

ROUNDTABLE ON POLICE REFORMS

The Police that we want...

7th December 2005
Qutab Hotel
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COMMONWEALTH HUMAN RIGHTS INITIATIVE



Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the *practical* realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

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Roundtable on Police Reforms

The Police
that we want...

Organised by
Commonwealth Human Rights Initiative

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A Roundtable on Police Reforms

The context

Police in India are governed by the Police Act of 1861 or state laws enacted on that model. This central law, enacted immediately after the uprising of 1857, clearly did not envisage a police organisation to serve people in a democracy but rather created a force that concentrated on maintaining law and order for colonial masters. Sadly, Independence and adoption of the Constitution with its strong bill of rights and commitment to the rule of law have failed to catalyse efforts to reform the police from those old ways.

It is not as if the need for reforms has not been recognised. Different state governments have set up numerous Commissions and Committees to suggest reforms. Over a quarter century ago in 1979-81, prompted by the excesses of the Emergency, the National Police Commission (NPC) set out a road map for reform. It thoroughly examined nearly all the important facets of policing and police management issues. In particular, the NPC deemed matters concerning supervision, control and accountability paramount. It recognised the dangers of unlawful interference in police administration and work, and recommended the creation of values, institutions and processes that would prevent abuse of power and better focus police resources towards achieving objectives stated in law.¹

Little of its most important recommendations have been implemented despite international commitments to good governance, assurances in political party manifestos, repeated promises while in opposition, exhortations of Human Rights Commissions within the country and international condemnation outside, and the evidence of damage to a political party's own image wrought by police misbehaviour. Policy makers have refused to take forward the reform agenda. The extent of resistance to reforms is indicated by the fact that a letter written in April 1997 by Mr. Indrajit Gupta (the Union Home Minister at the time) to the Chief Ministers of all States, exhorting them to introduce police reforms along the lines recommended by the NPC failed to produce a *single* response.

Nevertheless there have been intermittent initiatives to bring about change. Some come from within the state and the police, and others are based on civil society initiatives. Some are aimed at confronting the police with their wrong-doing in the hope that this will shame the system into changing for the better. Others aim to bring about systemic change through establishment of institutional arrangements. A few important recent initiatives include:

Civil Writ Petition No. 310 of 1996²

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

¹ For a detailed summary of recommendations given by the NPC, see Joshi, G.P. (2001) *National Police Commission: Some selected recommendations*: http://www.humanrightsinitiative.org/publications/police/npc_recommendations.pdf

² *Prakash Singh & Ors. v/s Union of India & Ors.*, Civil Writ Petition No. 310 of 1996.

Committee on Police Reforms

In pursuance of the directions issued by the Court in the above case, the Central Government set up a Committee on Police Reforms (in July 1998) headed by Mr. J.F. Ribeiro, a former IPS officer. In addition, the Committee had three other members. The Ribeiro Committee report is pending consideration at the Supreme Court.³

Padmanabhaiah Committee on Police Reforms

In January 2000, the Government of India set up another Committee on Police Reforms chaired by Mr. Padmanabhaiah, the former Secretary, Union Ministry of Home Affairs. Apart from him, the Committee had four members - all from the police (two serving and two retired). The Committee completed its report in August 2000, but none of its recommendations have been accepted by the Government.⁴

Writ Petitions (Criminal) Nos. 340-343 of 1996⁵

Another initiative in the form of Writ Petitions was filed in 1996 in what is commonly known as the Havala case. The Supreme Court's judgement delivered in 1997 raised issues of considerable significance, the most important of which was about the type of superintendence and control that should be exercised over the Central Bureau of Investigations, which is the premier central investigating agency. On the basis of the directions passed by the court, the government of India enacted the Central Vigilance Commission Act of 2003.

Committee headed by Kamal Kumar

In December 2004, the Ministry of Home Affairs set up a Committee headed by Mr. Kamal Kumar, the Director of SVP National Police Academy to review all the recommendations made so far by different national level committees on the issue of police reforms. The Committee selected forty-nine of the most relevant recommendations made by different committees, and submitted its report to the Ministry in March 2005 for immediate action.

National Conference of Superintendents of Police (SPs) with PM

In September 2005, the Hon'ble Prime Minister Mr. Manmohan Singh had a meeting with the Superintendents of police and his speech at the conference indicates the willingness of the present Government to initiate reforms. He recognised that "as the instrument for maintaining the rule of law, an efficient, effective and an accountable police administration is one of the most important institutions of the modern state." Apart from promising to "persist with the Chief Ministers" to ensure that "arbitrary transfers" and "uncertainty of tenure" do not bother the police, the PM also exhorted the "Home Minister to consider establishing an independent police performance board that enables government to monitor and assess police performance in an objective manner. The Home Minister may also consider setting up an independent oversight mechanism to handle complaints against police misconduct."

Police Act Drafting Committee

Soon after the PM's meeting with the SPs, the Ministry of Home Affairs set up yet another Committee consisting of jurists, police officers and administrators to Review the 1861 Act taking into account the changing role and responsibilities of the police.⁶

³ For a detailed summary of recommendations given by the NPC, see Joshi, G.P. (2001) *Summary of Ribeiro Committee's recommendations*: http://www.humanrightsinitiative.org/publications/police/recommendations_ribeiro.pdf

⁴ For a detailed summary of recommendations given by the NPC, see Joshi, G.P. (2001) *Summary of recommendations made by the Padmanabhaiah Committee on Police Reforms*: http://www.humanrightsinitiative.org/programs/aj/police/india/initiatives/summary_padmanabhaiah.pdf

⁵ *Vineet Narain & Ors. v/s Union of India & Anr.*, AIR 1998 SC 889

⁶ For Terms of Reference and composition of the Committee see <http://mha.nic.in/padc/npolice-act.pdf>

Background, Objective and Design

That police in India need to be reformed is a given. That the public, governance, democracy and development are being adversely affected by the distortions of policing is common knowledge. What is wrong is well known. The problems have been discussed threadbare and solutions exist. The only rationale for so little action on reforms, a cynic may see, is that it suits the elite in power to retain a police force that serves, as in colonial times, the interests of the ruling class. Equally, the inability of public opinion to organise and offset this interest keeps reforms at bay.

Over the past 9 years CHRI has worked steadfastly toward developing voice and capacity to engage on difficult issues of police reform particularly those that relate to police accountability and performance. In the many consultations that CHRI has held, different stakeholders have expressed different views and priorities to realise reforms. While for the police, checking illegal political interference with their functioning would cure all ills; the elected leaders are convinced that removal of political control, in any manner, would make the police a law unto themselves; and the civil society and public are largely unconcerned with this, so long as the policy makers prioritise accountability for police misconduct and performance. Despite the varied approaches to reforms, the bottom line remains the same: policing, as it exists today, must be changed for better.

The Objective

Given the varied ideas and the topicality of the issue, with the Government of India setting up a Committee to draft a new police Act⁷, CHRI decided to host a national roundtable to debate how the different stakeholders could come together on the issue of achieving police accountability. These encouraging developments necessitate public engagement and forward looking dialogue that can both critique new directions as well as engage constructively on what improved or altogether new mechanisms and processes can be put in place to ensure that the police are well endowed to deal with the challenges of the day, and meet the expectations of the population they serve.

Today there is much guidance available from the comprehensive examination of policing and still relevant recommendations of the NPC, and the many national and state level committees that have examined the issue of better policing. In an age of increasing connectivity where the interchange of ideas flows freely across borders, there is much to discover and learn from international experience and particularly the experiments of Commonwealth jurisdictions that share similar legal systems. For example, South Africa and Northern Ireland, two jurisdictions that have emerged from long periods of strife, offer many seminal lessons for policing and the need to assure, through the law, mechanisms for accountability and institutionalised public participation in policing. England and Wales, Canada and Australia seek to make constant improvements within their police services on issues of racism, bias and corruption. Increasingly, the police the world over are also examining ways to create results based management models that will constantly measure and improve performance and monitor public satisfaction. While the conditions and ground realities in foreign jurisdictions may differ or only loosely reflect Indian realities, an understanding of recent developments offers valuable lessons from which to take our endeavours forward.

