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CONTROLLING THE POLICE
AN ANALYSIS OF THE POLICE ACTS OF COMMONWEALTH
COUNTRIES

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Controlling the Police. An Analysis of the Police Act of the Commonwealth Countries

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ABSTRACT

In any democratic society, there are two important ideas relating to the exercise of police powers that are highly important. One, the police enjoy immense powers, which must be controlled to prevent their misuse. Two, controlling the police itself becomes a source of tremendous powers that can be misused to serve partisan interests. Balancing these conflicting ideas raises some very interesting issues for discussion. Who exercises control over the police and how is the control exercised? Central to this discussion is the type of relationship that exists between the police and the political executive that establishes and controls them. This paper examines the Police Acts of some Commonwealth countries to see how they deal with issues relating to the exercise of control and superintendence over the police. Based on a study of Police Acts of Commonwealth countries. The paper identifies five main models of police governance that exist in this region.

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Controlling the Police

An Analysis of the Police Acts of Commonwealth Countries

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Introduction

There are two ideas relating to the exercise of police powers, which have grown simultaneously in the democratic world. One, the police enjoy immense powers, which must be controlled to prevent their misuse. Two, controlling the police itself becomes a source of tremendous power that can be abused to serve partisan interests. While it is necessary to control the police so that they do not become a law unto themselves, it is equally important to see that control exercised over them is legitimate and serves public good.

This discussion raises some highly important issues. Who exercises control over the police and how is the control exercised? What are the checks and balances to which the police powers are subject? To whom do the police account for their performance and conduct? What type of relationship exists between the police and the political executive?

This paper examines the Police Acts of some Commonwealth countries to see how they deal with issues relating to the exercise of control and superintendence over the police. The paper has a limited objective- to provide information about the models of exercising control over the police that emerge from a study of the police legislation in the commonwealth countries.

This study of the Police Acts throws up five such models.

1. Regime Policing Model

This model exists in large parts of the Commonwealth, particularly in countries of Asia and Africa and the Caribbean islands, which were earlier colonies of the foreign powers. In such a system, the police function less to serve the rule of law and more to secure the interests of the dominant group or regime in power. Their accountability is mainly to their own hierarchy and the political executive, which provides them patronage. Structurally, the police as an organization are authoritarian and militaristic in design, whose managerial philosophy is based on distrust of lower ranks. The charter of functions assigned to them is narrow and limited, with great emphasis on law and order maintenance and on obeying orders faithfully.

The relevant provisions in the Police Acts that help in building and supporting such a model can be discussed under the following heads:

Exercising superintendence over the police force

The Police Act in countries where this model exists authorizes the government or the head of the political executive to exercise control over the police force, but without ensuring that the control or superintendence is exercised to make the police function in accordance with law. In fact, the provisions relating to exercise of control in some cases are deliberately left vague. For example, in India, the Police Act of 1861, which governs policing even now, vests the superintendence of the police in the state governments¹. At the district level, it puts the police under the command of the District Superintendent of Police, but subject to the “general control and direction” of the District Magistrate,² who is essentially a bureaucrat and not a judicial officer. But neither the word “superintendence” nor the phrase “general control and direction” has been defined in law. This enables the government of the day to use the police to serve the partisan interests of the regime in power, whenever required.

¹ *The Police Act, 1861*(India), Section 3

² *Ibid*, Section 4

In many African countries, the Police Acts vest the control in the head of the police force, but subject it to the directions given by the President or the Minister, which are binding. In some countries, the Police Acts go beyond this and give even the operational control of the police force to the head of the political executive. In Nigeria, while the Inspector General of Police (IGP), who heads the police organization, is charged with the command of the force subject to the directive of the President, the President is charged with the operational control of the force.³ The President is also authorized to give the IGP such directions for the maintenance of public safety and public order as are necessary and the IGP shall comply⁴. In Uganda, the “Inspector General of Police shall be subject to and act in accordance with the laws of Uganda, except that on matters of policy, the President may give directions to the Inspector General.”⁵ The problem with this provision of the Constitution is two fold. One, there is no cut and dried definition of what constitutes policy matters. Two, the provision does not state that the directions by the President should be given subject to and within the framework of law. This provision in fact is open to interpretation that requires the head of the police force to act in accordance with laws except where policy directions come from the President. There is a similar provision in the Police Statute of 1994, but here it is the Minister who may give policy directions to the IGP, who shall comply.⁶

The advent of Independence in countries like India and in other countries of South Asia and Africa, that were earlier colonies of foreign powers, did not bring about major changes in the police. It changed the political system and brought about enormous changes in economic and social spheres, but the police system remained more or less unaltered. In India, for instance, the Police Act of 1861 continued to govern it. Its managerial philosophy, value system and ethos remained what they were. The powers granted to politicians and bureaucrats to exercise control and superintendence over the police remained the same. They

³ *Nigeria Police Act (CAP 359), 1943, Section 9 (4)*

⁴ *Ibid, 1943, Section 10 (1)*

⁵ *The Constitution of the Republic of Uganda, 1995, Article 213 (4)*

⁶ *The Police Statute, 1994 (Uganda) Section 6(2)*

were a ruler or establishment supportive police force, considerably distant from the community and they continued to remain so.

It is not as if no new police legislation was passed. Some state governments in India have enacted new legislation since Independence to govern their police forces. For instance, the Police Forces in Maharashtra and Gujarat are governed by the Bombay Police Act of 1951, in Kerala by the Kerala Police Act of 1960, in Karnataka by the Karnataka Police Act of 1963, in Delhi by the Delhi Police Act of 1978. The enactment of these laws after Independence did not bring about any significant improvement in the organizational structure, performance or behavior of the Police Forces. The reason - the new enactments were patterned on the model of the old 1861 legislation.

