

The Government, the Police & the Community

A Comparative Analysis
of the Police Acts



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COMMONWEALTH HUMAN RIGHTS INITIATIVE

August 2002

A Comparative Analysis

Printed by:
Tara International Printers
Tel: 686 1914

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Introduction

Ensuring the safety of life and property of its citizens is one of the basic responsibilities of the government in all societies. It is by establishing and maintaining an efficient and an effective police force that the government provides a feeling of security to its citizens. However, collective security enjoyed by the citizens is not enough; in a democratic society, they also want to enjoy their individual freedoms and rights, without unwarranted and illegitimate interference by a coercive and an insensitive police force. Exercising proper control and superintendence over the police, holding them accountable for their various acts of commission and omission and bringing them close to the community, therefore, become issues of utmost importance in all democratic countries.

These issues are addressed in most countries mainly through appropriate provisions in their Police Acts. It is the Police Acts that define the relationship between the government, the police and the community. A comparative study of the Police Acts of some countries therefore becomes highly important, particularly to understand how the problems being faced by the police forces in one country have been handled elsewhere.

The study focuses on three main themes:

1. Control and superintendence over

- the police forces;
2. Police Accountability; and
3. Consultation with the Community.

This paper attempts a comparative analysis of the provisions contained in the Police Acts of India, UK, South Africa, Canada, USA and Pakistan on all or any of the above three themes.

So far as India is concerned, the Police Act of 1861 is governing most police forces in the country. Some state governments have, of course, enacted their own legislation for this purpose. 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 and in Delhi by the Delhi Police Act of 1978. Recently, the Madhya Pradesh Government drafted a Bill known as the MP Police Vidheyak, 2001 (MP Bill) to replace the Police Act of 1861. There is also a model Police Bill drafted by the National Police Commission (NPC) in 1981 (NPC Model), which incorporates most of their major recommendations. The paper will refer to the relevant provisions in these laws, whenever necessary and wherever relevant.

Control and Superintendence over the Police

In the Indian context, there are two aspects of the problem of control to be exercised over the police force. One is

the control of the state government and the other is the system of control existing at the district level.

State Government's Control

Police Acts in India

Police Act of 1861

The Police Act of 1861 vests the superintendence of the police force in the state government¹

There are many reasons for the poor quality of policing in this country, but a major reason identified time and again by committee after committee and inquiry after inquiry has been the type of control that has been exercised over the police. There is enough evidence to prove that the type of control that has been exercised over the police by the state governments has generally led to gross abuses. Almost all State Police Commissions, the National Police Commission and other expert bodies, which have examined police problems, have found overwhelming evidence of misuse and abuse of police system by politicians and bureaucrats for narrow selfish ends².

The State Police Acts

The State Police Acts enacted after Independence were modeled on the Police Act of 1861. The new legislations, in fact, further tightened the government's control over the police forces.

The Bombay Police Act of 1951 vests the superintendence of the police force through out the State of Maharashtra in the State Government³. This Act went a step beyond the provision contained in Section 4 of the Police Act of 1861 by stating further that "*any control, direction or supervision exercisable by any officer over any member of the police force shall be exercisable subject to such superintendence*"⁴.

The extended clause of the Bombay Police Act had the effect of giving the state government power to intervene in all matters relating to police work-administrative as well as operational. The extension amounted to saying that an order issued by any police officer concerning another police officer could be rescinded or amended by the government if they wanted to do so. All orders regarding transfers, postings, suspensions, rewards and punishments in respect of police officers issued by the departmental leadership could be interpreted to come within the purview of this clause. This extended clause was later on copied and incorporated in the Karnataka Police Act, 1963, the Delhi Police Act of 1978 and the Madhya Pradesh Police Vidheyak of 2001.

The situation resulting from wrong control over the police has become worse during the last few decades because of increasing criminalisation of politics. Bad elements in politics and in the police have now become a strong mutually supporting system whose influence permeates the police and negates its ability to be a crime fighting force or an organization pledged to

uphold the law and protect the people or the constitution. This has been seen in many instances over a period of time, the latest being the very comprehensive failure of the law enforcement machinery to protect the lives and property of the members of the minority community during the communal violence that occurred in Gujarat during the summer of 2002.

The NPC Model

The National Police Commission examined this subject in detail. Even though the quality of control exercised over the police in those days was not as bad as it has now become, the NPC realised the serious threat that poor control over the police posed to the quality of policing. The Commission made numerous recommendations to insulate the police from outside illegitimate control. The Commission felt that there was an immediate need to devise a new mechanism of control and supervision, which would help the State Government to discharge their superintending responsibility in an open manner under the framework of law.⁵ For this purpose, they recommended the constitution of a statutory commission in each State to be called the State Security Commission⁶. To give statutory effect to these recommendations, the NPC Model contains provisions regarding the establishment and constitution of the State Security Commission; functions of the Commission; disqualifications for becoming a member of the Commission; vacation of seats of members; appointment of Director and Principal Director of Inspection; annual

report of the Commission etc⁷. In this scheme of things, the superintendence of the police force vests in the State Government but is to be exercised through the State Security Commission⁸.

The N.P.C Model authorises the State Government to appoint a Director General/Inspector General of Police for the direction and supervision of the Police Force.⁹ The selection of the chief of Police has to be made from a panel of not more than three IPS officers of that cadre prepared by a Committee consisting of the Chairman or Member of the UPSC, Union Home Secretary, the senior-most amongst the heads of the central police organisations, the chief secretary of the state and the existing chief of police in the state. Posting from the panel should be according to seniority¹⁰.

Another recommendation made by the NPC was that the chief of police in a State should be assured of a statutory tenure of office to enable the organisation to resist outside pressures and illegal or irregular orders. The term of office of the Director General/Inspector General of Police appointed under the Act should be four years from the date of his appointment¹¹.

Superintendence

The Problem with Section 4 of the Police Act of 1861 and similar provisions in the State Police Acts is that the word “*Superintendence*” has not been defined in any legislation. The NPC tried to interpret the word after examining the rulings of the Supreme Court relating

to Article 227 of the Constitution, which authorises every High Court to exercise superintendence over all courts in the State. Based on the general principles enunciated in these judgments, the Commission recommended that *“the power of superintendence of the State Government over the police should be limited for the purpose of ensuring that police performance is in strict accordance with law”*.¹²

The word has been interpreted by the Supreme Court in what is known as the Havala Case judgment of 1998.¹³ The Court was examining the validity of the Single Directive- a set of instructions issued by the central government prohibiting the CBI from inquiring into complaints of corruption received against officers of the rank of Joint Secretary and above. The plea made before the Court was that the power of superintendence that the central government exercised over the CBI by virtue of Section 4 (1) of the Delhi Special Police Establishment Act, 1946¹⁴ allowed the government to issue instructions contained in the Single Directive. The Supreme Court refused to accept such a broad definition of ‘superintendence’. In the Supreme Courts interpretation, *“The general superintendence over the functioning of the Departmentwould not include within it the control of the initiation and the actual process of investigation, i.e direction;”*¹⁵ nor would it *“permit supervision of the actual investigation of an offence by the CBI contrary to the manner provided by the statutory provisions.”*¹⁶

In the Havala case, the Supreme Court was examining the functioning of the CBI, which is an investigating agency. Their interpretation of the word ‘*Superintendence*’ was therefore confined to explaining the process of investigation. This interpretation is not helpful in limiting government’s control over the functioning of police in other areas, like law and order.

