

SOCIAL WATCH INDIA PERSPECTIVE SERIES VOL.: 3



**ARE THE INDIAN POLICE
A LAW UNTO THEMSELVES?**

A RIGHTS-BASED ASSESSMENT

KS SUBRAMANIAN



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A Rights-Based Assessment

K.S. Subramanian



Social Watch India

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Jagadananda	Pamela Philippose	Vinod Vyasulu
John Samuel		

CONTRIBUTORS

K.S. Subramanian is a former officer of the Indian Police Service. He was a Senior Fellow at Schumacher Center for Development, New Delhi. He has worked as Assistant Director of the Intelligence Bureau (1967-72); Director, Research and Policy Division, Union Home Ministry, New Delhi (1980-85); Professor, Indian Institute of Public Administration, New Delhi (1991-93); Director General, State Institute of Public Administration and Rural Development, Government of Tripura (1993-97); and Professor, Academy of Third World Studies, Jamia Millia Islamia, New Delhi (2002-03). He has been a Visiting Fellow at the Indian Institute of Advanced Study, Shimla (1973-75); Queen Elizabeth House, Oxford (1983-84); Center of Contemporary Studies, Nehru Memorial Library, Teenmurti House, New Delhi (1986-91); and Institute of Development Studies, Sussex (1989-90). He was a member of the Concerned Citizens Tribunal Gujarat 2002. He has authored *Parliamentary Communism: Crisis in the Indian Communist Movement* (1989) and contributes regularly to various national newspapers and journals. His current research interests include the role of voluntary action in rural development. He is currently ICSSR Senior Fellow at Council for Social Development, New Delhi.

FOREWORD

Prof. Upendra Baxi is a renowned legal scholar, since 1996 Professor of Law in Development at the University of Warwick, United Kingdom. He was also honored with a Padam shri in 2011. He has been the Vice Chancellor of University of Delhi (1990-1994), prior to which he held the position of Professor of Law at the same University for 23 years (1973-1996). He has also served as the Vice Chancellor of the University of South Gujarat, Surat, India (1982-1985).

*This perspective paper is dedicated to
KG Kannabiran (1929-2010), fighter for freedom and constitutional justice.*

RESEARCH AND REPORT COORDINATING TEAM

Himanshu Jha

ADMINISTRATIVE SUPPORT

Shubhro Roy
Bhairav Dutt

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PUBLISHED BY

National Social Watch Coalition
R-10, Ground Floor, Green Park Extension
New Delhi-1100016, India
Tel./Fax: +91-11-41644576
E-mail: info@socialwatchindia.net

We acknowledge the generous support of Oxfam towards research and publication of this Report.

TYPESETTING AND PRINTING

Daanish Books Print Services
Website: www.daanishbooks.com

POLICE WATCH: RANDOM REFLECTIONS

Upendra Baxi

The challenge facing political decent societies everywhere is one of maintaining internal security and external threats with maximal respect for human rights obligations under customary and treaty-based international human rights law. India is not unique in confronting this challenge; yet it remains singular in its tardy recognition of human rights responsibilities in the administration of criminal justice and the state of policing in India. My esteemed friend K.S. Subramanian offers here 'a human rights perspective on the failed police reforms in India.' I endorse much of what he has to say.

The indictment of 'failed police reforms' is important; it entails three different propositions:

1. There is an agreed notion, image, or even a paradigm of police reform.
2. There is a commonly shared 'human rights perspective' concerning police reform.
3. 'Reform' agendas based on such agreed notion or images have 'failed.'

I think we need to carefully attend to these three propositions.

THE 'PARADIGM' OF POLICE REFORM

Is there a commonly agreed notion of police reform?

No easy response to this question is at hand.¹ Most approaches define the very idea of Police Reforms (PR, hereafter) that may be summed up in terms of the rule *by* and *of* experts. Their credentials are not often in question; what is at stake is the fact that this 'closed shop' approach (to borrow a trade union term) almost excludes the voices of those kept out of the deliberative public sphere. The dominant governance/administrative security mindsets constitute some poignant PR thresholds for celebrating the distinction between reforms *in*, but not *of*, the Indian ways of policing. PR thus remains confined to 'experts' in the Union and State Home Ministries and regime-handpicked 'law reform experts' comprising mainly superannuated justices, police officials and some state-trusted academicians. More recently, the Indian justices, especially of the Supreme Court of India, seem to have widened this rather circumscribed horizon, via innovative social action litigation (SAL), still misnamed as Public Interest Litigation (PIL). Welcome,

1. I say this after having studied over 30 police reform commissions and related reports since Independence [see, Chapters 3 and 4, and Appendix A of my book entitled *The Crisis of the Indian Legal System*, 1982, Delhi, Vikas Publications, now on my website upendrabaxi.net.]

indeed, as all this remains, this monograph preciously suggests room for questioning how far adjudicatory leadership or enterprise may have actually contributed to an alternate PR paradigm.

Many different approaches exist, which I perforce state rather summarily.

The 'technocratic' approach crucially focuses on making the police organization more effective in terms of its assigned role and functions. Here the emphasis is on [a] expansive recruitment; [b] training; [c] efficient working conditions; [d] appropriate pay structure and [e] investment on infrastructure of *everyday* and *exceptional* acts of policing. The official wisdom concerning each one of these issues is important but fails to provide any common national approach, except perhaps concerning recruitment and training.

The 'autonomic' approach seeks to distance elected public officials from the performance of the statutory duties of the police. Over time, substantial concerns have emerged concerning 'political' and 'partisan' interference with the performance of police duties and functions. In particular, autonomists direct attention to the situation of transfers of conscientious police officials based on manifestly ulterior motives. Such practices adversely affect police morale and worse still often accomplish regime-compliant policing. Autonomist approaches also draw attention to covert and overt political predation over routine police powers of criminal investigation, arrest, prosecution and related matters of the maintenance of law and order in situations especially of large public assemblies, situations of public protest. The concerns on this register remain varied, ranging from the abdication of statutory duties of police (abstinence from filing even first information reports or making cognizable offence non-cognizable) to the use of fatal force on 'crowd control' methods to the standardless use of force in 'custodial deaths' and by 'encounter' killings. As Subramanian notes, even the Supreme Court of India's model police law directed to secure minimal three-year tenure for top police officials has met with considerable opposition from many States. Yet, this is not the full story, if only because some incumbent and superannuated top cops also often contest some judicial policies such as granting liberal bail to accused of high echelon, and interim judicial orders monitoring routine police performance of their statutory duties and even transfers to the CBI.

'Superannuated activist' approach refers to the labours of retired police officials who in various important roles — from K.F. Rustamji to Prakash Singh and K.S. Subramanian — lend their experiential wisdom to the task of police reform. Of them, perhaps Subramanian remains a singular presence indeed in terms of his participation in various citizens' tribunals against police practices which are violative of human rights. Many superannuated police officials contribute preciously to human rights and social movement calls for police reform. Some superannuated police officials who are now members of the Supreme Court of India SIT for Gujarat, 2002, provide the best hope there is for the guilty to be brought to book.

Others however pursue rather aggressively the PR path as, for example, those who so eminently served as the members of the Malimath Committee advocating a retreat from 'due process' to 'crime control' model of criminal justice reform. I fulsomely critiqued this in an Amnesty International India Chapter monograph: the title of my article was 'An Honest Politician's Guide to PR!' At the Tata Institute of Social Sciences Conference on the Reform of Criminal Justice System (December 2009), some superannuated police officials went so far as to refer to my critique as 'foreign-agent' sponsored critique! In fact

one such senior police official went so far as to describe my essay as: 'His Master's Voice!' This sort of compliment of being described as a 'foreign agent' is an unfamiliar experience in my academic and activist life; yet in my understanding this signifies a mind-set that monopolizes the virtue of 'constitutional patriotism' in the anointed few!

I mention all this only to indicate the fact that not all superannuated incarnations of activist police officials represent a marked zeal for 'democratic' reform agenda. To be fair, in this, they are not alone; indeed, they often are in the august company of retired Supreme Court Justices who remain inclined towards a drastic 'final' solution of the 'crime' or the 'terror' problem.

THE PEOPLES POLICE PARADIGM

The 'democratic' paradigm stands perhaps best expressed by the Khosla Commission as early as 1968:

Independent India must ...choose whether we will have a people's police or a ruler appointed police, in other words whether the people should rule or the party should rule. The Constitution has laid down that people should rule, so the police must also be people's police.

I think that this is a great enunciation now fully endorsed by K.S. Subramanian. What Justice Khosla means is that even when appointed by the rulers, police must serve the peoples of India and not so much their political masters of the day. The very idea of police is presented not just in terms of their being *public servants* but *servants of the people*. This is a radical notion, indeed; but what may this mean in practice?

'Loknayak' Jayaprakash Narayan deployed the notion of people's police as an aspect of his 'Total Revolution' and the restoration of power to the people-citizens. What he indubitably meant was that police organization needed to be converted from an apparatus of regime power towards an instrumentality for, and an everyday arena of, protection and promotion of the rights and interests of the worst-off Indian citizenry. In many a sense, K.S. Subramanian remains a residuary legatee of this vision.

This fully said, the notion of 'people's police' remains a 'weasel word!' Disparate social collectives so varied as the 'Maoists,' the extreme Hindutva moral vigilante 'police,' the 'honor killers,' the 'Khap' Panchayats, and the Fatwa-wielders, for example, also marshal and mobilize this imagery! Obviously, then, 'democratic' police reform agenda poses some difficulties for the police organization, given the lack of overall political consensus on how to address violence against the marginalized sections of society, especially Dalits, tribals and women. Outside this, police reform may not translate the law's promises into meaningful action. As this monograph acutely illustrates, considerations of competitive electoral politics hollow out 'reform' talk; it remains overly focused on the crime control, or anti-'terrorist' models planks. How may any PR talk and action cope with regime-sponsored criminal violence and forms of social and cultural violence 'legitimated' by civil society?

HUMAN RIGHTS PERSPECTIVE ON POLICE REFORMS

Respect for human rights does not come naturally to the Indian police and security forces, as this monograph poignantly illustrates. K.S. Subramanian is a safe guide towards

understanding the reasons for this state of affairs. Brutal and barbaric policing practices indeed prevail and need reiterated public condemnation. At the same moment, a mindlessness condemnation of Indian police and security forces is scarcely the way forward. Understanding the reasons for the ways in which some members of the police force routinely conduct themselves is different indeed from *justifying* some forms of atrocious conduct. This distinction is crucial, even if such endeavors at understanding are often attacked by human rights and social movement activists. I learnt this the hard way when I floated the idea of a ‘friends of police’ campaign in the 1980s!

In particular, I had in view what I described (in *The Crisis of Indian Legal System*) as the plight of the Indian constabulary in terms of a *neocolonial minority* — as a vast mass of inferior citizens and human beings. The iron grid of discipline under which it must work remains rife with abuses by senior police officials; as if it was further necessary and desirable, the Police Forces (Restriction of Rights) Act 1966, divests in the name of ‘discipline’ any residuary associational rights of the subordinate police-citizens. I raised the following question (backed with sufficient data): ‘When subordinate police stand constantly converted by their supervisors into instruments of human rights violations and abuse, and as agents of torture, how may superstructural reforms ever furnish an avenue for accomplishing the ‘people’s police?’ Till today, even as I write, there are hardly any PR proponents that take this question seriously. This is deeply unfortunate because it retards a much needed advent of the idea of constabulary as citizens entitled to human rights.

If this democratic imagery of citizen policing is to endure, we also need to acknowledge ‘police’ as the part of the citizen-peoples. If so, the PR question is not best formed in terms of superstructure reforms — issues such as currently raised by the Supreme Court’s unusual leadership towards police reform, which stand well analyzed in this monograph.

There is no question that citizen police constabulary should always respect the rights of co-citizens or others in their jurisdiction. Yet, it is not always the case that the civilian citizenry, especially in situations of civil disobedience or mass protests, fully acknowledge the basic rights of the constabulary. Violence against frontline police in such situations — resulting regularly in violent mayhem against them and frequent fatality — seems neither a major concern of the state nor of civil society; the families of constabulary are left to fend for themselves with a tattle of state support or civil society solicitude.

No doubt, standardless use of fatal force by police should never be condoned; yet, the question of cruel indifference towards maimed and killed police constables and officials evokes only not so benign civic indifference. I say all this knowing full well that I will, all over again, unfortunately stand indicted as ‘justifying’ police ‘atrocities.’ As happens, even in a one-person minority, I must run this grave narrative risk.

Moving on, I realize that a wider concern remains at stake. The Indian police’s insistence on a realm of exception from the due process/human rights based normativity is based on the defence of necessity: the argument here is that in some situations standardless use of force is necessary for the police to protect collective security and order. This necessity based argument, even when presenting a mixed bag type argument, needs to be taken seriously. It is said that people, including social and human rights activists and activist justices, endorse standardless use of violence when they or their kith and kin are subjected to criminal violence. All this is often argued in terms of crypto-sociology of the ways of Indian policing, if only because the Indian police officials also implead their

human rights when confronted with human rights oriented/based public opinion and criticism. Put another way, they ask us (the critics) also to remain mindful of their distinctive difficulties in performance of their human rights responsibilities.

Crowd/riot control methods often ‘necessitate’ opening fire and killing non-armed civilians. Counter-insurgency operations of necessity are said to authorize this defense. And further, we also hear that where efficiency and in-service promotions stand measured by the number of arrests and investigation, or even such targets, this necessarily produces recourse to standardless use of force. There is much that ought to be fully contested in this mixed bag of arguments — and I do not intend to do so here, save to say that ‘necessity’ often pleaded as exception tends to become the rule.²

Having said this fully, I need to risk a further remark: we lack sociological and anthropological understanding of extra-legal violence by the police personnel. This sort of understanding is necessary for a sustainable approach to redressing this problem.

Reverting then to the original question about any commonly shared perspective on human rights responsibilities of policing the nation, I need to do no more than invite your attention to the current controversy on the much delayed legislative proposal for the prevention, prohibition, and punishment for torturous, cruel and inhumane treatment. To say the least, the elected public officials are reluctant to endorse a human rights based agenda of police reforms.

The question then turns towards human rights education of the elected officials. I present the task thus arising in some bare and swift narrative strokes.

How may ‘we’ now translate the imagery of ‘people’s police’ in terms of ‘human rights friendly’ formation? In this regard, I suggest that Social Watch compatriots, may heed more fully to some precious normative developments fostered by the UN Crimes Commission formulation of the Basic Principles on the Use of Force and Firearms and the Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice.

In particular may I also draw your ungrudging attention to the United Nations codification entitled — ‘A Code of Conduct for Law Enforcement Officials,’ which also encompasses the conduct of prosecutors, lawyers, and judges? As far as I know, all forms of the Indian PR talk seem to have little use for these standards. We need to remove this usual form of illiteracy of human rights based standard-setting in our addressal of ‘democratic’ agenda of police reform.³

THE NARRATIVES OF FAILURE

These need a more anxious re-visitation, in terms of what I have thus far maintained. Put differently, if the agenda of police reforms oscillates so heavily in terms of the four paradigms, in what ways may we tell the stories of failure?

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2. None of the above grounds lead to a conclusion that endorses such a development. K.S. Subramanian also includes rightly, the paramilitary forces, who press the defence of state necessity to its utmost limit.
 3. At stake is not just what passes as human rights friendly ways of Indian policing, but rather the concerns about the cultural and social composition in terms of the ‘class’ character as concerns the IPS cadres and the ‘caste’ profiles of the bulk and generality of the Indian police constabulary. Indeed, one may not press the contrast much further, if only because the IPS cadres often tend to blur the ‘bright lines’ between ‘caste’ and ‘class.’

Some of you may want to indict me with confusing what all of us regard as crystal-clear concerns. I however have to run this risk because my studies guide me into thinking that there is no single paradigm/model at hand by which we may tell either success or failure stories.

To take but one leading example from K.S. Subramanian about the Supreme Court-induced superstructural police reforms: is this a success or failure narrative? How may we fully grasp K.S. Subramanian's narrative, demonstrating that '23 states ... (out of a total of 28) have either recently passed new police legislation or have commenced work to draft new police legislation' as constituting failure narratives?

I understand of course the charge that legislative considerations do not take fully into account public interest and social activist concerns. This is indeed a sorry state of affairs and needs to be redressed. However, if we were to think that Indian governance ought to fully respect an unscripted human right to participative law-making, we need to clearly say that all exercises of legislative power disrespecting this human right remain illegitimate and unjust.

This way of thinking — that I endorse entirely in principle — leads us far beyond the tasks of police reform and points towards a re-democratization of the practices of Indian representative/plebiscitary democracy, now haunted by the constellations of a 'New Sovereign' constituted by the variegated vanguard of social movement and human rights activist imagination.

Simply, even starkly put, all I am saying is that the PR agenda while no doubt an important mission remains after all a *frail vessel of a new politics of democratic hope*. While some of us may think that it remains the best move ahead, I suggest that we all also ought to respect different approaches concerning these reforms and a wider popular redress of the human rights wrongs, always troublesomely recomposed and reconstituted by the practices of plebiscitary and populist ways of constituting political 'representation.'

In saying this, I sincerely seek to discharge of my fundamental duties under Part IV-A of the Indian Constitution, especially to develop 'scientific temper,' the spirit of 'critical enquiry' and social reform as also the fostering of 'excellence' individual and collective; in all walks of life. I feel comforted by the fact that the republic of Social Watch India, also reminds all of us that the critics as well as advocates of police reforms coequally constitute the new estate of Part IV-A citizens.

28 February 2011

PREFACE

My writing career began as a pseudonymous political analyst for the *Economic and Political Weekly*, Bombay (as it then was) in the late 1960s and early 1970s during my posting in the Intelligence Bureau (IB) in New Delhi. I had been attached to the 'B' ('B' for Bolshevik!) group of branches in the organization dealing with the Indian communist movement. I was on the Kerala desk. It was a great learning experience for me; reading up a lot of party literature on the Indian communist movement, imbibing information and knowledge and mixing around freely with the then top guns of the IB in the then most prestigious group in the organization. Perhaps it still is! I still remember how elated I felt when my first article was published in the intellectually highly respected EPW and was followed by a charming letter from the one and only Krishna Raj, the editor appreciating and encouraging me to write more for the journal. I began to do that and thereby hangs a tale, which I do not intend to go into here!

I was a member of the Indian Police Service (IPS) but the Indian police were not one of my main interests at that time. During 1973–75, I was Visiting Fellow at the Indian Institute of Advance Study, Shimla, where I began, unconsciously as it turned out, my PhD work on the Indian communist movement, which stemmed from my experience in the IB. My experience as Director of the Union Home Ministry's Research and Policy Division led me on to join the Nehru Memorial Museum and Library, New Delhi on a fellowship to write on issues relating to social justice, violence and the state machinery. Professor Ravinder Kumar (alas, no more) then Director of that institution, once remarked that I was an 'unusual' bureaucrat in the sense that I had come to academics in mid-career rather than at the end as most bureaucrats did! I was not aware of the problem at all; what mattered to me was that I could continue the work I was doing in the Home Ministry. I published a number of papers, visited the Institute of Development Studies (IDS), Sussex (1989–90), as I had earlier visited Queen Elizabeth House, Oxford (1983–84) and continued to write and publish on violence, social structure and the bureaucracy. I retired as Director General of the Tripura State Institute of Public Administration and Rural Development (SIPARD) in 1997. This was a fitting culmination of my work in the government.

The Indian police as a problem requiring serious analysis came to me only after my participation as member of the Concerned Citizens Tribunal on Gujarat, 2002 led by Justice VR Krishna Iyer. It was the painful experience of studying and documenting the role of the Gujarat police in that violence that made me realize how urgently an analysis of the Indian police was required. I tried to do this in my subsequent book *Political Violence and the Police in India* (Sage, 2007). This was followed by another book titled

Understanding the Indian Police (Lexis-Nexis, 2009) authored jointly with Arvind Verma of the Indiana University at Bloomington, USA.

Given this background, I was happy to be invited by my good friend John Samuel and Himanshu Jha of the National Social Watch Coalition (NSWC), New Delhi, to write this critical assessment of the role of the police in India today. Following this invitation, I happened to read two stimulating reports on the Indian police which influenced me considerably: the report on 'Public Order' (2007) produced by the Second Administrative Reforms Commission (SARC) and the report titled 'Broken System: Dysfunction, Abuse and Impunity in the Indian Police' (2009) by Human Rights Watch (HRW).

The present UPA government, coming to power in May 2009, was quick to announce its intention to carry out long-neglected police reforms in India, even though no movement has been seen in that direction so far. It is a notorious fact that since the time the British instituted the modern Indian police structure in 1861 together with its legal framework of the Police Act (1861), the Penal Code (1860), the Evidence Act (1872) and the Criminal Procedure Code (1973), to the present day in 2010, no fundamental reform of either the police organizational structure or of its legal framework has occurred. This has given rise to the crisis situation that faces Indian governance today with pervasive police violations of the human rights of ordinary people across the country from Jammu & Kashmir to the troubled states of the North East and the disturbed areas of the Central Tribal Belt (CTB). It is no use saying, as many do, that organizations of the poor, some of whom are Maoists in CTB, also commit serious human rights violations and, therefore, the police find it necessary to use strong methods to contain their activities. A 'deliberative democracy' such as India, cannot afford to have a police structure which defies accountability and enjoys immunity and impunity to the extent of committing extra-judicial executions of the type that have taken place in Gujarat, Kashmir, the North East, the CTB and elsewhere. Many of these violations have been documented in civil society reports including the 2009 HRW report and the report by People's Watch 2009, which has documented that every year, 1.8 million people are being subjected to torture in police custody across the country. The Government of India has been in denial as they were in denial in the past that a variety of 'racist' discrimination existed in India against the Scheduled Castes and Tribes.

A serious contradiction seems to exist between the socialist and democratic imperatives of the Constitution of India and the police system and criminal laws that have been uncritically retained from the colonial era. Unless this contradiction is removed there can be neither peace nor justice in India. It was taken for granted by the Indian elite that with the promulgation of a democratic Constitution, the freedoms embodied in it would be automatically guaranteed to the people of India despite the retention, without any change, of the British-created police structure and its laws. This assumption requires more serious analysis than it has received so far. Neither the SARC report on 'Public Order' (2007) nor the report of the earlier National Police Commission (1979–81) addressed the issue. This failure has significantly impaired the human, social and legal rights of the ordinary Indian people. This fact has been graphically brought out in the HRW report, which has not received the attention that it deserves. The Indian police, HRW has said, remain a 'law unto themselves' and are indeed a 'dangerous anachronism.' The legal sociologist, Upendra Baxi (Baxi 2010) has, in a seminal intervention, raised several questions in this regard, which call for a cogent response.

Looking back at the history of the Indian police from 1861 to the present day, one can discern three distinct phases. In the first, lasting from 1861 to 1947, the Indian police provided the pivotal organizational and legal framework for surplus extraction from India for the building of capitalist industry in Britain. In the second phase from 1947 to 1980s, the Indian police played a similarly pivotal role in the development of a state-supported capitalist structure in India despite the promulgation of a 'socialistic' and democratic Constitution. In the third and current phase from the 1980s, which coincided with the collapse of Soviet socialism, the emergence of globalization and the adoption of market-oriented economic policies by the government, the Indian police are playing perhaps their most important role in facilitating the development of corporate capitalism in contemporary India. In view of their pivotal role today, the Indian rulers find themselves in no position to carry out any progressive changes in the police structure or its legal framework lest it should affect the successful implementation of the current economic policies.

All the three phases of development mentioned above, needed a police structure which would be effective in preserving security of the state, collect political intelligence and maintain public order. The British felt that the structure devised in the 1850s by Charles Napier based on the colonial Irish constabulary model, a paramilitary structure (Arnold 1986), was the most appropriate for an unruly and turbulent country such as India. The unrivalled role of the Indian police in suppressing political dissent and unrest before and after independence is a story that has not yet been told effectively enough so far. This role has become all the more important after the collapse of Soviet socialism and the emergence of globalization and corporate capitalism in India. The Indian rulers, in retaining this colonial paramilitary structure of policing, have been extremely faithful to their British predecessors.

