

## National Human Rights Commission-Need for Review

By G..P.Joshi<sup>1</sup>

The National Human Rights Commission(Commission) was established on October 12, 1993 through an Act of Parliament titled "*The Protection of Human Rights Act, 1993*"(ACT). It will shortly be completing five years of its existence and it is time to undertake a review of its status, functioning and problems.

The Commission undoubtedly has some achievements to its credit. It has succeeded in persuading the Central Government to sign the United Nations Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Punishment or Treatment. It has brought into sharp focus the problem of custodial deaths and taken steps to see that these are not suppressed by the state agencies and that the guilty persons are made to account for their sins of commission and omission. It has also helped in designing specialised training modules on human rights for introduction in the educational and training institutions.

There is, however, a feeling that the Commission has not been able to achieve its full potential. Is it true? Are there any structural deficiencies and inadequacies in its constitutive law? This needs to be examined with reference to internationally accepted standards.

At a UN sponsored meeting in Paris in 1991, a detailed set of principles on the status of national human rights institutions was developed, which are known as the Paris Principles. These principles provide that a national institution must have a **broad mandate**; pluralism, including **representative composition**; **wide accessibility**; **effectiveness**; **independence**; sufficient **resources**; and adequate powers of **investigation**.

### Mandate

Section 2 (d) of the Act defines "*human rights*" as "rights relating to life, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India" Thus the law requires the NHRC to concentrate more on civil and political than on social and economic rights. This is somewhat unfortunate as a human rights commission can really play an effective role in pressurising the government to provide social and economic justice to citizens. The South Africans appear to have realised this as they have mandated, through Article 184 (3) of the Constitution of the Republic of South Africa, 1996, their human rights commission to "require relevant organs of state to provide the commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and environment." A similar type of provision in law governing the human rights commissions in this country can act as a pressure point on the governments to explain as to what they have done during the last 50 years to provide, for example, the safe drinking water to the public.

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## **Composition**

As per Section 3 of the Act, the Commission shall consist of five members, three of whom should be from the judiciary and two "from amongst persons having knowledge of, or practical experience in, matters relating to human rights." Selection of chairperson and members of the Commission is made on the recommendations of a committee consisting of the Prime Minister, Home Minister, Speaker and leader of the opposition in the House of the People and Deputy Chairman and leader of opposition in the Council of States.

There are three objections to the existing arrangements. Firstly, the legislation limits the selection to a narrow band of persons who, just by belonging to judiciary, need not reflect any particular expertise in or commitment to human rights. It restricts the Commission from getting the plurality of perspectives, vocations and diverse experiences from the civil society. Secondly, the committee recommending selection consists solely of politicians. Thirdly, the process of selection is not transparent. Composition of the Commission is generally decided through noting in secret files or during closed door meetings between the politicians and their favourite bureaucrats.

According to Section 11 of the Act, the Central Government shall "make available" to the Commission officers and other staff required for research, investigation, technical and administrative work. This provision of law, by making the Commission dependent on the Government for its manpower requirements, has also led to narrowing its field of choice to what is made available by the Government. The problem is compounded because the terms attached to the Commission's posts are not good enough to attract quality material. The post of Director (Research) in the Commission has been vacant since its inception. The majority of posts in the Research Division are manned by the clerical staff from the Ministries of the Central Government, who have no research background. The two posts of Superintendent of Police in the Investigation Division are manned by BSF officers who, neither by training nor by experience, can really be regarded as qualified investigating officers. The post of Director General (Investigation) has so far always gone to a retired IPS officer.

Most of the officers and other staff working in the Commission have come from different offices of the Government of India. After years of working in the government departments, they join the Commission with a certain mind-set, deep resistance to change, bureaucratic procedures of work and a very heavy accumulated backlog of bad practices. They have no knowledge of or commitment to human rights philosophy. What makes the situation worse is that they are not given any training when they join the Commission. It is not at all surprising that the Commission is gradually acquiring the image of a bureaucratic organisation.

