

POLICE REFORM IN INDIA: A DISCOURSE FOR THE TWENTY-FIRST CENTURY

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The police in any society and polity are “a living expression, an embodiment, an implementing arm of democratic law” (Robert Peel quoted in Robinson and Scaglione 1987, 116). However, policing began neither in the early nineteenth century when Peel was an important and prominent political leader and minister in the UK, nor did it start with the beginnings of democracy. The origins of the police and policing are coterminous with the sedentarisation of humanity and the emergence of human civilisations. With the emergence of family and private property, social protection was necessitated both at the personal and group levels that led to social controls for order in society with societal consent. The shift from cooperation to conflict and coercion in primitive agricultural societies eventually led to the organisation of early states, that also took upon themselves the power to police, eventually transgressing the boundaries of cooperative safety to enforced regulations and civic and political norms. The police thus emerged as an agency of the state tasked with legitimised use of violence to exercise, even enforce, social control. The task of the police gradually evolved to maintaining public order in a more organised fashion.

The emergence of democracies brought people and communities once again into the centre of power, and ‘legitimised violence’ discourse regarding the police powers of the state. The focus has since turned to institutionalisation of the police role in society, as well as its work in the framework of the rule of law, due process, and the constitutions of democratic nations. While training and orientation of police persons was stressed and streamlined, their awareness and sensitivity to emerging societal issues and requirements was also placed at the centre of institution-building. If complex situations created the requirement of new responsiveness for skill upgradation in social negotiations, the emergence of technology and its abuses in crime meant that the police perpetually continue to upgrade their knowledge, information, and skills. Conflicts and political contestations leading to the use of terror by dissenting groups led to new roles and demands for upgrading police specialisations, requiring them to carefully separate the wheat from the chaff at the societal level in order to avoid getting the wrong targets, which could

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expose them to charges of social and sectarian biases leading to human rights violations. Dichotomies and challenges kept arising over time, as the role and nature of the state kept changing, with fresh responsibilities not only of public security, but also of the protection of weaker and vulnerable sections of society requiring fresh sensitivities and sensibilities. The burden of these emerging new roles and responsibilities was writ large in complex police behaviour in dealing with social conflict across the globe.²

Obviously, in the given circumstances, police reforms has become an on-going process. The Oxford English Dictionary defines reform as “The action or process of making changes in an institution, organisation, or aspect of social or political life, so as to remove errors, abuses....” Clearly, the removal of errors and ‘abuses’ stands as the main aim of any reform effort. For police who have quotidian contacts with a modern society in their role performance, ‘reform’ emerges as a generic, though enduring, process of organisational, behavioural and statutory changes to ensure better people-centric public safety results. The substance and processes of reforms are intricate in transitional societies such as India.

Contextualising the Police in India

Even though modern police and policing in India began in stages with the consolidation of colonial rule, first under the British East India Company and then under the Queen-in-Parliament since 1858, there is evidence of a police system since the advent of the Indus Valley civilisation. If the remains of the civilisation unearthed in Mohenjo-Daro and Harappa revealed a well-organised urban structure and a system requiring a smooth functional administration, including police, for a systematised and conflict-minimised life, the chronicled details of the empires at various periods of history also indicate that, even if undifferentiated, a policing system to support revenue collection and other regulatory and enforcement state functions was present in India. This is reflected in the prevalence of police designations such as *thana* (police station), *Thanedar* (officer in charge of a police station), *kotwal*, *daroga*, and *jamadar* in some parts of north India.³

The grant of *Diwani* (the right and power to collect land revenue) to the East India Company, then led by Lord Robert Clive, after the battle of Buxar (1764) following the treaty of

² The discussion in this part of the essay is informed by the following readings: Arnold (1992, 42-61); Crank, and Langworthy (1992, 338-63); Robinson and Scallion (1987, 109-54); Seo (2019, 1246-302); and Sinclair (2008, 173-87).

³ *Kotwal* has developed from the designation *kottapal* (officer-in-charge of a fort) that later became simplified into *kotwal*, and with the evolution of Hindustani further as *kotwal*. *Thana*, *Thanedar*, *daroga* and *jamadar* are, of course, Persian terms that were used for officials following the advent of Muslim rule in the country and gradually these nomenclatures became parts of India’s lingua franca (Mehra 1985, 5-6).