In any case, these interpretations have not helped much because laws are still silent on what the term *“superintendence”* means. It is important that a clear definition of this word should be incorporated in the existing Police Acts to exclude use of the police for wrong and illegitimate purposes.

Foreign Police Acts

Governments almost all over the world exercise control over the police forces in some way or the other. What matters is the quality of control, the purpose for and the manner in which it is exercised. What is required is to balance two considerations- one of ensuring that the civilian political control results in setting up an efficient and accountable police force and the other of seeing that the force functions autonomously in carrying out its duties and operations with a clear chain of command. How has this balance been achieved in other countries?

UK

Police Acts in other countries in fact do not talk of control but of

responsibilities of the minister or government and lay down in clear terms how that responsibility has to be discharged. For instance, the main function of the Secretary of State in the United Kingdom is to exercise his powers "*in such manner and to such extent as appears to him to be best calculated to promote the efficiency and effectiveness of the police.*"¹⁷ The English model of police system provides for a tripartite structure consisting of the Secretary of State representing the political executive, the local Chief Constable representing the police department and the Police Authority representing the community. The Act requires the Secretary of the State to determine objectives for policing of different areas and this has to be done by him in consultation with the other two i.e. the police department as well as the Police Authority. A statutory instrument containing the objectives determined under this provision of law has to be laid before Parliament.¹⁸ Once the objectives have been set, he can ask the Police Authorities to set performance targets for the police forces¹⁹. This exercise lays down publicly the broad goals, which have been defined and prescribe a public standard of performance, which is then monitored. Political control is not compromised but at the same time scope for political interference is minimized; performance standards are set in a fashion that the political authorities can monitor police performance, and continue to be responsible to ensure that the force fulfills them. The process ensures that both remain responsible to parliament

and the people for the proper fulfillment of the community's expectations from the police.

The Police performance in the UK is constantly under review by the government, the civil society organisations and the public at large. Numerous important initiatives are being taken in that country to introduce further reforms in the police force. The Police Act of 1996 is being revised through a new Police Reforms Bill introduced in the House of Lords on January 24, 2002. Part 1 of the Bill makes new provisions regarding the supervision of the police forces. It is now being made a duty of the Secretary of the State to prepare a National Policing Plan for a financial year and to lay it before the Parliament. The plan must set out strategic priorities for the police service for the coming 3-year period. It should include the Home Secretary's objectives for police authorities and identify proposals for making regulations and for issuing codes of practice and guidance²⁰.

The Bill enables the Secretary of State to issue codes of practice relating to the discharge of their functions by the chief officers of police if he considers it necessary to do so for "promoting the efficiency and effectiveness" of the police forces. The 1996 Act already contains provision for codes of practice to which police authorities must have regard; this Bill introduces a parallel provision for chief officers. Where the Secretary of State proposes to issue a code, he must ask the Central Police Training and Development Authority (CPTDA)²¹ to prepare a draft of the

code. CPTDA must in turn consult such persons as it thinks fit.²²

The Bill extends the Secretary of State's powers to require inspection and reports²³. The Secretary of State can, at any time, require HM Inspectorate of Constabulary (HMIC) to inspect any police force. Where HMIC has made a report to the Secretary of State, saying that the whole or any part of the force is, or is likely to become, inefficient or ineffective, either generally or in specific respects, the Secretary of State can intervene to require a police authority to take remedial action.²⁴ The Bill also confers on the Secretary of State powers to intervene to direct a chief officer to take remedial action in similar cases. The Secretary of State may direct the chief officer to prepare an action plan for taking remedial measures and can subsequently direct that the plan be revised to include specific steps and implementation targets. The chief officer must consult his/her police authority before submitting or resubmitting a plan.²⁵

The Bill extends the Secretary of State's regulation-making powers in respect of equipment meant for police use. It allows the Secretary of State to require all police forces in England and Wales to use, or keep available for use, only equipment, which is specified, and the Secretary of State can apply conditions to the use of equipment. The Secretary of State can also prohibit forces from using specified equipment. The Bill requires the Secretary of State to consult such persons as he sees fit before making any regulations²⁶.

The Bill also enables the Secretary of State to make regulations requiring all forces in England and Wales to adopt particular operational procedures or practices where he considers it desirable in the national interest that they should do so. Where the Secretary of State proposes to make regulations, he must seek the advice of the Central Police Training and Development Authority (CPTDA). CPTDA must in turn consult such persons, as it thinks fit²⁷.

Ireland

The Police Act of Northern Ireland introduces a new provision in so far as standard setting for policing is concerned. The Secretary of State is now required, not merely to issue a statement of the principles on which the policing of Northern Ireland is to be conducted but to see that the statement must "*include the principle that the policing of Northern Ireland is to be conducted in an impartial manner.*"²⁸

South Africa

In South Africa, another country where, as in Ireland, recent reforms have come out of situations of great conflict, the Constitution itself makes it the "*political responsibility*" of a member of the Cabinet responsible for policing to "*determine national policing policy after consulting the provincial governments and taking into account the policing needs and priorities of the provinces.*"²⁹ The National Commissioner of Police Service is required to "*exercise control over and manage the police service in accordance with the national policing*

policy.”³⁰ The National Commissioner is required to develop a plan before the end of each financial year, setting out the priorities and objectives of policing for the following financial year.³¹

The National Commissioner is appointed by the President of South Africa.³² The National Commissioner appoints a Provincial Commissioner for each province of the country.³³ Both the National and Provincial Commissioners have a fixed minimum tenure of five years³⁴, which can be further extended, subject to a maximum of five years.³⁵

If the National Commissioner has lost the confidence of the Cabinet, the President may establish a board of inquiry, with a judge of the Supreme Court as chairperson, to inquire into the circumstances that led to the loss of confidence and make recommendations.³⁶ If the Provincial Commissioner has lost the confidence of the Executive Council, the National Commissioner, on receiving a notice from the concerned Minister, shall establish a board of inquiry, with a person qualified in law as chairperson, to make an inquiry³⁷.

During the inquiry period, the concerned Commissioner may be placed under suspension³⁸.

The Board shall submit its report to the President, or to the National Commissioner depending on whether the inquiry was conducted against the National or the Provincial Commissioner. In addition, the report

is also to be submitted to the concerned Commissioner and to the Parliamentary committees³⁹. The Inquiry Report may recommend⁴⁰ that:

- no action be taken in the matter;
- the concerned Commissioner be transferred;
- his salary or rank or both be reduced;
- he or she be removed from office; or
- any other appropriate step.

The President or National commissioner has the option to postpone taking a decision on the recommendations of the Board Of Inquiry for a period not exceeding 12 calendar months⁴¹. If the decision is postponed, at the end of the period the same or a similar Board of Inquiry has to make a new recommendation after having considered the conduct of the Commissioner during such period⁴².

The same procedure is applicable in cases of allegations of misconduct by the National or Provincial Commissioner or his or her fitness for office or capacity for executing official duties efficiently is questioned⁴³.

