



POLICING IN INDIA

Issues and Challenges



POLICE LINE NOT TO CROSS

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POLICING IN INDIA: Issues and Challenges

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Compiled by Dinbandhu Vats

Edited by Ajay K. Jha

Designed by Rajneesh Shrivastava

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E-46, Upper Ground Floor,

Lajpat Nagar-3, New Delhi-110024

Ph. +91-11-29841266, Fax: +91-11-29841266

Email: pairvidelhi@rediffmail.com, pairvidelhi1@gmail.com,

Web: www.pairvi.org | Blog: pairvi.blogspot.in

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INDEX

1. Introduction	1
2. Problems of Policing	5
3. Courts and Police Reforms	18
4. Police Reforms: A Distant Dream	26
5. Best Practices of Police Governance: Global Perspective	34
6. Conclusion and Suggestions	37
7. References	42

INTRODUCTION

Police is the primary agency for public's interface with the government. It acts as an enforcement arm of the government to preserve the public order and tranquility in society. It has both power and legitimate authority to uphold and enforce the laws, investigate crime and ensure security in the country. Indian Police has shown high degree of professionalism in crime control and maintaining law and order but at the same time police is alleged as the least trusted institution and charged with politicization and, to an extent, criminalization. Presence of police more likely generates a sense of fear rather than security. Corruption and misuse of power by police forces has always been a major point of criticism of Indian police.

The origin of modern and organized police dates back to colonial period when British Government established the first police force in the Indian subcontinent in year 1861. British created the police as a repressive force modeled on the Irish Constabulary. The Imperial Police was originally setup in year 1856 to check the law and order situation in three Presidency capitals (Calcutta, Madras, Bombay), which was later in the year 1861 reorganized to cover the whole of British India. Imperial Police consisted of an Inspector General, Deputy Inspectors General, District Superintendents and Assistant District Superintendents. The Subordinate Police Service in each province consisted of Inspectors, Sub-Inspectors, Head Constables and Constables. The rank of Sergeant (equivalent to Head Constable) also existed but was mainly confined to Europeans or Eurasians who served in the City forces or in cantonments.¹ The Indian Police replaced the Imperial Police after independence in year 1947.

Post 1947 the police system in India was reorganized and as per the newly drafted Constitution of India under its Article

¹ Indian Police Services, accessed through <http://www.bl.uk/reshelp/findhelpregion/asia/india/indiaofficerecordsfamilyhistory/occupations/indianpoliceservices/police.html>

246 policing was made a state subject, which means that the state governments frame the rules, and regulations that govern police force in each state. These rules and regulations are contained in the Police Manual of each state.² Legally, The Police Act, 1861 is still the basic instrument governing the functioning of the Indian Police. Besides, the Indian Penal Code, 1862, the Indian Evidence Act, 1872 and the Criminal Procedure Code of 1973 also govern the functioning of the police.³

Each state's police force is headed by a Director General of Police (DGP) who is responsible to the state government for the administration of the police force in each state, and for advising the government on police matters. The DGP represents the highest rung in the police hierarchy.

With the enactment of the Constitution of India, our nation witnessed the enactment of various state police legislations. State of Bombay came up with its police regulation named as Bombay Police Act of 1951, which also governed the police structure in Gujarat. Later on in year 1960 state of Kerala enacted the Kerala Police Act and similar enactment was done by the State of Karnataka in 1963. Unfortunately, these new Acts were patterned almost exactly on the model of the 1861 Act, resulting in no significant improvement in the performance or behaviour of the police forces. In fact, some of these state Acts tightened political control even further over the police force, without introducing any safeguards to prevent misuse of the police for partisan purposes, or creating effective mechanisms to ensure police accountability.⁴

According to Bureau of Police Research and Development 663 people are being looked after by one police person in India. United Nations recommended police personnel per lakh population ration is 222 but in India the sanctioned ratio is 192.83.⁵ However the actual availability of policemen per lakh population gets further reduced to 150.75 owing to the vacancy

2 Police Structure and Organisation The Organisational Structure accessed through http://humanrightsinitiative.org/old/index.php?option=com_content&view=article&id=88&Itemid=99

3 Building smart police in india: background into the needed police force reforms by: Suparna Jain/Aparajita Gupta accessed through <http://niti.gov.in/>

4 Police Structure and Organisation The Organisational Structure accessed through http://humanrightsinitiative.org/old/index.php?option=com_content&view=article&id=88&Itemid=99

5 Data on Police Organization as on 01 January ,2017 accessed through <http://bprd.nic.in/>

running up to 21.8 percent as on January 2017.⁶ The Indian Police apart from crime control has continued to display high degree of professionalism in handling terrorism. This was in ample evidence during the terrorist attack on Parliament on 13 December 2001. The response of the police to later attacks, at the Akshardhaam Temple near Ahmadabad in Gujarat on 24th September 2002 and at the Raghunath Temple in Jammu on 24th November 2002 was equally commendable.⁷ However, Indian police is also seen in bad light due to its poor and biased attitude on caste and communal line. The influence of political power in the appointment process of the key police personnel also draws lot of criticism.

In a vast country like India police needs to be well equipped, and trained with high international standards. Over the years, attempts have been made to reform the police. National Police Commission (1977-79) during the Janta Party Government kick started the reforms.⁸ Supreme Court of India in 2006, hearing the PIL filed by Prakash Singh, former DGP, Uttar Pradesh, gave the landmark judgment with seven directions like- fix the tenure of top officials, setting up of the State Security Commission, clear separation of law and order and crime investigations, creation of the Police Establishment Board to regulate police placement, formation of police complaint authorities at state and district level, formation of National Security Commission and process of appointments of the DGPs. The Supreme Court also constituted the Soli Sorabjee Committee that suggested a Model Police Act, 2006 with special focus on police responsibility and accountability.

Police Governance is important aspect of criminal justice system. Fair and neutral policing plays central role in access to justice. Therefore, police reform is essential not only to control the crime but also to reduce the trust deficit among people and public.

Notwithstanding the continuous intervention from courts and demand from civil society, police reform remains to be a distant goal in India. The police narrative is as harsh as pre-independence. Police reforms are not in the agenda of any political party. At best, governments talk about the modernization of police rather

6 <http://bprd.nic.in>

7 The Indian Police: Problems and Prospects, R. K. Raghavan, Publius, Vol. 33, No. 4, Emerging Federal Process in India (Autumn, 2003), pp. 119-133

8 Ibid

than fundamental reforms of police. However, during the general election in 2014 ruling Bhartiya Janta Party had placed the agenda of police reforms in election manifesto.⁹ The party has promised to bring the Indian police at par with international standards but situation has not changed at ground. The Prime Minister of India at the Guwahati Conference of the Directors General of Police on November 30, 2014, enunciated the concept of SMART Police - a police which should be sensitive, mobile, alert, reliable and techno-savvy. However, there has hardly been any progress in that direction.¹⁰ Police needs to be made the people centric institution. More than a decade after Supreme Court rulings in Prakash Singh's PIL, the Court directives have not been implemented in letter and spirit. This paper provides an overview of problems of policing in India and attempts to take the stock of compliances of Supreme Court's directions.

9 Indian Citizens Must Start Demanding a Better Policing System by Ajay K. Mehra accessed through <https://thewire.in/185447/police-reform-demand-political-will>

10 Police Reforms: Rejuvenate and Transform the Police by Prakash Singh Accessed through <http://www.businesstoday.in/magazine/cover-story/police-reforms-rejuvenate-and-transform-the-police/story/227523.html>

PROBLEMS OF POLICING

As already discussed in the introduction part, the Indian Police faces various challenges. Some of these challenges are inherent in the police structure of our country while some challenges such as cyber crimes etc are developing with the change of time.

LEADERSHIP IN POLICE

This is one of the primary problems faced by Indian Police, which is deeply rooted inside police structure of our country. The Indian Police reflects the principle of centralized federalism. The senior police officers are appointed by the Union Government and later allotted to the state governments. The Indian Police Service officers are recruited nationally by the centre as a part of All India Services along with Indian Administrative Service and Indian Forest Service. IPS officers are trained at centre and later allotted to different states as police is state subject under the Constitution of India.

The dual authority over the police leads to occasional differences between the Home Ministry in Delhi (the cadre authority for the IPS) and state governments. These may concern general policy matters related to the career management of IPS officers, the size of the cadre in each state, and what specific posts should be allocated to the cadre. There are also controversies over which IPS officers should be requisitioned by the central government or returned to a state cadre from the Center.¹¹

In the initial days of the Indian Police System during the British Raj the senior police officers were uniformly British until the early twentieth century when due to the recommendation of Islington Commission in 1902, the British Government started appointing Indians on top ranks in Police Service and around 1910

¹¹ The Indian Police: Problems and Prospects, R. K. Raghavan, Publius, Vol. 33, No. 4, Emerging Federal Process in India (Autumn, 2003), pp. 119-133

few of Indian police officers joined the senior ranks of Imperial Police Service.