Allahabad (1765), brought with it the responsibility of maintaining order for the collection and maintenance of funds. Clive relied on the existing systems with their dependence on *zamindars*. Lord Cornwallis (1786-93) brought in the Cornwallis Code in 1793, which took away police powers from *zamindars*. This system, lasting till the Charter Act of 1833, “provided that the East India Company’s service personnel be divided into three branches: revenue, judicial, and commercial. Private trade was forbidden to the members of the first two branches, and they were instead compensated by a new and generous scale of pay. The land revenue assessment (the major source of revenue) was fixed permanently with *zamindars*, or hereditary revenue collectors. These native Indians, provided they paid their land taxes punctually, were treated as landowners, but they were deprived of magisterial and police functions, which were discharged by a newly organised government police.”⁴ This was known as the Permanent Settlement system.

The Permanent Settlement system was not introduced in Madras. The prevailing system of policing through landlords (*zamindars*) was found to be preferable, as the Police Committee set up by Bentinck in 1805 had concluded that a *thanadari* police would subject the government to enormous expenditure. Various permutations and combinations of the *thanadari* system⁵ as well as of the collector, magistrate and superintendence of police, attempted in presidencies in the first half of the 19th century, were also attempts at police reforms, of course to give weight to the authority of the government and its officers.

When the East India Company adopted the Royal Irish Constabulary model in Sind at the initiative of Charles Napier (after he conquered the territory for the Company in 1843), it aimed at introducing policing where none existed.⁶ Yet, it was a major and audacious statement on colonial policing by the East India Company:

⁴ <https://www.britannica.com/topic/Cornwallis-Code> (accessed on 23 February 2024).

⁵ On 7 December 1792 Lord Cornwallis imposed police regulations in the Bengal (consisting of today’s states of West Bengal, Bihar, Jharkhand, and Odisha in India and Bangladesh) collectorate areas, ending policing under the *zamindars* (landlords). The entire region was divided into several *thanas* (police areas) and one *daroga* (officer-in-charge of a police station, a sub-inspector of police in the contemporary set-up) was appointed for each *thana* under the supervision of a District Magistrate. Each district was divided into several *thanas*, each comprising 400 sq. miles, with one *daroga* in charge of each police area — *Darogas* could not be removed without approval from the government. A 10 percent commission on the value of recovered stolen property and Rs 10 for arresting dacoits used to be awarded. This regulation was re-introduced as Regulation XXII of 1793. The police system introduced by Cornwallis was more commonly known as the *thanadari* system and it marked the beginning of the hierarchy in the police department. This system was introduced exclusively for strengthening the arms of the magistrate for revenue collection and exercising efficient control over the territory under British occupation.

⁶ The Royal Irish Constabulary (RIC) was founded in 1822 and existed for 100 years. It was first used in the Tithe War (1831-36) to collect tithe for the Catholic clergy in Ireland. Robert Peel as Chief Secretary in Ireland in 1812-18 was instrumental in organising the RIC on the model of the Gendarmerie, which had a long history, not only in France, but in the rest of the continent too. Peel was Prime Minister of Britain when the RIC model was applied in Sind. Although the London Metropolitan Police model, which he authored as Home Secretary in 1829, had been in operation for nearly a decade and a half by then, no fragment of that model was considered by his government for any part of India.

Colonial policing was Irish in origin, stemming from the Irish Constabulary's original role as an imposer of force on the people, a constant reminder that Ireland could only be governed through force. In this way, the Irish Constabulary's professional duty did not permit an easy transformation to the function of a police *service*, rather than a police *force*, until the late nineteenth century (Sinclair 2008, 173-74).

As if to reassert the sentiment, Lt. Governor of Bengal (1854-59) Frederick James Holiday recommended a close, constant, and vigorous control over the police. Obviously, during this period, and perhaps later too, the British attempted their own balance by creating and reforming police structures to secure the Company against rebellion by the 'natives', to assert its authority and to maintain public order for smooth conduct of the Company's business, rather than for the safety of the people at large.

The first Indian War of Independence (or the Sepoy Revolt) followed 14 years later in 1857, which led to the transfer of power to rule India from the 'inept' East India Company to the Queen-in-Parliament in 1858. Among the major enactments the British Parliament brought after passing the Government of India Act 1858 was the Indian Police Act of 1861. The enactment was preceded by a history of over six decades of various permutations and combinations of police and policing. By using the Royal Irish Constabulary as the model for the colonial police in India, the British Parliament successfully made a statement that they were creating a model of a police *force* for their jewel of a colony rather than a police *service* for a modern democratic polity. Importantly, this central Act, left police operations to the provinces. However, the police was to be led by a centrally recruited cadre named the Indian (Imperial) Police, consisting of British officers selected and trained in London, who would be allotted to different provinces. The lower ranks were to be recruited locally.