⁷ Another welcome development was the establishment of the Administrative Reforms Commission that is looking into the issue of public order.

The Roundtable was designed to bring together important opinion makers in the country with a view to examining earlier recommendations that have been made and assessing best practices around the globe, which may help in the designing of future legislation. The aim was to provide the forward-looking recommendations and the discussions of the consultation to the newly formed Committee in the hope that those would inform the Committee's deliberations.

The Design

The national consultation was designed to put forward both national and international experience to inform the police reform debate. It was intended to be fairly technical, looking at the structure and mandates of various mechanisms to create stronger police accountability, necessary for a pluralistic democracy like ours. Each session had a speaker to present an overview of workings and suggestions that are on the table in the Indian context and one speaker who looked at best practices which have proved valuable in the creation of efficient and people friendly policing. Presentations were followed by prolonged discussion on the issue. *Session I* discussed measures that would ensure that police personnel are able to function without any external pressures not strictly sanctioned by law. *Session II* debated the kinds of external mechanisms that could be created to ensure independent investigations into public complaints against the police. *Session III* discussed what mechanisms could be put in place to ensure the accountability of the police in the performance of their duty.

Inaugural Session

“The Police That We Want”⁸: Setting the agenda

The inaugural session set the tone for the Roundtable by opening by emphasising that democratic nations need democratic policing. This entails an approach founded on principles of equity and equality, accountability, transparency, participation, respect for diversity, the accommodation of dissent, protection of individual and group rights, and encouragement of human potential. It rejects any resemblance to the regime policing of colonial times. She emphasised that democratic policing is not an impractical ideal but a utilitarian concept that has been demonstrated to ensure peaceful societies based on strong police-public cooperation and trust.

A ‘democratic’ police organisation is one that:⁹

- *is accountable to the law, and not a law unto itself.* Democratic policing requires that the police act within their boundaries and within international laws and standards. Actions of the police are always subject to court scrutiny and those who break the law face consequences both through internal disciplinary systems and the criminal law.
- *is accountable to democratic government structures and the community.* To ensure that the police do not become overly controlled by and identified with a single seat of power, democratic police independently answer to all three branches of government, as well as to the community.
- *is transparent in its activities.* Most police activity should be open to scrutiny and regularly reported to outside bodies. People must be able to find out about the formulation of policy, manner of functioning and areas of priority. Information about individual behaviour, as much as organisational performance must be in the public domain.
- *gives top operational priority to protecting the safety and rights of individuals and private groups.* The police must primarily serve the people and be responsive to the needs of individuals and members of groups – especially those who are vulnerable and marginalised. In diverse and fragmented societies, police organisations must be responsive and respectful across social divides and always uphold the law without bias.
- *protects human rights.* This requires police to protect the right to life and dignity of the individual as well as the exercise of democratic freedoms – freedom of speech, freedom of association, assembly and movement, and freedom from arbitrary arrest, detention and exile, and impartiality in the administration of law.
- *provides society with professional services.* As an organisation with huge powers in which the public places enormous trust, the police must be governed by a strong code of ethics and professional conduct and be answerable for delivering high quality services.

⁸ The title for the Conference was borrowed from a book by Bruce, D. and Nield, R. (2005) *The police that we want: a handbook for oversight of police in South Africa*, Centre for the Study of Violence and Reconciliation, Johannesburg.

⁹ This section is adapted from Bayley, D. (2001) *Democratising the Police Abroad: What to Do and How to Do It*, National Institute of Justice, US Department of Justice, Washington, pp 11-15; Bruce D. and Neild R. (2004) *The police that we want: a handbook for oversight of police in South Africa*, Center for Study of Violence and Reconciliation, Johannesburg, and Open Society Justice Initiative, New York; and Stone, C. E. and Ward H. H.(2000) *Democratic policing: a framework for action*, Policing and Society, Vol. 10, number 1, p 36.

- *is representative of the communities it serves.* Police organisations that reflect the populations they serve are more likely to enjoy their confidence and cooperation and earn the trust of vulnerable and marginalised groups, who need their protection most.

What does your police look like?	
Regime Police	Democratic Police
They answer predominantly to the regime in power and its bureaucracy, and not to the people.	They serve the public and protect, rather than impede, human rights and freedoms of all.
They are responsible for controlling populations, rather than protecting the community.	They create the security environment which best promotes democracy.
They mostly remain outside the community.	They communicate with and serve members of the public.
They tend to secure the interests of one dominant group.	They are responsive to vulnerable groups, and adopt only such methods of functioning that accord with the rule of law.

What kind of policing should there be?

When faced with ineffective policing and rising crime, police, members of the public and at their behest, politicians, often support ‘tough policing’ as the solution. This implies a temptation for tolerance for policing outside the frame of law. Under the present constitutional framework rule of law is paramount. Policing cannot exceed the limits placed on them by the Constitution. The preamble to the Constitution speaks about justice, liberty, and equality assuring the dignity of the individual, as well as unity and integrity of the nation. If these concepts of human dignity and of integrity of the nation were inconsistent with each other, then the Constitution framers would not have spoken of them in the same breath. A fine balance must be struck between the need for security and the protection of liberty. The law cannot become tyranny and liberty cannot descend into license.¹⁰



Justice J.S. Verma

Experience across the globe also indicates that although tough policing might show results in the immediate future, human rights violations alienate the communities to an extent that routine policing becomes impossible, and a cycle of illegitimate malpractice perpetuates. The Independent Commission on Policing in Northern Ireland¹¹ has emphasised that the “fundamental purpose of policing” should be “the protection and vindication of human rights of all” and that “human rights are not an impediment to effective policing but, on the contrary, vital to its achievement”. It is well recognised that there can be no effective policing without the support and cooperation of the public.

“The more a policeman is hindered from participating in the community the less he will understand public sentiment, the less well he will exercise his discretion, therefore the more are [people] likely to be irritated by his behaviour, the more will they treat him differently in social contacts, the more isolated will the police become. As their sympathy for members of the public declines further, hostility towards them increases, they become further isolated, and so on.”¹²

¹⁰ Justice J.S. Verma (Retd.), former Chief Justice of India and Chairperson of NHRC

¹¹This Commission was established as part of the 1998 Agreement to secure a “new beginning to policing in Northern Ireland with a police service capable of attracting and sustaining support from the community as a whole”. See <http://www.belfast.org.uk/report/chapter04.pdf>

¹² Banton, M. (1964) *The Policeman in the Community*, Tavistock, London

So what should inform a reform agenda?

One way of coming at reforms is to ask “who the police serves”? Policing, it was felt must be proactive and in service of “the poor and the vulnerable who most need their services.”¹³ The police must serve the “economically and the socially disempowered”. This emphasises the need for police accountability, public satisfaction, as well as the participation of people within policing. Every station must have local committees comprising people who represent different sections of the society.¹⁴



Maja Daruwala

“It is not policing of someone these days; it is policing that can best enhance democracy. It is not policing that looks at law and order; it is policing that looks at the rule of law and how it can be protected. It is not about controlling population, it is controlling that which would underprivilege democracy and be a threat to democracy. It is not about curbing civil liberties; it is about making the environment that will enhance civil liberties. It is not about curbing dissent because we do not like the unpopular voice, but it is making sure that dissent is allowed and permitted and protected, but that it does not amount to hatred and spreading hatred and spreading violence. It is curbing violence within society sure, but it is not curbing violence with violence, that cannot possibly be it.”¹⁵

What are the big problems?

