

**The Police Act of 1861, Model Police Bill of the National Police Commission,
the Madhya Pradesh Police Vidheyak, 2001 and the Police Acts of three
Commonwealth Countries- A Comparative profile¹**

Introduction

In any discussion on police problems, the British invariably receive flak for the type of police system they established in this country through the Police Act of 1861(The 1861 Act). The argument is that the Act was legislated after the Indian Mutiny of 1857 and that the colonial rulers were not interested in establishing a people friendly police force here. They wanted to establish a police force, which could be used to consolidate and perpetuate their rule in the country.

Most of this criticism may be valid, but it raises a few pertinent points that need to be discussed here.

Foreign rule in this country ended more than 54 years ago. How long shall we keep on blaming the British for establishing the police system they did? Why has no government - central or state - taken the initiative to replace the Police Act of 1861 with new legislation, which would give the country or the state a different police force?

It is not as if no new legislation has been passed. Some state governments have enacted new legislation since Independence to govern the functioning of their police forces. 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, in Delhi by the Delhi

¹ This paper was prepared for discussion during the Workshop on MP Police Vidheyak 2001 organised by the CHRI at Indore, MP on July 20 & 21, 2001.

Police Act of 1978 etc. Now the Madhya Pradesh Police Vidheyak, 2001 (The MP Bill) is on the anvil. Some State Governments have also framed separate legislation to regulate the working of their State Armed Police Forces.² 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. The reason - the new enactments were patterned on the model of the old 1861 legislation. They are as silent and remiss about the new requirements of democratic policing as the colonial legislation was.

The National Police Commission (NPC) in 1981 had drafted a Model Police Act (the NPC Model) to replace the old 1861 Act. The central government has always had the option of implementing the important recommendations of the NPC by introducing the NPC Model in the Union Territories. If it had done so, it would have acquired the moral authority to ask the state governments to follow suit. It never did that and thus failed to convince the state governments about its genuineness in implementing the NPC's recommendations. When Mr Inderjeet Gupta was the Union Home Minister, he made a very fervent appeal to the chief ministers of all the states, asking them to implement the recommendations of the National Police Commission before the judiciary forced them down their throats³. Mr Gupta could have introduced this legislation in the union territories, which were under the control of his Ministry. This was not done.

The police forces in states/union territories have thus continued to be governed by the 1861 Act or by legislation modeled on that Act. The old police system established by the British suits the interests of the new ruling classes, which

² 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.

emerged in the country after Independence. As long as the police remained subservient to the executive, they could always be misused to further the interests of the ruling classes. It was therefore important to let them remain accountable only to the executive. This is the main reason why no significant attempt has been made to replace the old outdated Police Act of 1861 or to change it in a major way.

It is quite heartening to note that some state governments are trying to replace the 1861 Act with their own model. The MP Government has already drafted the MP Police Vidheyak, 2001. The draft of a new Police Bill has been pending with the Andhra Pradesh Government since 1996. The Government of Himachal Pradesh is also known to have drafted a new Police Bill for the state. The Police headquarters in Rajasthan has drafted the Rajasthan Police Bill, 2000 and has sent it to the state government.

In view of the above initiatives, we consider this an opportune time to review critically the main provisions of the Acts or Bills formulated to govern the structure and functioning of the police forces in this and in some other countries. This review includes the 1861 Act, the NPC Model Police Bill and the MP Police Vidheyak, 2001. We are not including in this analysis the Police Bills of other states, like AP, Rajasthan and Himachal Pradesh, as these have not yet reached even the stage of introduction in the Legislative Assemblies.

The review compares the provisions of the selected Bills under the following heads:

- Control/Superintendence of the Police Force

³ Union Home Minister's DO letter Letter No.11018/5/96-PMA dated April 3, 1997 addressed to the Chief Ministers of all State Governments and UTs

- Accountability
- Impunity
- Consultation with the community
- Duties & Responsibilities of the Police
- Regulation, control and discipline of the Police Force.
- Special measures for maintenance of public order and security of State.
- Police Regulations for regulating traffic and maintaining order:
- Offences and punishments.

This study also includes a comparative analysis of the provisions existing in the Police Acts of three Commonwealth countries viz. UK, South Africa and the Province of British Columbia in Canada (Foreign Models) with regard to the first four key issues listed above. When a comparative review of this type is attempted, there is generally a tendency on the part of most of us to turn away from developments in other countries by saying that they are not relevant to India's size, condition and special system or that they have no resonance in India's unique environment of diversity, poverty, and conflict patterns. But our view is that good practices elsewhere provide a springboard from which to catch ideas, filter and adapt them to fit local environment.

Control/Superintendence of the Police Force

In the Indian context, there are two aspects of the problem of control to be exercised over the police force. One is the control exercised by the State Government and the other is the system of dual control that exists at the district level.

State Government's Control

The 1861 Act

Control over the police in this country is exercised by the state government. The 1861 Act vests the superintendence of the police force in the state government⁴

There are many reasons for the poor quality of policing in this country, but a major reason identified time and again by committee after committee and inquiry after inquiry has been the type of control that has been exercised over the police. There is enough evidence to prove that the type of control that has been exercised over the police by the state governments has generally led to gross abuses. Almost all State Police Commissions, the National Police Commission and other expert bodies, which have examined police problems, have found overwhelming evidence of misuse and abuse of police system by politicians and bureaucrats for narrow selfish ends. The situation resulting from wrong control over the police has become worse during the last few decades because of increasing criminalisation of politics. Bad elements in politics and in the police have now become a strong mutually supporting system whose influence permeates the police and negates its ability to be a crime fighting force or an organization pledged to uphold the law and protect the people or the constitution.

The NPC Model

The National Police Commission examined this subject in detail. Even though the quality of control exercised over the police in those days was not as bad as it has now become, the NPC realised the serious threat that poor control over the police posed to the quality of policing. The Commission made numerous

recommendations to insulate the police from outside illegitimate control. The Commission felt that there was an immediate need to devise a new mechanism of control and supervision, which would help the State Government to discharge their superintending responsibility in an open manner under the framework of law.⁵ For this purpose, they recommended the constitution of a statutory commission in each State to be called the State Security Commission⁶. To give statutory effect to these recommendations, the NPC Model contains provisions regarding the establishment and constitution of the State Security Commission; functions of the Commission; disqualifications for becoming a member of the Commission; vacation of seats of members; appointment of Director and Principal Director of Inspection; annual report of the Commission etc⁷. In this scheme of things, the superintendence of the police force vests in the State Government but is to be exercised through the State Security Commission⁸.

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

⁴ Police Act of 1861, Section 3

⁵ *Ibid*, p31, para 15.46

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

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

⁸ *Ibid*, Section 30 (1)

⁹ *Ibid*, Chapter II, Section 5

¹⁰ National Police Commission, Second Report, p 31, para 15.45

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

The MP Bill

The MP Bill vests the superintendence of the police force through out the state of MP in the State Government¹². This type of clause vesting the general superintendence of the police force in the state government is there in all the Police Acts. The Bill, however, goes a step further and extends the clause by specifically stating that *“any control, direction or supervision exercisable by any officer over any member of the police force shall be exercisable subject to such superintendence”*¹³.