The conflicting situation which is discussed in the above paragraph arrived in the year 2001 in the State of Tamil Nadu when the central government in New Delhi without any warning through its Home Ministry issued orders to Tamil Nadu government asking for the officer's release on deputation to the central government. The orders were turned down by the State Government as it felt that this was a political move aimed at punishing the three officers Chennai Police Commissioner K. Muthukaruppan, Joint Commissioner (Central) S. George and Deputy Commissioner (Triplicane) Christopher Nelson for their alleged role in the arrest of some opposition leaders in Tamil Nadu. The allegation was that the DMK the opposition party which was represented in the coalition central government was dissatisfied with the arrest of its leader M Karunanidhi from his house after midnight on July 30, 2001 had lobbied in the central home ministry to issue the orders. The dispute was put to a halt when all the three officers approached the Central Administrative Tribunal (CAT) challenging the legality of Central Government's order and the CAT ordered a stay on the same order.¹²

STRUCTURAL PROBLEM OF POLICING

Infrastructure, strength and training of police play the key role in efficiency. Indian police severely lacks infrastructure, strength and training which adversely affect their performance. Over the last six decades, the overall strength of the state forces has increased substantially. Around 86 percent of present police force are head constables and constables, 13 percent belonged to the upper subordinate ranks (i.e. Inspector to Assistant Sub-Inspector), and one percent to the officers' ranks (DGP to the Deputy SP). Constabulary constitutes the huge chunk of police force that starts their career as constable and retires with head constable. They perform wide range of duties. They are expected to have some analytical and decision making capabilities but their training and qualification are not in compliance with the role they play

12 A questionable move, Frontline, Volume 18- Issue 17, Aug 18-31, 2001 <http://www.frontline.in/static/html/fl1817/18170370.htm>

The Padmanabhaiah Committee have expressed its concerns over qualification and training of police constables and emphasized on substantial upgradation in their qualification and training. Second Administrative Reforms Commission have echoed the same thing and noted that constables need greater training as they deal with the public regularly.¹³

Huge vacancies and lesser police population ratio is another problem. As mentioned, India has lesser police population ratio despite this fact 21.8 percent post is vacant. As of January 2017, out of 24, 64,484 sanctioned strength of police force 5, 38,237 posts are vacant.¹⁴ Police mobility is directly linked to police performance but police force is facing the shortage of transport facility. Only 10.8 vehicles are available for 100 policemen. As of January 2017 states police force has total 1, 99,062 vehicles marking more than 15 percent shortage. Police still uses outdated communication technologies. Mobility of police force for patrolling and other purposes is severely constrained due to acute shortage of vehicles and obsolescence of its fleet. According to CAG report weaponry of several state police forces is outdated, and the slow acquisition process causes shortage in arms and ammunition. CAG report, 2017 titled 'performance audit of modernization and strengthening of police force, Govt. of Uttar Pradesh' noticed that the State Police is still using obsolete weapons, even after decades of introduction of the scheme for modernization of police forces. The report added that about 48 percent of the police force in the State is still using point-303 bore rifle which had been declared obsolete by the Ministry of Home Affairs more than 20 years ago.¹⁵ An audit of the Rajasthan police force (2009 to 2014) concluded that there was a shortage of 75 percent in the availability of modern weapons against the state's own specified requirements and 59 percent of procured weapons were lying idle because they had not been distributed to the police stations. Similar audits in West Bengal and Gujarat found shortages of 71 percent and 36 percent respectively in required weaponry.¹⁶

13 Police Reforms in India, June 2017 by Anviti Chaturvedi accessed through <http://www.prsindia.org/uploads/media/Analytical%20Report/Police%20Reforms%20in%20India.pdf>

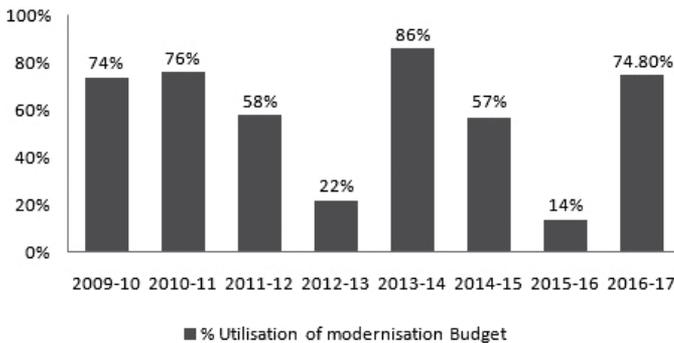
14 <http://bprd.nic.in>

15 http://cag.gov.in/sites/default/files/audit_report_files/Executive_Summary_of_Report_No.3_of_2017_Performance_Audit_of_Modernisation_of_Police_Forces%2C_Government_of_Uttar_Pradesh.pdf

16 Ibid 13

Allocation of Budget and proper utilization of fund is another important aspect of police infrastructure. Average states expenditure on police accounts for 3.57 percent of total budget. Both centre and states allocate funds for modernization of state police forces to upgrade police infrastructure and improve capabilities to meet emerging challenges to internal security. However, there has been a persistent problem of underutilization of modernization funds. Modernization grant for 2016-17 was 2,066.27 crores out of which only 1546.04 crores were utilized. Similarly in 2015-16, the centre and the states allocated Rs 9,203 crore for modernization. However, only 14 percent of it was spent. Expenditure on police training is also minimal. In year 2016-17 merely 1.03 of total police expenditure was spent on police training while in 2015-16 it was only 1.0 percent.¹⁷

Figure 1: Utilisation of funds for modernization (%)



Despite having largest police force, Indian police is overburdened mostly because police performs the non- police duties as well. Russia, with largest geographical area in the world, has only 11 lakh policemen, while the US, the second largest, has nearly 10 lakh police force.¹⁸ India, the seventh largest country, has nearly 25 lakh policemen. Besides usual police duties, police carry out the jobs like impounding stray cattle, killing stray dogs,

¹⁷ <http://bprd.nic.in>

¹⁸ What's to Be Done with Our Cop by Vappalla Balchandran published in Outlook Magazine <https://www.outlookindia.com/magazine/story/whats-to-be-done-with-our-cops/299556>

dealing beggars, regulating dance bars, moral policing etc. State governments frequently add non-police duties to the police force. Police can be also held responsible for stolen buffalos.¹⁹ Three policemen including a Sub-Inspector were punished during erstwhile Samajwadi Party regime in Uttar Pradesh when buffalos of then minister Azam Khan had been stolen. Then Superintendent of Police had led the massive buffalos hunt.²⁰

CASTE/COMMUNAL CLASHES AND POLICE

As already discussed policing in India is a tough task due to the fact that India has a diverse and complex society. Indian Police always faces a challenge in the communally charged heterogeneous society. Caste and communal violence have always posed a problem to the civil administration.

There have been several caste and communal riots in Independent India. Uttar Pradesh, Bihar, Maharashtra, and Gujarat have faced more communal violence as compared to other areas of India. It has become a customary rule that after every major communal outbreak a commission is set-up to enquire into the cause of the violence and in majority of the reports of such commission it is found out that the police were partisan in favor of the majority community or they failed to anticipate trouble, or they acted too indecisively at the beginning of trouble to be able to bring the situation under control.²¹

The inactivity of the police in first few hours after the start of communal violence always acts as a catalyst to the spreading of the riots. Vibhuti Narain Rai, a Rtd. IPS officer with hands on experience in controlling riots and one who has studied communal riots and role of police extensively, argues that Indian society is not torn apart with civil war and existence of armed militias as in West Asia, Europe or other parts of the world. Therefore, if the police and administration is unable to control a riot within 24 hours, it only means that their actions, conduct and behavior need proper examination. Through his research, Rai has arrived at

19 Ibid

20 <http://indianexpress.com/article/india/india-others/cops-feel-the-heat-for-theft-of-azams-buffaloes/>

21 Supera Note1

a conclusion that police and the administration have deep-rooted communal bias that prevents them from controlling communal violence within 24 hours.²²

There are several examples of police favoritism on caste and communal ground. Role of police during 1984 anti-Sikh riots and 2002 Gujarat communal riots were alleged to be the classic examples of police partiality and inaction. Police drastically failed to control the violence. Recently, role of police is also suspicious during Haryana Jat reservation agitation, 2016. More shockingly, police investigation of alleged mass rape at Murthal during the Jat agitation was reportedly dubious. Prakash Singh, former DGP of Uttar Pradesh who led the one man commission to probe the role of police and administration during Jat agitation indicted several IAS and IPS officers. Prakash Singh estimated that 40 percent of Haryana constabulary consists of Jat and speculation is natural about its stance during the Jat agitation.²³

POLICE AND POLITICS

In any democracy the ultimate responsibility for ensuring public safety and security lies with the people's representatives. The police are implementers. However, police to work in an efficient, unbiased, and responsive manner, needs autonomy and freedom. Conversely, the police remain accountable to elected politicians for enforcing the law and to perform its duties in accordance with the law.²⁴ The political executives have power to superintendence over police force. Having control over police force, politicians sometimes use to influence outcomes or to protect someone. Politicians oblige the police and in return favor them. This collusion of police with politicians gives the free hand to police to illegal work done without any fear of action.²⁵ Police action often alleged to be loaded with politics.