One of the biggest problems in realising reforms is that different stakeholders are divided in their opinions on what the remedy is. Typically, police personnel insist that the reason why police misconduct persists is because successive political regimes and individual politicians have consistently diluted the internal chain of command by drawing away powers and substituting their own patronage for the professional judgement of the officers. Officers point to the common practice of transfers being used as a weapon against inconvenient or resistant officers and as an incentive to the pliable. The practice has encouraged the habit of seeking favours of politicians and invoking their protection to remain untouched when there has been wrongdoing. This leaves no need for obedience to senior officers, eroding internal discipline. The path of inquiries into the role of police in successive riots situations in the 1984 anti-Sikh riots and the more recent 2002 anti-Muslim riots in Gujarat illustrate both the ill-effects of political interference with the operational autonomy of the police and the near impossibility of bringing either the police or their political masters to account. In police opinion, the sure shot way to ensure police reform is to insulate the police from illegitimate political/partisan control.

On the other hand, elected representatives maintain that the police are one of the most important arms of the executive in securing a safe environment for the population at large. They must necessarily be closely controlled by the political executive because a Minister is answerable to the legislature for the kind of policing government provides, and no one can answer for an organisation over which they have no control. They point out that absence of political control would lead to the police becoming a law unto themselves. At least now, if a situation like the recent Honda case (where several labourers and protestors were brutally beaten up by the police) occurs, the concerned officers can be immediately transferred or suspended pending action. If this were not possible, corrupt and abusive police officers would continue in their posts and influence any investigation into their misconduct. Politicians plump for better training and sensitisation as the cure for the present state of policing.

¹³ Mr. Amod Kanth, IPS

¹⁴ Mr. Julio Ribeiro, IPS (Retd.)

¹⁵ Ms. Maja Daruwala, Director CHRI

For civil society and ordinary people, reforms entail more responsive and accountable police service.

While key players have different ideas on how to improve policing, they all recognise that conditions of service of police personnel are appalling and must be improved, especially for the rank and file. There is no disagreement on the fact that police need better infrastructure but this cannot be an excuse or justification for an inefficient or brutal police. *At the heart of police reforms lies accountability, both for misconduct and for performing effectively.*

Session I

Accountability to the Executive – Limits and Scope



Ved Marwah

At the Roundtable, there was a broad consensus that one of the major obstacles in holding the police to account is political interference in the functioning of the police. Clearly, in a democracy, all agencies of the state are accountable to the executive, which in turn is answerable to parliament. Police are no exception, nor should they be. In practice, across the Commonwealth, police leaders tend to answer directly to elected public representatives in the *executive* branch of government, whether at a local, state or national level – and often operate in close proximity to political leaders.

Government has a very central and legitimate role to play in setting the strategic direction and broad policy priorities for the police, on behalf of the people they represent. In the framework of democratic policing, the prime responsibility of the government is confined to providing a well-resourced, well-led, well-trained police organisation, and to imposing suitable checks on the powers of the police to ensure they discharge their functions in accordance with law, and are held accountable when they act outside law.¹⁶

Though policing is a very important aspect of governance and its relation to politics and politicians is both complex and close, there is no room for ambiguity in the principle that democratic governments (and individual politicians) cannot use their authority over the police to promote specific political interests, or even worse for corrupt or illegitimate ends¹⁷. The distinction between *appropriate political direction* from a government to the police, and *inappropriate political interference* in operational policing matters is an immensely significant one, both in terms of the way it is expressed in law and policy, as well as in practice.

So how do we get to appropriate and effective accountability?

One important step in establishing appropriate political control over the police is to define, in law, the parameters of the government's role in relation to the police. A clear delineation of roles, responsibilities and relationships between the police and the executive that are laid down in law helps pinpoint who is responsible and for what, and where one role ends and another begins. Clear definition articulated in law also conditions orders, gives a foundation on which to judge the validity of instructions, and minimises the possibility of unfettered interference seeping into policing matters and unduly influencing police functioning. Having a clearly defined frame helps police retain operational control and protects the police's operational autonomy while, at the same time, defining where responsibility rests. The law must reflect this distinction. Requiring public participation in framing policy can also inhibit partisan impositions on policing from a small coterie.

Aren't the Indian police being properly supervised?

The archaic Indian Police Act of 1861 does not precisely delineate the roles and responsibilities of the political executive and the police. As a result, it allows for interference with police functioning. Colonial masters would have naturally wanted a police force under their control, and one that would carry out orders – right or wrong, lawful or unlawful – to reinforce the British Empire in India.¹⁸ The 1860 Police

¹⁶ Prasad, D. (2005) *Control & Governance of the Police: Commonwealth Innovations in Policy and Practice*: http://www.humanrightsinitiative.org/programs/aj/police/papers/control_governance_of_the_police.pdf

¹⁷ Ms. Devika Prasad, Research Assistant, Access to Justice Programme, CHRI

¹⁸ Mr. Prakash Singh, IPS (Retd.)

Commission, constituted immediately prior to the enactment of the present 1861 Police Act, records that the objective was to have a “politically useful force”. There was no other reason to put the police under the superintendence of the government¹⁹ without defining the term, and then to further place them under the general control and superintendence of the district magistrate.²⁰ In fact, the pre-independence Frazer Commission of 1902-03 had found that there was a degree of interference with the police that the law did not contemplate, and which had been prejudicial to the functioning of the police department.²¹ Clearly, the disease had been detected more than a century back and it is understandable why nobody cared to treat it till 1947, but it speaks volumes for independent India’s vision of the kind of police that it wants that no one is moving to address the problem more than 5 decades after independence and democracy.



Prakash Singh

More than a quarter of a century back, the National Police Commission²² had observed “pressure on the police takes a variety of forms, ranging from a promise of career advancement and preferential treatment in service matters if the demand is yielded to, and a threat of drastic penal action and dis-favoured treatment in service matters if the pressure is resisted.” Further, “interference with the police system by extraneous sources... encourages the police personnel to believe that their career advancement does not at all depend upon the merits of their professional performance, but can be secured by currying favour with politicians who count.” Additionally, “apart from deterioration in the quality of police performance...the exercise of such pressure on the police system...damages the control system and weakens the normal chain of command that has to operate efficiently if the discipline and health of the system are to be maintained.”²³

Participants at the Roundtable observed that the riots in Delhi, Ayodhya and Gujarat had brought out in an open manner the way in which politicians have long controlled police.²⁴ The status quo suits the political elite who do not want to lose control over the police. It was pointed out that the police have enough functional autonomy, but the problems were excessive workload and appalling service conditions combined with the existing work culture.²⁵ The majority opinion was that while the relationship between the police and the politicians has been confrontational in the past, in the last few years it has become one of collusion.²⁶ The status quo suits both the police and the politicians, and is one of the major reasons why things have not changed despite the recommendations of the various Commissions and Committees. Political interference in contravention of the original legislative design of the relationship between lawgiver and law enforcer, has weakened the internal integrity of the police force.

Is there a way of getting the right balance?

There was a consensus among roundtable participants that the endeavour must be to protect the police from unlawful orders and unhealthy pressures and to ensure that the police work in accordance with the law. Defining legal and functional roles and responsibilities of the police as well as the government is fundamental to curing one of the biggest problems that plague policing in India.

¹⁹ Section 3, *Police Act 1861* (India)

²⁰ Mr. Prakash Singh, IPS (Retd.)

²¹ Mr. Prakash Singh, IPS (Retd.)

²² The National Police Commission (1979-1981).

²³ National Police Commission (1979) *Second Report of the National Police Commission* at pp. 23-24, August, Government of India.

²⁴ Mr. Prakash Singh, IPS (Retd.)

²⁵ Ms. Anju Gupta, IPS.

²⁶ Mr. K. Padmanabhaiah, IAS (Retd.)