The SAPS Act also provides for the constitution of a Board of Commissioners consisting of the National and Provincial Commissioners to promote cooperation and coordination in the Service.⁴⁴

British Columbia

In British Columbia, Canada it is the overall responsibility of the Minister of the government to “*ensure that an adequate and effective level of policing and law enforcement is maintained throughout British Columbia.*”⁴⁵

There are three types of police forces⁴⁶ in British Columbia: (a) a provincial police force, (b) a municipal police department, and (c) a designated police unit, if prescribed by the Minister as a police force. A Commissioner, Dy Commissioner, Constables and other employees of the provincial police force are appointed by the Lt. Governor in Council.⁴⁷

It is the responsibility of the council of each municipality to provide policing and law enforcement by setting up a police department. The police department is governed by a Municipal Police Board, consisting of the Mayor, one person appointed by the Council and not more than five members appointed by the Lieutenant Governor in Council.⁴⁸ A member of the Board holds office for a term, not longer than 4 years, that the Lt Governor in Council determines. He may be reappointed but is not eligible to hold office for a period greater than 6 years. The employees of the Municipal Police Department, including the Chief Constable, are appointed by the Board

Pakistan

Earlier, the police in Pakistan was being governed by their Police Act of 1861. However, last year, the President of

Pakistan promulgated an Ordinance called the Police Ordinance 2001⁴⁹. As per its Preamble, the Police Ordinance 2001 aims at organising a police system, which is “independently controlled, politically neutral, non-authoritarian, people friendly and professionally efficient.”

The Ordinance makes it the “responsibility of the Government to provide for an adequate and efficient police force for every general district.”⁵⁰

The Ordinance vests the superintendence of the police force in the Government⁵¹ but clearly prescribes that the power of superintendence “*shall be limited for the purpose of ensuring that police performance is in strict accordance with law*”⁵² (These were exactly the words used first by the National Police Commission in India way back in 1979. Paragraph 15.38 on page 30 of their Second Report refers). This is to be ensured by the Public Safety Commissions proposed to be established at the federal, provincial and district levels.

Though there is a detailed charter of functions for the Commissions at each level, their overall job is to “take steps to promote integrity, efficiency and effectiveness of the criminal justice system in general and of policing in particular.”⁵³

The National Public Safety Commission is to have twelve members besides the Federal Interior Minister who is the ex-officio chairperson. Half the members are to be selected by the National Assembly from amongst its members

in proportion to the representation of political parties in the Assembly. The other half are independent members appointed by the President from a list of names recommended by the National Selection Panel⁵⁴. The Panel consists of only three members- the Chief Justice of the Supreme Court of Pakistan (chairperson), one member of the cabinet nominated by the Prime Minister and the chairman of the Federal Public Service Commission⁵⁵. Selection criteria are also laid down by the Ordinance.

The Ordinance prescribes similar arrangements to be made at the provincial level. The composition of the Provincial Public Safety commission⁵⁶ is the same, except that half of the members have to be selected by the Provincial Assembly and the State Home Minister is the ex-officio chairperson of the commission. The Selection Panel for the appointment of the independent members at the state level consists of the Chief Justice of the High Court as the chairperson and two non-elected members- one nominated by the Prime Minister and the other nominated by the Chief Minister⁵⁷.

The District Public Safety Commission is to consist of 8, 10 or 12 members depending on the size of the district. Half of the members are to be selected by the Zila or City Council and half to be appointed by the Chief Minister from a list recommended by the District Selection Panel⁵⁸. The Chairperson in this case is to be elected by the members from amongst themselves, alternating between the elected and independent members. The Selection

Panel for appointment of independent members consists of District and Sessions Judge as the chairperson and two non- elected members- one nominated by the Zila Nazim and the other nominated by the Chief Minister⁵⁹. One of the functions of the Commission at the district level is to “take steps to prevent the police from carrying out any unlawful or motivated orders or directions from any authority.”⁶⁰

The head of the provincial police force is to be appointed by the provincial government, “with agreement of the Provincial Public Safety Commission,” out of a panel prepared by the National Public Safety Commission⁶¹. The appointment of the police chief has to be for a minimum term of three years⁶². He can be transferred before the expiry of the term by the Federal Government, but “with agreement of National and Provincial Public Safety Commission.” The Ordinance is silent as to what will happen in case of any disagreement. The Police Chief is to be regarded as ex-officio Secretary to the government, enjoying all the administrative and financial powers of the head of the department⁶³.

Summing Up

Unlike the Police act of 1861 or other State Police Acts enacted in India after Independence, which merely talk of control and superintendence over the police force and are silent as to how that control should be exercised, the Police Acts in other countries make it a statutory responsibility of the government to set up an adequate, efficient and effective police service in

an area and also prescribe the consultative and other processes through which the efficiency and effectiveness have to be maintained. It is this statutory obligation which makes the governments accountable for their failures in field of policing and forces them to take steps to monitor police performance and take concerted action to improve the efficiency and effectiveness of the police force.

The mechanisms discussed above attempt to ensure three things. The overall responsibility of providing the community with an efficient and effective force remains with the political executive and yet functional autonomy remains with the head of police. There is a statutory public process for arriving at a careful demarcation of roles between the politician, the police and the community. Goals and performance are both governed by standards set in advance and there are systems of public accountability in place to ensure that performance matches goals.

System of Control at the District Level

The Police Acts in India

The Police Act of 1861

The Police Act of 1861 provides that *“The administration of the police through out the local jurisdiction of the Magistrate of the district shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant*

*District Superintendents as the State Government shall consider necessary.”*⁶⁴

The words *“general control and direction”* were not defined in the 1861 Act. According to the Indian Police Commission of 1902-03, the intervention of the District Magistrate in police matters was not *“intended to be constant or detailed.”*⁶⁵ It was *“not intended to extend to the administration of the police department except when interference in that is necessary for maintaining”* control over criminal administration and responsibility for maintenance of peace. *“This intention of the law has been overlooked in most provinces: in some much more than in others.”*⁶⁶ Rules and provisions in Police Manuals were framed so that the *“District Superintendent’s subordination to the District Officer was total and ambiguous.”*⁶⁷

This happened despite the controversy that had dogged the introduction of para 2 in Section 4 of the Police Act of 1861 since the legislation was promulgated. It is not necessary to refer here to the debate, which took place in the Legislative Council and other forums at that time, where considerable opposition was voiced to the introduction of the system envisaged in Section 4 of the Act. It is however necessary to refer to two important features of the situation prevailing at the time the Police Act of 1861 was legislated. One was the combination of judicial and executive functions in one authority, which the British introduced here for reasons of administrative expediency. The objection to the

system on this ground was stated very convincingly in the Note of Dissent to the Report of the Indian Police Commission, 1902-03 submitted by the Indian member of the Commission Mr. Rameshwar Singh, the Maharaja of Darbhanga: "Having regard to the actual working of the present system, it is hard to see how approval can be accorded to an arrangement under which the District Officer is at one and the same time the head of the police and the head of the magistracy"⁶⁸. The Commission did not accept the reasoning. The maintenance of the position of the District Magistrate as the chief officer of the District was considered "*absolutely essential to the maintenance of British rule in India.*" The position no longer obtains today and one of the fundamental tenets of a democratic polity, that is separation of judiciary from executive, has been adopted. Secondly, policing at that time was a comparatively simple task, which could be performed reasonably efficiently under the "general direction and control" of a functionary who was not trained in police work. In 1861, when the new police system was introduced, there was no regular cadre of senior police officers. The post of SP was created in Bombay in 1853 and in Madras in 1855. There was opposition to the creation of SP's post in Bengal. The institution of DM, on the other hand, had been in existence for nearly a century. "Absence of regular cadre of supervisory police officer at this juncture was responsible for the imposition of the control of the District Magistrate."⁶⁹ Now besides having a full-fledged cadre of police officers, the task of policing itself has

become complex, requiring a professionally trained team to handle it.

Even at the time the system of dual control was introduced in the districts, it was not considered suitable for introduction in all areas. In some metropolitan cities, the British introduced the commissionerate system of policing where the Commissioner of Police is the head of the police force and he is not subject to the control of the magistrate. Several state governments have adopted the commissionerate system of policing. Presently, this system is working in 34 cities in the country as against 8 cities where it was in existence during the earlier days.

