performance and make suitable recommendations, and take steps to improve policing. Operational independence or operational autonomy should remain with the police
- 3) There should be a clear delineation of roles and responsibilities of the government, the community, and the police, following from good practice in other Commonwealth jurisdictions. The Police Reform Act 2002 (United Kingdom) clearly defines the roles of the Secretary of State, the police oversight body, and police chiefs. Similarly, the Police Service Administration Act 1990 (Queensland, Australia) lays down that the Minister responsible for police is authorised to give directions to the police, which have to be given in writing.
- 4) The process and procedure of selection of the head of police is very important and should be prescribed. The National Police Commission recommended that s/he should be selected by the government from a panel of three officers prepared by a committee headed by the Chair of the Union Public Service Commission. The Ribeiro Committee more or less agreed with this. The Padmanabhaiah Committee recommended that a body consisting of the Chief Justice of the High Court, the Chief Secretary, and an eminent public person should recommend a panel of two names for appointment as head of the police
- 5) The head of police should have a fixed tenure that should not be extendable. The conditions and process for removal of the head of police before expiry of term should be specified. It may also be mentioned in the law that the head of police will not be eligible for public appointments after retirement
- 6) Authorities competent to issue transfer orders pertaining to various ranks in the police should be specified in law. Whether a Police Establishment Board can carry out the transfer orders, as recommended by the Ribeiro and Padmanabhaiah Committees, can be debated.

Mr. Shankar Sen (Former Director General, Investigation, National Human Rights Commission, associated with the Institute of Social Sciences)

The crux of the problem is that the police are not representing the people but the party in power. While it may not be possible to delink policing from politics in a democratic system, it is necessary to insulate the police from extraneous pressure. Day to day interference in police work - particularly in transfers, postings and criminal investigations - needs to be done away with.

The National Human Rights Commission gets a large number of complaints against the police both for acts of omission and commission. Eventually, there can be no justification, no condonation of police high handedness, as holistic reform demands that we go beyond mere punishment and ensure that due process is rigorously enforced. *Simply taking action against aberrant officers will not suffice. We have to focus on systemic weaknesses. Something has to be done to insulate police from extraneous pressure, about the fixity of tenure of the chief of police, and the separation of law and order from investigation.*

The National Police Commission suggested a security commission. Whether this is feasible can be discussed. But we need to put in place some mechanism to see that the police function according to law and not the dictates of politicians. Upright officers should have a right to appeal against illegal orders. While mention has been made about creating specific offences relating to the police, the rub lies elsewhere. We know that not only in the police, but in most government departments, a large amount of disciplinary proceedings lie pending. Many times action is not taken, and when it is taken, it is the bare minimum. *We have to ensure that disciplinary proceedings are completed expeditiously and swift action is taken against errant officers. We have to see that the law is properly and firmly implemented.*

Diversity in the police is important. The National Police Commission has very correctly said that the police must reflect the composite mix of the community. *Constant efforts need to be made to see that minorities are listed in the force* - this does not necessarily mean that a quota system has to be evolved which may fragment the police on caste and communal lines. *Equally, it is essential to ensure gender mainstreaming in the police.* Representation of women in the police remains abysmally low. Some states like Orissa and Rajasthan have gone ahead with 30% reservation for women. More women should be included in the police and given key posts to bring improvements in attitude and approach towards gender issues.

The issue of instituting performance evaluations in the police was raised, including by the Prime Minister, but it is seriously doubted whether politicians will agree to it. *No Chief Minister will allow crime to be registered freely because the efficiency or non-efficiency of the party in power is judged [by the quantum of crime].* But what can easily be done is to carry out public opinion surveys, which recently the Bombay Police did with a private firm.

In a democratic system the police must be accountable at multiple levels – to courts, human rights commissions, departmental authorities, and communities. *We may think of creating a District Complaints Authority comprising the District Judge, Superintendent of Police, District Magistrate and a member of civil society to inquire into important cases, referred by the National Human Rights Commission and the State Human Rights Commissions.* Given the current scenario, and the multiplicity of institutions exercising oversight of the police, this may be the best option. Experience from other countries has shown that ultimately what will work is what is practicable.

