

## Workshop for the Media On Police Reforms

### Background Note

### **Police Reform- Too Important to Neglect and too Urgent to Delay**

#### Introduction

Over the years, the Commonwealth Human Rights Initiative (CHRI), an independent international NGO, headquartered in Delhi and mandated to ensure the *practical* realisation of human rights in the countries of the Commonwealth, has been strongly advocating the **urgent need for police reforms**. In doing so it has been ploughing a lonely furrow.

While there is a lot of knowledge about police abuse, there is little known about how to go about reforms, its content and the initiatives at home and abroad which can lead to practical changes that will make for better policing. The media constantly report on police abuse and any addition of information about how to go about improving police performance and reforming their structures can enable the media to play a vital role in public education. As a premier conduit for disseminating ideas the media can promote serious debate and build informed public opinion around the need to implement reforms that are already too long over due.

The subject of police reforms is complex and covers many issues and concerns. There is the whole question of what can be done by changing the Police Acts and rules and what can be changed by the department or service from within to improve the police's present colonial-feudal subculture. At present, some attention is being paid to 'modernising' the police by augmenting their resources and giving them more infrastructure, powers and arms. But reforms go beyond modernising the police equipment, improving their service and living conditions or upgrading recruitment and training. The crux of police reform lies in making it possible for the police act fairly without fear or favour and within the law in all they do. Vital to this is ensuring that they can act autonomously without outside interference while remaining accountable to the law for all that they do. This requires setting up new institutional arrangements and making sure that what is already there works better.

This workshop focuses on certain selected aspects of police reforms and recognizes that the media plays an important role in creating a climate that will spur our police from being a force that favours a few to a service that works to promote democracy and uphold the rule of law for all.

## **Police Reforms:**

### **The Need**

The police as an organized institution came into existence in this country with the Police Act of 1861. The type of police system established was governed more by considerations of maintaining the colonial rule rather than providing sensitive and people friendly policing. What is really amazing is that though India became independent more than 58 years ago, the police in the country are still governed by the same Police Act of 1861, despite the fact that all police commissions and expert bodies set up from time to time to examine police problems, including the National Police Commission, have recommended the replacement of this old and archaic law with new legislation. This has not happened because the ruling classes have long found it in their interests to retain the same structure and system of policing that suited the colonial rulers. They realise that as long as they continue to exercise total unquestioning control over the police, it would be easy to misuse the police to further their partisan interests.

Enormous changes have occurred in this country since Independence. The intervention of the Constitution as a prime document from which all governments and citizens draw their duties and rights as equal partners in democracy has cast a paramount obligation and duty on the police to function according to the requirements of the Constitution, law and democratic aspirations of the people. They require the police to be professional, service-oriented, free from extraneous influences and above all be accountable to the rule of law.

This has, however, not happened because those who control and run the system have abused it and are responsible for the large number of ills that now threaten to destroy the system. We need go no further than the evidences coming out of the Gujarat riots still so fresh in memory to illustrate the control that is illegitimately exercised over the police

*"Today we have a police, which is politicised and politically polarised. For it has become a pawn in the hands of its masters. In return, the policemen get political patronage, which has become essential for their survival." - The Department- Related Parliamentary Standing Committee on Home Affairs (April 2002): Eighty- Eight Report on The Demand for Grants (2002-2003) of Ministry of Home Affairs, p 31*

The worst victim of this system of politicised policing is the common man, who really needs efficient and reliable policing but cannot get any remedy for the wrongs, big and small, that he has to deal with on a day to day basis. Politicians who think they have control over the police are not faring much better either these days. As coalition politics and the fragmentation of parties reduces long terms in power, they are finding themselves as vulnerable to police arbitrariness as ordinary people when, out of power, they become easy victims of the fall out of the police politicisation they have themselves encouraged and promoted.

After the change of government in Punjab in 2002, the police raided the properties of Mr Badal, the former chief minister. Mr Badal called the vigilance raid at his premises an act of “political vendetta.” Mr Advani called it “sheer intolerance against the opposition and against the values of democracy.” Later, Mr Amar Singh expressed the same sentiment about the raids at his father’s factory in Gaziabad saying that there was an undeclared emergency under Mayawati’s rule in UP. The scenes witnessed on TV by Indians all across the country some years ago when Mr Karunanidhi’s house was raided in the dead of night are still vivid. One public perception at that time was that Jayalalita did to Karunanidhi what was done to her earlier by the latter. Whether it is Jayalalitha or Karunanidhi, Amrinder Singh or Badal, Mayawati or Mulayam Singh, the common man is not much concerned. He has more or less come to accept such events as inevitable. The general perception is that the police would always be ready to do whatever they are asked to do by their political masters. If they are asked to bend, they will be willing to crawl. It is not the rule of law but the rule of politics that prevails. The police credibility is so low that even where action taken against a politician is perfectly legitimate and is as per the law, the public do not always accept it. The politician knows it and therefore always quotes scriptures and poses as a victim of political vendetta and witch hunting.

Bad policing has also serious practical implications for such basic issues as democracy, freedom, rights and dissent all of which we take for granted but need to protect vigorously. The manner in which police perform their tasks necessarily influences the course of our democracy. Without police reform, State’s authority is getting eroded and consequently it is becoming increasingly difficult to counter or quell corruption, terrorism and curb the descent into violence. Rule of law is undermined and the economic development process is being impeded.

Private armies, social conflict, vigilantism, and terrorism are fostered in the shadow of a police force that is seen as ineffective and inefficient. Habits of impunity and the presence of political patronage and interference have become so deep rooted in the service that the best cannot function without impediments and the worst find themselves protected in a way that demoralises ordinary good police personnel from working with honesty and commitment.

Police reforms are needed to uphold the constitution, the rule of law and the institutions of state as much as it is needed to make sure that laws are obeyed, individual citizens are assured their personal security and are able to pursue their lives free from fear.

Way back in 1979, the National Police Commission [NPC] set out a blueprint for reform, but it remained unimplemented. In the 26 years since then, the situation has only got worse. The courts in the country have indicated their displeasure with the functioning of the police at every level and laid down standards that are followed more in the breach than in obedience. . The National Human Rights Commissions and the State human rights commissions are overwhelmed with complaints against the police. The police justify their behaviour as necessary to control crime, which they see as their primary

function. Nevertheless, conviction rates for serious crimes are at an all time low. Public security and personal safety, especially that of vulnerable groups, have been severely compromised and some events, like those that occurred in 2002 in Gujarat, have evidenced what happens when police are obedient to persons rather than the law and highlighted the need for divorcing police from illegitimate political influences and police reform more dramatically and more tragically than ever before.

### **Resistance**

There is a deep-seated and strong resistance to the idea of police reforms. Indicative of the deeply entrenched resistance to police reform is the fact that NPC's recommendations have remained unimplemented these 26 years.

A letter written on the subject in April 1997 by Shri. Indrajit Gupta, the then Union Home Minister to the Chief Ministers of all States (*Annexure II*), exhorting them to rise above narrow partisan or political considerations and introduce police reforms on the lines recommended by the NPC failed to produce even a *single* response.

Resistance to police reform comes from many quarters. Despite international commitments to good governance, assurances in political party manifestos, clear statements in opposition, the exhortations of human rights commissions within the country and international condemnation outside, and the evidence of damage to a political party's own image wrought by police misbehavior, politicians in power have steadfastly refused to take forward the agenda of reform. Politicians of course resist letting go of this powerful force, which is at their beck and call but within the police establishment also, there are an increasing number of personnel at all levels that are content to retain the status quo. Closely associated with powerful interests, they bend to sectarian interests, acquiesce in wrongdoing and allow the system to continue.

### **Recent Initiatives**

Nevertheless there are initiatives to make change happen. Some come from within the State and the police and others are based on civil society initiatives. Some are aimed at confronting the police with their wrong doing in the hope that this will shame the system into changing for the better. Others aim to bring about systemic changes through establishment of institutional arrangements

#### *i) NPC's Recommendations*

In their 8 comprehensive reports, the NPC indicated what reforms were vital if misuse of police by people in power and misuse of authority by the police were to be prevented. They recognized that illegitimate political interference in police functioning was the primary reason that control and command structures within police forces had eroded and damaged its ability to function autonomously without fear and favour. Some important recommendations made by them to deal with this problem were as follows:

- i. A state security commission should be established in each state

- ii. The head of the police force should be selected from a panel prepared by a committee under the UPSC
- iii. The chief of police force should be assured of a fixed tenure of office
- iv. Police officers should be effectively protected against whimsical and mala fide transfer/suspension orders.
- v. Any order passed by any authority other than those specified in the Police Act to be rendered null and void.

