

# **Police Act, 1861: Why we need to replace it?**

*Police Reforms too Important to Neglect too  
Urgent to Delay*



**COMMONWEALTH HUMAN RIGHTS INITIATIVE**

**B-117 (First Floor), Sarvodaya Enclave**

**New Delhi – 110017 INDIA**

**Tel: +91-11- 26528152, 26850523**

**Fax: +91-11 - 26864688**

**E Mail: [chriall@nda.vsnl.net.in](mailto:chriall@nda.vsnl.net.in)**

**Website: [www.humanrightsinitiative.org](http://www.humanrightsinitiative.org)**

**Police Act, 1861: Why we need to replace it?**  
**CHRI, July 2005**  
**Maja Daruwala, G.P Joshi, Mandeep Tiwana**

*Police Reforms too Important to Neglect too Urgent to Delay*

**Introduction**

Any discussion on police reform in India eventually gravitates towards the demand for replacing the Police Act of 1861 with legislation that is more in keeping with the times and prevailing democratic values. The Police Act, 1861 was legislated by the British in the aftermath of the Mutiny of 1857 or the First War of Independence. The British, naturally at that time wanted to establish a police force that would suit the purpose of crushing dissent and any movement for self government. This Act continues to this day in most states of India despite far reaching changes in governance and India's transition from being a colonised nation to a sovereign republic. The government and its police today are obliged to respect political diversity and guarantee a climate of peace in which people feel secure in the exercise of their rights and the protection of their freedoms. Because these sentiments are not reflected in the legislation governing the police, it has contributed to the police remaining outside the loop of prevailing democratic values. It is also the primary reason for the police being perceived by many as the handmaiden of the political elite rather than as an organisation that provides essential services through ensuring peace and security to the people.

The Police Act of 1861 governs most police forces in India. Some states like Maharashtra, Gujarat, Kerala and Delhi have indeed enacted their own Acts but even these closely resemble and are modeled on the Act of 1861.<sup>1</sup> The National Police Commission, 1979-81 (NPC) was alive to the need for reform in legislation governing the police and went on draft a 'Model Police Act' in its Eighth Report submitted in 1981. Unfortunately, this proposed bill, which was developed as a response to the context of the times, and addressed to end some of the ills that plague policing has not been adopted by any state. Nevertheless, it has served as the template for nascent initiatives for many who are trying to replace the out of date Police Acts in their states with more relevant legislation.<sup>2</sup>

However, these initiatives, coming by and large from within the police establishment itself, have borrowed selectively from the NPC Model in ways that have the effect of strengthening the police establishment without the guarantee of accountability or responsiveness to the public. None of these initiatives has ever crystallised into an Act in any state in India.

---

<sup>1</sup> Like the Bombay State Reserve Police Act, 1951 in Maharashtra and Gujarat; State Armed Police Forces Act, 1952 in Andhra Pradesh; Madhya Pradesh Special Armed Forces Act, 1958 in Madhya Pradesh; Sikkim Armed Police Forces Act, 1981 in Sikkim; Tripura State Rifles Act, 1983 in Tripura, Nagaland Police Act, 1985 in Nagaland etc.

<sup>2</sup> For instance Punjab Police Bill 2003, Madhya Pradesh Police Vidheyak 2001, Rajasthan Police Bill 2000, Andhra Pradesh Police Bill 1996

This paper outlines the principles that must govern police legislation in a democratic country. It highlights the shortcomings of the Police Act, 1861 and identifies proposals for addressing these in the NPC Model; the proposed Bills of Punjab, Madhya Pradesh, Rajasthan and Andhra Pradesh. The paper also borrows ideas and best practices from the Riberio Committee on Police Reforms (1998-99); the Padmanabhaiah Committee (2000); and police legislation from the Commonwealth jurisdictions of U.K, British Columbia (Canada), South Africa and Northern Ireland.