The same happened in most African countries, where the colonial powers had established a regime police force and used it to consolidate their rule. After Independence, the governments in many countries legislated new Police Acts. For instance, in Kenya, the Police Act was enacted in 1961 and later revised in 1988; in Uganda, a new Police Statute was legislated in 1994 and amended by the Police Act of 2005 and in Tanzania, a new Police Force and Auxiliary Services Act came into existence in 2002. Similarly many other African countries saw the birth of new police legislation. But despite the plethora of new laws, neither the basic structure of the police, nor the philosophy of policing was changed in most Asian and African countries of the Commonwealth

There is also the example of a small country in the Commonwealth i.e. the Maldives that did not consider it necessary to legislate a Police Act for long even after becoming independent in 1965. The Constitution of the country sanctions a perfect example of a regime policing system by declaring the President to be “the Head of State, Head of Government and the Commander in chief of the Armed Forces and the Police of the Maldives.”⁷ The Government of Maldives has now drafted a new Police Bill, but it is as regime- police supportive as the Constitution. The President has the power to appoint and remove the head of the

⁷ *The Constitution of the Republic of Maldives*, 1998, Article 33

police force⁸ The Minister in charge of the Police has the authority “to make use, at any time, of the powers and discretions available to any senior officer of the police” and “to be able at all instances to give direct orders to the whole police force or a group of police men or an individual policeman,” but this authority can be used “provided that the Minister does not exceed the authority granted to him by the President and does not contravene any orders of the President”.⁹

The Police Acts in most Asian and African countries of the Commonwealth thus vest the superintendence of the police force in the political executive. The manner in which superintendence has been exercised over the police in most countries has led to gross abuses, resulting in erosion of the rule of law and failure of the police to grow as a professional organization. This is what a researcher says about the South Asia police and it is true of other Commonwealth countries too following this model: “The basic character of the South Asian police with its twin legacies of servility to the ruler and oppression for the mass of the people thus appeared set to survive well into the 21st century, neither the political class, nor the bureaucracy and least of all the police itself, showing any anxiety to alter its established culture, ethos, role and functional styles.”¹⁰

A few initiatives for reforms aimed at insulating the police from illegitimate outside control, pressures and interference have been taken in some South Asian countries of the commonwealth, but these have failed. The political executive has strongly resisted the idea of establishing institutions that would take away or even dilute their power of exercising superintendence over the police force. Examples of three such initiatives and their failure are given below:

1. In India, the National Police Commission (NPC) had suggested way back in 1979 the establishment of a State Security Commission “to ensure political neutrality in police performance”.¹¹ Recently, the Supreme Court directed that a State Security Commission be set up in each state “to ensure that the State Government does not exercise unwarranted influence

⁸ *Police Bill, 2006* (Maldives), Section 12 (b)

⁹ *Ibid*, Section 9 (b) (i) & (ii)

¹⁰ Dhillon, K.S, 1998, *Defenders of the Establishment- Ruler-supportive Police Forces of South Asia*, Indian Institute of Advanced Study, Shimla, India.

¹¹ National Police Commission (India), August 1979, *Second Report*, p32.

or pressure on the State police and for laying down the broad policy guidelines so that the state police always acts according to the laws of the land and the Constitution of the country.”¹² The recommendation of the NPC made long ago was never implemented and the general response of the state governments towards the Supreme Court’s judgment has been evasive and poor.

2. In Pakistan, the Police Order of 2002¹³ replaced the Police Act of 1861. This was later amended in 2004¹⁴. The Pakistan Police Order of 2002 proposed the establishment of Public Safety Commissions at the federal, provincial and district levels. One of the important functions of the commissions at the provincial and district levels is to “take steps to prevent the Police from engaging in any unlawful activity arising out of compliance with unlawful or mala fide orders¹⁵” The reluctance of the political executive to accept the reforms propounded in the Order of 2002 led first to the dilution of its original provisions and later to its tardy and half hearted implementation. The commissions at different levels are yet to be established fully.
3. In Sri Lanka, a National Police Commission was established to act as a buffer between the government and the police. It was set up not only to take administrative and disciplinary decisions in respect of police officers; but also to entertain and investigate public complaints against police and provide redress; and formulate schemes for improvement of efficiency and

¹² The Judgment of the Supreme Court of India, September 22, 2006 in *Writ Petition (Civil) No 310 of 1996- Prakash Singh & Others versus Union of India & Others*, p 22.

¹³ Policing in Pakistan till the other day was being governed by the *Police Act of 1861*. Recently, the Government decided to repeal it and the President of Pakistan promulgated the *Police Order, 2002* on August 14, 2002.

¹⁴ *The Police Order, 2002* in Pakistan met with strong resistance from the provincial political executive who felt that the *Order* had diluted their powers of exercising control over the police forces and therefore showed unwillingness to implement the reforms envisaged in the Order. The Federal Government could not resist the pressures and came out with an Ordinance known as the *Police Order (Amendment) Ordinance, 2004*, that restored some of the powers to control police forces to the political executive

¹⁵ *Pakistan Police Order, 2002*, Section 80 (1) (b) & *Police Order (Amendment) Ordinance, 2004*, Section 22

independence of the police service. The Commission is not functioning presently because its composition, which had expired in November 2005, has not been revived. In any case, the way the Commission functioned, it never stirred up the requisite confidence in the public. As concluded by a researcher: “We have therefore a situation where the NPC has been wholly unable to fulfil its constitutional mandate to initiate a dramatic (...) process towards change within the Sri Lankan police force (...) The need for an independent and credible NPC has never been greater.”¹⁶

Appointment of the head of the police force

The police being a hierarchical organization, the power to appoint its head and to remove him becomes highly important from the point of view of controlling the force.