Additionally, we need to build the principle of reparation for victims of crime, including torture victims, into the system. The National Human Rights Commission raised this. At present, human rights commissions are making recommendations for compensation, but they are on an ad-hoc basis and the amount varies. We need some kind of an Act on this.

Ms. Swati Mehta (Access to Justice Programme, Commonwealth Human Rights Initiative, Delhi)

Most of us would agree that we need some credible mechanism to deal with complaints against the police. Of course, we have human rights commissions, but they have a very wide mandate and are overwhelmed with complaints. Also, they are not working to the satisfaction of the people. *It is time to seriously debate whether we need a separate body to exclusively look into police related complaints, or should we concentrate on strengthening the existing human rights commissions.* Whatever we decide, who sits on the body and who appoints the members, are key issues that will determine whether the body can make a difference. Additionally, the power to follow up on recommendations is important. If the police and state governments can routinely ignore decisions, then there is no point in having oversight mechanisms.

It is also important to examine the role of the community in policing and how we can institutionalise it. One suggestion is to have the government and the police draw up policing plans every year in consultation with the community, taking their priorities into account. The plans would lay out what is sought to be achieved in a given year, and performance can be evaluated against stated aims.

Mr. S.R. Sankaran (Former Secretary to the Government of India)

The role of the police, in terms of public order maintenance, has to be clearly defined. *Presently the police's responsibilities are overarching. Anything from traffic control to crime investigation to controlling gambling is within the scope of police duties. This places tremendous pressure on policing.* Things like preventing gambling, which are in the ambit of 'moral policing', should be decriminalised. The same goes for offences that are non-cognizable, bailable, and compoundable. They are not really required to be in the police framework. Amendments to the law have been suggested by the National Police Commission and the Law Commission of India.

As regards accountability, at one level the police should be accountable to the executive (i.e. the democratically elected government). At another, they should be accountable to the judiciary in terms of investigation and filing of cases. *Additionally, the police should be accountable to the people and this should be internally accepted.* Perhaps at the police station level, there can be an advisory committee to which the police are accountable, not in terms of investigation but in respect of their actions. These limits can be defined. *Wrongdoing by the police should become the exception rather than the rule.* To address this, we can look to other jurisdictions and institutions such as the Independent Police Complaints Commission in Britain.

Mr. K.G Kannabiran (Advocate, Hyderabad, associated with the People's Union for Civil Liberties)

The Protection of Human Rights Act 1993 contains provisions for Sessions Courts to be designated as Human Rights Courts. If these courts were to be properly constituted, they would become an effective mechanism to oversee the conduct of the police and to curb indiscipline. Torture is a violation of the human body and there is a special chapter in the Indian Penal Code that deals with offences against the human body. A torturer can be prosecuted under this chapter. At present, the human rights courts have to wait for committal proceedings to be carried out in magistrates' courts before taking cognizance of offences. This is an obstacle in accessing justice. The Sessions Judge, who has been designated as a Human Rights Judge, should be allowed to take direct cognizance of offences against the human body committed by police officers and other public servants. The Protection of Human Rights Act 1993 and the Scheduled Castes / Scheduled Tribes (Prevention of Atrocities) Act 1989 should be suitably amended to this end.

There is the additional problem of obtaining sanction for prosecuting public servants who have violated human rights in the course of their duty, or purporting to act in the course of their duty under Sections 197 and 132 of the Code of Criminal Procedure 1973. If direct access is to be provided to Human Rights Courts, then the requirement for this sanction should be removed. The existence of the Protection of Human Rights Act should be construed as legislative sanction for prosecution.