## *Democratic Principles to govern Police Legislation*

### **Insulation from illegitimate political interference**

**Principle: any new formulation of policing in India today, must ensure that the police have functional autonomy combined with high performance and strong mechanisms of accountability. Insulating the police from illegitimate political control while retaining executive oversight has to be a singular objective.**

**Problem: too much unfettered discretion over appointments and transfers**

The Police Act, 1861 vests the superintendence of the police directly in the hands of the political executive i.e the state government. At the present time, the Head of Police (Director General/ Inspector General) enjoys her/his tenure at the pleasure of the Chief Minister. S/he may be removed from the post at any time without assigning any reasons. Such a state of affairs has resulted in wide-spread politicisation of the police where increasingly, allegiance is owed not to the law but to the ruling political elite. The pervasiveness of this influence over the rank and file, as much as senior police officers in ways that are not keeping with police regulations means that there is lesser obedience to the law, chain of command and established procedures.

The upshot being, a situation where police officers are functioning with a greater willingness to obey unwritten and informal orders to subvert legitimate democratic processes in lieu of personal gain and political patronage. This interferes with the exercise of democratic freedom by those who are opposed to the party in power. It is well demonstrated that political interference in the investigative work of the police hinders rule of law. Officers are often pressured to use their investigative powers to pursue political vendettas or shield those who enjoy the patronage of politicians belonging to the ruling party. The registration or non-registration of cases to favour or harm or to manipulate crime statistics for political expediency creates a deep sense of discrimination and uncertainty in the public. On the other hand, officers who resist illegitimate political interference are subject to frequent transfers and in extreme cases, departmental inquiries and even false legal proceedings.

All this has the cumulative effect of impairing any ability of the police force to perform its main function to provide the community with a safe and secure environment. Rather, the police has become highly vulnerable to abuse of power, corruption and criminality – the very things it is expected to fight.

### **The Solution**

*- oversight through a special body*

The NPC's Model Bill recognised that the superintendence of the police must vest with the state government. But to counter the existence of undue dominant influence, it suggested the creation of a statutory body called the State Security Commission. The State Security Commission would be comprised of the Minister in charge of the police (chair); two members from the State Legislature – one from the ruling party and the other from the opposition; and four members to be nominated by the Chief

Minister after approval by the State Legislature from amongst retired judges of the High Court, retired senior government servants, social scientists or academicians of public standing and eminence.

***- ensure that oversight will guarantee good performance and legality***

The Model Bill also limits the power of superintendence of the state government over the police to ensuring that police performance is strictly in accordance with the law. At the same time, the State Security Commission is responsible for laying down broad policy guidelines and directions for the performance of the preventive and service oriented functions of the police, evaluating as well as keeping under review, the functioning of the police. The Commission is also mandated to be a forum of appeal for police officers of and above the rank of Superintendent of Police for disposing representations from them about being subject to illegal or irregular orders in the performance of their duties.

***- appoint the police chief through an open procedure; on merit, not on whim.***

To counter the prevailing practice of subjective appointment of the Head of Police - which is based more on political considerations rather than merit of the candidate - the Model Bill provides an alternative procedure. It recommends that the selection of the Head of Police will be made from a panel of not more than three Indian Police Service (IPS) officers of the state cadre prepared by a Committee consisting of the Chair or Member of the Union Public Service Commission, Union Home Secretary, the senior-most amongst the heads of the Central Police Organisations, the Chief Secretary of the state and the existing Head of Police in the state.

***- assure the police chief, a stable tenure***

To avoid the present situation that allows powerful political lobbies to appoint and remove the police chief at will, the Model Bill lays down a fixed tenure of three years for the Head of Police. To minimise the scope for arbitrariness, it also clearly lays down the grounds on which the Head of Police may be replaced. In order to ensure that the police chief will do her/his job without fear or favour, the Model Bill also makes the Head of Police ineligible for any post retirement employment under the government or in any public undertaking in which the government has a financial interest.