In some countries, like India for instance, the Police Act is silent about the appointment of the head of the police force. Section 3 of the Act vests the superintendence of the police force in the state government, which uses this general authority to appoint the head of the police force. In the absence of any prescribed procedure in law and the fact that the word “superintendence” has not been defined, the political executive in the state enjoys enormous discretion to select and appoint officers of their choice as the heads of their police forces and remove them when they are not found ‘useful’. The absence of any fixed tenure makes them vulnerable to outside pressures.

In India, the National Police Commission had recommended that the head of the police force should be selected from a panel of three Indian Police Service officers of the state cadre and that this panel should be prepared by a committee headed by the chairman of the Union Public Service Commission.¹⁷ A similar recommendation forms a part of the judgment delivered by the Supreme Court in

¹⁶ Pinto, J. Kishali, 2007, “Regretting What Might Have Been: A Critique of The National Police Commission of Sri Lanka,” paper presented at the *Roundtable on Police Reform: An Exchange of Experiences from South Asia* organized by the Commonwealth Human Rights Initiative, New Delhi.

¹⁷ National Police Commission (India), August 1979, *Second Report*, p. 31.

Prakash Singh's case.¹⁸ The judgment prescribes a fixed minimum tenure of two years for the head of the police force and lays down that the removal of the chief of police before the expiry of the tenure should be done in consultation with the State Security Commission.

In Pakistan, the Federal Government recommends a panel of three names for the head of the provincial police force and the Provincial Government has to select and appoint one from that list. The Order fixes a term of three years for the police chief, but allows his transfer before the expiry of the term. The transfer can be effected by the provincial government with the approval of the federal government, while the latter can do it on its own.¹⁹

According to the Constitution of Sri Lanka, the President of the country appoints the head of the police force²⁰. The Seventeenth Amendment to the Constitution done in 2001, however, prescribed that no person can be appointed as the head of the police force unless the Constitution Council established by the Amendment has approved the appointment²¹. The composition of the Constitution Council prescribed by the Amendment includes the Prime Minister, the Speaker, the leader of the opposition in Parliament, one nominee of the President, five persons appointed by the President on the nomination of the Prime Minister and the leader of the opposition and one member nominated by the majority of the members of Parliament.²²

In the African region again, the heads of the police forces are mostly Presidents' men. They are appointed by the President or the head of the political executive and also removed by him. There are of course provisions in the Police Acts of some countries to ensure that the executive takes such decisions in consultation with other institutions, but whether this acts in checking arbitrary appointments and dismissals is another matter.

¹⁸ Judgment of the Supreme Court of India, 2006, *Writ Petition (Civil) No 310 of 1996- Prakash Singh & Others versus Union of India & Others*.

¹⁹ *Police Order (Amendment) Ordinance (Pakistan), 2004*, Section 5 (a).

²⁰ *The Constitution of the Republic of the Democratic Socialist Republic of Sri Lanka*, Article

²¹ *Seventeenth Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka, 2001*, Article 41 C (1)

²² *Ibid*, Article 41 A (1)

In Uganda, the IGP and the Deputy Inspector General of Police (Dy IGP), who is the next in command, are appointed by the President with the approval of the Parliament.²³ He also has the power to remove them. He appoints them on the advice of the Police Authority whose members are appointed directly or indirectly by him. The advice thus may not be independent and, in the absence of any legal provision for review, cannot be questioned. In any case, neither the advice, nor the basis on which it is made is known as the procedure for selection is not transparent. The power to remove the head of the police force rests solely with the President and he is not obliged, either under the Constitution or any other law, to seek anybody's advice for this purpose. There is no fixed secure tenure to the post of the head of police force. The recommendation made by the Sebutinde Commission²⁴ that the government should develop guidelines to be followed in the appointment of IGP and Dy. IGP and include those criteria in the Police Statute²⁵ has not been implemented.

There are two important points. One, laws are silent about the process or procedures of selection. The process is not open. The laws neither prescribe any guidelines for appointment to the post of the IGP, nor do they usually set down any conditions under which the head of the police force can be removed. So it is left entirely to the discretion of the President to decide who should command the police force and how long the selected person should remain there.

Two, in none of the jurisdictions in Commonwealth Africa, except South Africa, does the head of the police force enjoy fixed statutory tenure.

Besides obstructing the growth of the police as a professionally efficient and honest organization, the absence of proper procedures in law for selection and

²³ *Constitution of the Republic of Uganda*, 1995, Article 213 (2)

²⁴ A major initiative in the field of police reforms occurred when the Government of Uganda appointed the *Judicial Commission of Inquiry into Corruption* in the Uganda Police Force in April 1999. The inquiry completed by the Commission, popularly known as the *Sebutinde Commission*, in May 2000 was quite a comprehensive external assessment of the Police Force and its maladies in the post-independence Uganda. Besides inquiring into the general and specific allegations of mismanagement and corruption, the Commission made recommendations to improve the efficiency and effectiveness of the police force.