22 Role of police in communal violence, Irfan Engineer, http://twocircles.net/2013dec06/role_police_communal_violence.html

23 Rani & Rogues by Pragya Singh accessed through <https://www.outlookindia.com/magazine/story/rani-rogues/299554>

24 http://www.humanrightsinitiative.org/programs/aj/police/india/initiatives/police_executive_paradigm_stenning.pdf

25 Khaki Meets Khadi by Bhavna Vij Aurora accessed through <https://www.outlookindia.com/magazine/story/khaki-meets-khadi/299555>

The police organizations are headed by leaders who are handpicked by political masters. Political and financial considerations play a huge role in deciding an officer's suitability for a coveted post. The transfer industry allegedly has become a thriving business for the politicians in India. The elite members of the IPS are said to be the part of this murky business. Nexus of police, politicians and mafias led to the criminalization of the police. Police gets enormous power and subsequently apparent impunity from such illegal nexus. Organized crime syndicates thriving like land-grabbing, illegal mining cricket betting etc. purportedly have backing of the police.²⁶

According to Prakash Singh, political interferences have increased in police governance. Investigation standards of police have declined and the police have become the part of identity politics and money power. As per the study of Institute of Conflict Management (ICM) frequency of transfers of superintendents of police have increased several times. As per the report average tenure for an SP between 1995 and 2000 was 6-9 months across 73 districts where study had been conducted. In certain politically sensitive jurisdictions like the Chief Minister or some other top leader's constituencies, the average tenure of SPs was three months or less.²⁷

RK Raghavan in his book 'Governing the Police' stated that political control over the police has become reality in modern democracy. The politician arm-twists the average policeman and promotes favoritism. Even police chief never dare to cross its path and quote the law before the powerful ruling class. He blamed the police leadership as pliable and unscrupulous that always seeks favor from political executive.²⁸ The democratic structure may also crumble if the trend of criminals gaining ascendancy in public life is not controlled. Distrust of police is so high that police system is often described as inept, malevolent and a political tool. This deep rooted symbiotic relationship between the police and the ruling elite is one of the basic factors that make the police a dreaded force

26 Law Takes a Backseat as Police Officers Pander to Politicians, Parties by Basant Rath accessed through <https://thewire.in/61117/a-decade-since-the-prakash-singh-verdict-what-ails-the-india-police-service/>

27 Rani & Rogues by Pragya Singh accessed through <https://www.outlookindia.com/magazine/story/rani-rogues/299554>

28 <http://www.thehindu.com/books/literary-review/Police-politics/article14504724.ece>

in many parts of India and other developing societies. The police is bound to fail unless that umbilical cord is severed.

SEPARATION OF LAW AND ORDER FROM INVESTIGATION

For effective policing, the investigating police shall be separated from law and order police. Police must be restricted to their core business of maintaining the law and order. Separating the investigation from law and order is one of the important directives of Supreme Court in historic Prakash Singh's judgment. It is an important measure to ensure speedier investigation, better expertise and improved rapport with the people.

Crime investigation department is a separate wing of police in many developed country. The Federal Bureau of Investigation is an independent organization for investigation of serious crimes in US. The Bureau of Investigation was created in year 1908 to work for a new investigative agency under Department of Justice. A separate division for investigation was established much earlier in London. The London Metropolitan Police Detective Branch was set up in 1842. The Criminal Investigation Department in its present form dates back to 1877 and is almost a separate establishment from the rest of the police set up.²⁹

However, In India the police have to take two roles. On one hand the police have to take care of the law and order situation of area and also investigate the crimes committed under that area. A police officer is appointed as Investigating Officer (IO) in every criminal case to investigate the case and present all the evidence in proper manner and at the same time the same officer is burdened with his regular duty of maintaining law and order. This creates a productivity crisis for the police officer. Due to this dual role the effectiveness is absent from criminal investigations. Because of the delay the investigations are not timely completed and often various offenders walk free with guilt of grave offenses. Explaining this issue of lack of proper training and guidance to regular police staff for investigation Karnataka High Court while deciding the case of Darshan TS Vs. State of Karnataka stated

29 Bifurcation of Police Investigation Wing and Law & Order Wing BY: Justice Thomas. P. Joseph accessed through <http://www.livelaw.in/bifurcation-of-police-investigation-wing-and-law-order-wing/>

“The problem is complex because investigation of a crime is not a simple task. It requires thorough professionalism and professionalism can be achieved only through effective training. Many offences have become hi-tech, in that sense that mobile phones and electronic devices are used to hatch conspiracy and messages are sent through SMS and email. Digital evidence plays a vital role in many cases. Seizure of hard discs, collection of call details and such other digital materials require stricter evidence as per Sections 65-A and B of the Evidence Act. The protocols in proving digital evidence are made stricter. Apart from this technical aspect there is also a practical problem associated with the current system of dual role of police officers many police officers/ officials either having conducted the investigation or being a part of investigation, are expected to attend various criminal Courts to tender evidence and their presence in courts is essential. A Police officer who conducted the investigation here at Bengaluru two years ago might be working in Belagavi and he has to tender evidence at Bengaluru and it may require at least two days and his absence for two days at Belagavi will have a greater effect in regard to the investigation of a case already taken up by him there. Therefore demarcation of police in each station for investigation is an absolute necessity, lest, the desired results cannot be achieved.”³⁰

While discussing the issue of dual burden on the police force the Karnataka High Court in the same case stated

“Each police station in Bengaluru City is headed by a police officer of the rank of Inspector (Circle Inspector) assisted by 2-4 Police Sub Inspectors, 4-6 Assistant Sub Inspectors, 6-8 Head Constables and the remaining personnel being constables. Each station is entrusted to look after both the law and order situations as well as investigation of crimes. Many a time, substantial time is consumed in maintaining law and order. Many public functions will be arranged in various parts of the city requiring deputation of many police personnel. Every now and then, VIPs and VVIPs will be coming to the city and this also requires deputation of sufficient civil police attached to the police stations. Apart from this, elections will be held to Assembly, Parliament and local bodies and civil police will also be deputed to such elections. As a result of all these works, many a time, investigation takes a back seat.”³¹

30 Darshan TS Vs. State of Karnataka, CrI. P. No. 7706/2015

31 Ibid

After looking at the data of number of offenses in the city of Bangalore the court ruled that there is strong need for creating separation of law and order and investigation wing of police and stated *“taking into consideration the various types of offences reported in the police stations of the city and their gravity, this court is of the considered opinion that the authorities need to seriously think of bifurcating investigation from regular law and order and thus enhance the credibility of the investigation. This would indeed drastically cut down the crime.”*³²

Chapter XI of Code of Criminal Procedure shows that while investigating a case the Investigating Officer (IO) acts under the control and supervision of the judiciary. Under section 156 CrPC the judicial magistrate can ask IO to investigate a case, under section 157 CrPC, IO is required to send an intimation to the magistrate when a cognizable case is reported, under sections 158 and 159, CrPC IO is required to get a statement or confession recorded by a magistrate. Under section 165 CrPC, IO is to send the magistrate the grounds for conducting a search without a warrant, under section 167 CrPC, IO has to forward the accused to magistrate and apply not only for time for further investigation but also for remanding of the accused to judicial or police custody. Sections 169, 170 and 173, CrPC, require the Investing Officer to report the result of the investigations to the magistrate under different circumstances and also to forward the exhibits of the case to magistrate and under section 174, IO has to send intimation and an enquiry report to the magistrate in all cases of unnatural deaths.