See Annexure I for the major recommendations of the NPC

*i) Civil Writ Petition No. 316 of 1996*

In 1996, a civil writ petition was filed in the Supreme Court by two retired officers of the rank of Director General of Police Mr. Prakash Singh and Mr N.K.Singh, praying for issue of orders to the Government to implement the recommendations of the NPC (See *Annexure III* for a summary of the main points raised in this petition). The petition is still pending with the Supreme Court.

**Comment:** Page: 1  
name them the media always wants the facts because they are mighty lazy and busy

*ii) Committee on Police Reforms*

In pursuance of the directions issued by the Court in the above case, the Central Government set up in July 1998 a Committee on Police Reforms under the chairmanship of Shri J.F.Ribeiro (See *Annexure IV* for composition and terms of reference of the Committee).

The Ribeiro Committee finalised its report in October, 1998 regarding:

- the establishment of the State Security Commission;
- setting up of proper procedures to select the chiefs of police forces and providing a minimum secure tenure to them; and
- insulating the investigating wing of the police from its law and order functions (See *Annexure V* for a summary of the Ribeiro Committee's recommendations contained in its first report).

In January 1999, the CHRI did a critical analysis of these recommendations (See *Annexure VI*). The Ribeiro Committee report is pending consideration at the Supreme Court.

*iii) Padmanabhaiah Committee on Police Reforms*

In January 2000, the Government of India announced the setting up of another Committee on Police Reforms under the chairmanship of Mr. Padmanabhaiah, the former Secretary, Union Ministry of Home Affairs. In addition to the chairman, the Committee had four members - all from the police (two serving and two retired). The terms of the reference assigned to the Committee were very wide, covering different aspects of police

organization, structure, functioning and problems (For the Composition of the Committee and its terms of reference, see *Annexure VII*).

The Committee completed its report in August 2000. CHRI has summarised the main recommendations of the Committee in *Annexure VIII*.

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

Another initiative came in the form of Writ Petitions (Criminal) Nos. 340-343 of 1996 filed in what is commonly known as the Havala Case. The Supreme Court's judgement delivered in this case on December 18, 1997 raised issues of considerable significance, the most important of which was about the type of superintendence and control that should be exercised over an important organisation, like the Central Bureau of Investigation (CBI), which is the premier investigating agency of the country and which must function efficiently and impartially to serve the rule of law.

The directions contained in this judgement included:

- giving a statutory status to the Central Vigilance Commission (CVC);
- the CVC to exercise superintendence over the functioning of the CBI;
- selection for the post of the Central Vigilance Commissioner to be done from outstanding civil servants and others of impeccable integrity;
- selection for the posts of Director CBI and Director Enforcement to be done by a Committee headed by the CVC and giving each one a minimum tenure of two years; and
- declaring the 'Single Directive', which required the CBI to seek permission from the Government before undertaking any inquiry or investigation against senior civil servants of the rank of Joint Secretary and above, null and void.

Ever since the judgment was delivered, consistent and deliberate attempts were made to see that it was not implemented fully and defeated in its basic purpose.

The above developments once again show how deep seated and strong has been the resistance to police reforms. These developments have been analysed by us in a CHRI briefing called "The Story of the Central Vigilance Commission Act, 2003". A copy of the briefing is circulated separately and kept in the folder of the participants.

### **Present Workshop**

The battle for police reform is at present confined to a small number of informed and committed people, many of them retired persons from within the establishment, who know and understand the gravity of the situation and want to make change happen. More and more people now need to be involved in this area of endeavour.

The primary purpose of the present workshop is to provide information about basic issues underlying the need for police reform, so as to lead to a knowledgeable public debate on the subject. But even more than that, we seek to know how to create a public

impetus for police reforms and how institutions like the media can effectively catalyse police reforms in the country. We strongly believe that building up informed public opinion is the first step to successfully mount pressures on the government to force change.

It is to seek the media's help in catalysing more informed discussion on police reforms issues that the CHRI, in partnership with the Press Institute of India, have arranged this Roundtable on the need for police reform.

The general questions before participants are:

1. How can resistance to police reform be broken down and political will to reform the police be fostered?
2. what steps need to be taken by each of us to work actively toward reform from our own locations in society and not rest merely with prescriptions to government or expectations from others?
3. how can we work more collaboratively together?
4. what can the media do to highlight the need for police reform and spread debates around the content and means by which reform can be achieved.

The workshop has been designed so as to make different sessions as participatory as possible, with a free flow of ideas and views coming from the participants. We have provided time for participants to express their views, seek answers and come out with solutions through this joint exercise. Formal presentations have been kept to a minimum, mainly meant to provide participants with an immediate overview of the subject in hand. The background documents are expected to provide material to the participants, which will assist you in formulating your views on the subject.

We hope that concrete commitments to work for police reform will emerge from this exercise.

A SUMMARY OF A FEW MAJOR RECOMMENDATIONS  
OF THE NPC

1. Police tasks are of three types- (i) investigative (ii) preventive and (iii) service oriented. The investigative tasks of the police are beyond any kind of intervention by the executive or non-executive. In the performance of preventive and service – oriented functions, the police should be subject to the overall guidance from the government which should lay down broad policies for adoption in different situations from time to time. There should, however, be no instructions in regard to actual operations in the field. Policy directions should be openly given and made known to the State Legislatures.
2. To help the State government discharge their superintending responsibility in an open manner under the framework of law, a State Security Commission should be established statutorily in each State. The Commission should have the Minister in-charge of Police as its chairman and six more members. Two of these should be from the State Legislature (one from the ruling and the other from the opposition party) and four should be appointed by the Chief Minister, subject to the approval of the State Legislature, from amongst retired judges of the High Court, retired senior government officers and eminent social scientists or academicians. The State Security Commission should:
  - ❖ Lay down broad policy guidelines for the performance of preventive and service-oriented functions by the police;
  - ❖ Evaluate the performance of the State Police every year;
  - ❖ Function as a forum of appeal to dispose of representations from officers regarding their being subjected to illegal orders and regarding their promotion; and
  - ❖ Generally review the functioning of the State Police Force.
3. The Chief of Police should be assured of a fixed tenure of office. The tenure may be for four years or for a period extending up to the period of retirement, whichever is earlier. The removal of the Chief of Police from his post before the expiry of the tenure should require approval of the State Security Commission.
4. The Chief of the State Police Force should be selected from a panel of three IPS officers of that State cadre. The panel should be prepared by a committee headed by the Chairman of the UPSC.
5. The Police Act of 1861 should be replaced by a new Police Act, which not only changes the system of superintendence and control over the police but also enlarges the role of the police to make it function as an agency which promotes the rule of law in the country and renders impartial service to the community

Union Home Minister's Letter addressed to the Chief Ministers of states (Annexure II)

HOME MINISTER  
INDIA  
NEW DELHI- 110001

April 3, 1997

Dear Shri

From the utterances of the member of Parliament as also from the feedback which I have been receiving from various other quarters, one is led to believe that there has been a general fall in the performance of the police as also a deterioration in the policing system as a whole in our country, it is felt that a time has come when all of us may have to rise above our limited perception to bring about some drastic changes in the shape of reforms and restructuring of the police before we are overtaken by the unhealthy developments which appear to have been taking place all over the country. It is in this context that I have for long been thinking of addressing you so that we can break out of you colonial system of policing and bring about certain reforms and structural changes in consonance with the developments which have taken place during the last 50 years or so in the administrations of criminal justice in general and police functioning and practice in particular.

2. The popular perception all over the country appears to be that many of the deficiencies in the functioning of the police in our country have arisen largely due to an overdone of unhealthy and petty political interference at various levels starting from transfer and posting of policemen of different ranks, misuse of police for partisan purposes patronage quite often extended to corrupt police personal. This is the general perception of the people and we all should share our quota of blame in this regard irrespective of our party affiliations. Added to this malady is the prevailing system of inadequate public accountability of police performance, extremely poor level of police public relationship, increasing levels of police misconduct, poor state of police leadership and discipline and virtual absence of an effective public grievances redressal mechanism. In fact, within the police forces also there is strong resentment against political and other forces also there is strong resentment against political and other extraneous, interference or pressure in the discharge of their lawful professional duties.

3. At the same time it should also be recognized by us that quite often it is the police including the Para military forces which have stood between lawlessness verging on anarchy and functioning of our democracy. It is also a fact that besides the Armed Forces, it is the police and Central Parliamentary Organization (BSF, CRPF, ITBP etc.) whose personal are laying down their lives in our continuing battle against the secessionist and terrorist forces in various parts of our country. It is, therefore, of great national importance that we rise above any narrow and partisan considerations to insulate the police from the growing tendency of partisan or political interference in the discharge of its lawful

function of prevention and control of crime including investigation of cases and maintenances of public order. Unless this task is taken up by us all, we at the centre or in the States, may soon find ourselves to be incapable of maintaining our democratic institutions to which we are all committed.