The emergence of a much stronger Maoist movement, perceived to be the 'biggest internal security threat' to India, must be attributed to the intensified exclusionary processes generated by the market-oriented capitalist reforms of the present phase. This situation prevents the ruling classes from introducing democratic and secular police reforms, which would be antithetical to their economic policy arrangements. Any fundamental change therefore can come only as a result of pressure from below rather than from above. The ruling classes, however, are leaving nothing to chance and are continually strengthening the numbers of the Central Paramilitary Forces (CPFs), which today is said to stand at 1.3 million (Singh 2010). This is in addition to the state police forces (armed and unarmed) which stand at over 1.7 million as admitted by the present Union Home minister who proposes to enhance this strength further by recruiting an additional 0.8 million policemen over the next five years. The huge central police forces at the command of the union home ministry are being increasingly deployed for local conflict management in the states in contravention of the Constitution which provides that 'the police' and 'public order' are state subjects, not central subjects!

There has been an alarming increase in the incidents of torture, extra-judicial killings and custodial deaths and many other forms of human rights violations by the police and security forces in India in the recent period especially in J&K, the northeast and the Central Tribal Belt (CTB) comprising several states in central India. The immunity granted under section 197 of the CrPC and other special legislations seem to be encouraging increased human rights violations by the security forces.

It is worthwhile to briefly look at the role of the police in the Gujarat violence in 2002. The CCTG report showed a serious violation of rules and regulations by the police and their active connivance and participation in the violence in 20 of the 26 districts in the state. The violations included i) illegal registration of FIRs; ii) omnibus registration of FIRs; iii) FIRs registered without names of accused; iv) deliberate obfuscation of the identity of the accused; iv) unprofessional investigations; v) non-arrest of real culprits; vi) neglect of identification parades; vii) malicious combing operations; viii) neglect of victims of rape; ix) offensive media reports not acted upon; x) guilty political activists let off; xi) recommendations of the National Human Rights Commission ignored; xii) the Disturbed Areas (Special Courts) Act, 1976 ignored; and xiii) the Prevention of Damage to Public Property Act, 1984 ignored.

The Gujarat police thus violated the provisions of the Constitution; the UN Conventions and norms adopted by India; and the criminal law and procedures relating to the police response to mass violence (Mullik 1966).

Briefly, the Police Act delineates the structure and duties of the Indian police. These include execution of lawful orders and warrants issued by the competent authority; collection and communication of intelligence affecting public order; prevention of crime and public nuisance; bringing offenders to justice and arresting persons liable to be arrested; independent performance of duties without the need for any clearance from above; and liability for departmental action and punishment for any remissness.

The Criminal Procedure Code provides powers to arrest without warrant for 11 categories of persons on suspicion; use of force in effecting arrests in case of resistance; search without warrant; use of force in the dispersal of unlawful assemblies; preventive arrests; arrests on suspicion of commission of cognizable offences or injury to public property. Safeguards against their misuse are provided in the Police Act, the CrPC, the IPC and in the Constitution of India.

The realities of the total collapse of the criminal justice system, including the saga of extra-judicial killings which took place in Gujarat in 2002 continue to tumble out even today. The state junior home minister was recently arrested in connection with the notorious police encounter killings in 2005 of Sohrabuddin Sheikh, his wife and another person. The murder of the minister, Haren Pandya, who had dared to appear and testify before the Gujarat Tribunal still remains a mystery though the truth is bound to come out one day. Media reportage on other fake police encounter killings has been plentiful and many senior police have been accused of being guilty. 'Politicization of crime' and 'criminalization of politics' went hand in hand in Gujarat (*Frontline*, 27 August 2010).

Also documented are the encounter killings of Samir Khan Pathan in Ahmedabad in 2002; Sadiq Jamal Mehtar in Ahmedabad in 2003; Ganesh Kunte and Mahendra Yadav in Ahmedabad in 2003; Ishrat Jahan and others in Ahmedabad in 2004; Tulsi Prajapati in Banaskanta in 2006; and the Vatva killings in Ahmedabad in 2006. *Frontline* has provided a list of 34 people killed in fake encounters in Gujarat from 1990 to 2007. Senior police officials D.G. Vanzara, N.K. Amin and Abhay Chudasama along with junior officers have been arrested. Details of such encounter killings in other states of India are also published by the aforementioned journal.

In the north-east, similarly, a fact-finding visit to the tiny state of Manipur (population: 2.6 million) by the present writer and others, found that the commandos of the state police had been responsible for the encounter killing of 260 youths during January-July 2009. The figure for the year 2008 was 300. In the south, the state of Andhra

Pradesh witnessed 200 encounter killings every year during 1996–2001, as reported by credible sources (Balagopal 2010). A study (Mitta and Phoolka 2007) has documented the reprehensible role of Delhi police in the anti-Sikh carnage of 1984 in Delhi.

The present report on the role of the Indian police seeks to derive its credibility from these well documented incidents and the HRW report. The Government of India have on their record many unimplemented reports on police reforms including the latest report on 'Public Order' (2007) produced by the Second Administrative Reforms Commission headed by the present law minister, Veerappa Moily.

My participation as jury member in the hearings of two Independent People's Tribunal (New Delhi, 2009 and Ranchi, 2010) has reinforced my belief that the Indian police do not effectively perform their role as an agency for the delivery of criminal justice. They need to be radically transformed before they can be expected to achieve any of the Constitutional imperatives.

I am honoured to be invited by the National Social Watch Coalition to write this monograph so as to bring to light the many serious issues of police reform, which have been neglected and need urgent attention.

I wish to take this opportunity to thank all those who participated in the consultation on the draft paper held at the India International Centre, New Delhi on 10 September 2010. My special thanks are due to Professor Upendra Baxi who chaired the discussion ably in addition to providing a stimulating paper on the subject of police reforms, which is printed along with this report.

23 October 2010

K.S. Subramanian

ARE THE INDIAN POLICE A LAW UNTO THEMSELVES?

1. THE CONTEMPORARY INDIAN POLICE SCENE

The Constitution of India promulgated in 1950 provided for a democratic republican state, mandating justice, liberty, equality and fraternity in its Preamble, Directive Principles of State Policy and Fundamental Rights and including social justice and human rights among its core normative values.

Despite these wholesome provisions in the foundational document, the entire administrative and police systems created by the British for their colonial ends were retained intact at Independence, perhaps under the belief that once the foreign rulers were thrown out and the nationalist leaders take power, these systems also would change automatically in the direction of humane governance under their benevolent influence. However, this was a naïve expectation since repressive structures once set up do not undergo automatic change unless political systems change. This has clearly been the case in India.

To take an example, the offence of ‘sedition’ under Indian Penal Code promulgated in 1860 immediately after the revolt of 1857, was directed against the nationalist freedom movement. In a famous case in 1922, Mahatma Gandhi was charged with ‘sedition’ and he pleaded guilty to the offence saying that it was his nationalist duty to go to jail under the section because he was fighting against a ‘satanic’ government. In the changed post-independence situation, activists who fight for social, economic and political justice or call for changes in the state structure are often charged with ‘sedition’ misusing this provision of law, which should have been modified or dropped at the time of independence.

From the time of Jawaharlal Nehru to Indira Gandhi and others, no serious efforts were made to bring changes in the system of criminal justice administration, which includes the police and the criminal laws. The historically-inherited negative features of the Indian police organization, criminal laws and the intelligence organization were used by the British to suppress the Indian people but have remained in place well after independence. The Emergency experience of 1975–77 fully exposed the negative features of inherited system. The Janata party government which came to power after the defeat of Indira Gandhi in the general election of 1977 instituted the Justice Shah Commission of Inquiry, and the National Police Commission (NPC) to probe the excesses of the Emergency period and suggest reforms. The L.P. Singh Committee was set up to go into the political misuse of the Intelligence Bureau (IB) and the Central Bureau of Investigation (CBI) and recommend changes. The Shah Commission submitted a useful report. The

The entire administrative and police systems created by the British for their colonial ends were retained intact at Independence.

The Supreme Court directions are inadequate to deal with the fundamental crisis of the Indian police system.

NPC produced an eight-volume report (1979–81) suggesting a new framework for the Indian police. It was not, however, asked to examine whether the provisions of the IPC and the CrPC were fully in tune with the spirit and letter of the democratic and republican Constitution of India. The L.P. Singh Committee suggested a legal framework and a charter of duties for the IB and the CBI. All the recommendations contained in these reports were ignored by the Indira Gandhi government, which had been responsible for the imposition of the Emergency, when it returned to power in 1980.

In the following years too, the evils of the present system of policing were brought to light again and again, but without any resulting changes: police role in the anti-Sikh riots in 1984; the mass killings of Muslims in Mumbai in 1992–93; violence during and after the demolition of the Babri Masjid in 1992; the Gujarat carnage of 2002 and the anti-Christian violence in Orissa in 2008 and so on.

In 1996, Prakash Singh and N.K. Singh, formerly members of the Indian Police Service (IPS), filed a public interest petition before the Supreme Court of India requesting action on the long-ignored recommendations of the NPC. The Supreme Court issued seven directions on police reforms in September 2006.

The Police Act Drafting Committee (PADC) under Soli Sorabjee, set up in 2005 to recommend changes in the Police Act of 1861, reported in October 2006 submitting a Model Police Act. Further, the Second Administrative Reforms Commission (SARC), also set up in 2005, brought out a far-reaching report on ‘Public Order’ in 2007 also containing fundamental recommendations on police reforms.

Though the Supreme Court directions, based as they were on the basic recommendations of the NPC (1979–81), are, in the view of the present writer, inadequate to deal with the fundamental crisis of the Indian police system, we need to deal with them since they have the force of law. Some scholars have argued that the directions of the Supreme Court are ‘superstructural’ in nature and fail to touch ‘infrastructural’ issues in the police such as the living and working conditions of the constabulary or their associational rights (Baxi 2010). Other reservations have also been expressed on the Supreme Court directions (Desai 2009).

We begin by considering the Supreme Court directions and their impact and go on to examine several key issues which need to be addressed in conjunction with them to make the police reforms exercise meaningful. We then go into the recommendations of the SARC report on ‘Public Order’ (2007), which go well beyond those of the NPC and are more comprehensive.

Supreme Court Directions: Impact Analysis

These directions, addressed to state and central governments, are briefly summarized in box 1.1.

The directions were to be in force till such time as new police legislations, based on the PADC report, are brought into effect. As of 2008, 10 state governments had passed new Police Acts: Assam, Bihar, Chhattisgarh, Himachal Pradesh, Haryana, Kerala, Punjab, Rajasthan, Tripura and Uttarakhand. Some states such as Tamil Nadu, Goa and Gujarat, reportedly prepared Bills, which were yet to be enacted into law. Though the states of Tamil Nadu, Karnataka, Delhi and Maharashtra still operate Police Acts of dates ranging from 1859 to 1978, the other 13 states and six union territories are still governed by the Police Act of 1861. It is to be noted that though some state governments have

BOX 1.1 SC Directions

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|---|---|
| <ul style="list-style-type: none"> i. Constitute State Security Commissions to ensure that the state governments do not exercise unwarranted influence or pressure on the police; to lay down broad policy guidelines, and to evaluate the performance of the state police; ii. Ensure that the Director General of Police is appointed through a merit based, transparent process and enjoys a minimum tenure of two years; iii. Ensure that other police officers on operational duties (including Superintendents of Police in-charge of districts and Station House Officers in-charge of police stations) have a minimum tenure of two years' tenure; iv. Set up a Police Establishment Board to decide all transfers, postings, promotions and other service related matters of police officers of and below the rank of Deputy | <ul style="list-style-type: none"> Superintendent of Police and to make recommendations on postings and transfers of officers above the rank of Deputy Superintendent of Police; v. Set up a National Security Commission at the Union level to prepare a panel for selection and placement of Chiefs of the Central Police Organizations (CPOs), who should also be given a minimum tenure of two years; vi. Set up independent Police Complaints Authorities at the state and district levels to look into public complaints against police officers in cases of serious misconduct, including custodial death, grievous hurt or rape in police custody; and vii. Separate the investigation and law and order functions of the police. |
|---|---|

Source: CHRI, 2008

drafted new police legislations, they did not have any public consultation while doing so, which is a serious limitation. The state of Kerala had its own Police Act, 1960 before the Supreme Court directions came. Following the Supreme Court directions they passed the Kerala Police (Amendment) Act 2007 to modify the law in conformity with the directions. The Director General of Police for all States called for comments and suggestions from the public. Though the central government stated that they would enact a new law for the Union Territories under their control, nothing has been done so far.

A few states have expressed reservations such as that since political interference in police administration was minimal there was no need to set up State Security Commissions; that the setting up of the State Security Commissions would create a parallel power structure; that the grant of fixed tenures for officials as recommended would demoralize the police and limit the government's flexibility; that the role assigned to the Union Public Service Commission (UPSC) in the selection of the police chief was unnecessary; that fixed tenures to officials would affect their good performance; the setting up of a Police Establishment Board would duplicate existing systems; that the proposed Police Complaints Authorities would duplicate existing systems and constitute a financial burden; and that other national and state level commissions already exist to deal with complaints against the police; that there was no demonstrated need for such an agency; that such agencies would demoralize police; and so on.

Twenty-three of the 28 States had, by 2008, either passed new police legislations or commenced work in that direction. However, most displayed apathy on eliciting community participation.

In May 2008, the Supreme Court of India established the K.T. Thomas Monitoring Committee to review the progress of implementation of its directions and the reservations expressed by state governments. The Committees' two reports were reportedly not available even to the petitioners who took up the matter with the Court in the first place.

Though some state governments have drafted new police legislations, they did not have any public consultation.

TABLE 1

<i>State</i>	<i>Progress on the Police Acts</i>
Madhya Pradesh	Drafting underway
Andhra Pradesh	Drafting underway
Arunachal Pradesh	Drafting underway
Jharkhand	Drafting underway
West Bengal	Constituted a drafting committee in March 2007
Jammu & Kashmir	Drafting Committee set up
Sikkim	In final stages of drafting
Karnataka	Drafting underway
Manipur	Police Reforms Bill drafting underway
<i>State</i>	<i>Bills</i>
Tamil Nadu	Tamil Nadu Police Bill 2008 tabled in Legislature on 14 May 2008
Gujarat	Bombay Police (Gujarat Amendment) Bill 2007 passed by Legislative Assembly 20 July 2007, referred to State Law Commission
Goa	Goa Police Bill tabled in the Legislative Assembly 27 August 2008
Orissa	Orissa Police Bill submitted by working group to drafting committee
<i>State</i>	<i>New legislation passed recently</i>
Bihar	Bihar Police Bill passed 28 March 2007, Governor's assent 30 March 2007
Tripura	Tripura Police Bill passed 29 March 2007, Governor's assent 7 April 2007
Chhattisgarh	Chhattisgarh Police Bill passed 20 July 2007, Governor's assent 27 September 2007
Assam	Assam Police Bill passed 8 August 2007, Governor's assent 30 August 2007
Haryana	Haryana Police Bill passed 21 March 2007, Governor's assent 28 May 2008
Himachal Pradesh	Himachal Pradesh Police Bill passed 28 August 2007, Governor's assent 21 September 2007
Kerala	Kerala Police (Amendment) Act passed 19 September 2007
Rajasthan	Rajasthan Police Bill passed 21 September 2007, Governor's assent 30 October 2007
Punjab	Punjab Police Bill passed December 2007, Governor's assent 24 January 2008
Uttarakhand	Uttarakhand Police Bill passed 2 January 2008, Governor's assent 2 January 2008

Source: *Seven Steps to Police Reforms*, Commonwealth Human Rights Initiative (CHRI), New Delhi, 2008.

This has stymied civil society from voicing informed concerns over the continued delays. The lack of transparency makes it unclear whether the Committee has established a time table or made minimum demands on the non-compliant states. New laws, in some cases contrary to SC directives, have been passed by some states, but the Committee will not assess those laws until it finishes reviewing the responses of the completely non-compliant states, a process which has proceeded with no announced deadline.

The basic thrust of the Supreme Court directions was to curb political interference in the routine of daily police work. The major issue of accountability to community was

BOX 1.2

“The police cannot be used for subverting the process of law, promote the growth of authoritarianism and shake the very foundations of democracy. The commitment, devotion and accountability of the police have to be only to the rule of law.”

Supreme Court of India in a judgment delivered on 22 September 2006 in WP (Civil) 310 of 1996, Prakash Singh and Others vs. Union of India and Others

ignored (Desai 2009) and the procedure for approaching Police Complaints Authorities was not simplified.

The Court noted that the police are both a law enforcement agency and an institution to protect the rights of citizens enshrined in the Constitution. Misuse and abuse of the police have reduced them to a mere tool in the hands of political masters and caused numerous violations of the rights of the people. There was a need to redefine the role and functions of the police, provide for their accountability to the law of the land in accordance with the core recommendations of the NPC report (1979–81).

The Court felt that considerable damage had been done by the political misuse and abuse of the police before, during and after the Emergency. The National Human Rights Commission (NHRC) also stressed the need to preserve the integrity of the investigative process and to insulate it from ‘extraneous influences.’ The Union Home Minister’s letter to state Chief Ministers and others (April 1997) also referred to the ‘overdose of unhealthy and petty political interference at various levels starting from transfers and postings of policemen of different ranks, misuse of police for partisan purposes, including political patronage of corrupt police officials.’

A key lesson is that police reforms in India cannot be limited to the issue of prevention and detection of crime but would have to extend to other issues such as maintenance of ‘law and order,’ ‘security of state,’ collection of political intelligence, protection of vital installations, traffic management, local law and order problems, VIP security and others. Though the Supreme Court directions were seen as being mainly in the interest of superior officers who resented ‘political interference’ in their work, other key issues too need to be addressed in examining police reforms. Some of these are brought out below.

i) ‘Politicization’ of the Police

The NPC examined the issue of police interactions with politicians, the political and administrative executives (1979, Volume II: 28–30). It made distinctions between political ‘intercession,’ ‘intervention’ and ‘interference.’ While the first two may be condoned, the third was considered objectionable. The investigative process, in particular, had to be free of any kind of ‘interference.’ It recommended the separation of the domain of ‘investigation’ from that of maintenance of ‘law and order.’

It has been argued that a major reason for the ‘politicization’ of the Indian police has been the lack of professionalism and accountability within the organization (Verma 2005). Part of the blame for the situation is to be placed on police leadership and their management practices. ‘Politicization’ of the police is an outcome of the nature of the political

Overdose of unhealthy and petty political interference at various levels.

Both politicians and police officers must realize that by ignoring needed reforms, the police are losing their ability to provide basic services to the community.

order in India. Police become useful in political battles over power, pelf and profit. The police with the very nature of their capacity and legitimacy in the use of force, and their availability at the cutting edge level, become 'useful' not only for political gain but can also be used in organized crime. The destruction of the Babri Masjid in 1992 or the killing of Sikhs in 1984 took place precisely because of covert collaboration between politicians in power and the local police. Intimidation, arrest and threats of arrest are often used by the police to help politicians in their battles against their political rivals. Police provide political intelligence on the activities of their rivals to politicians. Being unprofessional and being partisan in their work, police become useful tools in the hands of politicians.

Verma has argued that the nature of political interference arises from internal organizational problems and poor performance. Corrupt officers with their indifference to citizens' problems and their personal misbehaviour, provoke or invite political intervention. They were unaccountable to the public under the British Raj and helped the latter to maintain itself through the use of brute force. The coming of Independence made the senior police officials accountable to elected politicians. But their organizational practices remained unchanged. Though the police organization remained unchanged, the political elites had been radically transformed. Democratic politics brought people's elected representatives and community leaders to political power. The transition from colonial rule to Independence and democracy empowered people to demand that the police function according to law. Verma (2005: 173) adds: 'politicization of the police is the price (paid) for the democratic functioning of the country.'

Since political interference in police work arises from the need of elected people's representatives to espouse the causes of their constituents, specific forms of interference are identified.

Verma argues that the major factors behind the growth of political interventions are the shortcomings and weaknesses in police administration. The failure of the police to address the problems of the people and to provide services in a fair and professional manner compels the people to approach the politicians for help. These shortcomings, he says (Verma 2005: 177), arise from the 'unaccountability of the police to the people, the lack of well conceived policies and problems of data management.'

Though police reforms, for their implementation, require competent officers, it often happened that superior administrative positions were held by officers beholden to politicians for their positions. This calls for IPS officers becoming 'professional managers' rather than 'colonial satraps.' Both politicians and police officers must realize that by ignoring needed reforms, the police are losing their ability to provide basic services to the community. This builds up an explosive situation in which people begin to lose faith in the system.

Verma's excellent analysis perhaps misses the point that often the nature of the political intervention could be related to criminal ends rather than community welfare. The common man fails to benefit from 'political interference' in police work and increasingly anti-social elements do. Thus, 'politicization of crime' becomes increasingly intermixed with 'criminalization of politics.'

ii) The 'Colonial-repressive' Structure

Arnold (1986) and Baxi (1982) stress the twin evils of paramilitary and 'colonial repressive' structures of the Indian police system. These aspects are altogether neglected in most studies, including the reports of the NPC.

Arnold states that the pre-independence police system reflected colonialism's need to establish a relationship of control, coercion and surveillance over a subject population. He delineates its structural and organizational features, essential to a regime of surplus extraction. The colonial Irish constabulary became the model for the Indian police after considerable experimentation by the British preceding the Police Act of 1861. This model was a centralized paramilitary organization. Its chief officer was called Inspector General who was directly subordinate to the Chief Secretary. 'In its services to a colonial power in a restless and violent country, in its availability as an armed force under civilian control and in its centralized organization' the Irish police structure was considered ideal for India. The impact of the 1857 revolt only made it all the more relevant to the India situation. The Police Act 1861, the IPC 1860, the CrPC 1862 and the Evidence Act 1872 were based on the lessons of 1857. The main purpose was to create the Indian police as a substitute for the Indian army in the wake of the revolt. This police structure was found most useful in the British governance of India. The Indian rulers who came to office in 1947 found it only too useful.

iii) Structural Features at Independence

According to Arnold (1986), the basic characteristics of the structure in 1947 were: i) strict subordination to the civilian administration despite increasing relative importance within the administration; ii) strengthening of ties between state police and central government as the intelligence network expanded and established an independent line of communication that extended right up to the Inspector General; iii) the secrecy and political importance of the intelligence wing, which gave the police bureaucratic prestige and mystique; iv) unaccountability to the public and their elected representatives; v) coercive strength and disposition with frequent use of high levels of state violence sanctioned by departmental custom and entrenched in police procedure and mentality; vi) limited understanding of the causes of industrial and agrarian unrest; vii) institutionalization of a paramilitary wing within the police organization; and viii) close identification with propertied interests. Further, the belief in the value of periodic exhibitions of force; the interplay of police and military responsibilities; the equation of force with authority and opposition with crime; the absence of public accountability; the reliance on supervisory and classificatory systems of manipulation and control were other characteristic features.

The new feature of policing after 1947 was the increasing sway of the politicians over the police in place of its subordination to the civilian administration; and the increasing role of the intelligence and paramilitary police in the governance of the country. The CrPC did not make any fundamental changes to the basic framework of the existing laws.

In the late 1970s, E.M.S. Namboodiripad said that India had a system of 'democracy at the top and bureaucracy at the bottom.' Noting the 'relative shift in the importance of the civil service and the police' an astute civil servant feared that 'the police can easily be used as an instrument of power, not on the effective leash of normal civilian control' (Rai 1976). This has been topped by the 'massive growth of centralized police power' in the shape of Central Paramilitary Forces (CPF) and a concomitant growth of the intelligence services which had grown in number from two to eight by the 1990s (Raman 2007).

Baxi (1982) calls for a critical review of the paramilitary model of police organization in the interest of the future of rule of law in India. The 'colonial repressive' character

Feature of policing after 1947 was the increasing sway of politicians over the police rather than its subordination to the civilian administration.

Overwhelming bulk of the police force, the constabulary, has been denied minimum conditions for a decent life.

emerges when the ruling elite of a decolonized society maintains its inherited police organization ignoring justified demands for it to be adapted to the needs and aspirations of an independent, democratic and republican polity.

The subordinate police constitute the bulk of the Indian police and addressing their problems would address the bulk of the problems of the Indian police. The Indian subordinate police constitute a vulnerable, exploited and neglected *minority*, indeed a *despised* minority. Baxi recalls Justice Mulla's famous characterization of the Indian police as the single biggest lawless group in the country. However, the denigration of an entire group of people without regard to their plight is itself justification of the description of the police as a *minority*. The subordinate police have been victims of lawlessness and injustice of their superiors. The overwhelming bulk of the police force, the constabulary, has been denied minimum conditions for a decent life; deprived of basic rights including the right of association and articulation of just demands.