Investigating officers are placed under the supervision and control of the magistrate but not get the benefits of protection of the law of contempt of court in case of interference with their statutory duties. An investigation is nothing but preliminary step to help the ultimate judicial process before a court of law. Investigation is the part of the judicial process and police must be entirely independent in discharge of duties that are judicial or quasi-judicial. The investigating police should unequivocally be brought under the court's protection. It would prevent the police from any kind of favoritism. Thus it is important that there must

32 Ibid

be strong steps taken to immediately separate the “law police” from the “law and order police”.³³

The Law Commission of India in its 154th report also made similar observation and stated “There should be a separate and exclusive cadre of investigating agency to investigate grave offences in every district subject to supervision by the higher authorities. When a case is taken up for investigation by an officer of such agency, s/he should be in charge of the case throughout till the conclusion of the trial. Officer should take the responsibility for production of witnesses, production of accused and for assisting the prosecuting agency. The police official entrusted with the investigation of grave offences should be separate and distinct from those entrusted with the enforcement of law and order and other miscellaneous duties. Separate investigating agency directly under the supervision of a designated Superintendent of Police should be constituted. The hierarchy of the officers in such agency should have adequate training and incentives for furthering effective investigations. The respective law and home departments of various state governments may work out details for structuring and betterment of their conditions of service.”³⁴

The Apex Court of our country while deciding the matter of Prakash Singh vs. Union of India held “*The investigating police shall be separated from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people. It must, however, be ensured that there is full coordination between the two wings. The separation, to start with, may be effected in towns/urban areas which have a population of ten lakhs or more, and gradually extended to smaller towns/urban areas also.*”³⁵

Putting emphasis on the above cited judgment of the Apex Court Justice Thomas P Joseph of Kerala High Court while delivering the Puthoor Gopalakrishnan Memorial Lecture 2013 gave a more practical approach to the issue and said

“Investigation and law and order wings should be separated. It is the need of the hour. The government should set up special investigation team attached to every police station, if not possible in

33 Policing India In the New Millennium, P.J. Alexander , Allied Publishers Pvt Limited, 2002, Page No 116-117

34 Law Commission of India , 154th Report, 1996

35 WP(Civil) 310/1996

*every police circle. Such special investigating agency should consist of sufficient number of police personnel. Each special investigation unit must be under the direct supervision of Supt/Commissioner of police. The Special investigation unit must be made accountable for their actions.....Financial problems cannot be a reason or excuse for the strengthening of the investigating agency since this is an issue having direct bearing on the life of the citizen.*³⁶

Apart from this separation, specialized crimes like social crimes, cyber crimes etc. require the specialized approach and personnel to deal with the crime. Social crimes like offences related to beggary, prostitution, crimes against women, domestic violence, dowry offences, etc cannot be handled by the traditional *daroga*. Similar is the case with cyber crimes. Experts suggest that social crimes and cyber crimes need to be handled by separate wing specialized in social work and technology respectively.³⁷ As per the 5th Report of the Second Administrative Reforms Commission police functions should be made free from the works like serving court's summons, antecedents and addresses verification for passport applications or job verifications etc. It will reduce the workload of the police. Excise, Forest, Transport and Food Departments need to have their own enforcement wings to relieve the State Police from their routine functions. However, 6th Report of the National Police Commission suggested separation restricted to the police station level under the Station House Officer (SHO). Officers above the SHO would be responsible for both investigation and law and order.

This step of separation of investigation from the law and order role has many benefits attached to it. Firstly it will bring the investigating police under the direct protection of the judiciary and greatly reduce the possibility of political or other types of interference with police investigations by invoking the law of contempt if necessary. Secondly with the possibility of greater scrutiny and supervision by the examining magistracy and public prosecutors, the investigation of police cases, especially serious cases are likely to be more objective and in conformity with the

36 Bifurcation of Police Investigation Wing and Law & Order Wing at: <http://www.livelaw.in/bifurcation-of-police-investigation-wing-and-law-order-wing/> Visited on 18th Jan 2017

37 Building smart police in india: background into the needed police force reforms by: Suparna Jain/Aparajita Gupta accessed through <http://niti.gov.in/>

law than at present, which are often the causes of failure of even detected cases in court.³⁸

Thirdly it will result in speedy investigations and as such help in the speedy overall disposal of cases as the investigating police would be completely relieved from performing law and order duties, VIP duties and such other miscellaneous duties which not only cause unnecessary delay in the investigation of cases but also detract from their efficiency, as detectives which require concentration, ability to think and capacity for drawing the right conclusions by a thorough and incisive analysis of the collected data.³⁹

This change will also bring a very practical and useful psychological improvement in the police-public relationship as pointed out by the 154th Law Commission Report “since the investigating police would be plain clothes men/women even when attached to police station will be in a position to have good rapport with the people and thus will bring their co-operation and support in the investigation of cases. Also, not having been involved in law and order duties entailing the use of force like tear gas, lathi charge and firing, they would not provoke public anger and hatred which stands in the way of police-public co-operation in tracking down crimes and criminals and getting information, assistance and intelligence which the police have a right to get under the provision of Section 37 to 44 of the CrPC.”⁴⁰ Thus separation of investigation from law and order is essential to make the policing more efficient.

38 Police Investigation ; A Review written by R Deb , Published by Indian Law Institute accessed through http://14.139.60.114:8080/jspui/bitstream/123456789/17736/1/009_Police%20Investigation_A%20Review%20%28260-271%29.pdf

39 Supra Note 9

40 Law Commission of India , 154th Report, 1996 , Page 6

COURTS AND POLICE REFORMS

Looking at the diverse, complex and problematic scene of policing in India, the Indian's Courts similar to other parts of the state has also showed great concern and need for police reforms. The Apex Court of our country looked into this problem first time in 1996 when Prakash Singh (a former Director General of Police of the States of Assam and UP and Director General of Border Security Force) initiated a Public Interest Litigation. In the PIL, Mr. Singh requested the court to investigate measures to reform the police forces across India to ensure the proper rule of law and improve security across India. The Supreme Court studied various reports on police reforms. While adjudicating the matter the Apex Court established a Commission and said *“The Commission observed that increasing crime, rising population, growing pressure of living accommodation, particularly, in urban areas, violent outbursts in the wake of demonstrations and agitations arising from labour disputes, the agrarian unrest, problems and difficulties of students, political activities including the cult of extremists, enforcement of economic and social legislation etc. have all added new dimensions to police tasks in the country and tended to bring the police in confrontation with the public much more frequently than ever before. The basic and fundamental problem regarding police taken note of was as to how to make them functional as an efficient and impartial law enforcement agency fully motivated and guided by the objectives of service to the public at large, upholding the constitutional rights and liberty of the people. Various recommendations were made.”*⁴¹

With making the above observations the court stated the process of giving recommendations stating *“In discharge of our constitutional duties and obligations having regard to the aforementioned position, we issue the following directions to the Central Government,*

41 Prakash Singh and Others. Vs. UoI WP(C) 310/1996

*State Governments and Union Territories for compliance till framing of the appropriate legislations.*⁴²

I. STATE SECURITY COMMISSION

The first directions was related with the formation of a State Security Commission about which the Court directed “The State Governments are directed to constitute a State Security Commission in every State to ensure that the State Government does not exercise unwarranted influence or pressure on the State police and for laying down the broad policy guidelines so that the State police always acts according to the laws of the land and the Constitution of the country. This watchdog body shall be headed by the Chief Minister or Home Minister as Chairman and have the DGP of the State as its ex-officio Secretary. The other members of the Commission shall be chosen in such a manner that it is able to function independent of Government control. For this purpose, the State may choose any of the models recommended by the National Human Rights Commission, the Ribeiro Committee or the Sorabjee Committee, which are as under —

NHRC	Ribeiro Committee	Sorabjee Committee
1. Chief Minister/HM as Chairman	1. Minister i/c Police as Chairman	1 Minister i/c Police (ex-officio Chairperson)
2. Lok Ayukta or, in his absence, a retired Judge of High Court to be nominated by Chief Justice or a Member of State Human Rights Commission.	2. Leader of Opposition	2. Leader of Opposition

42 Ibid

3. A sitting or retired Judge nominated by Chief Justice of High Court.	3. Judge, sitting or retired, nominated by Chief Justice of High Court.	3. Chief Secretary
4. Chief Secretary	4. Chief Secretary	4. DGP (ex-officio Secretary)
5. Leader of Opposition in Lower House	5. Three non-political citizens of proven merit and integrity.	5. Five independent Members.
6. DGP as ex-officio Secretary	6. DG Police as Secretary.	