Justice H. Suresh (Former Judge, Bombay High Court)

The police should be made to rigorously observe Supreme Court guidelines in the D.K Basu v State of West Bengal case. This will help control recourse to brutal methods. Additionally, torture is widely used in police stations to obtain information from the accused to help in recovery of evidence of a crime. This is because Section 27 of the Indian Evidence Act 1872 allows the admittance in court of facts discovered in the consequence of information received from an accused person in the custody of the police. This section should be done away with.

Additionally, the law should provide that if any custodial death or encounter takes place, the officer in charge of the concerned police station or his higher up should have the power to directly register a case, investigate properly, and prosecute. If the concerned police officer has a valid

defence, it will be established in court. Another thing to be considered is the establishment of human rights cells within the police, as advocated by the National Human Rights Commission. We can also consider the establishment of small committees of members of the public that have access to police stations. This was successful in curbing riots in Bhiwandi, Maharashtra.

Along with strict tackling of widespread corruption within the police that ranges from the junior-most constable to the highest level, better education, training, salaries, and living conditions are required for the police. Judicial delay is another pressing issue that needs to be tackled urgently by the government through the appointment of a higher number of judges.

Mr. Ram Narayan Kumar (Social Activist, Delhi, associated with the South Asia Forum for Human Rights)

There should be no confusion regarding the definition of torture. Section 44 of the Indian Penal Code 1860 defines injury as causing harm illegally to any person in body, mind, reputation and property. Section 166 provides punishment to public servants for causing injury. The Law Commission's report on custodial crimes went, in great detail, through questions linked with the practice of torture. *Anomalies in the Indian Evidence Act 1872 that reject the admissibility of confessions made to police officers [Section 25], but make admissible recoveries made by the police through the very same confessions [Section 27], have led to perverted abuse of authority.* In case after case in Punjab when the police took a person out to be killed, the excuse was recovery of weapons. These abusive traditions remain unaddressed, despite many findings.

The law of reparation as applicable to deprivation of the right to life and liberty is lagging behind the law relating to compensation for deprivation of property. *When crimes are established by the process of law, whether by courts or commissions, then irrespective of culpability, reparation principles must be guided by rationality, justice and completeness.* Compensation or reparation must endeavour to undo the damage done to the person, and that must become the process of law.

Ms. Sanyukta Basu (Advocate, Delhi, associated with Partners for Law and Development)

To tackle the problem of police atrocities, the police have to be made part of the solution. Police sensitisation is important to break traditional mindsets on women's issues. Many civil society groups have carried out sensitisation programmes with positive results. Programmes have to be designed to bring about an overall change in the perceptions of the police. Also many times, the police themselves don't know the scope of their responsibilities and capacity building / training programmes help them in realising this.

The police should also be made accountable under the Right to Information Act 2005. Everyone registering an FIR should have the right to know what action has been taken on their FIR, and what is the current stage in investigations.

Mr. Mandeep Tiwana (Access to Justice Programme, Commonwealth Human Rights Initiative, Delhi)

Public disorder is created because people feel a sense of injustice from the government. Unfortunately, despite being the most visible arm of the state, the police are doing nothing to improve their working. *Presently policing is seen just in terms of increase or decrease in crime, whereas it should be evaluated on police response to crime, particularly public satisfaction, victim satisfaction and operational efficiency.* But these things are not happening and hence there is greater disenchantment with the whole system, which is creating further disorder.

It is time to seriously consider setting up independent police performance evaluation boards in each state. The boards should not only have police officers, but also comprise academics, bureaucrats, and members of civil society to evaluate policing holistically on the basis of different parameters. An annual report on policing performance should be presented to the state legislature within three months of the ending of each financial year. In this report, the whole performance of the police should be analysed, and the needs of policing should be examined.

