

Report of the Roundtable Conference on Police Reforms



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Report of
The Roundtable Conference
on
Police Reforms

Organised by
COMMONWEALTH HUMAN RIGHTS INITIATIVE

in collaboration with
THE PRESS CLUB, TRIVANDRUM

at
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Contents

| | |
|--|----|
| <i>Introduction</i> | 3 |
| <i>Stirring A Debate: Questions Pondered, Issues Raised</i> | 3 |
| <i>Police as a Service Organisation - An Agenda for Change</i> | |
| <i>Taking Stock: The Principles of Democratic Policing</i> | 3 |
| <i>Clamouring Citizens: Public Grievances and Expectations</i> | 4 |
| <i>Cleaning Up the Police: Tackling Illegitimate Control</i> | 5 |
| <i>Assuring Accountability: A Pipe Dream?</i> | 7 |
| <i>Innovations: Kerala Police</i> | |
| <i>Reform at A Glance</i> | 10 |
| <i>Thoughts for the Future</i> | 10 |
| <i>Participants' List</i> | 11 |

Introduction

Over the last few years, the Commonwealth Human Rights Initiative (CHRI) has been advocating for urgent police reforms. As a part of the continuing commitment to catalyse a wider debate and foster more informed discussion at the policy level, CHRI in collaboration with the Press Club, Thiruvananthapuram organised a roundtable on Police Reforms at Thiruvananthapuram, Kerala on June 26 & 27, 2003. Designed to be a dialogue among equals, the Roundtable gathered politicians, the media, civil society groups, policemen, bureaucrats, lawyers, human rights commissioners, businessmen, activists, and concerned citizens, to collectively brainstorm, arrive at viable solutions, and finally settle on the best options for reform.¹

Stirring A Debate: Questions Pondered, Issues Raised

As preparation for the proceedings, the participants were given two central questions to ponder:

1. How can resistance to police reform be broken down and political will to reform the police be fostered?
2. What steps need to be taken by each of us to work actively toward reform from their own locations in society and not rest merely with prescriptions to government or expectations from others?

To do justice to the subject, the consultation of a day and a half addressed three seminal thematic areas - shaping the police to become an effective instrument of service, de-linking policing from illegitimate political interference, and refining mechanisms to ensure accountability to the law of the land. A running theme in the deliberations was the importance of the policy innovations and practical experience of the Kerala Police, lending a credible "real world" context to thorny theoretical issues.

In his keynote address to inaugurate the proceedings, Justice V.R. Krishna Iyer reflected on the centrality of good policing, simultaneous with the fair execution of justice by a vigilant judiciary, to the realization of "people's life, liberty and the pursuit of happiness in peace and security". He sees independence and accountability with commitment to the rule of law as the non-negotiable qualities of an invigilating and investigating police force. To get the ball rolling, Justice Iyer reiterated an extended version of the CHRI slogan, "Police reform is too grave to neglect, too urgent to delay, too serious to be left to self-corrective strategies".

Police as a Service Organisation - An Agenda for Change

Taking Stock: The Principles of Democratic Policing

Any discussion of the genesis of the police force in India must begin with the colonial context of British India, and the particular type of police organisation that was established by the Police Act of 1861. At that time, the police was constituted to serve its colonial

¹ A complete list of the participants is provided in Annexure - 1

masters, designed to be highly militaristic and authoritarian, while totally subservient to the executive.

Moving to the present day, the police remain tied to the dictates of the archaic Police Act of 1861. While India can be characterized as a democratic polity, with an extensive and modern constitution, the policing framework remains rooted in a colonial mold. This is particularly unfortunate for a force that stands at about two million strong and holds enormous potential to become an important catalyst for positive change.