Baxi adds that the key to basic changes in the Indian police organization lies not just in better wages, improved service conditions, and adequate amenities. The transition from colonial police to democratic police can only come when the notion of police as a paramilitary organization is abandoned. This conception is responsible for 'hierarchical tyranny,' lack of worthwhile grievance procedures, extensions of military ideas of police discipline and violation of due process and the practice of torture.

iv) Criminal Law Reform

Maintenance of colonial rule in India was the main objective for the British. Crime control was an 'additional' objective to be achieved by inducing fear of police (Gupta 1979). The Irish colonial paramilitary police organization was specifically designed for the infliction of state violence.

BOX 1.3

The Indian Criminal Law

The penal and procedural codes enacted in the early 1860s make it clear that suppression of the people was the primary British goal after 1857. The Indian Penal Code begins with chapters on criminal conspiracy and 'offences against the state,' as against the common preoccupation of the police everywhere with the prevention and detection of offences against the person and property. These find a place in the IPC only from Chapter XVI and Section 299. The Code did not repeal obnoxious Regulations of earlier times such as the Bengal Regulation III 1818, used freely to deport leaders of the freedom struggle; the offence of 'sedition' was included in the Code in 1870.

In the CrPC, the chapters on security for keeping the peace and maintenance of public order, including the use of force by the police, take precedence over provisions for the investigation and trial of criminal offences.¹ In the Police Act of 1861, priority is given to collection of political intelligence. The prevention and investigation of crime is included among the duties of the police only in section 23. The Act further provides for punitive policing at the cost of the local population in the event of 'disturbances' and for the appointment of private persons as 'special police officers.' Besides the police officers were vested with vast powers and the lowest officer could arrest anyone and keep him in confinement for at least 24 hours.

1. The placement of sections in the CrPC does not mean that the later sections are in any way subordinate to the preceding ones. In fact, the sections mentioned are proceedings not related to the police (although often initiated by them), but are proceedings which take place before an Executive Magistrate. Admittedly, these proceedings are liable to misuse but have, equally often been struck down on appeal.

The imperial imperative led to the recruitment of the constabulary from the lowest strata of society so that they could be made to use violence against the people without scruples. The inefficiency in the prevention and detection of crime, the bad reputation and unpopularity of the police were due largely to the low caliber of the subordinate police which however did not prejudice their repressive capability. The same imperative led to senior officers of the police being recruited, in the first instance from the army and reservation of all such appointment for Europeans. Some Inspector Generals were drawn from the army but the majority continued to be from the ICS till 1919.

The development of elaborate machinery for the collection and dissemination of political intelligence was started by Lytton in 1877 with the first manifestation of political unrest, the latter ultimately leading to the formation of the Indian National Congress. Curzon made a significant contribution by setting up the Intelligence Bureau (IB) in 1904 and the provincial Special Branches on a systematic basis. These organizations were expanded and became of value to the government. They have continued after independence with governments at the centre and the states finding them very useful.

Gupta (1988) points out that the Indian National Congress (INC) in its very first congress had demanded the appointment of Royal Commission on administrative reforms. On assuming power in 1947, the party forgot about their own demand. It failed to introduce administrative changes in tune with the provisions of the Constitution. The police remained distant from the people as in British days and were as hated as before. The role of intelligence agencies was not redefined to protect fundamental rights to freedom of expression, association and movement. The law on preventive detention and other repressive legislations were retained and used to curb the right to use law peacefully to bring about social change (Kannabiran 2004). The L.P. Singh Committee report of 1978 suggested fundamental changes in the working of the IB but was ignored. The persistent use of repressive criminal laws in independent India and their contribution to the unpopularity and anti-people character of the police are well documented (Kannabiran 2004; Haragopal and Jagannatham 2009).

The British legacy to independent India was 'a police force with a very small Indian leadership and a subordinate stratum studiously trained in the use of brute force and in which extortion, corruption and malpractices had been tolerated with a callous indifference to the welfare and dignity of citizens and was allowed to assume the sanctity of tradition; a system of supervision and control, which prevented the development of professionalism in the force and was antagonistic to the establishment of the rule of law; a body of criminal laws, which was hardly conducive to the control of crime and criminals; and a totally ineffective machinery for the security of the rural areas' (Gupta 1979).

It may be mentioned here that the Law Commission of India has from time to time recommended amendments to criminal law which have not been implemented or tardily implemented, reflecting the unwillingness or inability of the ruling elite to change the structure. There are also important judicial decisions striking down unconstitutional and illegal behaviour of the police which have now become part of law.

v) Mass Violence

India is characterized by endemic mass violence (Subramanian 2007) especially in J&K, northeast and the Central Tribal Belt. This calls for the existence and use of extraordinarily

The Congress party failed to introduce administrative changes in tune with the provisions of the Constitution. The police remained distant from the people as in British days and were as hated as before

BOX 1.4

Police monopoly over conflict information and its classification in the government has been allowed to persist from colonial days. The Ministry of Home Affairs (MHA) relies even today on the police-dominated IB for information on conflict and violence in the country. IB always conveyed its reports to MHA in secret or top secret covers and they are considered more reliable than information emanating from other sources. Naxalite violence and counter-violence by state agencies in Chhattisgarh has been a matter of deep concern. Considerable gaps, biases and contradictions between IB reports and public reports on the subject can be easily demonstrated.

However, MHA always relies on IB reports. This is a tradition which goes back to colonial times when the British used the IB as a barometer in sensing the public mood for law and order purposes, paying little attention to the real nature and causes of discontent and agitation. A large number of repressive legislations have been formulated and implemented in the post-independence period to manage mass violence in different parts of the country (Haragopal and Jagannatham 2009). Government policy in this regard appears to be mainly based on the precedents evolved during British rule despite the rhetoric of democratic consensus.

sensitive political antennae in the Union Home Ministry to collect and realistically analyze information from various sources including the state police and the central IB.

vi) The Role of the MHA

The MHA in New Delhi is the nodal agency for conflict analysis in the Government of India. It collects data from IB and other police sources across the country. It prepares policy papers for use in government and for rendering advice to state governments. Dissatisfied with 'over-classification' and other limitations in IB and police reports, the then Union Home Secretary L.P. Singh set up the Research and Policy Division in the ministry in 1967 to prepare independent policy papers.

Briefly, the sources of information for the MHA are two: state police agencies and the central Intelligence Bureau (IB), also a police organization. Both agencies coordinate the information which flows to the MHA and often present the same information. The reports on conflict situations are generally classified.

The MHA is a powerful agency in charge of modernization and development of state and central police forces. It raises its own police force in the form of central police forces (CPFs) whose total strength is estimated today to be over one million armed men. The technocratic Union Home Minister has revealed that the financial allocation for internal security in 2008–09 was Rs. 25,923 crore. In 2009–10, it rose to Rs. 38,114 crore. In 2010–11, after the first supplementary, it stood at Rs. 40,000 crore.⁴ A substantial part of this money goes for the maintenance of the CPFs.

The MHA's responsibility for conflict analysis is all embracing. It is responsible for keeping the central government, including the Union Home Minister, the Prime Minister, the National Security Council and its associated bodies informed of important developments. It prepares policy papers and formulates policy with regard to political and social violence such as Naxalite violence, violence against SCs and STs, communal violence, separatist violence in the north-east and J&K, tribal insurgency in the Central Tribal Belt (CTB) and others. It advises state governments on the strategy and tactics of

4. Speech at the DGPs/IGPs Conference, New Delhi, 2010.

dealing with violence across the country. The Union Home Minister has revealed that many groups espousing 'Left Wing Extremism' exercise influence in 20 states and over 2000 police stations in 223 districts and that the CPI (Maoist) remains the most potent of these groups with a presence in 17 states and are responsible for 90 percent of the extremist violence in the country.⁵ In spite of its control of enormous central and state police forces, the resources and quality of analysis done by the MHA on conflict issues is at best ad hoc, immature, and lacking in interdisciplinary inputs of knowledge, skill, vision and expertise. There are no mechanisms for policy making in the ministry at the highest level and too much dependence on police and intelligence information at the cost of human development inputs. More seriously, the ministry tends to ignore meaningful development inputs emanating from its own agencies such as the Planning Commission, Commissions for the Scheduled Castes and Tribes and so on. Press reports, however reliable, are not taken seriously in policy analysis by the ministry. As the most important and the most powerful policy making agency in government with respect to conflict resolution, the MHA seems to have failed comprehensively.

Realizing the information limitations of the MHA, former Home Secretary L.P. Singh set up in 1967 Research and Policy (R&P) Division in the ministry to prepare multidisciplinary analysis of conflict situations such as Naxalite violence, communal violence and other related aspects, avoiding the obsession with secrecy characteristic of IB reports. The Division prepared a seminal paper on the then newly emerging Naxalite (now Maoist) movement and warned that 'the green revolution would turn into red revolution' in the absence of far-reaching agrarian reforms. Similarly independent reports were prepared on communal and other patterns of violence. The R&P Division, however, became a victim of bureaucratic jealousies and rivalries and was eventually wound up in the 1990s aggravating the crisis of information in the MHA. In the recent period, a comparison of the IB reports and public reports on Maoist violence in Chhattisgarh is telling. While the IB reports stress the state security and public order angles, the public reports stress human security and humane development. This unsatisfactory situation at the central government level is replicated at the level of state government.

Again, the 28th Report of the Commissioner for the Scheduled Castes and Scheduled Tribes submitted to the President of India in 1986 noted the failure of official agencies to deliver on the development front as a major cause of the rise of extremist violence among the adivasi communities. And yet the report was totally ignored. The same point was made with the same consequence in the report of the Planning Commission's expert group on 'Developmental Challenges in Extremist Affected Areas' submitted in 2008.

A former district magistrate of Kalahandi in Orissa has written (Das 2010) that in 1966 emerging famine conditions in the district had compelled him to write to the then state government suggesting ameliorative measures but the latter had not agreed with him and asked him not to take any special steps since the conditions in the district were not so bad. The author wryly observes that the district magistrate of Kalahandi a century earlier in 1866 had written a similar letter to the state government about conditions in the district and that the state government had responded to him on similar lines! Governments, it seems, learn nothing and forget nothing!

In spite of its control of enormous central and state police forces, the resources and quality of analysis done by the MHA on conflict issues is at best ad hoc, immature, and lacking in interdisciplinary inputs of knowledge, skill, vision and expertise

While the IB reports stress the state security and public order angles, the public reports stress human security and humane development.

5. Speech at the DGPs/IGPs Conference, New Delhi, 2009.

vii) Other Civil Society Criticisms of the SC Directions

There have been several criticisms of the Supreme Court directions on police reform (Baxi 2010; Desai 2009).

Desai states that the perspective in these directions is that of the superior police officers whose main complaint is over political and executive interference, which avoids the issue of accountability to the community. A large number of police atrocities, including torture in police custody, take place every day and there is a need, as recommended by the NPC in its eighth report (1981), to remove the 'protection from prosecution available to police officers in the CrPC under sections 132 and 197 for acts committed in the course of performing duties' and allow the guilty police officials to be prosecuted. Ensuring professional autonomy to the police as proposed, along with continuance of the protective provisions of the CrPC mentioned above, would make it doubly difficult to bring guilty police officials to book. However, the Supreme Court judgment in the Prakash Singh case on police reforms and the Sorabjee Committee's Model Police Act, provide that in dealing with complaints against the police, the state level Police Complaints Authority must first be approached. This makes it difficult to prosecute the police even for heinous crimes. Therefore, police monitoring committees should be set up at local levels associating human rights groups and individuals with impeccable credentials. The cells should be empowered to make surprise visits to police stations and lockups, interview inmates, look at the records and make observations and recommendations. This job, now expected to be done by supervisory officers of the police, has not been done effectively. Further, the appointment of a High Court judge to the Police Complaints Authority alone does not ensure that justice is done. The mandatory appointment of a civil society person to the Police Complaints Authorities is required; field visits should be undertaken by experienced investigating officers with powers of investigation under the criminal law. Moreover, i) the Supreme Court is silent on torture, custodial violence and the rights of arrestees and failure of the police to follow legal requirements; ii) the Supreme Court fails to appreciate that democratic policing includes a role for civil society. Features of democratic policing include that priority be given to the needs of individuals and groups, accountability to law and not the government is ensured, unfettered civil and political rights be ensured, and transparency in police activities exist; iii) the Court fails to appreciate the routine police bias against minorities, women and dalits, their denial of associational rights to subordinate police and their tendency to side with the haves against the have-nots.

Baxi (2010) has observed that the Supreme Court directions are in the nature of 'superstructural' reforms and do not address 'infrastructural' issues such as the deplorable living and working conditions of the subordinate police and the denial of associational rights under 'The Police Forces (Restriction of Rights) Act, 1996.' Subordinate police are constantly converted into instruments of human rights violation and torture by their superiors. Baxi calls for the creation of 'people's police' including acceptance and observance of the United Nations Torture Convention and other international human rights obligations as codified in the UN booklet 'Code of Conduct for Law Enforcement Officials.' Other documents in this direction include UN Crimes Commission's 'Basic Principles on the Use of Force and Firearms' and UN 'Standards and Norms in Crime Prevention and Criminal Justice.'

Ensuring professional autonomy to the police as proposed, along with continuance of the protective provisions of the CrPC, would make it doubly difficult to bring guilty police officials to book.

Subordinate police are constantly converted into instruments of human rights violation and torture by their superiors.

Further, the 'democratic' agenda on police reform would call for study of the cultural and social composition of IPS officers and the 'caste' profiles of the bulk of the constabulary without, however, blurring the line between 'caste' and 'class.'

Reform debates have tended to be 'technocratic' making the police more effective in terms of its assigned roles and functions with emphasis on recruitment and training, efficient working conditions, appropriate pay structure and investment on infrastructure. 'Autonomists' have called for the distancing of elected public officials from police performance of the statutory duties. A retreat from the 'due process' model to the 'crime control' model of criminal justice is also often advocated by others (Malimath 2003).

The police as citizens must respect the rights of co-citizens but they often insist on deviating from the norm arguing that some situations demand standard less use of force to protect collective security. Counter-insurgency operations are said to necessitate use of such standard less violence. This must not be allowed since 'necessity,' often pleaded as an exception, has a tendency to become the rule.

Baxi also calls for attention to the legislative proposal for the prevention, prohibition, and punishment of torture, cruel and inhumane treatment though elected public officials are clearly reluctant to endorse this. This calls for human rights education of the elected officials. Legislative considerations, however, do not take full account of public interest and social activist concerns. This state of affairs can be addressed only by accepting that human rights considerations must allow participative law-making too. Exercises of legislative power, disrespecting the right to participatory law-making is illegitimate and unjust.

viii) Police Torture

Baxi (1982) has said that 'custodial violence and torture are an integral part of police operations' in India. Bayley (1969) felt that there was 'enough evidence of gross mistreatment to keep the issue of police brutality alive in the public mind.' While the issue of definition and assessment may be problematic, the UN Convention on the Prevention of Torture gives a broad enough definition to include a considerable variety of police misbehaviour in defining torture.

Baxi explained the contexts of police torture: containment of revolutionary protest movements, management of internal disorder during 'national emergencies,' external aggression or war, terrorism, inter-group violence and communal violence, investigation of cases, extra-judicial executions, and vigilante behaviour ('Greyhounds' in Andhra Pradesh, 'Salwa Judum' in Chhattisgarh). The nature and range of police torture in crisis contexts is different from such torture in the investigation of crimes.

The British were explicit about torture by police and revenue authorities. In 1855, the Torture Commission report described police practices and the plight of victims in terms which appear to apply to police practices even today (Gupta 1974). They said that police torture was 'customary' in India. The Indian rulers have been much more bashful about using the term torture. Baxi has noted that the terms of reference of the NPC, set up after the Emergency, did not use the term torture but referred only to the 'use of improper methods' and the 'extent of their prevalence' in police investigations!

In 2008, People's Watch, a voluntary organization, brought out a report on police torture in India based on investigations in nine states and 48 districts. The report revealed

Legislative considerations do not take full account of public interest and social activist concerns.

In the name of investigating crimes, extracting confessions, and punishing perpetrators, torture is inflicted not only on the accused, but also upon bona fide petitioners, complainants, informants and innocent bystanders.

that ‘in the name of investigating crimes, extracting confessions, and punishing perpetrators, torture is inflicted not only on the accused, but also upon bona fide petitioners, complainants, informants and innocent bystanders. Frequent police practices include assault, physical abuse, custodial death, rape, threats, psychological humiliation and deprivation of food, water, sleep and medical attention. Torture is also inflicted on women and girls in the form of custodial rape, molestation and other forms of sexual harassment. The report suggested that 1.8 million people fall victim to police torture each year. In most of these cases the victims are vulnerable sections of the society, particularly dalit women, religious minorities and the poor. Many of them ‘fear further prosecution or retribution, and so suffer in silence.’ The report was discussed in public fora with the participation of some former police officials but no official response to the report has been forthcoming. Further, India is yet to ratify the UN Convention on the Prevention of Torture. Ratification would involve legislative follow up and the enactment of a law authorizing visits by UN Special Rapporteurs.

The prevalence of police torture in British India led to the provision in the Evidence Act making confessions to the police inadmissible as evidence in court. This is still the law. Both the National Human Rights Commission (NHRC) and many state level commissions have stated that the largest number of complaints of human rights violations received by them have been against the police. HRW in its 2009 report provides case studies of police torture in India. The recent cases of extra-judicial killings by the police, especially in Gujarat, J&K and Manipur have been quite alarming.⁶

A large number of police atrocities are reported daily and torture is a routine law enforcement strategy. The NPC in its eighth report recommended that the protection available to various categories of public servants under sections 32 and 197 of the CrPC, for acts that they commit in the course of performing their duties, should be withdrawn. These provisions give virtual immunity to the police from being prosecuted as very rarely sanctions necessary for investigation and prosecution are given and even when they are granted, by the time this process is completed the evidence is either lost or destroyed.

In this context, it may be noted that the Government of India recently has prepared a draft Bill on the prevention and punishment of torture. Its provisions, however, have been found to be deficient by international norms and standards (Nair 2010; Ferreira 2010).

ix) Police Powers of Arrest

Recent amendments to section 41 of the CrPC that deal with the power of the police to arrest aim at balancing the liberty of citizens and the maintenance of peace and law and order (Sankaran 2009). ‘Crime in India’ 2007, published by the National Crime Records Bureau (NCRB) reported that the number of persons arrested in 2007 was 27,80,559 under the Indian Penal Code (IPC) cases and 40,87,246 under special and local laws, making a total of about 67 lakhs (6.7 million). The NPC in its third report said that the power to arrest is one of the chief sources of corruption in the police. It added that by and large nearly 60 percent of all the arrests made by the police were either unjustifiable

6. See the Independent Citizens’ Fact Finding Report to the Nation on Manipur at <http://www.countercurrents.org/manipur.pdf>

BOX 1.5 Types of Torture and Ill-treatment

The Supreme Court has said, 'dehumanizing torture, assault and death in custody are so "widespread" as to raise serious questions about the credibility of rule of law and administration of criminal justice.'

A man who worked with the Bangalore police for five years as a volunteer described common methods used by the police to elicit confessions, which were consistent with those recounted by victims and described in reports by local groups:

- Beating of the soles of victim's feet; this causes excruciating pain but does not leave visible marks. It is most commonly used against petty criminals to elicit information regarding stolen property or the identity of others involved;
- Waking the victim at 2 a.m., or in the midst of a deep sleep, and beating him with *lathis*. Wooden rods known as 'rollers' may be pressed and rolled on the victim's legs to cause extreme pain;
- Shock treatment administered by using a car's electrical generator, or dynamo, and applied to ear lobes, nipples, and genitals. This is said to be most commonly used in theft cases;
- In the 'Bombay treatment,' tying the victim's hands and forcing him to squat on a rod balanced between two tables. Pressure builds up on the ankle nerve. While the abuse leaves no visible marks, if the victim is left in the position for longer than an hour, he may suffer permanent nerve damage;
- In the 'aeroplane treatment,' using lathis or other rods to hang a person upside down and beat them.

Human Rights Watch also heard reports of sexually abusive and degrading treatment occurring in police stations. Other groups have reported the police's practice of dipping rods in 'chilli' powder and inserting them into the rectal area of suspects.

Source: HRW 2009

or unnecessary. The Supreme Court has issued a set of 11 requirements to be followed in all cases of arrest or detention. The NHRC has also issued detailed guidelines on the issue of arrests made by the police. Police reform exercises in India would not be effective without the reiteration of the requirements to be followed by the police while making arrests.

x) Police Corruption

For a serious discussion of police corruption one may have to begin with studies by experienced former civil servants (Gill 1999; Srivastava 2001).

A three year intensive study of the Rajasthan police completed in 2008 revealed that 71 percent of the people did not report crimes because they believed that the police could

BOX 1.6

On the people's perceptions of the police, the SARC notes the observations of the NPC and several state level reforms commissions, which note that the egregious features of the police are 'politically oriented partisan performance of duties, partiality, corruption, inefficiency, degrees of which vary from place to place and from person to person'; and public complaints of 'rudeness, intimidation, suppression of evidence, concoction of evidence and

malicious padding of cases.' Further, a study on petty corruption undertaken by Transparency International and Centre for Media Studies had shown that 80 percent of the respondents who had dealings with the police had paid a bribe to them. Out of 11 public service agencies, the police were regarded as the most corrupt and 74 percent of those who interacted with the police were dissatisfied with the service they had rendered.

Tampering with evidence, tutoring witnesses, deliberately neglecting proper investigation, putting up defective charge sheets etc are known methods of money making by the police.

not or would not do anything and would ask for a bribe to register a First Information Report (FIR). Again, 82 percent of the people said that no beat police officer ever visited their village or neighbourhoods. Obviously, much of this had nothing to do with subordination to the state executive. The findings of this report can easily be extrapolated to the rest of the country (Desai 2009).

The report also cites the Police Commission of 1902 on the issue of rampant corruption in the police, apparently valid even today. The UP (1960), West Bengal (1960), Bihar (1961), Tamil Nadu (1969), the NPC (1979–81) and SARC, 2007, the Gore Committee (1971–73) reports are cited for the infirmities of the police.

Police corruption has high visibility and is usually accompanied by harassment, extortion and use of raw force. Police officials, as a matter of routine, are known to collect bribes from artisans, traders and hawkers simply for letting them pursue their work. Property disputes, thefts, drunken brawls etc. also provide an opportunity for the police to extract a price. Writing of an FIR, its language, granting of bail, use of third degree methods, handcuffing, putting up *challans*, framing of charges, production and tutoring of bogus witnesses, are some of the basic avenues for police corruption. Police are known to collect money from the common man by falsely implicating him in a criminal case, taking away his watch, purse and other valuables during interrogation and collecting weekly payments from pavement stall owners, temporary encroachers and minor offenders. From the petty criminals the police have the opportunity to extort money by exploiting the distinction between ‘cognizable’ and ‘non-cognizable’ and bailable and non-bailable offences. Just the addition or omission of a section of the penal code makes all the difference. Much larger scope exists in the investigation of major crimes. Tampering with evidence, tutoring witnesses, deliberately neglecting proper investigation, putting up defective charge sheets etc are known methods of money making by the police.

A higher level of police corruption is reached when they actively collude with big-time criminals, drug mafias, gun runners and others involved in organized crimes and sometimes ‘multinational crimes’ (Martin and Romano 1992). Justice A.N. Mullah’s oft-quoted observation relating to the police being the ‘the single largest lawless group in the whole country’ becomes relevant here.

Politics, crime and corruption are deeply linked. ‘Criminalization of politics’ goes hand in hand with ‘politicization of crime.’ Election-related crime and corruption is a well known phenomenon. The struggle for political power informs the three way relationship between politics, crime and corruption. The big time economic crimes with political linkages and international ramifications are highly secretive and professionalized. The police are involved in these crimes directly or indirectly. Instances can be explored but we do not do so here for reasons of space.