Judicial interpretations: In the absence of a new law to redefine the level of control that the executive should have over the police, judicial interpretation had defined limits from time to time.²⁷ The Supreme Court has on many occasions defined the term ‘superintendence’ and had held as far back as 1968 that there could be no form of interference at all with the investigative functions of the police.²⁸ More recently in 1998, the Indian Supreme Court in suggesting permanent measures and structures necessary to ensure impartial investigative agency (CBI) at the Central level observed that “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.”²⁹

Clarifying that the police were independent of the executive in performing their operational duties, Lord Denning in UK had held:

“I have no hesitation, however in holding that...every constable in the land...is independent of the executive. He is not subject to the orders of the Secretary of State,...I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone.”³⁰

NPC Recommendations: When suggesting police reforms, the National Police Commission thought it “appropriate to lay down that the power of superintendence of the State Government over the police should be limited for the purpose of ensuring that police performance is in strict accordance with law.”³¹ The Commission broadly divided police tasks into three categories: (i) investigative; (ii) preventive; and (iii) service-oriented. In so far as the investigative functions are concerned, “they are beyond any kind of intervention by the executive or non-executive”. In performing their preventive and service-oriented functions, the Commission suggested that the police be subject to overall guidance from the government. Even in respect of these functions, “there should be no instructions in regard to actual operations in the field”.³² Apart from suggesting a merit based selection and a fixed tenure for Chief of Police, the Commission also suggested the creation of a body through which the government could exercise superintendence over the police. The proposed State Security Commission would comprise the Minister in charge of the Police and members from the ruling and opposition parties, along with retired government servants, members of the judiciary, academicians and social scientists. Apart from laying down policy guidelines and directions, this body would evaluate police performance and serve as an appellate body for police officers aggrieved by irregular/illegal orders or promotions.



G.P. Joshi

²⁷ Justice J.S. Verma (Retd.)

²⁸ *Abhinandan Jha & Ors. V/s Dinesh Mishra*, AIR 1968 SC 117

²⁹ *Vineet Narain & Ors. v/s Union of India & Anr.*, AIR 1998 SC 889

³⁰ *R. v. Metropolitan Police Commr.*, [1968] 1 All ER 763/(1968) 2 QB 118, p. 769

³¹ Author’s emphasis

³² National Police Commission (1979) *Second Report of the National Police Commission* at p. 29, August, Government of India.

International Best Practice: To facilitate the appropriate degree of executive direction over police, guard against illegitimate interference and ensure that responsibility for wrongdoing and poor performance can be pinpointed, many countries have put in place innovative institutional arrangements.



Devika Prasad

Various named service commissions, police boards or authorities, and with differing mandates and composition, these bodies have all been created with a view to insulating the police from unwarranted external influence. Across the Commonwealth, these bodies are bold both in composition and scope: many include citizen representation –especially of minorities and more vulnerable groups – and have wide powers to shape policy, set budgets, examine police behaviour, and assess performance. This takes significant policing matters away from solely executive control and makes it more transparent. Illustratively, the National Police Commission of Sri Lanka is responsible for the appointment, transfers, promotions and disciplinary matters relating to all police officials except the Inspector General of Police. In England and Wales, Northern Ireland, as well as Canada, Police Boards or Police Authorities diffuse executive control over the police. These bodies seek to give the police a measure of independence and protection from direct political control and interference, mostly by ensuring that these semi-independent bodies with community representation, rather than only elected politicians, provide policy direction and approve police budgets. It is important to stress that like Ministers in most countries, these bodies can only provide policy guidance to police organisations, who retain their professional operational discretion.³³

³³ Prasad, D. (2005) *Control & Governance of the Police: Commonwealth Innovations in Policy and Practice*: http://www.humanrightsinitiative.org/programs/aj/police/papers/control_governance_of_the_police.pdf

Session II

Accounting for Misconduct - Mandates of a civilian oversight agency

Perhaps the greatest public resentment and disappointment over bad policing is reserved for impunity – the safety from punishment provided by authorities and supervisors to errant police.

Don't we have systems that make the police accountable?

At present, a member of the public aggrieved by police abuse of power can go to the police, courts, and the Human Rights Commission.

The internal inquiry: An internal departmental inquiry is conducted to determine the guilt and award a penalty. There are three distinct stages in the protracted course of disciplinary action for dealing with complaints against the police. Any complaint received is submitted for a preliminary enquiry by a field officer. After, receiving the report of the preliminary enquiry, the senior officer decides (an exercise of discretionary powers) whether charges must be framed and issued to the delinquent police officer. Once that decision is taken, formal hearings, in the form of quasi-judicial hearings, are conducted with a senior police officer presiding as judge.

The procedure prescribed is the adversarial mode where the complainant is pitted against the police officer, who usually has better skills and greater experience in law and procedure, very often has a stronger personality and is on home ground so to speak. The efforts needed to produce witnesses and the skills required to examine them are also often beyond the resources of the complainant. The elaborate nature of the procedure leads to interminable delays that prove more detrimental to the complainant than to the defence. In any case, on the conclusion of the formal proceedings, the enquiry officer submits a report to the disciplinary authority. The disciplinary authority finally decides whether the evidence is sufficient to warrant a punishment. Once again, the disciplinary authority exercises discretionary powers in deciding whether to punish or not and what the quantum of punishment will be. At the stage of decision-making, the suspect gets the benefit of a second stage of defence against the penalty proposed while the complainant has no such opportunity. Avenues of acquittal are still open to the suspect whereas the complainant gets no opportunity to seek enhanced punishment. The cumulative result of these proceedings is that there is a strong perception that it is designed to allow the suspect to get away or to ensure light punishment.³⁴

The external process: If the conduct complained of amounts to a criminal offence, or human rights violation, the courts and human rights commissions come into play. However, there is growing public resentment with regard to those redress mechanisms. The courts are extremely slow, dependent on police investigation, expensive, and remote from local difficulties. The National Human Rights Commission set up in response to allegations of rape, torture and death in police custody, can serve only as a limited corrective. State commissions are, for the most part, weak and remote. Yet the volume of complaints and the piling arrears is evidence of both the huge need for continuous oversight and quick redress.



A.P. Mukerjee

³⁴ As described by Mr. A. Kurien, IPS (Retd.) in his presentation.

How to realise an accessible and effective accountability system?

As an agency empowered to use force, it is imperative to ensure that the police function in accordance with law. This can be ensured by making the police accountable not only to one body but to different stakeholders at different levels - and ideally to civilian dominated bodies as well. Oversight needs to be localised and where possible, focused solely on complaints against the police.

Having good internal management systems can help decrease police misconduct and criminality. Internal management mechanisms – if well implemented – are a powerful method of holding police organisations to account. But good management is not enough, and even the best-managed systems never command the full confidence of the public. Many countries have sought to balance internal accountability mechanisms with some system of specialised external, non-police (civilian) oversight. With one system complementing and reinforcing the other, this approach creates a web of accountability in which it becomes increasingly difficult for police misconduct to take place without consequence.³⁵

Some countries have established agencies dedicated solely to the investigation and oversight of complaints against the police. Others have given this responsibility to existing oversight bodies with a wider mandate, such as Ombudsmen or National Human Rights Institutions.



Swati Mehta

Much of how complaints authorities, ombudsman's offices and human rights commissions perform their functions, once again, relies on how separate they are from police and executive influence, and how autonomous and well embedded their status is in the country's legal framework. It also depends upon the width and clarity of their mandate; the scope of their investigative powers; the composition of their leadership and competence of staff; the adequacy and sources of financing; and most importantly their ability to compel obedience to their recommendations and the attention or support their reports and findings get at the hands of the government and police. Summing this up, *the factors that determine success are the same: independence, adequate powers, sufficient resources and the authority to follow up on recommendations or pass binding decisions.*

A police officer observed that the majority of police complaints arise because of "defective policing strategy". "We take preventive actions and book people under the Excise Act and Arms Act because we need to show the status sheet. We carry out fake encounters and resort to other short cuts, for whatever reasons. Whether it is because of lack of resources, or because this is what people want from us, or because we know that the criminal justice system is ineffective; we take it upon ourselves to remedy the situation through these short cuts and majority of the police officers believe that such defective policies are delivering. This is total fallacy; they are not delivering. They are just giving rise to 90% of the complaints against the police. It is imperative that a civilian body looks at complaints, as the police organisation is bound to be biased in such cases."³⁶

Will a civilian oversight body dilute the internal disciplinary systems?