For instance, the police's capability to control a riot is severely debilitated. An ordinary constable does not even know the proper procedure in a riot situation. *Only if situations are analysed and performance evaluation is regularly carried out will the police be provided with proper equipment and training to deal with public order problems.*

Mr. B.G Verghese (Senior Journalist, Delhi)

Apart from the state making the necessary structural changes, including implementation of the National Police Commission's recommendations, we should concentrate on creating a system that does not necessarily have to depend on the state. Take the example of the Human Rights Commission of Pakistan – an NGO in a country less well governed, more feudal and less democratic than India – which because of its extraordinarily high credibility with the public is accepted by the government, the courts and the police. Similarly, the findings of Amnesty International are acknowledged because of its credibility internationally. We should therefore think of parallel structures, which need not wait for the state to act, or rather would compel the state to change. *A process of social audit of the police could be undertaken at the state, district, city, and mohalla levels. Additionally, a public private partnership, such as a community police board, could be developed to further accountability.*

Dr. V. Suresh (Advocate, Chennai, associated with the People's Union for Civil Liberties)

A practical way of bringing human rights consciousness into the working culture of the police is to incorporate landmark court directives into the Code of Criminal Procedure, police manuals, and rules. Many times these rulings are not available with magistrates in rural and mofussil areas.

Instead of creating new structures we should also focus on strengthening existing mechanisms. For instance, the Protection of Human Rights Act 1993 creates Human Rights Courts, but state governments have not put in place rules of procedure that will operationalise the proper functioning of these courts. Human Rights Cells have been created in police departments, but these are treated as punishment postings. Officers who cannot be accommodated elsewhere are sent there by state governments. This can be changed by posting a DGP-level officer to the Human Rights Cell whose appointment, like that of members of the human rights commission, is approved by the Chief Minister and the Leader of the Opposition. That will go a long way in appointing an officer who is honest, straightforward and interested in doing the job.

Ultimately you cannot have a humane police when its personnel are treated in a dehumanised way. We cannot have a culture, which is punitive, fault oriented, and non-appreciative that does not allow for creativity but rather leaves space for favouritism. If we really want governance based on equity and dignity, we must treat those entrusted with responsibility with these very same qualities.

Mr. Ashok Aggarwal (Advocate, Delhi, associated with the Committee for Information and Initiative on Punjab)

There are two aspects to the working of the state. The first is the process of government appointed committees and commissions, whose recommendations (if accepted) could lead to a certain amount of progress and improvements in the system. But then there is another aspect of the state, which justifies its actions and seeks to maintain the *status quo*. The Punjab Police has justified what it did in Punjab in the name of integrity of the nation. The Kashmir case is very well known - the Indian Army has openly said that we cannot hold Kashmir for India unless we are allowed freedom of action. Then you have the case of the recent Armed Forces Special Powers Act Review Committee where the army chief went on record to say that the army would withdraw from the Northeast if the Armed Forces Special Powers Act was repealed or their powers under the Act were removed. *Commissions, inquiries, think tanks and discussions are fruitful only if there is some impetus, some momentum, some will [by the state] to lead, in that direction.*

Mr. Asghar Ali Engineer (Social Activist, Mumbai, associated with the Centre for Study of Society and Secularism)

In Maharashtra, some honest and committed police officers of very high ranks (such as Director General of Police and Inspector General of Police) have been transferred, simply because they are honest [and hence inconvenient]. A simple order from the *Mantralaya* is enough, which is humiliating. Similarly, in Gujarat, an officer of the rank of Additional Commissioner of Police who had very honestly controlled the riots in his jurisdiction was transferred overnight and given an administrative job at headquarters.

There is a need to put in place a proper transfer policy for the police. Transfers of senior officers should not be done by the chief minister or home minister, but by a committee consisting of the chief minister, the leader of the opposition, a High Court judge and prominent citizens. Many police officers are striving for this and have approached the Supreme Court.