***- assure a fixed tenure for cutting edge posts***

Frequent transfers and unstable tenures are seriously undermining the efficiency of the police in India. The threat of transfer is often used by the political executive to make officers subvert adherence to procedures and facilitate indulgence in questionable practices. Police officers who resist illegitimate political pressure frequently find themselves transferred on account of “administrative expedience” to make way for others who are willing to act on dubious political dictates with greater alacrity. Not only does this lower the morale of upright officers but also prevents the proper carrying out of policing plans and strategies. It is therefore essential to prescribe fixed tenures particularly at the cutting edge posts of Superintendent of Police and Station House Officer in the police act itself. The law must lay down the

conditions under which an officer can be transferred before the expiry of tenure, which must be strong, cogent and justified.

### **Accountability of the police**

**Principle: The police are a responsible arm of the State and are accountable for their conduct and for the service they are expected to provide.**

**The Problem: the lack of effective accountability mechanisms and periodic review of performance is causing the police to lose confidence of the public.**

Police misconduct and the failure to effectively respond to situations are undermining public confidence in the system. These are issues whose gravity is not being addressed in any really serious way. The widespread belief that the police functions with impunity - and officers are rarely held to account for their acts of omission and commission – is breaking the faith of the public in the police.

The question that is often asked is that why do we need additional accountability mechanisms when we have an elaborate system of courts and internal disciplinary procedures. Firstly every act of police misconduct may not necessarily be a criminal offence that can be tried by the courts. Additionally, registering a criminal case against a police officer is a long and cumbersome process. Further, Sections 132 and 197 of the Code of Criminal Procedure (CrPC) prevent courts from taking cases of alleged offences in the discharge of official duty, for various categories of public servants including police officers, without the prior sanction of the government. This sanction is sparingly granted which explains the overwhelming reliance on internal disciplinary mechanisms which unfortunately do not inspire public trust and confidence. General public distrust stems from a variety of beliefs such as an innate desire for the department to protect its image; some questionable practices finding widespread acceptance within the police; inquiry officers not wishing to be seen as turncoats and inimical to the feeling of camaraderie; the feeling that disciplinary action will lower the morale of the force and blunt its edge in dealing with special situations like militancy or organised crime; and the likelihood of the person under scrutiny being personally known to inquiry officer/s.

### **The Solution: Multiple levels of accountability**

The Police Act, 1861 does not put in place any mechanism to ensure external accountability unlike police legislation in the U.K, South Africa, Canada and Northern Ireland. The NPC's Model Bill limits itself to prescribing as functions of the State Security Commission, evaluation of the performance of the police and generally keeping in review, the functioning of the police. The Punjab Police Bill, 2003 addresses the issue of accountability only so far as by prescribing redress of grievances of the public against police officers as a function of the State Security Commission.

In the absence of any dedicated body to look into complaints against the police, human rights commissions have assumed the role of exercising civilian oversight of police performance. Perhaps, because the largest numbers of complaints received by

the National and 16 state human rights commissions are against the police. But human rights commissions have a wide mandate and are expected to look at a variety of human rights concerns. With their limited resources they can barely do justice to very serious complaints against the police such as those involving extra judicial killings, custodial death, torture or extortion. The unusually high number of police related complaints nationwide and the general public dissatisfaction with police performance demand the creation of separate dedicated bodies to receive police related complaints and evaluate police performance.

### ***Establishing an independent complaints body***

Here we can borrow and adapt from international experience where police acts themselves provide for these independent bodies.

In the UK, the Independent Police Complaints Commission (IPCC) supervises and investigates public complaints against the police and can take over the supervision or investigation of any complaints case. The Head of Police must by law give the IPCC access to police documents and premises. Complaints can be made by persons other than victims or even via a third party or through independent organisations like the citizens advice bureau. Complainants have the right to appeal to the IPCC if their complaints are not registered. Complainants are kept informed about the progress and conduct of the investigation into their complaint and given a summary of evidence, explaining how conclusions were reached. If the complainant is not satisfied, s/he can appeal.