The extended clause of the MP Bill would have the effect of giving the state government power to intervene in all matters relating to police work-administrative as well as operational. The extension amounts to saying that an order issued by any police officer concerning another police officer can be rescinded or amended by the government if they want to do so. All orders regarding transfers, postings, suspensions, rewards and punishments in respect of police officers issued by the departmental leadership come within the purview of this clause. In fact, the government can even issue directions as to how investigation of criminal cases should be supervised.

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

¹² The Madhya Pradesh Police Vidheyak, 2001, Section 4

Superintendence

The word “*Superintendence*” has not been defined in legislation. The word has been interpreted by the Supreme Court in the Havala Case judgement of 1998.¹⁴ The Court was examining the validity of the Single Directive- a set of instructions issued by the central government prohibiting the CBI from inquiring into complaints of corruption received against officers of the rank of Joint Secretary and above. The plea made before the Court was that the power of superintendence that the central government exercised over the CBI by virtue of Section 4 (1) of the Delhi Special Police Establishment Act, 1946¹⁵ allowed the government to issue instructions contained in the Single Directive. The Supreme Court refused to accept such a broad definition of ‘superintendence’. In the Supreme Courts interpretation, “*The general superintendence over the functioning of the Department ...would not include within it the control of the initiation and the actual process of investigation, i.e direction;*¹⁶” nor would it “*permit supervision of the actual investigation of an offence by the CBI contrary to the manner provided by the statutory provisions.*¹⁷”

Earlier, the NPC had deliberated on this subject. The Commission examined the rulings of the Supreme Court relating to Article 227 of the Constitution according to which every High Court is authorised to exercise superintendence over all courts in the State. Based on the general principles enunciated in these

¹³Ibid, Section 4

¹⁴ Judgement of the Supreme Court of India in Writ Petition (Criminal) Nos. 340-343 of 1993, pp 66-73

¹⁵ Section 4(1) of this Act, which is in *pari materia* with section 3 of the Police act of 1861, says that “The superintendence of the Delhi Special Police Establishment shall vest in the Central Government.”

¹⁶ The Judgement of the Supreme Court of India in Writ Petition (Criminal) Nos.340-343 of 1993, PP 66-67

¹⁷ *Ibid*, P67

judgements, the Commission recommended that “*the power of superintendence of the State Government over the police should be limited for the purpose of ensuring that police performance is in strict accordance with law*”.¹⁸

To ensure reform, which is the intention of any amending or new legislation, it is important that the word “*superintendence*” should be clearly interpreted to exclude use of the police for wrong and illegitimate purposes. This is the crux of reform.

Foreign Models

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

Police Acts in other countries in fact do not talk of control but of responsibilities of the Minister or government and lay down in clear terms how that responsibility has to be discharged. For instance, the main function of the Secretary of State in the United Kingdom is to exercise his powers “*in such manner and to such extent as appears to him to be best calculated to promote the efficiency and effectiveness of the police.*”¹⁹ The English model of police system provides for a tripartite structure consisting of the Secretary of State representing the political executive, the local Chief Constable representing the police

¹⁸ National Police Commission: Second Report, August 1979, Pp29-30

¹⁹ The UK Police Act of 1996, Section 36.

department and the Police Authority representing the community. The Act requires the Secretary of the State to determine objectives for policing of different areas and this has to be done by him in consultation with the other two i.e. the police department as well as the Police Authority. A statutory instrument containing the objectives determined under this provision of law has to be laid before Parliament.²⁰ Once the objectives have been set, he can ask the Police Authorities to set performance targets for the police forces²¹. This exercise lays down publicly the broad goals which have been defined after taking the general context into account and lays down a public standard of performance which is then monitored. Political control is not compromised but at the same time scope for political interference is minimized; performance standards are set in a fashion that the political authorities can monitor police performance, and continue to be responsible to ensure that the force fulfills them. The process ensures that both remain responsible to parliament and the people for the proper fulfillment of the community's expectations from the police. The Secretary of State is also authorised to get an inspection of any police force done by the Inspectors of Constabulary and ask the Police Authority to take specific remedial measures if the inspection report reveals that the force is not working efficiently or effectively.

The Police performance in the UK is constantly under review by the government, the civil society organisations and the public at large. Numerous important initiatives are being taken in that country to introduce further reforms in the police force. The Police Act of 1996 is being revised through a new Police Reforms Bill introduced in the House of Lords on January 24, 2002. Part 1 of the Bill makes new provisions regarding the supervision of the police forces. It is now being made a duty of the Secretary of the State to prepare a National

²⁰ *Ibid*, section 37

²¹ *Ibid*, Section 38

Policing Plan for a financial year and to lay it before the Parliament. The plan must set out strategic priorities for the police service for the coming 3-year period. It should include the Home Secretary's objectives for police authorities and identify proposals for making regulations and for issuing codes of practice and guidance²².

The Bill enables the Secretary of State to issue codes of practice relating to the discharge of their functions by the chief officers of police if he considers it necessary to do so for "promoting the efficiency and effectiveness" of the police forces. The 1996 Act already contains provision for codes of practice to which police authorities must have regard; this Bill introduces a parallel provision for chief officers. Where the Secretary of State proposes to issue a code, he must ask the Central Police Training and Development Authority (CPTDA)²³ to prepare a draft of the code. CPTDA must in turn consult such persons as it thinks fit.²⁴

The Bill extends the Secretary of State's powers to require inspection and reports²⁵. The Secretary of State can, at any time, require HM Inspectorate of Constabulary (HMIC) to inspect any police force. Where HMIC has made a report to the Secretary of State, saying that the whole or any part of the force is, or is likely to become, inefficient or ineffective, either generally or in specific respects, the Secretary of State can intervene to require a police authority to take remedial action.²⁶ The Bill also confers on the Secretary of State powers to intervene to direct a chief officer to take remedial action in similar cases. The Secretary of State may direct the chief officer to prepare an action plan for taking remedial measures and can subsequently direct that the plan is revised as well as

²² Police Reforms Bill (HL), Clause 1, introducing Section 36A in the Police Act of 1996

²³ A new organisation established under the Criminal Justice and Police Bill of 2001.

²⁴ Police Reforms Bill (HL), Clause 2, introducing Section 39A in the Police Act of 1996

²⁵ Police Reforms Bill (HL), Clause 3 amending section 54 of the Police Act 1996

directing specific steps and implementation targets to be included in the plan. No direction may be given in respect of a particular case or particular individual. The chief officer must consult his/her police authority before submitting or resubmitting a plan.²⁷

The Bill extends the Secretary of State's regulation-making powers in respect of equipment used for police use. It allows the Secretary of State to require all police forces in England and Wales to use, or keep available for use, only equipment, which is specified, and the Secretary of State can apply conditions to the use of equipment. The Secretary of State can also prohibit forces from using specified equipment. The clause requires the Secretary of State to consult such persons as he sees fit before making any regulations²⁸.