The recommendations of this Commission shall be binding on the State Government. The functions of the State Security Commission would include laying down the broad policies and giving directions for the performance of the preventive tasks and service oriented functions of the police, evaluation of the performance of the State police and preparing a report thereon for being placed before the State legislature.⁴³

Here the Court gave the independence to the State Government to choose the composition of the leadership of the proposed State Security Commission by giving all the three models available under the three various different committee recommendations

II. SELECTION AND TENURE OF THE DIRECTOR GENERAL OF POLICE

As already discussed in this paper the Indian Police System as always faced a huge problem related to the appointment of its senior leadership. In earlier chapters this problem has been dealt in detail as how political influence and red-tapism affects the selection process for senior police leadership. To tackle this issue the second

43 Ibid

directive given by the court in the Praksh Singh case dealt with this problem. The court observed

*The Director General of Police of the State shall be selected by the State Government from amongst the three senior-most officers of the Department who have been empanelled for promotion to that rank by the Union Public Service Commission on the basis of their length of service, very good record and range of experience for heading the police force. And, once he has been selected for the job, he should have a minimum tenure of at least two years irrespective of his date of superannuation. The DGP may, however, be relieved of his responsibilities by the State Government acting in consultation with the State Security Commission consequent upon any action taken against him under the All India Services (Discipline and Appeal) Rules or following his conviction in a court of law in a criminal offence or in a case of corruption, or if he is otherwise incapacitated from discharging his duties.*⁴⁴

The DGP may, however, be relieved of his responsibilities by the State Government acting in consultation with the State Security Commission consequent upon: (i) any action taken against him under the All India Services (Discipline and Appeal) Rules; or (ii) following his conviction in a court of law in a criminal offence or in a case of corruption; or (iii) if he is otherwise incapacitated from discharging his duties.

III. TENURE OF SENIOR POLICE OFFICIALS

After looking into the problem of the appointment of senior police officials the court looked into the issue of the problem of minimum tenure of the senior police leadership and directed that

Police Officers on operational duties in the field like the Inspector General of Police in-charge Zone, Deputy Inspector General of Police in-charge Range, Superintendent of Police in-charge district and Station House Officer in-charge of a Police Station shall also have a prescribed minimum tenure of two years unless it is found necessary to remove them prematurely following disciplinary proceedings against them or their conviction in a criminal offence or in a case of corruption or if the incumbent is otherwise incapacitated from discharging his

⁴⁴ Ibid

*responsibilities. This would be subject to promotion and retirement of the officer.*⁴⁵

IV. SEPARATION OF INVESTIGATION FROM THE LAW AND ORDER

After dealing with the issue of State Security Commission and appointment and minimum tenure of senior officials the Court went on to look into one of the most complex issue which is related with the separation of law and order control and investigation. The present paper has also placed special emphasis on this issue and had discussed it at length in Chapter 2. Both investigation and law and order are vital and specific police functions. In order to encourage specialization and upgrade overall performance, the Court has ordered a gradual separation of investigative and law and order wings, starting with towns and urban areas with a population of one million or more. It is felt that this will streamline policing, ensure speedier and more expert investigation and improve rapport with the people. The Court has not said how this separation is to take place in practice but clearly indicates that there must be full coordination between the two wings of the police. Dealing with this issue the court observed:

*The investigating police shall be separated from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people. It must, however, be ensured that there is full coordination between the two wings. The separation, to start with, may be effected in towns/urban areas which have a population of ten lakhs or more, and gradually extended to smaller towns/urban areas also.*⁴⁶

V. POLICE ESTABLISHMENT BOARD

Matters related with the transfer, positing, promotions etc always create problems for the police organization as they result in delay in decision making, lack of confidence among the police force and unnecessary dispute and litigation. To handle this issue the

⁴⁵ Ibid

⁴⁶ Ibid

Court directed to form a Police Establishment Board which will look into these issues. While recommending the concept of Police Establishment Board the court directed:

*There shall be a Police Establishment Board in each State which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police. The Establishment Board shall be a departmental body comprising the Director General of Police and four other senior officers of the Department. The State Government may interfere with decision of the Board in exceptional cases only after recording its reasons for doing so. The Board shall also be authorized to make appropriate recommendations to the State Government regarding the posting and transfers of officers of and above the rank of Superintendent of Police, and the Government is expected to give due weight to these recommendations and shall normally accept it. It shall also function as a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above regarding their promotion/transfer/disciplinary proceedings or their being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State.*⁴⁷

VI. POLICE COMPLAINTS AUTHORITY

Atrocities committed by the police force put a very bad effect on the public-police relationship and also adversely impact the idea of rule of law. To handle the problems of complaints against the police the Court directed to establish a Police Complaints Authority.

The Court directed to establish State Complaint Authority to look into complaints against officers of the rank of Superintendent of Police and above. State level Authority may be headed by a retired Judge of the High Court/Supreme Court. The head of the State level Complaints Authority shall be chosen by the State Government out of a panel of names proposed by the Chief Justice. The State level Complaints Authority would take cognizance of only allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt or rape in police custody.

⁴⁷ Ibid

There shall be a Police Complaints Authority at the district level to look into complaints against police officers of and up to the rank of Deputy Superintendent of Police. The district level Authority may be headed by a retired District Judge. The head of the district level Complaints Authority may also be chosen out of a panel of names proposed by the Chief Justice or a Judge of the High Court nominated by him. The district level Complaints Authority would, apart from above cases, may also inquire into allegations of extortion, land/house grabbing or any incident involving serious abuse of authority

These Authorities may be assisted by three to five members depending upon the volume of complaints in different States/districts, and they shall be selected by the State Government from a panel prepared by the State Human Rights Commission/Lok Ayukta/State Public Service Commission. The panel may include members from amongst retired civil servants, police officers or officers from any other department, or from the civil society. They would work whole time for the Authority and would have to be suitably remunerated for the services rendered by them. The Authority may also need the services of regular staff to conduct field inquiries. For this purpose, they may utilize the services of retired investigators from the CID, Intelligence, Vigilance or any other organization. The recommendations of the Complaints Authority, both at the district and State levels, for any action, departmental or criminal, against a delinquent police officer shall be binding on the concerned authority.⁴⁸

VII. NATIONAL SECURITY COMMISSION

At the last the Court directed the setting up of a National Security Commission on the line of the State Security Commission and held:

The Central Government shall also set up a National Security Commission at the Union level to prepare a panel for being placed before the appropriate Appointing Authority, for selection and placement of Chiefs of the Central Police Organisations (CPO), who should also be given a minimum tenure of two years. The Commission would also

⁴⁸ Ibid

*review from time to time measures to upgrade the effectiveness of these forces, improve the service conditions of its personnel, ensure that there is proper coordination between them and that the forces are generally utilized for the purposes they were raised and make recommendations in that behalf. The National Security Commission could be headed by the Union Home Minister and comprise heads of the CPOs and a couple of security experts as members with the Union Home Secretary as its Secretary.*⁴⁹

Apart from the above mentioned case of Prakash Singh the Supreme Court of India in the case of Vineet Narain vs Union of India year 1997 had looked into the issue of police reforms.⁵⁰ While looking at the complex problem of police reforms observed

“In view of the problem in the States being even more acute, as elaborately discussed in the Report of the National Police Commission (1979), there is urgent need for the State Government also to set up credible mechanism for selection of the Police Chief in the States. The Central Government must pursue the matter within the State Governments and ensure that a similar mechanism, as indicated above, is set up in each State for the selection/appointment, tenure, transfer and posting of not merely the Chief of the State Police but also all police officers of the rank of Superintendent of Police and above. It is shocking to hear, a matter of common knowledge, that in some States the tenure of a Superintendent of Police is on an average only a few months and transfers are made for whimsical reasons. Apart from demoralising the police force, it has also the adverse effect of politicizing the personnel. It is, therefore, essential that prompt measures are taken by the Central Government within the ambit of their constitutional powers in the federation to impress upon the State Governments that such a practice is alien to the envisaged constitutional machinery. The situation described in the National Police Commission’s Report (1979) was alarming and it has become much worse by now. The desperation of the Union Home Minister in his letters to the state Governments, placed before us at the hearing, reveal a distressing situation which must be cured, if the rule of law is to prevail. No action within the constitutional scheme found necessary to remedy the situations is too stringent in these circumstances.”