South Africa has independent complaints authorities that investigate police misconduct at both national and provincial levels. The Independent Complaints Directorate functions independently and has its own staff. It looks at deaths in police custody and deaths occurring as a result of police action; police involvement in criminal activities such as assault, robbery, theft of motor vehicles etc.; and police conduct or behaviour which is prohibited by the police regulations, such as violation of the code of conduct or neglect of duties; and failure to protect victims of domestic violence under the Domestic Violence Act. All these situations are very relevant to our own circumstances in India. The Minister in consultation with the Parliamentary Committees nominates the head of the Directorate. S/he is appointed to the post only when the nomination is confirmed by the Parliamentary Committees. S/he is required to submit an annual report to the Minister within three months of the end of the financial year, which has to be tabled in Parliament by the Minister within 14 days. All these procedures allow for wide debate on issues relating to policing at the level of peoples representatives, which is expanded by public knowledge and understanding of police functioning and year on year police performance evaluations

The Police Act in British Columbia provides for the appointment of a Police Complaint Commissioner to oversee the handling of complaints against the police. S/he is appointed on the unanimous recommendation of a special committee of the Legislative Assembly. The police complaint commissioner cannot be a Member of the Legislative Assembly but is considered to be an officer of the Legislature, who holds office for a term of six years. S/he can appoint staff to assist in performing the duties of the office and must report annually to the Speaker of the Legislative Assembly on the work of her/his office.

### *Specialised performance evaluation*

As affirmed earlier, the police must be held accountable for the service they are expected to provide and for which huge amounts of tax payers' money are spent. The National Police Commission had strongly recommended continuous monitoring of police performance and pointed to the creation of an independent cell in the State Security Commission for this purpose. The NPC Model Bill provides for a Director of Inspection to evaluate the performance of the police and report to the State Security Commission.

In Northern Ireland, the Policing Board which is an independent public body made up of 19 political and independent members sets objectives and targets for police performance following a consultation with the Police Chief and uses these to monitor progress. The Board, set up under the Police (Northern Ireland) Act 2000 publishes an annual report of performance against these objectives. In addition, the Board monitors trends and patterns in crime and devises ways for the public to cooperate with the police to prevent crime.

In the U.K, the performance of different forces is measured and compared by a Police Standards Unit, which grounds its evaluation in the Police Performance Assessment Framework (PPAF) prepared each year by the Home Office. The PPAF assesses police performance on a number of factors, including: satisfaction of victims of domestic burglary, violent crime, vehicle crime and road traffic collisions with respect to police handling of their cases; people's perception about their local police doing a good job in the British Crime Survey; satisfaction of victims of racist incidents to the service provided by the police; representation of women and minorities in the force; incidence (per 1000 population) of domestic burglaries, violent crime, robberies, vehicle crime, life threatening and gun crime; number and percentage of offences brought to justice; action taken in domestic violence incidents; statistics regarding fatalities or serious injuries in road accidents; people's perception about the fear of crime, anti-social behaviour, local drug use/selling in the British Crime Survey; percentage of officer time spent in frontline duties; delivery of internal efficiency targets; and time lost due to sickness of police officers.

### **Offences by police officers**

**Principle: The police are custodians of the law and must respect it all costs. Duty cannot be furthered through the adoption of illegal means.**

**The Problem: Widespread indiscipline and cavalier attitudes towards law and procedures are eroding the faith of people in the police.**

The Police Code of Conduct requires officers to respect and uphold the rights of citizens guaranteed in the Constitution and other laws. It also requires officers to maintain the highest standards of integrity. Unfortunately, not a day goes by without police excesses being reported in different parts of the country. The rising number of complaints, coupled with strong public perceptions about the police being brutal and corrupt point to a crisis of discipline in the department.



**The Solution: Enforce the highest standards of personal and professional conduct through the law.**

*Offences*

The list of offences committed by a police officer under the Police Act, 1861 includes wilful breach or neglect of any rule or regulation or lawful order; withdrawal from duties of the office or being absent without permission or reasonable cause; engaging without authority in any employment other than police duty; cowardice; and causing any unwarrantable violence to any person in her/his custody. The penalty for these offences is fine up to three months' pay or imprisonment up to three months or both.

The NPC Model recognises all these offences but adds many new ones to the list, like being found in a state of intoxication while on duty; malingering or feigning illness or voluntarily causing hurt to self so as to render oneself unfit for service; being grossly insubordinate to superior officers or using criminal force against superior officers; and engaging in or participating in any demonstration, procession or strike or abetting any form of strike or coercion or physical duress to force any authority to concede anything. All such offences are punishable with imprisonment up to one year or fine up to five hundred rupees or with both.