²⁵ *Judicial Commission of Inquiry Into Corruption in the Uganda Police Force, 2000, Report*, p 239

appointment of the head of the police force has resulted in some African jurisdictions in the increasing militarization of policing. Since the head of the government in many countries has come from the army, mostly by staging coups, he is inclined to trust the army and its officers to do even police work. There have been numerous instances of army officers being appointed as the police chiefs in many African countries of the commonwealth.

The charter of duties prescribed in the Police Acts of the countries in this region has also contributed to the militarization of policing. The police can be asked to perform military duties. To give a few examples, the Police Act in Nigeria requires the police to perform such military duties as may be required²⁶. Similarly, the Botswana Police Act says that besides its police duties, the force shall perform military duties whenever required by the President to do so²⁷. In Uganda, though there is no provision in the Police Act, yet the military is frequently deployed on police duties because of a provision in the Constitution that allows for joint operations to be conducted by the army and police to control crime or maintain order. Operation Wembley is a well-known example of such operations.

Administrative Decisions regarding other ranks

Another issue very closely connected to regime policing is the manner in which the police are administered. Who exercises the power to administer the police? Who has the power to appoint, transfer, promote and exercise disciplinary control?

In India, transfer is one of the most potent weapons through which the political executive controls the police officers and forces them to follow their commands. In August 1979, the National Police Commission stated that transfer and suspension are two weapons frequently used by the politician to bend the police officers down to his will.²⁸ The Supreme Court in an important judgment observed that frequent and whimsical transfers, besides “demoralizing the police

²⁶ *Nigeria Police Act, 1990*, Section 4

²⁷ *The Botswana Police Act, 1979*, Section 6

²⁸ National Police Commission (India), 1979, *Second Report*, p24

force” and “politicizing the personnel” constitute a practice that is “alien to the envisaged constitutional machinery.”²⁹

Police Acts in most jurisdictions make a distinction between the senior and junior hierarchy and have separate mechanisms and procedures to deal with them. Generally the thumb rule in most jurisdictions is that while the government takes decisions concerning seniors, the head of the police force takes them for the lower ranks. There are some interesting variations to this rule with regard to decisions concerning lower ranks. Three such variations have been identified:

1. In some countries, a separate body has been set up to deal with such matters. For example, in Nigeria, a Police Service Commission³⁰ has been established to take decisions about appointing and promoting all officials of the Nigeria Police Force, other than its head i.e. the IGP; and about dismissing and exercising disciplinary control over the same persons. The Commission is headed by a chair, a retired justice of the Supreme Court or Court of appeal and a retired police officer not below the rank of a Commissioner of Police as its full time members.

In Sri Lanka, a National Police Commission was set up for the same purpose i.e. to decide the appointment, promotion, transfer, disciplinary control and dismissal of police officers other than the Inspector-General of Police.³¹

2. A slightly different type of arrangement exists in some other countries. In Lesotho in Southern Africa, a Police Appointments and Promotion Board does appointments and promotions of police officers. The Board consists of the head of the police force as the chairman and two members, one

²⁹ The judgment of the Supreme Court of India, 1997, *Writ Petition (Criminal) Nos. 340-343 of 1993*, popularly known as the Havala case

³⁰ *Nigeria Police Service (Establishment) Act*, 2001

³¹ *Seventeenth Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka*, 2001, Article 155G (1), (2) & (3)

nominated by the Police Authority and the other by the Minister in charge of the Police.³²

In India, the Supreme Court has recently directed that a Police Establishment Board shall be set up in each state with the Director General of Police as the head and four other senior officers of the department as members to “decide all transfers, postings and other service related matters of officers of and below the rank of Deputy Superintendent of Police.”³³

3. In a large number of African jurisdictions in the Commonwealth, law establishes other structures of control. The most common is known as the Police Council. Though charters of such Councils differ, an important function of the institution is to advise the head of the executive about appointments and postings of police officers.

In Ghana, the power to appoint persons to hold or to act in any office in the police service vests in the President, but he is required to act in accordance with the advice of the Police Council³⁴

In Uganda, the Police Act sets up two bodies. One is the Police Authority, which has the Minister as its chairperson, with the Attorney General, IGP, Dy IGP, a senior police officer in charge of Police Administration and three other persons appointed by the President as members.³⁵ Its charter of functions includes advising the President on the appointment of IGP & Dy IGP, recommending appointments and promotions of senior police officers, determining the terms and conditions of service and settling appeals from decisions of the Police Council. The other is the Police Council, which is an all police body, with IGP as its chairperson and officers representing different ranks and departments as its members. Its

³² *Lesotho Police Act, 1998, Section 8*

³³ Judgment of the Supreme Court of India, 2006, *Writ Petition (Civil) No 310 of 1996*- Prakash Singh & Others versus Union of India & Others.

³⁴ *Ghana Police Service Act, 1970, Section 10 (3)*

³⁵ *Uganda Police Act, 1994, Sections 8&9*

charter of functions includes recruiting, appointing and promoting police officers up to the rank of Inspector of Police, exercising disciplinary control over police officers, formulating terms and conditions of service, ensuring efficient organization and administration of the force etc.

The experience with the functioning of such institutions has not been a happy one. The general assessment is that they have failed to achieve their objectives. To give a couple of examples, in Ghana, the effectiveness of the Police Council suffered as a result of the disruptions in constitutional rule by the military and the police. “Between independence in 1957 and constitutional rule in 1993, Ghana experienced four unconstitutional regimes which interfered with the smooth functioning of constitutional bodies such as the Police Council. This is because these unconstitutional regimes abrogated the constitution undermining the legal basis for the existence of the Police Council.”³⁶ In Uganda, the Sebutinde Commission felt that the Police Authority “has failed to effectively curb the widespread indiscipline and corruption in the Police Force.”³⁷ That is why the Sebutinde Commission felt that powers of appointment, promotion and the handling of disciplinary matters in the Force should be vested in an independent and impartial body, like a Police Service Commission, consisting mostly of prominent citizens.³⁸ The recommendation has not been implemented.