49 Ibid

50 AIR 1998 SC 889

POLICE REFORMS: A DISTANT DREAM

A Supreme Court bench headed by former Chief Justice JS Kehar while hearing PIL on police reform in March 2017 said that police reforms are going on and on and nobody listens the Court's orders.⁵¹ This helplessness of highest court of the land narrates the story and destination of police reforms in India. More than a decade after Supreme Courts directives police reforms have not been complied with in letter and spirit by any state. Many states have enacted laws to legitimize the status quo and circumvent the implementation of the Court's directions. Some states have passed executive orders which dilute or amend the Court directions. The Supreme Court appointed Justice Thomas Committee had expressed dismay over the total indifference to the issue of reforms in the functioning of police being exhibited by the States.⁵² As on 1 August 2016, 17 states (Assam, Bihar, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Maharashtra, Meghalaya, Mizoram, Punjab, Rajasthan, Sikkim, Tamilnadu, Tripura and, Uttarakhand) have passed new Police Acts and 12 states (Andhra Pradesh, Arunachal Pradesh, Goa, Jammu and Kashmir, Jharkhand, Madhya Pradesh, Manipur, Nagalaland, Odisha, Uttar Pradesh, West Bengal and Delhi) have issued executive orders.⁵³

States have tweaked the composition of State Security Commission (SSC). Leader of opposition is not included in some of the states. Non-official members are not included. Several States failed to adopt any of the three models suggested by Supreme Court. Reports of SSC are not binding and not required to be placed before the State legislature. However, State Security Commissions had been set up in all States except Jammu and Kashmir and Odisha. Directives on the selection and tenure

51 <http://www.thehindu.com/opinion/lead/the-mystery-of-police-reform/article17430921.ece>

52 <http://www.livelaw.in/commissions-court-contempt-decade-police-reforms/>

53 Building smart police in india: background into the needed police force reforms By: Suparna Jain/Aparajita Gupta http://niti.gov.in/writereaddata/files/document_publication/Strengthening-Police-Force.pdf

of senior police officers are not being followed. Contrary to the guideline of Supreme Court for removal of senior police officers, Police Act of all the 17 States included the additional clauses like public interest, any contingency, administrative ground etc. to remove the police officers without consulting State Security Commission which can be misused with subjective interpretation. Some States have separated the investigation from law and order but provisions don't satisfy the Supreme Court directives. The separation has clear anomalies e.g. mechanism for implementation is not spelt out in several states, investigation is limited to specific crime instead of all crimes and separated investigative staffs are not recruited. The whole exercise defeats the purpose of separation.

Even though, the Police Establishment Board (PEB) has been set up in most of the states, its purpose to depoliticize appointments and transfers became defeated when police chiefs in practice get prior political approval from political executives before transfer and posting of top police officers. Police Establishment Board in State like Assam is not authorized to recommend posting and transfer of police officers with the rank of Additional SP and above. In Bihar, PEB doesn't have authority to recommend transfer of officers above Inspector level. They are not authorized to review the function of State police and act as forum of appeal.

The Second Administrative Reforms Commission and the Supreme Court have observed that there is a need to have an independent complaints authority to inquire into cases of police misconduct. The effectiveness or success of complaint Authority in India depends on the will of the government. Its financial dependence on the government has reduced it to a subordinate department. Accessible, independent and effective police oversight bodies remain still a distant goal in India.⁵⁴ Most of the States of constituted Police Complaints Authorities but Supreme Courts directives are not followed by any of the State. A report of the NITI Aayog also shows that the composition of these authorities is at variance with the Model Police Act, 2006 and the Supreme Court directions.⁵⁵ Some States have constituted the Authorities at district

54 http://www.humanrightsinitiative.org/publications/police/PCA_Rapid_Study_December_2012_FINAL.pdf

55 Police Reforms in India, June 2017 by Anviti Chaturvedi accessed through <http://www.prsindia.org/uploads/media/Analytical%20Report/Police%20Reforms%20in%20India.pdf>

level while some at state level. Compositions of the Authority don't conform the Supreme Court guideline. Recommendations are not binding in State like Assam. While in Bihar only district-level Authorities are constituted headed the District Magistrates concerned, instead of retired District Judge defying the Supreme Court directive. In Gujarat, District SPs have been appointed as Chairperson of district level complaint authorities. The other members are also all officials with no representation of non-officials and recommendations of the Authorities will not be binding on the administrative authorities concerned. It clearly shows that none of Indian state has enacted the Supreme Court directions in letter and spirit. Even these halfhearted and hurried attempts don't reflect at ground level.

COMPLIANCE WITH SUPREME COURT DIRECTIVES ON POLICE REFORMS (AS ON 1 AUGUST 2016)⁵⁶

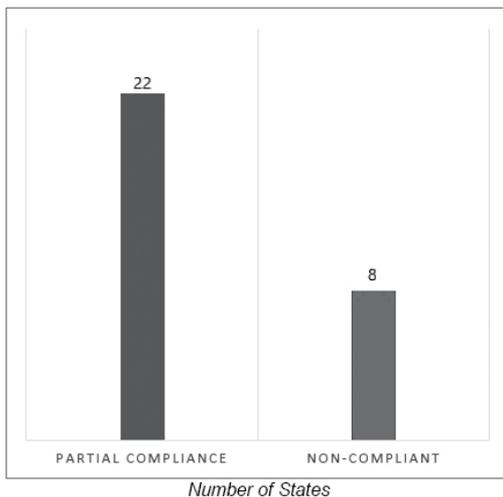
Directive 1: State Security Commission

State Security Commission has been constituted in most of the states but none of them fully comply with this directive. All States have constituted State Security Commission (SSC) either through Police Acts or through government orders except Jammu and Kashmir and Odisha. Out of 30 states including Delhi and Union Territories, six states (Assam, Chhattisgarh, Gujarat, Punjab, Tripura and UTs) have failed to comply with inclusion of leader of the opposition, inclusion of independent members and independent panel and not made the recommendations binding in nature. Thus together with Odisha and Jammu and Kashmir, eight states have not complied with Supreme Court directives. Remaining 22 states have partially complied with Supreme Court directives. State like Punjab, Tripura, Gujarat, Chhattisgarh, Bihar and Assam have not include leader of opposition in the SSC. Only nine states – Andhra Pradesh, Arunachal Pradesh, Himachal Pradesh, Jharkhand, Madhya Pradesh, Uttarakhand, Sikkim, Nagaland, Manipur and Delhi have complied with the provision for independent members as laid down

⁵⁶ Compliance Report from Commonwealth Human Rights Initiative and Niti Ayog

by the Court and four states – Himachal Pradesh, Andhra Pradesh, Karnataka and Meghalaya give binding powers to the SSC.

Figure 2: Status of Compliance on State Security Commission

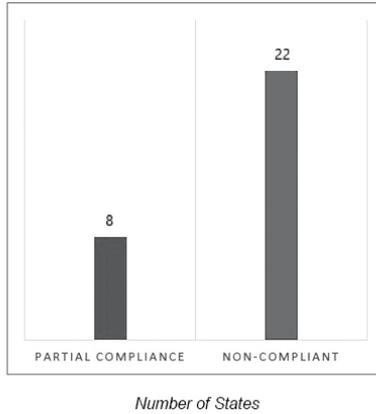


Source: Commonwealth Human Rights Initiative

Directive 2: Selection and Tenure of the Director General of Police

Most of the states continue to vest the power of appointment of the DGP with the state government and either ignore or dilute the requirement of short listing by the Union Public Service Commission (UPSC). Out of 30 States 22 states have neither provided minimum tenure of two years nor followed the selection process of UPSC. Only eight (Andhra Pradesh, Assam, Maharashtra, Manipur, Meghalaya, Nagaland, Rajasthan and Tamil Nadu) states have partially complied. Out of these eight states, only five states – Tamil Nadu, Nagaland, Maharashtra, Rajasthan, and Andhra Pradesh provided minimum tenure. The rest either provide only one year tenure, or have made tenure subject to superannuation. Short listing by the UPSC for the post of DGP is provided only by five states – Assam, Andhra Pradesh, Meghalaya, Nagaland, and Tamil Nadu.

Figure 3: Status of Compliance on Selection and Tenure of the Director General of Police

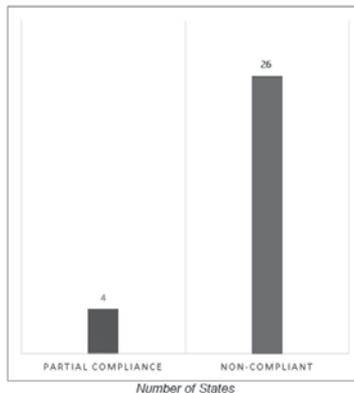


Source: Commonwealth Human Rights Initiative

Directive 3: Tenure of Senior Police Officials

Only four states (Andhra Pradesh, Manipur, Nagaland and Meghalaya) have provided for minimum tenure of two years for IGP and other officers and clearly defined the grounds for removal. Rests 26 have not followed the both conditions. Nine states (Assam, Bihar, Chhattisgarh, Gujarat, Himachal Pradesh, Karnataka, Sikkim, Tripura and Uttarakhand) provide only one year tenure to certain officers, and lay down wide grounds for removal of these officers beyond what the directive suggests. Delhi, Goa, Jharkhand, Kerala, Madhya Pradesh, and West Bengal are silent on the process of removal of the mentioned officers.