State Police Acts

The control of the District Magistrate over the Police Force in the district is recognised by the State Police Acts. Some of them even go beyond the provisions of the Police Act of 1861. For example, the Bombay Police Act of 1951 says that the "Superintendent and the Police Force of a district shall be under the control of the District Magistrate."⁷⁰ Unlike the Police Act of 1861, the district police force is not subject merely to the "general control and direction" but put along with the Superintendent of Police under the "control of the District Magistrate." The Act empowers the District Magistrate not only to "require from the superintendent reports" about crime and law and order but also about "distribution of the police force, the conduct and character of any police

officer ... the utilization of auxiliary means and all other matters in furtherance of his control of the Police force and maintenance of order.⁷¹” If the District Magistrate observes any marked incompetence or unfitness ... in any police officer subordinate to the SP, the DM’s “power of supervision” authorises him to ask the SP to replace that officer by another officer and the SP “shall be bound to comply with the requisition.”⁷² Similar provisions were later included in the Karnataka Police Act, 1963.⁷³

The MP Police Vidheyak, 2001 breaks new ground by abolishing the system of dual control. It authorises the state government to set up the commissionerate system of policing⁷⁴. In areas where the commissionerate system is established, the administration of the police force is vested in the Commissioner of Police⁷⁵. This provision is similar to the one that the NPC Model has, except for the difference that the MP Bill prescribes that the officer appointed as Commissioner of Police shall not be below the rank of Deputy Inspector General of Police. In districts, the administration of the police is vested in the District Superintendent of Police.⁷⁶ The MP Bill does not accord any coordinating role to the District Magistrate that the NPC Model does.

The MP Bill authorises the state government to empower the Commissioner of Police to exercise and perform the powers and duties of an Executive Magistrate and of a District Magistrate under the provisions

of Section 20 (5), CrPC⁷⁷. The state government is further authorised to empower any other officer not below the rank of Assistant Commissioner or Deputy Superintendent of Police to exercise all powers and perform all duties that an Executive Magistrate does under such provisions of the CrPC as may be specified in the Notification⁷⁸.

The NPC Model

The problems resulting from the relationship between the District Police and the Executive Magistracy established under the provisions of the Police Act of 1861 were examined in detail by the NPC. The Commission felt that after the separation of judiciary from the executive, there was no reason to subject the district police administration to any control other than that exercised by the departmental hierarchy itself. According to the Commission, “*the new police which we hope to create should have a self contained organisational structure where there is no distortion of command and no dual accountability.*”⁷⁹

The NPC Model lays down that the administration of the Police throughout the district shall be vested in the Superintendent of Police⁸⁰. It does not authorise the D.M to exercise “general control and direction” over the police administration in the district. The Model does allow the district officer to coordinate functioning of the police with other agencies of the district administration in respect of certain matters, which are laid down by NPC⁸¹.

For the purpose of such coordination, the district officer may call for specified information or report and also give such directions as are considered necessary by him to the Police. The Superintendent of Police is required to render assistance to the District Officer for the purpose of coordination.

The N.P.C Model also empowers the State Government to authorise the Commissioner, Superintendent of Police and certain other police officers to exercise powers and duties of District Magistrate and Executive Magistrates under the Cr.P.C⁸². It has been clarified that the Commissioner, Superintendent of Police or any officer subordinate to him shall not be subjected in the exercise and performance of any powers and duties to the general control of District Magistrate⁸³.

There is no provision in the Police Act of 1861 about the Commissionerate system of policing. The NPC Model contains provisions, which are intended to give statutory recognition to this system. It authorises the State Government to appoint a police officer to be Commissioner of Police for any area comprising a city or town specified in a notification issued by the State Government⁸⁴.

Foreign Police Acts

The system of dual control in its existing form is something unique to India. Earlier, Pakistan had similar system. With the promulgation of the Police Ordinance, 2001, the system of dual control in Pakistan has been abolished.

The Ordinance vests the administration of the district police solely in the district Superintendent of Police, who is no longer subject to the “general control and direction” of the district magistrate. However, Section 156 of the Ordinance makes the head of the District Police responsible to the Zila Nazim for the general maintenance of law and order. Zila Nazim is an elected person defined as such under the Local Government Ordinance, 2001. Investigations and departmental matters like postings, transfers, promotions and discipline remain the exclusive preserve of the police hierarchy and except the head of the district police force no other officer of the district police shall be answerable to the Zila Nazim.

The Police Acts in other countries studied by us do not have any provision resembling to the system of dual control prescribed in the 1861 Act.

Police Accountability

The police enjoy tremendous powers over the lives and liberties of citizens. History of policing in different parts of the world and our own experience tell us that these powers are not always used to uphold the rule of law. In fact, sometimes these powers are used for a purpose and in a manner that brings the rule of law into disrepute. Whenever this happens, it destroys public confidence not merely in the police but in the democratic system and its processes, which the police in a democratic society are supposed to safeguard. That is why it is being increasingly accepted all over the

democratic world that the police must be made accountable for what they do and what they do not do.

Police accountability has two facets. One is the accountability of the police department to provide a feeling of security to all in the community and the other is the accountability to ensure that citizens' complaints against negligence or misuse of powers by individual police personnel are inquired into fairly and redress provided to the complainants speedily.

What are the provisions in different laws to deal with the two types of problems?

Police Acts in India

The Police Act, 1861

The Police Act of 1861 talks only of control over the police but is conspicuously silent about police accountability. In the system established by the British through the Police Act of 1861, the police remained unaccountable to anyone except their own hierarchy and the political and administrative executive. The need to make the police accountable to the community or other institutions did not fit into the model of control established by the 1861 Act.

The State Police Acts

The State Police Acts legislated after Independence contain certain provisions regarding disciplinary matters and also about offences for which police personnel can be

prosecuted. The Acts do not set up any mechanism to ensure that the community gets an efficient, effective and honest police cover and that the citizens' complaints against the instances of police misconduct are inquired into impartially, speedily and effectively. There is not much difference between the 1861 Act and the State Police Acts in so far as police accountability is concerned. They are as silent and remiss as the 1861 Act.

The NPC Model

The need to monitor police performance constantly was emphasised by the NPC in different reports. One of the functions of the State Security Commission (SSC) recommended by the NPC in its Second Report is to evaluate the performance of the State Police every year and present a report to the State Legislature. In the chapter on "Accountability of Police Performance" in the Eight Report, the NPC recommended that the SSC should have an independent cell to do this work. The NPC also felt that the police could not achieve complete success in their work unless all wings of the criminal justice system operated with simultaneous efficiency. They therefore recommended that a Criminal Justice Commission should be set up on a statutory basis to monitor the performance of all agencies, including the Police and apply corrective measures from time to time⁸⁵.

So far as the citizens' complaints against the police are concerned, any arrangement for inquiry into complaints, according to NPC, should be

acceptable to both police and public as fair and just. The Commission therefore suggested arrangements, which would include inquiries conducted by departmental authorities and those conducted by an independent authority outside the police. The Commission felt that a large number of complaints against police should be disposed of by the supervisory ranks in the police hierarchy. However, a judicial inquiry must 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.

A District Inquiry Authority headed by the Additional Sessions Judge should be set up in every district to conduct such inquiries and to oversee the disposal of complaints dealt with departmentally. To oversee the satisfactory implementation of the entire scheme, a Police Complaint Board should be set up at the state level.

However, most of the above recommendations of the NPC are not reflected in the model Police Bill drafted by them.