The Bill also enables the Secretary of State to make regulations requiring all forces in England and Wales to adopt particular operational procedures or practices where he considers that it is desirable in the national interest that they should do so. Where the Secretary of State proposes to make regulations, he must seek the advice of the Central Police Training and Development Authority (CPTDA). CPTDA must in turn consult such persons, as it thinks fit²⁹.

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

²⁶ Police Reforms Bill (HL), Clause 4 substituting Section 40 of the Police Act of 1996 by a new provision.

²⁷ Police Reforms Bill (HL), Clause 5 incorporating 41A in the Police Act of 1996

²⁸ Police Reforms Bill (HL), Clause 6 amending Section 53 of Police Act of 1996

²⁹Police Reforms Bill (HL), Clause 7 substituting Sub-sections (2) & (3) of Section 53 of the Police Act of 1996 by new provisions.

the principle that the policing of Northern Ireland is to be conducted in an impartial manner.”³⁰

In South Africa, another country where, as in Ireland, recent reforms have come out of situations of great conflict, the Constitution itself makes it the “*political responsibility*” of a member of the Cabinet responsible for policing to “*determine national policing policy after consulting the provincial governments and taking into account the policing needs and priorities of the provinces.*”³¹ The National Commissioner is required to “*exercise control over and manage the police service in accordance with the national policing policy.*”³² The National Commissioner is required to develop a plan before the end of each financial year, setting out the priorities and objectives of policing for the following financial year.³³

In British Columbia, Canada it is the overall responsibility of the Minister of the government to “*ensure that an adequate and effective level of policing and law enforcement is maintained throughout British Columbia.*”³⁴ It is the responsibility of the council of each municipality to provide policing and law enforcement by setting up a police department. The police department is governed by a Municipal Police Board, consisting of the Mayor, one person appointed by the Council and not more than five members appointed by the Lieutenant Governor in Council.³⁵

In India, the 1861 Act and the MP Bill merely talk of control and superintendence over the police force and are silent as to how that control should be exercised. The Police Acts in other countries make it a statutory responsibility of the

³⁰ Police (Northern Ireland) Act, 1998, Section 37 (2).

³¹ The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), Article 206 (1)

³² *Ibid*, Article 207 (2)

³³ The South African Police Service Act, 1995, Section 11 (2) (a)

³⁴ Police Act, RSBC 1996, Chapter 367, Section 2

³⁵ *Ibid*, Section 23

government to set up an adequate, efficient and effective police service in an area. It is this statutory obligation which makes the governments accountable for their failures in field of policing and forces them to take steps to monitor police performance and take concerted action to improve the efficiency and effectiveness of the police force.

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

System of Dual Control

The 1861 Act

The 1861 Act provides that *“The administration of the police through out the local jurisdiction of the Magistrate of the district shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant District Superintendents as the State Government shall consider necessary.”*³⁶

The words *“general control and direction”* have not been defined either in the 1861 Act or in the State Police Acts promulgated after Independence.

³⁶ Police Act of 1861, Section 4

Introduction of para 2 in Section 4 of the Police act of 1861 had given rise to considerable controversy even at the time when the Act was promulgated. It is not necessary to refer here to the debate, which took place in the Legislative Council and other forums at that time, where considerable opposition was voiced to the introduction of the system envisaged in Section 4 of the Act. It is however necessary to refer to two important features of the situation prevailing at the time the Police Act of 1861 was legislated. One was the combination of judicial and executive functions in one authority, which the British introduced here for reasons of administrative expediency. The maintenance of the position of the District Magistrate as the chief officer of the District was considered *"absolutely essential to the maintenance of British rule in India."* The position no longer obtains today and one of the fundamental tenets of a democratic polity, that is separation of judiciary from executive, has been adopted. Secondly, policing at that time was a comparatively simple task, which could be performed reasonably efficiently under the "general direction and control" of a functionary who was not trained in police work. In 1861, when the new police system was introduced, there was no regular cadre of senior police officers. The post of SP was created in Bombay in 1853 and in Madras in 1855. The institution of DM, on the other hand, had been in existence for quite a long time. Now besides having a full-fledged cadre of police officers, the task of policing itself has become complex, requiring a professionally trained team to handle it.

The NPC Model

The problems resulting from the relationship between the District Police and the Executive magistracy established under the provisions of the Police Act of 1861 were examined in detail by the NPC. The Commission felt that after the separation of judiciary from the executive, there was no reason to subject the district police administration to any control other than that exercised by the

departmental hierarchy itself. According to the Commission, the *“the new police which we hope to create should have a self contained organisational structure where there is no distortion of command and no dual accountability.”*³⁷

The NPC Model lays down that the administration of the Police throughout the district shall be vested in the Superintendent of Police³⁸. It does not authorise the D.M to exercise "general control and direction" over the police administration in the district. The Model does allow the district officer to coordinate functioning of the police with other agencies of the district administration in respect of certain matters, which are laid down by NPC³⁹. For the purpose of such coordination, the district officer may call for specified information or report and also give such directions as are considered necessary by him to the Police. The Superintendent of Police is required to render assistance to the District Officer for the purpose of coordination.

The N.P.C Model also empowers the State Government to authorise the Commissioner, Superintendent of Police and certain other police officers to exercise powers and duties of District Magistrate and Executive Magistrates under the Cr.P.C⁴⁰. It has been clarified that the Commissioner, Superintendent of Police or any officer subordinate to him shall not be subjected in the exercise and performance of any powers and duties to the general control of District Magistrate⁴¹.

There is no provision in the Police Act of 1861 about the Commissionerate system of policing. The NPC Model contains provisions, which are intended to give

³⁷ The National Police Commission: Fifth Report, New Delhi, November 1980, p 39

³⁸ The National Police Commission: Eight Report, The Police Bill, Section 11

³⁹ Ibid, Section 12

⁴⁰ Ibid, Section 81 (1) (a) & (b)

⁴¹ Ibid, Section 81 (3)

statutory recognition to this system. It authorises the State Government to appoint a police officer to be Commissioner of Police for any area comprising a city or town specified in a notification issued by the State Government⁴².

The MP Bill

The MP Model abolishes the system of dual control. It authorises the state government to set up the commissionerate system of policing⁴³. In areas where the commissionerate system is established, the administration of the police force is vested in the Commissioner of Police⁴⁴. This provision is similar to the one that the NPC Model has, except for the difference that the MP Bill prescribes that the officer appointed as Commissioner of Police shall not be below the rank of Deputy Inspector General of Police. In districts, the administration of the police is vested in the District Superintendent of Police.⁴⁵ The MP Bill does not accord any coordinating role to the District Magistrate that the NPC Model does.

The MP Bill authorises the state government to empower the Commissioner of Police to exercise and perform the powers and duties of an Executive Magistrate and of a District Magistrate under the provisions of Section 20 (5), CrPC⁴⁶. The state government is further authorised to empower any other officer not below the rank of Assistant Commissioner or Deputy Superintendent of Police to exercise all powers and perform all duties that an Executive Magistrate does under such provisions of the CrPC as may be specified in the Notification⁴⁷.

