

Police Accountability in India

By G.P.JOSHI*

Introduction

India is a union of 28 states and 7 union territories.¹ Under the Constitution of India, the 'Police' are a State subject.² This means that they are the responsibility of State governments. The organisation and working of the police forces are governed by rules and regulations framed by the state governments.

Each state/ union territory has its own separate police force. In addition, there are central police organisations set up by the union government for specialised work. The total strength of the state/union territory police forces on 1.1.2003 in the country was 14,68,776. In addition, the strength of the five³central para-military organisations alone was 6,01,328.⁴ The combined strength of state and central police is about 2.2 millions.

This huge reservoir of trained manpower can become a very important catalyst of positive change in society provided they are made to serve the rule of law and held accountable for their sins of commission and omission, if any. The issue of holding them accountable is very closely linked to the type of control and superintendence exercised over them.

This paper discusses the subject of police accountability in India in four parts. The first part describes the main features of the police system established by the British in this country and shows how the idea of making the police accountable to anyone outside the establishment did not fit into the colonial model of policing introduced in this country. The second part argues that though the post Independence India witnessed changes on many fronts, the police system, in its basic structure, methods of work and lack of public accountability remained more or less unchanged. It also discusses some developments that resulted in strengthening the executive control over the police and leading to an increasing abuse of police forces and misuse of police powers. The third part talks about the need to make the police accountable, especially in the context of citizens' complaints against police personnel and discusses the mechanisms that exist, both within and outside the department, to ensure accountability. The concluding portion sums up the discussion and suggests that the need for police reforms is too important to be neglected and too urgent to be delayed.

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1. The Police System - A Colonial Legacy

The Police as an organised institution in this country came into existence with the Police Act of 1861. This legislation was passed in the wake of the *Indian Sepoy Mutiny* of 1857, when the Indian soldiers in the colonial army revolted against their British commanders. The mutiny later developed into a rebellion against British rule in India. Though the revolt was quelled speedily and successfully, it did jolt the British into taking many steps to consolidate their rule in India, including the establishment of an authoritarian police force to support the colonial government.

The British realised that to perpetuate their rule in this country, they must have a police force that was totally subservient to the executive. The executive must exercise complete and unquestioning control over the police force. Section 3 of the 1861 Police Act vested the superintendence⁵ of the state police forces in the state governments. The same Act introduced a system of dual control at the district level.⁶ It put the police forces under the command of the District Superintendents of Police, but subject to the “general control and direction”⁷ of the District Magistrates. This was done deliberately because the functioning of the District Magistrate as the chief officer of the district was considered essential for the maintenance of British rule in India. Under the system of police governance established by the 1861 Act, the police forces in India were unaccountable to anyone except their own hierarchy and the colonial political and administrative executive. Making the police accountable to the community or other democratic or local indigenous institutions did not fit into the British colonial model of control.

The British structured the organisation in a way so that the senior positions in the force would be occupied by them and the junior slots would be kept for ‘natives.’ Section 7 of the Police Act of 1861 uses the words “inferior officers” for those occupying the lower ranks in the police. Even when the senior posts were Indianised in due course, the elitist bias was not forsaken. Family background always weighed heavy in picking candidates for senior vacancies. They realised that a system based on feudal values prevalent in the Indian society would work effectively in ensuring that the rank and file, which constituted the bulk of the force, remained loyal, subservient and accountable to their seniors within the organisation and government.

This gave rise to a managerial philosophy, which was based on distrust of the lower ranks in the organisation. The natives were not to be trusted. This distrust is reflected in the provisions of law also. For example, under Section 162 of the Criminal Procedure Code, the statement of a witness recorded by the police during investigation is not to be signed by the person making the statement and it can not be used during trial for any purpose other

than that of contradicting the witness if he differs from it. Similarly, Section 25 of the Indian Evidence Act, 1872 says that confessions recorded by a police officer shall not be admissible in evidence.

The police was raised on a militaristic and authoritarian pattern. There was tremendous emphasis on maintenance of a type of discipline, which bordered on regimentation, requiring the lower ranks to obey orders blindly. The system did not require the constabulary to put on their thinking caps while performing their duties. They in fact were not required to have any. That is why recruitment to constabulary stressed on the requirements of brawn and not brain. The taller and heftier the recruit, the better. During training, his physical fitness and endurance must improve. It was for this reason that the training programmes in the police were biased heavily in favour of outdoor activities, like drill. He need not be educated, but he must have an intimidating presence, that should deter not only the criminals but also ordinary citizens. In his presence, nobody should raise questions or demand answers.

All the above factors combined to produce a system, which situated the bulk of the police force at a distance from the community. Understandably, the 1861 Act failed to produce an efficient, professional and an accountable police force in the country. This was realised by the colonial rulers themselves. For example, 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."*⁸

The Commission made many recommendations but either failed to recognise or conveniently ignored the fact that most of the ills afflicting the organisation could be ascribed to the system established by the Police Act of 1861 and the philosophy of policing that was prescribed. The Commission, despite themselves unearthing massive evidence to the contrary, concluded that the system introduced in 1861 was on the whole a wise and efficient system⁹.