Figure 4: Status of Compliance on Tenure of IGP and other officers

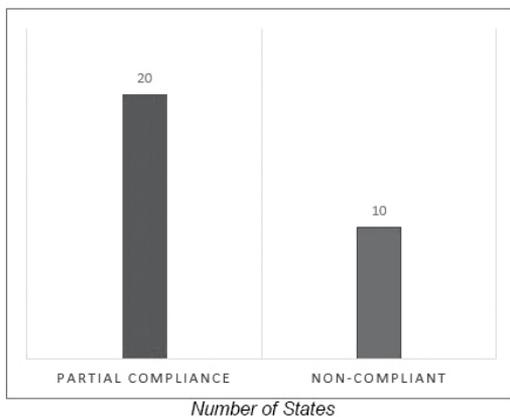


Source: Commonwealth Human Rights Initiative

Directive 4 Separation of Investigation from the law and order

Ten States have not implemented this directive. These are Andhra Pradesh, Gujarat, Haryana, Jammu and Kashmir, Madhya Pradesh, Manipur, Meghalaya, Nagaland, Uttar Pradesh and Union Territories. These states have also not provided any details of separation mechanism. The remaining states have taken some measure towards separating investigation from law and order duties.

Figure 5: Status of Compliance on separation of investigation and law and order

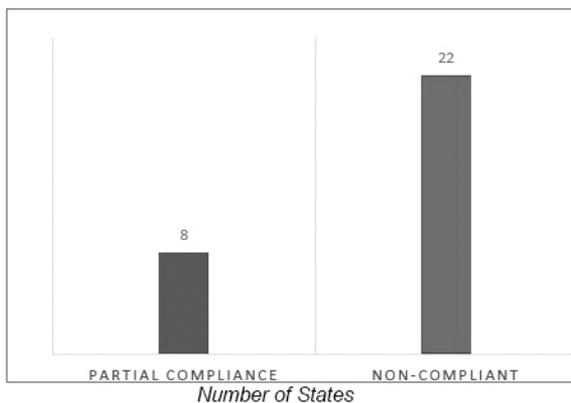


Source: Commonwealth Human Rights Initiative

Directive 5 Police Establishment Board

22 states have circumvented totally the composition, mandate and authority of Police Establishment Board. These states have included government representatives instead of only senior police officers, restricted the power to select ranks of officers, recommendations are not made binding in nature, and not given the power to act as a forum of appeal. Only eight states – Arunachal Pradesh, Bihar, Karnataka, Sikkim, Tamil Nadu and West Bengal together with Delhi and other Union Territories – partially comply with the directives.

Figure 6: Status of Compliance on Police Establishment Board

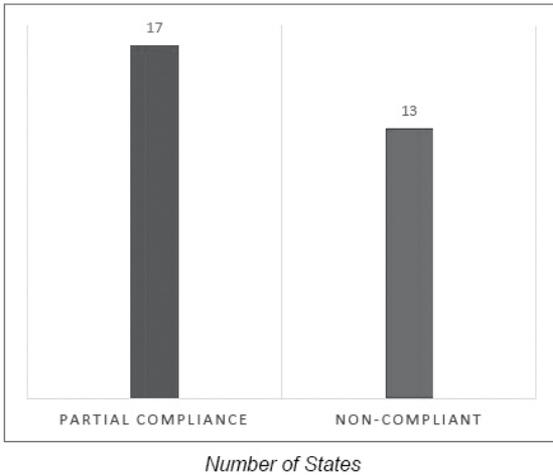


Source: Commonwealth Human Rights Initiative

Directive 6: Police Complaints Authority

Police Complaint Authorities have been constituted in all the States except Uttar Pradesh, Odisha, and Jammu and Kashmir. 10 states have not constituted the Police Complaint Authority at both State and districts level, not included the independent members, and not made the recommendations binding in nature. These are Bihar, Chhattisgarh, Haryana, Himachal Pradesh, Madhya Pradesh, Nagaland, Uttarakhand, West Bengal, Delhi and UTs. Thus together with Uttar Pradesh, Odisha, and Jammu and Kashmir 13 states have not complied with Supreme Court directives. Rests of the 17 states have partially complied with Supreme Court directives. Among these states only 12 states – Andhra Pradesh, Assam, Gujarat, Jharkhand, Karnataka, Kerala, Maharashtra, Manipur, Mizoram, Punjab, Rajasthan and Tamil Nadu – have constituted PCAs both at state and district level, six states (Andhra Pradesh, Arunachal Pradesh, Goa, Kerala, Karnataka, and Sikkim) have independent members who are selected through a transparent and independent selection process and nine states (Andhra Pradesh, Arunachal Pradesh, Goa Kerala, Meghalaya, Mizoram, Sikkim, Assam and Tripura) have made recommendations binding on the state government.

Figure 7: Status of Compliance on Police Complaints Authority



Source: Commonwealth Human Rights Initiative

Even after 11 years of the Supreme Court direction to bring in reforms to make the police force more people-centric than ruler-centric not much has changed on the ground. None of the Indian State has implemented all directives of Supreme Court in letter and spirit.

BEST PRACTICES OF POLICE GOVERNANCE: GLOBAL PERSPECTIVE

Like India every other modern society needs an efficient and effective police force and also suffers from the lack and loopholes in its police system. As already discussed in the introductory chapter that India inherited its police system from British Raj and therefore both the societies faces similar issues in its police system.

While discussing the issues of policing in India this paper deals with the problem of caste or religion based bias in Indian Police. On various instances it's been shown that Indian Police has acted with a bias towards minorities in India. Similarly in United Kingdom the police system has faced the issue of racism in its police force.

The police in Britain have very often been accused by the black ethnic minority community of being racially prejudiced. But it was for the first time in February 1999 that the charge was 'officially' admitted when the Stephen Lawrence Inquiry Report came down heavily on the Metropolitan Police service and accused it of institutional racism. William Macpherson, retired High Court judge, inquired into the conduct of the Metropolitan Police following the murder of black teenage Stephen Lawrence who was stabbed to death by white racist thugs in London on April 22, 1993. The Inquiry Commission's findings noted that the police officers handling the case were "racially prejudiced and ill-trained" The conclusions of the Lawrence report shook the conscience of society and the establishment - prompting it to undertake a serious introspection and corrective measures in order to avert an impending social upheaval. Even in the past several reports prepared by the Home Office, Her Majesty's Inspector of Constabulary (HMIC), independent Commissions and judgments passed by the courts in the 1970s and 1980s, had highlighted and condemned

racism in its various forms. Ironically, they all proved largely futile when it came to changing the situation on the ground. These efforts notwithstanding, the problem of racism was compounded over the years when domestic political aspirations - especially of the Tories - and a constant fear of backlash from the white majority, compelled the system to promote policies which ultimately, directly and indirectly, contributed to strengthen institutional racism.⁵⁷

This became a major issue for UK and its police and over the coming few years several steps were taken by the administration like formation of a special racial and violent crime task force and drafting of new guidelines for the police officers to deal with people from different races.

Later as suggested by the Lawrence report, Home Secretary Jack Straw subsequently announced on December 3, 1999 that police officers would be brought under the purview of the Race Relations Act, 1976 which ensures action against direct racism.⁵⁸

This experience observed by the UK police is big lessons for India as both the countries suffers from political influence of the police and a nexus between police and political leadership. The British experience can be a good example to learn from. Especially for the Indian decision-makers, who very often misuse the police as their private force. In turn they tend to defend every illegal and anti-people action of the police.⁵⁹

There are some examples of independent complaint authority to the probe the police conduct in Europe and US. In EU countries, a dedicated external independent mechanism to deal with complaints about police misconduct has become the rule over the past decade based on five principles developed by the European Court of Human Rights for the effective investigation of complaints against the police (Independence, Adequacy, Promptness, Public scrutiny, and Victim involvement). The resolute political will has increased the confidence of the public in the police. Complaints against the police are dealt with total impartially. To restore the confidence in the police Northern Ireland was first in Europe to create an independent mechanisms dealing with all complaints about

57 Democratising the Police: Lessons from UK, Rajesh Joshi, Economic and Political Weekly, Vol. 35, No. 40 (Sep. 30 - Oct. 6, 2000), pp. 3589-3596

58 Ibid

59 Ibid

the police.⁶⁰ The United Kingdom has an Independent Office for Police Conduct, comprising of a Director General appointed by the crown, and six other members appointed by the executive and the existing members, to oversee complaints made against police officers. Similarly, Civilian Complaint Review Board has been constituted in New York to investigate into cases of police misconduct. Civilians have been appointed in this Board by local government bodies and the police commissioner.⁶¹