⁴² Ibid, Section 9

⁴³ The Madhya Pradesh Police Vidheyak, 2001, Section 7 (1)

⁴⁴ Ibid, Section 8

⁴⁵ Ibid, Section 7 (5)

⁴⁶ Ibid, Section 25 (1) (a)

⁴⁷ Ibid, Section 25 (1) (b)

Foreign Models

The system of dual control in its existing form is something unique to India. The three Police acts studied by us do not have any provision resembling to what is contained in the 1861 Act.

Police Accountability

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

Police accountability has two facets. Firstly, the organisation is responsible to provide an efficient and effective police cover to the community, and secondly, its individual members are expected to conform their conduct to the requirements of law. Thus so far as public is concerned, there may be dissatisfaction with the failure of the organisation to provide a feeling of safety and security to the community and there may be complaints from citizens against the misuse of powers by the individual policemen. Multiple mechanisms of accountability to deal with both types of problems have been set up in different countries either by enacting separate legislation or by keeping provisions in their Police Acts.

The 1861 Act

The Police Act of 1861 talks only of control over the police but is conspicuously silent about police accountability. As already mentioned, the police in this country were a ruler appointed police and they continued to remain so. They therefore remained unaccountable to anyone except their own hierarchy and the executive. No external institutional mechanisms of police accountability were therefor set up.

The NPC Model

The NPC has made numerous recommendations to set up institutional arrangements to inquire into citizens' complaints against police misconduct in its First Report, but none of these finds a place in the NPC Model.

According to scheme of things envisaged in the NPC Model, the State Security Commission will be able to ensure that the police perform and behave according to the requirements of law. Two important functions of the Commission are to prescribe policy guidelines and directions for the performance of preventive and service oriented tasks of the police and to evaluate the performance of the police.⁴⁸

The MP Bill

The MP Bill does not set up a single accountability mechanism to ensure that the community gets an efficient, effective and honest police cover to the community and that the citizens' complaints against the individual instances of police misconduct are inquired into impartially, speedily and effectively. There is not

much difference between the 1861 Act and the MP Bill in so far as police accountability is concerned. The 2001 Bill is as silent and remiss as the 1861 Act.

Foreign Models

It has already been shown how different Police Acts in foreign countries make it the responsibility of the government to establish an efficient and effective police service. In addition, these laws establish separate administrative institutions to inspect the working of the police organisations periodically as well as thematically and also external review agencies, mostly civilian, to deal with individual complaints of misbehaviour on the part of police personnel.

In the UK, the Inspectors of Constabulary are appointed to inspect and report to the Secretary of State on the efficiency and effectiveness of every police force⁴⁹. The Chief Inspector of Constabulary submits an annual inspection report on each police force to the Secretary of State, who is required to lay a copy of the report before Parliament⁵⁰. The amendments being introduced through the Police Reforms Bill, 2001 about the Secretary of State's powers to utilise the Chief Inspectorate of constabulary and action to be taken on their recommendations have already been discussed.

To deal with citizens' complaints against police personnel, a statutorily constituted Police Complaints Authority exists in the UK. The Police Reforms Bill proposes to replace this Authority with a new organisation called the Independent Police Complaints Commission (IPCC). The main reason for the proposal to set up the new body is the public dissatisfaction resulting mainly from the existing arrangements where investigation into public complaints

⁴⁸ Ibid, Section 31 (i) & (ii)

⁴⁹ The Police Act, 1996 of UK, Section 54 (2)

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

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

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

The Police Act of South Africa provides for the establishment of an Independent Complaints Directorate at both national and provincial levels to investigate misconduct or offence allegedly committed by a member of the South African Police Force.⁵¹ The Directorate has to function independently from the Service.⁵² The head of this Directorate is nominated by the Minister in consultation with

⁵⁰ *Ibid*, section 54 (4)

⁵¹ South African Police Service Act,1995, Chapter 10, Section 50 (1) (a)

⁵² *Ibid*, Section 50 (2)

the Parliamentary Committees⁵³. He is appointed to the post only when the nomination is confirmed by the Parliamentary Committees⁵⁴. 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.⁵⁵

The Police Act in British Columbia provides for the appointment of a Police Complaint Commissioner to oversee the handling of complaints against police. He is appointed on the unanimous recommendation of a special committee of the Legislative Assembly. The police complaint commissioner is an officer of the Legislature, who holds office for a term of six years.⁵⁶ He must report annually to the Speaker of the Legislative Assembly on the work of his office.⁵⁷

In addition to complaints against police misconduct, the Act also provides for “Service or Policy Complaints” to be made. Once a complaint of this type is received, the Police Complaint Commissioner sends it to the concerned Municipal Police Board. The Board gets it investigated or studied and then informs complainant and the Police Complaint Commissioner about the results of investigation or study. The Police Complaint Commissioner is authorised to review the decisions of the Board and recommend either further investigation or study or changes to service or policy.⁵⁸

After many complaints of police brutality, particularly against blacks and use of undue violence and excessive force, the Federal Government in the USA has taken initiatives to force reluctant city and municipal police forces to introduce

⁵³ *Ibid*, Section 51 (1)

⁵⁴ *Ibid*, Section 51 (3)

⁵⁵ *Ibid*, Section 54 (a)

⁵⁶ *Ibid*, Section 47

⁵⁷ *Ibid*, Section 51.1

reforms in their methods of work. The Rodney King incident of a video taping of a group of policemen mercilessly kicking and beating a black African American, focussed national attention on the problem of police brutality and saw the passing of the Violent Crime Control and Law Enforcement Act of 1994. This authorised the Federal Attorney General to file law suits seeking court orders to reform police departments engaging in a pattern or practice of violating citizens constitutional rights. The Special litigation Section of the Civil Rights Division of the US Department of Justice has already obtained significant relief under this provision of law. For instance, it has succeeded in obtaining consent decrees to remedy systemic misconduct in municipal police forces in Pittsburgh, Pennsylvania and Ohio.

Thus while the Police Act of 1861 and the MP Bill and even the NPC Model have no provision to deal with citizens' complaints against police misconduct, the Police Acts of the three Commonwealth countries have detailed provisions establishing accountability mechanisms and prescribing procedures to deal with complaints against police personnel.

Impunity

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

⁵⁸ *Ibid*,Section 63.1

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

The 1861 Act

There is no provision in the Police Act of 1861, which can be utilised by the government to grant or the police officer to enjoy impunity. It allows prosecution to be launched against the police officer provided it is done within a period of three months of the alleged deed and after giving one month's notice in writing about the proposed action⁵⁹. However, if the act done is under the authority of a warrant, that plea can be made in defence by the concerned police officer. According to the Police Act, 1861: "*when any act of prosecution shall be brought or any proceedings held against any police officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate.*"⁶⁰ The Act however does not have any

⁵⁹ The Police Act, 1861, Section 42

⁶⁰ The Police Act, 1861, Section 43

provision regarding the tort liability of the government or the police department for wrongful and illegal acts of police officers committed during performance of duties.

