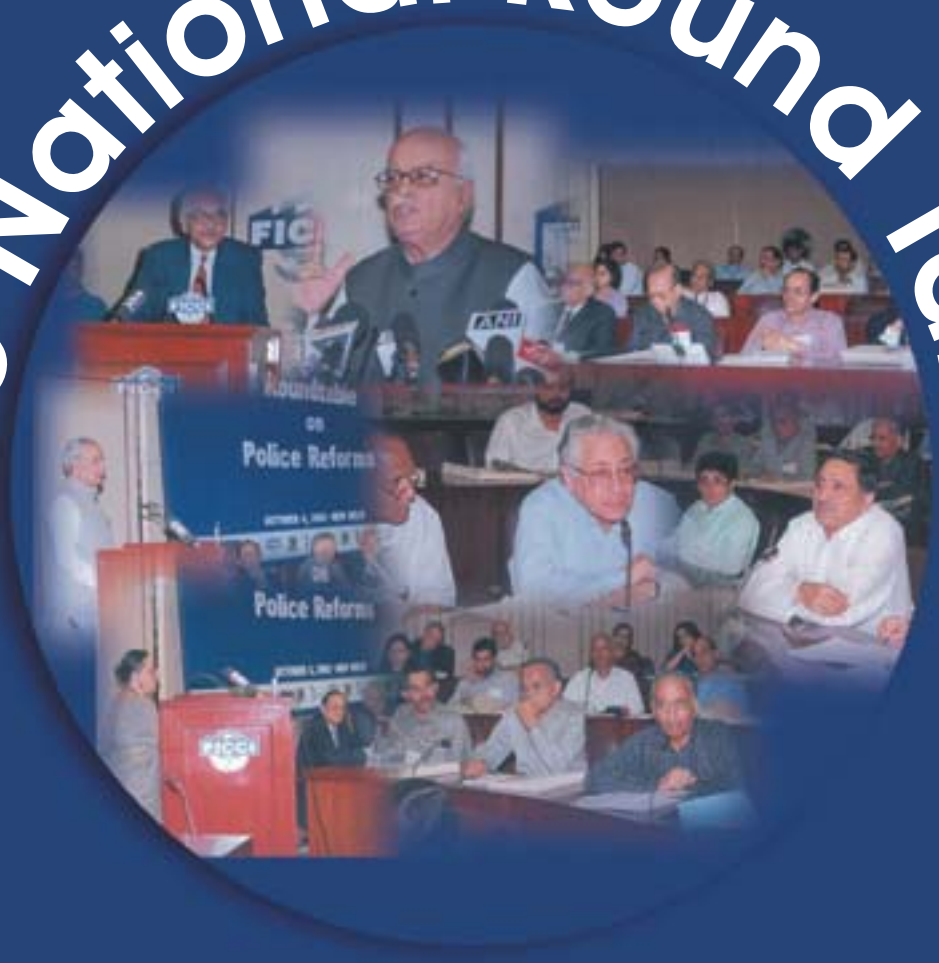
Report of

The National Round Table



on

POLICE REFORMS

2002

Commonwealth Human Rights Initiative

We acknowledge the support of the **British High Commission** in organising this Roundtable and in bringing out this report.

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Report
of
The National Roundtable
on

POLICE REFORMS

organised by
COMMONWEALTH HUMAN RIGHTS INITIATIVE

in collaboration with
EDITORS GUILD & FEDERATION OF INDIAN CHAMBERS OF COMMERCE AND INDUSTRY

at
FICCI Federation House, New Delhi
on
4TH October 2002

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INTRODUCTION

For the past 4 years, the **Commonwealth Human Rights Initiative** [CHRI] has been advocating strongly the urgent need for police reforms. It has been urging state governments to recognise this need and take immediate steps to introduce police reform. It has also been trying to persuade the government at the Centre to set an example by reforming the police forces under its control so that this can inspire state governments to follow suit. In doing so it has, from time to time, allied itself with different organizations and civil society actors to bring this issue into the forefront of the national agenda.

At the present roundtable[1] CHRI, in collaboration with **the Editors Guild of India** (EG) and **Federation of Indian Chambers of Commerce and Industry** (FICCI) brought together politicians, media, civil society groups, policemen, bureaucrats, lawyers, human rights commissioners, members of the business community, activists and concerned citizens[2].

Designed as a dialogue amongst equals - in the belief that some of the best minds and most committed hearts were at the meeting - discussions were organized to focus sharply on issues that lie at the heart of police reform. In particular, the Consultation was designed to discuss:

- various models and structures required to be put in place to insulate police from illegitimate and unwarranted extraneous influences;
- arrangements that are needed to ensure greater police accountability; and
- steps to be taken to break resistance to police reforms and to foster political will to reform the police.

Intended to be forward-looking, the Roundtable sought to refrain as much as possible from reiterating the frailties of policing, or apportioning blame between different agencies or the difficulties of policing which so often take up the lion's share of time.

However, it was inevitable that in order to reach an understanding of what the role of the police should be, the Roundtable did deliberate on its present image, its genesis,

[1] October 4, 2002 at Federation House, FICCI, Tansen Marg, New Delhi –110001
[2] See *Annexure – I* for participants list

functioning and modes of control and the role that it should ideally play in the context of India's pluralist, constitutional democracy.

Speaking at the valedictory session, the Hon'ble Deputy Prime Minister & Home Minister Mr. L.K. Advani stated that the mandate of the present government is to convert 'Self Governance' into 'Good Governance'. A good police force that is responsible, accountable and people friendly is an imperative to good governance. He stated: "If whatever you suggest is feasible, practical. I would like to implement it, at least in the UT's and see the Delhi force becoming a different force." Assuring participants that the present government does indeed have the necessary political will to bring in reforms, the Hon'ble Minister said it was indeed unfortunate that the recommendations of the National Police Commission (NPC)[3] had remained dormant for years. He further promised that if the 1861 Act was indeed shown to be *ultra vires* of the Constitution, he would make it his duty to persuade legislators to replace this outdated legislation with an Act that conformed to the democratic values and prescriptions enshrined in the Constitution of India.

HIGHLIGHTS

- Police reform is indeed *too important to neglect and too urgent to delay*.[4] Continued neglect to this area will most certainly fuel increased social conflict and encourage crime, cross-boarder terrorism, vigilantism, and impact adversely on governance and development.

- The whole criminal justice system with its inter-connecting and interpenetrating segments requires overhauling. However waiting for holistic measures cannot be an excuse for not implementing early reform within the police.