Some of the police participants argued that they already report to a multiplicity of authorities and one more would further dilute the chain of command and could be biased. Instead, they suggested

³⁵ Mehta, S. (2005) *Police Complaints Agencies in the Commonwealth*: http://www.humanrightsinitiative.org/programs/aj/police/papers/police_complaints_agencies_in_cw.pdf

³⁶ Ms. Anju Gupta, IPS

strengthening the internal complaints mechanism. In relation to the concern about dilution, it was pointed out that civilian oversight does not result in diluting internal systems. Experience indicates that such bodies strengthen the internal system by overseeing the functioning of the internal discipline and complaints processing systems, and providing regular input to police management on how to improve the existing system.³⁷ In New South Wales, Australia, for instance, the Police Integrity Commission³⁸ expressed concerns about how the Police Service was investigating certain categories of complaints. Based on a qualitative audit of 81 internal investigations, the Commission recommended that the Police Service change its existing complaints management system. As a result, the police organisation set up Complaint Management Teams tasked with allocating resources for investigations, and monitoring and evaluating the quality of investigations in every 'local area command' (where the bulk of investigations are done). An internal Complaints Management Unit has also been set up to monitor and approve all Category 1 investigations prior to their finalisation and submission to oversight agencies.

“If we examine the disciplinary proceedings...the number of policemen punished for misbehaviour with the public is very little. Most policemen are punished for misbehaviour with their superiors...So internal police disciplinary mechanism is now used to support or reinforce the hierarchy and not to ensure that there is better public interaction by the policeman.”

Several participants, both from the civil society and the police, agreed that civilian oversight is needed and argued that fear of the police is a major reason why many people do not complain against police misconduct at all. The existence of a civilian body would not only alleviate such fears but also assist police leadership to address police misconduct. Many agreed that serious abuse by police officers must be enquired into by a civilian agency even though this may “dilute our contemporary concept of hierarchy”. “If we examine the disciplinary proceedings...the number of policemen punished for misbehaviour with the public is very little. Most policemen are punished for misbehaviour with their superiors....So internal police disciplinary mechanism is now used to support or reinforce the hierarchy and not to ensure that there is better public interaction by the policeman.”³⁹ Participants concurred that these mechanisms are not accessible to the public at large who do often not have enough knowledge or resources. As a panellist put it, “...we have to think of introducing a mechanism, which is accessible to the general public, to the common citizen whose case goes unheard and which is capable of redressing grievances in an effective manner.”⁴⁰

What kind of a body would suit our circumstances?

Paucity of time did not permit detailed discussions on the kind of body that would be useful in the present Indian context. Nevertheless, discussions touched on the value of a civilian oversight body, its relationship to the police, the challenges of creating sustainable mandates and modes of functioning, and the kind of powers that it would have.

³⁷ Ms. Swati Mehta, Project Officer, Access to Justice Programme, CHRI

³⁸ Police Integrity Commission, Special Report to Parliament, *Project Dresden II: Second audit of the quality of internal investigations*, June 2003, pg. 3.

³⁹ Mr. Jacob Punnoosse, IPS

⁴⁰ Mr. A. Kurien, IPS (Retd.)

Won't a strengthened NHRC suffice? Many police officers argued that the existing civilian structure, the National Human Rights Commission (NHRC), should be strengthened rather than creating another mechanism. A panellist⁴¹ pointed out that across the world, it is civilian agencies, dedicated to deal exclusively with complaints against the police, that have been the most successful in holding the police to account. Such an agency is more likely to develop the necessary expertise in policing issues and investigative techniques. Unlike a body with a wide human rights mandate like the NHRC, its focus will not be diverted to other areas and it will have greater ability to analyse patterns of police conduct and performance. However, if resources do not permit the establishment of a dedicated agency to focus only on the police, NHRC can play a valuable role in improving overall police accountability. In such a case, a specialist division must be created within the NHRC, which is solely dedicated to dealing with the police.

What about getting down to the last person? Another panellist⁴² observed that the NHRC at the national level has not been able to do justice to the issue because of the volume of complaints it receives and limited resources. Given the fact that policing is a state subject, he mentioned that in order to make the complaint mechanism accessible to the public, we need to take it to the district and the state level. He suggested a model for the Indian context that would involve changing the existing disciplinary forum. Instead of a senior police officer conducting the proceedings, there would be a three-member board or jury comprising a police officer, a retired judicial officer, and a member of the public. He also suggested that this body would follow an inquisitorial mode of inquiry and not an adversarial system where the burden is on the complaints to establish their case against a much powerful person. The proposed body would endeavour to find the truth and come to a decision on whether the person is guilty or not. Once the decision is made, it should be transmitted to the disciplinary authority, which should make up its mind to award the punishment or not. If there is disagreement between the proposed body's finding and the disciplinary authority's decision, then it should go to a higher body created at the state level. The speaker was clear that delays in such proceedings must be curtailed by allowing only one appeal. There should be no court proceedings, no tribunals, no human rights commission or any other body superimposed over this body at the state level.



Abraham Kurien

Must the civilian body have police personnel on board? Concern was expressed about whether it was useful to have police personnel on a body that dealt with public complaints against the same organisation. "If you keep police officer on the periphery, I think you are going to lose out..."⁴³ However, a panellist⁴⁴ pointed out that it is precisely because the public does not trust the police that such a body needs to be created, and having a police officer on board would defeat the entire purpose of creating a civilian body. Credibility of such a body is increased when it comprises leadership and staff drawn from outside government and police. Illustratively, the Independent Police Complaints Commission in England and Wales is staffed entirely by civilians (non-police officers).⁴⁵ Lack of skilled civilian investigators may require police officers to be seconded for the purposes of assisting with investigations or to advise the members, but without civilian superiority in staffing, the perceived bias toward former

⁴¹ Ms. Swati Mehta, Project Officer, Access to Justice Programme, CHRI

⁴² Mr. A. Kurien, IPS (Retd.)

⁴³ Ms. Anju Gupta, IPS

⁴⁴ Ms. Swati Mehta, Project Officer, Access to Justice Programme, CHRI

⁴⁵ In seeking to secure the confidence of the minority members of the public, the law establishing the Independent Police Complaints Commission provides that no person shall be "appointed as the chairman of the Commission, or as another member of the Commission, if ... he holds or has held office as a constable ... he is or has been a member of the National Criminal Intelligence Service or the National Crime Squad". *Police Reform Act 2002*, Section 9 (UK).

networks and culture may, in the public mind, offset the benefits of any investigative skills police personnel may bring.

Are we being impractical? One of the participants⁴⁶ observed that there was much “impractical idealism being injected into the debates”. He mentioned that everything cannot go civilian and “many people here do not realise how vitiated civilian life has become. You go to civilians; I think you will be landing up with half of them as criminals.... Village life is full of corruption and litigation and feuds and inter-caste clashes.” He noted that “idealism is fine but let us temper it with pragmatism”. He suggested that the model recommended by the Committee headed by Mr. Ribeiro consisting of the Superintendent of Police, the District Magistrate and the District and Session Judge would work well in the Indian context. However, many participants continued to stress the importance of having a civilian body.⁴⁷ One of the major problems with the Ribeiro Committee body is that it cannot function as a full-time body since all its members are serving government officials with heavy workload. Given the volume of complaints against the police, such a body would not be able to deal with complaints effectively.

What about dangers of capture? Another major concern was that the proposed civilian body should not become a “rubber stamp or weapon in the hands of politicians to punish upright officers”.⁴⁸ To avoid this, it is important to prescribe a “proper procedure for the selection of the members of the civilian oversight body to ensure that this is not done on either caste basis or political base”.⁴⁹ The law must prescribe certain qualifications or criteria for the appointment to such a body. Applications could be invited by public advertisement, and members could be selected from amongst the applicants conforming to clear criteria including clean reputation, relevant experience and necessary skills.