Weak and Inadequate Accountability Mechanisms

In a system of regime policing, the police generally believe in policing themselves. There is considerable reluctance to accept oversight of any outside agency. Police accountability is mostly to its own hierarchy and the political executive. Even where civic oversight agencies exist, they do not prove very effective in controlling police performance or behavior. Their powers remain as

³⁶ Foley, E.A, 2006, “*Police Council in Ghana*,” paper presented at the Roundtable on Police Accountability organized at Arusha, Tanzania by CHRI.

³⁷ *Judicial Commission of Inquiry Into Corruption in the Uganda Police Force*, 2000, Report, p. 240

³⁸ *Ibid*, p. 241

limited as their resources. The internal systems of accountability do exist but the habits of impunity and the presence of political patronage and interference have undermined the authority of the departmental leadership, consequently affecting the discipline of the force.

The Police Acts of the region do not require their police forces to be transparent. Most Police Acts do not set up any mechanism to monitor and inspect the police performance. Whatever monitoring is done is by the government or the police.

2. The Tripartite Model

This model of control and accountability established by the UK Police Act of 1964 is applicable to the 43 police forces of England and Wales. The model, with minor modifications, also exists in Northern Ireland, which saw the birth of a new Police Service in November 2001, following the recommendations of the Patten Commission on Policing.

As the name indicates, the tripartite system involves three parties in police governance- the Secretary of State that represents the government, the Police Authority which stands for the local community, and the Chief Constable, who heads the police force.

The Police Act, 1964 distributes powers and responsibilities relating to policing between the Secretary of State, the Police Authority and the Chief Constable. The tripartite arrangements were later endorsed by the new British legislation, like the Police and Magistrates' Courts Act of 1994(PMCA), the Police Act, 1996 and the Police Reform Act of 2002, though the distribution of powers was altered to some extent.

The Secretary of State is answerable to Parliament and public for setting up an efficient and effective police service. The Police Act of the United Kingdom, unlike in the countries dominated by the regime- policing system, recognizes the responsibility of the government to provide efficient and effective policing to the public³⁹. The Police Acts of countries under the regime system talk more of

³⁹ *Police Act (UK)*, 1996, Section 36 (1)

governments' control over the police forces and less of their responsibility to improve police efficiency and effectiveness. For example, in India, the Police Act of 1861 has no provision to make it the government's responsibility to ensure that the people get the good policing that they so badly need and deserve.

The Police Act of the UK gives numerous powers to the Secretary of State. He sets strategic direction for the service; determines key national policing objectives; monitors police performance; issues codes of practice to police authorities and to chief officers of the police; determines cash grant to police authorities and approves the appointment and removal of the chief of a police force.

An important party in the tripartite system of police governance is the Police Authority. It is an independent body made up of local people. Generally, it has 17 members, 9 local councilors, 5 independent members and 3 magistrates from the local area. It is responsible for maintaining an efficient and effective local police force. It determines local policing priorities, sets a three-year strategic direction for the police force consistent with the National Policing Plan and monitors police performance against the set targets. The Authority is responsible for budgeting and resource allocation to the police. It has the authority to appoint and dismiss the chief constable, but this is subject to ratification by the Secretary of State. It can require the suspension or early dismissal of police officers on public interest grounds.

The Chief Constable is the head of every territorial police force in the United Kingdom, except Greater London. The chief constable is responsible to the local police authority.

The Chief Constable is responsible for direction and control of the police force. The responsibility for operational control of the police force vests solely in him. He also drafts local policing plan in conjunction with the local police authority. Achieving local and national policing objectives is a part of his responsibility.

An important feature of the system of police control and governance is the recognition of the functional independence of the police. The police are functionally independent and no one can interfere in their operations. This idea of

police independence has received wide acceptance even though it is not supported by any provision in any statute book. All that the Police Act says is that a police force “shall be under the direction and control of the chief constable.”⁴⁰

Besides, this concept, particularly the manner in which it has been interpreted in many countries, comes in conflict with a highly important principle of democratic policing- that of police accountability. In all democratic societies, the police have to be held accountable for what they do or do not do and the tactics that they often employ in discharging their responsibilities. Being independent in functioning does not mean that they become unaccountable for their performance and behavior. That is why the Patten Commission on Policing in Northern Ireland substituted the concept of operational independence with that of operational responsibility.⁴¹

The roles and responsibilities of the three parties in the tripartite system of police governance have been defined in police legislation. The legislation also requires decisions to be taken through a process of consultation between the concerned parties and that imposes checks on their powers

3. Australasian Model

This is the model that exists in Australia and to some extent in New Zealand. The model can be summed up in these words. The Governor generally appoints the head of the police force, known as the Commissioner of Police. The appointment is done on the recommendation of the minister and in some cases the minister has to do so after consulting or even obtaining the approval of an external oversight body. The terms on which appointment is made are stated in the contract of employment signed between the two parties. The head of the police force remains at the post for a fixed period, mostly five years, and the grounds on which he can be removed are stated in the Police Acts. Where the grounds are not stated and the minister can remove him from service without assigning any reasons, he has to do so in consultation with an outside independent oversight agency. The

⁴⁰ *Ibid*, Section 10 (1)

⁴¹ Independent Commission on Policing for Northern Ireland, 1999, *Report*, paragraphs 6.19 to 6.21

responsibilities of the head of police are statutorily defined and in some cases, the scope of ministerial directions on police matters is also prescribed in law. Ministerial directions to the head of the police force have to be in writing. Invariably, there are provisions sanctioning parliamentary oversight of police-government relationship.