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[3] National Police Commission (1977) constituted by the Ministry of Home Affairs, Government of India by its resolution No. VI.24021/36/77-GPA.I dated 15th November 1977

[4] CHRI's background note

- Initiatives from the Centre to catalyse police reform are vital to making reform happen. Such initiatives require the Centre to lead by:
    - implementing reforms that will insulate police from illegitimate political control and outside interference in the forces over which the Centre has direct control; and
    - using its considerable influence over States and dialogue mechanisms such as the inter-state council, encourage early implementation of similar reformative measures;
    - legislating a new central Police Act
- The Police Act of 1981 was designed to create a force able to enforce foreign rule and keep down the native population. Its objectives and machinery are entirely unsuitable for present day democratic policing and must be replaced by a Police Act that is in consonance with citizens' rights, furthers good governance and social justice and is able to facilitate rapid development.
- The police are indeed accountable only to law and not to personages but the present system has created such a deep subversion of this concept that it requires amendments in Police Acts to make explicit that every policeman is accountable only to the law above all else.
- Even if there are no legislative changes, there is considerable scope for change from within the police itself. Police leadership is not harnessing itself sufficiently to ensuring efforts toward this.
- The political will to reform the police is presently not available. It must be created through public pressure.

The citizens' point of view…

That legacy of the Police Act of 1861 carries forward. Even 50 years after Independence the police are addressed as, and address themselves as, the 'Police Force' instead of being thought of as the 'Police Service'. This projects the police as militarized and as defenders of establishment' rather than an institution dedicated to upholding law[5].

[5] Mr. K.S.Dhillon, IPS (Retd.) and Former Director General of Police (State of Punjab)

They are almost universally seen to be rude, unprofessional, inefficient, authoritarian, unaccountable, insensitive to community's needs, and violators of basic human rights. Brutality and corruption within the police are of serious concern for everyone but impact much more on socially and economically disadvantaged sections, who ironically need the police most.

Citizens feel that there is no police commitment to protecting their rights according to law. Police are generally seen to be functioning in near total disregard of rule of law and constitutional values. Specific infirmities include regular refusal to record First Information Reports (FIRs); refusal to inform complainants of the progress of complaints; incorrect recording of statements to tailor them to police convenience; random investigations used largely as a means to harass witnesses and victims and extort money; farcical prosecution and conviction rates that are becoming a scandal.

A major disincentive to improving police public relationships is that the public do not see police as dealing with people in an open and fair manner. Police stations are not service providers to the public, as they ought to be, but are unfriendly places with hostile environment.

Perceived as coercive tools in the hands of the ruling regime and other powerful interests, more than every other debility, the public at large considers the police biased. The presence of communal bias in the police force has been well documented in a number of official and citizens' reports and affects the performance of their duty.[6] Partiality is the direct result of politicization and is ever more evident when police deal with communal riots.

The police point of view...

The police, on the other hand, see themselves as working to deal with traditional problems of law enforcement and new and complex societal problems and situations of violence and terror with both hands tied behind their backs. They feel they work unappreciated by the public amongst whom they live, handicapped by poor infrastructure and worse service conditions, accountable to too many masters and hindered by political interference.

[6] Mr.Soli J Sorabji, Attorney General of India

Since Independence, tasks have become more complex. They range from routine police duties to dealing with longstanding low intensity conflicts, politically stoked problems of public order, terrorism and controlling complex sophisticated white-collar crimes. Demands from the public have become multifarious. Expectations are high. While the public accept delays in court as inevitable, they brook no delays by the police. The equipment provided to them is quite often outdated and transport and communication facilities are inadequate and their use and availability bound up in bureaucratic red-tapism. In the face of criminals who move around with AK-47s and mobile phones, the police for the most part continue to carry .303 rifles and antiquated wireless where available. Training continues to emphasize physical tasks and is often unsuitable and irrelevant. There is insufficient specialization. Opportunities for in-service education are restricted, investigation abilities poor, and aids to detection old fashioned or simply not available.

Service conditions of the constabulary are so pitiable that they are a prime de-motivator. Mental health, stress and tension from working in constant danger and in the absence of regular hours or a predictable family life, have been given too little attention when assessing performance and attitude. The sub-culture within the police favours a class system long out of step with India's egalitarian Constitution. Semi-feudal relationships inhibit innovation and initiative and the relationships between officer and constable do not promote service loyalty.

Not just the police…

The police also feel they are unfairly targeted in isolation and too often bear the brunt for misbehavior when in fact they are only one part of a larger system that has deteriorated. The entire apparatus of governance remains a legacy of over 200 years of colonial rule and is riddled with corruption, nepotism, undemocratic policy making, unaccountable bureaucracy, and abuse of executive power. The last 15 to 20 years have seen a complete deterioration of the entire Criminal Justice System (CJS) and this includes the police who are naturally enough affected by the general downturn. Yet between the police who apprehend criminals and the court, which decides their guilt, lie many other phases of the criminal justice system, the detection side, the forensic side and the prosecution side. All these have their own infirmities but any failure is often unfairly perceived to lie at the door of the police alone.

The courts and the police seem continually at odds when they should be working complementarily. It does not help that the legal system is posited on mistrust of the

police. The entire foundation of the Criminal Justice System relies on investigative work done by police. Yet, police statements and confessions to the police are inadmissible in court. The police are frustrated by the procedural complexity, enormous delays and corruption in the courts which lead to consistent failure in taking criminal justice to its logical conclusion. The police feel that the judiciary must take a deal of the blame for low conviction rates and is accountable for long delays when the case does not come up for trial for years together.[7] On the other hand the judiciary feels unable to convict where investigation has been so manifestly poor or contrived and prosecution is based on the flimsiest of grounds.

At the root of the problem...

Foremost in the litany of cause and effect is the palpable perception within the police that its poor performance can be laid firmly on lack of functional autonomy and subversion of discipline within the force. Both police and public recognise that the police cannot resist being the creature of whichever is the current regime in power and acts at their bidding rather than in accordance with the law. Governments over the years have manipulated the police for self-gain. Police has been used to put down opposition, to cover up failures of the ruling party and protect friends. Political interference is rife at the local level, in the higher echelons and in everyday functioning.

The incentive to bad officers is to benefit from powerful political patronage. Honest officers who discern their duty as serving without bias, fear or favour find themselves labeled as uncooperative, difficult and unhelpful and are sidelined into non-operational roles. Allegiance to power centers outside of the police means that the chain of command is weakened, lines of control get blurred within the force and the ability of superior officers to marshal their forces or make them accountable for wrong-doing is severely compromised. Political interference has a chain reaction and gets institutionalized in a negative sense[8] resulting in the subversion of existing structures of supervision and control within the establishment.