## **Accessibility and Effectiveness**

There has been a definite increase in the number of complaints received by the Commission. From 6,987 in 1994-95, the number increased to 10,195 in 1995-96 and to 20,514 complaints in 1996-97. The Commission feels happy on this account, as it signifies, according to the Commission, an increase in awareness of human rights and a "reflection of the increasing

confidence of people in the Commission." Is this interpretation realistic or is the optimism misplaced?

A study of data shows that the majority of complaints are being received from three or four states. Out of 20,514 complaints in 1996-97, as many as 13,485 i.e. 65.7% were received from four states only i.e. UP (8,668), Bihar (2,413) Delhi (1,340) and Tamilnadu (1,064). Similarly, in 1995-96, these three States and the Union Territory of Delhi accounted for 5,780 out of 1,0195 complaints (56.7%).

Rights' awareness, besides being limited to a few states, is not enlightened. In 1996-97, out of a total of 16,823 cases, 8048(47.8%) were dismissed in limini. In the preceding year also i.e. 1995-96, 5,984 out of 11,153 cases (53.6%) were dismissed similarly. These are the cases which do not fall within the purview of the Commission's charter or are time barred or are sub-judice. There is thus considerable ignorance amongst the public about the Commission's charter.

The Commission must keep a tight grip on its disposal, so that pendency is not allowed to increase. Unfortunately, this is not happening and the number of cases pending with the Commission has been increasing sharply every year. Though the report for the year 1996-97 shows that only 319 cases were pending on 1.4.1996, the actual pendency was much higher. At the end of the preceding year, i.e.1995-96,out of 11,153 cases considered, the Commission was not able to dispose of 3,535 cases. The number of cases pending with the Commission on 1.4.1996 was 3,584(319+3535). By 1.4.1997, the pendency had increased to 9,985 (4,010+5,975). The Commission either must get its actual strength increased or change its methods of disposal so that the backlog of accumulated undisposed cases does not become heavy. There is no reason why cases dismissed in limini can not be decided at the secretariat level, instead of being put up to the Commission for final disposal, as is happening at present.

### **Independence and Resources**

The Commission is supposed to be completely independent in its functioning, even though the Act does not say so. In fact, there are provisions in the Act which underscore the dependence of the Commission on the Government. As already stated, Section 11 of the Act makes it dependent on the government for its manpower requirements.

Then there is that all important question of finance. According to Section 32 of the Act, the Central Government shall pay to the Commission by way of grants such sums of money as it may consider fit. While the Commission asked for a sum of Rs.8 crores for 1998-99, the Government has granted a sum of Rs.5 crores only. Thus in respect of the two most important requirements i.e. manpower and money, the Commission is not independent.

### **Investigation**

The Act does not authorise the commission to enquire into complaints of violations of human rights committed by the members of the armed forces. "Armed Forces", as defined in Section 2(1)(a) of the Act, means not only the naval, military and air forces but also the central para-military forces. Since a very large number of complaints of human rights

violations are directed against the members of the “armed forces”, the Act obviously weakens the NHRC’s effectiveness in providing redress to the public in such cases. All that the Commission, under

Section 19 of the Act can do is to call for reports from the Central Government in such cases and then make recommendations to the Government or not “proceed with the complaint” at all.

Under the Act, the Commission has no power to enforce its decisions. According to Section 18 of the Act, where the enquiry conducted by the Commission discloses violation of human rights, it can only advise the government to take action against guilty persons or grant relief to the victim. If any Government refuses to accept the advice, as was done recently by the Bihar Government in a case of granting relief, there is no provision in law which empowers the Commission to force the Government to implement its advice.

The Commission is thus weak, deficient and dependent in many respects. It is too important an institution to be neglected. The Act must, therefore, be amended to make the Commission a strong, independent and vibrant institution, supporting democracy and good governance.