Thus, broadly speaking, there are four generic elements of police-government relationship in this model:

- Terms of appointment/dismissal of the head of police
- Statutory responsibilities of the head of police
- Scope of ministerial directions on police matters
- Parliamentary oversight of police-government relationship.

Terms of appointment/dismissal of the head of police

In Queens land, the Governor in Council appoints an appropriate person as the Commissioner of Police (COP) on a recommendation agreed to by the chairperson of the Crime and Misconduct Commission (CMC), which is a statutory civilian watchdog⁴². The conditions on which appointment is made are determined by a contract of employment made between the government and the COP and are not subject to any award or industrial agreement⁴³. The COP is appointed for a term of 3 to 5 years.⁴⁴

The grounds on which the Commissioner of Police can be removed from office are stated in law. These are⁴⁵:

- Breach of contract
- Incapacity to properly perform duties
- Incompetence or neglect of duties

⁴² *Queens land Police Service Administration Act, 1990*, Section 4.2 (1)

⁴³ *Ibid*, Section 4.3 (b) & (c)

⁴⁴ *Ibid*, 4.4

⁴⁵ *Ibid* 4.5 (2) & (3)

- Found guilty by the Misconduct Tribunal of an official misconduct.
- Conviction of an indictable offence
- Imprisonment

Dismissal on any ground requires concurrence of the CMC chairperson or, failing that, request by the Parliament to the Governor.⁴⁶

The law governing the appointment and removal of the head of the police force in New South Wales is slightly different. The Governor on the recommendation of the Minister appoints the Commissioner of Police. Before recommending the appointment, the Minister is required to make inquiries from the Police Integrity Commission, the head of the Special Crime and Internal Affairs unit, and from any other person or body the Minister considers appropriate about the person's integrity⁴⁷. In addition, the person selected for the job is required to provide a statutory declaration that he has not knowingly engaged in specified misconduct or any other misconduct⁴⁸. Failure to provide mandatory statutory declaration renders the person unfit for selection.⁴⁹ The employment of the Commissioner is governed by a contract of employment between the Commissioner and the Minister.⁵⁰ He holds office for a period not exceeding five years, but is eligible for reappointment.⁵¹

The Governor can remove the Commissioner from office after the Minister makes such a recommendation.⁵² No reason or notice is required to be given but the Minister can make such a recommendation only after the Police Integrity Commission has been notified of this intention and given a reasonable opportunity to comment on the proposed recommendation.⁵³

⁴⁶ *Ibid*, Section 4.5 (4) (a) & (b)

⁴⁷ *New South Wales Police Act*, 1990, Section 24 (6) (a)

⁴⁸ *Ibid*, Section 24 (8)

⁴⁹ *Ibid*, Section 24 (9)

⁵⁰ *Ibid*, Section 27 (1)

⁵¹ *Ibid*, Section 26

⁵² *Ibid*, Section 28 (1)

⁵³ *Ibid*, Section 28 (3) (a) & (b)

Statutory responsibilities of the head of police/ Scope of ministerial directions on police matters/ & Parliamentary Oversight of the Relationship

The responsibility for the efficient and proper administration, management and functioning of the police vests in the Commissioner of Police, and in most jurisdictions this superintendence is subject to the directions of the Minister. The Minister is authorized to give directions to the police, but they have to be in writing. In some jurisdictions, the areas in which directions can be given are mentioned in the Act. For example, in Queensland, police legislation requires the Commissioner of Police to furnish to the Minister reports and recommendations in relation to the administration and functioning of the police service, when required by the Minister to do so and otherwise when the Commissioner thinks fit⁵⁴. It also authorizes the Minister⁵⁵ to give directions to the Commissioner about:

- the overall administration, management and superintendence of or in the police service;
- policy and priorities to be followed in performing police functions; and
- the number and deployment of officers and staff members and the number and location of police establishments and police stations.

Two conditions are prescribed. The directions have to be in writing and given “having regard to advice of the commissioner first obtained.”⁵⁶

The COP is bound to comply with directions, but he is required to register all reports and recommendations sent to the Minister and all directions received from him. This record is to be sent to the chairperson of the Crime and Misconduct Commission to be tabled by the Parliamentary Crime and Misconduct Committee in the Legislative Assembly within fourteen days of its receipt⁵⁷.

In South Australia, the Commissioner is responsible for the control and management of South Australia Police, but it is “subject to this Act and any

⁵⁴ *Queensland Police Service Administration Act 1990*, Section 4.6 (1) (a) & (b)

⁵⁵ *Ibid*, Section 4.6 (2) (a), (b) & (c)

⁵⁶ *Ibid*, Section 4.6 (2)

⁵⁷ *Ibid*, Section 4.7

written directions of the Minister”⁵⁸ The South Australia legislation has a specific provision debarring the Minister to issue directions in respect of some administrative matters: “No Ministerial direction may be given to the Commissioner in relation to the appointment, transfer, remuneration, discipline or termination of a particular person.”⁵⁹ The Act requires the Minister to cause a copy of any direction given to the Commissioner to be (a) published in the Gazette within eight days of giving it; and get it (b) laid before each House of Parliament within six sitting days of the date of the direction if Parliament is then in session, or, if not, within six sitting days after the commencement of the next session of Parliament.⁶⁰