The power of transfer and ability to damn or further the career paths of individual officers make the police unable to resist outside influence, whether this comes from powerful societal elements or political superiors. Transfers have become manifest

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7 Mr. Bharat Chandra, IPS, Principal Secretary, Dept. of Home (Police), State of Andhra Pradesh

8 Mr. Ajay Mehra, Director (Hony), Centre for Public Affairs, New Delhi

negotiable instruments.[9] Its constant threat hangs like the sword of Damocles over their heads.[10] Eager to please, at times police itself tend to resort to politicking and hobnobbing with functionaries outside the system for personal favors and gains. All this makes the possibility of professional policing a distant dream.[11]

Whatever the causes of poor police performance, there was general agreement that it has had serious repercussions, which are clearly available for all to see. Recent events in Gujarat have demonstrated with stark tragedy the consequences of bad policing. But this is only one of the many instances of perpetuated injustice that have become commonplace through the years. Lack of public confidence in the State's ability to protect personal safety, property and rights has promoted self-help. There has been a brisk growth in vigilantism and private armies for settling scores, or getting redress. Lack of access to the criminal justice system and a fair means of redress only make the victim resort to the extra-constitutional methods of an eye for an eye and tooth for tooth.[12] Loss of confidence means that the public is unwilling to share information with the police. This makes their work much harder. Defensive and isolated, the police too become insular and unnecessarily suspicious and a vicious circle is formed.[13]

What most citizens feel and is acknowledged by police and policy makers alike has been borne out time and again by learned studies, the regular reports of the National Human Rights Commission (NHRC), the strictures and exhortations of the Supreme Court and the negative perceptions about India's human rights record in international forums.

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[9] Mr. B.G.Verghese, Visiting Professor-Centre for Policy Research, New Delhi

[10] Mr. Soli. J. Sorabji

[11] Mr.Madhava Menon, Vice Chancellor, West Bengal University of Juridical Sciences, Kolkatta

[12] Mr.B.G.Verghese

[13] Mr.C.V.Narasimhan, IPS (Retd.) and Member Secretary, National Police Commission (1977)

What reforms?

Reforms can be divided into two categories, those that can be initiated from within the police organisation itself without legislative reform and those that need legislative change. Many police officers felt that reforms should begin with repealing the existing police legislation.[14] Without legislative change it is too much to expect that the system will change from within. In the context of past experience, the administrative culture and ethos, the preferred means of bringing about reform is to have a well-considered, balanced new law on police. By contrast, others felt that the leadership thrust must come from within the police itself and that in the absence of manifest determination within the force, legislative changes would bring about very little change.

Any reforms, especially those to be made by legislative change must begin by articulating a redefined role for the police and the type, level and extent of superintendence of the state government over the police;[15] be transparent about how accountability is assured; and take notice not only of the new conditions and legal assumptions within the country but also of the latest developments that have taken place elsewhere, especially the good practices in similarly placed jurisdictions. The NPC has offered a package of reforms, which if implemented as a whole will have an overhauling impact on policing.

Redefining the role...

India is a country committed to the rule of law. Whatever their limitations, the police are universally recognized as an indispensable part of the justice system and exists solely to uphold the rule of law.

Because the Police Act of 1861 was intended to give power to the ruling elite of the time, it has no place for words like 'people's welfare', 'citizens police' anywhere in the sections. But at the present time, in a democracy where the people are sovereign the police derive their strength from them. Any new law must make this explicit. Unfortunately there has been such massive support to the continuation of such a

[14] Mr. Bharat Chandra, IPS

[15] Mrs. Maja Daruwala, Director, Commonwealth Human Rights Initiative, New Delhi

colonial piece of legislation that it has defied any effort for improvement for over 150 years. In future, the citizens will have to bear the brunt of retaining such an Act.[16]

It was suggested that in order to make explicit the changed role of policing in a democracy where citizens have fundamental rights, there is a strong argument for a constitutional amendment to the effect that "there shall be throughout the country, a police force, answerable to the law, exempted from extraneous influences and the state shall enact legislation to that end."[17] A change in constitutional provisions is necessary to making it a bounden duty of the political authority in power and other political parties, to act responsibly for the welfare of the common people. The subject of policing should also perhaps be added to the concurrent list, to facilitate the applicability of a central legislation to the provincial police forces as well.[18]

New laws must begin with a redefinition of the role of the police. The police must be recognized as an important instrument of governance that protects rights and ensures that all people, especially so the most vulnerable, can realize the many rights that have been promised in the Constitution. This requires that the role of police go beyond providing citizens with a sense of security in respect of life and property. While law enforcement has a critical role in preserving the socio-economic stability of a developing country and is necessary to create an atmosphere conducive to growth,[19] in modern India police must be a multi-function service agency responding to citizens' problems. Good governance so necessary to equitable growth and sustainable development also requires an independent, non-authoritarian, impartial, professionally efficient and citizen friendly police. At the heart of good governance lies the protection of human rights, which must also be a recognised part of police duty[20].

[16] Mr. Bharat Chandra, IPS
[17] Mr. Noorani, Senior Advocate, Mumbai High Court
[18] Mr.Prakash Singh, IPS (Retd.)
[19] Mr. R.S. Lodha, President, Federation of Indian Chambers of Commerce and Industry
[20] Mr.L.K.Advani, the Hon'ble Deputy Prime Minister of India

Unfortunately, the country has consistently been a hub of conflict, mayhem and human rights violations, partly because of the growing criminalisation and politicisation of society and its institutions, but also because of lawlessness within the police establishment. Such an unstable environment can neither underpin the growth of enterprise nor positively contribute to sustained economic and social development. An unbiased and independent law enforcer is also a crucial element for enhanced accountability across government structures. Without reform in this arm, other parts of the executive will also remain unaccountable.