Insulating Police from Political Control-A Critical Review of the National Police Commission’s Recommendations

**By G.P.JOSHI**

### **Introduction**

The Police Act of 1861 brought into existence a ruler appointed Police Force, governed by the need of the British to ensure their suzerainty over a subject population and to perpetuate their rule in the country. Policing was to be done at the minimum possible cost to the public exchequer. Major reforms in the police, requiring substantial increase in expenditure, were to be avoided.

Obviously, the Act failed to produce an efficient and a professional police force in the country. The Indian Police Commission appointed in July, 1902 under the chairmanship of Sir A.H.L. Fraser concluded: *“The police force is far from efficient; it is defective in training and organisation; it is inadequately supervised; it is generally regarded as corrupt and oppressive; and it has utterly failed to secure the confidence and cordial co-operation of the people.”*

The advent of Independence did not bring about any significant change in the police system or its philosophy. It made no *“substantial difference in one of the most significant aspects of the colonial police- its public unaccountability remained unchanged.”*<sup>ii</sup>

For some years after Independence, it did not matter, because the quality of leadership, both at political and administrative levels, was of a high order. However, with the increasing criminalisation of politics, the quality of leadership at both levels has deteriorated, leading to a perceptible decline in the quality of control exercised over the Police and increasing misuse of the organisation by people in positions of power for partisan interests.

This has resulted in subverting the rule of law in this country. It has also obstructed the growth of a healthy and professional system of policing. When important decisions relating to promotions, postings, appointments, transfers etc. in the police are taken on political or other extraneous considerations and not on the basis of merit, it not only shatters the morale of honest officers but encourages the wrong ones to court favour by pandering to the wishes of those in positions of power. This distorts the command structure of the police, erodes discipline, breeds corruption and leads to abuse of police authority and miscarriage of justice. It ultimately shakes the confidence of the public not only in the police but in the entire system of governance. This is what has been happening in this country for a fairly long time now.

The police organisation and its leadership can not be absolved of the blame altogether, for they have also contributed to this state of affairs by willingly falling in line.

### **National Police Commission (NPC)'s Recommendations**

The problem of illegitimate interference in the work of the police and its consequences on the rule of law in this country were examined by the NPC. The major recommendations made by the NPC to deal with the problem can be discussed broadly under the following three heads:

1. Establishment of the State Security Commission (SSC).
2. Appointment, transfer and Fixed Tenure of Service.
3. Enactment of a new Police Act

The purpose of this paper is to critically assess the NPC's recommendations to find if they can really provide effective insulation to the Police against illegitimate political control and interference.

### **Establishment of the State Security Commission**

#### **Composition**

According to the NPC, the SSC should be set up statutorily, having the Minister in-charge of the Police as its chairman and six more members. Two of these should be from the State Legislature (one from the ruling and the other from the opposition party to be appointed on the advice of the Speaker of the State Legislature) and four should be appointed by the Chief Minister, subject to the approval of the State Legislature, from amongst the retired judges of the High Court, retired senior government officers and eminent social scientists or academicians.

There are four main objections to the type of arrangements suggested by the NPC. Firstly, the Minister in-charge of the Police is to be the Chairman of the SSC. This is somewhat odd, as the primary objective of the SSC is to limit the power of superintendence of the State Government over the Police. Secondly, the composition does not reflect the plurality of perspectives and experiences available in civil society. Thirdly, the selection or appointment of members is to be done by or on the advice of politicians only. Considering

the fact that the need to set up SSC has been felt because of illegitimate influences exerted on the police by politicians, selection of members done by them would definitely lack public credibility. Fourthly, no procedure for selection of members has been prescribed by the NPC, which can prove fatal to the success of such an organisation.