Over the decades, community policing has been established as the dominant paradigm of democratic policing. To share the responsibility of policing locally platforms like Local Council of Security and Prevention of Delinquency (LSPD) has been established in France, Crime and Disorder Reduction Partnership (CDRP) in the UK, and Municipal Consultative Council of Prevention and Security in Belgium. These platforms are comprises of representatives of the state, local government, and civil society. The participation of civil society derives from the facts that civil society is viewed as an important and resourceful actor in the field of prevention and it represents community interests. In France, civil society organizations are co-opted by the chair based on relevance criteria in the local prevention landscape. CDRP is mandatory in the UK at local government level while in France LSPD are mandatory for municipalities with a population over 10,000 inhabitants or those with a sensitive zone. In France, LSPDs are chaired by the mayor. In Belgium, these organs are also chaired by the head of local government but in UK, the CDRPs are chaired jointly by the police and the local authorities.⁶² Police commissions constituted by provinces in Canada play an important role in ensuring public confidence in the police service. It relates directly to the public, permit the public to make presentations to them and actively consult the community to get their views of policing. Police commissions operate, for the most part, in public and have a direct accountability to the public.⁶³

60 Police Governance: European Union Best Practices by Dominique Wisler accessed through <http://www.coginta.org/uploads/documents/cddb3426f-65c2c542838983337d85b5913cd213c.pdf>

61 Police Reforms in India, June 2017 by Anviti Chaturvedi accessed through <http://www.prsindia.org/uploads/media/Analytical%20Report/Police%20Reforms%20in%20India.pdf>

62 Ibid 60

63 www.andrewbgraham.ca/uploads/1/2/5/1/12517834/best_practiceswinnipeg.pdf

CONCLUSION AND SUGGESTIONS

Police reforms are more than organizational and structural changes. Policing is believed to be a masculine profession full of aggression and force. This attitude needs to be changed. The aggressiveness of police comes from the job description during the recruitment. Policing is characterized as using physical force instead of highly developed communications and negotiation skills, and a demonstrated ability to de-escalate a situation that could become violent. Police should be considered as service respecting the human rights rather than a force. Police is upholder of the law and not merely the enforcer concerned with maintaining law and order. Every action of police must be compliant with the constitutionally mandated human rights framework. The police should not only protect the life and property but also protect the constitutional rights of each individual.⁶⁴ Moreover, police needs to be made accountable to public especially on the issues of human rights violations by the police itself.

Change in nature and rate of crime, over burden, undue political interference, and criminalization of police necessitates police reforms at priority basis. It is also essential to instill the confidence of people in police institution by making them people friendly. To make the police accountable it is essential to upgrade the quality of recruits and ensure dedication and honesty in delivery of service to the public.⁶⁵ Police also requires the confidence, cooperation and support of the community to prevent crime and disorder. Therefore, police-public relations are an important concern in effective policing which also needs to be strengthened. The slow process of police reforms despite regular interventions from judiciary raises doubts on the intentions of political class.

64 <http://www.humanrightsinitiative.org/download/1471863970Actionable%20Measures%20for%20Better%20Policing.pdf>

65 <http://www.thehindu.com/opinion/lead/the-mystery-of-police-reform/article17430921.ece>

It needs to be emphasized that police reforms are absolutely essential to make India a great economic power. Economic progress can not be sustained without safe and secure environment. It's high time to rejuvenate and transform the Indian Police into an instrument of service upholding the rule of law and inspiring confidence among the people. Some of recommendations for better and sensitive policing have been shared below.

SUGGESTIONS

- 1. Replace the Colonial Act** - The police institution is still governed by the archaic laws framed by the British Imperial Government in year 1861 which was primarily designed for repression. However, some states have enacted their own Police Act or changed the existing Act based on Model Police Act, 2006, Police Act 1861 remains to be the main guiding principle of police functioning. The operational and functional Blue-Books (IPC, CrPC, and Evidence Acts) are also colonial in nature and in the contemporary policing contexts became outdated. The old, archaic and outdated provisions need to be identified and removed.
- 2. Improve the training and recruitment standards** - Qualification and training of police particularly of constables need to be substantially upgraded. Transparent recruitment process must be adopted by establishing an independent Police Recruitment Board. Police constables need more effective and consistent training. Police training must be designed to sensitize the recruits to democratic norms in pluralistic Indian society. State Government should also focus on psychological and behavioral training of police. The overall functioning of lower-level officers can be boosted by better training and positive action instead of negative behavior.
- 3. Increase the expenditure on police training** - Police departments, need to train all police officers to be better at communication, de-escalation skills, mediation, problem solving and interpersonal skills. Expenditure on police training must be increased which is merely one percent of total police budget.

4. **Improve the service condition of police constabulary** - The undue physical strain leads to cumulative physical and mental fatigue for personnel. The stretched duty hours hinders their personal and family needs, social life and commitments. It adversely affects the morale, motivation and self-esteem of police. This causes frustration which manifests in the offensive conduct and behavior leading to erosion of societal image of the police and alienation of the public. Therefore, service and living conditions of the constabulary must be improved. Working hours should not be more than eight hours. Instead of dehumanized barracks, police constables should be given family quarters.⁶⁶
5. **Change the hierarchical structure of police** - Intensely hierarchical structure needs to be changed and police constables shouldn't be reduced to the serf of police leadership. Police constables also work as domestic help of senior police officer. Such kinds of dehumanizing work must be stopped.
6. **Unburden the police** - Indian police is overworked and deeply involved in crime investigation which needs lot of time, money and skills. A separate and equipped unit of police investigation must be created in every police station. State governments must resist engaging police in non-policing duties.
7. **Modernize the police Stations** - Police station is the main place of interaction between police and public. Police station must be made people friendly and accessible to the public without any fear. Infrastructure of police stations must be strengthened. Every police station must be digitalized and equipped with CCTV camera including lockups. Every police station must have complaint book visible and accessible to the people. Like Delhi Police, every State must have online facility to register the FIR that can be traced online also.
8. **Improve the engagement of police with local community**– To bridge the trust deficit between police and public special focus should be given on community policing and beat policing. Regular meeting with members of Panchyati Raj

66 <https://thewire.in/57247/up-sleeping-cops-represent-need-for-police-reforms/>

Institution, community leaders and local peoples should be organized at police station level to discuss the action plan and safety measures taken by police stations.

- 9. Criminalize the police torture and ensure punishment-** The apparent impunity of police to use the gruesome third degree treatment must be restricted by prohibiting the torture legally and ensuring punishment for the same. The impartial Police Complaint Authorities must be created at State and districts level to look into public complaints against the serious misconduct of police.
- 10. Increase the presence of women in police -** Presence of women recruits in police force plays an important role in humanizing the police force. Female police officers are less likely to resort to excessive force. Adequate women force is also essential to reduce the vulnerability of women becoming the victim of crimes. Currently, women police constitute around seven percent of total strength which needs to escalate up to 33 percent.
- 11. Make the police gender sensitive -** Police needs to be more cautious and sensitive while dealing with women. Regular training workshops to sensitize the police towards the women should be organized at district and sub-district level. Operational protocols on the police response and investigation of crimes against women must be adopted.
- 12. Make the police stations women friendly -** Considering the rise in crime against women and children, visible and effective help desks for women and children must be constituted in every police station.
- 13. Deploy the Women Police Volunteers -** Women Police Volunteers must be deployed at village level to act as the link between police authorities and local communities. This will increase the confidence in women and the rapport of police and public particularly women.
- 14. Delink police from the politics -** Police must be disentangled from politics. Accountability structures needs to be created to make police answerable to the law and the people they serve,

not to the political masters. State Security Commission as per the Supreme Court directive must be constituted in every State. Recommendations of the Commission must be binding on the state government. Police Establishment Board must be setup in every State as per Supreme Court directives to decide the posting, transfers, promotions, deployment, and other service related matter and recommendations of the Board must be binding in nature.

15. Ratify the UN Convention Against Torture Union -

Custodial and interrogational torture has become the new normal rather than exception in India. Government must ratify the UN Convention Against Torture and frame a standalone anti-torture law directly making the State responsible for any injury inflicted by its agents on citizens.

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E-46, Upper Ground Floor, Lajpat Nagar-3, New Delhi-110024
Ph. +91-11-29841266, Fax: +91-11-29841266
Email: pairvidelhi@rediffmail.com, pairvidelhi1@gmail.com,
Web: www.pairvi.org | [Blog: pairvi.blogspot.in](http://Blog:pairvi.blogspot.in)