Anju Gupta

How powerful civilian oversight? Certain important issues were raised about the powers of the civilian body. Should it have investigatory powers or even supervisory powers? Should it pass binding decisions or only recommendations? The participants were requested to send their suggestions to CHRI, which would compile these and submit to the Police Act Drafting Committee.⁵⁰

CHRI View

- There should be an independent civilian complaints body at the district and state level.
- **Independence:** For the body to be truly independent, it should have adequate finances allocated directly by the legislature. To ensure it enjoys public faith, the body should also be composed of people outside of the police. This does not in any way exclude the police, as their point of view would be heard irrespective of whether they occupy a position in the oversight panel.
- **Investigative powers:** This body should have both investigative and supervisory functions. Obviously, such external bodies cannot investigate all complaints against the police. Traditionally, complaints are categorised on the basis of seriousness, with the independent body investigating the serious complaints and supervising police investigations into other complaints.
- **Binding recommendations:** Since this body investigates very serious complaints against the police, it will have no credibility if the police and governments routinely ignore its recommendations. This body should have powers to give binding recommendations. The aggrieved police personnel retain their right to approach the administrative tribunals for redress.

⁴⁶ Mr. Prakash Singh, IPS (Retd.)

⁴⁷ Mr. Amod Kanth, IPS; Mr. B.R. Lal, IPS (Retd.); and Mr. A.K. Bhattacharya

⁴⁸ Ms. Anju Gupta, IPS

⁴⁹ Mr. Jacob Punnoose, IPS

⁵⁰ CHRI has yet to receive any such suggestions from the participants.

Session III

Accounting for Performance – Mechanisms to Evaluate

Everyone agreed that the police must go beyond being a force to being a public service. In its special role of performing a service for the good of citizens with the citizen's money, police are answerable, not only to the state, but also to the public. Like any other public service, police must account not only for the services that they are expected to provide but also for the public money that they spend.

How do you evaluate police performance?

When evaluating police performance for a given period, certain indicators or determinants must be devised against which the performance would be judged. Best practice shows that these indicators cannot relate only to crime prevention or detection, but must also gauge public satisfaction with the services. Furthermore, they must determine whether the huge amount of money, and other resources used by the police, are utilised in the manner that the legislature intended, and used in a way that serves the public interest. It is important to review these indicators periodically to ensure they are in tune with the actual tasks that the police perform. It is equally important that each member of the police hierarchy is aware of the indicators against which the organisation's performance would be evaluated so that every one down the line is working towards achieving the same goals. It would be best if an independent body outside of the police were to evaluate the police performance on the basis of these indicators.

Are the police properly evaluated today?



Kamal Kumar

At present, the police in India account to the executive and the legislature through their annual administrative reports and to their own department through periodical inspections. *Participants at the Roundtable agreed that there was no well-established system of evaluating performance.* The chairperson in this session⁵¹ mentioned that not only are the annual administrative reports of the police organisation delayed by months before they reach appropriate quarters, they are also statistics based, and do not reflect qualitative satisfaction of the citizens. He also observed that although these reports are laid before the legislature, the debate again is on statistics. The ruling party and the opposition, both make conflicting claims with regard to the crime statistics, so even though the police are technically held accountable for performance by the executive and the legislature, it is merely a formality.

Clearly, *the only agency to which the police are really accountable is the organisational hierarchy.* Here again, the commonly used parameters for assessing performance are crime and "preventive measures" statistics. The most commonly used parameter relates to assessment of police efficiency by comparison of crime-statistics of the period under review with those of previous years. "If the number of offences registered in the period under review is more than the preceding years, a facile conclusion is drawn that the police of the area has failed to control crime."⁵² In 1981, the

the commonly used parameters for assessing performance are crime and "preventive measures" statistics.

⁵¹ Mr. Kamal Kumar, IPS

⁵² National Police Commission (1981) *Eighth Report of the National Police Commission* at p. 8, May, Government of India

National Police Commission recognised the futility of using such parameters that lead to the large-scale non-registration of cases at the police station level, sometimes with the consent of the supervisors. In order to check criticism in the state legislatures, the State Government and the senior police officers frequently connive at under-reporting of cases. The other commonly used parameter is the preventive measures taken under Local and Special laws like the Police Act, Arms Act, Excise Act, and Gambling Act, etc. The “adoption of this determinant of evaluating police performance leads to large-scale and unwarranted arrests, and the initiation by police of false cases against innocent persons”.⁵³

The National Police Commission had suggested that the selection of indicators should be governed by two important considerations: “these should help the authorities to have an objective evaluation of police performance”, and “these yardsticks should not encourage the police to resort to extra-legal methods.

How to remedy the situation?

Developing appropriate indicators: Both the National Police Commission and the Committee on Police Reforms headed by Padmanabhaiah, suggested developing appropriate indicators of police performance. The latter, in the year 2000, stressed the necessity of developing performance indices that would reflect people’s satisfaction with local police and called for state-wide development of indicators to be collected through public surveys. These would be (a) feeling of public safety (b) level of crime (c) fear of crime (d) public confidence in the police (e) percentage of victims and witnesses satisfied with how they were treated by the police in the course of a case.⁵⁴ The National Police Commission had suggested that the selection of indicators should be governed by two important considerations: “these should help the authorities to have an objective evaluation of police performance”, and “these yardsticks should not encourage the police to resort to extra-legal methods.”⁵⁵



Mandeep Tiwana

Some countries have developed comprehensive indicators for evaluating police performance. In South Africa, the success of policing is determined monthly, quarterly, bi-annually and annually on the basis of a performance index called the EUPOLSA INDEX, which measures progress in seven areas: crime prevention, crime reaction, crime investigation, crime information, skill development and professional conduct, vehicle management, and efficiency/productivity. This work is still in progress, and many police academies have called for a more inclusive framework along the lines of the England and Wales’ Police Performance and Evaluation Framework (PPAF).⁵⁶ In England and Wales, the PPAF provides measures of satisfaction, overall trust and confidence in the police, as well as measures that put performance into context in terms of efficiency and organisational capability. Each year, the Police Standards Unit reviews its indicators on the basis of policing plans and identifies priority areas.

⁵³ National Police Commission (1981) *Eighth Report of the National Police Commission* at p. 9, May, Government of India
⁵⁴ Tiwana, M. (2005) *Independent Institutional Evaluation of Police Performance*: http://www.humanrightsinitiative.org/programs/aj/police/papers/indepdt_inst_eval_pol_perf.pdf
⁵⁵ For the list of determinants suggested by the NPC, please see National Police Commission (1981) *Eighth Report of the National Police Commission* at p. 10, May, Government of India
⁵⁶ Tiwana, M. (2005) *Independent Institutional Evaluation of Police Performance*: http://www.humanrightsinitiative.org/programs/aj/police/papers/indepdt_inst_eval_pol_perf.pdf

England and Wales: Police Authorities (Best Value) Performance Indicators for 2005

- 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.

Participants observed that developing indicators for the Indian context would not be very easy. Police in India have to enforce hundreds of laws and before evaluating them, we need to "differentiate between core and non-core duties.... A policeman needs to know what is his core duty. He should know as to why he is being burdened by social legislations. Why is it that he is being asked to do all kinds of things under the Bombay Police Act like dealing with cattle and with dead bodies etc. Why can't the appropriate authorities deal with those?"⁵⁷ Participants recognised the difficulty of quantifying all the different tasks that police perform. It was observed that it would be difficult to evaluate preventive work of the police." How will you judge performance in terms of riots that have been successfully prevented through police action?" The co-chair in this session⁵⁸ agreed that it was very difficult to assess all preventive work, but some actions can be judged. For instance, in a communally sensitive district, we need to assess whether the police have taken the measures suggested under prescribed riots schemes in different states. Have *Mohalla* or local peace committees been formed in the communally sensitive districts comprising prominent citizens, representatives of political parties, public representatives and office bearers of prominent associations and unions? If an incident likely to spark of riots has occurred, have the police taken preventive steps like arresting *goondas* and anti-social elements? Is there enough patrolling to prevent the outbreak of a riot? The performance can be evaluated against all these factors. What needs to be done is to develop these indicators to judge performance proactively and innovatively.