Foreign Police Acts

It has already been shown how different Police Acts in foreign countries make it the responsibility of the government to establish an efficient and effective

police service. In addition, these laws establish separate administrative institutions to inspect the working of the police organisations periodically as well as thematically and also external review agencies, mostly civilian, to deal with individual complaints of misbehaviour on the part of police personnel.

UK

In the UK, the Inspectors of Constabulary are appointed to inspect and report to the Secretary of State on the efficiency and effectiveness of every police force⁸⁶. The Chief Inspector of Constabulary submits an annual inspection report on each police force to the Secretary of State, who is required to lay a copy of the report before Parliament⁸⁷. The amendments being introduced through the Police Reforms Bill, 2001 about the Secretary of State's powers to utilise the Chief Inspectorate of constabulary and action to be taken on their recommendations have already been discussed.

To deal with citizens' complaints against police personnel, a statutorily constituted Police Complaints Authority exists in the UK. The Police Reforms Bill proposes to replace this Authority with a new organisation called the Independent Police Complaints Commission (IPCC). The main reason for the proposal to set up the new body is the public dissatisfaction resulting mainly from the existing arrangements where investigation into public complaints against police personnel is done by the police officers. The Commission is to consist of a chairman appointed by Her Majesty and not less

than ten other members appointed by the Secretary of State⁸⁸. Neither the chairman nor the members should have held the office of a constable or worked under the direction and control of the chief constable⁸⁹. The Commission is not to be regarded as a servant or agent of the Crown⁹⁰.

The Commission is required not only to ensure the existence of suitable arrangements for the handling of complaints made about the conduct of police personnel, but also to “secure that public confidence is established and maintained” in the existence of such arrangements⁹¹. One of the duties of the commission would be to ensure the existence of arrangements that are “conducive to, and facilitate, the reporting of misconduct” by police personnel and “protect persons who report such misconduct from victimisation.”⁹²

The Reforms Bill refers to the IPCC all serious cases falling into specified categories, irrespective of whether a complaint has been received or not and authorises it to get it investigated, if it considers necessary to do so. It has been given its own powers of investigation and also allowed to have its own body of independent investigators. It also has the power to supervise police investigation of complaints and can call in any case to either investigate or supervise. The Bill puts the heads of police forces and police authorities under a legal obligation to provide the IPCC with access to documentation and to police premises.⁹³ Any complaint or conduct matter as relates to the direction and

control of a police force by the head of the force is outside the purview of the Commission.⁹⁴

The Bill increases the access to the complaints system. Complaints can be made by persons other than victims or even via a third party or through independent organisations like the citizens advice bureau. Complainants have been given the right to appeal to the IPCC if their complaints are not registered.

The Bill provides for complainants to be informed as to how the investigation has been conducted, a summary of evidence and an explanation of why the conclusions to an investigation were reached. The complainant has a right to appeal to the IPCC if he feels that the written account does not provide a satisfactory explanation of the investigation.

South Africa

The Police Act of South Africa provides for the establishment of an Independent Complaints Directorate at both national and provincial levels to investigate misconduct or offence allegedly committed by a member of the South African Police Force.⁹⁵ The Directorate has to function independently from the Service.⁹⁶ The head of this Directorate is nominated by the Minister in consultation with the Parliamentary Committees⁹⁷. He is appointed to the post only when the nomination is confirmed by the Parliamentary Committees⁹⁸. The Directorate may suo moto or upon receipt of a complaint investigate any misconduct or offence

allegedly committed by any member of the police service, but if the information or complaint is about the death in police custody or as a result of police action, it is mandatory for the Directorate to investigate it⁹⁹. The National or Provincial Commissioners must notify the Directorate of all such cases.¹⁰⁰

The head of the Directorate is required to submit an annual report to the Minister within three months of the end of the financial year, which has to be tabled in Parliament by the Minister within 14 days.¹⁰¹

British Columbia

The Police Act in British Columbia provides for the appointment of a Police Complaint Commissioner to oversee the handling of complaints against police. He is appointed on the unanimous recommendation of a special committee of the Legislative Assembly. The police complaint commissioner is an officer of the Legislature, who holds office for a term of six years.¹⁰² He must report annually to the Speaker of the Legislative Assembly on the work of his office.¹⁰³

The main function of the Commissioner is to oversee the handling of complaints. He can receive complaints from any source, maintain a record, including of dispositions, compile reports and make them available to the public. It is also his job to inform, advise and assist complainants and disciplinary bodies about the complaint process and the handling of complaints.¹⁰⁴

In addition to complaints against police misconduct, the Act also provides for "Service or Policy Complaints" to be made. Once a complaint of this type is received, the Police Complaint Commissioner sends it to the concerned Municipal Police Board. The Board gets it investigated or studied and then informs complainant and the Police Complaint Commissioner about the results of investigation or study. The Police Complaint Commissioner is authorised to review the decisions of the Board and recommend either further investigation or study or changes to service or policy.¹⁰⁵

Pakistan

The Police Ordinance, 2001 of Pakistan sets up a Criminal Justice Coordination Committee at the district level¹⁰⁶. One of the main functions of the Committee is to "keep under review the operation of the criminal justice system and work towards the improvement of the system as a whole."¹⁰⁷

The Ordinance requires the government to establish a Police Complaints Authority for enquiring into serious complaints against the police.¹⁰⁸ The Authority consists of a chairperson and six members. At the national level, the chairperson is to be appointed by the Prime Minister and at the provincial level by the Home Minister.¹⁰⁹ Members of the Authority are to be appointed by the Home Minister at the Provincial level out of a panel recommended by the Provincial Public Safety Commission. The Authority is required to receive complaints, get them investigated by

the police under their supervision and send results of the investigation to the competent authority for departmental action or registration of a criminal case.¹¹⁰ It is authorised to direct the competent authority to take disciplinary action where no such action was taken. It is mandatory to comply with the directions of the Authority in such cases.

USA

In the USA, a number of Civilian Complaint Review Boards have been set up to deal with the citizens' complaints against police personnel. There are wide differences in the structure, composition, charter and powers of the Review Boards. Brief details regarding one such Board i.e. the Civilian Complaint Review Board, New York are being presented here.

The Board in its present form was created in 1993 not through provisions of the Police Act but by amending Section 440 of the New York City Charter. It has 13 members of the public appointed by the Mayor of the city. The members must be residents of New York City and reflect the diversity of city's population. Appointment is done on the following basis:

1. One from each of the five boroughs designated by the City Council.
2. Three with law enforcement experience designated by the Police Commissioner.
3. Five selected by the Mayor, one of whom is the Chairman.

No member of the Board can hold any public office or employment. Nor can he have experience as law enforcement official or be a former employee of the New York City Police Department (except the three nominated by the Mayor)

The Board hires the Executive Director, who in turn hires and supervises the agency's staff, who are all civilians.

The Board has the power to receive, investigate and hear on public complaints against New York City police officers of all ranks and recommend disciplinary action. The complaints should be about:

- ❑ Force- An act of unnecessary or excessive force.
- ❑ Abuse of Authority- Improper use of police powers to threaten, intimidate or otherwise mistreat a civilian
- ❑ Discourtesy- Rude or profane gestures and/or language
- ❑ Offensive Language- A slur that refers to a person's sexual orientation, race, ethnicity, religion, age, disability etc.

The Board has the authority to compel the attendance of witnesses and require the production of such records and materials as are necessary for the investigation of complaints.

The Police Department has to cooperate fully with investigations by the Board by providing records and other materials required for investigation and ensure that employees from police department appear before the Board when required.