This dreary backdrop begs the question: What is required to transform the police force into an instrument of service? The first part of the answer is to lay down the basic principles of democratic policing.² Broadly, these include establishment and promotion of the rule of law, political neutrality, transparency and accountability, non-discrimination in discharge of duties, no impunity for human rights violations, and minimal use of force. The second part denotes the specific steps that need to be taken to inculcate these principles into the practice of policing:

- Mandate the police to function as a professional and service oriented organisation to protect and promote the rule of law
- Establish institutional and other arrangements to insulate the police from illegitimate outside control
- Set up mechanisms to ensure that the best in the service is selected to lead
- Strengthen the authority of the head of the police force by reducing his vulnerability to outside interference
- Pressure the government to recognise its responsibility to set up an efficient and effective system of policing
- Outline objectives and performance standards and create independent mechanisms to monitor and inspect police performance
- Institute credible complaint handling procedures and mechanisms
- Incorporate reference to accepted rights standards and norms relevant to policing
- Initiate community policing schemes to involve the community in police work
- Ensure that the police force composite reflects the general mix of the community
- Advocate for adequate training in issues of culture awareness to enable the police to be in tune with the larger community

Clamouring Citizens: Public Grievances and Expectations

As a law enforcement agency, the police are obligated to serve and protect the public. Yet, a sad fact emerged from the deliberations concerning the public view of the police. In India, "people are conditioned to fear the police".³ In voicing his view of public grievances against the police, Paul Zacharia came down on the third degree tactics used in policing, "As long as the third world democracies, like India, depend on terror, force, torture, and encounter killings as their favoured methods to enforce their power agenda, the idea of the police as a service organisation will have few takers". In the public gaze, the police are a corrupt and violent outfit.

² Mr. G.P. Joshi

³ Mr. Paul Zacharia

Mr. Tharakan, the current DGP of the Kerala Police, argued that the problems of the police are probably well known, but not well understood by civil society. For instance, he pointed out that the adversarial image of the police arises from the plain fact that by law, the police are duty-bound to use force when it is required. The very nature of police work necessitates the use of force, and he maintained that "scientific investigation is no guarantee for the detection of crime". According to him, research done in the UK disclosed that the crime detection rate decreased, with the increased use of scientific investigation. Following from this, civil society must be willing to accept a lower detection rate if there is an emphasis on strict compliance with scientific investigation methods. Problems often arise out of the public perception that the police must "deliver" (which primarily means effective detection followed by conviction); otherwise they are regarded as completely inefficient. Yet, in the same breath, the public continue to criticise the rough and tough methods which officers on the ground see as essential to achieve a large measure of that delivery. This reality demands that any attempt at police reform must find a way to reconcile the appropriate use of force with some measure of human rights standards.

Justice Iyer's address drew attention to a widespread public grievance against the police, when he said "a major area of public dissatisfaction with the police arises from the inability of the public to follow the progress of reported crime and victims' complaints to the police". The police feel no obligation to provide information to a complainant about how the investigation of his/her case is proceeding. Justice Iyer conclusively recommended that "it should be made mandatory in law for the police to inform the complainant about the progress of the investigation".

Cleaning Up the Police: Tackling Illegitimate Control

In India, the transition to democratic policing seems to remain an elusive goal. In terms of the practicalities, the police are handicapped by poor infrastructure, inadequate equipment, meagre transport and communication facilities. However, mere modernisation of the police in terms of increase in their resources and facilities, though necessary, will not bring them closer to the public. What is required is to free them from the plague of illegitimate political interference. In fact, the plight of the Indian police has been described in stark compelling terms, "In today's India, the police is a victim of the political system just as much as the citizen is a victim of the police system".⁴

According to Section 3 of the 1861 Police Act, "superintendence" over the police force is exercised by the state government, which in effect refers to the ruling party. Superintendence has not been defined in the Police Act or in any other law. In practice, this has resulted in the exercise of unlimited discretionary powers, directions and orders to the police, by those who are ostensibly exercising "superintendence". Almost all State Police Commissions as well as the National Police Commission (NPC) have found overwhelming evidence of the misuse of the police system by politicians and bureaucrats for partisan selfish ends. Police acceptance and implementation of illegitimate directives are guaranteed by the threat of transfer and the arbitrary use of powers to appoint, promote and punish. In this regard, potential solutions would necessitate protection of officers who are

⁴ Mr. Paul Zacharia

subjected to harassment for refusing to carry out illegal orders from politicians or superiors.⁵

Illegitimate political interference in police work has certainly left its mark. Political patronage has meant that policing has become heavily politicised, with the obvious result that the police tend to lean towards the party currently in power.⁶ The tragic events that unfolded in Gujarat in 2002 reveal the devastating consequences that can come from the politicisation of a police force. By the same token, the collusion between corrupt politicians and nefarious elements in the police has served to demoralise the honest and upright in the service, deteriorating the qualities of leadership and standards of service across the force as a whole.