The NPC Model

The NPC Model follows the provisions contained in the CrPC, which can be utilised to grant immunity to police officers in cases of misconduct. Section 197 Criminal Procedure Code, provides that a public servant cannot be prosecuted without the sanction of the appropriate authorities for acts done "*while acting or purporting to act in the discharge of his official duties.*" The purpose of this provision of law is to ensure that frivolous and vexatious complaints are not filed against police officers to demoralise them and dissuade them from performing their duties. However, it is a fact that this provision of law has been abused to provide almost blanket protection to police officers even in serious cases of misconduct. This happens because of nexus between politicians, bureaucrats and police officers, which deliberately delays or denies sanctions for prosecutions. Eight years ago, the law Commission of India recommended that this provision should be amended to explain that it would not apply to any offence committed by a public servant, "*being an offence against the human body committed in respect of a person in his custody, nor to any other offence constituting an abuse of authority.*"⁶¹

The National Police Commission has also recommended that protection available to the police officers under Sections 132 and 197 of the Cr.P.C. 1973 should be withdrawn so that the complainant is free to press his complaint against police official for a judicial pronouncement without having to obtain prior permission

⁶¹ Law Commission of India: *One Hundred and Fifty Second Report On Custodial Crime, 1994, pp 127-128*

of the competent authority for such prosecution.⁶² However, contrary to this recommendation, the NPC's draft Police Bill debars the courts from taking any cognizance of offences under the Model Bill without prior sanction of the state government, when the accused is a police officer⁶³. Another provision in the NPC's Model says that "*No police officer shall be liable to any penalty or to payment of damages on account of an act done in good faith in pursuance or intended pursuance of any duty imposed or any authority conferred on him*" by law.⁶⁴

The MP Bill

The MP Bill also does not allow any court "*to take cognizance of any offence under this Act when the accused person or any one of the accused is a police officer except on a report in writing of the facts constituting such offence by, or with the previous sanction of the Director General of Police.*"⁶⁵ This provision is exactly similar to the one contained in section 132 of the NPC Model, except for one difference. While the NPC Model requires that prior permission for such prosecution has to be taken from the State Government, the MP Bill accords the power to sanction prosecution of police officers to the Director General of Police.

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

⁶² National Police Commission: *Eight Report, May 1981, pp 6-7*

⁶³ National Police Commission: *Eight Report, Police Bill, Section 132.*

⁶⁴ *Ibid*, Section 143

⁶⁵ The Madhya Pradesh Police Vidheyak, 2001, Section 50

Foreign Models

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

The Police Act of UK makes the chief officer of police “*liable in respect of torts committed by constables under his direction and control in the performance or purported performance of their functions*” and shall “*in respect of any such tort be treated for all purposes as a joint tortfeasor.*”⁶⁶

The Police Act of British Columbia in Canada makes a distinction between the government and the personal liability of the police officer in such cases. The liability of the government at all levels is total. The Minister on behalf of the government is jointly and severally liable for torts committed by police officers in the performance of their duties.⁶⁷ A municipality, regional district board or government corporation are liable for torts committed by their police officers, while performing duties.⁶⁸ There will be no personal liability except in certain circumstances. According to the legislation, “*No action for damages lies against a police officer appointed under this Act for anything said or done by him or her in the performance or intended performance of his or her duty or in the exercise of his or her power or for any alleged neglect or default in the performance or intended performance of his or her duty or exercise of his or her power.*”⁶⁹ This immunity, however, is not

⁶⁶ UK Police Act, 1996, Section 88

⁶⁷ Police Act, RSBC, 1996, Chapter 367, Section 11

⁶⁸ *Ibid*, Section 20

⁶⁹ *Ibid*, Section 21(2)

available if the police officer *“has been guilty of dishonesty, gross negligence or malicious or willful misconduct or the cause of action is libel or slander”*⁷⁰

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

One of the standards prescribed by the Association is: *“In order to strengthen the effectiveness of the tort liability for improper police activities, governmental immunity, where it still exists, should be abolished, and legislation should be enacted providing that governmental subdivisions shall be fully liable for the actions of police officers who are acting within the scope of their employment.”*⁷¹

Consultation with the Community

The 1861 Act

As already mentioned, the Indian Police is a *‘regime police’*. The idea of the police being a part of the community and accountable to it has never grown in the Indian soil. It is not at all surprising that the Police Act of 1861 talks of the community or the inhabitants of an area only in terms of their responsibility to

⁷⁰ Ibid, Section 21 (3) (a) & (b)

maintain order and penalties that should be imposed on them in case of failure to do so. There is not a single provision in this Act, which suggests the need on the part of the police to consult the community or involve them in any way in their work.

The NPC Model

The NPC Model also has no provision that specifically requires the police to consult the community about their policing needs and priorities or establish better relations with them. There is just one provision in the Model Bill that authorises the Superintendent or Commissioner of Police to constitute Defence Societies for protecting persons, securing property and public safety⁷².

The MP Bill

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

The Foreign Models

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

⁷¹ The ABA Standards for Criminal Justice, Volume 1, Little Brown and Company, Boston, 1980, Standard 1-5.4., pp 154 to 157.

In South Africa, the Constitution itself makes it the “*political responsibility*” of each province “*to promote good relations between the police and the community*”⁷³ and to appoint a commission of inquiry into any breakdown in relations between the two.⁷⁴ The South Africa Police Act, 1995 gives effect to the provisions of the Constitution by prescribing the establishment of Community Police Forums at police station level to act as forums for liaison between the Police Service and the community. The liaison is meant to assist in :

- * establishing and maintaining a partnership between the community and the police;
- * promoting communication and co-operation between the police and the community;
- * improving the rendering of the police services in the community;
- *improving transparency in the Service and accountability of the Service to the community; and
- *promoting joint problem identification and problem solving by the Service and the community.⁷⁵

In addition to forums, the Act establishes community police boards at area and provincial levels. The area community police boards are to consist of representatives of community police forums in each area, while provincial community police boards are to include representatives of all area community police boards in that province⁷⁶.

The UK Police Act requires that “*arrangements shall be made for each police area for obtaining (a) the views of the people in that area about matters concerning the policing of*

⁷² Natioanl Police Commission: Eight Report, Police Bill, Section 80

⁷³ The Constitution of the Republic of South Africa, 1996, Article 206 (3) (c)

⁷⁴ Ibid, Article 206 (5) (a)

⁷⁵ South African Police Service Act, 1995, Chapter 7, Section 18

⁷⁶ Ibid, Sections 20 & 21

the area, and (b) their co-operation with the police in preventing crime in that area." These arrangements are to be made by the police authority for each area and by Commissioner of Police of the Metropolis under the guidance of the Secretary of State.⁷⁷

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

The Police Act of the Province of British Columbia in Canada establishes Police Committees for this purpose.⁷⁸ The Committee is mandated to promote a good relationship between the residents and the police force and to bring to the attention of all concerned including the Minister matters concerning the adequacy of policing and make recommendations on those matters.⁷⁹

Duties and Responsibilities of the Police

The 1861 Act

The Police Act of 1861 had a limited purpose. As per its Preamble, it was enacted mainly to *"reorganise the police and to make it a more efficient instrument for the*

⁷⁷ UK Police Act, 1996, Section 96.A

⁷⁸ Police Act, RSBC, 1996, Chapter 367, Section 31

⁷⁹ Ibid, Section 33.

prevention and detection of crime." It laid down the following duties for the police officers:

- 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 he is legally authorised to apprehend and for whose apprehension sufficient ground exists.