2. Post Independence Developments

The advent of Independence changed the political system, but the police system remained more or less unaltered. 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 were

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

Though the country has been independent for more than 57 years, till now, no government, central or state, has taken the initiative to replace the Police Act of 1861 with new legislation, which would be in tune with requirements of democratic policing.

It is not as if no new legislation has been passed. Some state governments have enacted new legislation since Independence to govern 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. 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 organisational structure, performance or behaviour of the Police Forces. The reason - the new enactments were patterned on the model of the old 1861 legislation. They are as silent and remiss about the new requirements of democratic policing as the colonial legislation was. In fact, some of these state Acts, like the Bombay Police Act, 1952 further tightened the executive control over the police force, without introducing any safeguards to prevent the misuse of police force for partisan purposes and without incorporating effective mechanisms to ensure police accountability. The result was there for all to see during the communal riots in Gujarat in 2002.

Police during the Emergency

For a couple of decades after Independence, it did not matter much, as the standards of leadership, in both politics as well as police, were quite good. Gradually, however, the standards started declining, with politics becoming increasingly contentious and criminalised, 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. Almost all the State Police Commissions, the National Police Commission and other expert bodies, which inquired into the problems of the police in India, found overwhelming evidence of misuse of the police by politicians for narrow selfish ends.¹⁰ This was particularly seen during the period of Emergency¹¹ (1975 - 1977) when the police committed atrocities on a wide scale. The brazen manner in which the police were misused during this period prompted the government that came to power at the center after the Emergency to appoint the Shah Commission of Inquiry.¹² The Shah Commission unearthed considerable evidence to prove that during the

period of Emergency, some police officers behaved as though they were not accountable at all to any public authority. In its report, the Shah Commission told the government: "employing the police to the advantage of any political party is a sure source of subverting the rule of law",¹³ and asked the central government to take measures to insulate the police from illegitimate political and executive interference.

National Police Commission

In response, the Government of India appointed the National Police Commission (NPC). The NPC was asked to make a comprehensive review of the police system, having regard to the far-reaching changes that had taken place in the country after the enactment of the Indian Police Act of 1861, the report of the last Police Commission of 1902 and particularly those changes which had taken place since Independence. The NPC had fairly wide and comprehensive terms of reference, including a fresh examination of the role and performance of the police, both as a law enforcement agency and as an institution to protect the rights of citizens enshrined in the Constitution. One of its most important terms of reference required it to recommend measures and institutional arrangements to prevent misuse of powers by the police and misuse of the police by politicians or other pressure groups.

During the period between 1979 and 1981, the NPC produced eight reports. Some major recommendations centering around the problem of insulating the police from illegitimate political and bureaucratic interference included: (i) setting up of a Security Commission in each state to see that the government exercises its superintendence over the police in an open manner within the framework of law; (ii) prescribing a selection procedure that would ensure the appointment of the best officers to head the state police force; (iii) giving these officers a fixed minimum tenure so as to reduce their vulnerability; (iv) amending rules so that arbitrary transfers of police officers done without authority would become null and void; and (v) replacing the Police Act of 1861 with a new Police Act.

None of the above recommendations of the NPC has been implemented. These recommendations perturbed the entrenched elite at the prospect of losing control over an organization, which they have been misusing for so long. Politicians and bureaucrats have developed a great vested interest in retaining control and superintendence over the police organization and in letting the status quo continue.

Criminalisation of Politics

In fact, the situation has become worse since the NPC made its

recommendations. Over the last few decades, there has been a large influx of criminals into the Indian polity. The Election Commission of India estimated in the late 1990s that 40 members of Parliament and 700 members of State Legislative Assemblies had criminal records.

As the nexus between the criminals and politicians becomes stronger, it is able to subvert the loyalty of the functionaries at different levels in the government, including the police. Criminalisation of politics has gradually led to undermining the authority of the police leadership and consequently the discipline of the force. The police are a hierarchical organisation. If the effectiveness of the leadership is undermined, the entire force becomes vulnerable to wrong influences, with the functionaries at different levels looking elsewhere for protection and rewards. Besides breeding indiscipline in the force, it promotes a climate in which impunity flourishes. It ultimately shakes the confidence of the public in the police.

“Today we have a police, which is politicised and politically polarised. For it has become a pawn in the hands of its masters. In return, the policemen get political patronage, which has become essential for their survival.”¹⁴

Failure of the criminal justice system

The public are unhappy not only with the police but with the functioning of other agencies of the criminal justice system. Crime has registered an increase. For example, the total cognizable¹⁵ crime registered under the Indian Penal Code (IPC) increased from only 6.25 lakhs¹⁶ in 1951 to 17.2 lakhs in 2003. The total cognizable crime in 2003 was about 55 lakhs, including 37.8 lakh offences¹⁷ registered under the local and special laws.¹⁸

When there is an upsurge in criminal activities or a particularly heinous crime is committed, the public tend to blame the police. The general tendency is to hold the police solely responsible for any increase in crime. This attitude is reinforced by the manner in which the police react to public criticism. They either quote crime statistics, which are not too impressive or point out inadequacies of manpower and equipment at their disposal.