Police corruption extends to the metropolitan context as well. The bribes that producers and transporters pay to the police at various check points significantly inflate the price of vegetables when they finally reach the consumer. Road transport operators are favourite targets of police corruption. In 1997, it was estimated that the Delhi police extracted Rs. 1.25 crore every day from the trucks that enter the city from various points. There are fixed charges for other items such vehicle registration, driving license, arranging bail for the driver, if charged by the police, speed radar check and so on. A one-man enquiry committee set up by the Delhi administration found that the exchequer lost a huge sum of money from these exactions. Apart from transport operations, there are several other areas for illegal exactions by the police. Politicians and

ministers who receive a share of the money allow the police to go on the rampage with impunity. Lucrative police stations are known to be 'auctioned' by police commissioners. The international airport is known to be a happy hunting ground for policemen on the take who are ready to pay huge sums for getting postings there. The most lucrative opening is said to be in the area of facilitation of smuggling. The police strike gainful association with travel agents, fake passport racketeers, unauthorized currency dealers and other swindlers (Gill 1999).

More recent areas of police corruption include collection of money for lower level police recruitment. A former senior police official has examined this problem and suggested measures to deal with it (Sankaran 2004, 2007, 2008 and 2009a and 2009b). This activity appears to be a fast growing cottage industry in India given the massive police recruitment, amounting to about 800,000 men in the constabulary, ordered by the Union Home Minister.

xi) Decentralization

The 73rd and 74th amendments to the Constitution of India have created an elaborate machinery for development administration in the country believing that top-down, command and control policies were ineffective and inefficient. However, proposals for police reforms by the National Police Commission did not mention the need for decentralization of the highly centralized police structure. Former Prime Minister Rajiv Gandhi noting that the district administrative structure was 'unresponsive because it was unrepresentative,' wanted the introduction of Panchayati Raj Institutions (PRIs) of local self government to make the administration more responsive, accountable and participative. E.M.S. Namboodiripad had, in his dissenting note to the Ashok Mehta Committee report (1979) on Panchayati Raj, called for the decentralization of the entire administrative structure. It is heartening that the Second Administrative Reforms Commission report on 'Public Order' recommends decentralization and suggests that 'local bodies' must be involved in local police management.

xii) Training

There is the issue of police training for human rights. In a training programme on 'social tensions' held in Hyderabad, some 'surrendered Naxalites' had been invited to make presentation. They began narrating their experiences of police torture. The narration became too painful to hear and the audience was getting tense. Suddenly, a senior woman police officer in uniform from the nearby national police training institution burst out at the Naxalites 'when I hear you people talk, I wish I had brought my revolver.' In a conversation later, the officer said that she had joined the police to 'serve the nation' and that the surrendered Naxalites, by narrating their experience of police torture, were 'defaming the nation!' What is the quality of training the officer had been given in the National Police Academy and what is the quality of training that she, as a trainer, would impart to her senior police trainees? The current training patterns, training manuals and training officers would need to be carefully examined from the point of view of human rights and social justice imperatives.

The issue of the current patterns of training, their flaws and the new trends in training and whether they address the real issues before us needs to be taken up separately.

The current training patterns, training manuals and training officers would need to be carefully examined from the point of view of human rights and social justice imperatives.

NPC identified politically partisan performance, brutality, corruption and inefficiency as constituting the public image of the police.

xiii) Central Paramilitary Forces

The rapid multiplication of Central Paramilitary Forces (CPFs) especially since the early 1980s has caused scholarly comment (Austin 1999). Their number is now more than a million men and is indicative of the growing importance of the police in the Indian polity. The persistent failure of the political elite to reform the police in a humane and people-friendly direction, despite the valuable work done by many committees and commissions of administrative and police reform, elucidates the nature of the caste and class structure that dominates the Indian polity. 'Domination' by police forces however, is not the same thing as cultural, social and political 'hegemony' of society by the ruling class (see also Subramanian 2007, chapter V).

SARC Report on 'Public Order'

The SARC report on 'Public Order' is a 341 page document and covers a wide ground in nine chapters, which include a general perspective on public order, the existing police system, core principles of police reform, organizational structure of the police of the future, maintaining public order, reforms in the criminal justice system, constitutional issues and special laws, and role of civil society, media and political parties. Here, we examine selectively some aspects of the report such as diagnosis of the present system; analysis of grave public order problems; causative factors; core principles of reform; organizational structure of the future police; autonomy and accountability, and public order management in general. The report is innovative and combines the wisdom of the NPC, the Sorabjee report and the Supreme Court directions and carries them forward in a significant manner especially in its elaboration of the core principles of reform and the future model of the Indian police.

Did the National Police Commission fail?

The political circumstances under which the NPC came to be set up were quite unusual: the defeat in a general election of the ruling Congress party led by Indira Gandhi who had imposed an Emergency regime. As a result, an opposition Janata party-led government came to power, which set up the Shah Commission of Inquiry to probe the Emergency 'excesses' and the NPC to examine police reforms.

The NPC was led by Dharma Vira, a former member of the conservative Indian Civil Service (ICS). Three of its five other members were former policemen! All the members

BOX 1.7

Rule of Law and Politics

Visiting India after the Emergency, Bayley (1983) observed that the 'rule of law, far from being the 'professional imposition of a coherent moral consensus on society' had become uninhibited 'rule of politics.' Police officers were 'preoccupied with politics, pen-

etrated by politics and were participating in it individually and collectively.' The situation was grave. The NPC started with a handicap and kept the Emergency regime always in mind while attempting an 'independent' assessment of the ills of the Indian police.

had had long association with the ruling establishment. Even while seeking a new orientation, the new government was unable to think fresh and did not involve public figures, social activists, scholars, lawyers and journalists in its reform exercise, which was seen as more of a management issue. The NPC had six sub-committees and 41 members in all, out of which only three were non-policemen and there were no women!

The NPC submitted its report in eight volumes. It identified politically partisan performance, brutality, corruption and inefficiency as constituting the public image of the police. The challenge was to transform the police into an impartial law enforcement agency, motivated by the objectives of serving the people, upholding their rights as enshrined in the Constitution. The main thrust of its recommendations was to create an organizational structure to prevent direct political interference in police functioning. It called for the setting up of a State Security Commission.

The changing political context contributed to the non-success of the NPC (Verma 2005). It had been set up in November 1977 but by mid-1978 instability began to dog the Janata party government. The first two reports of the NPC were submitted to the new government but were not released to the public. In January 1980, the Congress party led by Indira Gandhi, the target of inquiries by the Janata party government, returned to power with a big majority in Parliament. Three reports of the Commission were ready but the government was not interested. NPC failed to take the proactive step of making its reports public to initiate a public debate. They did make an attempt to see the Prime Minister who had won a massive electoral mandate. Thus the NPC failed to perceive the changing political and policy environment which affected the fate of its recommendations, which were duly ignored.

Context of the SARC

Unlike the NPC, the SARC was set up by the dispensation in power in 2005. The chances of implementation of its recommendations appeared much higher given the increasingly complicated public order scenario in the country. However, a major civil society group, CHRI, advocating police reforms seems more preoccupied with implementation of the Supreme Court directions rather than the more meaningful recommendations of the SARC. Governments in power would not normally take kindly to perceived judicial intervention in public order management, which is an executive function under the exclusive domain of the ruling authority.

The SARC, after examining and approving the provisions of the Model Police Act as recommended by the Police Act Drafting Committee, observes that a holistic of the functioning of the police and the criminal justice system is called for. On the idea of 'One Police Service' for each state advocated in the Sorabjee report, the SARC observes significantly that 'police functions' are not performed only by the police. Some government departments have already been given police powers. Currently, state police are burdened with the enforcement of so many laws that they can hardly perform their core functions. There is need to reduce this burden by empowering departmental agencies to enforce their regulations. Noting the establishment of local bodies under the 73rd and 74th amendments to the Constitution, SARC wants these bodies to acquire their own enforcement wings. Though the state police would continue to play a central role, the need for other police services should be recognized and the creation of new services needs to be facilitated to meet future requirements.

NPC failed to take the proactive step of making its reports public to initiate a public debate.

Holistic examination of the functioning of the police and the criminal justice system is called for.

State police are burdened with the enforcement of so many laws that they can hardly perform their core functions.

BOX 1.8**Fifth Report on 'Public Order'**

The report states that only 12 percent of the respondents of a survey said that the existing system of management of public order is satisfactory; 79 percent were categorically dissatisfied. Recalling the reports of the commissions of inquiry into the Mumbai blasts of 1992 and the serial bomb blasts of 1993, it underlines several factors such as the canker of corruption, frequent transfers, delayed justice, poor intelligence, inadequacies of weapons and manpower, religious activities etc to explain the failures of the existing system. It cites the Law Commission, the Committee on the Reforms of the Criminal Justice System, the NPC and others to note the huge pendency of criminal cases, and the very low rate of convictions. It takes note of the provisions of the Model Police

Act recommended by the Police Act Drafting Committee (PADC) set up in 2005.

Disturbingly, the study notes the increase in the number of custodial deaths from 207 in 1995 to 887 in 1997 and to 1340 in 2003–04. There has been a general decline in the conviction rates of all types of crime from 1960 to 2005. Conviction rates for murder showed a general decline and a steeper one in the South Indian states. The high profile cases of the disappearance and killings of a large number of children in the Nithari village of Noida, UP adjoining the national capital, the Jessica Lal and Priyadarshini Mattoo murder cases indicating 'callousness, collusion, shoddy investigation and hostile witnesses' had made a mockery of the criminal justice system.

Civil police structure exhibits undue reliance on numbers — quantity rather than quality of the personnel.

SARC mentions a role for 'local bodies' on policing but does not use the Constitutional term Panchayati Raj Institutions for these bodies. It adopts a gradualist approach to the empowerment of these bodies. It does not consider the District Magistrate/Superintendent of Police being placed under the Zila Parishad with marginal modification of existing arrangements, if need be. SARC notes the decentralized systems of policing which exist in the UK and the U.S. but does not consider it necessary to discuss them in the Indian context, which is a major weakness in its report.

Core Principles

SARC puts forward eight core principles of police and criminal justice reforms: responsibility of the elected government; authority, autonomy and accountability; disaggregation and deconcentration; independence of crime investigation; professionalization, expertise and infrastructure; attendant criminal law reform; and police as a service.

BOX 1.9**Committees Galore**

The Ribeiro Committee (1999), which was set up on the orders of the Supreme Court following a Public Interest Litigation (PIL) on police reforms in 1996 had recommended a Police Performance and Accountability Commission at the state level, a District Complaints Authority and replacement of the Police Act 1861. The Padmanabiah Committee (2000) was set up to examine the Ribeiro committee report! The Malimath Committee (2003) was set up

to examine the criminal justice system. The Police Act Drafting Committee (PADC) was set up in 2005 to redraft the Police Act, 1861. The report was submitted to Government of India in October 2006. The Second Administrative Reforms Commission (2007) report on public order is the latest in the series. It would appear that barring a few researchers these reports are not being read especially by those in government.

SARC is of the view that reforms in the organization of the police have to be the 'first critical step' in bringing about a lasting and substantive change in police practices and behaviour especially at the lower levels. It notes that the civil police structure exhibits undue reliance on numbers — quantity rather than quality of the personnel; and a growing emphasis on the armed wing of the police as distinct from the reliance on the civil police; and an unthinking adherence to the lopsided police strength — majority of the police strength in most states is composed of the armed wing and over 80 percent of the civil police is composed of constables and head constables. Field level policing, whether urban or rural, is expected to be done through this lowest level of police.

A further disturbing aspect is that between 1999 and 2001, on an average about 5 million crimes were committed in the states and union territories. One third of these were IPC crimes and the rest were offences under the local and special laws, more than 70 percent of the cases belonging to the special category. Conviction rate (86 percent) in this category is higher than in the IPC category (37 percent). In India, crime investigation is neglected since law and order issues take precedence over other police functions. Separation of law and order from crime work addresses this problem to an extent. Role of the local bodies, entrusted with the management of such cases by the SARC, becomes important in this context.

Organizational Structure of Future Police

The organizational structure for the police of the future as envisaged by the SARC (2007: 72–75, Figure 5.1) would be as follows:

- An independent Crime Investigation Agency (CIA) in each state to investigate crimes (except for offences entailing a prescribed punishment of three years' prison term or less). It would be a separate, fully autonomous, elite, professional investigative agency. This agency and the prosecution wing would be managed by an independent Board. Crime investigation will be completely insulated from partisan influences and political control. An independent prosecution wing would function under the supervision of the same Board in close coordination with the Crime Investigation Agency (CIA). The police station would be the first point of contact for citizens. All crimes, except those mentioned above, will be investigated by the law and order police and more serious offences transferred to the independent CIA. Effective coordination would exist between the local police, the CIA and the law and order police. A system of local courts, functioning under the High Courts and the Subordinate Court would ensure speedy justice. Many functions, which need not be discharged by the police directly such as service of summons etc would be outsourced to appropriate agencies. Duties under special laws would be transferred progressively to the concerned departments.
- Local police agencies (under local authorities), in addition to investigation of petty crime, would attend to other duties such as traffic management and minor law and order problems. More police functions would be progressively brought under the supervision of statutory local bodies. A strong forensic division in each district would function under the Board of Investigation.

On an average about 5 million crimes were committed in the states and union territories. One third of these were IPC crimes and the rest were offences under the local and special laws, more than 70 percent of the cases belonging to the special category.

- The rest of the police, excluding CIA and the Local Police would constitute the Law and Order Agency (LOA) headed by a police officer under the supervision of the autonomous Police Performance and Accountability Commission (PPAC). The PPAC would have both official representatives and independent members. The elected government would have a legitimate say in decisions to the extent required. The SARC envisages ultimate transfer of most police functions along with personnel to statutory local bodies, over a period of time. Municipal bodies in metropolitan cities with a population of a million and more can be entrusted with some of these duties immediately. Until the Local Police are transferred to local governments, LOA would continue to supervise all local police stations.

While day-to-day operational control of the three agencies mentioned above would vest with the chief of each, harmonious functioning between them would be ensured by a Police Establishment Board (PEB) which would advise on transfers, postings and service matters. It would also deal with internal complaints. All the police wings, except the armed police, would be staffed by officers. The CIA would be an officer corps since inception, and in other agencies there would be a progressive shift by attrition of constables. There would be no future recruitment of constables except in armed police. They would be replaced by Assistant Sub Inspectors.

State and local Police Complaints Authorities (PCA) would be set up to investigate serious complaints of abuse of authority, corruption and obstruction of justice.

The Central Paramilitary Forces (CPFs) would form part of the national security apparatus (SARC 2007: 74). Their structure and top management would continue to remain as at present with mechanisms to ensure professional management, proper selection of chiefs and security of tenure. When deployed on law and order duties, they would be accountable in the same manner as the state LOA and would be subject to the jurisdiction of the state PCAs. The structure as envisaged would apply to Union Territories with appropriate modifications.

Setting up of effective accountability mechanisms requires a delicate balance between control and initiative.

Accountability: Autonomy and Control

On the issue of superintendence of the police by the state government as laid down and followed since 1861, the NPC noted that over the years a ‘symbiotic relationship’ had developed between politicians and civil servants. What started as a normal interaction for the purpose of better administration ‘degenerated into different forms of intercession, intervention and interference with *mala fide* objectives unconnected with the public interest.’ They suggested the constitution of a State Security Commission to lay down broad policy guidelines, evaluate performance and function as a forum for appeal and review of the functioning of the police. The SARC, after studying the formulation on the issue made by PADC, felt the need to lay down specifically in the law that ‘issuing illegal or *mala fide* instructions by any government functionary to any police functionary would be an offence.’

Accountability means an obligation or willingness to accept responsibility or to account for one’s actions. Accountability in the context of governance means that public officials have an obligation to explain their decisions and actions to citizens. This accountability is achieved through various mechanisms — political, legal and administrative. Setting up of effective accountability mechanisms requires a delicate balance

between control and initiative. The SARC examined the system of police accountability in the UK and USA. In the UK, the police are not a unitary body; 43 police forces undertake territorial policing on a geographical basis. There is a tripartite system of police accountability. In this system, accountability to parliament is through Home Secretary. The police are accountable to the local citizens through local Police Authorities, comprising elected local councilors, magistrates and eminent persons. The third arm of accountability is the Chief Constable. In the U.S., there are 17,000 police forces each under the control of their respective elected local governments. The federal and the States also have certain specialized police forces but the local police are under the control of local governments.

To address the complex task of balancing control over the use of police powers to hold them accountable and the need for operational autonomy, the SARC divides police functions into prevention, investigation and service provision. The NPC held that in performing preventive and service oriented tasks the police needed to be guided by the government and in performing investigative tasks, they had to have complete professional independence without any executive control or direction. The police perform different functions and the accountability required for each is quite different. After examining the recommendations of the NPC, the Committee on Reforms of Criminal Justice System (2003), the Padmanabiah Committee (2000) and the Supreme Court judgment on the writ petition by Prakash Singh, the SARC has felt that a clear separation of investigation from law and order is required. The entire police service would have to be restructured so as to have two separate agencies dealing with 'investigation' and 'law and order' with separate accountability mechanisms. The investigation police will be under an independent police chief who in turn will be under a Board of Investigation. Maintenance of law and order and preventive and service functions require close civilian oversight and coordination but civilian control should not extend to operational control of the police.

While the NPC recommended the setting up of a State Security Commission for this purpose, the SARC has recommended a Police Performance and Accountability Commission (PPAC) for the purpose. To ensure that posting of officers take place on the basis of merit and experience, a Police Establishment Committee would be set up.

SARC is supportive of the Supreme Court and PADC proposal to set up independent Police Complaints Authorities to look into allegations of human rights violations. After examining the systems available in the UK and other countries in detail, it recommends the setting up of Independent District and State Police Complaints Authorities as well as an Independent Inspectorate of Police as in the UK to establish a system of rigorous inspection of police stations and the functioning of police officers to prevent the occurrence of serious crimes by the police. The recurring incidents of dubious deaths in 'encounters' with the police would also be looked into by the Inspectorate.

On intelligence gathering, one of the most important inputs for maintaining public order, the SARC notes the inadequate attention paid to collection of criminal intelligence. The basic source of all information for the government still remains the police station and the Special Branch. In fact, collection of intelligence is the responsibility of all policemen. Information is collected through various sources: the beat constable, the traffic policemen, field visits, interaction with officials of other departments, study of FIRs, use of informants and so on. Focus on law and order has reduced the attention paid to intelligence gathering by the civil police. The system of beat patrolling has fallen into

Clear separation of investigation from law and order is required. The entire police service would have to be restructured so as to have two separate agencies dealing with 'investigation' and 'law and order.'

The intelligence apparatus is not integrated with well defined hierarchical and collateral linkages.

disuse thanks to motorized mobility. The Padmanabhiah Committee mentioned that presently 'the intelligence apparatus is not integrated with well defined hierarchical and collateral linkages. It is neither obligatory on the part of the state police to share intelligence with other intelligence gathering agencies or *vice versa* or mandatory to act upon it with the seriousness it deserves. The existing amorphous arrangements that heavily rely on personal equations and subjective appreciation needs to be replaced by professionally worked out institutional arrangements.'

Empowering Cutting Edge Functionaries

Reforms in the organization of the police have to be the critical first step in bringing about a lasting and substantive change in police practices and behaviour, especially at the lower level. Several recommendations are made in this regard.

Independent Complaints Authorities

In the past, policing as part of the criminal justice system was considered to be corrupt and inefficient. Today, the added element of criminalization and dehumanization characterizes the working of a fringe. Dehumanization of the guardians of law and order can be disastrous. Reports of fake encounter killings in different parts of the country amounts to subversion of the police by criminal elements. Whole sale reform of the criminal justice system as well as the police structure is essential to wipe out the practice of encounter killings.

The move towards greater autonomy of the police necessitates more effective public grievance redress mechanisms. The police have an inherent authority to curtail the personal liberty of any person, even if only for a short time before a judicial authority takes cognizance of the case. No other arm of government has such powers. Even the slightest abuse of authority is a matter of grave concern because it can result in excesses or brutality. The SARC goes into the existing mechanisms, the suggestions made by the NPC and others as well as the system prevalent in the UK and South Africa. It agrees with the Supreme Court view and recommends the setting up of District and State Complaints Authorities whose findings shall be binding. The Complaints Authorities should be easily accessible to the aggrieved persons. The procedure should be simple. Technology provides various solutions, which must be used.

Independent Inspectorate of Police

The existing system of inspection of police stations by higher police formations has become ineffective over the years. The Nithari case which witnessed the ruthless killings of innocent children and the subsequent discovery of their dead bodies in a municipal drain, would not have occurred if the local police station had been subjected to frequent rigorous inspections. In the UK, an Independent Inspectorate of Police exists to promote efficiency and effectiveness of policing and to ensure that agreed standards are observed and maintained. The Padmanabhiah Committee had recommended the setting up of such an Inspectorate in India. The SARC has supported the recommendation. The Bureau of Police Research and Development, New Delhi should identify common standards of police functioning across the country and update them

The police have an inherent authority to curtail the personal liberty of any person. No other arm of government has such powers.

constantly and ensure their observance by diverse police agencies. The many incidents of stage-managed police ‘encounter’ killings, which are nothing but extrajudicial executions underline the need for such an agency. The State Inspectorate should function under the PPAC and enquire into all cases of death by encounter irrespective of whether a complaint has been lodged or not. The reports in this regard should be submitted to PPAC and SCA.

It would be necessary for appropriate agencies, such as the Thomas Committee set up by the Supreme Court, to examine how far the State Police Acts passed so far take into account the recommendations of the SARC, even though these recommendations are not yet officially approved.

Police and Human Rights

Reports of human rights violations by the police and security agencies have frequently come up in the context of counter-insurgency operations. SARC has supported the view of the Supreme Court that the challenge of terrorism must be met with an innovative approach. ‘State terrorism is no answer to combat terrorism. State terrorism would provide legitimacy to ‘terrorism.’ That would be bad for the state, the community and above all for the Rule of Law.’ Further, the NHRC has stated in its Annual Report for 2004–5 that 74,401 cases were recorded by the Commission during that year of which 1,500 cases related to custodial deaths, four to custodial rape, and 122 to police encounters. NHRC has said that the most important issue is insulating the police from ‘extraneous influences’ and putting a stop to arbitrary transfers of police officials, which weaken the capacity of the police to function without fear or favour. The SARC agrees with the NHRC and has recommended insulation of the police from unwarranted interference; emphasis on professional investigation, and the use of forensic science, training and attitudinal change, and the setting up of Complaints Authorities to prevent instances of police highhandedness.

Gender Sensitivity

A major manifestation of gender disparity in India is domestic and societal violence against women. The statistics published by the National Crime Records Bureau (NCRB) show not only the high rates of incidence of crimes against women but disturbingly, low rate of convictions. The Centre for Social Research, after making a study, has recommended that gender training should receive more importance and all training should have a gender component. Specific features in different states should be taken into account in designing training programmes. The National Police Academy was advised to formulate a gender policy for police training. Five essentials were mentioned for a successful gender strategy for the police: education, training, awareness campaigns, research analysis and annual audits. Women are often reluctant to approach the police in matters relating to violence/cruelty against them. Even when a case is registered, there are deficiencies in investigation and prosecution. The Planning Commission advised addressing the problem in several ways: strict enforcement of relevant legal provisions; measures to prevent and punish harassment at work places; regular review; strengthening of women’s cells in police stations; and wide dissemination of legal and human rights of women.

Identify common standards of police functioning across the country and update them constantly.

Important issue is insulating the police from ‘extraneous influences’ and putting a stop to arbitrary transfers.

Gender training should receive more importance and all training should have a gender component.

Low representation of women in all wings of the police is a major issue. Women in civil police constitute only 2 percent of overall strength. Affirmative action is called for. The National Commission for Women has made relevant recommendations on changes in laws and on sensitizing the criminal justice system.

A number of recent studies have identified the challenges and responses arising from the recent Prevention of Women from Domestic Violence Act (PWDVA), 2005 (*Combat Law* 2010). The Lawyers Collective Women's Rights Initiative (LCWRI), which has been doing pioneering work in the area of prevention of domestic violence against women in India, has brought three monitoring and evaluation reports on its work during the last three years (LCWRI 2009), which among other things underlines the need for sensitivity on the part of the police in dealing with domestic violence.