4. It is with this sincere commitment in view that I address my colleagues for accomplishing a very difficult but nationally significant task in the matter of some urgently needed reform and restructuring of the police in our country. The details of my thinking and considered suggestions on this are included in the enclosed Note.

5. It is a sad commentary on our professed commitment to the people to provide them with professionally competent and reasonably clean police administration that we have so far not even made any serious attempt to implement many of the basic and salutary recommendations of the National Police Commission to bring about the required changes in police performance and behavior patterns. On the contrary, quite often the recommendation of the NPC for police reforms have been misrepresented, perhaps deliberately, as amounting to giving unbridled power to the police. In reality, however, proper implementation of the recommendation will amount to not only curbing many of the existing power of misuse by the policing but also by those who are the existing controllers of the police, viz., the political executives and the bureaucracy. The proposed reforms will reduce to the minimum the possible misuse of power both by the policemen themselves and also by their controlling by the introducing more effective system of checks and balance and also by ensuring discharge of police functions strictly in accordance with law and professional requirements without fear and favour. It will also ensure greater transparency, accountability and responsiveness to public criticism of police functioning.

6. If recent developments are any indication, judicial intervention in bringing to book many of the allegedly corrupt politicians and other public servants has been hailed by a wide cross section of the people as step in the right direction. I have feeling that if the political executives do not take the desired measures even now to bring about suggested reforms and restructuring of the police, the day may not be far off when the judiciary may intervene decisively to force such socially desirable change down the throat of the political executives.

7. In the end I would earnestly request you to kindly take a hard look at the reality around us and do all that is needed and excepted from us all in bringing about the long awaited basic changes in the functioning of the police including the police system in keeping with the legitimate aspiration of the common people.

With regards

Encls: Note on Police reforms  
and restructuring.

Yours Sincerely,

Sd/  
(INDARJIT GUPTA)  
UNION HOME MINISTER  
3 April 1997, NEW DELHI

UNION HOME MINISTER'S NOTE ON POLICE REFORMS AND RE-STRUCTURING (Annexure II continued)

1. You must be aware of the fact that the National Police Commission (NPC) which was formed in 1977 with a number of eminent personalities from various walks of life had gone into great depths about various aspects of policing in our country. The Commission submitted 8 reports between 1979 and 1981. All these reports were forwarded to the State Governments/UT Administrations under Ministry of Home Affairs letters No. VI-25011/4/79-GPA-I dated 1.6.1979 and 11013/11/83-NPC Cell dated 31.3.1983 "for necessary action". "Police" being a State subject under our Constitution, most of the recommendations of the NPC had to be implemented by the State Governments and as such they were requested in the MHA letter dated 31.3.1983 to "consider the recommendations and take appropriate follow-up actions".
2. I have carefully considered all the feedback which have been received in the Ministry of Home Affairs from various States. After careful consideration of all such reports, it appears to me that though some actions have been taken on a few peripheral matters/recommendations of the NPC, the general impression all around is that no basic changes either by way of reforms or restructuring of the Police in India have taken place till date. Many experts including the knowledgeable segment of our country consider the following to be the major defects besetting our basic police functioning:
  - a) Total disruption, if not destruction, of the command structure of the police in the States, especially at the 3 most crucial levels, namely, at the level of the Chief of the State Police or the Chief of the Metropolitan City Police, at the level of the Superintendent of the Police of a district and at the level of the officer incharge of a police station or SHO (Station House Officer). The effects of such disruption in command structure can be seen in the low level of discipline of the force, indifferent registration of cases at police station, poor quality of investigation of cases and mounting public grievances against police malfunctioning and corruption.
  - b) Related to the disruption in the command structure is the existing system of police chiefs which quite often leads to placement of persons who are not known for their integrity, professionalism and non-partisan attitudes.
  - c) Thoughtless and undue emphasis on crime statistics has resulted in widespread non-registration of cases or their registration under minor sections of law. All these malpractices have led to further popular distrust against the administration in general and the police in particular, whose belief that the police is an appendage of the ruling group rather than being the protector of the life and property of the common people has been strengthened.

- d) General failure of the prosecution machinery and heavy backlog of cases under trial have also led to both deterioration in the crime situation and growing tendency of the people for taking law into their own hands for 'instant justice'.
3. The National Police Commission (NPC, 1977-81) had gone into all the above maladies in great detail and come up with several salutary recommendations after due deliberations. As I noted earlier, though some actions have been taken on a few peripheral matters/recommendations of the NPC, the general impression all around is that no basic changes either by way of reforms or restructuring of the police in India have taken place even after the last report of the NPC was submitted in 1981-82.
4. Keeping in view the major aberrations which have crept into the police system and its malfunctioning all over the country, I consider the following to be the basic and important recommendations of the NPC which need to be implemented urgently at the State level to check any further deterioration in the policing system affecting the lives and liberties of our citizens:
- (a) Constitution of a Statutory Commission in each State called the State Security Commission to be charged with the responsibility of –
- (i) laying down broad policy guidelines and directions for the performance of preventive tasks and service-oriented functions by the police:
  - (ii) evaluation of the performance of the State Police every year and presenting a report to the State Legislature:
  - (iii) functioning as a forum of appeal for disposing of representations from any police officer of the rank of Superintendent of Police and above regarding his being subjected to illegal or irregular orders in the performance of his duties:
  - (iv) functioning as a forum of appeal for disposing of representations from police officers regarding promotions to the rank of Superintendent of Police and above; and
  - (v) generally keeping in review the functioning of the police in the State.
- 4.2 The composition of this body may be with the State Chief Minister/Police minister as ex-officio Chairman and six others as Members. Two Members shall be chosen from the State Legislature, one from the ruling party and another from the opposition parties to be appointed by the Chief Minister from retired Judges of the High Court, retired Government servants who had functioned in the senior positions in the Government, social scientists or academicians of public standing or eminence. The Chief of the Police will function as ex-officio Secretary of this Commission. (Vide paras 15.46 to 15.54 of the NPC's 2<sup>nd</sup> Report).
- 4.3 Perhaps you may consider having a slightly modified nomenclature like the State Police Control Authority. You may also consider selection of a retired judge of the

High Court in consultation with the Chief Justice of the High Court to give it greater public credibility and judicial acceptability.

- 4.4 It is hoped, as the NPC did, that such an institutional mechanism will generate greater acceptability of the police as a non-partisan institution and at the same time allow the government to have its role in the overall supervision in ensuring lawful discharge of functions by the Police in a more objective and transparent manner without any suspicion of political interference.
- (b) As an important step towards restoring a proper command structure for the police and also to enable honest and professionally competent officers to be at the apex of the police hierarchy, the NPC recommended that the Chiefs of the State Police should be selected from a panel of IPS officers of that State Cadre to be prepared by a Committee to be headed by the Chairman of the UPSC and having as its Members the Union Home Secretary, the Chief Secretary of the State, the senior most amongst the Chiefs of the Central Police Organisations and the existing Chief of the State Police. This Committee should prepare a panel of 3 names and the Chief Minister may select, anyone out of them, preferably keeping in view their relative merit-cum-seniority, and in consultation with the State Security Commission/State Police Control Authority. The NPC also made another salutary recommendation in this context, namely, giving the Police Chief thus selected a fixed tenure of as also the procedure for his removal, if necessary, even during such tenure. (Vide para 15.45 of the NPC Reports).
- (c) The NPC has also recommended appointment of the Head of the State Anti-Corruption Bureau from a panel of IPS officers to be prepared by a Committee headed by the Chairman, Central Vigilance Commission with a fixed tenure (Vide para 22.17 of the NPC Reports). The State Government may also consider a similar procedure for selection of the Chief of the State Vigilance Commission.
- (d) Amendment of Article 311 of the Constitution for weeding out corrupt officers (para 22.11 of the NPC Report).
- (e) In its 8<sup>th</sup> Report, the NPC included the model of a new Police Act for replacement of the Police Act of 1861 which was meant for subserving interests of the colonial rulers. (Para 65.22 of the NPC's 8<sup>th</sup> Report). If you so desire, the new Police Act can be enacted by Parliament which can be subsequently adopted by the respective State Governments as has been the case with many central legislations even on matters pertaining to subjects in the State List.
5. In addition to the above basic recommendations of the NPC which call for implementation without further delay in the larger interests of the people, it is also felt by a number of experts in the field that no major change in the attitude and behavioural pattern and performance of the Police can be expected without making it more officer-oriented rather than constabulary oriented as it is now. For instance, of the total All India Civil Police strength of nearly 9.05 lakhs, the strength of the