While each segment of the criminal justice system may point to the other as being the main weakness, the need to find a holistic solution cannot become an excuse for not tackling a particular segment and creating changes.[21] Positive changes in the police would then naturally have a cascading effect on other areas of the system[22]. It is true that the whole disturbing scenario necessitates comprehensive reformation of the entire criminal justice system. However, police reforms are a condition precedent for the success of any such attempt. Rather than being crestfallen and isolated in their own arena the police need to feel part of the judicial system and an adjunct for the purpose of searching for the truth. The time to appoint more committees and commissions has run out and it is time to deliver.[23]

The notion of police reform encompasses on-going implementation of everything that goes into assuring democratic policing. This includes reviewing the means by which to assure: better processes and standards of recruitment; effective leadership; efficient and equitable service delivery; decent service and living conditions for police; improved infrastructure; absence of hasty and ill considered transfers; increased avenues for promotion; a healthy work culture; de-politicised control and supervisory structure; lack of corruption, nepotism and misuse of power and authority; increased transparency; enhanced accountability; increased interface between police and public; respect for human rights; people friendliness and above all better adherence to the rule of law.

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[21] Mr. B. G. Verghese

[22] Mrs.Maja Daruwala

[23] Mr.A.N.Roy IPS, ADGP (Admn.), State of Maharastra

An argument often given is that the police function poorly because they lack resources, but additional resources cannot assure that the focus of policing will change from being perceived as an oppressive colonial ruler supportive police to a citizen oriented police. Talk of 'modernization' of police does not adequately cover the concept of reform. Modernisation in its present form accents providing the police with better infrastructure and more modern means of communication, transportation and equipment. Over the years, funds for this have increased from 10 crores to 1000 crores. But this cannot ensure that there is a change in the governance of the police, or its culture and does not seek to do so.

The priorities for reform have been carefully diagnosed time and again by the National Police Commission [NPC] and other committees that have come after. None of the measures suggested is as fundamental to police reform as the need to give professional functional autonomy to the police; to insulate them from any possibility of illegitimate political or executive control; and change laws and practices so that there are strong mechanisms to ensure effective accountability.

These core issues of police reform require the most immediate attention. Changes in service, working conditions, scope for promotions, are indeed also areas for consideration but will not by themselves change the character of policing unless the basic problem of supervision and control is addressed so as to minimize the possibility of misuse of the police by extraneous, illegitimate political forces.

Supervision and control...

Though Section 3 of the Police Act of 1861 provides for superintendence of the state over the police, it does not clearly define the term 'superintendence'. This vagueness permits all sorts of influences over the police to be camouflaged as 'superintendence'. State governments allow themselves unlimited discretionary powers to issue arbitrary orders and directions to the police in the ostensible exercise of the power to superintend. The level and density of interference – political and extra-constitutional - over the years has been persistent and uninterrupted. Interference relates to the very recruitment of the constabulary, first appointments, deployments, positioning,

promotions, transfers and goes right up to the selection of the chief of police force in the state i.e. the Director General and his immediate subordinates. The result has not merely fractured, but virtually destroyed the command and control structures of a uniformed force.[24]

Since 1979, when political interference was highlighted in the second report of the National Police Commission under the chairmanship of Shri. Dharma Vira, subsequent committees like the Vohra Committee Report, the Ribeiro Committee Report, the Padmanabhaiah Committee Report have reiterated the dire need to develop some mechanism capable of insulating the police from illegitimate, external and political interferences and to defend lawful police action.[25] Pressure is a phenomenon that cannot be wished away but the remedy to sanitize the police system is the 'State Security Commission' proposed by NPC.[26]

In a bid to limit the scope for interference, the Dharma Vira committee and the subsequent committees have made clear recommendations that the power of superintendence of the state government should be limited only to ensure that police performance is in strict accordance with the law. The police must be treated as an adjunct of the judiciary and ensured functional autonomy and independence equivalent to the higher judiciary in India. Urging the implementation of the long over due recommendations of the NPC, the Supreme Court in Vineet Narain and others Vs. Union of India and another[27], popularly known as the Hawala Case, expressly stated that *superintendence merely means the over all functioning of the police, but certainly not any control or supervision even on the initiation, much less the progress or process of investigation.*[28]

Discussions ranged around the limits of legitimate executive control over the police. Some felt that the maintenance of 'public order' is a matter in the domain of political judgment. Hence insulating the police from political control in toto cannot be the answer, as it would only make them less accountable. Others pointed out that 'crime investigation' is already treated as a quasi-judicial function and is not at all 'under' political control and beyond any kind of intervention either by the executive or non-executive.

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[24] Mr. N.N.Vohra, Former Secretary, Ministry of Home Affairs, Government of India
[25] Mr.Giridhari Nayak, IGP (Training), Chhattisgarh
[26] Mr. C.V.Narasimhan
[27] Vineet Narain and others Vs. Union of India and Another, Writ Petition (Criminal) Nos.34-343 of 1993
[28] Jus. J.S.Verma, Chairperson, National Human Rights Commission

The NPC recommended the establishment of a statutory State Security Commission (SSC) that would ensure politically neutral performance, while retaining the government's responsibility of overseeing the police. Its recommendations suggest that though the SSC would act as a supervisory body laying broad policy guidelines, it would have no powers to issue instructions in regard to actual operations in the field. The charter of duties for the Commission included:

- Laying down broad policy guidelines for the performance of preventive and service-oriented functions by the police;
- Evaluating the performance of the State Police every year;
- Functioning as a forum of appeal to dispose of representations from officers regarding their being subjected to illegal orders and regarding their promotion; and
- Reviewing the functioning of the State Police Force.

As arbitrary transfers and suspensions are important weapons in the hands of politicians, the SSC was to be a forum of appeal for representations against illegal orders. Political control per se is not resisted but it cannot be the control of the ruling party. It has to be popular control and that is why the idea of state security commission has been provided for.

"The recommendations of the NPC are basic, fundamental and unless they are projected, acted upon, embodied in a statute police reforms will not be possible."

- Mr.C.V.Narasimhan

There was agreement that while the SSC was a means of insulating police from illegitimate political control it would not achieve its purpose unless a packet of reforms are attempted along with it. There is no point in having a SSC, if the most corrupt person can be appointed DGP. The process of creating an SSC and the selection of its members must itself be insulated so that it is a fair and impartial mechanism of selecting the head of the state police force. A fixed tenure for the police chief would also make him less amenable to outside influence.

Each state should have an independent mechanism for the selection, appointment, transfer, tenure and posting of not merely the Chief of Police but also the police

officers of the rank of the Superintendent of Police and above. Appointments should be made by a high-powered committee headed by a judicial officer, the Advocate General of the state, the Home Secretary and of course the criteria should be seniority, experience, integrity and commitment.[29] The proposed body should be statutory with mandatory status to its recommendations unlike that suggested by the Ribeiro Committee in 1998[30].

The question of accountability...

Accountability is a measure of performance against a mandate under the law, the expectations of the people, effectiveness in upholding rule of law and respect for human rights.