The second report of the National Police 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 the law". To help the state governments discharge their superintending responsibility in an open manner guided by law, a State Security Commission should be established on a statutory basis in each state. In addition, the NPC also recommended other safeguards to insulate the police from political interference, including minimum fixed statutory tenure of service for the chief of police, more rigorous and competitive selection criteria for the head post, and lawful transfer/suspension orders that follow a codified procedure adhering to law.

At the most basic level, the elimination of illegitimate political interference necessitates that the police is insulated from political meddling, allowing it to flourish with autonomy. In Kerala, where this simple theory has been enacted as informal policy, the state's police has indeed secured some freedom from the blight of unlawful political control. However, according to some, this has been, to some extent, a mixed blessing. "Faceless middlemen" have replaced the corrupt politicians in debasing policing.⁷ Insulation from illegitimate political control has not resulted in reducing police corruption. In fact, corruption at the police station level is alleged to have increased. At least when politicians misbehave, as public figures, they can be forced to answer to the media and eventually to the public. The faceless middle man, who is often more dangerous than a politician, can obstruct democratic policing with no thought to his accountability or a potential media backlash.

From this lens, widespread, entrenched corruption yields many sources of illegitimate interference in policing, be it unruly politicians or even more menacing external elements. Corruption has tainted policing to the extent that even the high-level Padmanabhaiah Committee report speaks of "police personnel hobnobbing with individual criminal elements or with people operating in the grey areas of law" and "reported linkages between the policemen and the organised criminal gangs is most pernicious and threatens national security". Clearly, police reform can truly sustain when parallel and sincere efforts are made to dismantle the culture of corruption that prevails.

⁵ Mr. C. M. Radhakrishnan Nair

⁶ Mr. P.P. Mukundan

⁷ Mr. V.M. Sudheeran

It was mentioned in the deliberations that India's criminal justice system has inherited rules and regulations that are not in tune with the democratic system.⁸ There is an urgent need to redraft the current rules and regulations to reflect the larger democratic framework, and to move away from corrupt practices that erode democracy. Mr. Bhaskar added that this need is particularly acute as the country as a whole, and Kerala in particular, are overcome with a feudal mindset, and any reforms will remain absolutely futile if these pernicious value systems are not attacked simultaneously. Adding to this view, in terms of the legal context, the law itself, in the form of the 1861 Act, presupposes that the police cannot be trusted.⁹ Speaking of police reforms is entirely useless until an effective legal framework is created to sketch and support the makings of a democratic police force.

Assuring Accountability: A Pipe Dream?

The British required a police force that was designed to suppress and subjugate, according to the will of the rulers of the day. An independent democratic nation that professes to be committed to the rule of law places a fundamental duty on the elected government to ensure the full gamut of rights due to all citizens, with no exceptions. This fundamental duty requires that the state set up an efficient and effective police system that acts in accordance with the law at all times, by instituting processes that can mitigate police dysfunction, and infuse democratic principles into all aspects of policing. The 1861 Police Act and the other State Police Acts are entirely silent on the crucial issue of accountability. Strictly in the context of law, there is no mention of mechanisms designed to continually assess the performance of the police service or to formally inquire into allegations of police misconduct, signaling that the legal framework does not contain any measures to guarantee police accountability to citizens. Distressed by this gaping hole in the law, Justice Iyer warns, "It must be remembered that the police, as a law enforcement agency, command far more *physical* power than any other public service agency and therefore the mechanism for accountability is all the more necessary".