constabulary (i.e. Head-constables and Constables) is nearly 8 lakhs, i.e., 87.16 per cent of the total civil police force. In the Union Territories the respective figures are nearly 46,000 and 38,000 i.e., 81.46 per cent of the total strength of the civil police is composed of the constabulary. It may perhaps be desirable to gradually increase the number of ASIs and reduce the number of Head-constables and Constables in such a manner that this does not lead to any large additional outlay but is expected to contribute towards better behavioural pattern, greater professionalism, productivity and substantially augmented investigative pool in the civil police. For instance, against 100 posts of Head-constables/Constables, we have 65 to 70 ASIs without any additional financial outlay. This can be done in two ways, partly by converting a sizeable segment of the existing constabulary into the officer level of ASIs and partly by introducing fresh induction in the subordinate ranks of the police at the level of ASIs only instead of at the existing levels of Constables and Sub-Inspectors. This will also lead to substantial boost in the morale of the existing subordinate ranks of the Police as ASIs with good record of service would eventually be able to reach the level of an Inspector, if not a Dy.S.P. whereas nearly 80 per cent of those recruited as Constables end their career now at the some level of constabulary. For the District Armed Police as also for the State Armed Police Battalions, however, the existing system of recruitment and hierarchy may continue though their deployment pattern may have to be modified to some extent in the light of the above suggestion. For instance, though there need not be any recruitment at the level of Constables for the civil police recruitment at this level for the District Armed Police and the State Armed Police Battalions will continue; a Constable or a Head-constable may be eventually transferred to the civil police after having served in DAP or the SAP after he attains the age of 45 years or 50 years.

6. In the above context, I may also bring to your notice that the 1995-96 Annual Report of the National Human Rights Commission (NHRC) has highlighted the urgent need for reforms and restructuring of the police and has "urged the insulation of the investigative functions of the police from political and other extraneous pressures as essential to restoring confidence in the police and the reducing of complaints of human rights violations by "members of that force"; and further urged in this connection "the implementation of the recommendations of the Second Report of the Police Reforms Commission aimed at insulating the investigative work of the police from extraneous pressures". [vide para 2.4 (vi) page 3 of the NHRC Annual Report 1995-1996]. The NHRC has also put a log of emphasis for systemic reforms of the police as it felt that "an efficient, honest police force is the principal bulwark of the nation against violations of human rights. A police force often over-worked and ill-equipped, whose conditions of service are inadequate and whose integrity is repeatedly questioned, itself becomes part of the problem. The Commission is strongly in favour of improving the quality of the police and restoring its prestige and luster in the eyes of the nation". (vide para 3.23 of the NHRC Annual Report 1995-96).
7. The NHRC further stated that "there is need to act with conviction and without further delay upon recommendations contained in Chapter XV of the Second Report of the Police Reforms Commission which, as long back as 1979, proposed a number

of critically needed remedial measures to prevent interference with, and misuse of the police by illegal or improper orders or pressure from political, executive or other extraneous sources. In particular, that Report calls for full respect for the Supreme Court judgement in criminal appeal No.218 of 1966, in the case of Abhinandan Jha and others vs. Dinesh Mishra, reported in AIR 1968 Supreme Court 117 (V5 SC32) which directed that the investigative tasks of the police should be placed beyond any kind of intervention by the executive or non-executive. Paragraph 15.43 of that Report also urges a statutory tenure of office for Chief of Police in the States, observing that the "Damocles' sword of transfer" should be removed from over their heads. Further, paragraph 15.46 of that Report recommended the constitution of statutory State Security Commission in each State to help the State Government to discharge its superintending responsibility in an open manner, under the framework of law.

7.1 The NHRC further went on to observe that this Commission finds itself greatly in favour of implementing these three critically important recommendations of the Police Reforms Commission in the interest of improving the human rights situation in the country. The Commission believes that there is a yearning in the nation for upright police force, whose probity and fairness are beyond reproach, that can be relied upon to protect the rights of the citizens of India".

7.2 The NHRC also observed that it was aware of the fact that the recommendations of the Second Report of the Police Reforms Commission were earlier transmitted to the State Governments for consideration and that the matter of reform of the police is an on-going process and one that is, in important respects, for the States to undertake. Nevertheless, given the loss of credibility in the impartiality of the police, the increasing clamour in the country for a police force insulated in its investigative role from extraneous considerations and the opportunity created by new governments in the Centre and a number of States, this Commission hopes and recommends that these key proposals of the Police Reforms Commission will be re-opened expeditiously for consideration and positive decision. The Commission further recommends that this matter be considered, if necessary, in a meeting of the Chief Minister of all States and Union Territories and that, in the meantime, the Central Government endeavour to implement these proposals of the Police Reforms Commission in the Union Territories as an indication of its own commitment to police reform". (vide paras 3.24 to 3.26 of the NHRC Annual Report 1995-96).

8. I may mention in this context that we have not only reopened the so called closed chapter of police reforms at our end but we are also currently engaged in ensuring implementation of some of the basic recommendations which lie within our jurisdiction, viz., the Union Territories and other centrally administered areas.

Sd./-  
(INDRAJIT GUPTA)  
UNION HOME MINISTER  
NEW DELHI

**THE PETITION ON  
POLICE REFORMS-SALIENT FEATURES**

The Police in its present form was raised by the Britishers through the Police Act of 1861. This legislation was passed in the wake of the Indian Mutiny of 1857 and the police was raised more to perpetuate British rule in the country than to work as an agency to ensure rule of law or render service to the community.

After Independence, despite far reaching socio-economic and political changes which have occurred in society, the police system has continued to remain under the control of the political executives and bureaucrats.

The subordination of the police, including investigative agencies to politicians and bureaucrats has threatened the very foundations of democratic functioning by:

- ❖ letting the people in power or those having clout get away even with blatant violations of laws; and
- ❖ resulting in direct violations of the rights of citizens in the form of unauthorised detentions, torture, harassment, fabrication of evidence, malicious prosecutions etc.

A few glaring examples from the recent history of the erosion of rule of law or of major violations of citizens rights resulting from the wrong type of political control over the police are;

- ❖ anti-Sikh riots of 1984;
- ❖ demolition of Babri Masjid on December 6, 1992;
- ❖ assault on the Allahabad High court on September 13, 1994;
- ❖ excesses committed on Uttarakhand agitators at Mujjafar Nagar, U.P on October 1, 1994 and
- ❖ inaction in registering or pursuing cases of corruption, scams and frauds involving politicians.

The police was blatantly misused for political purposes during the Emergency (1975-77). The excesses committed by the police and magistracy were vividly brought out in the report of the Shah Commission of Enquiry (April 1978).

The Government of India appointed a National Police Commission in 1977 to undertake a review of the entire system and working of the police organisation. The Commission remained in existence till 1982 and submitted eight comprehensive reports to the Government, containing recommendations covering almost all aspects of police organisation and its work.

The problem of political interference in the work of the police and its disastrous consequences on rule of law in this country were examined by the National Police Commission in its Second Report (August 1979). The Commission made the following major recommendations to deal with the problem.

- ❖ A State Security Commission should be set up in each state to:
  - i. lay down broad policy guidelines;
  - ii. evaluate the performance of the state police (CHRI's comments: Present system of evaluation is through departmental heads. Monitoring under such arrangements is sporadic and irregular and not very effective in identifying inadequacies and deficiencies and in bringing about desired improvements);
  - iii. function as a forum of appeal to dispose off representations from officers regarding their being subjected to illegal orders and regarding their promotion, and;
  - iv. generally review the functioning of the police force.
- ❖ Investigative functions of the police should be made completely independent of any extraneous influences.
- ❖ The Chief of the State Police Force should be selected from a panel of three IPS officers of that State cadre. The panel itself should be prepared by a committee headed by the Chairman of the UPSC. The Police Chief thus selected should have a fixed tenure. (CHRI's comments: The model Police Act drafted by the NPC incorporates its recommendations regarding the selection of the head of the State Police Force and providing him with a fixed tenure of four years. Under the existing system, selection of the head of the State Police Force and his continuance in office are dependent on the discretion of the Chief Minister/Home Minister. This encourages a very unhealthy race amongst senior officers in the police to lobby for the top post. It leads to erosion of standards of leadership and discipline in the police, besides disrupting its organisational structure and command system).
- ❖ The Police Act of 1861 should be replaced by a new Police Act, which not only changes the system of control and superintendence over the police but also enlarges the role of the police to make it function as an agency which promotes the rule of law in the country and renders impartial service to the people.

The National Human Rights Commission in its report for the year 1995-96 has urged the government to take urgent action to separate the investigative wing of the police from its law and order wing and insulate it from political, executive and other interference. It has also asked the government to implement the recommendations made by the National Police Commission in its Second Report, including the establishment of State Security Commission and fixing a statutory tenure for the Chiefs of the Police Forces in the country.