Crimes against SCs and STs

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was enacted in 1989. Two separate Commissions for SCs and STs were established in 1978 and 2004 respectively and they acquired constitutional status. Civil Rights Enforcement Cells were established in different states. The implementation of these measures, however, has left much to be desired as indicated by statistics analyzed by the SARC. The assertion of civil rights by SCs and STs is often met with hostile reprisals. Enforcement agencies, including the police, often fail and display caste bias and tolerate and even participate in the crimes. The police service in India has to become more professional, responsive and citizen-friendly than has been the case so far.

Community Policing

David Bayley has stated (SARC 2007: 122) that community policing has the elements of i) community based crime prevention; ii) patrol deployment for non-emergency interaction with the public; iii) active solicitation of requests for service not involving criminal matters; and iv) mechanisms for grassroots feedback. The basic principle here is that a policeman is a citizen with uniform and a citizen is a policeman without uniform. Community policing involves creating an environment that enhances community safety and security. Some states in India have taken steps in this direction and formulated basic principles. Other states have been deficient.

The following are some of the missing elements in the otherwise admirable SARC report on 'Public Order':

- A serious discussion on police corruption is lacking;
- it does not examine the role of Central Paramilitary Forces (CPFs) adequately;
- it pays little attention to the role of Panchayati Raj Institutions in public order management at the district level and below; while talking about the decentralized systems of policing that exist in the UK and the USA, it opts for the continuance of the decrepit, unitary police and criminal justice system in India so as to ensure 'minimal dislocation' (SARC 2007: 61);
- the role of IAS and IPS in public order management needs specific discussion;

Enforcement agencies, including the police, often fail and display caste bias and tolerate and even participate in the crimes.

- the role of intelligence agencies and their role in the democratic functioning of the government needs detailed discussion;
- the IPC and the CrPC contain many provisions that are anti-thetical to democracy and need discussion;
- police role in the management of political violence in many parts of India needs discussion;
- anti-people enactments (Haragopal and Jagannatham 2009) such as the TADA, POTA, AFSPA, CLAA and Chhattisgarh Public Security Act and other state level legislations on the statute book, and their role in curbing democracy need discussion;
- the role of the High Courts in implementation of the Supreme Court directions on police reforms need discussion;
- ‘multinational systemic crimes’ (Martin and Romano 1992) such as terrorism, espionage, drug trafficking, arms trafficking and money laundering need discussion;
- the paramilitary structure of even the civilian police (Arnold 1986; Baxi 1982; Subramanian 2007) needs to be addressed.

In conclusion, it must be noted that the state governments have shown significant lack of enthusiasm for Supreme Court directions; the central governments even more so. These are, in any case, ‘superstructural’ reforms. What is needed are ‘infra-structural’ reforms, which the Supreme Court, following as it does the NPC recommendations, has not been bothered about. The SARC recommendations, however, need to be accepted and implemented by the central government, which will give a fillip to reform exercises in the states.

The state governments have shown significant lack of enthusiasm for Supreme Court directions; the central governments even more so.

2. THE INDIAN POLICE: HISTORICAL BACKGROUND-I

The history of the Indian police has been examined in a number of studies (Griffiths 1971; Baxi 1982; Arnold 1986; Bayley 1969; Gupta 1974 and 1979; Verma 2005). These studies cover a well-trodden ground. The important study by Bayley took an objective, yet sympathetic, stance towards the problems of a colonially inherited police structure in facing the law and order issues in a newly independent, democratic polity. Another study by Gupta, a former senior police officer, has traced the historical evolution of the Indian police in two volumes (Gupta 1974 and 1979).

The initial efforts of the East India Company to establish a system of policing in India came in the light of the perceived abuses which had overwhelmed the native police during the Mughal period. The East India Company’s combination of executive and judicial functions in Bengal and of both with revenue functions in Madras, coupled with the inadequacy of numbers, poor pay and supervision of the police had proved unsound.

The Court of Directors of the Company, in their guidelines issued in September 1856 stated: ‘That the police in India has lamentably failed in accomplishing the ends for which it was established is a notorious fact; that it is all but useless for the prevention and sadly inefficient for the detection of crime, is generally admitted. Unable to check crime, it is with rare exceptions, unscrupulous as to mode of wielding the authority with which

Police in India has lamentably failed in accomplishing the ends for which it was established.

The strength of the civil police was never adequate for the duties of prevention and detection of crime.

Recourse to the criminal laws earlier enacted were abandoned while dealing with what were called political crimes.

it is armed for the functions, which it fails to fulfill and has a very general character for corruption and oppression.’

The Police Commission of 1861, which led to the formulation of the Police Act of 1861 provided for the organization of a police force in all the British provinces directly subordinate to the executive arm of the government, through the District Magistrates and *the elevation of repressive functions over those of prevention and detection of crime.*

The period from 1861 to the second Police Commission in 1902 witnessed a thorough reorganization of the army and the police including the arrangements for the collection and dissemination of political intelligence, the codification of criminal laws, legislation for control over the press and the possession of arms and ammunition and a ‘neat’ arrangement of the bureaucracy, *all designed to suppress the emerging nationalist movement.*

The Police Commission of 1902 dismissed the police system established in 1861 and said: ‘There can be no doubt that the police force throughout the country is in a most unsatisfactory condition, that abuses are common everywhere, that this involves great injury to the people, and that radical reforms are urgently necessary.’ They concluded: ‘The police force is far from efficient; it is generally regarded as corrupt and oppressive; and it has utterly failed to secure the confidence and cordial cooperation of the people.’

The period from 1902 to independence in 1947 witnessed the emergence of terrorism and communalism, conflict in the wake of the partition of Bengal and the non-cooperation movement under Gandhi. The limited recommendations of the 1902 Police Commission remained unimplemented; the improvement of the police for the prevention and detection of crime lost its importance though attention was paid to extract loyalty to the regime and to punish political dissent; recourse to the criminal laws earlier enacted were abandoned while dealing with what were called ‘political crimes,’ which were dealt with by repressive laws in an increasingly draconian manner.

The bulwark of British rule in India was the army. After 1857 the proportion of the British troops to ‘natives’ was increased substantially. The police force was reorganized as a kind of civilian ‘army of occupation’ with the army standing behind for use when necessary. The district police were gradually supplemented by special armed reserves at selected centres. The role of the army and the police were clearly defined and there was a gradual increase in the strength of the armed police which rose to ‘fantastic proportions’ in 1943. *Additional funds, allocated for the implementation of the recommendations of the 1902 Police Commission, were diverted to increase in the strength of the armed police, which were always kept up to the sanctioned strength allowing vacancies to accumulate in the civil police. The strength of the civil police was never adequate for the duties of prevention and detection of crime.*

Further, senior officers of the police were drawn in the first instance from the army with almost total reservation of all top posts for Europeans. The recruitment to Imperial Police (IP) was thrown open to Indians only in 1920 although direct recruitments to these posts had been started in 1893. Army sources, previously used to fill up the posts, dried up. The recruitment was designed to attract candidates of inferior quality to those recruited to the Indian Civil Service (ICS) in order to ensure that the Superintendents of Police did not become discontented on account of their subordination to District Magistrates (DMs) drawn from the ICS. Some of the Inspector Generals were also from the ICS till 1919 when the posts were transferred to the IP. In spite of some liberalization of intake later, there were only 193 Indian officers in the IP out of a total of 516 at independence in 1947.

The police force so composed and tasked, remained inadequate for the 'additional' responsibility of prevention and detection of crime and the prosecution of offenders. While in England, the basic power of investigation was vested in the constable, in India this power was vested in small number of investigating officers.

The investigating officers under the Police Act of 1861 were the *darogas* in charge of police stations. However, this system was grossly perverted by the placement of mostly illiterate Head Constables as officers in charge of police stations who were paid a pittance as salary. *The arrangement, in combination with the criminal laws, made sure that the primary police function would be performed with brute force and instilling fear of the police in the public.* The inefficiency and bad reputation of the police were commented upon by the authorities but ignored by the government. They were reiterated by the 1902 Police Commission after which it was decided to entrust the police stations only to directly recruited sub-inspectors. However, financial considerations diluted the arrangement to some extent leading to the creation of the intermediate posts of assistant sub-inspectors for the job. Though the crime situation deteriorated during 1919–24, sufficient number of investigators consistent with the incidence of crime was never available and encouragement was given to concealment and minimization of crime. *Non-reporting of crime was already prevalent because of the bad reputation of the police in general and the ineffectiveness of the criminal justice system as a whole. Thus, the government never had a correct idea of the exact state of the crime situation.*

The Second Law Commission, 1855, had recommended that the police should not have the authority to record the confession of an accused person. This recommendation resulted in an elaborate distrust of the police incorporated in the CrPC and the Indian Evidence Act. These provisions reinforced the factors, already inherent in the personnel, structure and equipment of the force, which helped perpetuate corruption, malpractices and abuse of authority in the police stations. The first ever conference of Home Ministers held in May 1939, after the inauguration of provincial autonomy, failed to discuss the question and the penal approach of the past was continued forgetting that the punishment of the operators was not a substitute for the defects of the system.

The British never provided adequate security for the rural areas, which were left to the whims and fancies of the zamindars, assisted by their henchmen, the village headman and the watchman.

3. INDIAN POLICE: HISTORICAL BACKGROUND-II

There was no significant historical rupture between the structure and legal framework of pre-independence police and its post-independence successor despite the promulgation of a democratic republican Constitution. The penal legislations which governed the working of the Indian police and its paramilitary-like organizational structure continued as before. This has had serious consequences for the assertion of legal, social and human rights of the people of India guaranteed to them under the Constitution. Organized rural and urban poor assertions could easily be put down by the police using the repressive provisions of the IPC, CrPC and the Police Act, which do not respect the Constitutional rights and privileges guaranteed to the people. The whole history of use of repressive legislations from the colonial to the postcolonial period has had a disturbing continuity.

For the British, the maintenance of their rule in India was the primary objective. Crime control was only a secondary objective to be achieved through fear of the

The arrangement, in combination with the criminal laws, made sure that the primary police function would be performed with brute force and instilling fear of the police in the public.

Non-reporting of crime was already prevalent because of the bad reputation of the police in general and the ineffectiveness of the criminal justice system as a whole.

police (Gupta 1988). The IPC, CrPC and the Evidence Act were intended to put in place a legal framework and a police force equipped for the maintenance of British rule by force.

However, on assuming power in 1947, the new rulers forgot their demand and became 'enamoured' of the system 'gifted' by the British and failed to introduce administrative changes in tune with the provisions of the republican Constitution. The police remained distant from the people and were as hated as before. The process of planning and development gave rise to corruption on a large scale, which spread rapidly and led to the emergence of several new forms of crime, especially 'white collar crimes' (Gupta 1988).

The blanket powers of superintendence vested in the government by the Police Act, 1861 is not appropriate in a democracy. Further, the role of intelligence agencies was not redefined to protect the fundamental right to freedoms of association, expression and movement. The police in India still keep a watch on all political activities without discrimination, except for the activities of ruling party, which gives them authoritarian powers antithetical to democracy.

The NPC reported that unregulated political intervention in police work was a matter for serious concern. It conceded that in a democracy, police could not be wholly autonomous and political intervention was both inevitable and necessary to some extent and added that what appeared to be interference to police officers was sometimes justified supervision on the part of elected representatives. It sought to specify areas where government interference was justified and others where it was not. It recommended the setting up of Security Commissions at the state level for police supervision with non-political persons as majority of the members and with fixed tenures.

The demolition of the Babri Masjid in December 1992 revealed graphically the decline of rule of law and the loss of whatever professionalism, impartiality, dedication and commitment that was left on the part of the police. This was followed by the communal violence in Mumbai in 1992–93 and the Gujarat carnage of 2002, which witnessed a total collapse of the criminal justice system, putting justice itself, as it were, on trial. These developments lent further urgency to police reforms. Several unsuccessful reform efforts were initiated starting with the public interest petition to the Supreme Court by Prakash Singh and another in 1996, followed by the Julio Ribeiro Committee of 1998, the Padmanabhaiah Committee of 1999, the Malimath Committee of 2000 and the recommendations of the National Human Rights Commission. The effort made in 1997 by the Union Home Minister Indrajit Gupta was also unsuccessful. The recent constitution of the Police Act Drafting Committee to revise the Police Act of 1861 and the Second Administrative Reforms Commission too appear to be destined for the same end.

The efforts of the NPC, though laudable, have failed to address the complex issues of police reforms as highlighted in a recent study (Verma 2005). The author attributes the 'failure' of the Commission to a variety of factors including its composition, methodology, neglect of research, neglect of cross-country experiences together with a flawed perception of the policy culture and politico-administrative environment in the country.

The conflict between democratic politics and the authoritarian practices of the police leads Verma to state boldly that 'politicization of the police is the price paid for the democratic functioning of the country.' This analysis is in refreshing contrast to the

Organized rural and urban poor assertions could easily be put down by the police using the repressive provisions of the IPC, CrPC and the Police Act.

prevailing wisdom, which tends to place all the blame at the door of the politicians, ignoring the role of the police leadership. The author critiques the three 'design features' of the Indian police system: the authoritarian and ceremonial character of the police administration; the priority accorded to the role of the armed police; and the dual control of the police by the District Magistrate (DM) and by the Superintendent of Police (SP). He notes that democracy has placed greater discretion in the hands of the Indian police which they utilize to gain room for manoeuvre in the management of public order situations. He holds the police leadership, not politicians, responsible for the politicization of the department since their authoritarian practices, lack of professionalism and poor response to public complaints, invites political intervention. Further, the organizational features of the police have led to corruption and brutality. Political misuse of the police is the result of internal organizational problems and poor performance of the police. Verma calls for professionalism, training, technology, and emphasis on research as the core of policing in order to reform police structures and performance.

The basic issue of the constabulary constituting over 80 percent of the total police also needs to be addressed. Most policemen in India are recruited as constables and retire as constables; a large number of the human rights violations occur at this level of the police hierarchy. Structural changes in police organization at lower levels from the constabulary to the deputy superintendent are as important as changes at higher levels of the police organization.

The modern Indian nation-state is the outcome of a freedom struggle. It adopted a liberal-democratic Constitution but decided to retain the 'colonial-repressive' police structure. This structure is quite distinct from the ruler supportive structure of policing elsewhere and emerges when the governing elite of a decolonized society maintains its inherited police organization ignoring justified demands for change and refusing to adapt it to the needs of an independent and free society (Baxi 1982).

Professionalism, training, technology, and emphasis on research is the core of policing.

Political-organizational Characteristics

The basic characteristics of the Indian police organization are well brought out in two studies (Arnold 1986; Baxi 1982). Both emphasize its paramilitary character. Unfortunately, the first ever National Police Commission in independent India failed to go into this aspect deeply enough.

While Bayley (1969) examined the evolution of the system from the point of view of crime prevention and public order management, Arnold(1986) viewed the system in the light of colonialism's need to establish a relationship of control, coercion and surveillance over a subject population; he delineated its structural and organizational features helpful to a regime of exploitation and surplus appropriation. Britain's seizure of a land empire and the snapping of the East India Company's trading relations, coincided with that country's industrial revolution, which brought a new dimension to the character of the colonial state and its police system. India was a financial asset of value to Britain's industrial economy: a captive market for its manufactures, a source of food-stuffs as well as of cotton, jute, and other raw materials, and in its railways, plantations and public utilities a 'dependable recipient and multiplier of capital investment.' Alongside was developed a bureaucratic ideology, which stressed the broader imperial civilizing mission.

The colonial Irish Constabulary was the model for the police system created by the British. The police in colonial Ireland were a centralized paramilitary organization. Its chief officer was called an Inspector-General, apt designation for the head of a colonial paramilitary police. The officer was directly subordinate to the Chief Secretary. Answerable solely to the government, the Irish Constabulary was untrammelled by local authorities. *In its services to the colonial ruling elite in a restless and violent country, availability as an armed force under civilian direction, and its centralized organization, the Irish police model was ideally suitable for India. No better police force had been designed for the suppression of rural and industrial unrest.*

Charles Napier who designed the Indian police system in the 1840s laid down the principles of police organization in India: the constabulary must be separated from the military; while assisting the Collectors/District Magistrates in maintaining 'law and order' the constabulary must be under its own officers. These principles were later extended to Punjab but modified in the 1850s in Madras where the majority of the constables remained unarmed but a section was kept as an armed reserve in each district. The Madras principle was formalized in the Madras Police Act of 1859 and a police structure partly military and partly civil within a single organization became the basic structure of the Indian police system. The total integration of the police within the colonial state was a feature borrowed from the Irish colonial constabulary (Arnold 1986).

The Madras Police Act of 1859, which modified the Sindh experiment of General Napier, became a model for other British provincial governments. Though the police in British India were province-based, central government played a key role in its functioning. The Police Commissions of 1860 and 1902 standardized and reformed police in the whole of British India. *The trend towards centralization of intelligence work, strengthened during the closing years of the colonial regime, was sustained and accelerated after independence* (Arnold 1986).

The rigid hierarchy of rank and function between the superintendents at the top, the inspectorate in the middle and the constabulary at the bottom was an essential feature. The entire police department was under the control of the civil service and the provincial government. *The function of the superior police officers was not to engage in ordinary detective or protective duties but to keep watch on the lower levels of the departmental hierarchy.* The extreme subordination to the civilian administration lessened only in the twenties of the last century with increasing police professionalism and its enhanced political importance in a period of mass agitation, nationalism and communism. This prefigured the post-independence 'shift in the relative importance of the civil service and the police,' arousing the fear of the civil service that 'the police can easily be used as an instrument of power, not on the effective leash of normal civilian control' (Rai 1976).

Unlike Bayley, Arnold emphasized the political surveillance functions of the Indian police. The British, an alien element in Indian society, were not interested in raising a professional police for crime prevention and detection but in maintaining imperial control over the country to exploit its resources and to develop it as a market for British manufactures. The British needed to have information on the moods and opinions of the public and on the possibilities of agrarian and industrial unrest.

While the Police Commission of 1860 had seen no reason to create a separate detective or intelligence branch, the setting up of the Indian National Congress in 1885, at a time of growing communal tension and anti-colonial opposition, led to the formation of an intelligence agency for collecting information about political and social movements

as well as organized crime. The Madras police in 1888 took the initiative to set up the Special Branch with wide-ranging duties. The Police Commission of 1902, considering the direction of political winds, recommended strengthening of the police in anticipation of future political needs with the reform of the armed police and the review of intelligence work. The Central Intelligence Department was established in Shimla in 1904 for collection and dissemination of political intelligence. The department was the precursor of Intelligence Bureau (IB) of later years. Similar developments were witnessed in the states with the expansion of the Special Branch. By the mid-1930s, the Special Branch was active against the civil disobedience movement, the labour movement, the growth of communism and the developing underground terrorist activities. When the Congress moved from agitation to constitutional action, the communists were increasingly identified as the 'main danger' by the IB. *The last ten years of British rule witnessed the rapid expansion of Special Branch and the range of its political activities. The largest expansion of staff was related to the growth of communist activities, which still remains a central preoccupation.*

Police coercion became by the mid-1930s a vital instrument of state policy. Heavy reliance upon the police raised them to a position of unprecedented importance within India's colonial system. But the emergence of the more militant strain in nationalist politics and the development of the coercive and surveillance strength of the police led to sharper public criticism of the police. *However, with the onset of provincial autonomy in 1937, Congress criticism of the police became muted. A massive expansion of police arms and surveillance took place during the 1940s.*

By 1947, the police 'occupied a crucial position in the ordering of rural and urban society, in the suppression of political opposition and in the maintenance of state and class control' (Arnold 1986). Sustained political challenges to the colonial regime and the colonial socio-economic order contributed to the strengthening of police power during the 1940s. Successive agitations during the period, labour unrest and the emergence of communism and rural insurrection ensured that the strengthening and reorganization of the police went on in a direction set by the Police Commission of 1902.

Though the police was created to be the eyes and ears of the colonial state, this role was related to its role in protecting property and suppressing crime and rioting. Police intervention on behalf of propertied interests contributed to the brutalization of class conflict; partisan policing created a fund of subaltern bitterness against the police, which often led to an escalation of violence in rural and industrial disputes.

The only changes after 1947 have been in the increasing numbers and strength of centralized police forces (CPFs) and in the expansion of political intelligence work. The roots of these departures lay in the nature and functions of the colonial police (Arnold 1986).

For the British Raj, says Arnold, crime and politics were inseparable: serious crime was a defiance of state authority and a prelude to rebellion; political resistance was a crime or a likely occasion for crime. The resources and skills developed in combating the one were freely employed in defeating the other. The factor of political purposes behind the origin of the Indian police is of importance but has been frequently ignored (Griffiths 1971).

Bayley noted that the British legacy to independent India's police consisted of three elements: the basic structure of the police system; the perceptions, attitudes and predispositions towards the police on the part of the public and the policy-makers; and the

Police intervention on behalf of propertied interests contributed to the brutalization of class conflict; partisan policing created a fund of subaltern bitterness against the police.

The transition from a colonial police to a democratic police would come only when the notion of the police as a paramilitary organization is abandoned.

Congress failed to develop an alternative state structure of its own which could have provided the rudiments of a new police structure.

concept of the role that the police should play in Indian society. Bayley also notes the following ‘primary structural characteristics’ of the Indian police at independence: the police are organized, maintained and directed by the states of the Indian Union; the Indian police system is horizontally stratified in terms of ranks; the police in each state are divided vertically into an armed and unarmed branch. Arnold, however, adds to this the political surveillance function implicit in the organization and duties of the colonial police right from its inception.

A forceful call to dismantle the paramilitary structure of the Indian police has been made from a human rights point of view (Baxi 1982). The key to basic changes in the Indian police organization lies not in better wages, service conditions and amenities. The transition from a colonial police to a democratic police would come only when the notion of the police as a paramilitary organization is abandoned. ‘It is this conception of police, which is responsible for hierarchical tyranny, lack of worthwhile grievance redress procedures, unfortunate extension of ideas concerning police discipline and its maintenance and violation of due process, illegality and practice of torture by the police’ (Baxi 1982).

The lack of theoretical analysis of alternate models of police organization has led to prescriptions for change which do not affect the paramilitary nature of police organization (GoI 1979–81). In the absence of this, the future of the rule of law in India will remain bleak despite normative revolutions in Indian law.

Why was the Colonial Police Retained after Independence?

This question needs to be answered. Arnold (1988) explains that from 1885, the Congress had been one of the main victims of police coercion and surveillance though later on, the communists had begun to rival the Congress. The Congress had fashioned its agitational strategy and identity partly in response to police brutality and its public unaccountability. Both the Congress party and the Indian police had developed an ‘increasingly all-India outlook and organizational form’ as the nationalist movement advanced. They were analogous agencies of ‘external intervention in the localities, within wider political and administrative arenas.’ They had an expanding mutual interest in the protection of property and the prevention of violent and revolutionary change. This explained the relatively untroubled transition from colonial police to Congress police.

The Congress apparently had no option. Both in 1937 and in 1946, it took office under the Government of India Act of 1935 and was formally bound by its provisions, which gave special responsibility to the governors for the protection of law and order. But such constitutional constraints counted for less than the determination to ‘maintain and extend the existing powers of the police’ (Arnold 1988: 218). Thus, the Congress, having gained its ascendancy over the police department by constitutional rather than revolutionary means, adopted and endorsed the police system. Secondly, the Congress failed to develop an alternative state structure of its own (unlike the Indian National Army of Subhas Bose) which could have provided the rudiments of a new police structure. Thirdly, the end of the Raj was a period of escalation of industrial insurrection. The Army was needed to defend the frontiers and to secure the integration of Kashmir and Hyderabad. All this accentuated the need to rely on the police. Administrative compulsions in the subsequent period as perceived by the Congress also prevented any attempt at reform of the police structure.

Apart from the fact that Vallabhbhai Patel, the new Union Home Minister, believed in maintaining law and order with a firm hand, the Indians promoted to occupy the highest offices in the police service were men who had served a long apprenticeship with the Raj and their patterns of thought and conduct bore the colonial imprint. Many who had sided with the nationalist movement, either out of selfish motives of career advancement after independence or out of genuine anti-colonial sentiments, discouraged the Congress ministers from a drastic purge of police personnel.