All policing has to be brought in line with the requirements of democratic functioning and must take into account that Indian citizens have constitutionally mandated fundamental rights and all instrumentalities of government must be accountable to the people. Methods to judge performance and accountability require to be carefully worked out and laid down clearly in law.

The Indian Police Act of 1861 does not speak of the role of the police beyond law enforcement and does not recognize the need and responsibility of the Government to establish an effective and efficient system of democratic policing. State police acts passed after independence are mostly modeled on the 1861 Police Act and there is little to distinguish them from colonial legislation. By contrast, the police Acts of UK, British Columbia and several other Commonwealth countries make it a statutory responsibility of the government to set out objectives and performance targets for the police and clearly lay down how these responsibilities are to be discharged through a process of consultation. Similar provisions are found in the Police Act of South Africa and in fact the Constitution of South Africa envisions such responsibility on the state. [31]

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[29] Mr.Soli J Sorabji

[30] The Ribeiro Committee on Police reforms was constituted pursuant to the writ petition filed in the Supreme Court in 1997 praying for the implementation of the recommendations of the National Police Commision. It proposed that the SSC should be a non-statutory body with advisory powers only on the contention that the states are opposed to the idea of constituting a SSC.

[31] Mr. G.P.Joshi, Programme Coordinator, CHRI.

A segment of the police felt that the police have little authority, too many responsibilities and a plethora of institutions to whom they are already accountable. Others however felt that the Police as a law enforcement agency stands on an altogether different footing from other public service agencies by virtue of the enormous power and the level of control exercised over the lives of the citizens. Heavy public investment in the police, the steady increase in manpower, and the additional powers given to it under such laws as the Prevention of Terrorism Act and similar state laws demand a greater level of accountability from the organization. Accountability has also to be visible. The increased number of complaints against the police highlighting discriminatory enforcement of laws; misbehavior; arbitrary exercise of power; the common prevalence of torture and encounter deaths; corruption and communalization in the force coupled with impunity only add credence to the suggestion that accountability of police must be manifest.

A part of accountability implies that there must be a process of evaluating the performance of the police. The present system of evaluating police performance is statistically based i.e. how many crimes have been reported, what was the property lost, how many crimes have been solved and what property has been recovered. This in itself leads to distortions. Faced with the compulsions of solving crimes with little resource support, there is a tendency not to register cases, to use coercion such as illegal detention, third degree methods and intimidation of family members as common practice to solve crimes in lieu of detection thorough proper or scientific investigation.

More scientific and continuing assessment of police performance needs to be developed to evaluate individual and collective performance. Both the NPC and the Padmanabhaiah committee suggested that there should be independent directorates of police evaluation in every state. [32]

The NPC in its recommendations also suggested yardsticks for evaluating police performance such as the sense of security prevailing in the community; levels of cooperation that the police can get from the public; people's participation in crime

[32] Jus.Leila Seth, Chairperson, Executive Committee, CHRI

prevention; their sense of impartiality in police investigation; quality of service rendered in distress situations etc. These determinants have the virtue of being based on community satisfaction and therefore reduce the scope for 'extra-legal methods'. The inherent nature of these new mechanisms requires that the community be more closely involved and therefore also means greater public knowledge of the police and greater local oversight.

A major area of public dissatisfaction with the police arises from the inability of the public to follow the progress of reported crime and victims' complaints to police. At present, police feel themselves under no obligation to provide information to a victim or complainant about how the investigation is progressing. It should be made mandatory in law for the police to inform the complainant about the progress of the investigation.[33] This will not only enhance accountability to the complainant as far as investigation is concerned, but also progressively build confidence that will bring in more willing public participation into policing. [34]

Another aspect of accountability requires that there be a credible redressal system to deal with public grievances against the police.[35] Many police officers argued that internal disciplinary systems exist and do indeed punish policemen for wrongdoing more frequently than other services. However others felt that present mechanisms, because they are by their very nature internal to the force, do not provide a satisfactory indication to the public that complaints against the police are being dealt with impartially or leading to appropriate consequences. The argument that strict action against wrong elements would, if made in the public domain, lower the morale of the police was felt to be baseless[36] and had few takers.

Another irritant for the public when dealing with the police is that the police frequently refuse to take cognizance of some complaints on the ground that they are non-cognizable. In such cases, the police require the permission of a magistrate before

[33] Mr. N.C.Joshi, IPS – IGP (Operations), Special Security Branch, New Delhi
[34] Mr. N.C.Joshi
[35] Mr.Chamanlal, IPS (Retd.) – General Secretary, NHRC
[36] Mr.Chamanlal, IPS (Retd.)

intervening. Unused to this technical distinction, the public feel the police are avoiding their duties. It was suggested that the police should have a right to interfere to the extent of providing immediate relief, even in non-cognizable cases. Removal of this distinction could go some way toward the police being able to meet local expectations. The distinction between cognizable and non-cognizable offences does not exist in the US or UK law. Instead, clear objective guidelines have been laid down about how various types of cases should be dealt with and how discretion should be exercised.

Adjudication of complaints on a regular basis against any erring officer by transparent processes and independent officers and laypersons will bring about much more accountability.[37]

Sovereign immunity is an obstacle to police accountability. It is antithetical to the democratic governance and cannot co-exist with the concept of rule of law.[38] Section 197 of the Criminal Procedure Code, 1973, under which a public servant cannot be prosecuted without the sanction of the appropriate authorities for acts done while acting in the discharge of his duties, has often been abused to provide protection to police officers even in serious cases of misconduct. This needs to change.

Even in the absence of new mechanisms, accountability can be enhanced if legislatures pay more attention to the performance of police as an institution. The standing or other committees in parliament and state legislatures examine police budgets and that is the time when scrutiny of the annual performance of the police can be done. The public can make submissions and NGOs can indicate levels of satisfaction through documentation. All state assemblies need to make this effort and publicise findings widely to increase public awareness of this mechanism.[39]

[37] Dr.Amrik Singh

[38] Mr.N.N.Vohra, IAS (Retd.)

[39] Mr. Pranab Mukherji, Member of Parliament & Chairperson - Parliamentary Standing Committee

What others are doing?

S.6(2) Pakistan Police Ordinance 2001:
'The power of superintendence under sub section (1) shall be limited for the purpose of ensuring that police performance is in strict accordance with law.'