As the government has not taken any action to implement the recommendations made by the NPC seventeen years ago, the petitioners have prayed to the Court to issue orders directing:

- ❖ the Government of India to frame a new Police Act on the lines recommended by the NPC to ensure that the police in this country is made accountable essentially to the law of the land;
- ❖ the Government of India and the State Governments to constitute National/State Security Commission to ensure that the police functions strictly in accordance with law;
- ❖ the Union and State Governments to ensure that the investigative work is separated from law and order functions of the police and that the investigative agencies in the country function uninfluenced by extraneous pressures or considerations; and
- ❖ the Governments to follow procedures which would enable only the finest officer to reach the top and to enjoy a fixed tenure.

## **REBEIRO COMMITTEE ON POLICE REFORMS**

The Ministry of Home Affairs, Government of India, vide Office Memorandum No. 11018/1/98-PMA dated May 25, 1998, set up a Committee in pursuance of the Supreme Court's directions issued in the context of Writ Petition (Civil) No. 310 of 1996.

The Committee is headed by Shri. J.F. Ribeiro, IPS (Retd.), former Ambassador of India and has Ms. Nirmala Buch, IAS (Retd.), former Chief Secretary, Government of Madhya Pradesh, Shri. Arun Bhagat, IPS (Retd.), former Director, Intelligence Bureau and Ms. Prabha Shankarnarayanan, Advocate as members. The terms of reference of the Committee are as follows:

1. To review action taken to implement the recommendations of the National Police Commission, National Human Rights Commission and the Vohra Committee.
2. To suggest ways and means to implement the pending recommendations of the above Commissions/Committee.
3. Consider and make recommendations regarding any other matter which the Government may refer to the Committee or which the Committee considers necessary in this behalf.

The Committee has been asked to submit its report within a period of six months.

On a reference made by the petitioner in Writ Petition (Civil) No. 310 of 1996, the Supreme Court has asked the Committee to review action taken to implement the recommendations of the NPC, particularly focusing on the need, relevance and practicability of

1. setting up a Security Commission or Police Authority in each State and at the Centre on the lines suggested by the NPC, NHRC and the petitioners, and if so its functions and composition;
2. prescribing a procedure for the appointment of Police Chiefs which would be transparent and ensure that the best officers are selected and giving the senior incumbents a minimum tenure; and
3. insulating the investigative wing of the police from its law and order functions.

**Summary of Ribeiro Committee's Recommendations**

**First Report (October 1998)**

1. A Security Commission should be set-up in each State consisting of the Minister in charge of Police as the Chairman, the Leader of the Opposition, the Chief Secretary of the State, a sitting or retired judge nominated by the Chief Justice of the State's High Court and three other non-political citizens of proven merit and integrity as members. These three citizens should be chosen by a committee to be set-up by the Chairman of the NHRC, which has taken much interest in the establishment of this proposed institution.
2. The name of the Commission should be "**The Police Performance and Accountability Commission.**" (PPAC)
3. The four non-political members of this Commission excluding the Chief Secretary, should hold office for three years after which they will be replaced by persons of equal merit chosen in the same manner.
4. The Commission will have advisory and recommendatory powers for the present. The State's DGP will be its Secretary and Convenor.
5. The Commission will oversee the performance of the Police and ensure that it is accountable to the law of the land. Its functions will be as spelt out by the NPC in para 15.48 of their report. In addition, it will ensure that no premature transfers of officers of the rank of SP and above are made without prior clearance from the Commission and that transfers are made only by the authority competent under the rules to do so.
6. Besides the Commission, a District Police Complaints Authority will be set up in each Police District as a non statutory body to examine complaints from the public of police excesses, arbitrary arrests and detention, false implications in criminal cases, custodial violence, etc and to make appropriate recommendations to the Police Performance and Accountability Commission, as well as to the Government and to the State or National Human Rights Commission. The Principal District and Sessions Judge, the Collector of the district and the SSP should constitute this authority.
7. In every State, a Police Establishment Board should be constituted with the DGP and his four senior-most officers, borne on the IPS cadre of the State but who are immediately junior to the DGP, as members to monitor all transfers, promotions, rewards and punishments as well as other service related issues. The Board should be given the legal authority to discharge its duties by amending the relevant Rules.
8. Rules should be framed by the Government on transfers, tenures, promotions, rewards and punishments and the police authorities designated to administer these rules. Any departure from these norms and rules will be brought to the notice of the PPAC.

9. The DG of Police will be selected by the Chief Minister of the State from a panel of three names prepared by a Committee headed by the Chairman of the UPSC and consisting of the Union Home Secretary, the Director of Intelligence Bureau, the State's Chief Secretary and the State's incumbent DGP. This selection committee may consult the CVC before drawing up a panel. The DGP will have fixed tenure of three years. He can be removed within the period of tenure only on the recommendations of the PPAC and for specified reasons, made in writing to the Government.
10. The investigation wing of the Police will be insulated from undue pressure if the DGP is selected in the manner prescribed above and given a tenure and also if the PPAC discharges its role of overseeing police performance and ensuring accountability. All investigating officers should be specially trained in scientific methods of investigation and not utilised for law & order duties except in small rural police stations where it may not be possible to strictly demarcate the two important police functions. The investigating officers should not be shifted to law and order or other duties for five years at least.

### **Second Report (March 1999)**

1. The NPC had recommended that there should be a State Security Commission at the Centre. There is no need for such an institution at the central level. In case of CBI, the Supreme Court has already given directions. The IB is an intelligence organisation and the BSF and the CRPF are para-military outfits which do not involve themselves with local politics and politicians.
2. The Central Police Committee as recommended by the NPC in its Seventh Report should be constituted.
3. The old Police Act of 1861 needs to be replaced by a new Police Act.
4. The The Vohra Committee had recommended the establishment of a Nodal Cell in the Ministry of Home Affairs to deal with the problem of nexus between crime syndicates, political leaders, government functionaries and others. It is learnt that such a cell is already operative but how far it has succeeded in its endeavour is not known to our Committee.
5. The recommendations of the Law Commission about insulating the investigative functions of the police from its law and order work should be implemented urgently.
6. The recommendations of the NPC about recruitment, training and welfare of the constabulary should be implemented.
7. The minimum educational qualifications for recruitment to the level of Constable should be Higher Secondary.

8. The NPC had recommended the reorganisation of the hierarchy of the police , with an increase in the strength at middle levels of ASI/SI/Inspector to be offset by reducing numbers at the lower levels of constabulary. This would improve promotion opportunities of lower ranks. We endorse the recommendations of the NPC.
9. Every State should establish an independent Police Recruitment Board and entrust to it the task of recruitment of all non-gazetted ranks.

A qualitative change in the training being imparted in police training institutions is imperative to improve performance and behaviour of the police.

**Report of the Ribeiro Committee on Police Reforms**

**A Critical Analysis**

**Background**

The Ministry of Home Affairs, Government of India,<sup>1</sup> set up a Committee on Police Reforms (Committee)<sup>2</sup> in pursuance of the Supreme Court's directions issued in the context of Writ Petition (Civil) No. 310 of 1996<sup>3</sup>.

The terms of reference of the Committee are as follows:

1. To review action taken to implement the recommendations of the National Police Commission(NPC), National Human Rights Commission (NHRC) and the Vohra Committee.
2. To suggest ways and means to implement the pending recommendations of the above Commissions/Committee.
3. Consider and make recommendations regarding any other matter which the Government may refer to the Committee or which the Committee Considers necessary in this behalf.

On a reference made by the petitioners, the Supreme Court asked the Committee to review action taken to implement the recommendations of the NPC, particularly focusing on the need, relevance and practicability of:

1. setting up a Security Commission or Police Authority in each State and at the Centre on the lines suggested by the NPC,NHRC and the petitioners, and if so its functions and composition;
2. prescribing a procedure for the appointment of Police Chiefs which would be transparent and ensure that the best officers are selected and giving the senior incumbents a minimum tenure; and
3. insulating the investigative wing of the police from its law and order functions.

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<sup>1</sup> Vide Office Memorandum No.11018/1/98-PMA dated May 25, 1998.

<sup>2</sup> The composition of the Committee is as follows:

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|---|-------------|
| ▪ Shri J.F. Ribeiro,IPS(Retd.),<br>Former Ambassador of India                       | Chairperson |
| ▪ Ms Nirmala Buch, IAS (Retd.),<br>Former Chief Secretary, Government of M. Pradesh | Member      |
| ▪ Shri Arun Bhagat, IPS (Retd.),<br>Former Director, Intelligence Bureau            | Member      |
| ▪ Ms Prabha Sankarnarayanan,<br>Advocate  | Member      |

<sup>3</sup> This petition was filed in the Supreme Court by two retired police officers, praying for issue of orders to the Government to implement the recommendations of the NPC.