Crime statistics in any case are not very reliable. A common complaint against the police is that they do not register crime fully. Concealment or burking of crime is quite common. One major reason for this is that police performance is evaluated on the basis of crime statistics. This, according to the NPC, encourages “the police to adopt questionable methods of recording and controlling crime and even resorting to illegal acts.”¹⁹ They suggested that “correct registration of crime”²⁰ be adopted as one of the yardsticks to

evaluate police performance. However whenever this is done, it leads to a tremendous increase in crime figures, resulting in an outcry in the press and the legislature and causing considerable embarrassment to the government. The police revert again to the old evil of concealing crime by not registering it. This results in denying access to justice to a large number of people, particularly those belonging to poor and marginalised sections of society.

When a large number of persons, after committing crimes, are allowed to get away and justice is not meted out to victims or cases drag on in courts for umpteen number of years, it results in eroding the faith and confidence of the public in the effectiveness of the system.

More than an increase in crime, it is the failure of the system to deal promptly, justly and effectively with those who commit it that has been responsible for the loss of faith and confidence of the public in the effectiveness of the system. There has been a steep decline in the conviction rate. While in 1971, the conviction rate of IPC offences (number of cases convicted to total number of cases tried) was 62%, by the year 2003, it had declined to about 40%.²¹ Justice is being denied as well as delayed. The courts are clogged with huge arrears of cases under trial. According to the 61st report of the Parliamentary Standing Committee on Home Affairs, 25 million cases were pending trial in different courts in the country.²²

The citizens expect the State to establish the rule of law and provide them freedom from crime and violence. The State's failure to do so gives rise to public fear of crime and criminals. Fear of crime feeds on itself and always grows at a rate faster than crime. It is public fear of crime, which sometimes provides a license to the police to ignore the law and deal with crime and criminals by using rough and illegal methods. Blinding of criminals done by Bhagalpur Police way back in early eighties was one example of such license.²³ This has been followed by other incidents. Police deviance is bound to increase whenever the fear of crime whips up the rhetoric of war against crime, criminals and terrorists. What the public want is a feeling of security and are not always willing to question the methods used by the police in achieving their success in the fight against crime and criminals.

Terrorism and organized violence

It becomes all the more difficult to hold the police personnel accountable for their misdeeds committed in areas affected by the problem of terrorism or other forms of organized violence. A number of states, like Punjab and J&K witnessed considerable terrorist violence in the last few decades. In such areas, rule of fear reigned supreme and people did not come forward to give any support or cooperation to security agencies. The functioning of courts

was affected badly and cases against terrorists if brought before the courts by the police did not get settled. The government in such situations invariably used the opportunity provided by the accelerating fear of crime and violence to arm itself with repressive powers. It introduced 'black' laws, which enhanced the powers of the police and curtail citizens' rights. The police got virtually a free hand and frequently committed violations of human rights. Complaints of human rights abuses received against police personnel from such areas often included arbitrary arrests, incommunicado detention, excessive use of force, disappearances, custodial violence and extra-judicial executions. The government generally overlooked complaints against security personnel on the ground that action taken in such cases would demoralise the police forces and weaken their resolve to crush organised violence with a heavy hand. This has happened in several areas. For example, in Punjab, gross violations of human rights during the hey-days of terrorism were overlooked by the State and to some extent even by the public.

Impunity

Usually, where the police are needed by government to deal with serious or significant law and order problems of political significance such as terrorism, police excesses get state implicit or even explicit approval, if not encouragement and support. In some cases, the assurance of impunity is granted in advance. An example could be found in the address given on April 30, 1998 by the then Chief Minister of Uttar Pradesh (UP) Mr. Kalyan Singh. The Chief Minister, while addressing the state police officers at a law and order review meeting in the state capital, said:

*"I want performance results. I want you to take a vow that you will create a dhamaka (explosion) in the state. If noted criminals can be liquidated in encounters, do it. If you take the life of one person who has taken the lives of 10 others, then people will praise you. And I am here to protect you."*²⁴

This concern for maintenance of law and order does not inspire confidence in the public because the credentials of political leaders expressing such concern are themselves questionable. As an editorial in a newspaper said in connection with a similar call made to the police force in the same state by a different Chief Minister: "As it is, many of his ministerial colleagues, cutting across political affiliations, have a criminal background. Surely their presence in positions of power can only encourage criminals.....The right place for criminals is neither jungles nor the Assembly but behind bars."²⁵

When the assurance of impunity comes from the highest quarter in the State, police officers become emboldened to misuse their powers or to become silent spectators to incidents involving major violations of law. They know that

they cannot be asked to account for their acts of dereliction of duty or misdeeds. This was particularly noticeable during the incidents of communal violence in Gujarat that occurred during February-April, 2002.²⁶ The police were not able to control the riots, which continued for more than three months and caused tremendous loss of lives and property of the members of the minority community. There is considerable evidence to show that the police were complicit in many cases and did not come to the rescue of the victims. There are reports that the state government was biased against the minority community and did not want the police to quell the riots effectively.

The danger of the public also turning a blind eye towards the use of illegal methods by the police is particularly manifest in areas where the terrorists or insurgents or criminals belong to minority communities and their crimes of violence are targeted against members of majority community. The public in such cases may not take serious notice of violence committed by police personnel against people suspected to be terrorists or their supporters.