Congress response was also conditioned by the growth of industrial unrest, communal violence and the possibility of communist insurrection around independence. The Union Home Minister urged the expansion of armed police to meet the crisis and as in colonial days, it was the police rather than the army that the government turned to. The army led the 'police action' in Hyderabad in September 1948 but it was the substantial deployment of armed police and central intelligence agents that won the day in counter-insurgency operations. The Telengana revolt showed that the survival of the Congress could not be based on consent alone and, as in British days, police coercion would have to determine permissible limits of protest and dissent. In the ten years since independence, the police in Congress ruled states opened fire over a thousand times to contain industrial and political unrest, killing over 800 people and sustaining limited casualties. The Congress in office was as chary as the British had been in allowing police accountability to the public.

A further reason why no radical change in the police structure was attempted after independence was perhaps the understandable nationalistic assumption that once the foreign masters were out, the behaviour of the police would automatically improve. It was also felt that the police could play a positive role in the integration and development of the new nation. With the idea of the state as an economic regulator, it was thought that the police could play a role in enforcing controls and could even be a legitimate instrument for the attainment of desirable moral and social objectives, such as prohibition. That the police were widely deployed against communalism and communism in the transition period from British rule to Congress rule, legitimized the role of the police in the eyes of many Congressmen. Fear of 'disorder' (Brass 1999) outweighed earlier aversion to police methods. The imperative of political survival dictated the choices made. The more radical elements in the party may have been disappointed but the broader alignment of the Congress party with the coalition of propertied interests, from rich peasants to professional middle classes and industrialists, who had supported the party to power, was confirmed.

Though eleven police commissions were set up at the state level between 1958 and 1971, the colonial mindset which continued, prevented them from considering fundamental reform. It was only after Mrs. Gandhi's fall from power that the first National Police Commission was set up but its modest recommendations were largely ignored.

Major Issues

The advent of the Congress in power in 1947 thus did little to improve the character and consequent unpopularity of the subordinate police. By extending the range of police activities to include prohibition, the government increased the predatory opportunities for the police and their 'autonomy' from senior police control remained contributing to

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the perception of them as the 'single largest lawless group' in the country. Extension of the restrictions on police unionization introduced by the British prevented the police from organizing to press for improvement in pay scales and conditions of service. The depressed and despised condition of the subordinate police, the cause of several strikes since independence, is ironical in view of the critical role of the police in the sustenance of the post-colonial political system (Baxi 1982).

The Indian police today serve several masters as they did during British rule. In rural India, they are under the sway of the rural rich against the rural poor as shown in many studies (Viswanathan 2005; Human Rights Watch 1999). They inflict mindless violence against the Scheduled Castes and Tribes resenting and opposing social ameliorative measures ordered by the government. In urban India they come under the influence of industrial magnates. That they are also under the politicians' sway is by now folklore. All political parties exercise influence over police postings, promotions and transfers and over the deployment of police during demonstrations, strikes and elections. It is customary for political parties in power to expect police to be the pliant instruments they become. The Inspector General of Police in one of the states was said to have become the closest adviser to the Chief Minister (Arnold 1988).

The massive growth of centralized police power since independence may be viewed in the context of the increasing politicization of the police forces at the state level in many states, although this development had its origins in the colonial period. With increasing coordination of political intelligence at the central level, the colonial police was essentially a provincial organization with no more than general directions from the centre. The granting of limited provincial autonomy in 1937 led to the withholding of certain aspects of intelligence operations from the state governments. However, the formation of state governments since 1967 with a different outlook from that of the Congress party, especially the United Front governments in Kerala and West Bengal with communist participation, made control over the police a major cause of contention between state governments and the centre. The outcome has been the formation of paramilitary and intelligence units able to operate in the states but accountable only to the centre. This may have led to the emergence of a 'two-tier system' of policing in India in contravention of the Constitution, which assigns the subjects of 'police' and 'public order' to the state governments. As political opposition grew during the middle and late sixties and India's economic performance faltered, the Congress-led central government placed increasing reliance upon its own police and intelligence agencies. While the state police forces have remained largely unreformed with poor discipline, the central police have been developed as an elite police corps, specially trained and selected, better equipped and armed, and loyal to the central government.

The timing of provenance of these forces is revealing. It was during the counter-insurgency operation in Telengana that the Intelligence Bureau (IB) first emerged as an all-India agency for the collection and collation of political intelligence (Mullik 1972). In 1949, the Central Reserve Police Force (CRPF) was formed in succession to the Crown's Representative Police raised a decade earlier for the protection of law and order in the princely states. In 1964, the CRPF numbered 14 battalions; by 1975 it had multiplied to 60 battalions. The late 1960s witnessed the creation of Central Industrial Security Force (CISF) with 17 battalions and the Border Security Force (BSF) in 1974 with 70 battalions. The central government has direct authority over Assam Rifles (AR) and the Railway Protection Force (RPF).

The war against China in 1962 and against Pakistan in 1965 led to a reappraisal of army and police responsibilities for 'internal security.' While the army has been frequently called out in 'aid of civil power' since independence (Cohen 2001), the central paramilitary forces, especially the CRPF and the BSF, have also been increasingly called out for this purpose. While the army in India has not acquired the same profile as in Pakistan and Bangladesh, there has been a 'creeping coup,' some feel, in India with the central paramilitary forces being used for the suppression of the Naxalite movement, the defeat of the all India Railway strike in 1974, the repressive measures against the JP movement in Bihar during 1974–75 and the Emergency in 1975–77, which witnessed a steady expansion of central control. The overall trend in India has been for police numbers to grow faster than the rate of population growth. In 1975, there were approximately 200,000 armed police in the central paramilitary forces, bringing the total police strength in India to about a million and greatly increasing the number of armed security forces (Arnold 1988).

An interesting account of the role of police under Prime Minister Jawaharlal Nehru has been given by B.N. Mullik, Director of the Intelligence Bureau (DIB) from 1950 to 1964 (Mullik 1971, 1971a and 1972). Mullik had been a senior police official under the British before he was picked up to be DIB in 1950. During his posting in Bihar, he had had a rather bad snub from Jawaharlal Nehru who visited the region in the early thirties. Though the memory rankled, Mullik was able to quickly establish a cordial and even close relationship with the Prime Minister, which lasted till the very end of Nehru's term.

The stability of the Nehru regime did not last long. The Indira Gandhi regime was marked by political instability leading up to the imposition of the Emergency, which brought out in full virulence, the misdeeds and oppressions of the Indian police.

Impact of the Emergency

The Shah Commission, which went into the Emergency excesses of 1975–77, brought into public view the organizational crisis of the entire administrative system especially the police. The Janata Party, which came to power after the 1977 general election had set up the Shah Commission, the National Police Commission and the L.P. Singh Committee on Intelligence to undertake far-reaching police and intelligence reforms. The National Police Commission submitted eight reports with many far reaching recommendations. However, the Congress party, which returned to power in 1980, made sure that the recommendations remained in cold storage.

David Bayley, a leading expert on the Indian police, visited India in the early eighties and evaluated the impact of the Emergency on the Indian police (Bayley 1983). Bayley noted an atmosphere of desperation with regard to issues of public order. The people had lost faith in the ability of the police and the courts to impose order. The police were devoting attention primarily to preventing group violence rather than individual criminality. The superintendents of police were spending up to 80 percent of their time in dealing with actual or potential outbreaks of rioting and demonstrations. Mounting group violence had led to substantial increases in the armed police, mainly at the central level; distortion had arisen in the deployment patterns in that officers tended to collect their forces in reserve in order to be prepared for mob outbreaks. This meant pulling police out of rural areas and concentrating them in urban areas and the neglect of beat duties. Further, continuous involvement with riots, demonstrations, firing deaths, injuries, and judicial

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enquiries had led to a decline of professionalism, morale and efficiency in the police. This was a staggering assessment on the part of a sympathetic observer.

Continuing, Bayley noted the substantial increase in the number of riots taking place over the 1970s. The police had been under unprecedented stresses during the decade marked by massive politicization accompanied by a decline in the rule of law. He examined three aspects in particular: political direction; police strikes; and violence and crime. While politics had been creeping into police decision making for a long time, the Emergency experience had injected it explicitly and dramatically. The Emergency represented 'high politicization' as opposed to 'low politicization' of the previous period. During the Emergency, the police faced the 'Nuremberg dilemma' of whether or not to implement illegal orders by persons in political authority and other extra-constitutional authorities. This had happened before only in the regimes of the communists in West Bengal and Kerala. The Emergency was the first time when senior police officials at the state and central levels faced openly proclaimed political exigencies. The Janata party regime of 1977 was short-lived and did not succeed in punishing those found guilty by the Shah Commission. Mrs. Gandhi returned to power in 1980. She was in a position to insist that professional responsibility be enhanced in administration, especially with regard to criminal justice and maintenance of public order. However, the message sent out was that the administration was to serve the government. Through out the country, officers censured by the Janata regime were rehabilitated. Partisanship in administration was reinstated.

The process of political manipulation of the police ('low politicization') had, however, been going on for quite some time before the Emergency. By the late seventies, political pressure on police was felt at all ranks down to the assistant sub-inspector. Pressures related to dropping proceedings against those with political connections or to filing trivial charges against political enemies to harass them. Local politicians even sat in the police stations to serve as a buffer between their supporters and the police. Station House Officers were courted and made to feel important. Looking for leverage in particular cases, politicians would start at the lower levels of the hierarchy and go up till they found a pliable officer. If all else failed they would go through the party channels to the chief minister. The qualitative impact of all this was dramatic. *Many felt that India had developed a 'dual system' of justice, one through the formal channels of the criminal justice system and another through political channels.*

The invariable retention of the Home portfolio, which had jurisdiction over the police, by the State chief ministers was an indication of the crucial role of law enforcement in politics. The Home Minister of India was perceived to be the second most powerful figure in government after the Prime Minister and only a hardcore loyalist was appointed to the post. Officers who held out against political pressure were summarily transferred. In states like Bihar and Uttar Pradesh, top police officers and district police chiefs served for less than one year in office and Station House Officers for even less! Electoral changes invariably caused turnover in police postings. Political manipulation led to decline in discipline and senior officers were often unable to control undisciplined juniors with political connections. Even senior officers were affected. A kind of Gresham's Law began to work wherein intrusion of politics in matters of police management led to solicitation of further political influence. All this led to pervasive disillusionment, loss of pride and collegiality within the higher police ranks. The IPS association, the national fraternal organization of the senior ranks, signally failed to take a stand on these issues.

Perhaps a misplaced sense of being members of a disciplined force prevented the association from putting up a stand.

Although preoccupied with group violence, police officers were also trying to safeguard their career prospects. Both the public and the police were caught in an increasingly norm less, unpredictable and unjust environment. Policing was being transformed from the 'professional imposition of a coherent moral consensus into an intensely partisan political activity.' Governments in the states were increasingly prone to punish enemies and reward friends through the criminal justice machinery. Because of the politics of scarcity, it was too much to ask senior police officers to jeopardize their careers in the pursuit of the ideal of impartial rule of law. As a result, rank and file policemen were hardly ever discharged for their failings and senior officers almost never resigned on principle and probationers were never failed. Besides, there were genuine philosophical complexities in balancing accountability with responsibility in a democracy.

The decline in the capacity and discipline of the police reinforces the insecurity of the people in an atmosphere of intense competition and perceived lawlessness. 'As order becomes uncertain, people are tempted to take the law into their own hands or to use the official apparatus to make sure their interests prevail. Lawlessness and grassroots manipulation of criminal justice then occur. Politicians, who are as much captive of these circumstances as police officers, do what they can to use the police and courts to provide their constituents with a modicum of safety and advantage. A qualitative change has taken place. The rule of law is less evident in India's political life and the workaday world of its suffering citizens, while morale, impartiality and dedication of the police have become problematic.'

Police Strikes

The lack of unionization in Indian police prevented the subordinate police from pressing for betterment. Demonstrations and work stoppages became almost normal activities in the Indian police in the late 1970s after the Emergency ended. The first manifestation of organized militancy was in the Delhi police strike of 1967 against working conditions. The second, much more dangerous, was the 'mutiny' of the Provincial Armed Constabulary (PAC) in Uttar Pradesh in 1973. In that episode, the army was called out and exchanged fire with PAC units in several towns, including Kanpur and Banaras. The causes of the escalating unrest were obvious: inadequate pay especially at the lower levels; housing and dearness allowances; disability benefits; pensions; hours of service; promotion prospects; and finally, performance of menial duties for senior officers. The National Police Commission (NPC) held it unrealistic today to prohibit non-gazetted ranks, from organizing themselves, with complaints calling for serious review. The First Report of the NPC made specific recommendations about the establishment of rank and file grievance machinery.

All India Police Strike 1979

The police strike in the aftermath of the Emergency (May-June 1979) engulfed the whole country and deserves close attention. The strike was not confined to the state police forces. It spread to the Central Reserve Police Force (CRPF) and the Central Industrial Security Force (CISF) as well. The situation was perceived to be so grave that the Indian Army was enlisted to quell it. When the state police went on strike on the basis of

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Forces had been growing rapidly in an almost uncontrolled manner and were being widely used for law and order, election duties and so on outside the original purposes for which they were raised.

Heavy reliance on the police force in Gujarat since 1981 to deal with communal and caste violence had led to the politicization of the police.

legitimate professional demands, the CRPF was used to suppress the strike. Strike by the CRPF necessitated that the Army be called out. The strike was spontaneous, ill-coordinated and short-lived. Its proximate cause was the same for the state civil police as well as the central paramilitary forces: humiliating treatment of police subordinates.

The strike started as a series of bush fires but soon developed a broader pattern involving issues of pay, prerequisites, conditions of service, mechanisms for grievance redress, recognition of policemen's association and withdrawal of magisterial powers possessed by superior officers of the paramilitary forces. The well entrenched paramilitary model of policing in the country gave rise to these issues in the first place.

Strong arm methods were used to crush the police strike but the issues remained. The participation in the strike by central paramilitary forces was particularly noteworthy. These forces had been growing rapidly in an almost uncontrolled manner and were being widely used for law and order, election duties and so on outside the original purposes for which they were raised. The existence and expansion of these central forces, especially the CRPF, which is essentially meant for law and order duties at the state level, seemed to send the message that the state police forces could not be fully relied upon to maintain or restore order in some situations without the help of mobile, centrally controlled paramilitary forces (Baxi 1982).

India has probably the largest number of police forces in the world with anywhere between 2–3 million armed men putting state and central police forces together (NCRB 2001; MHA 2006). Discontent in the police forces could thus be quite destabilizing for our political system. It would be a serious matter if the state in India cannot maintain these forces at a minimum level of decency and comfort. Does India need to have two types of police forces, one under the central government and the other under the state governments? How are the costs to be met? Already, it is clear that between Rs. 8 and 9 billion are being spent on the maintenance of the CPFs out a total current budget of about Rs. 21 billion for the Union Home Ministry. Can India afford such a huge expenditure for the upkeep of these forces with additional costs for their deployment, training etc? These are not merely security matters to be kept out of public scrutiny but are issues to be debated in the public domain by citizens. The police agenda needs to be clarified by the government before serious police strikes involving central and state police forces recur.

Gujarat Police Strike 1985

Political violence in Gujarat in the mid-1980s led to a major police strike. Violence was organized against the poor in the state for electoral-political reasons; the police not only failed to contain it but participated in the violence in many cases. A complete breakdown of law and order followed and the army had to be called out. An observer stated at that time that the violence during the last quarter of 1985 in Gujarat would figure more prominently in political histories than even the major violence in Punjab during the 1980s or the Hindu-Muslim violence of the period (Manor 1988).

Heavy reliance on the police force in Gujarat since 1981 to deal with communal and caste violence had led to the politicization of the police. The recognition of police associations by the Janata Party government, which came to power in New Delhi in the late 1970s, led policemen in Gujarat to make claims, which the state exchequer could not

meet. Ashok Bhatt, a former police officer and convener of the police coordination committee, organized police strikes on six occasions after 1979 (thrice on the eve of politico-religious processions led by certain political parties), which led up to ghastly communal riots in 1985 and 1986. In 1987 too, Ashok Bhatt was able to ensure that his demands were met by the threat of a strike, which caused considerable destruction. The communalization and politicization of the police during that time appears to have been the precursor to the unabashed participation of the police in the massive anti-Muslim pogrom in Gujarat in 2002.

The 1985 police unrest in Gujarat was notable for i) the arrest of 21 police leaders and dismissal of 72 policemen; ii) the take-over of 34 police armouries by the central police forces within forty minutes on 24 July; the locking up of 24 police stations in Ahmedabad and the large scale abstention from duty by policemen; iii) the evacuation of several battalions of the State Armed Police (SAP) to Punjab for fear of provoking a serious police mutiny and the deployment of over 70,000 BSF and CRPF personnel in the state to contain the deteriorating situation; iv) the open disrespect to President and Prime Minister shown by rebel police leader Ashok Bhatt; v) the major intervention by central paramilitary forces and intelligence agencies to deal with the situation created after the strike; vi) the bungling in the course of arrest of Ashok Bhatt leading to his release and consequent arousal of tensions; vii) the serious discord among top policemen with action against at least one of them for corruption (Subramanian 1988).

Increasing Disunity

The wave of indiscipline by the rank and file seen in the seventies, dramatized the larger issue — the increasing disunity of the Indian police. Observers noted three aspects: high stratification of the rank structure; increasing strain between gazetted officers of the state services and the IPS; and the problem of state loyalties (Bayley 1983).

Recruitment to the police takes place at four levels — constables, Sub Inspectors, Deputy Superintendents and Assistant Superintendents. Although some people may be promoted from each of the four strata into the next highest, opportunities are in fact quite limited. Unionization will highlight these divisions at lower levels as it would become necessary to determine whether there should be a single or multiple rank associations. Secondly, gazetted officers of the state services resent the tradition of reserving the most important state level posts to directly recruited IPS officers. There is a quota for promotion of state service officers into the IPS but monopolization by the IPS is strong. By 1980, eight states had demanded that no more directly recruited IPS officers be sent to them. Some state governments pay the promoted state service officers, salaries comparable to the directly recruited IPS officers. The movement towards limiting the intake of directly recruited IPS cadres into the states may be viewed as politicization of the rule of law, representing an alliance between state level officers and politicians that would cement their mutual dependence. It also reflects latent federal tensions in the Indian polity between the centre and the States. Thirdly, since 1950, fifty percent of the directly recruited IPS officers are posted outside their home states in order, it is said, to promote 'national integration.'

However, these officers, given the increasing politicization of the local environment in every state, are always regarded as 'outside officers' not to be fully trusted by local politicians. Tensions arise between three groups of gazetted police officers in each state:

The movement towards limiting the intake of directly recruited IPS cadres into the states may be viewed as politicization of the rule of law.

Politicization of the Indian police from inside and outside occurs within a context of growing socio-political violence.

state police officers promoted to IPS; directly recruited IPS officers belonging to the state; and directly recruited IPS officers from other states!

Politicization of the Indian police from inside and outside occurs within a context of growing socio-political violence. Officers told David Bayley (1983) that 'law and order' meaning public order maintenance in the context of increasing rioting and violent demonstrations, is the crippling preoccupation of their daily work. They estimated in the early eighties that they spent about 80 percent of their time dealing with actual and potential outbreaks of violence. Official crime statistics bear out an escalation of violence over the years. Incidents of rioting per unit of population doubled from 6.9 per 100,000 in 1965 to 12.6 in 1977. Subsequent to a decline during the Emergency, there was an upsurge of violence after it was lifted. The summer of 1980 brought a crescendo of violence, mostly communal, in which over 2,000 people died.

Increasing political violence has had discernible impacts on the police. Firstly, it causes an increase in the size of the armed police relative to civil police. Increases in police strength after 1970s have been almost exclusively in the armed police. Most of the increases are also said to be of the central paramilitary forces (CPFs). The armed forces of the states are also being augmented by the setting up of India Reserve Battalions (IRB) with central financial assistance. State armed police comes in two forms: one, the district armed reserve, kept for riot duty; two, the mobile armed police, organized and directed from the state police headquarters such as Provincial Armed Police (PAC), Uttar Pradesh, Bihar Military Police (BMP), Punjab Armed Police (PAP) and so on. Secondly, preoccupation with political violence has warped deployment patterns. Forces tend to be collected in reserves in order to be prepared for outbreaks of political violence. This means pulling out police from rural areas and concentrating them in cities to the neglect of beat duties. It also saps creativity, inhibiting officers from being proactive, making them adopt a self-protective approach with neither the initiative nor the inclination to devote attention to other mundane but important problems which clamour for attention, especially investigation of routine crime. Thirdly, the challenge of public order management pushes the police into the glare of public and media attention. Riots, police firings, deaths and injuries, demonstrations against the police, further riots, judicial enquiries and so on are the staple of press and media reports and lead to action against erring police officials in some cases or in a selective manner which leads to demoralization on the part of those who did a job in good conscience. Since political parties almost inevitably organize the riots, their increasing incidence makes professional policing increasingly less likely. From the police point of view, it increases their need for political champions, both individually and collectively. The 'traditional method' of appearing impartial in a riot situation, namely, by arresting an equal number of people from both sides has become dysfunctional in today's atmosphere of heightened political tensions and partisanship. In addition to group violence, private citizens are increasingly willing to take to violence to settle personal scores as part of an all-pervading sense of breakdown of order and collapse of the criminal justice system. This has any way been a persistent feature in rural India with increasing attacks on the rural poor by the rural rich and upper castes, often with the support and participation of the police. The result is the collapse of public confidence in the government with regard to ensuring minimal justice. The Bhagalpur blindings, back in the 1980s, was just an early example.

Political parties almost inevitably organize the riots; their increasing incidence makes professional policing increasingly less likely.

An estimate in 1987 showed that apart from cases of murder, kidnapping, dacoity, and robbery, which showed increases of over 100 percent during the period from 1951 to 1981, the figures of riots increased by nearly 440 percent during the same period, and cases under the Arms Act by nearly 550 percent (Singh 1987). There was the emergence of 'atrocities' against Dalits and Adivasis as well as the problem of terrorism in India.

Verma has made a useful contribution to the debate on crime and violence in India today and what the police must do about it (Verma 2005). His suggestions regarding the collection and analysis of statistics on crime and violence should be examined by the Indian police. The call for better research and learning of lessons from abroad is well taken. The brief evaluation of the work of National Crime Records Bureau (NCRB) could have been supplemented with a much-needed assessment of the work of the Bureau of Police Research and Development (BPR&D), the parent body of NCRB.

Politicization, Corruption and Brutality

Verma (2005) also fills a gaping void in the literature on Indian police by opening a discussion on the culture of politicization, corruption and brutality. The discussion of police and politics in India calls for theoretical depth and rigour which does not exist at present (Bayley 1969; Dhillon 2005). For example, a British study found that the para-militarization, centralization and partisanship of the police was related to the trends towards authoritarianism and centralization of the British state and its legitimacy crisis, which expressed itself in a series of public order challenges, with the police intervening aggressively on behalf of the state (Brewer 1998). The liberal model of policing was challenged and a 'symbiotic relationship' between the police and the state was postulated thus exposing the claim that policing was apolitical. The study further demonstrated that in a number of countries, the 'state to a lesser or greater degree, influenced the structure, organization and finance of the police, affected the formal structures of authority within the police, conditioned or reinforced a militarization or politicization of the policing, and provoked many public order situations in which the police had to intervene' (Brewer, J.D. 1998: xv). Brewer's study of political violence and state response in India highlights the need for a study of the role of the Indian police in a comparative and comparable perspective.

The liberal model of policing was challenged and a 'symbiotic relationship' between the police and the state.

Political intervention, intercession and interference' in the functioning of the police and suggested remedial measures still remain to be accepted and implemented.

BOX 3.1

Verma makes a fascinating analysis of the organizational features and the cultural and managerial practices, which promote corruption, brutality and politicization in the police. He focuses on the elitist nature of the police leadership, the politicization of the department, its unaccountability to the people and its outdated managerial practices, which have made corruption endemic. Politicization of the police, according to him, is the result of lack of professionalism and accountability within the police organization.

Political misuse of the police is the direct result of internal organizational problems and poor performance. When police indifference to citizens' problems and personal misbehaviour of officers become matters of public concern, it becomes necessary for the politician to intervene. Independence, which brought no fundamental changes for the police, nevertheless transformed the ruling elite in a dramatic way. Empowered by democracy, people demanded that politicians should address their grievances.

Indian police are characterized as a 'law unto themselves' and a 'dangerous anachronism.'