The Committee recently completed its deliberations on these three issues and submitted its report to the Court through the Government of India.

### **CHRI's Comments**

#### **Police Reforms- the Guiding Principle**

During a short period, the Committee has attempted to make several recommendations. However, confronted with a complex problem, the Committee appears to have gone against its own convictions and has recommended institutions and arrangements, which, in our view, are weak. It has done so on grounds of "practicability," as it feels that the NPC's recommendations in their original form would not be acceptable to the State Governments. The Committee's recommendations have, therefore, been guided, according to its own admission, by the need to make "compromises and adjustments."

Referring to its recommendations about the constitution of State Security Commission (SSC) the Committee suggests that this is not "*to be taken as substituting our judgement for that of the worthy and wise men who were instrumental in making most profound and useful recommendations. If their intentions have to be achieved, their objectives attained and their goal realised, then some compromises and adjustments have to be made in public interest.*"<sup>4</sup>

We do not agree. The present functioning of the police system in this country has been the result of all types of 'compromises and adjustments', which have been made with what is absolutely necessary to bring about police reforms. Compromises have been made not in public but private interests. In fact, three main pressure groups have obstructed police reforms in this country- the politicians, bureaucrats and in many cases the police officers themselves.

Measures for police reforms should never be defined or circumscribed by the reaction of any of these pressure groups. Police is a part of the community and it is only the community's interest, which should guide the movement for police reforms in the country.

#### **Committee's Composition**

The Committee consists of four members, including the Chairperson. The Committee was, however, "deprived of the benefit of the views of Mrs. Nirmala Buch in arriving at the conclusions as she did not associate herself with the Committee's work after attending the first meeting from 6<sup>th</sup> to 8<sup>th</sup> July, 98."<sup>5</sup> The report does not explain as to why the retired senior bureaucrat dissociated herself from the Committee's work after attending only the first meeting.<sup>6</sup> This was an unfortunate development as it disturbed the original composition of the Committee. Any disagreement within the Commission

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<sup>4</sup> Committee's Report, paras.55&56, pp23-24.

<sup>5</sup> Committee's Report, p2.

<sup>6</sup> The Government appoints members on such Committees only after obtaining their consent.

could have been accommodated by recording notes of dissent. The total disassociation of one of the four members with the Committee's work does create an avoidable feeling of disquiet.

### **NPC's Recommendations- the Centre's Response**

The Committee has referred to the "*concern of the successive Ministers in the Ministry of Home Affairs, Government of India about the implementation of the NPC Report...*"<sup>7</sup> This concern, according to the Committee, is reflected in the letters sent by Shri Rajesh Pilot, Minister of State in the Ministry of Home Affairs in July, 1994; Shri Inderjit Gupta, Union Home Minister in April 1997 and by Shri L.K.Advani, Union Home Minister in May 1998 to the Chief Ministers of all States/Union Territories, urging them to take action on the recommendations of the NPC. The Committee has tried to convey an impression as if the Central Government has been keen to bring about police reforms on the lines suggested by the NPC, but the State Governments have not shown even an inclination to consider the subject. This impression is ill founded.

While the State Governments have been stoically and consistently indifferent towards the recommendations of the NPC and even of their own State Police Commissions, the Central Government, except for occasional outbursts of sudden enthusiasm, has been equally lackadaisical in pursuing the subject with the State Governments.

The NPC had finalised its eight and last report in May, 1981. The Government of India circulated the last seven reports of the NPC (Second to the Eight Report) to the State Governments in 1983. The response of the Central Government towards some highly important recommendations of the NPC was negative. In 1983, when the reports were forwarded to the State Governments, they were not asked merely to take appropriate follow-up action. The State Governments were specifically informed that "*at some places in the 2<sup>nd</sup> Report (paras 15.24, 15.35 and 15.55) the Commission has relied on the observations and findings of the Shah Commission to arrive at certain conclusions. Government strongly repudiate all such conclusions. At several other places (such as paras 15.2, 15.4, 15.6, 15.7, 15.18, 15.19 and 15.26 of the 2<sup>nd</sup> Report; para 22.3 of the 3<sup>rd</sup> Report; para 32.7 of the 4<sup>th</sup> Report; para 44.9 of the 6<sup>th</sup> Report; paras 59.10, 59.19 and 59.25 of the 7<sup>th</sup> Report and para 61.8 of the 8<sup>th</sup> Report), the Commission has been unduly critical of the political system or of the functioning of the police force in general. Such general criticism is hardly in keeping with an objective and rational approach to problems and reveals a biased attitude. Government are of the view that no note should be taken of such observations*".<sup>8</sup> The message was loud and clear and after such advice, it is not surprising that the State Governments conveniently put the major recommendations of the NPC in the cold storage.

The Central Government has always had the option of implementing the important recommendations of the NPC by introducing the model Police Act as drafted by the NPC

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<sup>7</sup> Committee's Report, p3.

<sup>8</sup> The Government of India's letter no. 11013/11/83-NPC Cell dated March 31, 1983

in the Union Territories<sup>9</sup>. If the Central Government had done so, it would then have acquired the moral authority to ask the State Governments to follow suit. It never did that and merely sent some routine reminders to the State Governments, which naturally failed to convince the States that the Centre was really and genuinely interested in implementing the NPC's recommendations. Even the present attempts at reviving a process of reforms have come about at the instance of a couple of public-spirited retired police officers, the Supreme Court and the NHRC.

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

#### ***Statutory or non-statutory***

The Committee considers the establishment of the State Security Commission as highly relevant under the present circumstances. The SSC is required to (i) check the arbitrary acts of politicians, (ii) ensure transparency and accountability in governance, (iii) build public confidence in the police and (iv) protect politicians from unwanted pressures.

The Committee, however, departs from the recommendations of the NPC in a major way. While the NPC has recommended that the SSC should be a statutory body, the Committee has recommended that it should be a "*non-statutory, advisory and recommendatory*"<sup>10</sup> body. In the Committee's view, the "*possibility of a statutory SSC as envisaged by the NPC seems a far fetched dream.*"<sup>11</sup> The main reason given by the Committee in arriving at this decision is that the Committee members encountered from the politicians "*stiff opposition to the idea of any monitoring body or to the concept of an institution to supervise the superintendence of the political executive over the police force....It must be remembered that for 17 years, no State Government has lifted a finger in this direction.*"<sup>12</sup> The Committee's observations are correct. The reluctance of the political executive to accept the idea of such a body and the reasons for the reluctance as stated by the Committee are obvious. It is exactly and precisely for these reasons that the SSC should have a statutory base. The entrenched system of abuse of power and lack of political will to introduce police reforms need to be countered by establishing institutional structures backed by the force of law.

It is not enough to establish the SSC; what is necessary is to ensure that it remains in existence and functions independently, objectively and effectively to prevent the misuse of police force by politicians and bureaucrats and abuse of power by police personnel. A Commission established by administrative instructions and not backed by the authority of law would always be hostage to the very power it seeks to check.

Law will not merely set up such an institution, but spell out its composition, process of selection of members, charter of functions, budgeting, procedure for implementation of decisions, safeguards against its misuse etc. The process of setting up the SSC and its

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<sup>9</sup> The model Act incorporates all the major recommendations of the NPC.

<sup>10</sup> Committee's Report, p9.

<sup>11</sup> *Ibid.*, p9

<sup>12</sup> *Ibid.*, pp8-9

composition are highly crucial. The Committee has not examined these issues in great detail; nor has it discussed the pros and cons of the alternate ideas put before it in the course of its work.

In a recent judgement, the Supreme Court decreed that the superintendence over the Central Bureau of Investigation would be exercised not by the Central Government but by the Central Vigilance Commission (CVC)<sup>13</sup>. The CVC was already in existence, but it had been set up in 1964 through a Resolution of the Government of India<sup>14</sup>. The Supreme Court directed that the CVC should be given a statutory base so that it can exercise its superintendence over the CBI under the authority of law.

The Committee recognises that a statutory SSC is better than one set up through an executive fiat. It says: *“This issue could have been easily solved if the political executive were to rise above personal interest and co-operate to do what is best in public interest, since a statutory institution would be the most satisfactory and efficient of solving this problem.”*<sup>15</sup> The Committee, however, does not make this recommendation on grounds of *“practicability”*. It suggests an easier option, which would be acceptable to the political executive, who apparently can not be expected to rise above their personal interests.