According to the Act governing the Australian Federal Police, the Minister is authorized to give directions to the Commissioner “with respect to the general policy to be pursued in relation to the performance of the functions of the Australian Federal Police”. The directions have to be in writing and may be given after “obtaining and considering the advice of the Commissioner and of the Secretary”⁶¹ The Commissioner has to comply with the directions⁶². The Commissioner must also give to the Minister such reports as the Minister requests relating to the administration and performance of the functions of the Australian Federal Police.⁶³

In New Zealand, the Police Act of 1958 and Police Regulations, 1992, which govern policing, are currently under a broad review by the government. Amongst other major areas of concern, the government feels that the “1958 Police Act contains virtually no guidance on the boundaries of the Commissioner-Minister relationship.”⁶⁴ Though the Police Regulations state that “the Commissioner shall be responsible to the Minister for (a) the general administration and control of the

⁵⁸ *South Australia Police Act, 1998*, Section 6

⁵⁹ *Ibid*, section 7

⁶⁰ *Ibid*, Section 8

⁶¹ *Australian Federal Police Act, 1979*, Section 37 (2)

⁶² *Ibid*, Section 37 (4)

⁶³ *Ibid*, section 37 (6)

⁶⁴ Government of New Zealand, May, 2007, *Policing Directions in New Zealand for the 21st Century*, paragraph 5.24 (<http://www.policeact.govt.nz>)

police; and (b) the financial management and performance of the police,”⁶⁵ it does not clearly specify what the relationship between the Minister and Commissioner of Police should be. The Government feels that “freedom from political interference in operational decisions is a fundamental value of New Zealand’s policing tradition. Consideration could be given to recognizing this in legislation by putting the notion of constabulary independence on a statutory footing”⁶⁶. The Government broadly accepts that “the Minister may provide direction to the Commissioner on overall Police resourcing, and matters of administration which do not directly affect the Commissioner’s operational responsibilities.”⁶⁷

4. The Board/Commission model

Two major ideas or developments in policing have gained ground internationally during the last few decades. One is the idea of community policing that has been tried in different forms. The other is the idea that policing is too serious or important a business to be left to the policemen or politicians alone and that it is necessary to exercise some form of civilian control or oversight over the police. This idea has led not only to the setting up of independent mechanisms to inquire into complaints against police personnel but also to the establishment of autonomous police commissions or boards.

The Commission model serves two different purposes- one, to insulate the police from illegitimate influences of partisan politics by acting as a buffer between the police and elected governments; and, two, to involve community members in providing direction to the police and help improve police administration and management.

The Board or Commission model of police governance exists widely in some developed countries, like Canada. Canada has police forces at the municipal, provincial and federal levels. In addition, a number of First Nations policing agreements for aboriginal communities are in place across Canada. The role that

⁶⁵ *Police Regulations (New Zealand)*, 1992, Section 3

⁶⁶ Government of New Zealand (May, 2007):”Policing Directions in New Zealand for the 21st Century,” paragraph 5.28(<http://www.policeact.govt.nz>)

⁶⁷ *Ibid*, paragraph 5.27

the Police Boards or Commissions play in governing the police forces, particularly at the municipal level, is very significant, as they involve community members in providing direction to the police. For example in British Columbia, every municipality with a population of 5000 or more has to provide for police service. Municipalities with their own police forces are required to set up police boards to act as civilian oversight bodies. The Municipal Police Board in British Columbia consists of the Mayor of the Council, one member appointed by the Council and not more than five persons appointed, after consultation with the director, by the Lieutenant Governor in Council⁶⁸. The municipal police board, in consultation with the chief constable, must determine the priorities, goals and objectives of the municipal police department.⁶⁹

The charter of the boards or commissions in Canada may differ somewhat across the country, but their mandate is mainly two fold – one to provide general direction to the police in accordance with law and in response to the community needs, and, two to protect the police from illegitimate influences of politicians.

A country, which has recently emerged out of a history of conflicts and violence but is setting up new institutions in policing, is Northern Ireland. One such institution is the Police Board set up by the Police (Northern Ireland) Act, 2000. The Board is an independent public body made up of nineteen members, whose broad objective is to secure for the people of Northern Ireland an effective, efficient and impartial police service. The Board has a comprehensive charter that monitors police performance not merely for ensuring the efficiency and effectiveness of the organization but also to see that the police do not violate human rights of citizens. By holding the head of the police to account for his actions and those of his staff and by overseeing the working of the internal police complaints and discipline system, the Police Board performs a very active management and oversight role.

⁶⁸ *British Columbia Police Act, Chapter 367, Section 23 (1)*

⁶⁹ *Ibid*, Section 26 (4)

5. South Africa Model

The South Africa model presents an example of an institution that has made determined efforts to make a complete break with the past during a very short period of less than thirteen years. The apartheid regime, which lasted till 1994, used the police as a “political instrument” and “created a militaristic, secretive, unaccountable, racist, and violent institution”⁷⁰ The Constitution as well as the Police Act reflect the aspirations of the people of South Africa to turn a highly regime police force into a democratic police service.

The South Africa Police Service (SAPS) Act of 1995 establishes a secretariat for Safety and Security (a) to advise the Minister; (b) to ensure civilian oversight of the service; (c) promote democratic accountability and transparency in the service; and (d) to evaluate the functioning and report to the Minister.