Not without a sense of irony was it brought to the attention of the house[40] that while the NPC's comprehensive recommendations for police reform in the vital areas of insulating them from political control and enhancing accountability had been studiously shelved by successive governments, the dictatorship in Pakistan has recognized the need to create institutional mechanisms to insulate the police from political interference and gone about making this happen through Pakistan Police Ordinance 2001. The Ordinance explicitly recognizes the need for establishing an "independently controlled, politically neutral, non-authoritarian, people-friendly and professionally efficient police".

15.38 having regard to the general principles enunciated above in regard to judiciary, we feel that it would be appropriate to lay down 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.

Section 6(2) of the Ordinance reads exactly the same as Para 15.38 of the Second report of the NPC.[41] The Public Safety Commission, which the Ordinance proposes to establish at the federal,provincial and district levels, has objectives similar to those of the State Security Commission proposed by the NPC[42]. Membership is half from the legislature and half from amongst independent appointees recommended by the National Selection Panel. One thirdmust be women. The Public Safety Commission's powers and duties include taking steps to promote the integrity, efficiency and effectiveness of the criminal justice system and of policing in particular. It has specific responsibility for setting out policy guidelines concerning administration, education and training of the police. It lays down standards for such things as recruitment, appointment, promotions, transfers, tenure, discipline and performance

[40] Mr G. P. Joshi
[41] National Police Commission, Second Report, August 1979
[42] Chapter III, IV, V & VI, Pakistan Police Ordinance (Draft), 2001

of duties. It can recommend panels of officers suitable for appointment as chief and recommend their transfers in the interest of efficiency and effectiveness. It requires the police to present annual plans setting out arrangements for achieving policing objectives It further requires the chief of police to provide annual reports that indicate police performance and that shall be published, which it can then submit to parliament.

Other jurisdictions offer rich experience in police reform. Commonwealth jurisdictions provide good practices worth examining and emulating because their history and legal basis so closely resemble conditions in India. South Africa has an innovative and forward-looking legislation. As does Northern Ireland. Others such as Uganda are in the midst of reforming the police as part of a comprehensive program to revamp the criminal justice system. These are countries, which have been prey to conflicts and are also not always from amongst the richest nations. In Hong King, an **Independent Commission Against Corruption (ICAC) provides** an interesting model for creating a level of independence to the investigating agency, equivalent to the higher judiciary. India could do well to adopt such a mechanism that is totally independent from the executive. Such an initiative might require a constitutional amendment but attempts to build public opinion for this could be made.[43]

A few steps toward changing police functioning and emulating good practices have been undertaken in the states. Andhra Pradesh[44] has drafted a new Police Bill which remains in storage pending cabinet approval. However, it incorporates a **statutory public grievance redressal authority** on the lines of the U.K. Police Complaints Authority. Headed by a judicial officer with the director of prosecution, and a senior police officer as members, the Authority has wide range of functions and is required to submit its recommendations to the state government from time to time.[45]

The Indore Police Ayukth Adhyadesh has borrowed the concept of the local police authority from the UK and provides a system for the public to participate in the management of the police.[46] It incorporates broad based **city police authorities comprising of members the public and** members of the legislative assemblies, and representatives of the civil society groups. Its main charter is to protect the interests of specific sections of society namely the women, children, weaker sections, minorities, Scheduled Castes and Scheduled Tribes.

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[43] Mr.Anil Diwan, Senior Advocate, Supreme Court of India.
[44] Andhra Pradesh Police Bill, 1996
[45] Mr. Bharat Chandra, IPS
[46] Mr.Rajendra Chaturvedi, ADGP- Madhya Pradesh

Technology also offers ways in which to promote and to improve service to the people. One such initiative has been taken by the government of AP through a project known as e-cops, which is meant to facilitate a person in registering an FIR from any place in the state.

Resistance to reform...

All participants unanimously endorsed the view that there is a crying need for change. The need for police reforms is self evident and urgent and in fact essential for the very survival of our democratic structure, good governance, promotion of human rights and economic progress. As long ago as 1979, the National Police Commission [NPC] set out a road map for reform. In its comprehensive and still relevant recommendations the NPC indicated what reforms were vital if misuse of power by the police through administrative or executive instructions, political or other pressures was to be avoided and the tendency for following oral orders or those contrary to law was to be curbed.

Twenty-three years on, the situation has only got worse. Recent events involving police complicity in human rights violations, low rates of conviction in serious crimes, overwhelming numbers of complaints lodged with the Human Rights Commissions only corroborate the absolute subversion of systems within the police establishment. Despite this, the recommendations of the NPC remain shelved and the fact that a letter written by the then Home Minister Mr. Indrajit Gupta[47] to all the chief ministers urging them to rise above narrow partisan considerations and initiate police reforms on the lines suggested by the NPC produced not a single response indicates the extent of lack of political will.

Other reports have remained equally dormant in the hands of the government. The Vohra Committee set up by the Ministry of Home Affairs after the serial bomb blasts in Bombay provided a full picture of the nexus between criminals, the politicians, police and the bureaucracy and showed how it was virtually running a parallel government, pushing the state apparatus into irrelevance. Little has been done in the wake of its revelations.

[47] Ref. No: 11018/5/96-PMA dated April 3, 1997

Attempts to break the resistance to police reforms have by and large come to naught. In 1996 two retired police officers[48] prayed the Supreme Court to order the government to implement at least some crucial recommendations of the NPC - especially in terms of the appointment of the State Security Commission, replacement of the Police Act of 1861 and selection of the chief of the state police force by an independent mechanism.

Pursuant to the directions of the apex Court, the government appointed the Ribeiro Committee on Police Reforms, whose recommendations submitted in 1998 are pending with the Supreme Court. Again in 2000, the Padmanabhaiah Committee on Police Reforms set up by the Government of India submitted its report. Most recently, the Government of India has constituted a committee under the chairmanship of Justice V.S. Malimath to look into reforms of the entire criminal justice system. It is required to look comprehensively into judiciary, prosecution, and police problems arising out of the fundamental principles of jurisprudence that we have been following and inadequacies in the substantive as well as procedural laws. Many felt that the repeated setting up of committees and now the search for a 'comprehensive solution' was mere prevarication. Waiting for comprehensive reforms will result in comprehensive failure when so much can be done piecemeal.[49] Above all, attempts to bring in comprehensive reforms should not be a cause of paralysis but rather spur us to continue our efforts.