Even in this limited charter, there is the requirement that the police will act according to the law. They are required to obey and execute orders, which are (i) lawful and (ii) issued by a competent authority. If the orders are not lawfully issued or they are issued by an authority that is not competent, the police are not obliged to execute those orders. The Act only gives limited authority to the police to arrest people. It allows arrest only when the policeman is legally authorised to arrest and when there is sufficient ground for such apprehension. This was at a time when human rights as an international legal regime of common law had not been heard about.

The NPC Model

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 prescribes the following duties for the police officers⁸⁰:

- 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 old 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

⁸⁰ National Police Commission: Eight Report, Police Bill, Section 43

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.⁸¹ 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 the arrested person is not denied his rights and privileges, see that victims of road accidents are given prompt medical aid without waiting for formalities etc.

Another new feature of the NPC Model is to prescribe "*emergency duties of the police*"⁸². 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 service⁸³.

MP Bill

So far as duties and responsibilities of the police are concerned, the MP Bill is an amalgamation of the 1861 Act and the NPC Model. It reproduces the duties prescribed in Section 23 of the 1861 Act⁸⁴ as well as those laid down in Sections 43 and 44 of the NPC Model.⁸⁵ The only provision of the NPC Model that does not find a place in the MP Bill is the one pertaining to "Emergency Duties."

Discipline of the Police Force:

The 1861 Act

A police officer is considered to be always on duty.⁸⁶ He can not resign or withdraw himself from duties unless expressly allowed to do so by officers authorised to grant such permission. He is required to give two months notice of his intention to resign⁸⁷

⁸¹ Ibid, Section 44

⁸² Ibid, Section 49.

⁸³ Ibid

⁸⁴ Madhya Pradesh Police Vidheyak, 2001, Section 16

⁸⁵ Ibid, Sections 14 & 15

⁸⁶ The Police Act, 1861, Section 22

⁸⁷ Ibid, Section 9

The 1861 Act⁸⁸ authorises the I.G., D.I.G., A.I.G. and District Superintendents of Police to dismiss, suspend or reduce any police officer of the subordinate ranks⁸⁹whom they think remiss or negligent in the discharge of his duties or unfit for the same. They are also authorised to impose one or more of 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, and
- (d) Removal from any office of distinction or special emolument.

The NPC Model

The NPC Model also prescribes that the police officer shall be considered to be always on duty⁹⁰ and can not resign without leave or notice.

The disciplinary penalties provided in the N.P.C Model are slightly different. The penalties include

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

⁸⁸ The Police Act, 1861, Section 7

⁸⁹ Subordinate officers mean officers of and below the rank of Inspector of Police

Any officer of the rank of SP and above may give any of the above punishments as well as other punishment like 'reprimand' or 'censure' to any police officer of subordinate rank. Even an Assistant Superintendent of Police and officers of equivalent rank can reprimand or censure any officer of and below the rank of Sub-inspector of Police. Any officer of and above the rank of Inspector of Police can give punishment drill, extra guard, fatigue or other punitive duty to Constables and Head Constables.

Unlike the 1861 Act, the NPC Model requires the concerned officer to record his order of major punishment along with the reasons for the same in accordance with rules.⁹¹

The 1861 Act is silent about the appeals against orders of punishment. The N.P.C Model, on the other hand, lays down the authorities with whom appeals against orders of punishment shall lie⁹².

It is not always easy to take statutory punitive action against police personnel under the disciplinary rules, but transfers can be affected on grounds of administrative expediency without difficulty. The NPC was appalled by the fact that *“transfers were too frequent, ad hoc and arbitrary in nature, and were mostly ordered as a means of punishment and harassment, sometimes due to the influence of local politicians”*.⁹³ To protect police officers against whimsical and malafide transfer/suspension orders the NPC suggested incorporating a provision in the Police Act itself specifying the authorities competent to issue transfer/suspension orders regarding different ranks. Any transfer/suspension

⁹⁰ National Police Commission: Eight Report, Police Bill, Section 59

⁹¹ National Police Commission: Eight Report, Police Bill, Section 55

⁹² Ibid, Section 56

– National Police Commission: Second Report August, 1979, p24, para 15.15.

order passed by an authority other than those specified in the Act would be ineffective⁹⁴. The NPC Model prescribes the authorities which can place a police officer under suspension and also the broad circumstances which would justify the order of suspension⁹⁵. It also lays down that the transfer or suspension orders of officers of different subordinate ranks in the police shall be made only by the authorised departmental leaders.⁹⁶ A police officer can be suspended when (i) a disciplinary proceeding against him is contemplated or pending, (ii) he has taken part in activities prejudicial to the interest or the security of the state, and (iii) when a criminal case against him is under investigation or trial⁹⁷.

MP Bill

The MP Bill too lays down that the police officer is to be considered to be always on duty⁹⁸ and can not resign or withdraw himself from duties unless allowed to do so.⁹⁹ The upper subordinate officers, like Assistant Sub-Inspectors, Sub-Inspectors and Inspectors of Police can not resign within three years from the completion of basic training and if they do so they will have to reimburse the expenditure incurred on their training.¹⁰⁰ This provision discriminates against these officers as officers of other ranks are not required to return the money spent on their training at the time of leaving the service within three years of joining it.

The list of disciplinary penalties prescribed by the MP Bill includes all the eight major punishments described above. In addition, it includes three more

⁹⁴ Ibid, Sections 54 & 57

⁹⁵ Ibid, section 54

⁹⁶ Ibid Section 57

⁹⁷ Ibid, Section 54

⁹⁸ Madhya Pradesh Police Vidheyak, 2001, Section 20

⁹⁹ Ibid Section 10 (1)

¹⁰⁰ Ibid, section 10 (3)

penalties i.e. compulsory retirement, stoppage of stagnation allowances, and recovery of pecuniary loss caused to the state government.¹⁰¹ It differs from the NPC Model in three other ways. Firstly, It does not require the officer to record his order of punishment along with the reasons for the same. Secondly, unlike the NPC model, it is silent about the authorities to whom appeals against penalties can be made. Thirdly, it clarifies what will not constitute a penalty. For example, withholding increment for failure to pass a departmental examination, non promotion, reversion on ground of unsuitability or on completion of the probationary period, compulsory retirement and termination of service in accordance with the terms of agreement will not amount to penalty¹⁰².