Chapter 10 of the SAPS Act establishes an Independent Complaints Directorate to investigate complaints of criminality and misconduct against police service members. Steps have also been taken to evaluate the performance of the police on a scientific basis.

South Africa has a national police service, which is structured to function in the national, provincial and, where appropriate, local spheres of government. The South Africa Constitution makes it the “political responsibility” of a member of the Cabinet responsible for policing to “determine national policing policy after consulting the provincial governments and taking into account the policing needs and priorities of the provinces.”⁷¹

The National Commissioner of Police Service is required to “exercise control over and manage the police service in accordance with the national policing policy and the directions of the cabinet member responsible for policing.”⁷² The National Commissioner is required to develop a plan before the end of each

⁷⁰Haysom, Fink: “Policing the Transition: Transforming the Police”, A Discussion paper on Policing Commissioned by Department of Information and Publicity, African National Congress. (<http://www.anc.org.za/ancdocs/policy/policing.html>)

⁷¹ *The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)*, Article 206 (1)

⁷² *Ibid* , Article 207 (2)

financial year, setting out the priorities and objectives of policing for the following financial year.⁷³

Though the President of South Africa appoints the National Commissioner of Police Service,⁷⁴ the National Commissioner appoints the Provincial Commissioner of Police for each province.⁷⁵ Even though he is required to do so with the “concurrence of the provincial executive,”⁷⁶ the fact that the head of the police force in a province is appointed by another police officer and not by the political executive is very significant. Both the National and Provincial Commissioners have a fixed minimum tenure of five years⁷⁷, which can be further extended, subject to a maximum of ten years.⁷⁸

If the National Commissioner of Police has lost the confidence of the Cabinet, the President may establish a board of inquiry, with a judge of the Supreme Court as chairperson, to inquire into the circumstances that led to the loss of confidence and make recommendations.⁷⁹ If the Provincial Commissioner has lost the confidence of the Executive Council, the National Commissioner, on receiving a notice from the concerned Minister, shall establish a board of inquiry, with a person qualified in law as chairperson, to make an inquiry.⁸⁰

The Board shall submit its report to the President, or to the National Commissioner depending on whether the inquiry was conducted against the National or the Provincial Commissioner. In addition, the report is also to be submitted to the concerned Commissioner and to the Parliamentary committees.⁸¹ The Inquiry Report may recommend⁸² that (a) no action be taken in the matter; (b)

⁷³ *The South African Police Service Act, 1995*, Section 11 (2) (a)

⁷⁴ *The Constitution of the Republic of South Africa, 1996*, Section 207 (1)

⁷⁵ *The South African Police Service Act, 1995*, Section 6 (2)

⁷⁶ *The Constitution of the Republic of South Africa, 1996*, Section 207 (3)

⁷⁷ *The South African Police Service Act, 1995*, Section 7 (1)

⁷⁸ *Ibid*, Section 7(2)

⁷⁹ *Ibid*, Section 8 (1)

⁸⁰ *Ibid*, Section 8 (2)

⁸¹ *Ibid*, Section 8, (6) (a)

⁸² *Ibid*, Section 6 (b)

the concerned Commissioner be transferred; (c) his salary or rank or both be reduced; (d) he or she be removed from office; or (e) any other appropriate steps

The President or National commissioner has the option to postpone taking a decision on the recommendations of the Board of Inquiry for a period not exceeding 12 calendar months⁸³. If the decision is postponed, at the end of the period the same or a similar Board of Inquiry has to make a new recommendation after having considered the conduct of the Commissioner during such period.⁸⁴

The same procedure is applicable in cases of allegations of misconduct by the National or Provincial Commissioner or his or her fitness for office or capacity for executing official duties efficiently is questioned⁸⁵.

Conclusion

The Commonwealth is an association of 53 independent states representing about 30 per cent of the world's population. A large number of countries in this region were ruled by the colonial powers for long in history. The type of police system established in such countries was governed more by considerations of consolidating and safeguarding the colonial rule rather than providing sensitive and people friendly policing. The police system was, therefore, designed to be subservient to the rulers of the moment. The type of police legislation enacted during colonial times to ensure this remained in existence even after the countries became independent. Even where new legislation was enacted after Independence, the model remained the same. It is thus the regime policing model that governed policing during the colonial times and continues to do so even now in large parts of the Commonwealth.

This, however, is not the whole story. There are countries in the Commonwealth, which present examples of good policing. The Police Acts in such jurisdictions recognise the governments' responsibility to set up an efficient and effective system of policing; establish institutional and other arrangements to insulate the

⁸³ *Ibid*, Section 6 (b) (vi)

⁸⁴ *Ibid*, Section 7

⁸⁵ *Ibid*, Section 9

police from illegitimate outside control; demarcate the areas of responsibility between the political executive and the chief of police; set up credible and effective complaint handling mechanisms and procedures; create mechanisms to ensure proper and neutral selection of the head of the police and strengthen his/her authority by reducing his/her vulnerability; outline objectives and performance standards and set up independent mechanisms to monitor and inspect police performance; and establish institutional arrangements to consult the community and involve them in police work.

It has been rightly said: “Some of the best policing in the world is found in the Commonwealth, and also some of the worst. But by and large, its 1.8 billion people do not have the policing they deserve. Police Reform is too important to neglect and too urgent to delay.”⁸⁶ Reforming the police across various countries of the Commonwealth would require diverse steps, but changing and refining the police legislation is definitely one of them.

⁸⁶ Commonwealth Human Rights Initiative. 2005. *Police Accountability Too Important To Neglect, Too Urgent To Delay*, CHRI’s 2005 *Report*, p.2.

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