There is a provision in law that enables the government to provide impunity even in proven misdeeds. This provision is contained in Section 197, Criminal Procedure Code, under which a public servant cannot be prosecuted without the sanction of the appropriate authorities for acts done "*while acting or purporting to act in the discharge of his official duties.*" The purpose of this provision of law is to ensure that frivolous and vexatious complaints are not filed against police officers to demoralise them and dissuade them from performing their duties. However, it is a fact that this provision of law has been abused to provide protection to police officers even in serious cases of misconduct. This happens because of nexus between politicians, bureaucrats and police officers, which deliberately delays or denies sanctions for prosecutions. The National Police Commission's recommendation²⁷ that protection available to the police officers under Section 197 of the Cr.P.C. 1973 be withdrawn has not been accepted.

Double Standards

The police feel that the government as well as the public sometimes adopt double standards in dealing with them. When the problem of terrorism is at its peak, they are given a free hand to deal with it the way they think fit, but once normalcy and peace return, their methods are questioned. This happened especially in Punjab, where after the state was rid of the problem of terrorism, the civil society groups became active and started demanding that police personnel be held accountable for all the wrongs they did during the earlier days. The Times of India in September 1997 cited figures from the Union Home Ministry stating that 123 police officials were facing trial for using illegal methods against terrorists. In addition, 2,555 petitions

had been filed against Punjab police officers by individuals and human rights organisations. The grievance of the police was that no one came forward to support or assist them during those difficult times when they and their families had to bear the brunt of terrorist onslaught. As many as 1500 policemen lost their lives while fighting terrorists during the five-year period 1988-1992 in Punjab,²⁸ but once the problem was over, mainly due to police efforts and sacrifices, they were being asked to account for the methods they used.

3. Police Deviance and Accountability mechanisms

There is ample evidence of increasing police deviance in India. Incidents of brutality, extortion and other crimes committed by police officers in different parts of the country are reported in Indian newspapers. The National Human Rights Commission's data shows that the number of complaints relating to 'deaths in police custody' reported to them increased from 136 in 1995-96 to 183 in 2002-03. During the same period, 'illegal detention/arrest' increased from 112 to 3595, and other 'police excesses' from 115 to 9622²⁹.

The majority of complaints received by the National Human Rights Commission (NHRC) are against police personnel. Even the official statistics indicate that the number of public complaints against the police received by police departments is very high. The report of the National Crime Records Bureau (NCRB), a Government of India organisation, shows that during 1997, as many as 1,23,523 complaints against the police were received from the public, though by the year 2003, the number had declined to 55115³⁰.

Most public complaints against police personnel fall into the following four categories:

- brutality or excessive use of force;
- corruption;
- partiality or bias; and
- failure to register complaints

The existing mechanisms for calling the police account for their actions can be discussed broadly under two main headings:

1. Internal Accountability Mechanisms.
2. External Accountability Mechanisms

Internal Accountability Mechanisms

The internal mechanisms for holding individual police officers accountable

for their actions are contained in the Police Act of 1861, the state governments' Police Acts and in rules laid down in state Police Manuals. The Police Act of 1861³¹ authorises senior police officers of the rank of Superintendent of Police and above to dismiss, suspend or reduce the rank of any police officer of subordinate ranks³² whom they think remiss or negligent in the discharge of his or her duties or unfit for the same. They are also authorised to impose one or more of the other punishments, including (a) fine not exceeding one month's pay, (b) confinement to quarters not exceeding 15 days, (c) deprivation of good conduct pay, and (d) removal from any office of distinction or special emolument.

In addition, the Police Act of 1861 lists the following offences for which a police officer can be disciplined: (i) a wilful breach or neglect of any rule or regulation or lawful order; (ii) withdrawal from duties of the office or being absent without permission or reasonable cause; (iii) engaging without authority in any employment other than his police duty; (iv) cowardice, and (v) causing any unwarrantable violence to any person in his custody. The penalty for these offences ranges between fine of up to three months' pay to imprisonment up to three months or a combination of both.³³

The rules divide punishments into 'major' and 'minor'. Though the rules differ from state to state, generally, dismissal, removal, reduction in rank or pay and forfeiture of service are regarded as 'major punishments'. They cannot be imposed on any police officer without conducting a regular departmental inquiry. It is only after the inquiry proves the charges against the accused police official that a major penalty can be imposed. Minor punishments include censure and reprimand. They can be imposed without conducting any departmental disciplinary proceedings.

Giving major punishments to guilty police personnel is difficult and takes time because the procedure of conducting departmental inquiry is highly elaborate, cumbersome and time consuming. Even if the charges are proved, the delinquent police officer can and generally does go to the court against the findings and punishment imposed.

Unfortunately, the authority of police leadership in India has been eroded over time by political interference, leading to loss of discipline in the force and the promotion of a tendency at different levels within the police to seek outside patronage for rewards and to be shielded against punishment. This is one of the major reasons for the decline in the effectiveness of departmental mechanisms to ensure police accountability.

It is imperative that any arrangement for inquiry into complaints against the police should be acceptable both to the police and public as fair and just.

This was recognised by the National Police Commission. In their First Report, the Commission suggested arrangements, whereby inquiries would be conducted by departmental authorities and also by an independent authority outside the police. The Commission felt that a large number of complaints against police should be looked into and disposed of by the supervisory ranks in the police hierarchy, but a judicial inquiry should be made mandatory in the following categories of complaints against the police:

- alleged rape of a woman in police custody;
- death or grievous hurt caused while in police custody; and
- death of two or more persons resulting from police firing in the dispersal of unlawful assemblies.