Dr. Rahul Das (Municipal Doctor, Delhi, associated with the Dalit Press)

Our administration is not truly representative of the population. That is why our laws are not being implemented and [necessary] action is not taken. A sort of quota system is required at all levels. There should be [proportionate] representation of women according to their population, say about 45%. *We should also have a caste study to see which castes are dominating and which are exploiting to formulate a policy on representation in the police, judiciary, medical and educational fields. A true concept of representative bureaucracy is required.*

Ms. Teesta Seetalvad (Advocate, Mumbai, associated with Citizens for Justice and Peace)

A question to be asked is whether there is some coordination between the efforts of the Law Commission, the Police Act Drafting Committee, and the Administrative Reforms Commission; and will people's voices be taken into account. Globally and nationally, governance is distanced from people and their problems. The police and the Indian Administrative Service (IAS) are steeped in hierarchy. The moment some of us talk about a human rights complaints monitoring mechanism the immediate response from some quarters is that it should be a police cell. If we really want institutions of democracy to become proactive for the people, let's not have judicial officers monitoring the errant crimes that take place within courtrooms, and let's not have police officers sitting within police stations monitoring the human rights cell. This way there's going to be no monitoring at all. *If we are talking of monitoring, we have to talk of monitoring that is independent of these institutions and properly accountable to the State Human Rights Commission and the National Human Rights Commission – though in a rejuvenated, rather than their current, form.*

We have reached a crisis of governance in the country. We are talking about a state that is getting used to legitimising terrorist police action day in and day out. *If reform exercises are to be made meaningful, each proceeding should be widely publicised in regional language newspapers and suggestions invited from ordinary people.*

Mr. Umakant (Social Activist, Delhi, associated with the National Campaign on Dalit Human Rights)

The Administrative Reforms Commission like other committees and commissions may come out with a wonderful report, but the concern is whether we can ensure implementation in totality and with full sincerity. The Scheduled Castes/ Scheduled Tribes (Prevention of Atrocities) Act 1989 contains provisions for monitoring and vigilance committees at the district level. At the state level, there is a committee to be presided over by the Chief Minister. Both these committees are non-functional and have been unable to prevent atrocities Dalits and *Adivasis*.

SUMMING-UP

Afternoon Plenary: Democratic Solutions

Discussion around suggested legal and policy prescriptions to curb *illegitimate* political interference in policing opened this session. Numerous National Police Commission recommendations to this end were reiterated and endorsed. Proposals included laying down a specific procedure for the selection of the head of police, ensuring her/him a secure tenure and minimising external meddling in police investigation work. Several delegates also stressed the need to frame a strong policy to govern *transfers* of police officers to bring an end to politicians' manipulation of this administrative tool. Two other key issues for reform that emerged were the importance of institutionalising public access and oversight of the police, and building a diverse police that is truly representative of India's makeup. Further, jurists and civil liberties practitioners pointed to the urgent need to tackle police brutality - for instance, methods amounting to torture routinely used in the course of investigation. Existing legal provisions that penalise police misconduct were cited, and their use encouraged. It was highlighted that law does establish institutions to provide deliberation and redress, such as human rights courts, which are poorly constituted in practice. Suggestions to amend particular laws to remove legal loopholes that prevent prosecution were shared.

Valedictory Session

In his Valedictory Address, Mr. Veerappa Moily, Chair of the Administrative Reforms Commission stressed that we should not end the day with pessimism. In a democratic set up, while we may not get 100% results, the time has come when the environment is poised to implement reforms of the kind we all envision. The Administrative Reforms Commission is concerned with a comprehensive approach to governance, encompassing the legislature, part of the judiciary, the executive, civil administration and also civil society.

Recognising that a key point that emerged from the day's discussions was that we should look at public order in the light of civil liberties and human rights, Mr. Moily affirmed that it is important that our laws envision this. Major public order issues identified by respondents to a questionnaire prepared by the ARC are religious fundamentalism and communal strife, caste and regional conflict. The time has come when we should pin down authority, responsibility and accountability on respective agencies [involved in governance]. Mr. Moily pointed to the need to bring in systemic changes through institutional mechanisms that support a culture of professionalism in the police and the bureaucracy. He invited the participants to write to the ARC with solutions that can be built into the governance process, to stabilise and consolidate democracy.