It is, therefore, considered extremely important that some basic principles should be laid down to govern the establishment and composition of the SSC. Some of these principles could be as follows:

- Law must establish the Commission.
- It should be independent from government and this should be reflected in its mandate and methods of work.
- The composition should reflect the plurality of experiences and perspectives existing in the civil society. The members should be drawn from a variety of different backgrounds, including relevant professional groups and the non-governmental sector.
- Selection of members should be done on the basis of their record and reputation. They should be eminent persons known for their integrity and having the capability to decide about matters in an impartial, fair and objective manner unaffected by inducements, pressures, interference or threats of any kind.
- The method of selection of members should be clearly specified in law.
- The selection of members should not depend on whims, preferences and predilections of individuals. In fact, a Committee formed specifically for this purpose and headed by a member of the National Human rights Commission/State Human Rights Commission should do the selection
- The process of selection should be open and transparent.
- The terms of appointment, tenure and removal of members of the Commission should be clearly prescribed, so as to guarantee that it functions impartially, independently and competently.
- The Commission should have the authority to select its staff and be assured of required resources, including its budget.
- The mandate of the Commission should be wide and effective enough to insulate the police from illegitimate pressures and influences.
- The Commission's reports and major decisions must be made known to the public at the earliest possible opportunity, definitely within a maximum period of three months.

The NPC's recommendations about the constitution of SSC need to be reviewed in the light of the principles enunciated above

### Charter

A notion exists in many quarters that the NPC has recommended the establishment of the SSC to exercise superintendence over the State Police Force. The NPC has made no such recommendation.

The functions prescribed for the SSC by the NPC do not include exercising superintendence over the Police and are as follows:

- (i) Laying down *broad policy guidelines and directions* for the performance of preventive tasks and service-oriented functions by the police;
- (ii) *evaluating the performance* of the State Police every year and presenting a report to the State Legislature;
- (iii) functioning as a *forum of appeal* for disposing of representations from any police officer of the rank of Superintendent of the Police and above regarding his *being subjected to illegal or irregular orders in the performance of his duties*;
- (iv) functioning as a *forum of appeal* for disposing of representations from police officers *regarding promotion to the rank of Superintendent of Police and above*; and
- (v) generally keeping in *review the functioning* of the police in the State.<sup>iii</sup>

The charter prescribed for the SSC by the NPC is somewhat effete. The NPC has divided police tasks in three categories - (i) investigative; (ii) preventive; and (iii) service-oriented. According to the NPC, the investigative tasks of the police are beyond any kind of intervention by the executive or non-executive. However, in the performance of preventive and service-oriented functions, the police should be subject to the overall guidance from the government, which should lay down broad policies for adoption in different situations from time to time. Even here, policy directions are to be openly given and made known to the State Legislatures. *“There should, however, be no instructions in regard to actual operations in the field.”*<sup>iv</sup>

Thus, in the scheme recommended by the NPC, the SSC has no jurisdiction in so far as investigative functions are concerned. The SSC can not even prescribe broad policy directions for police investigation work, which it can for the other two categories of functions.

It has been the general experience of the police forces that most situations in which illegitimate pressures are exerted on the police officers involve investigative tasks. The NPC’s list of typical situations or matters in which pressure is brought to bear on the police by political, executive or other extraneous sources illustrates the point.<sup>v</sup>

It is a weakness in the NPC’s scheme that it offers no solution to the problem of insulating the police from undesirable outside influences in an area of operations where such interference is at its most and worst.

The idea of functional independence of the police in respect of its investigative tasks has been recognised by the Supreme Court in its earlier as well as the recent Havala case. It is in the light of the Supreme Court's judgement<sup>vi</sup> that the NPC projected it as a fundamental principle governing police work that the investigative tasks of the police are beyond any kind of intervention by the executive or non-executive.

Enunciation of a principle is one thing; its implementation by the concerned parties is another. In the U.K, the principle has been accepted and implemented because the standards of leadership, both in the politics and in the police, have been comparatively of a high order. The police as an organisation and policing as a set of functional activities have evolved on healthy lines. The existence of an alert and enlightened citizenry has combined with the growth of healthy democratic institutions to ensure that the prescribed boundaries are not crossed by the concerned parties.