However, the government has not accepted these recommendations. The response of the government to the recommendations of the NPC has never been made public.

In any case, the departmental mechanisms for dealing with police misconduct do not always inspire public confidence. There are allegations that police departments sometimes suppress incidents of misconduct by individual police officers because the revelation of the facts could damage the image of the organisation. Inquiries into citizens' complaints against the police are not credible. There is general public distrust emanating from the fact that the police themselves conduct the enquiries. In 2001, the Prime Minister's Office (PMO) reprimanded the Delhi Police for treating shoddily public complaints against police officers referred to it by that office. According to the PMO "The field reports prepared at the district level are generally evasive, there is a lack of sensitivity, lapses of police are concealed and emphasis is mainly on statistical disposal." ³⁴

One factor that is sometimes responsible for police indifference towards public complaints is a feeling on the part of police personnel that a large number of complaints are false and made out of selfish and malicious considerations.

External Accountability Mechanisms

Judiciary

The courts constitute one of the most important external mechanisms of ensuring police accountability. While writ petitions and public interest litigations can be filed in higher courts, criminal prosecutions can be launched in lower courts. A number of significant judgments have been passed by the higher courts, prescribing safeguards or guidelines to regulate police

conduct during arrest, interrogation and other stages of investigation, asking the government to pay compensation in cases of custodial violence, commenting adversely on the police for showing discrimination in the handling of communal and caste conflicts and passing strictures in many cases where defective or inadequate police investigation was noticed. On December 18, 1997, the Supreme Court delivered a landmark judgement aimed at insulating the Central Bureau of Investigation³⁵ and the Directorate of Enforcement from outside influences so that they could function efficiently and impartially, to serve the rule of law³⁶. The Judgment also declared null and void, the Single Directive, which required the CBI to seek permission from the government before undertaking any inquiry or investigation against senior civil servants of the rank of Joint Secretary and above. However, the government has succeeded in diluting the effect of this judgement by passing a law, which has brought the Single Directive back and put it on the statute book³⁷.

One major problem is the absence of any mechanism to constantly monitor the implementation of the courts' judgements and take the defaulting government or other parties back to the courts.

Citizens can, of course, file private complaints to the courts to seek redress. However, this is rarely done. This is partly because of ignorance and partly because accessing courts is time consuming and costly and inhibits the average person's ability to use the courts for redress.

Human Rights Commissions

The human rights commissions established under *The Protection of Human Rights Act, 1993 (the Act)* provide another means of holding the police accountable in cases of misconduct. The most important of these commissions is the National Human Rights Commission (NHRC), which was established on October 12, 1993.

The NHRC undoubtedly has some achievements to its credit, in terms of its efforts to make the police accountable for their actions. However, the Commission's work has suffered due to certain infirmities and deficiencies in the law governing its functioning.

The Commission is supposed to be completely independent in its functioning, but there are certain provisions in the Act, which underscore the dependence of the Commission on the Government. The Act makes it dependent on the government for some of its requirements, like manpower and finance.³⁸

More importantly, 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 the Act, means not only the naval, military and air forces but also some central armed police organizations, like the Border Security Force.³⁹ The Act obviously weakens the NHRC's effectiveness in providing redress to the public in cases where violations have been committed by members of these forces, which are often deployed on law and order duty in disturbed areas. All that the Commission, under 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 all⁴⁰. There have been cases where the central government has sometimes denied it even the records sought by it. In its latest report, the Commission regretted "the lack of cooperation extended to it through the denial of access to records requested by it in respect of trials conducted against members of the para-military forces accused of human rights violations."⁴¹

Furthermore, under the Act, the Commission has no power to enforce its decisions. According to the Act, where the enquiry conducted by the Commission discloses a violation of human rights, it can only advise the government to take action against the guilty persons or grant relief to the victim⁴². If any State government refuses to accept the advice, there is no provision in law, which empowers the Commission to force the government to implement its advice. It can of course approach the higher courts and seek directions. The J&K State Human Rights Commission in its latest report "is disappointed to place on record its anguish at the attempt to brush aside the recommendations of the Commission by some officers and starting a fresh inquiry at their end after they receive the recommendations."⁴³

In many respects, the human rights commissions have acted as a check. The problem, however, is that an institution like the NHRC in a country of India's size becomes too remote from the scene to be effective in many cases. A large number of police atrocities are committed in small towns and villages of India, where people are not aware either of the Commission's existence or of its procedures. Most State Governments have yet to set up their own Commissions. Till now, only fourteen⁴⁴ out of twenty-eight states have established human rights commissions. Even where these bodies have been established, all of them are not functioning viably. The NHRC, in its report for the year 1999- 2000, expressed its disappointment with the slow pace with which State Governments were acting to constitute State Human Rights Commissions. It also noted that not all human rights commissions that had been established were being appropriately supported through the provision of adequate financial and manpower resources.⁴⁵ More or less similar sentiments have been expressed in the latest report of the NHRC for the

year 2002-03. The Commission has referred to the “unhappiness” expressed by certain state human rights commissions “over the difficulties they are experiencing in terms of lack of support, both financial and otherwise.”⁴⁶ The J&K Commission in its latest annual report has alleged that efforts are on to make it redundant and dilute its position “which if allowed will terribly tell upon the reputation of the state”⁴⁷.