Politics has been increasingly criminalised since the NPC made its recommendations. The weakness of the Committee’s recommendations lies in the fact that though the situation has worsened and the need to set up a strong institution is ever more acute and urgent, it nevertheless recommends a weak and vulnerable mechanism because it feels that entrenched power elite will resist. The advice being given to the Supreme Court is circuitous, to say the least. Luckily, the final decision rests with the Supreme Court.

### ***SSC’s Secretariat & Budget***

According to another recommendation of the Committee, the SSC need not have a separate secretariat of its own. *“The DGP of the State would be the ex-officio Secretary and Convenor of the Commission and would provide secretarial assistance from time to time from his own establishment.”*<sup>16</sup> The basis of making this recommendation is not known, as its rationale is not spelt out in the report.

One of the important functions in the charter visualised for the SSC is, to use the Committee’s own words, to work as *“an impartial body to oversee”* the functioning of the police. That is why the Committee has suggested that the SSC should be called the *“Police Performance and Accountability Commission.”*<sup>17</sup> It is doubtful whether a Commission, whose Secretary and Convenor is the head of the State Police Force and

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<sup>13</sup> Supreme Court’s judgement in *Writ Petition (Criminal) Nos. 340-343 of 1993*, Commonly known as the *Havala Case*

<sup>14</sup> By Resolution No. 24/7/64- AVD dated February 11, 1964

<sup>15</sup> Committee’s Report, p8.

<sup>16</sup> Committee’s Report, P9.

<sup>17</sup> *Ibid.*, p10

who also provide the police staff to function as the secretariat of the Commission, can really be expected to monitor the functioning of that Force effectively and ensure its accountability. The Secretary and his Secretariat would be in a strong position to ensure that the Commission sees what the Police Department wants it to see and not what the public requires.

The absence of its own Secretariat means that the Commission would have to depend on the Police Department not only for the statistics and other material required by it but also for getting the necessary inquiries conducted in important matters of public interest. Such arrangements would clearly convey an impression to the public that the Commission is nothing but an adjunct of the Police Department. Lack of public faith in the institution would defeat the very purpose for which it is proposed to be set up.

The Committee has been silent about the budget of the SSC. Presumably, this will be a part of the police budget, as the expenditure to be incurred on the functioning of the organisation as visualised by the Committee may not be much. According to the Committee's recommendations, the non-official members of the Commission "*would not be entitled to any emoluments or allowances, except transport costs and sitting fees.*"<sup>18</sup> The recommendations appear to suggest that the Commission will not have a standing office of its own. The meetings will be convened by the DGP; members will attend and go home, presumably leaving the police staff to take follow up action too.

### **District Police Complaints Authority**

An important subject, like that of police accountability has not, in our view, been dealt with adequately. The Committee recommends the setting up of a "non-statutory body called the District Police Complaints Authority to examine complaints from the public on police excesses, arbitrary arrests and detentions, false implication in criminal cases, custodial violence etc and make appropriate recommendations to the SSC, the Government and the State or National Human Rights Commission"<sup>19</sup>. The Authority will be headed by the District Sessions Judge and have the District Collector and Senior Superintendent of Police as members.

The report is silent about the secretariat of the Authority and the procedure to enquire into complaints against police personnel. Since the District Superintendent of Police will be the Member Secretary of the Authority, it is safe to presume that the Committee wants the Secretariat to be provided by the District Police. If the SSC can function from the State Police Headquarters, the Committee obviously sees no reason why the Authority can not work from the District Police Office.

Two of the three members composing the Authority are a part of the existing executive set-up of the district. The District Police Force, despite being headed by the SP, is subject to the "general control and direction"<sup>20</sup> of the District Magistrate. The way the

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<sup>18</sup> Committee's Report, p9

<sup>19</sup> *Ibid.* p 12.

<sup>20</sup> Section 4 of the Police Act of 1861,

system is functioning, the public can not be expected to repose its trust and confidence in either of the two functionaries. The public can hardly be expected to approach with confidence the very persons who are supervising the system that has aggrieved them and who are now being asked to sit in judgement over themselves.

The credibility of the proposed institution will be further reduced because the Authority is not being provided with an independent investigating agency of its own. Obviously, the Authority will depend upon the police force to enquire into public complaints against the police personnel. This is precisely the reason why the existing system lacks public credibility. No police accountability mechanism can be considered successful if it fails to inspire public confidence.

According to its charter suggested by the Committee, the Authority can not initiate action; it can merely make recommendations. The organizations to which it can make recommendations include the SSC. However, the SSC itself is a recommendatory body only. In addition, the SSC is not meant to deal with public complaints against police personnel. At least, the charter prescribed for it by the Committee does not say so.

The trend all over the world is to set up complaint mechanisms under law, invest them with resources and authority to guarantee independent and fair investigations and clothe them with powers to ensure that the guilty policemen are not allowed to get away with their sins of commission and omission. In this country also, if the proposed institution is to succeed, it must be established to do its work openly, quickly, effectively and with patent impartiality. It must be independent, so that it has public confidence and the community sees it as unbiased.

### **Establishment of the Police Establishment Board**

The Committee has recommended that a Police Establishment Board consisting of the Director General of Police as Chairman and four senior-most officers who are immediately junior to him in the police hierarchy should be set up *“to monitor transfers, promotions and other related matters.”*<sup>21</sup> The Committee feels that *“transfers, promotions, rewards, punishments, including suspensions and all service-related matters of officers of and below the rank of Deputy Superintendent of Police should be the sole prerogative of the police hierarchy”*.<sup>22</sup> The Police Establishment Board has been suggested to ensure this. However, how the Board will do so has not been spelt out clearly anywhere in the report. The only suggestion made by the Committee is to amend the Service Rules.

It is presumed that this would bestow enough authority on the Police Establishment Board to enable it to discharge its functions without fear or favour. What is not realised is that presently It is not the rules which allow the political executive or bureaucrats to decide or interfere in transfers, promotions, rewards, punishments and other service related matters of the non-gazetted ranks in the Police. Again it is not the rules which

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<sup>21</sup> Committee's Report, p 14.

<sup>22</sup> *Ibid.*, p14

obstruct the police leadership to exercise its authority in such matters. In fact, the existing rules in most States empower the police hierarchy to take such decisions. The crux of the problem is that the senior hierarchy in the police has become vulnerable and in many cases is a willing party to outside illegitimate pressures. The scheme formulated by the Committee does not suggest measures to reduce the vulnerability of the senior leadership in the police or to break the nexus between the politicians and police officers.

According to another recommendation made by the Committee, the Board will also consider the postings and transfers of officers of and above the rank of Superintendent of Police and send its recommendations to the Government for final orders. According to the Committee, the Government should, "*as a matter of course*" accept these recommendations. In case of disagreement, the Government should record the reasons in writing and then "*seek the views of the State Security Commission before issuing orders.*"<sup>23</sup>

This recommendation of the Committee creates confusion about the role of the SSC. Once the SSC has expressed its views to the Government, it can hardly be expected in such cases to attend to an important part of its mandate, which is to work as an advisory forum of appeal for disposing of representations from officers against their transfers or postings.

#### **Selection Procedure for the post of DGP in the State**

The NPC had recommended that selection for the post of the head of the police force in the State should be done by a Committee consisting of the Chairman of the UPSC, the Union Home Secretary, the State's Chief Secretary and the senior-most among the heads of the Central Police Organisations. The Ribeiro Committee agrees with this recommendation, except in respect of one point. It feels that instead of assigning one slot in the Selection Committee to the senior most police officer among the Central Police Organisation Chiefs, it should be reserved for Director, Intelligence Bureau. As at various other places in the report, the Committee once again does not substantiate this recommendation with supporting arguments, except expressing a subjective opinion that it "*would be more appropriate*"<sup>24</sup> to do so.

In our view, it would not be appropriate to do so, as it would result in depriving the Selection Committee of wide diversity of perspectives, experiences and opinions, which the NPC's scheme would enable it to have. No organisation or individual should have a permanent interest in a matter of such vital importance as the selection of heads of police forces in the country. Rotating the slot amongst the heads of Central Police Organizations is a much better idea than to assign it to the head of one agency.

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<sup>23</sup> *Ibid* ,p9

<sup>24</sup> Committee's Report, p18.