In addition to the offences committed by a police officer against the department, there are also offences against citizens in the NPC Model. A police officer is guilty of an offence punishable by imprisonment up to one year and/or with fine up to Rs 500 if s/he:

- (a) without lawful authority or reasonable cause enters to search or causes to be entered or searched any building, vessel, tent or place; or
- (b) vexatiously and unnecessarily seizes the property of any person; or
- (c) vexatiously and unnecessarily detains, searches or arrests any person; or
- (d) offers any unnecessary personal violence to any person in her/his custody; or
- (e) holds out any threat or promise not warranted by law.

The Bill also makes vexatious and unnecessary delay in forwarding an arrested person to the magistrate, an offence punishable with imprisonment up to one year and/or with fine which may extend to one thousand rupees.

All these listed offences in the NPC Model address common instances of rampant and frequent abuse of power present in policing today. They are intended to curb particular acts of misconduct by making them explicitly punishable under police legislation. Perhaps a significant inclusion into the above list of offences should be malafide refusal to register an offence or 'burking' which is one of the common public complaints against the police.

*Disciplinary penalties*

The Police Act, 1861 authorises the Inspector General, Deputy Inspectors General, Assistant Inspectors General and District Superintendents of Police to dismiss, suspend or reduce any police officer of the subordinate ranks<sup>3</sup>whom they think remiss

---

<sup>3</sup> Subordinate officers mean officers of and below the rank of Inspector of Police

or negligent in the discharge of duties or unfit for the same. They are also authorised to impose the following punishments: (a) fine not exceeding one month's pay (b) confinement to quarters not exceeding 15 days (c) deprivation of good conduct pay (d) removal from any office of distinction or special emolument.

The NPC Model increases the number of disciplinary penalties that may be imposed on police officers. These are:

- Out right dismissal
- removal from service
- reduction in rank
- forfeiture of approved service
- reduction in pay
- withholding of increment
- withholding of promotion
- fine not exceeding one month's pay

The Model also states that a police officer may be placed under suspension:

- where disciplinary proceedings are contemplated or are pending against the officer
- where the officer in the opinion of the suspending authority has engaged in activities prejudicial to the security of the State
- where a case against the officer in respect of any criminal offence is under investigation, inquiry or trial and in the opinion of the suspending authority, there is a prima facie case

Disciplinary provisions in the Andhra Pradesh, Madhya Pradesh, Punjab and Rajasthan Bills are more or less similar to the provisions included in the NPC's Model Bill.

## **Duties and responsibilities**

**Principle: For police legislation to be effective and responsive, it is essential that it contains a charter of duties and responsibilities of the police. Police officers must be aware of the standard they will be held to. It is therefore essential that this charter is elaborate and specific.**

**The Problem: the police are still functioning as a colonial style regime police, vastly removed from ground realities.**

The Police Act, 1861 was enacted with a limited purpose. Its preamble mentions that "*it is expedient to reorganise the police and to make it a more efficient instrument for the prevention and detection of crime*". This has led to frequent assertion by the police that they have no other societal role to play, given their duties under the Act, which are to:

- i. obey and execute all orders and warrants *lawfully* issued by any competent authority;
- ii. collect and communicate intelligence affecting the public peace;

- iii. prevent commission of offences and public nuisances;
- iv. detect and bring offenders to justice; and
- v. apprehend all persons whom the officer is legally authorised to apprehend and for whose apprehension sufficient ground exists.