It will take time, some amendments in law, sincere and efficient attempts by the commissions to live up to their charter and tremendous pressure from the public to make the human rights commissions in India sufficiently strong, independent and vibrant to ensure the accountability of state institutions and protection of citizens against violations of their rights.

Non-government organizations

NGO activities relating to the police are broadly of two types: (1) those concerned with violations of human rights committed by police officers and (2) those concerned with reforms in the working of the police organisation. The former group of activities include bringing police atrocities out in the open and putting pressures on the government to take action against the police. Police or government reaction to NGO allegations is usually that of denial. The government is generally reluctant to expose police abuse of power as it could be used against them by the opposition. However, where the documentation of human rights violations is authentic and supported by irrefutable evidence, the government is forced to take action. But documenting human rights violations committed by police personnel poses a major challenge to the NGOs. The task is quite daunting not only because of the intimidating nature of the work but also because of lack of expertise. The NGO's lack of expertise makes it difficult for them to advocate successfully for concrete alternative plans for restructuring the police or recommend programmes for action within the existing framework. For example, during the communal violence in Gujarat, the police did not register the complaints of many of the victims of communal violence who belonged to minority ethnic groups. Many of these victims were denied compensation as well as access to criminal justice. While a large number of NGOs were very eager to help the victims, they could not do much because of their own ignorance of law, the police and court procedures.

One problem faced by NGOs advocating for police reforms is the non-availability of information about government's plans and programmes concerning the police. The police are very reluctant to share information with outsiders, particularly the NGOs. This hampers the work of the NGOs, especially with regard to police reforms.

More importantly, there is an element of distrust between the NGOs and the government in the country. The government feels that although the NGOs are ever ready and willing to condemn the police at the drop of a hat, they have no alternative plans to suggest. Those NGOs that receive foreign funding are under greater suspicion. Generally, the government regards NGOs as the mouthpieces of the opposition parties or of international pressure groups. Another perception about them is that they are selective in denouncing human rights violations. While violations by security forces of the country are violently denounced by them, more heinous violations committed by terrorists are not even criticized. This perception is shared even by certain sections of the public.

Media

One of the most vigilant watchdogs over the police functioning in this country is the media. The media in India enjoys a wide measure of freedom. It has enormous reach and power. Technological advances witnessed during the last few decades have revolutionized the world of communications and opened frontiers, which were hitherto unknown to the media or beyond its reach. Any violation of human rights occurring anywhere in the country can be known to the rest of the country in no time, provided the media takes it up.

The media has shown great interest in reporting on human rights violations committed by police officers. What happened in Gujarat during communal riots last year (2002) was known to the rest of India and the world mainly through the efforts of the media. However, the known incidents of police misconduct or abuse of power are far less than those that take place but are not known. The media's coverage sometimes is inadequate and selective. Most media organisations in this country, as in other parts of the world, are either state or corporate owned. The media has taken interest in projecting issues and areas which are lucrative, not necessarily those that are of public interest. Political news, politicians and celebrities have dominated the media coverage. Bias and lack of sensitive appreciation of issues involved have affected the quality of coverage, the selection of subjects and contents. The tendency to sensationalise issues and events has often been noticed.

On the whole, the mainstream national media have been far better than the regional media in covering human rights violations and holding state agencies accountable. Some newspapers in Gujarat deliberately spread rumours, distorted facts and did their best to promote the hate campaign against the minority community. As the Human Rights Watch pointed out: "While the national Indian press has played an important role in exposing the violence and official neglect or misconduct, sectors of the local press have been accused of inciting the violence."⁴⁸ It became difficult to

hold the editors and management of the local press accountable for violating criminal law, besides infringing their own code of ethics, because they had the support of the state government.

The government has occasionally tried to pressurize or intimidate the media, which has exposed corruption or abuse of power by politicians and senior bureaucrats. Recalcitrant media persons have been subjected to raids by income tax and law enforcement authorities and harassed in other ways. For instance, this happened a few years ago to the editor and staff members of Tehelka. Com, an internet portal that succeeded in video tapping some important politicians, bureaucrats and army officers accepting bribes and fixing arms deals with decoy arms dealers belonging to Tehelka. According to Vir Sanghvi, Editor, the Hindustan Times, a national newspaper: *"The message in all this is quite direct: if anyone ever tries to expose corruption in the way in which Tehelka has done, they will face the full might of the government of India. It worries me that as journalists, we are allowing the government to get away with all this"* (The Sunday Hindustan Times, 14 July, 2002).

4. Summing Up

Providing a sense of security to the ordinary citizens and attending to their grievances is dependent on the establishment of a police force, which is efficient, honest and professional to the core. The fact that such a police force does not exist in India is attested to by the findings of the various commissions and committees, the complaints received by the human rights commissions, the stories reported by the press and the experiences of the common people on the streets. The need for police reforms is self evident and urgent. There are two directions in which the idea of police reforms must be pursued simultaneously.