J.Y. Umranikar

Creating independent mechanisms to evaluate performance: The National Police Commission recommended that the State Security Commission in each state, in addition to setting policy guidelines and directions for performance of preventive and service oriented functions of the police, would evaluate and review police functioning. They called for the creation of an independent Directorate of Inspections to evaluate police performance, both in quantitative and qualitative terms. This "should not be a part of police and may include experts from other disciplines...". The Committee on Police Reforms headed by Ribeiro, favoured the creation of a Police Performance and Accountability

⁵⁷ Mr. J.Y. Umranikar, IPS

⁵⁸ Ms. Maja Daruwala, Director CHRI

Commission in each state to oversee the performance of the police and to ensure its accountability to the law. With a mandate similar to that of the proposed State Security Commission, this body would differ only in terms of its composition. The Padmanabhaiah Committee, on the other hand, envisaged setting up an Independent Inspectorate of Police along the lines of Her Majesty's Inspectorate of Constabulary (HMIC) in England and Wales to broadly look at deployment and resources, strategies for crime control, efficiency of investigations, degree of coordination with prosecuting agencies, and effectiveness of training among other things. The HMIC advises the Home Secretary (Home Minister) on the efficiency of the police force and conducts both annual and thematic inspection of provincial police forces. It acts as a watchdog, monitoring, in an open and objective manner, police performance and the maintenance of policing standards. Members of HMIC are appointed by the Queen who is the Head of State and comprise of retired heads of police forces and persons with a mix of skills and backgrounds. Participants agreed that it was important to evaluate police performance but some did raise concerns about the capability of an external independent body to properly evaluate the organisation.

Jurisdictions across the world have put in place independent institutional mechanisms to evaluate police performance on the basis of objective indicators developed by them. In Northern Ireland, the Policing Board comprises 19 members⁵⁹ and is mandated under the Police (Northern Ireland) Act, 2000 to secure an effective, efficient and impartial police service, which has the confidence of the whole community. The Board sets objectives and targets for police performance following a consultation with the Police Chief, using these to monitor progress. It 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. It also lays down standards of conduct and practice for police officers and reinforces awareness of human rights laws. In England and Wales, it is the Police Standards Unit that measures and compares police performance. Staffed by seconded police officers, other specialists and civil servants, the Unit seeks to understand the underlying causes of performance variation and works with those forces in need of assistance. It also identifies and disseminates good practice. It measures the performance of 43 police forces on their ability to reduce crime, investigate crime, promote public safety, provide assistance, deliver local policing, use resources effectively and improve citizen focused policing through the Policing Performance Assessment Framework.⁶⁰

Kerala experience: The sole Indian experiment on independent evaluation

None of the recommendations of various Committees have been implemented by either the State or the Union governments. The only state in the country to have made any attempt to evaluate police performance is Kerala, where the Police Performance and Accountability Commission was set up in 2003. This was an ad hoc body set up by the Chief Minister specifically to evaluate the performance of the police between the years 2002 and 2003. In the preceding two years, the police had been given operational independence and there was no interference by the politicians in their function. Complaints of increased corruption and police abuse in the absence of any forum to appeal (with the politicians not available to the public to intercede on their behalf), prompted the Kerala Government to set up this Commission.⁶¹ The Commission identified ten parameters for evaluating



Jacob Punnoose

⁵⁹ Ten are members of the Northern Ireland Assembly and are nominated by it. The other nine members are appointed through an open process in which applications are advertised in local newspapers. All members are appointed by the Home Secretary (Home Minister).

⁶⁰ Tiwana, M. (2005) *Independent Institutional Evaluation of Police Performance*: http://www.humanrightsinitiative.org/programs/aj/police/papers/indepdt_inst_eval_pol_perf.pdf

⁶¹ Mr. Jacob Punnoose, IPS

police performance including prevention of crimes, investigation of crimes and prosecution of crimes, maintenance of law and order, traffic management, police response to public grievances, police response to emergencies, police response to information on cognisable crimes, conduct of police towards public with courtesy, reputation of integrity and impartiality of individual officers and the force in general, and efficiency of the police in collecting advance intelligence on potential law and order incidence including communal tension. However, the Commission did not prescribe any qualitative or quantitative guidelines on how to apply these at the police station level. The speaker mentioned that the Commission did not even consider the British or the US public survey models, which could have helped.⁶²

Nowhere in its report does the Commission mention the particular areas where police performance was poor, or conversely where it was good. No statistics about the percentage of respondents satisfied or dissatisfied with policing have been included in the report. Nor is there any reference to how the police are viewed by different socio-economic groups in the state. An “assessment” of public feedback on police performance has been simplistically passed off as “a mixed bag ranging between accusation and adulation”. The Commission’s broad assessment of the police reads, “while some improvement in the overall police performance during 2002 and 2003 was noticed, there was a disturbing tendency towards deterioration subsequently”.⁶³ This “deterioration” is apparently based on recorded crime, which increased in 2004, though the Commission itself mentioned that crime statistics are “not a safe guide to make a correct evaluation of police performance”. Clearly, any “deterioration” in police performance should have been gauged by the police response to the increased crime, but this aspect was notably absent in the report.⁶⁴

Kerala experiment on police reforms: Lessons to be learnt

Kerala is the only state in the country where police were allowed to function without any political interference for over three years. The Kerala experiment clearly indicates the relevance of all the issues discussed in the Roundtable. It demonstrates that it is not enough to guarantee operational independence to the police unless they are made accountable for their acts and omissions when performing their duties. The Police Performance and Accountability Commission noted that although many officers “were for the first time emboldened to act according to the dictates of their conscience”, there were others “who felt that autonomy was a license to misuse vast police powers”.⁶⁵

There were “widespread allegations that corruption had increased, and that the rates charged for ordinary favours from police stations had gone up considerably.”⁶⁶ The Commission pointed out that the common people lost the political conduit to reach the police without fear of ill-treatment or intimidation, a function which the politicians were discharging rather effectively by accompanying complainants to the police station and interceding with the police, and protecting the citizen from police ill-treatment. The Commission noted that “autonomy to the police is the ideal, but it should be tempered with measures to prevent its misuse”. Although, it failed to lay down those measures, the participants at the Roundtable did discuss the various measures to “temper” autonomy.

⁶² Mr. Jacob Punnoose, IPS covered these points in his presentation.

⁶³ The Kerala Police Performance and Accountability Commission (2005) *Report of the Kerala Police Performance and Accountability Commission*, March.

⁶⁴ See Tiwana, M. (2005) *Summary Critique of Kerala Police Performance and Accountability Commission Report*: http://www.humanrightsinitiative.org/programs/aj/police/papers/critique_kerala_pol_perf_acct_comm_rep.pdf

⁶⁵ Mr. Jacob Punnoose, IPS

⁶⁶ Mr. Jacob Punnoose, IPS

Conclusion⁶⁷

Universally there is a thirst for better policing. However, the jury is out about how this can be achieved. Some prefer holistic reforms that encompass the whole criminal justice system because the police are but one spoke in the wheel. Others say it is vital to have comprehensive legal changes that will underpin a police force envisioned as an aid to our fundamental constitutional commitments. Others favour an attempt at piecemeal changes. Yet others express there is little more needed than personal commitment and leadership. No matter what the argument, all agree that there is little or no political will and that there are deep obstacles to making any changes. But the situation is so critical now that it cannot be left alone to deepen into chaos. There is no room for hope or pessimism, but only for a robust realism that must be put to work and an active citizenry that must take on the task.

Indeed the horizon is not so dark. Many experiments and initiatives are on the anvil; many have died when their progenitors have moved on; little has been adopted institutionally. All this must change. Informed public opinion is key. In democracies, public opinion matters to the politicians, both in government and in opposition. The very politicians that have to be convinced to enact an effective Police Act and put in place accountability mechanisms are the ones who need public support for the next election. The process of demanding police reforms is not going to be easy, as it is difficult for outsiders to build expertise in police matters that are somewhat specialised and technical. It is not enough to say that police are brutal or corrupt or communal, alternative and viable suggestions have to be put forth when demanding the political executive to initiate reforms. Civilians in many jurisdictions, including India, frequently lack the skills and expertise that would facilitate deeper engagement with public security policy debates. In order for police reforms interventions to be taken seriously, it is imperative to build knowledge on policing issues. Consultative meetings, training programmes and wide dissemination of simplified literature on these issues would go a long way in generating debate and demand on police reforms. Fortunately, the process has begun, and all of us have the responsibility to take it forward.