**PADMANABHAIH COMMITTEE ON POLICE REFORMS**

No. 11018/17/99-PMA  
GOVERNMENT OF INDIA  
MINISTRY OF HOME AFFAIRS  
(GRIH MANTRALAYA)

North Block, New Delhi-1  
Dated: 5-1-2000

**OFFICE MEMORANDUM**

Where as the Government of India is of the opinion that it is necessary to set up a Committee for going into the matter mentioned hereinafter:

1. Now therefore, Committee of the following is, hereby set up –
  - (i) Shri. K. Padmanabhaiah - Chairman  
Ex-Union Home Secretary
  - (ii) Shri. Vijay Karan, IPS - Member  
(AGMU-58), Retd.
  - (iii) Shri M. D Sharma, IPS - Member  
(MP-62) Retd.
  - (iv) Shri. Amitabh Gupta, IPS - Member  
(RAJ-64), DGP, Rajasthan
  - (v) Shri. B. B Nanda, IPS - Member –Secretary  
(OR-65), DG, BPR&D
  
2. The terms of references of the Committee are as under:-
  - (i) To examine and specify the challenges that the police in India would face during the next millennium;
  - (ii) To evaluate the strength and weaknesses of the police force, as it is organised and structured today, to see if it would be able to meet those challenges;
  - (iii) To understand and appreciate the gap between the public expectations and the police performance and whether this gap can be filled without making any basic changes in the structure, organisation and the attitudes of the police.
  - (iv) To envision a new look, cultured, people-friendly and a fighting-fit police force which is able to win the confidence and trust of the people and, at the same time, can tackle effectively the problems of organised crime, militancy and terrorism;

- (v) To examine and bring out the changes which should be made in the following systems to transform our police into a most professional and competent force:-
- (a) Recruitment at different levels
  - (b) Training-both induction and in-service
  - (c) Career planning at all levels
  - (d) Accountability of the police
  - (e) Redressal of public grievances
  - (f) Redressal of police grievances
  - (g) Police Station of the Next Millennium
  - (h) Villages and city police
  - (i) Techniques of investigation
  - (j) Prosecution of cases
  - (k) Management of traffic
  - (l) Dealing with women and weaker sections of society.
- (vi) To suggest measures to equip the police to adequately meet the challenges of the modern, hi-tech criminal and of cyber crime;
- (vii) To recommend changes in the weaponry, communication and mobility of the police force;
- (viii) To examine how the intelligence gathering machinery could be revamped both at the Centre and the States and how their mutual interaction for intelligence sharing could be made faster and more reliable;
- (ix) To devise methods of insulating the police from politicisation and criminalisation.
- (x) To devise ways of securing public trust and cooperation in preventing and solving crime;
- (xi) To examine the need to clarify some crimes as “federal crimes” and to create a Federal Law Enforcement Agency under the Ministry of Home Affairs;
- (xii) The structural changes that need to be introduced for the police to function more efficiently and professionally.

3. The Committee shall submit its report within a period of 3 months. Ministry of Home Affairs will provide necessary secretarial assistance to the Committee.

Sd/-  
(O.P ARYA)  
JOINT SECRETARY TO THE GOVT. OF  
INDIA  
TEL: NO. 3014927

- (i) Shri K. Padmanabhaiah,  
Chairman  
Ex-Union Home Secretary

**Summary of Recommendations made by the  
Padmanabhaiah Committee on Police Reforms**

1. There should be a greater recruitment of Sub-Inspectors instead of Constables. Recruitment to constabulary should be restricted till a teeth-to-tail ratio of 1:4 is achieved as against present ratio, which ranges from 1:7 to 1: 15 in different states.
2. Constables should be recruited young. Boys/girls, who have passed 10<sup>th</sup> Standard examination and are below 19 years in age should be eligible to appear in a common competitive qualifying examination. The successful candidates should be put through a rigorous 2-year training programme and qualify for appointment as constables only after passing a final examination.
3. The existing constabulary should be retrained to enable them to imbibe right attitudes to work. Those who do not successfully complete training should be compulsorily retired.
4. A Police Training Advisory Council should be set up at the centre and in each state to advise the Home Ministers on police training matters.
5. The eligibility criteria for recruitment to the level of Sub-Inspectors should be 12<sup>th</sup> class pass and an upper age limit of 21 years. They should be recruited on the basis of a common written qualifying examination. The successful candidates must pass a final examination after undergoing a 3-year training programme. 50% of vacancies of Sub-Inspectors should be filled by direct recruitment and 50% reserved for promotions.
6. A constable should be classified as a 'skilled worker' in view of the skills required and risks involved in the job.
7. All promotions should be subject to completing the mandatory training programmes and passing of promotional examinations.
8. The Indian Police should adopt the philosophy of community policing. The Government of India should support this by bringing out a handbook on the subject, providing training inputs and funding pilot projects.
9. Lack of a proper tenure policy for posting of officers at different levels and arbitrary transfers have been used by politicians to control and abuse the police for their own ends. To deal with this problem, following action is required:
  - a) A body headed by the Chief Justice of the State High court as Chairman, State Chief Secretary and an eminent public person as members should be constituted to recommend a panel of two names for appointment to the post of the Director General of Police.

- b) A police Establishment Board, consisting of DGP and three other members of the police force selected by him, should be constituted to decide transfers of all officers of the rank of Deputy Superintendent of Police and above.
  - c) The minimum tenure of all officers should be 2 years
  - d) Another Committee under the Chief Secretary, with Home Secretary and the DGP as members, should be constituted to hear representations from police officers of the rank of Superintendent of Police and above alleging violation of rules in the matter of postings and transfers.
10. To deal with the problem of corruption in the police, which leads to the criminalisation of the force, the committee has recommended a more serious enforcement of the code of conduct and simpler but more effective procedures for removing corrupt officers.
  11. Since police work can not be organised on an 8-hour shift basis, police personnel should be given a weekly off and compulsorily required to go on earned leave every year. Holiday homes may be constructed for police personnel.
  12. Investigation should be separated from law and order work. In the first phase, this separation should take place at police station level in all urban areas. An Additional Superintendent of Police should be exclusively responsible for crime and investigation work.
  13. Sections 25 and 26 of the Indian Evidence Act should be deleted and confessions made to police officers of the rank of Superintendent of Police and above should be made admissible in evidence.
  14. Every police station should be equipped with 'investigation kits' and every sub-division should have a mobile forensic science laboratory.
  15. The police leadership, through proper manpower and career planning, improved training, effective supervision and by inculcating a sense of values amongst the members of the force, can play an important role in encouraging specialisation, promoting professionalism and increasing morale in the force.
  16. There is an urgent need to encourage specialisation in various aspects of policing.
  17. In each district, there should be a crime prevention cell manned by officers who have specialised in crime prevention work.
  18. To deal with cyber crime effectively, police capabilities in various areas need to be developed. Capabilities of some police institutions, like the National Police Academy in the field of training, CBI in investigation, Intelligence Bureau in cyber surveillance

and the National Crime Records Bureau in cyber technology/forensics should be enhanced.

19. The present classification of offences into cognizable and non-cognizable made 150 years ago is not very relevant today. The Law Commission of India should review the entire classification and the powers of the police to investigate.
20. The concept of VIP security has been grossly, blatantly and brazenly misused. The entire concept of personal security needs a careful review and dismantling.
21. Certain offences having inter-state, national and inter-national repercussions should be declared "federal offences" to be investigated by the Special Crimes Division of the CBI, which should function under the administrative control of the Ministry of Home Affairs.
22. Taking into account the wide ramifications of the terrorist crime, there have to be different norms regarding the burden of proof, degree of proof and the legal procedures in regard to trial of terrorist cases. There is a need for a special and a comprehensive law to fight terrorism.
23. There should be a national counter terrorism coordinator to prepare a comprehensive counter-terrorism plan and budget.
24. A statutory independent Inspectorate of Police should be set up to carry out annual as well as thematic inspections of the police force and to report to the state government whether the police force is functioning efficiently and effectively.
25. A non statutory District Police Complaints Authority (DPCA) should be set up with the District Magistrate as the Chairman and a senior Additional Sessions Judge, the District Superintendent of Police and an eminent citizen nominated by the DM as members. Investigations into public complaints against the police should in the first instance be done by the police department itself. Those who are not satisfied can approach the DPCA.
26. There should be a mandatory judicial inquiry into all cases of alleged rape of a woman or death of any person in police custody.
27. The Government of India should establish a permanent National Commission for Policing Standards to lay down norms and standards for all police forces on matters of common concern and to see that that the State Governments set up mechanisms to enforce such standards.
28. The release of central grants for modernisation or upgradation funds should be dependent upon compliance by state governments with certain basic issues, like each state having a manpower and career planning system, a transparent recruitment, promotion and transfer policy and meeting certain minimum standards for training.

29. The Police Act of 1861 should be replaced by a new Act.
30. The State Government must give high priority to the allocation of resources to the police.
31. There should be a permanent National Commission for Police Standards and (NCPs) to set standards and to see that State Governments set up mechanisms to enforce such standards.
32. There is need for comprehensive reforms in criminal justice administration. Public would soon lose faith in the criminal justice system unless the other components of the systems are also thoroughly overhauled simultaneously.