Unfortunately, in our country, we have not been able to set up healthy traditions and practices of good governance. It, therefore, becomes essential to establish institutional and other arrangements, which would ensure that the police are able to attend to their investigative functions without illegitimate interference. As already suggested, the State Security Commission must play an active role in ensuring this by closely monitoring police performance. The Commission must build up capability in the police to take cognizance of, and pursue cases involving politicians and other influential people. It was this consideration which led the Supreme Court to decide in the Havela case that a statutorily established Central Vigilance Commission should exercise superintendence over the CBI. If the superintendence of the Central Government over the CBI can be terminated, there is no reason why the control of the State Government over the investigation work of the police should not be similarly dealt with, at least in respect of cases involving politicians and others in positions of power.

The SSC has been conceived of merely as an advisory body to the Government and not as a mechanism which would provide the type of insulation required by the police if they have to function effectively as an instrument of law and not of the Government.

### **Appointment, Transfer and Fixed tenure of service**

It is felt that one of the prominent reasons for the vulnerability of the Police to illegitimate pressures from the executive is the threat of transfer that always hangs on the head of Chief of the State Police Force and other officers, particularly when they resist pressures.

Transfer and suspension are two weapons frequently used by the politician to bend the police down to his will. It is not always easy to take statutory punitive action against police personnel under the disciplinary rules, but transfers can be effected on grounds of administrative expediency without difficulty.

This, however, is not the only reason for whimsical and arbitrary transfers. Postings and transfers are done to reward people too. In fact, the moment somebody is appointed as the Chief Minister, he brings a person of his choice as the head of the police force. This imports into the system a personal factor, sends a message that the chief of police is the Chief Minister's man and increases the vulnerability of the organisation to pressures.

Superintendents of Police are posted in the districts less on grounds of merit and more on considerations of caste and communal politics or on the basis of estimation of being amenable to pressures. The Supreme Court recently observed: "*It is shocking to hear, a matter of common knowledge, that in some States the tenure of a Superintendent of Police is on an average only a few months and transfers are made for whimsical reasons.*"<sup>mii</sup>

Transfers are also used by corrupt politicians as a means of making money. There are certain postings, which are considered lucrative as they offer opportunities to make money, while others are regarded as 'dry.' Then there are postings, which are known to be hard, either in terms of absence of even basic facilities in places of posting or on account of arduous and perilous nature of the new job. Transfer orders to some places or jobs and cancellation of



orders in other cases fetch handsome illicit gains. As Shri Madhav Godbole, the former Union Home Secretary has pointed out: "*The transfer mela gets converted into a wholesale market where posts often go to the highest bidder.*"<sup>xiii</sup>

The NPC had considered this subject. Even at that time, when the situation was somewhat better than what it is now, the NPC was appalled by the fact that "*transfers were too frequent, ad hoc and arbitrary in nature, and were mostly ordered as a means of punishment and harassment, sometimes due to the influence of local politicians.*"<sup>xiv</sup> The NPC cited figures and cases, including that of a Sub-Inspector of Police, who was subjected to 96 transfers in 28 years of service, to prove that frequent and arbitrary transfers badly damaged the professional health of the police organisation.

In Uttar Pradesh, during the recent regimes of Mulayam Singh Yadav and Mayawati, 3000 IAS, IPS & PCS officers were transferred during the short period of 1993 to 1995.<sup>x</sup> Mayawati set an all-time record by transferring as many as 250 of the 310 IPS officers in the State in a short span of 100 days. Some officers were transferred as many as six times in this period<sup>xi</sup>

Frequent and arbitrary transfers damage the growth of the police organisation on professional lines in many ways. Firstly, they introduce an element of instability in the police organisation. This happens not only due to changes in policies and programmes of the police organisation at different levels, but also because the short period of stay of incumbents hardly equips them with knowledge of the new place to perform effectively. Secondly, they invariably result in putting the wrong man at the right place and the right man at the wrong place. Since postings are not governed by merit, honest men are assigned comparatively inconsequential postings and wrong men are given crucially important assignments. This demoralises those who can deliver. Thirdly, they encourage the system of patronage and impunity, which in turn promotes police deviance.