The MP Bill is not content with the three main circumstances mentioned in the NPC Model when a police officer can be suspended. It adds seven more contingencies to the list, including (i) charges involving moral turpitude, insubordination and riotous behaviour, (ii) showing cowardice, (iii) not taking cognizance of an offence, (iv) destroying evidence, (v) not implementing lawful orders, (vi) unauthorised absence from duty and (vii) grave misconduct¹⁰³.

Special measures for maintenance of public order and security of State:

The 1861 Act

The British had introduced here the concept of providing additional police cover at a cost to be recovered from others. The idea was that the cost of maintaining peace in a particular area by deploying additional police should be borne not by the state but by the persons who have either requested for such additional help

¹⁰¹ Ibid, Section 46 (1)

¹⁰² Ibid, Proviso to Section 46 (2)

¹⁰³ Ibid, Section 47 (1)

or are responsible for creating a situation which necessitates the deployment of extra manpower from the police. The 1861 Act allows for deployment of additional police officers to keep peace at the cost of individuals asking for such help.¹⁰⁴ Under the Act, the additional force can be deployed in the neighborhood of railway and other works and cost is to be recovered from the “person having the control or custody of funds used in carrying on such work.”¹⁰⁵ If an area has been declared by the state government to be “*in a disturbed or dangerous state*,” the cost of quartering additional police force is to be borne by the residents of that area.¹⁰⁶ The objective was to convey to the community that it was their responsibility to ensure that no law and order problem occurred in that area and if it did, they should be penalised for their failure in discharging their responsibility effectively. If a person living in that area suffered injury from the misconduct of the inhabitants, he could claim compensation which would be paid by the inhabitants according to the assessment made by the District Magistrate.¹⁰⁷

The NPC Model

The NPC Model devotes a full chapter¹⁰⁸ to the maintenance of law and order. It has detailed provisions regarding the employment of additional police to keep peace under different circumstances, the procedure for recovery of compensation for injury caused by unlawful assembly from the inhabitants of the disturbed area and the manner of awarding the compensation. The Model authorises the state government to prohibit or restrict the holding of meetings of persons for the purpose of training or drilling them to the use of firearms or practising military

¹⁰⁴ Police Act, 1861, Section 13

¹⁰⁵ Ibid, Section 14

¹⁰⁶ Ibid, Section 15

¹⁰⁷ Ibid, Section 15 (A)

¹⁰⁸ National Police Commission: Eight Report, Police Bill, Chapter VII

exercise¹⁰⁹. The state government can also ban the use of dress resembling the uniform of the armed forces or of any police force.¹¹⁰ Another important feature of the Model is that it authorises the Commissioner or Superintendent of Police to constitute voluntary bodies known as Defence Societies for the protection of persons, security of property and public security in any locality¹¹¹.

The MP BILL

The MP Bill reproduces the provisions of the NPC Model relating to the deployment of additional police under different circumstances and procedure for payment of compensation to be paid for injury caused by unlawful assembly.

Police Regulations for regulating traffic and maintaining order:

The 1861 Act

The 1861 Act authorises the S.P or the A.S.P of the District to direct the conduct of all assemblies or processions on the public roads at prescribed routes. It also requires that a license should be obtained by the persons convening an assembly for taking out a procession, which, in the opinion of the D.M. or the S.D.M, may cause breach of peace¹¹². He may issue a license subject to such conditions as may be necessary and may also regulate the use of music and streets on the occasion of festivals and ceremonies. The procession can be stopped and the assembly asked to disperse if the conditions of the licence are violated.¹¹³ Violation of conditions of the licence, on conviction, entails a fine of Rs. 200.00 or less.¹¹⁴ It is

¹⁰⁹ Ibid Section 79 (1)

¹¹⁰ Ibid. Section 79 (2)

¹¹¹ Ibid, Section 80

¹¹² The Police Act, 1861, Section 30

¹¹³ Ibid, Section 30 A

¹¹⁴ Ibid, Section 32

the duty of the police to keep order on the public roads and other places of public resorts.¹¹⁵ The general control over all these matters remains with the DM.¹¹⁶

The NPC Model

The traffic problem now-a-days is entirely different from what it was during the last century. The NPC Model therefore devotes a full chapter to this subject and gives extensive powers to the police to make regulations for orderly traffic on public roads and for preservation of order in public places. It lists out activities, occasions or situations which can cause obstruction to traffic, inconvenience or annoyance or risk or damage to public or cause breach of public peace and empowers the Commissioner or the Superintendent of Police to make regulations to deal with such activities, occasions or situations in an effective manner. The power to make regulations for licencing, prohibiting, controlling, directing or regulating the conduct and behaviour or action of persons for the purpose of regulating traffic, preserving order and for preventing inconvenience and annoyance to public and risk or damage to their health and safety, is all vested in the Commissioner or Superintendent of Police.¹¹⁷ The word 'Magistrate' does not figure in these provisions.

The Model also empowers the police officers to give directions to the public which are considered necessary for regulating traffic and maintaining order¹¹⁸.

Under the Model, the Commissioner or the Superintendent of Police is empowered to prohibit certain acts for prevention of disorder. He can prohibit

¹¹⁵ Ibid, Section 31

¹¹⁶ Ibid, Section 33.

¹¹⁷ Natioanl Police Commission: Eight Report, Police Bill, Section 61

¹¹⁸ Ibid, Section 62

the carrying of arms, explosives, stones or other missiles, swords, spears, knives, lathis for public peace and safety. The exhibition of persons or corpses, public utterance of cries, singing of songs or playing of music, delivery of harangues, use of gestures, pictures, symbols or placards can all be prohibited.¹¹⁹

The Model gives powers to the Commissioner or Superintendent of Police to temporarily close down or take possession of any building or place and exclude all or any persons therefrom, in case this is considered necessary for the purpose of preventing or suppressing any riots or grave disturbance of peace.¹²⁰

The Commissioner or Superintendent of Police is empowered to take special measures to prevent outbreak of epidemic disease at any place in their area¹²¹. They are also authorised to temporarily reserve for any public purpose any street or other public place and prohibit persons from entering the area, if necessary by erecting barriers.¹²²

The MP Bill

The MP Bill has reproduced almost all provisions of the NPC Model concerning police powers to regulate traffic and to preserve order in public places. There are no major differences in the provisions existing in the two Bills.

Offences and punishments

Offences by public

¹¹⁹ Ibid, Section 63

¹²⁰ Ibid, Section 66

¹²¹ Ibid, Section 68

¹²² Ibid Section 69.

The 1861 Act prescribes punishment for certain offences, like slaughtering cattle, furious riding etc.; cruelty to animal; causing obstruction; inconvenience or danger to the public by leaving cattle or conveyance on the roads; exposing goods for sale; throwing dirt on street; being found drunk or riotous; indecent exposure of person; and neglect to protect dangerous places.¹²³ The punishment prescribed for such offences is fine not exceeding Rs.50/- or imprisonment with or without hard labour not exceeding 8 days.

The Act lays down the penalty for opposing or not obeying the orders issued by the authorities to maintain order in public roads and places and for violating the conditions of any licence granted for the use of music or for the conduct of assemblies or processions¹²⁴. The maximum penalty for disobeying orders issued under Section 30, 30A and 31 of the Act is fine not exceeding two hundred Rupees.