One is to establish statutory institutional arrangements, which would ensure that the power of superintendence of the state government over the police force is limited to guarantee that police performance is in strict accordance with law. In other words, the police function to establish rule of law and not the rule of politics. This would require insulating them from outside illegitimate control and giving them functional autonomy. Once the police are given functional independence, they must be held accountable for the wrongs they do. The existing mechanisms of accountability must be strengthened and improved. In addition, new mechanisms, working independently to monitor the functioning of the police and to inquire into public complaints against the police, must be established. The performance of the police as an organization and the behaviour of police personnel as individuals both need constant monitoring.

The other direction is to think in terms of doing all that can be done to strengthen and improve the policing under the existing set up. Besides upgrading the recruitment, training and leadership standards, the working and living conditions of lower police personnel need vast improvement- an exercise that should start with raising the status of constabulary.

¹ Union territories are areas, which do not form part of states' jurisdiction and are under the control of the central government

² The powers and responsibilities of the union and states are demarcated in the Constitution of India.. Article 246 of the Constitution distributes the legislative powers between the Parliament and the State Legislative Assemblies. It refers to three lists of subjects given in the Seventh Schedule of the Constitution. List 1 is the Union List, which includes subjects in respect of which the Parliament has the sole powers to make laws. List 2 is the State List, enumerating subjects in respect of which the State legislature has exclusive powers to make laws. The third list is the Concurrent List, consisting of subjects on which the Parliament and the State Legislatures have concurrent powers to make laws. The police, public order, courts, prisons, reformatories, borstal and other allied institutions figure in the State List.

³ These are the Border Security Force, Central Reserve Police Force, Central Industrial Security Force, Indo Tibetan Border Police and the Assam Rifles.

In addition, there are some other armed as well as unarmed central police organisations.

⁴ Bureau of Police Research & Development, Ministry of Home Affairs, Government of India: *Data on Police Organisation in India, 2003*

⁵ The word "Superintendence" has not been defined in legislation. The word has been interpreted by the Supreme Court in the Judgement in Writ Petition (Criminal) Nos. 340-343 of 1993, pp 66-73. The Supreme Court refused to accept a broad definition of the word 'superintendence'. According to the Supreme Courts interpretation, the superintendence was general in nature and would not include government giving directions in investigations or supervising investigations done by the police. Earlier, the NPC had interpreted the word to suggest that "*the power of superintendence of the State Government over the police should be limited for the purpose of ensuring that police performance is in strict accordance with law*" (National Police Commission: *Second Report*, August 1979, Pp29-30).

⁶ Section 4 of the Act

⁷ The words ' general control and direction' have also not been defined in the legislation.

⁸ Government Central Printing Office, Simla, 1903, *Report of the Indian Police Commission, 1902-03*, p 150

⁹ K.S. Dhillon, *Defenders of the Establishment*, Indian Institute of Advanced Study, Shimla, 1998, p 150

¹⁰ The Kerala Police Reorganisation Committee (1959) observed that the greatest obstacle to efficient police administration flows from the dominance of party politics in the state administration and the result of partisan interference is often reflected in lawless enforcement of laws and inferior service.

The Punjab Police Commission (1961-62) found evidence that the members of political parties, particularly of the ruling party, interfere considerably in the working of the police for unlawful ends, which has not only demoralised the police force but also affected their work considerably.

The Maharashtra Police Commission (1964) recommended isolating whole classes of decision from political interference through the promulgation of a code of conduct

The Delhi Police Commission (1968) found that the politicians interference made it impossible for policemen to conduct themselves in a blameless manner.

The Tamil Nadu Police Commission (1971) felt that the problem of political interference was not a new one, but it had grown over the years.

The Uttar Pradesh Commission (1971) expressed concern at the increasing interference in police work, as it felt that the result of political manipulation was reflected in a warped enforcement of law and inferior service.

The Committee on Police Training (1971) set up by the Government of India found evidence of a great deal of political interference in the administration as well as the operation of the police force, particularly at the lower level.

In a study on 'Image of the Police in India' (1978) done by the Indian Institute of Public Opinion on behalf of the Bureau of Police Research and Development, political interference was seen by the public as a major factor contributing to the poor image of the police and manifesting itself in the misuse and abuse of police powers and disregard of the law by the police.

The Shah Commission of Enquiry (1978), appointed to examine the excesses committed on the citizens by the state authorities during the Emergency, unearthed considerable evidence to prove that "some police officers behaved as though they are not accountable at all to any public authority. The decisions to arrest and release certain persons were entirely on political considerations which were intended to be favourable to the ruling party. ... The Government must seriously consider the feasibility and the desirability of insulating the Police from the politics of the country and employing it scrupulously on duties for which alone it is by law intended."

In a study on 'Law and Order problems of Dhanbad district with a special reference to the Bharat Coking Coal Limited', done by the Bureau of Police Research & Development in 1979, the most important factor responsible for the deteriorating law and order situation in Dhanbad district was found to be the inability of criminal justice administration to take effective action against certain notorious criminals who wielded considerable political clout.

The subject was examined by the National Police Commission in detail in its Second Report (1979). The Commission referred to the existence of a nexus between unscrupulous elements amongst politicians and anti-social elements, which affects the enforcement of law and breeds corruption and other mal-practices by the police and politicians acting in collusion with each other. After dealing with various aspects of the problem of political interference in the working of the police, the NPC recommended some remedial measures to insulate the police system from such interference.