⁶⁷ Of course, it is impossible to debate all these important issues on police reforms in a one-day conference. A much larger debate is needed these as well as on other issues involving public participation in policing. The CHRI Director suggested that the participants could begin by sending their ideas on the issues discussed in the conference to CHRI, which would function as a secretariat and take these forward, both to the Police Act Drafting Committee and to the public at large. It was decided that the participants would send their suggestion on the following issues:

- Should there be an independent body or a board to evaluate police performance at all? And if so, what would be the appointment procedure to that board; the composition of that board; the criteria against which these boards should function, i.e. their role and function; and their mandate.
- Should there be an independent civilian oversight mechanism to deal with complaints against the police? And if so, what would be the appointment procedure to that body; its composition; the criteria against which these bodies should function, i.e., their role and function; and their mandate.
- In order to change the existing relation between police and executive, how should the roles of the police and the political executive be defined and delineated? Where would you see the limitations of the role of the political executive and the role of the police itself in terms of finances, administration, and operational duties?

CHRI has yet to receive any comments on these issues.

Agenda

ROUNDTABLE ON POLICE REFORMS

Venue – Qutab Hotel, at Shaheed Jeet Singh Marg, Qutab Institutional Area
New Delhi 110016, in the Ball Room (on the ground floor).

December 7th, 2005

Programme/Subject	Time	Panelist/ speaker
Registration	09:00-09:45	
INAUGURAL SESSION		
Welcome Address	09:45-10:00	Mr. B.G. Verghese, Chairperson, CHRI
Inaugural Address	10:00-10:20	Justice J.S. Verma (Retd.), Former CJI and Chair, NHRC
Key Note Address	10:20-10:35	Maja Daruwala, Director, CHRI
Discussion	10:35-11:00	
TEA	11:00-11:15	

Plenary Session I

Control and Superintendence over the Police

AIM: The police, like any other agency of state, are accountable to the government. The prime responsibility of the government must remain confined to providing a well-resourced, well-led, well-trained police service to the public, and to imposing suitable checks on the powers of the police. To ensure the police can carry out their duties lawfully and without illegitimate external interference, the police in a democracy need to be assured a measure of functional autonomy. This session will discuss the present situation in India and the mechanisms in other jurisdictions that have been established in law to insulate the police from illegitimate interference.

Chairperson: Mr. Ved Marwah, IPS (Retd.)

Co-chair – Ms. Maja Daruwala

Setting the Context	11:15-11:25	Chairperson
1861 Model- Major Concerns	11:25-11:45	Mr. Prakash Singh, IPS (Retd.)
Models in other jurisdictions	11:45-12:00	Ms. Devika Prasad (CHRI)
Discussions	12:00-13:00	
LUNCH	13:00-14:00	

Plenary Session II

Police Complaints Agencies

AIM: A wide and multi-layered system of accountability seeks to balance the internal accountability mechanisms of the police with some form of external oversight. Importantly, external accountability bodies create channels for public complaints to be pursued, independently of the police. This session will discuss best practice in handling public complaints against the police through an overview of external bodies in various Commonwealth countries. It will also briefly discuss the Indian experience of NHRC as an independent oversight agency in dealing with public complaints and identify issues relating to the establishment of a dedicated police complaints agency suitable to the Indian context.

Chairperson- Dr. A.P. Mukherjee, IPS (Retd.)

Co-chair – Ms. Maja Daruwala

Setting the Context	14:00-14:10	Chairperson
Handling of Public Complaints:		
Some international models	14:10-14:30	Ms. Swati Mehta (CHRI)
Issues in the Indian context	14:30-14:45	Mr. Abraham Kurien, IPS (Retd.)
Discussion	14:45-15:30	
TEA	15:30-15:45	

Plenary Session III

Assessing Police Performance

AIM: Setting up an effective, fair framework for regularly assessing police performance, taking into account public needs and priorities, is an integral part of establishing more professional policing. Grounded in this premise, this session will describe the initiative taken in Kerala of a Commission created to monitor police performance, the only one of its kind in India; as well as provide a comparative survey of systems in place in other countries.

Chairperson: Mr. Kamal Kumar, IPS Director, SVP N PA

Co-chair – Ms. Maja Daruwala

Setting the Context

(Need for such mechanisms)	15:45-15:55	Chairperson
Monitoring Police Performance- The Indian (Kerala) experiment	15:55-16:05	Mr. Jacob Punnoose, DG, Training, PTC, Kerala
Monitoring Police Performance- International perspectives	16:05-16:15	Mr. Mandeep Tiwana (CHRI)
Discussion	16:15-17:00	

Valedictory Session

Chairperson: Ms. Maja Daruwala, Director, CHRI

Summing up	17:00-17:15	Chairperson
Valedictory Address	17:15-17:30	Mr. Shivraj Patil, Union Home Minister
Discussion	17:30-18:00	
Vote of Thanks	18:00-18:05	CHRI

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CHRI Programmes

CHRI's work is based on the belief that for human rights, genuine democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. Accordingly, as well as a broad human rights advocacy programme, CHRI advocates access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

Human Rights Advocacy: CHRI makes regular submissions to official Commonwealth bodies and member governments. From time to time CHRI conducts fact finding missions and since 1995, has sent missions to Nigeria, Zambia, Fiji Islands and Sierra Leone. CHRI also coordinates the Commonwealth Human Rights Network, which brings together diverse groups to build their collective power to advocate for human rights. CHRI's Media Unit also ensures that human rights issues are in the public consciousness.

ACCESS TO INFORMATION

Right to Information: CHRI catalyses civil society and governments to take action, acts as a hub of technical expertise in support of strong legislation, and assists partners with implementation of good practice. CHRI works collaboratively with local groups and officials, building government and civil society capacity as well as advocating with policy makers. CHRI is active in South Asia, most recently supporting the successful campaign for a national law in India; provides legal drafting support and inputs in Africa; and in the Pacific, works with regional and national organisations to catalyse interest in access legislation.

Constitutionalism: CHRI believes that constitutions must be made and owned by the people and has developed guidelines for the making and review of constitutions through a consultative process. CHRI also promotes knowledge of constitutional rights and values through public education and has developed web-based human rights modules for the Commonwealth Parliamentary Association. In the run up to elections, CHRI has created networks of citizen's groups that monitor elections, protest the fielding of criminal candidates, conduct voter education and monitor the performance of representatives.

ACCESS TO JUSTICE

Police Reforms: In too many countries the police are seen as oppressive instruments of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In East Africa and Ghana, CHRI is examining police accountability issues and political interference.

Prison Reforms: The closed nature of prisons makes them prime centres of violations. CHRI aims to open up prisons to public scrutiny by ensuring that the near defunct lay visiting system is revived.

Judicial Colloquia: In collaboration with INTERIGHTS, CHRI has held a series of colloquia for judges in South Asia on issues related to access to justice, particularly for the most marginalised sections of the community.

That police in India need to be reformed is a given....

Over the past 9 years CHRI has worked steadfastly toward developing voice and capacity to engage on difficult issues of police reform particularly those that relate to police accountability and performance. Given the varied ideas and the topicality of the issue, with the Government of India setting up a Police Act Drafting Committee, CHRI decided to host a national roundtable to debate how the different stakeholders could come together on the issue of achieving police accountability. The Roundtable was designed to bring together important opinion makers in the country with a view to examining earlier recommendations that have been made and assessing best practices around the globe, which may help in the designing of future legislation. The aim was to provide the forward-looking recommendations and the discussions of the consultation to the newly formed Committee in the hope that those would inform the Committee's deliberations.



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