The reports of the NPC and those that have come after have emphasized again and again that insulating police from politicisation and criminalisation and accountability of police are at the heart of reform and in need of urgent and vital attention from the point of view of addressing public needs and sustaining the constitutional system and rule of law. An arrangement like the SSC implies that the political executive will not have exclusive control over the police.[50] Every single political party in the country almost without exception has been in Government at one time or another and yet none of them have been willing to implement what is considered to be absolutely minimum to improve governance.[51]

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[48] Mr. Prakash Singh and Mr. N.K. Singh

[49] Mr.B.G.Verghese, Visiting professor- Centre for Policy Research

[50] Mr.C.V.Narasimhan, IPS (Retd.) and Member Secretary, National Police Commission.

[51] Mr.B.G.Verghese, Visiting Professor-Centre for Policy Research.

Politicians and bureaucrats have a vested interest in retaining the status quo. The police are desperate that their service and living conditions be improved but not anxious about doing away with the semi-feudal subculture or the perks and privileges that the network of patronage brings. [52]

Centre or State or Centre and State?

How can Centre and the states be moved to reform the police? Police and public order are no doubt the exclusive preserve of the State government.[53] But this prerogative is being interpreted very crudely and irresponsibly as a kind of monopoly, as a kind of territorial hegemony; so that if the Centre initiates anything that appears to disturb power sharing arrangements it is immediately unacceptable to states, whatever its merits. Yet increasingly, issues of law and order seldom respect state boundaries; in the last 50 years a stage has been reached when states just cannot deal individually with the kinds of problems that are coming up and spilling over from one state to another. To name but a few: terrorism; trafficking in drugs, arms and human beings; counterfeit currency operations, all stretch beyond the borders of one state.[54] The nature, magnitude and complexity of the problem of law and order have undergone a sea change[55] and it is time 'public order' be viewed in a larger sense in terms of its consequences for the entire country.

Participants agreed that the primary responsibility to make changes in policing lies with States but that the Centre has enormous influence over them and is well placed to initiate and encourage reform but has done little to make it happen. Nor has the Centre provided examples of best practices that can be emulated. "While I have been away from the government for a decade, my perception after retirement is that in the Ministry of Home Affairs and in the Government of India as such in its entirety, there has not been a sustained effort to pursue one or more elements of the recommendations of the NPC, whether it be the SSC or the entire modality of selecting the officer to be the Director General of police, his tenure and removal etc."[56] The Centre has not sustained centre-state dialogue on reform and has, over

[52] Mr. Arun P.Mukherji IPS (Retd.) & Former Governor of Mizoram.
[53] Art.246 of the Constitution of India.
[54] Mr. N.N.Vohra
[55] Mr. Prakash Singh, IPS (Retd.)
[56] Mr.N.N Vohra

the years, underutilized the interstate mechanisms for dialogue between the states. It is time that the central government rejuvenates these forums and assigns the issue of police reforms high priority on the agenda.[57]

The Centre has a responsibility to guide, oversee and ensure that state administrations uphold their constitutional functions.[58] It is for the Centre to ensure that establishing an effective and efficient police system becomes the sovereign responsibility of the States and to see that changes are brought about within a specified framework, and laws are updated so as to make the police functioning at the helm more transparent and accountable.[59] The Centre also has great leverage over the states, for instance when disbursing the crores of rupees earmarked for modernisation.[60] "I do not buy the argument that in a federal set up this is a state subject and therefore nothing can be done about it. The Centre and the state are inexplicably linked. They are separate, it is true but the Centre has a responsibility, which they cannot slough off.[61]"

The Supreme Court has strongly urged the Centre to act on reform but to no avail. In the 1998 Havala Case judgment[62] the Court took sharp note of the fact that the situation had become alarmingly bad since the NPC first made its recommendations and urged state governments to implement its long overdue recommendations. It particularly directed the Central Government to pursue the matter with state governments.

The Court specifically mentioned that transfers of police officers were very often arbitrary and very frequent and resulted in demoralizing and politicizing the police force. This surely interferes with police functioning and should necessarily be done

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[57] Mrs.Maja Daruwala, Director, Commonwealth Human Rights Initiative, New Delhi.
[58] Mr.B.G.Verghese, Visiting Professor-Centre for Policy Research.
[59] Mr.Hari Jaisingh, President Editors Guild of India.
[60] Mr.N.N.Vohra, IAS (Retd.)
[61] Mr.B.G.Verghese, Visiting Professor-Centre for Policy Research
[62] Judgement of the Supreme Court of India in Writ Petition (Criminal) Nos. 340-343 of 1993, pp 66-67

according to principles laid down under the law. It urged that each state government put in place proper mechanisms for the selection, appointment, tenure, transfer and posting of all police officers of the rank of Superintendent of Police and above.

The Court in particular enjoined the Central Government to take "prompt" measures to impress upon the state government that such practices are alien to the envisaged constitutional machinery and that no action within the constitutional scheme found necessary to remedy it was too stringent in these circumstances.

The country in fact looks to the Centre and the federal authorities like the NHRC, the Supreme Court, the Ministry of Home Affairs (MHA) to take these issues forward. In defence of its inaction, the Centre has been frequently heard to say that police is a state subject and therefore its hands are tied. In refreshing contrast the Hon'ble Dy Prime Minister stated in his valedictory address: "Though there are constitutional limitations in terms of legislating powers, our government would not like to advance the argument that Police is a state subject."

Participants took the opportunity to stress that the Central Government has the power to comprehensively implement the recommendations of the NPC in centrally administered areas over which it has all powers, viz. the union territories. Basically the people need to know where the NPC's recommendations stand? And insulation should begin with Delhi, if the Central Government declares that it is acceptable to them and offer as an example to the whole country. Implementing the same will pave a way to understand where we stand, how far we have benefited and then smoothen the rough angles.[63]

Furthering the reform agenda...

The problem areas where reform is urgently needed are well known. The consequences of not reforming the police are felt everyday and have been reiterated by high and low alike. The cure has been articulated. The NPC's Model Police Bill and its other recommendations remain relevant despite the near quarter century that has passed and yet successive administrations have made few serious moves for reform.

[63] Dr.Kiran Bedi, IPS

A country that so emphatically overthrew the British yolk remains satisfied with colonial legislation whose only objective was to subjugate the population and to defend the establishment. The present structure of police is now in a terrible state of disrepute and seems too often to privilege those who are bad, mediocre and those that prefer to be in the shade of non-accountability and patronage rather than the ordinary officer who wants to do nothing more than do a good days work and return home to a quiet and guiltless sleep.