¹¹ The period of Emergency is known as the Indian democracy's darkest interval. The Emergency was declared on June 26, 1975, ostensibly to deal with threat to the security of India from "internal disturbances". Fundamental rights of citizens were suspended and opposition leaders were rounded up under the Maintenance of Internal Security Act and put behind bars. Censorship was imposed and the right of the citizens to move the courts for the enforcement of their fundamental rights was also suspended. The police and other administrative authorities misused the authoritarian powers acquired by them during this period and committed all types of atrocities on citizens. The Emergency was lifted on March 21, 1977. When elections were held, the opposition parties presented a united front (the Janata Party) and succeeded in defeating Mrs. Gandhi and her Congress party and formed the government at the center.

¹² The Shah commission of Inquiry was appointed by the new Government that came to power after the Emergency was lifted to inquire into excesses committed by the state authorities on citizens during the Emergency.

¹³ Shah Commission of Inquiry, 1978: *Interim Report*, p 142

¹⁴ The Department- Related Parliamentary Standing Committee on Home Affairs (April 2002): *Eighty-Eight Report on The Demand for Grants (2002-2003) of Ministry of Home Affairs*, p 31

¹⁵ The police are not empowered to take cognizance of all the penal offences. Criminal law makes a distinction between two categories of offences- cognizable and non-cognizable. In cognizable offences, the police have a direct responsibility to take up investigation and can arrest a person without warrant. Non-cognizable offences can not be investigated by the police on their own, unless directed by the courts having jurisdiction to do so.

¹⁶ One lakh is equal to one hundred thousand (100,000)

¹⁷ These crime statistics have been taken from the annual publication *Crime In India* published by the National Crime Records Bureau, Ministry of Home Affairs, Government of India.

¹⁸ The substantive criminal law of the country is contained in the Indian Penal Code, 1860 and various special and local laws enacted by the central and state legislatures from time to time. These laws define different types of crimes and prescribe appropriate punishment for offences.

¹⁹ National Police Commission: *Eighth Report*, May 1981, P9

²⁰ *Ibid*, p10

19 National Crime Records Bureau, Ministry of Home Affairs, Government of India: *Crime In India, 1971 & 2003*

²² *The Hindu* dated April 24, 2000

²³ Bhagalpur is a place in Bihar- a state in Eastern India. This was one of the most atrocious incidents in the history of police deviance, in which the local police blinded prisoners to disable them from committing further crime. There was reported to be considerable local public support in favour of guilty policemen, who were punished.

²⁴ Joshi, G.P: *Police Brutality in India, A Media Scan*, Commonwealth Human Rights Initiative, New Delhi, November 2000, P12.

²⁵ The Editorial in the Indian Express dated November 4, 2000

²⁶ Gujarat is a state on the western coast of India. On February 27, 2002, a compartment of a train carrying Hindu *Ramsevaks* (Servants of Lord Rama, a Hindu deity) was burnt by miscreants belonging to Muslim community at a place called Godhra, near Ahmedabad, the capital of the state. 58 passengers, many of them women and children, were burnt alive. This incident provoked widespread communal riots in different parts of Gujarat, in which Muslims and their property were targeted.

²⁷ Government of India (May, 1981): *Eight and Concluding Report of the National Police Commission*, p7

²⁸ Human Rights Violations caused by Terrorism- India: Punjab, A Government of India Publication (Year not stated)

²⁹ Compiled from the annual reports of the National Human Rights Commission for the years 1995-96 and 2002-03.

³⁰ National Crime Records Bureau, Ministry of Home Affairs, Government of India: *Crime In India, 1997 & 2003*

³¹ *The Police Act, 1861, Section 7*

³² Subordinate officers mean officers of and below the rank of Inspector of Police

³³ *The Police Act, 1861, Section 29*

³⁴ The Indian Express, June 9, 2001: *PMO nails Delhi Police 's Khaki lies*

³⁵ The CBI is the premier investigating agency of the central government.

³⁶ Writ Petitions (Criminal) Nos. 340-343 of 1996

³⁷ This is now a part of the Central Vigilance Commission Act, 2003

³⁸ Section 11 and Section 32

³⁹ Section 2(1)(a)

⁴⁰ Section 19

⁴¹ National Human Rights Commission: *Annual Report, 2000-2001, p16*

⁴² Section 18

⁴³ *The Hindu* dated April 29, 2005

⁴⁴ State Human rights Commissions have been established in Assam, Chattisgarh, Himachal Pradesh, J&K, Kerala, Manipur, Madhya Pradesh, Orissa, Punjab, Rajasthan, Tamilnadu, Uttar Pradesh and West Bengal

⁴⁵ National Human Rights Commission: *Annual Report, 1999-2000, p 88*

⁴⁶ National Human Rights Commission: *Annual Report, 2002-03, p 165*

⁴⁷ *The Hindu* dated April 29, 2005

⁴⁸ Human Rights Watch: India- “ *We Have No Orders To Save You* ” *State Participation and Complicity in Communal Violence in Gujarat*, Vol. 14, No 3 (C) April 2002, p34