Anyone having knowledge of police misconduct can file a complaint. The complaint may be reported directly either by telephone, by letter or in person.

Complaints are processed by the Board or its panels. They review three types of cases:

1. Full Investigations-Cases in which investigation runs its full course.
2. Truncated Investigations- cases in which investigations are started but do not reach completion. This may happen due to various reasons, like non availability of complainant, refusal to cooperate, withdrawal of complaint etc.
3. Alternative Dispute Resolution Procedures.

After full investigation into the complaint, The Board may dispose it of in any of the following ways:

- ❑ Substantiated-Sufficient credible evidence is available to believe that the act was committed
- ❑ Exonerated- The officer was found to have committed the act alleged, but it was determined to be lawful and proper.
- ❑ Unfounded- The act, which is the basis of the allegation did not occur.
- ❑ Unsubstantiated- The available evidence is insufficient to substantiate, exonerate or unfound the allegation.

The Board's findings and recommendations with regard to substantiated allegations are sent to the Police Commissioner for his final

decision. However, the Board can recommend one of the following three disciplinary measures:

- ❑ Instruction - The commanding officer is required to instruct him or her on proper police procedures regarding the incident.
- ❑ Command Discipline - The potential penalties range from a forfeiture of up to ten days of vacation or an accrued time to an oral warning and admonishment.
- ❑ Charges and Specifications- It involves the lodging of formal charges and may result in an administrative trial. The findings and recommendations are forwarded to the Police commissioner.

The Public in the USA are not very happy with the functioning of the Civilian Review Boards. There is an increasing demand from the public that the Boards should be given some powers to discipline delinquent police officers.

After many complaints of police brutality, particularly against blacks and use of undue violence and excessive force, the Federal Government in the USA has taken initiatives to force reluctant city and municipal police forces to introduce reforms in their methods of work. The Rodney King incident of a video taping of a group of policemen mercilessly kicking and beating a black African American, focussed national attention on the problem of police brutality and saw the passing of the Violent Crime Control and Law Enforcement Act of 1994. This authorised the Federal Attorney General to file law suits seeking court

orders to reform police departments engaging in a pattern or practice of violating citizens constitutional rights. The Special litigation Section of the Civil Rights Division of the US Department of Justice has already obtained significant relief under this provision of law. For instance, it has succeeded in obtaining consent decrees to remedy systemic misconduct in municipal police forces in Pittsburgh, Pennsylvania and Ohio.

Thus while the Police Acts in India have no provision to deal with citizens' complaints against police misconduct, the Police Acts of other countries have detailed provisions establishing accountability mechanisms and prescribing procedures to deal with complaints against police personnel. Civic oversight of policing is increasingly being accepted as the most essential requirement of democratic policing.

Impunity

Impunity is another word for lack of accountability. Policing in a democratic society means functioning according to the rule of law. No one is above the law of the land and no one can be allowed to go unpunished when violating that law. This rule is as binding to police personnel as to ordinary citizens; in fact more so. Courts across the world routinely punish people in positions of trusteeship such as law enforcers with far greater severity because apart from the crime they have committed they have also breached the public trust and contributed to breaking confidence in the law.

It is, however, a hard fact that many state functionaries, even in democratic societies, including police personnel, succeed in getting away after committing major crimes. This happens due to various reasons. Crimes do not come to the surface because evidence is covered up. Investigations are not done effectively to unearth violations of law. Victims are intimidated or threatened to remain silent. Colleagues are not willing to blow the whistle and maintain a code of silence. However, an important source of impunity in many cases is the law itself, which does not allow prosecutions to be launched against the delinquent officers without sanction of the government. In order to make a beginning to break the unethical solidarity within the force itself and to build an environment that encourages the weeding out of the bad eggs from the force, the law needs to be reformed so that public servants cannot hide behind its provisions. If it cannot be done for all public officials, at least any reforming legislation relating to police must remove the barriers that presently exist to protect wrongdoers in the force.

Police Acts in India

The Police Act, 1861

There is no provision in the Police Act of 1861, which can be utilised by the government to grant or the police officer to enjoy impunity. It allows prosecution to be launched against the police officer provided it is done within a period of three months of the alleged deed and after giving one month's notice in writing

about the proposed action¹¹¹. However, if the act done is under the authority of a warrant, that plea can be made in defence by the concerned police officer. According to the Police Act, 1861: "when any act of prosecution shall be brought or any proceedings held against any police officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate."¹¹²

The Act however does not have any provision regarding the tort liability of the government or the police department for wrongful and illegal acts of police officers committed during performance of duties.

State Police Acts

All the State Police Acts have provisions saying that no police officer is liable to any penalty or payment of damages for any act done or intended to be done in good faith in pursuance of any duty and that no suit or prosecution can be instituted against a police officer for any act done under colour of duty and is not to be entertained unless it is filed within six months of the commission of the alleged offence.¹¹³

The MP Bill also does not allow any court "to take cognizance of any offence under this Act when the accused person or any one of the accused is a police officer except on a report in writing of the facts constituting such offence by, or with the previous sanction of the Director General of Police."¹¹⁴ This provision is exactly similar to the one contained in section

132 of the NPC Model, except for one difference. While the NPC Model requires that prior permission for such prosecution has to be taken from the State Government, the MP Bill accords the power to sanction prosecution of police officers to the Director General of Police.

Lawmakers a century and four decades ago did not think it necessary to have a provision in law, which could be misused to provide escape to guilty but protected and patronised officers. In sharp contrast, the laws framed during the present days when the country is independent and democratic have provisions, which could be wrongly utilised to grant impunity.

The NPC Model

The NPC Model follows the provisions contained in the CrPC, which can be utilised to grant immunity to police officers in cases of misconduct. Section 197 Criminal Procedure Code, provides that 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 almost blanket 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. Eight years ago, the law Commission of India recommended that this provision should be amended to explain that it would not apply to any offence committed by a public servant, *“being an offence against the human body committed in respect of a person in his custody, nor to any other offence constituting an abuse of authority.”*¹¹⁵

The National Police Commission has also recommended that protection available to the police officers under Sections 132 and 197 of the Cr.P.C. 1973 should be withdrawn so that the complainant is free to press his complaint against police official for a judicial pronouncement without having to obtain prior permission of the competent authority for such prosecution.¹¹⁶ However, contrary to this recommendation, the NPC’s draft Police Bill debars the courts from taking any cognizance of offences under the Model Bill without prior sanction of the state government, when the accused is a police officer¹¹⁷. Another provision in the NPC’s Model says that *“No police officer shall be liable to any penalty or to payment of damages on account of an act done in good faith in pursuance or intended pursuance of any duty imposed or any authority conferred on him”* by law.¹¹⁸

The NPC has borrowed this provision from some state Police Bills. For example, the Bombay Police Act has an exactly similar provision.¹¹⁹

Foreign Police Acts

The doctrine of governmental immunity is not recognised in the Police Acts of other countries. The Police Act of South Africa allows legal proceedings to be instituted against the local government for *“an alleged act performed”* or *“an alleged failure to do anything which should have been done in terms of this Act or any other law, by any member of a municipal or metropolitan police service.”*¹²⁰

The Police Act of UK makes the chief officer of police *“liable in respect of torts committed by constables under his direction and control in the performance or purported performance of their functions”* and shall *“in respect of any such tort be treated for all purposes as a joint tortfeasor.”*¹²¹