Participants felt that police reforms are very much possible and require only two major inputs. One is leadership from within and the other is political will. Political will to initiate policy level action follows public opinion. Public opinion is manifestly dissatisfied with police functioning and is in favour of reform. From within the force, good responsible officers are in favour of reforms. The mounting terrorist threat lends urgency to reform. Foreign investment and international image require reform. For example, much to the discomfiture of Indian representatives in trade and aid negotiations, the international community continuously highlights India's poor human rights record. The regular strictures of the Supreme Court and the Human Rights Commissions call out for police reform. Therefore, there was general bewilderment expressed to the Deputy Prime Minister & Home Minister at the valedictory session about why reform was not going forward. He in turn recognized that to go from 'swaraja to 'surajya' required a reformed police and was open to reform.

Participants felt that much more was needed before resistance to reform could be overcome and were at pains to find ways to break the resistance to police reform. Some felt that the only way to rouse political will[64] was to ensure that it became an election issue. Police reform needs to come on to the fore of the public agenda so that, like other issues, it becomes what influences a vote bank. Only then will politicians pay heed to it.[65] Public opinion must be created to compel legislative and executive action to ensure that the police are given their due and required to act professionally and be accountable to the Constitution and laws of the land and not to persons.

NGOs and interested citizens need to work to create awareness amongst the broader public.[66] Small committees of public and NGOs working quietly together can devise

[64] Jus. J.S.Verma

[65] Mr. Pranab Mukherji, Member of Parliament & Chairperson - Parliamentary Standing Committee.

[66] Jus. J.S.Verma

specific measures to build political will. In order to mobilize and create a mass movement, there is a need to go beyond NGOs and reach out to educate the public at large - particularly the student and teaching community, lawyers, media and political parties. They need to be brought into the dialogue.[67] Media, bar councils and committees of ten to twelve members can meet major actors in political parties in order to make an impact.[68] Such efforts in themselves require knowledge about the specific provisions of Criminal Procedure Code, the Police Act, State acts and manuals so that informed suggestions can be made to drafters and legislators about the exact amendments required in various states. Researchers and practitioners could prepare brief documents outlining the main issues and possible solutions for circulation to carefully chosen groups such as standing committees of the Ministry of Home Affairs and to the Interstate Councils where the Chief Ministers are present. In order to impact State governments, more conferences such as the present one should be held at the provincial level to impress upon the local opinion makers and rulers the need to respond to public distress at the state of police functioning. Police-public partnerships can also ensure that there is a growth of understanding. Ill-equipped police trying to fight criminal elements involved in sophisticated crimes and terrorism can be assisted to modernize by industry who can equip them with the latest available gadgets and boost their morale.

Participants warned that without police reform, our independence, self rule, constitution and commitment to the rule of law would remain a paper rhetoric till we ourselves initiated reform efforts and struggled to enact a legislation that established an independent, accountable, service oriented and people friendly police.[69]

[67] Mr.Vineet Narain, Director Kalchakra.
[68] Mr. Arun P.Mukherji IPS (Retd.) & Former Governor of Mizoram.
[69] Mrs. Maja Daruwala

RECOMMENDATIONS AT A GLANCE

1. Police reforms cannot wait. The process of change must begin immediately. This can be piecemeal and should not wait on being comprehensive. Much can be achieved through honestly implemented administrative action within the police forces themselves, but it requires encouragement from the political establishment.

2. The priority actions required to reform the police should be those that will ensure accountability of the police to the law alone and those that will ensure that political and other extraneous interference in police functioning are eliminated and will return internal autonomous functioning to the chain of command within the police. Mechanisms which will ensure unbiased selection and tenure at senior levels and prevent interference in recruitment, postings, transfer and disciplinary actions require immediate implementation.

3. Any reformative actions or legislative enactment to replace police acts across the country must redefine the role of the police so that it is absolutely clear that the police are a service meant to uphold and protect citizens' rights and are accountable only to the law.[70]

4. As in other countries, it must be the statutory responsibility of the government to set out objectives and performance targets for the police and ensure to the nation an effective and efficient police service.

5. The Centre must be proactive and take the lead. It must encourage states to reform the police along these lines and set an example itself in the territories and forces under its control.

6. The central government can in particular:[71]

   - based on the NPC's Model Police Act and adaptations from modern laws in other jurisdictions, enact a Model Act for the country and for implementation in the Union Territories that are directly administered by the Central Government and use this as an example to states across the country;

[70] Mr. N.C.Joshi, IPS – IGP (Operations), Special Security Branch, New Delhi
[71] Mr. N.N.Vohra, IAS (Retd.)

- use, via the Home Ministry, the Inter-state council, as a means of furthering implementation of police reform measures with Chief Ministers of different states and persuade them to take the desired steps in a time bound manner.

7. The process of implementing crucial recommendations of the NPC could begin with Congress ruled states as 'police reform' already forms part of the avowed party agenda. NGOs and activists must act to hold governments to their promises.

8. Governments must put in place policy and laws that prevent extraneous interference in everyday police administration by establishing mechanisms at the state level such as state security commissions so that the police can function with the same degree of autonomy and independence as the judiciary.[72] Concurrently they must establish transparent internal mechanisms to strengthen accountability, monitor performance and exercise appropriate controls.

9. Without waiting for comprehensive or legislative reforms, in order to indicate commitment to de-politicizing the police, governments can identify all sensitive postings and fill them by a process of selection, based on the recommendations of neutral committees, like the one for Central Bureau of Investigation and once they are appointed, they shall not be shifted for three years[73] .

10. For greater accountability, present impediments that are remnants of colonial times such as S. 197 of the Criminal Procedure Code must be done away with.

11. In order to ensure better performance, governments must involve local communities in policing by bringing in institutionalized mechanisms for public participation at all levels starting from the police station level, to district and state level[74] and thereby lay down a system of social audit or public monitoring that would make the police more responsive and responsible.[75] Citizen ombudsmen in various localities can assist the public in making complaints to the grievance redressal mechanism/authority.

12. To improve performance more specialization, like the separation of crime investigation from public order is necessary.

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[72] Jus. J.S.Verma
[73] Mr. N.Vittal
[74] Mr.A.N.Roy IPS, Addl. DG (Admn.), Maharastra.
[75] Mr.B.G.Verghese, Visiting Professor-Centre for Policy Research.

13. Police performance must not be statistically based. It must be based on continuous evaluation of public satisfaction against set targets.

14. To change attitudes more mid-career training and orientation in people – friendly, rights- based policing is necessary.

NGOs, activists and others should make the solutions provided in the NPC and good practices in other jurisdictions better known to the public and to strategic groups so that there is more debate and discussion and public engagement with issues related to police reform and performance.

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Annexure - I

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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.

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