According to the Supreme Court, frequent and whimsical transfers, besides "demoralising the police force" and "politicising the personnel," constitute a practice that is "alien to the envisaged constitutional machinery."<sup>xii</sup>

The main recommendations made by the NPC on the subject can be briefly summarised as follows:

- The Chief of Police should be assured of a fixed statutory tenure of office. The tenure may be for four years or for a period extending up to the period of retirement, whichever is earlier. The removal of the Chief of Police from his post before the expiry of the tenure should require approval of the State Security Commission.
- The Chief of the State Police Force should be selected from a panel of three IPS officers of that State cadre. The panel should be prepared by a committee headed by the Chairman of the UPSC, with Union Home Secretary, the senior most among the heads of Central Police Organisations, the Chief Secretary and the existing DGP of the State as members.

- There should be a provision in the Police Act, specifying the authorities competent to issue transfer/suspension orders regarding different ranks and stating clearly that any such order issued by any other authority would render the order null and void.
- The rules should state that every transfer/suspension order should contain a brief statement of reasons for the issue of the order and any order not supported by the explanatory statement should be treated as invalid.

Considerable water has flown down the bridge since the above recommendations were made by the NPC. The problem has become much worse than what it was at that time. However, some initiatives taken by the civil society organisation recently appear to be bearing fruit. One of these initiatives was the Civil Writ Petition filed in the Supreme Court in what has come to be known as the Havala Case. The Supreme Court, in the Havala case, decreed that superintendence over the CBI's work should be exercised by the Central Vigilance Commission. Director CBI should have a fixed tenure of two years and a Committee headed by the Central Vigilance Commissioner should recommend the selection of an officer to the post. In fact, selection/extension of tenure of officers up to the level of Joint Director in the CBI should be decided by this Committee. The Court further suggested that a similar mechanism should be set up in States for the selection/appointment, tenure, transfer and posting of not merely the Chief of the State Police but also all police officers of the rank of Superintendent of Police and above.

The charter prescribed for SSC should be widened to include this responsibility.

Premature termination of tenure should be permissible in exceptional circumstances, which should be clearly stated in law.

Under no circumstances should the tenure of service be extended beyond retirement.

### **Enactment of a new Police Act**

The Police Act of 1861 had a limited purpose. It was enacted mainly to "*reorganise the police and to make it a more efficient instrument for the prevention and detection of crime.*"<sup>biii</sup> This objective can not be regarded as adequate for the police force of a modern democratic country.

Enormous changes have occurred in this country since Independence, which, as pointed out by the National Police Commission of 1997, cast a paramount obligation and duty on the Police to function according to the requirements of the Constitution, law and the democratic aspirations of the people. They also suggest the need for the police to be professional, service-oriented and free from extraneous influences and yet remain accountable to the people.

As already stated, the 1861 Act provides for control over the police force but not for its accountability to the community. This is its biggest shortcoming in the present context.

Even in respect of control, it vests the superintendence of the police force in the State Government and the administration of the district police in the District Superintendent of Police, but subject to the "general control and direction" of the District Magistrate. This system of dual control over the district police subjects it not merely to its departmental seniors but also to a part of the executive outside the department. This has been a unique feature of the police system introduced in this country by the British and has been a considerable source of resentment to the senior police hierarchy. Two important features of the situation prevailing at the time the Police Act was introduced are relevant. One was the combination of judicial and executive in one authority which the British introduced here for reasons of administrative expediency. This position no longer obtains today and one of the fundamental tenets of a democratic polity i.e. separation of executive and judiciary has been accepted and implemented. The other was the fact that that the policing at that time was considered a relatively simple task which could be performed reasonably efficiently under the general control and direction of a functionary who was not professionally trained in police work. It is significant to note that in 1860, when the new system was introduced, there was no regular cadre of superior police officers. This situation also no longer prevails and there is now a full-fledged cadre of professionally trained police officers.