The Police Act of British Columbia in Canada makes a distinction between the government and the personal liability of the police officer in such cases. The liability of the government at all levels is total. The Minister on behalf of the government is jointly and severally liable for torts committed by police officers in the performance of their duties.¹²² A municipality, regional district board or government corporation are liable for torts committed by their police officers, while performing duties.¹²³ There will be no personal liability except in certain circumstances. According to the legislation, *“No action for damages lies against a police officer appointed under*

this Act for anything said or done by him or her in the performance or intended performance of his or her duty or in the exercise of his or her power or for any alleged neglect or default in the performance or intended performance of his or her duty or exercise of his or her power.”²⁴ This immunity, however, is not available if the police officer “has been guilty of dishonesty, gross negligence or malicious or willful misconduct or the cause of action is libel or slander”²⁵

The doctrine of sovereign immunity has thus not been recognised by the Police Acts of the countries mentioned in this paper. In the USA also, this doctrine has either been extensively modified or completely abolished in different states. Recognition of governmental liability for the improper conduct of its police officers is being regarded as a greater incentive for the executive and the police leadership to institute the kinds of policies and practices that will guard against tort liability. Consequently, the American Bar Association, while prescribing standards for criminal justice, has recognised the need to do away with the system of governmental immunity.

One of the standards prescribed by the Association is: *“In order to strengthen the effectiveness of the tort liability for improper police activities, governmental immunity, where it still exists, should be abolished, and legislation should be enacted providing that governmental subdivisions shall be fully liable for the actions of police officers who are acting within the scope of their employment.”²⁶*

Consultation with the Community

Police Acts in India

The Police Act, 1861

As already mentioned, the Indian Police is a ‘*regime police*’. The idea of the police being a part of the community and accountable to it has never grown in the Indian soil. It is not at all surprising that the Police Act of 1861 talks of the community or the inhabitants of an area only in terms of their responsibility to maintain order and penalties that should be imposed on them in case of failure to do so. There is not a single provision in this Act, which suggests the need on the part of the police to consult the community or involve them in any way in their work.

State Police Acts

State Police Acts are as silent on this issue as the 1861 Act. The 1861 Act reflected the relationship between the colonial ruler and his subjects. But can this lack of people’s participation or consultation be the parameter for policing in a democratic society today?

The NPC Model

The NPC Model also has no provision that specifically requires the police to consult the community about their policing needs and priorities or establish better relations with them. There is just one provision in the Model Bill that authorises the Superintendent

or Commissioner of Police to constitute Defence Societies for protecting persons, securing property and public safety¹²⁷.

Foreign Police Acts

The Police Acts of the countries studied by us, on the other hand, make specific provisions to obtain community's views on policing and emphasise the need to establish good relations between the police and the community.

South Africa

In South Africa, the Constitution itself makes it the "political responsibility" of each province "to promote good relations between the police and the community"¹²⁸ and to appoint a commission of inquiry into any breakdown in relations between the two.¹²⁹ The South Africa Police Act, 1995 gives effect to the provisions of the Constitution by prescribing the establishment of Community Police Forums at police station level to act as forums for liaison between the Police Service and the community. The liaison is meant to assist in :

- establishing and maintaining a partnership between the community and the police;
- promoting communication and co-operation between the police and the community;
- improving the rendering of the police services in the community;
- improving transparency in the Service and accountability of the Service to the community; and
- promoting joint problem

identification and problem solving by the Service and the community.¹³⁰

In addition to forums, the Act establishes community police boards at area and provincial levels. The area community police boards are to consist of representatives of community police forums in each area, while provincial community police boards are to include representatives of all area community police boards in that province¹³¹.

UK

The UK Police Act requires that "arrangements shall be made for each police area for obtaining (a) the views of the people in that area about matters concerning the policing of the area, and (b) their co-operation with the police in preventing crime in that area." These arrangements are to be made by the police authority for each area and by Commissioner of Police of the Metropolis under the guidance of the Secretary of State.¹³²

The Police Reforms Bill, 2002 of the United Kingdom allows exercise of police powers by civilians. The Bill enables the chief officers of police to appoint suitable support staff from amongst citizens to function as community support officers. The Bill gives them powers to deal with minor issues. The Bill also makes provision for community safety accreditation schemes and, in certain circumstances, the granting of limited powers to accredited members of those schemes.

British Columbia

The Police Act of the Province of British Columbia in Canada establishes Police Committees for this purpose.¹³³ The Committee is mandated to promote a good relationship between the residents and the police force and to bring to the attention of all concerned including the Minister matters concerning the adequacy of policing and make recommendations on those matters.¹³⁴



¹ Police Act of 1861, *Section 3*

² 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.

³ The Bombay Police Act of 1951, *Section 4*

⁴ *Ibid*, *Section 4*

⁵ National Police Commission: *Second Report*, August 1979, p31, para 15.46

⁶ *Ibid*, pp31-32, paras. 15.46 to 15.54

⁷ National Police Commission: *Eight Report, The Police Bill*, Chapter III, Sections 29-42.

⁸ *Ibid*, *Section 30 (1)*

⁹ *Ibid*, *Chapter II, Section 5*

¹⁰ National Police Commission, *Second Report*, August 1979, p 31, para 15.45

¹¹ National Police Commission: *Eight Report*, The Police Bill, Section 8.

¹² National Police Commission: *Second Report*, August 1979, Pp29-30

¹³ Judgement of the Supreme Court of India in *Writ Petition (Criminal) Nos. 340-343 of 1993*, pp 66-7

¹⁴ Section 4(1) of this Act, which is in *pari materia* with section 3 of the Police act of 1861, says that “The superintendence of the Delhi Special Police Establishment shall vest in the Central Government.”

¹⁵ The Judgement of the Supreme Court of India in *Writ Petition (Criminal) Nos.340-343 of 1993*, PP 66-67

¹⁶ *Ibid*, P67

¹⁷ The UK Police Act of 1996, *Section 36*.

¹⁸ *Ibid*, *section 37*

¹⁹ *Ibid*, *Section 38*

²⁰ Police Reforms Bill (HL), *Clause 1*, introducing Section 36A in the Police Act of 1996

²¹ A new organisation established under the Criminal Justice and Police Bill of 2001.

²² Police Reforms Bill (HL), *Clause 2*, introducing Section 39A in the Police Act of 1996

²³ Police Reforms Bill (HL), *Clause 3* amending section 54 of the Police Act 1996

²⁴ Police Reforms Bill (HL), *Clause 4* substituting Section 40 of the Police Act of 1996 by a new provision.

²⁵ Police Reforms Bill (HL), *Clause 5* incorporating 41A in the Police Act of 1996

²⁶ Police Reforms Bill (HL), *Clause 6* amending Section 53 of Police Act of 1996

²⁷ Police Reforms Bill (HL), *Clause 7* substituting Sub-sections (2) & (3) of Section 53 of the Police Act of 1996 by new provisions.

²⁸ Police (Northern Ireland) Act, 1998, *Section 37 (2)*.