NPC Model

The list of offences in the NPC Model, on the other hand, is fairly exhaustive. This list contains various new provisions, like causing obstruction and annoyance by performance etc.; letting loose any horse, animal or a ferocious dog; defiling water in public wells or other sources of water supply; misbehavior with intent to provoke a breach of peace; flying of kites or other things dangerously; committing nuisance in or near street or public place; affixing notice etc. upon public property without consent; smoking or spitting in disregard of notice in public buildings willful trespass; false alarm of fire or damage to fire-brigade; being found under suspicious circumstances between sun-set and sun-rise; possession of property suspected to be stolen or

¹²³ The Police Act, 1861, Section 34

¹²⁴ Ibid, Section 32

fraudulently obtained; omission by pawn brokers to report to the police possession or tender of property suspected to be stolen; defacing, altering or melting of stolen property; cheating at games and gambling in streets, dangerous performance like burying oneself under-ground etc, making a false statement or using a false document for the purpose of obtaining employment as a police officer; carrying of weapons, explosives etc. without authority and in violation of regulations; unauthorised use of police uniform etc.¹²⁵

For most of the offences committed by the members of the public, the punishment prescribed in the NPC Model is generally imprisonment which may extend to 15 days along with fine which may extend to Rs.500/-. For some serious offences, the punishment prescribed is imprisonment for a term which may extend to one month along with fine which may extend to Rs.1,000/-. Being found under suspicious circumstances between sun-set and sun-rise is an offence which carries the penalty of imprisonment for a term which may extend to three months. The punishment prescribed for the offence of possessing stolen or fraudulently obtained property is imprisonment for a term which may extend to one year or fine which may extend to Rs.1,000/- or both. Defacing, altering or melting stolen or fraudulently obtained property is an offence punishable with imprisonment for a term, which may extend to three years or fine or both. Violation of orders issued by the State Government prohibiting or restricting or drill in the use of arms or for practising militancy exercises or holding or taking part in any camp, parade or procession is punishable with imprisonment which may extend to three years or fine or both

The MP Bill

¹²⁵ National Police Commission: Eight Report, Police Bill, Sections 88-122.

The MP Bill has borrowed from the list of offences given in the NPC Model. The list of offences by public includes contravention of orders issued for regulating traffic and for preservation of order in public place; failure to conform to directions given by the police officer; omission by pawnbrokers to report to police possession of stolen property or melting or defacing it; taking pledge from child; offences on roads that lead to obstruction, annoyance, risk, danger or damage of the residents or passengers; affixing notice upon public property without consent of authority, false alarm of fire or damage to fire brigade; and holding or giving dangerous performance

The fine prescribed for these offences ranges between Rs. two hundred to Rs. one thousand and imprisonment between seven days to six months. The maximum punishment prescribed is for altering, defacing or melting property suspected to be stolen or involved in some criminal case. In such cases, the person concerned may be sentenced to imprisonment for a term which may extend to three years or with fine for with both.¹²⁶

Offences by police officer

The 1861 Act

The list of offences committed by a police officer includes a 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 his police duty; cowardice; and causing any unwarrantable violence to any person in his custody.

¹²⁶ Madhya Pradesh Police Vidheyak, 2001, Section 37

The penalty is the same for all these offences-fine up to three months' pay or imprisonment up to three months or both¹²⁷.

The NPC Model

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 himself so as to render himself unfit for service; being grossly insubordinate to his superior officers or using criminal force against superior officers; and engaging himself or participating in any demonstration, procession or strike or abet any form of strike or coercion or physical duress to force any authority to concede anything¹²⁸. 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 his department, he is also guilty of committing offences against citizens. According to the NPC Model, a police officer is guilty of an offence¹²⁹ if 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 his custody; or
- (e) holds out any threat or promise not warranted by law.

Vexatious and unnecessary delays in forwarding an arrested person to the Magistrate is also an offence.¹³⁰

¹²⁷ The Police Act, 1861, Section 29

¹²⁸ Natioanl Police Commission: Eight Report, Police Bill, Section 128

Surprisingly enough, the punishment prescribed in the Model for all these offences, which amount to grave violations of human rights of citizens, is same as prescribed for offences falling in the other category- imprisonment up to one year or fine up to five hundred rupees or both

The NPC Model prohibits the court from taking cognizance of any offence against a police officer without prior sanction of the state government.

MP Bill

The MP Bill prescribes penalties for neglect of duties by the police officers. A police officer who is guilty of cowardice, resigns or withdraws from duties, commits any wilful breach or neglect of any provision of law, or is guilty of any violation of duty is liable to imprisonment up to three months or fine up to one thousand rupees or both.¹³¹

No court can take cognizance of any offence where the accused is a police officer without the previous sanction of the Director General of Police. The state government's permission is not required under the MP Bill.

Summing Up

¹²⁹ Ibid, Section 129

¹³⁰ Ibid, Section 130

¹³¹ Madhya Pradesh Police Vidheyak, 2001, Section 49

The draft Police Bill of the NPC is a vast improvement over the Police Act of 1861. It expands the charter of police duties, improves police control mechanisms by establishing State Security Commission; abolishes the system of dual control; recommends commissionerate system of policing in metropolitan areas; prescribes a procedure to select the right man to head the police force and to secure his tenure; suggests measures to stop whimsical and arbitrary transfers, suspensions and other punishments; enlarges the list of offences committed by police and public and prescribes enhanced punishment; and gives the police additional regulatory functions and powers.

The MP Bill borrows heavily from the NPC Model, but only selectively. For instance, it borrows the provisions relating to the duties and responsibilities of the police and their regulatory powers. It too does away with the system of dual control, even more completely than the NPC Model does, provides for the establishment of the commissionerate system of policing and authorises the government to invest the police officers with magisterial powers. While the Bill gives additional powers to the police, it simultaneously tightens the state government's control over the police department. Unlike the NPC Model, it makes no arrangements to ensure that the power of superintendence of the State Government over the police should be limited to ensure that police performance is in strict accordance with law.

A brief analysis of the Police Acts of the three Commonwealth countries clearly brought out the good practices underpinning a system of democratic policing. To recapitulate, there were provisions in the Acts:

- making it a statutory responsibility of the government to establish an efficient and effective system of policing in an area;
- defining a relationship of consultation between various authorities and bodies connected with policing;

- prescribing public principles on which policing is to be based;
- setting defined objectives and performance standards;
- establishing credible and effective complaint handling mechanisms and procedures;
- setting up independent mechanisms to monitor and inspect police performance;
- establishing institutional arrangements to consult the community and involve them in police work; and
- prohibiting impunity and imposing tort liability on government and police department for misconduct of individual policemen

The Police Act of 1861 of course lacks almost all these and understandably so. The NPC Bill fares better as it makes a determined effort to insulate the police from illegitimate external control; but it too is lacking in most of the good practices stated above. The MP Bill emerges in fairly poor light if it is analysed in the light of the important features of legislation that should govern the working of the police system in a democratic country.