

Legislation Governing the Police- Need to Replace

The Police in India is a State subject, though most police forces in the country are governed by The Police Act of 1861, which is a central Act but adopted by the state governments.

What type of police organisation was established by law?

The Police Act of 1861 was legislated after the Indian Mutiny of 1857. The colonial rulers were not interested in establishing a people friendly police force here, but in a regime police, which could be used to consolidate and perpetuate their rule in the country. Through this Act, they established a police system:

- That was totally subservient to the executive. That was unaccountable to anyone except their own hierarchy and the executive.
- Whose managerial philosophy was based on distrust of the lower ranks. That was highly militaristic and authoritarian in design.
- Whose charter of functions was narrow and limited.
- Even the normal tasks of policing, such as the detection and prevention of crime, public safety etc. were secondary to the task of preserving political dominance of the regime.

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

- The Police Act of 1861 continued to govern it.
- The powers granted to politicians and bureaucrats to exercise control and superintendence over the police remained the same.
- It remained largely unaccountable to the public.
- Its managerial philosophy, value system and ethos remained what they were.
- It was a ruler or establishment supportive police force, considerably distant from the community and continued to remain so.

State Police Acts

We have always been holding the Police Act of 1861 responsible for most of the ills afflicting us. But then we have enacted new legislation since Independence to govern the functioning of the police forces in many states. For instance:

- the Police Forces in Maharashtra and Gujarat are governed by the Bombay Police Act of 1951,
- in Kerala by the Kerala Police Act of 1960,
- in Karnataka by the Karnataka Police Act of 1963 and
- in Delhi by the Delhi Police Act of 1978.

The enactment of these laws after Independence has not brought about any significant improvement in the organisational structure, performance or behaviour of the police forces. Why?

- ➔ The new enactments were patterned on the model of the old 1861 legislation. In fact, some of these state Acts, like **the Bombay Police Act, 1952** further tightened the executive control over the police force, without introducing any safeguards to prevent the misuse of police force for partisan purposes and without incorporating effective mechanisms to ensure police accountability. How this act failed to prevent the misuse of police force was clearly seen during the communal riots of last year in Gujarat

What is wrong with the present legislation governing the functioning of the police force? :

1. The present Act has made it easier for others to abuse and misuse the police organization. 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. Talks only of control over the police but is conspicuously silent about police accountability.
 - iv. The Act does not recognise the responsibility of the government to establish an efficient and effective police force.
 - v. 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 completely antiquated in terms of charter of duties. The charter is narrow and limited.
3. The Act does not mandate the police to function as a professional and service oriented organization
4. Does not conceive of community in positive terms; nor does it seek community involvement or participation in police work.
5. 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 wishes of a powerful leader or party;
 - b. can intervene in the life of citizens only under limited and carefully controlled circumstances; and
 - c. is publicly accountable.
6. The Act has obstructed the establishment of the rule of law and retarded the growth of a professional system of policing.

What type of Police Act should replace the present Legislation?

The new Act must

- Set up a system that meets the requirements of democratic policing. Recognise the paramount obligation of the police to function according to the requirements of the Constitution. Mandate the police to function as a professional and service oriented organization. Recognize the government's need to set up an efficient and effective system of policing.
- incorporate reference to accepted rights standards and norms relevant to policing. Establish institutional and other arrangements to insulate the police from undesirable and illegitimate outside control, pressures and influences. Outline Objectives and performance standards and set up independent mechanisms to monitor and inspect police performance. Set up credible and effective complaint handling mechanisms and procedures. Establish institutional arrangements to consult the community and involve them in police work.