**The Solution: Expand the charter of the police and attune it to uphold constitutional rights and maintain the rule of law.**

The NPC's Model goes far beyond the 1861 charter and takes into account not only the changes which have occurred within the organisation during this period but also in the environment in which the organisation is required to function. The Preamble to the Model stresses that "*the police has a paramount obligation and duty to function according to the requirements of the Constitution, law and the democratic aspirations of the people*", and requires it "*to be professional and service-oriented and free from extraneous influences and yet accountable to the people.*" The Model therefore prescribes the following duties for individual police officers:

- i. Promote and preserve public order;
- ii. Investigate crimes, and where appropriate apprehend the offenders and participate in subsequent legal proceedings connected therewith;
- iii. Identify problems and situations that are likely to result in commission of crimes;
- iv. Reduce the opportunities for the commission of crimes through preventive patrol and other prescribed police measures;
- v. Aid and co-operate with other relevant agencies in implementing the prescribed measures for prevention of crimes;
- vi. Aid individuals who are in danger of physical harm;
- vii. Create and maintain a feeling of security in the community;
- viii. Facilitate orderly movement of people and vehicles;
- ix. Counsel and resolve conflicts and promote amity;
- x. Provide necessary services and afford relief to people in distress situations;
- xi. Collect intelligence relating to matters affecting public peace and crimes in general including social and economic offences, national integrity and security; and
- xii. Perform such other duties as may be enjoined on them by law for the time being in force.

Some distinctly new features of the police role can be identified from the above-mentioned list of duties. Firstly, the preventive role of the police has been enlarged and given a more positive proactive shape than the one envisaged in the 1861 Police Act. The police are required to identify problems and situations that are likely to result in commission of crimes, and to reduce the opportunities for such commission through appropriate measures. They are required to help people who are in danger of physical harm and thereby help in creating and maintaining a feeling of security in the community. The police are required not merely preserve but to promote public order. Secondly, the police are required not merely to investigate crime and apprehend offenders, but also to participate in subsequent legal proceedings connected therewith. Item (ii) of the above list is intended to give legal scope for police to be associated with the process of prosecution and have effective interaction with the prosecuting agency. Thirdly, the National Police Commission has emphasised the need for the

police to maintain effective working relationship with other sub-systems of the Criminal Justice System and with community services. Item (v) of the list of duties is intended to afford scope for police to be associated with the other wings of the Criminal Justice System for preventing crime. Fourthly, items (ix) and (x) of the list of duties are intended to facilitate the performance of service-oriented functions and also recognise a counseling and mediating role for the police in appropriate situations.

In addition to the above, fourteen additional duties of the police towards the public, particularly towards women, children, poor and other disadvantaged segments of society have also been prescribed. These additional duties again emphasise the preventive and service-oriented role of the police. Some of these duties require the police to register all cognizable offences, assist in preventing the poor from being exploited, prevent harassment of women and children in public places, refrain from causing needless inconvenience to the members of the public, ensure that arrested persons are not denied their rights and privileges, see that victims of road accidents are given prompt medical aid without waiting for formalities etc.

Another feature of the NPC Model is to prescribe "*emergency duties of the police*". The Model empowers the State Government to declare any specified service to be an essential service to the community and makes it "the duty of every police officer to obey any order given by any superior officer in relation to any employment" in connection with the specified service.

The Rajasthan Police Bill, 2000 includes as a duty of police officers, to ensure safe custody of a person under arrest and in case a sick or wounded person comes or is brought to a police station, to promptly make available, necessary medical help. The Andhra Pradesh Police Bill, 1996 mentions as a duty of the police to prevent ragging in educational institutions and hostels.

## **Consultation with the community**

**Principle: The police in a democracy must be a provider of service to the community and cannot be a force to subdue and subject people. As such, it must be a trusted ally of the community in ensuring safety and security for the public at large.**

**The Problem: little trust, understanding or consultation between the police and the people**

As the work of the police essentially involves serving communities, it is essential that police organisations be responsive to the needs of communities. Therefore, active consultation and working with and through communities are essential elements of democratic policing. Unfortunately policing in India has been by and large, a one sided affair with communities having little or no say in policing plans and strategies that affect them the most. The idea that the police is part of the community and therefore accountable to it, has not taken root in the country.