In practice, this conspicuous absence of credible accountability mechanisms leads to frequent police misconduct, in a number of ways. The National Human Rights Commission (NHRC) reported the incidence of blatant human rights violations by the police during the year 1999-2000, with 177 deaths in police custody, 1157 cases of illegal detention and arrest, 1647 false implications and 5783 additional police excesses.¹⁰ Non-registration of complaints is one of the most common, serious, and widespread grievances of citizens, particularly from disadvantaged sections, against the police. The process of criminal justice starts with the registration of all relevant information by the police about the commission of a crime. Non-registration of a case abruptly ends the process of justice then and there, by denying any measure of justice for victims while bestowing virtual impunity for alleged criminals. In India, registration of complaints is mandatory under law, but even then a large number of complaints are not registered. Plagued by a lack of resources, the police have become accustomed to using underhanded, coercive tactics to "solve" crimes, such as third degree methods and intimidation of family members, in place of more scientific modes of investigation. To make a bad situation worse, this abdication of responsibility on the part of

⁸ Mr. B.R.P Bhaskar

⁹ Mr. C.M. Radhakrishnan Nair

¹⁰ Justice Pareed Pillai

the police can continue unabated as there is no credible redressal system properly in place to deal with public grievances.

The deliberations spoke of implanting internal and external mechanisms to ensure accountability. The Kerala police is reported to have put instruments, both internal and external, in place to hold its force accountable.¹¹ For instance, the Petition Enquiry System provides a separate register where complaints against the police can be recorded; and strict disciplinary action is taken in all instances of police misconduct. Yet, the efforts at disciplinary action within the police take on a less hopeful light when measured against the public's discontent.¹² It is important to note that public dissatisfaction continues to simmer since, "the public cannot see this disciplinary action, cannot believe it and therefore cannot accept that there is disciplinary action". A recommendation was made to institute a regular social audit of police performance, a practice that can bring a higher degree of transparency to policing.¹³

The conference discussed some useful accountability mechanisms established outside the direct realm of the police. One recommended periodic inspection of police stations as one way to monitor police activity and performance.¹⁴ If implemented, this scheme could easily be replicated along the lines on which an independent custody visiting system exists in the UK. This system authorizes volunteers from the community to attend police stations to check on the treatment of detainees and the conditions in which they are held. As per the Circular¹⁵ issued by the Home Office, UK, the process involves the recruitment of volunteers by the Police Authorities after which they are organized to visit police stations, unannounced, at any time of day or night. The volunteers have immediate access to the custody area and their main function is to check the conditions of detention and the treatment of individual detainees. The visitors are independent persons of good character drawn from and representative of local communities, who are able to make informed judgements in which the community as well as the police can have confidence.

The advocates for reform vociferously pointed out that the power of human rights commissions to inspect and audit police work in relation to human rights must be utilised to its full potential. Undoubtedly, the first task here is to apply pressure to ensure that human rights commissions are set up in all of the states of the country. To date, only eleven out of twenty eight states have established human rights commissions, and of these eleven some commissions are not even functioning properly. Human rights commissions can take the lead role in conducting human rights audits of all police stations, as well as of police training practices. Simultaneously, these commissions can monitor and seriously investigate the occurrence of non-registration of complaints. Further, the public can turn to human rights commissions to take action in allegations of police inefficiency, atrocity, and brutality.¹⁶

The courts are held as one of the most important means of ensuring police accountability. The higher courts have passed a number of significant judgements, prescribing safeguards

¹¹ Mr. Jacob Alexander

¹² Mrs. Maja Daruwalla

¹³ Ms. Sandhya

¹⁴ Mr. M.K. Joseph

¹⁵ HOC 15/2001 dated May 4, 2001

¹⁶ The above three points were contributed by Mr. Jacob Punnoose

or guidelines to regulate police conduct during arrest, interrogation and other stages of investigation. The judiciary has also served as a vigilant watchdog by commenting adversely on the police for showing discrimination in the handling of communal and caste conflicts, and expressing strict reprimand in many cases where defective or inadequate police investigation or handling was noted. In fact, members of the judiciary argue that this type of judicial activism can be discontinued if the government creates an effective and credible system that can hold members of the police, other security forces, and government agencies accountable for acts of negligence, callousness, torture, and other illegal activities.¹⁷

One way of ensuring accountability is to institutionalise a process of evaluating the performance of the police. The system currently in place is based on statistics, and thereby entirely vulnerable to distortion. Both the NPC and the Padmanabhaiah Committee have proposed the establishment of an Independent Directorate of Police Evaluation in each state. The Directorate would carry out annual inspections of the district police forces, as well as of the specialised units operating as part of the state police forces. Most importantly, the Directorate would be vested with the responsibility to produce independent inspection reports, detailing the areas of weakness in police performance and ensuring that standards are maintained. An independent police evaluation body designed along the lines of the NPC recommendation is under the serious consideration of the Kerala state government, as expressed by Chief Minister A.K. Antony during his valedictory address.