²⁹ The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), *Article 206 (1)*

³⁰ *Ibid* , *Article 207 (2)*

³¹ The South African Police Service Act, 1995, *Section 11 (2) (a)*

³² The Constitution of the Republic of South Africa, 1996, *Section 207 (1)*

³³ *Ibid*, *Section 6 (2)*

³⁴ *Ibid*, *Section 7 (1)*

³⁵ *Ibid*, *Section 7(2)*

³⁶ *Ibid*, *Section 8 (1)*

- ³⁷ Ibid, *Section 8 (2)*
- ³⁸ Ibid, *Section 8, (3) (a)*
- ³⁹ Ibid, *Section 6 (a)*
- ⁴⁰ Ibid, *Section 6 (b)*
- ⁴¹ Ibid, *Section 6 (b) (vi)*
- ⁴² Ibid, *Section 7*
- ⁴³ Ibid, *Section 9*
- ⁴⁴ Ibid, *Section 10*
- ⁴⁵ Police Act, RSBC 1996, Chapter 367, *Section 2*
- ⁴⁶ Ibid, *Section 1.1*
- ⁴⁷ Ibid, *Section 6 (2) & (3)*
- ⁴⁸ Ibid, *Section 23*
- ⁴⁹ We have no information about the latest status of this legislation and also whether institutions prescribed under the Ordinance have been established or not.
- ⁵⁰ Police Ordinance, 2001, *Section 3(2)*
- ⁵¹ Ibid, *Section 6 (1)*
- ⁵² Ibid, *Section 6 (2)*
- ⁵³ Ibid, *Section 36*
- ⁵⁴ Ibid, *Section 30*
- ⁵⁵ Ibid, *Section 33*
- ⁵⁶ Ibid, *Section 42*
- ⁵⁷ Ibid, *Section 45*
- ⁵⁸ Ibid, *Section 54*
- ⁵⁹ Ibid, *Section 57*
- ⁶⁰ Ibid, *Section 60*
- ⁶¹ Ibid, *Section 8(1)*
- ⁶² Ibid, *Section 9*
- ⁶³ Ibid, *Section 8(4)*
- ⁶⁴ Police Act of 1861, *Section 4*
- ⁶⁵ The Indian Police Commission: *Report, 1902-03*, p79, para 121
- ⁶⁶ Ibid
- ⁶⁷ K.S. Dhillon: *Defenders of the Establishment- Ruler Supportive Police Forces of South Asia*, Indian Institute of Advanced Study, Shimla, 1998, p 109
- ⁶⁸ Indian Police Commission: *Report, 1902-03*, p 153
- ⁶⁹ Report of the Working Group on Police administration set up by the Administrative Reforms Commission, Department of personnel and Training, Government of India, August 1967, p 72
- ⁷⁰ Bombay Police Act, 1951, *Section 17*
- ⁷¹ Ibid, *section 18*
- ⁷² Ibid, *Section 19*
- ⁷³ Karnataka Police act, 1963, *Sections 17 & 18*
- ⁷⁴ The Madhya Pradesh Police Vidheyak, 2001, *Section 7 (1)*
- ⁷⁵ Ibid, *Section 8*
- ⁷⁶ Ibid, *Section 7 (5)*
- ⁷⁷ Ibid, *Section 25 (1) (a)*

- ⁷⁸Ibid, *Section 25 (1) (b)*
- ⁷⁹The National Police Commission: *Fifth Report*, New Delhi, November 1980, p 39
- ⁸⁰The National Police Commission: *Eight Report*, The Police Bill, Section 11
- ⁸¹Ibid, *Section 12*
- ⁸²Ibid, *Section 81 (1) (a) & (b)*
- ⁸³Ibid, *Section 81 (3)*
- ⁸⁴Ibid, *Section 9*
- ⁸⁵National Police Commission, *Second Report*, August 1979, p 8, para 14.14
- ⁸⁶The Police Act, 1996 of UK, *Section 54 (2)*
- ⁸⁷Ibid, *section 54 (4)*
- ⁸⁸Ibid, *Section 9 (2)*
- ⁸⁹Ibid, *9 (3) (a) & (b)*
- ⁹⁰Ibid, *9 (5)*
- ⁹¹Ibid, *Section 10*
- ⁹²Ibid, *Section 10, (4) (b) (i) & (ii)*
- ⁹³Ibid, *Sections 17 & 18*
- ⁹⁴Ibid, *Section 10 (8) & 14*
- ⁹⁵South African Police Service Act,1995, *Chapter 10, Section 50 (1) (a)*
- ⁹⁶Ibid, *Section 50 (2)*
- ⁹⁷Ibid, *Section 51 (1)*
- ⁹⁸Ibid, *Section 51 (3)*
- ⁹⁹Ibid. *Section 53 (2) (a) & (b)*
- ¹⁰⁰Ibid, *Section 53 (8)*
- ¹⁰¹Ibid, *Section 54 (a)*
- ¹⁰²Ibid, *Section 47*
- ¹⁰³Ibid, *Section 51.1*
- ¹⁰⁴Ibid, *Section 50*
- ¹⁰⁵Ibid,*Section 63.1*
- ¹⁰⁶The Police Ordinance, 2001, *Section 159*
- ¹⁰⁷Ibid, *Section 161,*
- ¹⁰⁸Ibid, *Section 162*
- ¹⁰⁹Ibid, *Section 163*
- ¹¹⁰Ibid, *Section 164 Section 162*
- ¹¹¹The Police Act, 1861, *Section 42*
- ¹¹²The Police Act, 1861, *Section 43*
- ¹¹³The Bombay Police Act, 1951: *Section 159-161*;Kerala Police Act: *Section 64* & Karnataka Police Act: *Sections169 & 170*
- ¹¹⁴The Madhya Pradesh Police Vidheyak, 2001, Section50
- ¹¹⁵Law Commission of India: *One Hundred and Fifty Second Report On Custodial Crime, 1994, pp 127-128*
- ¹¹⁶National Police Commission: *Eight Report, May 1981, pp 6-7*
- ¹¹⁷National Police Commission: *Eight Report, Police Bill, Section 132.*
- ¹¹⁸Ibid, *Section 143*
- ¹¹⁹Bombay Police Act, 1951, *Section 159*
- ¹²⁰South African Police Service Act,1995, *Chapter 12, Section (64) (4)*

- ¹²¹ UK Police Act, 1996, *Section 88*
- ¹²² Police Act, RSBC, 1996, *Chapter 367, Section 11*
- ¹²³ Ibid, *Section 20*
- ¹²⁴ Ibid, *Section 21(2)*
- ¹²⁵ Ibid, *Section 21 (3) (a) & (b)*
- ¹²⁶ The ABA Standards for Criminal Justice, Volume 1, Little Brown and Company, Boston, 1980, *Standard 1-5.4., pp 154 to 157.*
- ¹²⁷ National Police Commission: *Eight Report, Police Bill, Section 80*
- ¹²⁸ The Constitution of the Republic of South Africa, 1996, *Article 206 (3) (c)*
- ¹²⁹ Ibid, *Article 206 (5) (a)*
- ¹³⁰ South African Police Service Act, 1995, Chapter 7, Section 18
- ¹³¹ Ibid, *Sections 20 & 21*
- ¹³² UK Police Act, 1996, *Section 96.A*
- ¹³³ Police Act, RSBC, 1996, *Chapter 367, Section 31*
- ¹³⁴ Ibid, *Section 33.*

The Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is a non-partisan, non-profit independent international non-governmental organisation mandated to work towards the practical realisation of human rights in Commonwealth countries. Human rights advocacy and education are at the core of all CHRI's activities, and the aims and ends of all its reports and investigations.

CHRI aims to raise awareness of and adherence to internationally recognised human rights instruments and declarations made by the Commonwealth Heads of Governments, and more particularly the values embodied in the Harare Declaration.

CHRI was based in the United Kingdom until 1993, when the head office moved to India. The Trustee Committee office in London continues to support the work of the headquarters based in New Delhi. In May 2001 CHRI opened a new office in Accra, Ghana in order to develop human rights interventions particularly appropriate to the context of Commonwealth Africa.

CHRI is working in the following areas:

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- Police Reforms
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