**The Solution: institutionalised role for the community in policing.**

The Police Act, 1861 is silent on the issue of community consultation. Rather it focuses on the responsibility of communities to ensure that they do not step out of line

and penalises them for disturbance of order. The NPC Model Bill also does not specifically require the police to consult with communities. It limits itself to authorising the Superintendent or Commissioner of Police to constituting defence societies for the protection of persons, security of property and public safety. The Punjab Police Bill, 2003 offers a slight improvement over this by mentioning that the Director General of Police shall frame rules for the implementation of community policing and the establishment and working of community police resource centres.

In South Africa, the Constitution itself makes it the “political responsibility” of each province “to promote good relations between the police and the community” and to appoint a commission of inquiry into any breakdown in relations between the two. The South Africa Police Act, 1995 prescribes the establishment of Community Police Forums at police station level to act as liaison between the police and the community. The liaison helps establish and maintain community – police partnerships; it promotes communication and co-operation; improves the rendering of services by the police in the community; increases transparency in police functioning and strengthens accountability to the local community; and promotes joint problem identification and problem solving.

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

In the U.K, the police are required by law under the Police Act, 1996 to make arrangements in each police area to find out the views of the local people about matters concerning the police and also to involve people in cooperating with police in preventing crime.

The Police Reforms Act, 2002 of the UK allows exercise of police powers by civilians. It enables the chief officers of police to appoint suitable support staff from amongst citizens to function as community support officers and gives them powers to deal with anti-social behaviour. Community support officers may also have powers to confiscate alcohol and tobacco in defined circumstances, seize vehicles used to cause alarm and direct traffic for certain specific purposes among other things.

Again, in Canada, community involvement in policing is required by law. In British Columbia, police committees may be set up for promoting a good relationship between the residents and the police and to bring to the attention of all concerned including the Minister, matters concerning the adequacy of policing and making recommendations on those matters. Members of the committees are to be selected after consulting municipal councils.

## Conclusion

The Police Act, 1861 needs to be replaced with legislation that reflects the democratic nature of India's polity and the changing times. The Act is weak in almost all the parameters that must govern democratic police legislation.

1. The Act has made it easier for others to abuse and misuse the police organisation. It has been possible for people in positions of power to do so because of the following reasons:
  - i. The Act gives the government, the authority to exercise superintendence over the police, without defining the word 'Superintendence' or prescribing some guidelines to ensure that the use of power will be legitimate
  - ii. The Act does not establish any institutional and other arrangements to insulate the police from undesirable and illegitimate outside control, pressures and influences
  - iii. The Act does not recognise the responsibility of the government to establish an efficient and effective police force.
  - iv. The Act does not make it necessary to outline objectives and performance standards, nor does it set up independent mechanisms to monitor and inspect police performance.
2. The Act is antiquated in its charter of duties, which is narrow and limited.
3. The Act does not mandate the police to function as a professional and service oriented organization
4. The Act is not in consonance with the requirements of democratic policing. These requirements insist on the existence of a police force that:
  - (a) is subject to the rule of law, rather than the whims of a powerful leader or party;
  - (b) can intervene in the life of citizens only under limited and controlled circumstances; and
  - (c) is publicly accountable.

In short, the Act has obstructed the establishment of the rule of law and retarded the growth of a professional system of policing.

The NPC Model makes a valiant effort to address some of the shortcomings in the Police Act of 1861 but it is deficient in two fundamental aspects:

- (i) It does not put in place, mechanisms for police accountability. It is here that we must borrow and adapt from international experience.
- (ii) The NPC Model also does not provide for institutionalised police – community engagement. Here too, we must look at international experience and adapt it to Indian conditions.

Another area where the NPC Model requires work is the sections dealing with offences. A number of changes have taken place since May 1981 when the Eighth Report of the National Police Commission in which the NPC Model is laid out, was tabled. The punishments for offences need to be reviewed. The fines are based on the

price index of 1981, which make the amounts negligible today. In some cases, punishment by fine is accompanied by punishment with imprisonment, which may also be reviewed.

The NPC Model provides a useful template to base new police legislation upon. Many provisions in the NPC Bill are relevant but they need to be augmented by provisions that will ensure multiple levels of police accountability, means of evaluating police performance, involvement of the community in policing and police oversight at the local level.