Justice Iyer also advocated for the creation of a credible, efficient mechanism that can check alleged abuses committed by the police, particularly to prevent impunity for human rights violations by law enforcement officials. He argued that "it is essential to have a Vigilance Commission or other ombudsman to act immediately when police delinquency or criminality is brought to its notice. Apart from the long-winded judicial proceedings, we must have an instant instrumentality, outside the police department, which will blitz into action when reports about police violation come to its notice".

One important message that was carried loud and clear throughout the conference was a vociferous appeal to the police force to surge ahead and propel reform by itself. Several participants blamed the police for purposely lagging in reforms, by constantly looking to others (laws, the public, the government) for change instead of simply doing what they, on their own, can do. To this end, one impassioned police officer identified particular areas for reform: professionalism, attitudes, and training. He asserted that the police could bring about improvements in these areas on their own without waiting for directions or support from outside.¹⁸ Justice Iyer echoed this line of thinking when he said, "A new sense of dignity and reverence for institutional reputation must develop from within the police establishment. All these and other matters of concern make it imperative that avant-garde, progressive metamorphoses in police functionalism are the challenge of the time". Similarly, Paul Zacharia urged for reform as "the police themselves have a stake in the reform process. They should be catalysts for social change making the world a better place to live for our posterity. Police need to introspect, engage in interior dialogue, recognise that *policedom* does not exist anymore and attempt to de-brutalise itself".

¹⁷ Justice D. Sreedevi

¹⁸ Mr. Jangpangi

Reform at A Glance

Reportedly, the Kerala Police can speak of some significant developments in its organisational ethos, as well as functioning over the last few years. The bulk of these reforms strive to eliminate illegitimate political interference in policing, by creating a measure of independence for the Kerala Police from the unlawful manoeuvrings of politicians. The current Chief Minister of Kerala, Mr. A.K. Antony, has received tremendous praise, for the initiatives taken under his leadership to reform the police. To this end, the Chief Minister has taken the authority with regard to transfers and postings out of political hands and vested it in the Director General of Police (DGP), which means that the police have a free hand when it comes to transfers and postings. The current DGP of Kerala asserted that this drastic change in policy has restored discipline across the state police, from the senior to the lower ranks.¹⁹ Interestingly, he also mentioned that many politicians showed reluctance to accept these reforms.

Thoughts for the Future

Mr. Antony pledged his government's commitment to securing police reforms to realise "a secular and secured environment for the common man". As part of this commitment, Mr. Antony articulated his vision of a modernised, democratic police force for Kerala, with better living and working conditions for the constabulary, increased budgetary allocations, no illegitimate political or external interference, and strict implementation of a service mentality infused by human rights ideals.

In terms of immediate goals, he readily admitted that his "government is determined to raise the composition of women (by 10%) in the police force by the end of the year; also, a police performance evaluation board made up of a retired judge, a retired police officer, and a public person will be constituted to evaluate police performance".

A key question was put to the Chief Minister: Is the move to reform an experiment or will it take shape in policy and institutionalised through statutory reforms?²⁰ This question emerged from the recognition that the impetus to reform the police in Kerala had come from the visionary leadership and progressive political will of the current Chief Minister. In response to the question concerning the viability of the reforms, Mr. Antony maintained, "mainly it depends on the police and their performance". In brief, he wanted to express that "the aim of giving total professional freedom is to give confidence to the common man, even the poorest of the poor...everything depends on the satisfaction of the people". The Chief Minister sees a firm interconnection between public satisfaction resulting from high-quality police performance, and sustainability of reforms. Thus, in his words, "after a reasonable period of time, if the police can convince the people that this set-up is better for the people, better for the State, no government, no political party can attempt to change it". His response presented a challenge to the Kerala Police when he appealed to the force: "Are you mature enough, are you capable enough to perform in total freedom to the best satisfaction of the people?" Let everyone hope that the Kerala Police will rise to the expectations and standards demanded by this challenge.

¹⁹ Mr. Tharakan

²⁰ Mrs. Maja Daruwalla

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