The charter of functions prescribed in the Police Act of 1861 requires the policeman to obey and execute all orders issued by a competent authority; collect and communicate intelligence affecting public peace; prevent commission of offences and public nuisances; detect and bring offenders to justice; and apprehend persons whom he is legally authorised to apprehend. This charter does not include even some basic functions associated with the police, like preserving public order; controlling traffic etc. In addition, the preventive and service oriented functions are missing from the charter.

The National Police Commission has removed the inadequacies and redefined the role of the police. The preventive and service oriented role of the police has been heavily stressed, requiring the police, *inter alia*, to identify problems and situations that are likely to result in commission of crimes; reduce opportunities for commission of crimes; aid individuals who are in danger of physical harm; counsel and resolve conflicts and promote amity; provide necessary services and afford relief to people in distress situations; assist in preventing the poor from being exploited; prevent harassment of women and children in public places; refrain from causing needless inconvenience to the members of the public; arrange for the provision of prompt medical aid to the injured persons etc.

It is not merely the Police Act of 1861, but certain State Police Acts too, which too need to be replaced. There is an impression in certain quarters in the public that it is the Police Act of 1861 which is governing the Police Forces all over the country. This impression is wrong. A number of States have enacted own laws since Independence to regulate the functioning of 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 etc. Some State Governments have also framed separate legislation to regulate the working of their State Armed Police Forces. The enactment of these laws after Independence has not brought about any significant improvement in the performance or behaviour of their Police Forces. The new pieces of legislation have been as silent and remiss as the Police Act of 1861 in so far as ensuring police accountability to the community is concerned. It only

proves once again that there has through out been a resistance, covert or overt, to the idea of reforming the police in the country.

It is necessary to discard the outdated Police Act of 1861 as well as some State Acts introduced after Independence and replace them with new legislation.

All new legislation introduced to govern the working of the Police Forces must be measured against the following criteria<sup>xiv</sup> as a minimum:

- incorporates reference to international and domestic rights standards relevant to policing;
- establish institutional and other arrangements to insulate the police from undesirable and illegitimate outside control, pressures and influences
- outline the nature, philosophy and practices expected of the police;
- prescribe mechanisms to ensure police accountability;
- delineate powers as well as functions; and
- impose a statutory requirement on the police to consult with and be influenced by the community and provide appropriate guidelines for such consultation.

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<sup>i</sup> Report of the Indian Police Commission, 1902-03, p 150

<sup>ii</sup> David Arnold: *Police Power and Colonial Rule in Madras, 1859-1947*( 1986)

<sup>iii</sup> National Police Commission: *Second Report ( August, 1979)*, pp 31-32, para 15.48

<sup>iv</sup> National Police Commission: *Second Report*, p30, para 15.42

<sup>v</sup> The list is given in para 15.13 of the Second Report of the NPC

<sup>vi</sup> Supreme Court's judgement in Criminal Appeal No. 218 of 1966 reported in AIR 1968 Supreme Court 117

<sup>vii</sup> Supreme Court's judgement in Writ Petition ( Criminal )Nos. 340-343 of 1993, commonly known as the Havala case.

<sup>viii</sup> Vide his essay "Corruption, Political Interference and the civil Serrvice" in *Corruption in India – Agenda for Action* (ed.- S. Guhan & Samuel Paul ), Vision Books, New Delhi, 1997, P70

<sup>ix</sup> National Police Commission: *Second Report*, august 1979,p24, para 15.15

<sup>x</sup> Prakash Singh: *Tarnishing Khaki*, The Times of India, May 5, 1996

<sup>xi</sup> Figures cited by Shri Madhav Godbole in his essay cited above.

<sup>xii</sup> *Ibid* 7

<sup>xiii</sup> Preamble to the Police Act of 1861

<sup>xiv</sup> Mary O'Rawe & Dr. Linda Moore: *Human Rights on Duty- Principles for Better Policing- International Lessons for Northern IReland*, published by the Committee on the Administration of Justice, Belfast, 1997