The author also makes an interesting typology of the forms of 'political interference' distinguishing between its public, general and special forms. The National Police Commission in their reports also examined the issue systematically by distinguishing between 'political intervention, intercession and interference' in the functioning of the police and suggested remedial measures, which still remain to be accepted and implemented. Political intervention in police work, however, reached new levels during the demolition of the Babri Masjid in 1992 and in the Gujarat carnage in 2002. In the former case, the chief minister of the state where the mosque is located, that is, Uttar Pradesh, who espoused the 'Hindu nationalist' perspective, reliably instructed the state Director General of Police that no police firing should take place in case the demolition occurred and the officer complied by issuing written instructions in this regard. In the latter case, the chief minister of Gujarat, who also was of the 'Hindu nationalist' persuasion, reliably told a meeting of senior police and civil officials on the day before the commencement of the massacre (27 February 2002) that a major public protest by Hindus would take place the next day against the alleged Muslim role in the death of Hindu pilgrims in the Godhra train arson incident and that the police and the administration should 'respect Hindu sentiments.' This was presumably done resulting in the marked inactivity and even participation of the police in the massacre that followed.

Cracks in the Intelligence Bureau

The intelligence system under the control of the police has been showing cracks for a long time. B.N. Mullik who was DIB (1950–1964) published a three volume account of his work in the IB under Prime Minister Nehru, which unwittingly revealed the organization as highly politicized. Right from British times, the IB has lacked a legal framework and a charter of duties. Mullik did nothing to address the issue although he was considered a 'colossus' of the Indian police (Rao 1993). His volumes give an account of the period from 1948 to 1964.

M.K. Dhar, who retired from the crucial position of Joint Director of the IB, has given an interesting, important and courageous account of the goings on in the organization from about 1968 to 1995 (Dhar 2005). His narrative is hair-raising in many respects. The details are sordid and specific. The bugging of criminals, terrorists, communists and even journalists is known. What is staggering is that bugging devices were placed in the Parliament, the PM's office, and even in the Rashtrapati Bhawan. In 1974, the author was called upon to subvert for a second time the loyalty of a section of politicians in the northeastern state of Nagaland. In 1982, Indira Gandhi wanted the parliamentary office

BOX 3.2

Extra-Judicial killings by police

The Indian police can be described to be committing two types of unlawful killings. In the first, suspects die during custodial torture or by execution and police deny all responsibility, claiming instead that there were other causes for the deaths. In the second, known as 'fake encounter' killings, the police acknowledge the killings but falsely claim that they acted in self-defence or to prevent victims from fleeing arrest.

Source: HRW 2009

of a particular member of her own party to be bugged. In 1987, a bugging device aimed at the President of India was placed in the PM's office. Dhar's memoirs also unabashedly reveal his political links with the then main opposition party. Dhar's defence is that he did everything out of a sense of doing his duty as a spy! Speaking to a journalist he said: 'this is not dirty tricks, this is trade craft.' One is tempted to say 'fair enough!'

That the situation in the Central Bureau of Investigation (CBI) is no better has been brought out in the book by a former Joint Director of the organization (Singh 1996).

4. HUMAN RIGHTS WATCH ON THE INDIAN POLICE

The 118-page Human Rights Watch (HRW) report *Broken System: Dysfunction, Abuse and Impunity in the Indian Police* (2009) is a seminal document. Its importance has not yet been appreciated in India, which lives in denial. It constitutes a significant assessment of the current predicament of Indian police who are characterized as a 'law unto themselves' and a 'dangerous anachronism.' The report must be examined in the larger context of the working of the Indian political system and the 'failure' of police reforms in India. The inverted commas are used since the concept of failure has to be problematized in the Indian context. The police as they exist today are integral to the working of the political system and they cannot be 'reformed' without an overhaul of the political system itself.

Briefly, HRW has examined i) the dangerous state of disrepair of the Indian police; ii) political interference and stalled reforms; iii) failure to register complaints and investigate crime; iv) illegal arrests, detention, torture and ill treatment; and v) impunity for extra-judicial killings. On the issue of obstacles to police accountability, it suggests i) an overhaul of police structure; ii) improvement of working conditions; iii) enforcement of law; and iv) making abusers accountable for violations. The report assumes relevance because there are growing human rights violations by the police in India today, which call for radical political intervention and an awakened civil society.

The Police Act 1861 makes the Indian police no more than a government department lacking the autonomy under rule of law which is available to police agencies in leading democracies. The liberal democratic Constitution of India enshrines human, social and legal rights; but the police continue to be governed by the colonial Penal Code (IPC), and Criminal Procedure Code (CrPC) in their day-to-day work. Thus, there is a fundamental contradiction between the provisions of the Constitution and the organization and working of the police under the Police Act, the penal and procedural codes.

Scope and methodology

Police practices in the three states of Himachal Pradesh, Karnataka and Uttar Pradesh and in the national capital region of Delhi were examined by HRW. Ongoing human rights violations by the police and the impunity that contributes to abuse were looked into. It was found that the police were overstretched and outmatched battling problems like armed militancy, organized crime and religious and caste violence, without adequately trained personnel and equipment. The public, a vital source of cooperation and information, often avoided contact with the police out of fear. Political figures intervened in police operations to protect influential criminals, bribing officers and destroying morale.

The lack of independent investigations into complaints of police abuse contributed to impunity. Poor working conditions coupled with impunity for abuse led to predictable

Public often avoided contact with the police out of fear.

Police commit abuses and used threats and physical and mental torture as the primary tools of investigation and law enforcement.

results. Officers often adopted ‘short cuts’ to get round systemic impediments; they cut caseloads by refusing to register complaints. They also used illegal detention, torture and ill treatment to punish criminals when they lacked the time and effort to build cases, or elicited false confessions. HRW has made detailed recommendations for reform including steps the authorities should take to end impunity and overhaul everyday police policies and practices.

HRW consulted experts and analyzed the extensive research on police practices and human rights record nationwide, examining cases arising since 2005. Victims and witnesses, including victims of police torture/ill-treatment or members of their families, were interviewed. Individuals arrested/detained on false charges though not suffering torture, were interviewed along with interviews with family members and lawyers of people killed by police in alleged shoot-outs or deaths in custody. Interviews were held with individuals for whom police had failed to register or investigate crimes. Group interviews were held with individuals threatened and harassed along with extortion of money.

HRW visited police stations in big and small cities and villages. Officers spent full days to give HRW an understanding of their day-to-day practices. Officers of different ranks including constables were interviewed inside police stations and outside, without the presence of other senior officers. Also interviewed were junior-ranking officers who worked as heads of police stations, investigators and assistants to senior police, many speaking on conditions of anonymity. Several senior police officers, including chief officers of Karnataka and Uttar Pradesh were interviewed along with former police officers, including former members of the National Human Rights Commission. The range of human interest coverage and documentation was thus impressive.

Nature of Abuses

HRW noted that the Indian police, a ‘dangerous anachronism,’ had failed to evolve from a ruler-supportive, repressive force they were under colonial rule into a democratic agency. They committed abuses and used threats and physical and mental torture as the primary tools of investigation and law enforcement. The institutional culture discouraged officers from acting otherwise, failing to give them the resources, training, an ethical environment and encouragement to develop professional policing. Many officers were ordered to or were expected to commit abuses. Two linked issues were examined:

- i. abuses by the police against individuals, usually criminal suspects;
- ii. conditions that facilitated and encouraged the abuses.

It was found that misbehaviour was deeply rooted in institutional practices. Government failure to enforce accountability and to overhaul the structure encouraged abusive practices to continue. Four clusters of issues called for attention:

- police failure to investigate crimes;
- arrest on false charges and illegal detention;
- torture and ill-treatment; and
- extra-judicial killings.

Historically, marginalized groups were especially vulnerable to the first three abuses. Arising from the discriminatory biases of the police, the vulnerability itself was a product of an abusive police culture related to an ability to pay bribe, trade social status or call on political connections.

Why Abuses Persist

Part of the problem was the working conditions. The civil police, especially constables, lived and worked in abysmal conditions. They were often exhausted, demoralized, always on call, working long hours without shifts and necessary equipment, only to return to government-provided tents or filthy barracks for a few hours of sleep. On top of this, junior officers often faced unrealistic demands from their superiors to solve cases quickly. Despite official encouragement, their use of professional crime investigation techniques were effectively discouraged by the dearth of time, training and equipment. Local political figures frequently intervened in investigations and sometimes acted to protect known criminals.

To get round these systemic problems, many officers took 'short cuts' (refusal to register complaints, illegal detention, torture and ill-treatment of alleged criminals, or eliciting false confessions). The abuses contributed to a climate of fear in which many people avoided contact with the police. Consequently, the police did not get public cooperation that is so essential to solving and preventing crimes. A vicious cycle was created in which crimes went unreported and unpunished and the pressure on the police mounted to deal with rising criminality.

The Manmohan Singh government, in May 2009, promised to pursue police reforms. The challenge of transforming the police institution from one that enables and encourages abuse to one that promotes human rights and the rule of law is formidable. Abusive officers must be held accountable. Incentives must change. Disobedience to illegal orders and failure to meet the expectation of superiors to solve crimes without the necessary means must not be punished. Sustainable decline in police abuses can only come from overhauling archaic police laws and structures and investing in training, personnel and equipment to build a professional and rights-respecting police force.

Dangerous State of Disrepair

Indian police are tasked to tackle serious problems like armed militancy, terrorism and organized crime. However, lack of political will to invest in improvement has overstretched and ill-equipped the police. India has just one civil police officer for every 1,037 residents. The Asian average is one officer per 558 people and the global average is 333. Despite this, increasing the number of paramilitary police forces is getting priority. Despite 'law and order' and 'the police' being state subjects in the Constitution, the Central Paramilitary Forces (CPFs) are growing in numbers. Though meant for specific purposes such as border security and industrial security, they are increasingly being deployed in local conflict management on the request of hard-pressed state governments. Manpower deployment for 'VIP security' and misuse of police 'orderlies' as family servants continue. Colonial police laws do not allow lower rank police to have operational authority or advanced professional training. Constables make up 85 percent of the police force though for the most part they are

Police abuses contributed to a climate of fear in which many people avoided contact with the police.

Sustainable decline in police abuses can only come from overhauling archaic police laws and structures and investing in training, personnel and equipment.

Border security and industrial security, are deployed in local conflict management on the request of hard-pressed state governments.

not trained to investigate cases. Junior officers have little chances of promotion and are subject to the unrealistic demands of the senior officers. The latter are, for the most part, directly recruited to management positions at the top with no firsthand knowledge of the difficulties of the constabulary.

Political Interference and Stalled Reforms

Partisan policing, including politically motivated refusal to register complaints, arbitrary detention and torture and killings, sometimes perpetrated at the behest of national and state level politicians, have produced unprecedented levels of public distrust and fear of the police.

The Supreme Court in their 2006 judgment directed the central and state governments to enact new police laws to reduce political interference. However, the response has been discouraging; the central government, which funds most police activities in the country including state police budgets, holds that police is a state subject in the Constitution thus passing the buck to state governments. The latter are going about the business at their own pace or are altogether resisting the move.

Key government officials are hesitant to accept the need for far-reaching reforms including the need to make the police accountable for widespread human rights violations. The immediate need to improve the living and working conditions of the subordinate police, which encourage such violations, is also not widely recognized.

Need to improve the living and working conditions of the subordinate police is not widely recognized.

Victims of crime, who are poor and marginal are often unable to obtain police assistance.

Failure to Register and Investigate Cases

Police officers are often inclined not to register cases on account of pressure from ruling parties who are keen to show that the law and order situation in their states is not bad. Many of the victims of such non-registration of cases belong to the deprived communities such as the Scheduled Castes and Tribes. Victims of crime, who are poor, are often unable to obtain police assistance. They cannot afford to pay the bribes that the police demand for registration of cases or for the cost of investigation that the victims are expected to pay on behalf of the police. They may also find it more difficult to elicit political support than the socially more powerful perpetrators of crime.

Poor are vulnerable to prolonged detention and repeated ill-treatment.

Illegal Arrest, Detention and Police Torture

Arrests are often made in retaliation for complaints of police abuse, in return for bribes or due to political considerations or influence of powerful local political figures. Police also often use coercion and torture to elicit confessions to fabricate charges. The procedure indicated in Supreme Court in *D.K. Basu vs. State of West Bengal* includes production of a suspect before a magistrate within 24 hours of arrest but this is often disregarded. Severe ill-treatment is sometimes intensified over a period of an individual's detention. Individuals who are poor and socially or politically marginal are especially vulnerable to prolonged detention and repeated ill-treatment because they are unable to pay a bribe or have no connections with local political figures who can intervene. Arrested children are often not provided the protections guaranteed in the Juvenile Justice Act. Also frequent are sexual and physical harassment of deprived women in custody. Some police officers admit that 'using force' is their primary investigative tool. False confessions lead police

BOX 4.1

HRW reports that, in the course of their field work, a police official told them: 'This week I was told to do an 'encounter' (referring to the practice of taking into custody and extra-judicially executing an individual, then claiming that the victim died after initiating a shoot out with the police). I am looking for my target. I will eliminate him.' On 2 July 2010, the most

recent such event, in an alleged 'encounter' with the Andhra Pradesh police, two Maoist leaders were 'eliminated' (*Mainstream* 2010). A peace activist who met the Union Home Minister recently to demand a judicial probe into the incident was told that such a probe was not possible since the subject was related to the state government.¹

1. Personal conversation with the activist.

to gather faulty evidence, which often lead to cases being thrown out of court or wrongful convictions.

Impunity for Extra-judicial Killings

While the practice is not the norm in most of India, fake encounter killings do occur frequently. The NHRC reported 201 complaints of such killings in the state of Uttar Pradesh in 2007, allegedly more than any other state (although the record available from the tiny north eastern state of Manipur for 2008 and 2009 far surpasses this figure (*Independent Citizens' Fact Finding Report* 2009).⁷ Police were usually the only witnesses to these alleged encounters which were typically carried out by junior officials. There was evidence of unofficial sanction for such practices. Criminal suspects, members of minority communities and political activists were often the victims of fake encounter killings.

Obstacles to Police Accountability

HRW reports that efforts at police accountability were hampered by systematic deniability arising from the absence of records, post-mortem examination, record of arrest and detention. Independent investigations were rare in much of India despite the existence of National and State Human Rights Commissions. Investigations, undertaken by the police or at the behest of other agencies, were hampered by an unwritten 'code of silence' that makes it unlikely that the police would disclose incriminating evidence. Criminal prosecutions by victims often does not take place because of fear of police retaliation. Further, section 197 of the Criminal Procedure Code provides immunity from prosecution to all public officials without government sanction. Efforts by the NHRC have often resulted in police investigating themselves. In most cases, the NHRC recommends only provision of interim compensation to victims without proper prosecution of officers. The country's eighteen state human rights commissions (SHRCs) vary in resources and willingness to act with local lawyers describing the staff as inadequate in number, lacking human rights

Police are usually the only witnesses to the alleged encounters.

Punishment is often temporary suspension or transfer of the accused.

New state laws in some cases were contrary to Supreme Court directives.

7. Mass killings with the participation of or facilitation by the police are a different matter altogether.

training, and biased against complaints. In exceptional cases, the punishment is often temporary suspension or transfer of the accused. Until officers know that they will be prosecuted, fired, or their careers seriously damaged, the problem will not go away.

After noting the Supreme Court direction to set up Police Complaints Authorities at the district, state and central levels, the HRW report however observed that the promise of comprehensive reforms remained unrealized and the momentum it created was dissipating. As of April 2009, only 12 states have passed laws claiming to implement the Court's directives but the Court has not initiated contempt proceedings against the non-compliant states. In a 'dangerous departure' from the sense of urgency articulated earlier, the Court established a monitoring committee to review the states' compliance. The committee's two reports were unavailable even to the petitioners who took up the matter with the Court in the first place. This has stymied civil society's ability to voice informed concerns over the continued delays. The lack of transparency has made it unclear whether the committee has established a timetable or made minimum demands on non-compliant states. New state laws in some cases were contrary to Supreme Court directives but the committee would not assess those laws until it finished reviewing the responses of the completely non-compliant states, a process for which there was no announced deadline.

HRW report rightly noted that even if eventually implemented, the Supreme Court directives, with their focus on curbing political interference in police work, may fail to significantly reduce arbitrary arrest and detention, torture and other mistreatment and deaths in police custody. These abuses 'cannot be ascribed solely to political interference although the problems are linked because of de facto impunity provided by political patrons.'

The danger of a reform agenda that seeks to free the police from political control without making them more accountable to the public is also noted. The Supreme Court directions have left undisturbed the police's general immunity from prosecution for serious misconduct, as provided under section 197 of the Criminal Procedure Code. Further, the reform agenda fails to address the working and living conditions of low ranking police, often the perpetrators of abuses, carrying out illegal orders or operating under a police culture that 'condones and facilitates such behaviour.'

HRW further noted that the Supreme Court, while requiring states to establish Police Complaints Authorities to investigate complaints of police misconduct, had not required them to take preventive measures against human rights abuses. While changing laws to prevent undesirable political influence on police functioning, it is equally necessary to ensure that 'political control is replaced with accountability of the police to the community.'

Thus, in noting some problematic issues relating to current police reforms efforts in India, especially with regard to section 197 of the CrPC, HRW is in advance of agencies such as the Commonwealth Human Rights Initiative (CHRI), who are not yet critical of the Supreme Court directions and reports of other reform committees.

The report contains case studies of extra-judicial executions by the police in several states and identifies the obstacles to police accountability. After analyzing the number of complaints made and the enquiries conducted by official agencies, it concludes that impunity is still the norm. Police Complaints Authorities have not been set up in half of the 28 Indian states and seven Union Territories and those that exist do not have staff to conduct independent enquiries. Potential for police intimidation or harassment

Reform agenda fails to address the working and living conditions of low ranking police.

of individuals complaining of abuse is high because registration of the complaint may require a visit to the very police station where the abuse occurred. Several constraints affect the functioning of the national and state human rights commissions that have been set up.

HRW has made detailed recommendations for action by i) the Union Home Ministry, Union Territory police, State home ministries and State police; ii) the Indian Police Service; iii) the Parliament; iv) the National Human Rights Commission; v) the State Human Rights Commissions; and vi) concerned foreign governments and donors.

HRW has thus done a signal service by producing this extraordinary report. In this context, a few broader issues, relevant to police reforms in India, may be mentioned:

- Despite the rhetoric on rule of law, provisions of the Constitution and the existence of institutions for human rights protection and promotion, the fact remains that the Indian police are a government-controlled department with no meaningful autonomy;
- The focus on crime and investigation detracts attention from the fact that the existing police organization is a reproduction of the Irish colonial paramilitary police model which had the specific purpose of putting down political resistance to British rule instead of serving the public by professional investigation and detection of crime;
- The provisions of the Indian Penal Code, the Criminal Procedure Code and the Police Act focus mainly on security of state, maintenance of public order and collection of political intelligence at the cost of human rights protection and service delivery;
- Decentralization and democratization of the police in India and empowerment of Panchayati Raj Institutions (PRIs) to deal with conflict management are not to be neglected;
- The impact of conflict on women and children in the conflict zones of Jammu & Kashmir, the North-eastern states and the Central Tribal Belt require detailed attention;
- The reform of police-controlled intelligence agencies, which collect political intelligence for ruling parties needs attention;
- SARC recommendations to divide police functions and organization into three separate areas of investigation, law and order, and local police needs attention;
- The role of the Indian Administrative Service and the Indian Police Service in public order management requires serious attention.

5. WHERE DO WE GO FROM HERE?

Before concluding this discussion and assessing the future tasks before the Indian police and the Government of India, it would be useful to look at the role of the police in dealing with the Maoist movement, which is said to have pockets of influence in 223 districts and 2000 police stations in 20 states of the country.⁸ The Union Home Minister reported

8. Union Home Minister's speech at the DGP's/IGP's Conference, 2009.

that of all the 'Left Wing Extremist' groups in India, the CPI (Maoist) was the most potent, with a presence in 17 states and accounted for 90 percent of the violent incidents that were taking place. Violence has been consistently witnessed 'in about 400 police station areas of 90 districts in 13 states.' Police role in containing this violence has become perhaps the most controversial aspect of policing in India today.

The May 1967 peasant uprising in the Naxalbari area of the state of West Bengal (hence the term 'Naxalite violence') was put down by force. After the Emergency, in the 1980s, the Maoist movement re-emerged and grew in strength despite police repression. In the 1990s, the reform-led market oriented growth has led to exclusion of vast masses from the development process, which has led to a growing mass base for the Maoist movement in regions and states where the most oppressed sections of the Indian population live, such as Telengana, Chhattisgarh, Orissa, Jharkhand and West Bengal. The minority ruling elite perceives the mass mobilization by the Maoists as a threat to the existing order and has resorted to the large scale use of central paramilitary forces to suppress the movement. The Planning Commission's Expert Group (2008) on the 'causes of discontent, unrest and extremism' has stated that the Maoist movement is a 'political movement with a strong base among the landless and poor peasantry and adivasis,' seen by its support base as 'basically a fight for social justice, equality, protection and local development.' The causes of the unrest lay in landlessness, failure of the assurance of a minimum wage and usurpation of common property resources by the powerful. It also saw the discontent flowing from government failure to fulfil the mandate of the Constitution, forbidding concentration of wealth in a few hands, denial of justice and human dignity to the SCs and STs, which leads to their alienation and political marginalization, mass displacement, and the consequent failure of resettlement and rehabilitation policies.

Political class has abdicated its responsibility to the police.

The Concerned Citizens' Committee (CCC) in Andhra Pradesh has stated in its 2006 report that the political class has abdicated its responsibility to the police, who in turn are developing vigilante responses such as the 'Salwa Judum' in Chhattisgarh and the so-called 'Operation Green Hunt' elsewhere. A transformative agenda is needed including de-brutalization of the police and restoration of the rule of law and accountability creating space for the democratic assertion of the people (Maringanti 2010).

Meetings of Independent People's Tribunals in New Delhi and Ranchi recently, brought out typical features of police-led violence against the indigenous communities in the Central Tribal Belt (Subramanian 2010). Reports have found that the Maoists are not opposing rural development programmes of the government but are in fact assisting in their better implementation (Banerjee and Saha 2010).

Police response however has continued to be repressive often resorting to extra-judicial execution of the Maoist leadership presumably with the approval of the politicians in power. The most prominent recent case has been the killing of the talks-inclined Maoist leader Cherukuri Rajkumar alias Azad and the journalist H.C. Pandey who had reportedly gone to interview him. The recently published report of the fact finding team on the incident has exposed several contradictions in the police version of the incident (*Mainstream* 2010). Incidents like this are hardly likely to rectify the trust deficit of the Indian police.

It is not clear at what level of the chain of command of the Andhra Pradesh (AP) police/intelligence agencies and the government, the decision to eliminate Azad was taken. Action teams and the police personnel in AP are known to have developed procedures to successfully evade judicial accountability. A ruling by the AP High court justices

P.S. Misra and CVN Sastri on Writ Petition No. 16868 (1995) on 14 August 1995 observed, 'Do we have the law that a group of police personnel will report that they were making arrest of a person who attempted to evade the arrest and since in his attempt to evade the arrest he used force, they returned the force and caused his death and the law would accept the statement and sanctify the end of a life in accordance with the procedure prescribed by law?' A series of subsequent orders upheld the AP High Court ruling which require the police to register a murder case against the police officer and bring it to trial (where the police officer would be the accused and would have to prove that he had to open fire in self defence). However, the state government has challenged these orders in the Supreme Court and the AP Police Officers' Association has impleaded into the Supreme Court hearings. Pending judgment, the present practice continues unchecked. The practice currently followed is that a report has to be filed by the police party involved in the encounter, which states that the police party had to open fire in self defence. Thus the person dead in the encounter becomes the accused. Since the accused is dead the case automatically abates (Maringanti 2010: 45).

The negative characteristics of the Indian police structure and behaviour as seen above should have been removed at independence in 1947 by forceful enforcement of accountability and removal of impunity, but it was not done. Indeed, in the subsequent period, there has been a 'massive growth of centralized police power' and increase in repressive legislations (Haragopal and Jagannatham 2009). The Central Reserve Police Force (CRPF), a tiny unit in 1947, increased to a strength of 246,689 in 2006 (GoI 2006) and is steadily growing. Other central paramilitary forces are also growing in strength. The combined strength of these forces adds up to about 1.3 million today (Singh 2010). These are used in increasingly larger numbers for local conflict management in several parts of the country despite 'public order' and 'the police' remaining state subjects in the Constitution. There has been a similar growth in the number and strength of the central intelligence agencies (Raman 2007). The Union Home Minister recently announced the creation of the third and fourth regional institutes of the Intelligence Bureau (IB) to be located in Jodhpur and Delhi.⁹ The minister stated that other measures to strengthen the police included

- increased allocation for internal security up from Rs. 23,923 crore in 2008–09 to Rs. 40,582 crore in 2010–11;
- two more schemes of 'police modernization' in the states and at the centre during 2010–11;
- sanctioning of central paramilitary forces by the creation of an additional 111 battalions;
- creation of four unified commands, including the army, in Maoist-affected states with provision of helicopters for logistical support, setting up or strengthening of 400 police stations, appointment of additional special police officers; implementation of integrated action plans emphasizing road connectivity, primary education, primary health care and drinking water in these areas; hardware and software to connect the State level Multi-Agency-Centres; augmentation of training facility for security forces; augmentation of Coastal Security Scheme; and review and strengthening of the elite IPS cadres from 4,013 to 4,730.

There has been a massive growth of centralized police power and increase in repressive legislations.

9. Union Home Minister's Speech at the DGPs/IGPs Conference, New Delhi, 2010.

Impunity is a major part of the police system whether dealing with crime or political dissent.

Democratic content of governance is declining and sanction for impunity is growing.

Trust deficit causes lack of people cooperation for police work.

Through civil and political rights people can draw attention forcefully to general needs, and to demand appropriate public action.

The preoccupation with ‘security of the state’ and ‘public order’ characteristic of the British Raj has grown steadily after Independence to the neglect of crime control and service provision.

The police today enjoy institutionalized impunity and lack of accountability for human rights violations (see articles in TLM 2010). From Telengana in Andhra Pradesh and the villages of Punjab, West Bengal and Tamil Nadu, to Jammu & Kashmir, the northeast and Gujarat, impunity is a major part of the police system whether dealing with crime or political dissent, both peaceful and violent. Democratic content of governance is declining and sanction for impunity is growing. Such impunity coexists with political democracy. A Western style liberal democracy has adapted itself to a distorted political system recently characterized as ‘parliamentary fascism’ by an author (Kannabiran 2010). A plethora of special legislations such as the Prevention of Terrorism Act (POTA), Unlawful Activities Prevention (Amendment) Act (UAPA), Terrorist and Disruptive Activities Prevention Act (TADA) and the Armed Forces (Special Powers) Act, support this structure. These legislations are widely misused to commit violation of human rights in several parts of the country (Haragopal and Jagannatham 2009; Singh 2007; Delhi Solidarity Group 2009).

Corruption has always existed in the Indian police (Gill 1999) but it is now eating into their vitals (Sankaran 2009b). There is increasing evidence of the growing criminality of the Indian police as well.¹⁰ However, the Union Home Ministry has decided to increase police recruitment allegedly to meet ‘UN norms,’ which do not apply to the Indian situation (Navlakha 2010). The ministry has also proposed to build enormous new security architecture to deal with terrorism.¹¹

There exists a huge trust deficit between the police and the people of India today. People’s cooperation for police work cannot be elicited given this deficit. The trust deficit is part of, and contributes to, the existing governance deficit and democracy deficit. These deficits need to be addressed to meet the challenges facing the Indian police and to create a ‘people’s police’ (Baxi 2010).

Where do we go from here? Strong civil society action is needed. One is tempted to turn to Amartya Sen who stresses the critical relevance of civil and political rights for the realization of economic and social rights (Human Development Report 2000). Sen further outlines a conceptual framework: ‘Civil and political rights give people the opportunity not only to do things for themselves, but also to draw attention forcefully to general needs, and to demand appropriate public action. Whether and how a government responds to needs and sufferings may well depend on how much pressure is put on it, and the exercise of political rights (such as voting, criticizing, protesting, and so on) can make a real difference’ (Sen 1999).

The Indian Constitution, it is said, is ‘first and foremost, a social document.’ The majority of its provisions are either directly aimed at furthering the goals of social revolution or an attempt to foster this revolution by establishing the conditions necessary for its achievement. The core of the commitments to the social revolution lies in Parts III and IV, in the Fundamental Rights and in the Directive Principles of State Policy. As the Delhi High Court aptly put it, ‘*These are the conscience of the Constitution.*’¹² Social

10. See, for example, Indian Express and Times of India, 17 August 2010.

11. IB Centenary Lecture by the Union Home Minister, 23 December 2009.

12. Writ Petition No. 7455/2001.

transformation through enforcing of constitutionally-recognized socio-economic rights is an on-going process and a work-in-progress. Change can only be ensured by identifying the barriers, which are placed in the path of social and economic change by powerful interests, and the means of overcoming them through a strategy of empowerment of citizens and a strengthened democracy (Hossain 2009). These are sobering thoughts indeed for a largely dispirited citizenry.

6. RECOMMENDATIONS

Though the Manmohan Singh government had committed itself to police reforms, when it came to power in May 2009, there has been no evidence so far of any serious action in this regard. However, the urgency of police reforms in India remains and both central and state governments need to be reminded of their obligation to: i) enforce accountability to abusive police officers; ii) change the police structure and working conditions that contribute to abusive behaviour; and iii) make the police observe the rule of law even while dealing with those who do reject the existing legal regime.

Point iii) above may be briefly elaborated. An authority on the subject, Sir Robert Thompson, in his book 'Defeating Communist Insurgency' has stated (Rammohan 2005), that 'the government must function according to rule of law. There is a very strong temptation in dealing with terrorism and guerrilla actions for government forces to act outside the law, the excuse being that the processes of law are too cumbersome, that normal safeguards in the law for the individual are not designed for an insurgency, and that a terrorist is to be treated as an outlaw anyway. Not only is this morally wrong, but over a period it will create more practical difficulties for a government than it solves. A government that does not act in accordance with the law forfeits the right to be called a government and cannot then expect its people to obey the law. Functioning in accordance with the law is a very small price to pay in return for the advantage of being the government. Action in accordance with the law was a vital factor in the HUK insurgency and in Malaya, where the civil court functioned normally throughout the emergency. In the long term adherence to the law is a great advantage to the government. It helps to make all officers and civilian officials responsible and accountable for their actions. It puts torture and shooting of terrorists in their proper place. However great the provocation both are crimes and latter is murder. It puts the government in a position in which it is represented as a protector of those who are innocent and it puts the terrorist in the position of criminals. If the government does not adhere to the law, then it loses respect and fails to fulfil its contractual obligation to the people. This leads to a situation where the officers and officials cease to be responsible for their actions with the result that instead of insurgency, there is to all intents a civil war. In such circumstance, there is very little to choose between the two sides. The people have no reason for choosing to support the government.'

The experience in Andhra Pradesh and elsewhere calls for a serious analysis of the phenomenon of 'encounter' killings by the police and the equally brutal Maoist response across the countryside. A political intervention is needed to remove the psychosis of fear arising from the cycle of violence and counter-violence in the villages and to find democratic spaces in which ordinary people can articulate their legitimate aspirations. Both Maoist leadership and the government must be addressed to wind down the violence without ideological critiques of the Maoists or the government. A democratic debate

must be initiated focusing on the aspirations of the people, their ‘right to life, right to livelihood and right to dignified and honourable existence.’

In areas like J&K, the Northeast and the Central Tribal Belt a civil war like situation has come into existence. Even in less disturbed situations like that in Gujarat, during and after the carnage of 2002, cases have occurred in which police officers have taken the law into their own hands in extra-judicially executing (known as ‘encounter’ killings), often with government approval, persons seen as a threat to ‘national security,’ loosely defined.

In Andhra Pradesh, in the context of an active Maoist insurgency, the police have evaded accountability by adopting procedural tactics as noted in a ruling by the AP High court justices P.S. Misra and C.V.N. Sastri on writ petition number 16868 on 14 August 1995 (Maringanti 2010). The justices observed... ‘Do we have a law that a group of police personnel will report that they were making arrest of a person who attempted to evade arrest and since in his attempt he used force, they returned the force and caused his death and the law would accept the statement and sanctify the end of life in accordance with the procedure prescribed by law?’ A series of subsequent orders have upheld the AP High Court ruling which require the police to register a murder case against the police officer and bring it to trial (where the police officer would be the accused and would have to prove that he had to open fire in self defence). However, the state government challenged these orders in the Supreme Court and the AP Police officers’ Association has impleaded into the Supreme Court hearings. Pending judgment the present practice has continued unchecked. The practice involves a report to be filed by the police party concerned in the ‘encounter’ that the party had to open fire in self defence. Thus, the person dead in the ‘encounter’ becomes the accused. Since the accused is dead, the case automatically abates.

The AP Special Intelligence Branch killing of Cherukuri Rajkumar alias Azad, a Maoist leader, in an alleged ‘encounter’ on 1 July 2010 along with Hemchandra Pandey, a journalist (Maringanti, 2010) is a case of this type, by no means an exceptional one. It is not clear at what level of the chain of command networks the decision to liquidate the two was taken.

Police violence and misconduct today are so pervasive and rooted in institutional practice that public confidence in the police is low and decreasing. Efforts to end abuses will not succeed unless made part of a comprehensive overhaul that includes officially acknowledging the problems — including impunity — and setting out an action plan to overhaul the relevant laws and practices.

The report of the Second Administrative Reforms Commission report on ‘Public Order’ (2007) contains exhaustive recommendations, which must be implemented.

The following recommendations are drawn from multiple sources including the present report, agencies of the Government of India, Law Commission, National Police commission, judicial verdicts, and others.

- Despite the rhetoric on rule of law, constitutional provisions, the existence of human rights laws and institutions such as the NHRC, the fact remains that the Indian police are a government department functioning under government orders without meaningful autonomy. This issue needs deeper exploration.
- Exclusive focus on prevention of crime and detection of cases, important as it is, detracts attention from the basic fact that the police organization was mainly designed to deal with political resistance to British rule. Political resistance was

seen as a crime and serious crime as a prelude to political resistance. The provisions of the Police Act 1861, the IPC and the CrPC are admirably suited to this purpose. This structure has been retained without change in the post-colonial period and further reinforced from time to time.

- The main provisions of the Police Act, the Indian Penal Code and the Criminal Procedure Code display focus mainly on security of state, political intelligence collection and public order maintenance. There are no specific provisions for human rights protection and service delivery. Thus, there is a need for thorough overhaul of these laws.
- The Indian police must be decentralized and made accountable to the Panchayati Raj Institutions.
- The role of Central Paramilitary Forces (CPFs) in local conflict management must be reviewed since 'police' and 'public order' are state subjects in the Constitution.
- Legal framework and charter of duties must be provided for intelligence agencies.
- National Human Rights Commission guidelines on 'encounter' killings must be implemented.
- The district SP and the DGP of the state must be made jointly accountable for non-compliance with guidelines.
- The provisions of the SC & ST (Prevention of Atrocities) Act 1989 must be used to prevent policemen from misusing the law against dalits and adivasis.
- The UN Code of Conduct for Law Enforcement Officials, prosecutors, lawyers and judges must be adopted along with UN Basic Principles on the Use of Force and Firearms; the UN Standards and UN Norms in Crime Prevention and Criminal Justice.
- Provision should be made for standing invitations to Special Procedures of the UN Human Rights Council, such as Working Groups on Arbitrary Detention, Enforced & Involuntary Disappearances; Special Rapporteurs on Extra-judicial, Summary or Arbitrary Executions, on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and standing invitation to Special Rapporteur on the human rights and fundamental freedoms of indigenous communities.

In addition, steps must be taken to:

- *Improve conditions for rank and file officials:* Low ranking police officials are overworked and often exhausted due to the requirement that they be available for duty 24 hours a day. Many live in filthy cramped barracks. They are demoralized by limited promotional opportunities and relegation to menial tasks. In such conditions they are prone to fall into abusive behaviour. Minimum standards for housing and working hours should be developed: SHOs must be required to announce and adhere to a monthly work schedule with maximum hours of work and providing for mandatory leave.
- *Improve training and equipment :* A scarcity of trained personnel contributes to the likelihood of abusive behaviour, such as 'short cuts' of refusing to register

complaints so as to reduce case loads, and building cases on coerced confessions rather than collection of evidence. Increasing the number of junior ranking officers trained and authorized to conduct investigations and register complaints and training constables to assist in investigations, is critical. The lack of crime investigation training and equipment effectively discourages officers from building cases on forensic evidence and witness statements rather than on coerced confessions. The investigation curriculum in police academies must be strengthened including the use of forensic tools and no-coercive interrogation techniques. Every investigative officer must have access to basic forensic equipment. The training and roles of low ranking police officers should be enhanced to include investigative assistance.

- *Create a culture that rewards respect for human rights and professional conduct:* The skills and potential of junior and low ranking officials are often underdeveloped, with many staying at the same ranks for their entire careers. Frustrated officers with nothing to lose are more likely to engage in abusive behaviour. To change this environment, provide incentives for better police behaviour. Fill more senior and junior ranking positions by promotions, not direct recruitment. Senior police officers should actively encourage junior ranking officers to innovate police station procedures and publicly appreciate such work.
- *Create a system of effective independent investigations into complaints of police abuse and misconduct:* Independent and effective investigations into complaints against the police are rare in India. To reduce impunity central and state governments should bolster the capacity of the national and state human rights commissions to undertake independent investigations, including the number of investigative staff. The central and State governments should also comply with the Supreme Court's order in the Prakash Singh case mandating the establishment of Police Complaints Authorities and provide such bodies sufficient resources and independence to carry out their duties in a way that creates public confidence.
- *Enact Laws against Torture:* Strong laws are critical to signaling to the police that torture is never a permissible means to extract confessions or other information from criminal suspects. Parliament should ratify the UN Convention against Torture and amend the Indian Evidence Act to make inadmissible any evidence obtained on the basis of police interrogations that involve the use of torture or cruel, inhuman or degrading treatment or other illegal coercion. It is noted with regret that the recent draft bill against torture leaves much to be desired.
- *Repeal Laws that encourage impunity:* Section 197 of the Criminal Procedure Code continues to effectively shield many abusive police officials from prosecution for action taken on 'official duty,' permitting abuse to frequently go unpunished and undeterred. The Parliament should repeal section 197 or retain it but define 'official duty' to exclude unconstitutional conduct such as arbitrary detention, custodial torture, ill-treatment and extra judicial killings.
- *Require the reading of rights to suspects and put safeguards in place to deter torture:* Existing laws regarding arrest and detention are frequently flouted, regarded by some police officers as impractical. To encourage institutional acceptance of these safeguards and reduce abuse, police should be required to formally recite the suspects' rights upon arrest or any informal detention.

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ABBREVIATIONS

BMP – Bihar Military Police
BSF – Border Security Force
CCTG – Concerned Citizens Tribunal on Gujarat
CHRI – Commonwealth Human Rights Initiative
CIA – Crime Investigation Agency
CISF – Central Industrial Security Force
CPOs – Central Police Organizations
CrPC – Criminal Procedure Code
CPFs – Central Paramilitary Forces
CRPF – Central Reserve Police Force
CTB – Central Tribal Belt
DGPs – Directors General of Police
DIB – Director, Intelligence Bureau
DM – District Magistrate
DSG – Delhi Solidarity Group
DySP – Deputy Superintendent of Police
FIR – First Information Report
HRW – Human Rights Watch
IB – Intelligence Bureau
IGPs – Inspector General of Police
ICS – Indian Civil Service
INC – Indian National Congress
IP – Imperial Police
IPC – Indian Penal Code
IPS – Indian Police Service
LOA – Law and Order Agency
LCWRI – Lawyers Collective Womens’ Rights Initiative
LOP – Law and Order Police
MHA – Ministry of Home Affairs
NCRB – National Crime Records Bureau
NPC – National Police Commission
NHRC – National Human Rights Commission
PAC – Provincial Armed Constabulary
PADC – Police Act Drafting Committee
PCA – Police Complaints Authority
PEB – Police Establishment Board

PPAC – Police Performance and Accountability Commission

PRIs – Panchayati Raj Institutions

R&P – Research and Policy

SARC – Second Administrative Reforms Commission

SP – Superintendent of Police

UN – United Nations

UK – United Kingdom

UPA – United Progressive Alliance

NATIONAL SOCIAL WATCH COALITION – STATE PARTNERS

Madhya Pradesh: Samarthan, Bhopal and Madhya Pradesh Voluntary Action Network (MPVAN), Bhopal. Samarthan promotes participatory governance and development thus encouraging leadership of Women, Dalit, Tribals and other disadvantaged sections of the society.

Orissa: Centre for Youth and Social Development (CYSD), Bhubaneswar works towards achieving people-centred development for the deprived and under privileged through direct intervention as well as building up alliances with agencies of shared intent.

Maharashtra: Youth for Voluntary Action (YUVA), Mumbai, implements its development agenda by engaging with local, community-based organizations strengthening existing organizations to respond effectively to local development issues.

Vikas Sahyog Pratisthan (VSP), Mumbai, is a group of voluntary organizations working for the upliftment of poor and deprived sections of society with its area of expertise being in nature farming, water conservation, promoting role of youth in village governance and co-operatives.

Karnataka: (Karnataka Social Watch) Rejuvenate India Movement (RIM), Bangalore, which is a conglomerate of 11 Non-Government Agencies. It works towards effecting positive changes by generating actions that are practically effective and morally compelling while upholding the principles of participative democracy, genuine volunteerism and self-empowerment.

Community Development Foundation (CDF), Bangalore believes in collective efforts to bring about meaningful change and sustainable development in adult literacy, children and human rights, gender issues, education and health aspects.

Tamil Nadu: Tamilnadu Social Watch (TNSW), Chennai is a resource-cum-research centre involved in social public policy monitoring and lobbying at the State level. The major contributions have been Dalit budgeting and in budget awareness in civil society along with the Tamilnadu Social Development Report 2000.

Centre for Policy Studies (CPS), Gandhigram Rural University, Dindigul Distt., Tamilnadu People's Forum for Social Development (TNPFS), Chennai.

Andhra Pradesh: Centre for World Solidarity (CWS), Hyderabad, is a support organization with partners in nearly five states working with a rights-based development approach towards Panchayati Raj, Minorities, Tribal Rights, Education, Forestry, Alternative Agriculture and Natural Resource Management, Human Rights Issues and women's rights and gender mainstreaming.

Dalit Bahujan Shramik Union (DBSU), Hyderabad, working with Dalit organizations on dalit issues and rights.

Uttar Pradesh: Uttar Pradesh Voluntary Action Network (UPVAN), Lucknow, is a conglomerate of nearly 225 vibrant civil society organizations of UP. It operates through the advocacy resource centre, networking, alliance-building centre, gender resource and information resource centre and takes up issues for advocacy which affects the voluntary organizations and their struggle to ensure justice and equity for the marginalized.

Bihar: Vidyasagar Samajik Suraksha Seva Evam Shodh Sansthan, Asian Development Research Institute.

Chhattisgarh: Mayaram Surjan Foundation (MSF), Raipur runs a research & documentation centre and conducts programmes to build up grassroot democratic values and practices, promote value-based and development-oriented journalism and prepare youth to take lead in building and safeguarding a pluralistic society.

Gramin Yuva Abhikram (GYA), Raipur, works in the areas of community empowerment, campaign for people's right to water, campaign for accountable governance, media advocacy, women empowerment apart from networking with like-minded agencies and policy research.

Rajasthan: Centre for Community Economics and Development Consultants Society (CECOEDECON), Institute of Development Studies, Pratham.

West Bengal: Institute for Motivating Self Employment (IMSE) along with Forum of Voluntary Organisations, West Bengal, Kolkata. The Forum is comprised of 98 voluntary organizations representing Christian Missionaries, Leftist Social Action Groups, Human Rights Groups. The Forum apart from supporting the achievement of food sovereignty of the people and their rights over land, water, forest and seed also opposes imperialist globalization.

Kerala: Representatives of Kerala Sastra Sahitya Parishad, Centre for Development Studies, Indian Institute of Information Technology and Management, led by C. Gouridasan Nair, Special correspondent, The Hindu, Thiruvananthapuram.

Jharkhand: Currently coordinated by National Social Watch Coalition supported by SPAR, Gene Campaign, Agragati, SPAR, LJK, HOPE, SAFDAR, Adivasi Sanghamam, Swaraj Foundation

Himachal Pradesh: RTDC-Voluntary Action Group (RTDC-VAG), People's Campaign for Socio-Economic Equity in Himalayas (PcfSEEH)

NATIONAL COALITION PARTNERS

ADR: Association for Democratic Reforms aims to work towards improving and strengthening democracy and governance in India. The main objectives of ADR are Electoral reforms, Right to information and greater transparency of those in power, Empowerment of the ordinary citizen and Reform of the government and bureaucracy.

Centre for Youth and Social Development (CYSD) works with the deprived and the underprivileged towards the goal of people-centred development. Its participatory development action enables people to pursue their need fulfillment through their own institutional means. Its training and capacity building support to development organisations produced a cascade of effective learning at the grassroots and increasing professional efficiency in development action at all levels. By building up alliances with agencies of shared intent, it attempts to bring on a pro-poor agenda in the mainstream of development policies and practices.

The Centre for Budget and Governance Accountability (CBGA), New Delhi, India, is an attempt to promote transparent, accountable and participative governance. CBGA has been proactively engaged in tracking public policies and economic issues from the perspective of the poor and the marginalised

Ekta Parishad: Ekta Parishad is a Gandhian organisation, it works towards community based governance (gram swaraj), local self-reliance (gram swawlamban) and responsible government (Jawabdehi Sarkar). It is a mass movement based on Gandhian principles of non-violence. It mobilizes people (especially the poor and deprived sections) on the issue of proper and just utilization of livelihood resources (i.e. primarily land, but also forest, and water).

KABIR: Kabir is a communications organization dedicated to the increased awareness and use of the Right to Information (RTI) Act by all individuals and organizations across all segments of Indian society. It envisions a culture of transparency and accountability in government that allows for meaningful participation of citizens in their own governance.

National Centre for Advocacy Studies (NCAS) is a membership-based organisation that has been working on various people-centred advocacy initiatives across the country. NCAS has a decade-long history of training people on advocacy and undertaking people-centred advocacy initiatives. NCAS works on various socio-economic rights essentially from the perspective of the marginalised. NCAS is also involved in Media Advocacy initiative, Advocacy Learning and Praxis and Governance and

Advocacy. The theme in NCAS work is bridging people and building ideas. NCAS sees the Social Watch Process as an essential component towards this end.

PRS Legislative Research: PRS Legislative Research is an independent research initiative that aims to strengthen the legislative debate by making it better informed, more transparent and participatory. PRS is the first initiative of its kind in India.

SANSAD (South Asian Network for Social and Agricultural Development), aimed at making South Asia free from hunger and poverty and taking global and regional initiative for sustainable agricultural and rural development and human dignity aimed at putting collective pressure on policy making.

Samarthan Centre for Development Support promotes participatory governance and development. The organisation is committed to strengthen democratic processes building leadership of Women, Dalit, Tribals and other disadvantaged section. Civil society organisations have a critical role as social change agent, therefore promotion support and strengthening civil society institutions in development is also key endeavour of Samarthan. Samarthan also believes in building examples of participatory development and governance, therefore, is actively involved in field action at the grassroots to build people's institutions.

Social Watch India is a broad based network of civil society organizations, citizens and communities to build a process of monitoring governance towards professed goals of social development, particularly with respect to the marginalized sections of our county. As an attempt to check rhetoric against the real, it tries to monitor the institutions of governance and their commitment towards citizens and principles of democracy.

This paper as a part of Social Watch Perspective Paper Series provides an insight into the police functioning and police reform in India; Indian ways of policing; police lack of respect for and disregard of international human rights obligations and norms; their excesses and brutalities towards the marginalized and their use by political masters for their own narrow political ends and so on. The paper highlights the paramount necessity of radical re-structuring and overhauling of police structures, police laws, police policies and procedures.

It recommends the following:

- De-politicization of police so that they function autonomously and professionally
- Reduction in number of the police in general and armed police in particular
- Democratic and citizen-friendly policing with strict accountability and respect for the right of the weaker sections
- Decentralization and strengthening of the police so that they can discharge their duties without political interference
- Making police accountable to PRIs.



SOCIAL WATCH INDIA