Four decades later, it was felt necessary to have an appraisal of police functioning under the Act as well as measures to strengthen the force where required. This led to the appointment of a seven-member (five Europeans and two Indians) Indian Police Commission in 1902 under Andrew Henderson Leith-Fraser, Chief Commissioner of the Central Provinces. The Commission observed that the police in the country were, "in a most unsatisfactory condition" and that "abuses are common everywhere". Underlining the need for "radical reforms" it recommended more funds for the financially starved department. The Indian Police was opened to Indian recruits in 1920.

Police Reforms since Independence

Official discourse on police reform was set in motion very soon after independence. Even as discussions on independence were in the air, the government of the United Provinces (now

Uttar Pradesh) appointed a Police Reorganisation Committee on 23 January, 1947, which submitted its report on 2 March 1948. The Committee underlined the ills plaguing the police organisation such as corruption, misuse of authority, brutality, non-registration of First Information Reports (FIRs), poor investigation, fabrication of evidence *et al.* It recommended a better recruitment policy and improved salaries and service conditions, and laid tremendous emphasis on better training, professionalisation and specialisation of personnel and various units of the police, inculcation of scientific methods of investigation, and so on. However, the partition of India and its aftermath overwhelmed the embryonic Indian state. The immediate repercussions and the gargantuan task of tackling the massacre of Hindus and Muslims and at the same time managing law and order so that independent India did not present itself as a chaotic state, overtook any action on the Committee's recommendations.

The police was not only found inadequate during the communal frenzy and unprecedented violence preceding and following the partition of the British India, as the army had to be deployed in several parts of north India, it displayed traces of communalism in several instances by siding with their own communities (Khalidi 2003, 88-89).⁷ Despite their military-like discipline, police revolts had been witnessed in Bihar in the wake of the Quit India Movement in 1942 and soon after independence, and in several parts of the country between 1945 and mid-1947. In March and April 1946, for example, "there were police demonstrations and protest marches in New Delhi, and on 16 April a company of the Malabar Special Police, the Madras government's crack paramilitary force, went on strike over pay and conditions of service" (Arnold 1992, 55). Clearly, the police organisation, along with its prevailing organisational culture, had been passed on and persisted, even as Indian leaders were attempting to deal with the post-partition mayhem and lay the foundation of a new democratic republic.

There were five key features to the foundation of the post-independence police as laid out by the Constituent Assembly of India. First, within the gamut of India's strong centre federal structure, 'Police' was placed in the State List, assigning to states the responsibility of maintaining the police and streamlining policing.

Second, the Union government was authorised to maintain the central para-military forces for the security of central organisations such as the public sector undertakings (PSUs)

⁷Richard D. Lambert, an American scholar commented on the role of the Indian police during the Partition riots thus:

Policemen came to be regarded, not as neutral arbiters of social disputes operating within a system of legal redress for grievances, but rather as armed representatives of the communities from which they were originally recruited. This interpretation of their role was accepted by members of rival policemen themselves. When this occurred the usefulness of police in social control was sharply reduced and, in some cases, police activities contributed to further disruption of social organization (quoted in Khalidi 2003, 89-90).

across the country, the railways run by the Union government, and other properties it maintained to perform its sovereign functions some of which related to managing the country's borders ⁸

Third, while the Indian Police Act 1861 was kept in to, three key acts that the police used for maintaining public order within the larger framework of the criminal justice system – the Criminal Procedure Code (CrPC),⁹ the Indian Penal Code (IPC),¹⁰ and the Indian Evidence Act (IEA)¹¹ – were placed in the Concurrent List for both the Union and state governments to contribute to as the need arose.

Fourth, Articles 21 and 22 of the Constitution of India in Part III (Fundamental Rights), imposed limitations on the police powers of the Indian state by guaranteeing life and personal liberty to Indian citizens and those living within the territory of India.¹² The debate in the Constituent Assembly on items which eventually took shape as Article 22 is extremely significant, for it highlighted the concerns of the framers of the Constitution about parliamentary powers within the framework of the 'procedure established by law' to tamper with the life and liberty of people (see Mehra 2006). The draft Article 15A that eventually became Article 22 was hotly debated in the Assembly from the perspective of providing protection to individuals from possible arbitrary arrest. Eventually, Dr Ambedkar inserted into the Article two provisions which had been lifted from a part of Chapter V (Articles 41-60) of the Cr. PC (amended in 1973), through which he sought to incorporate two of the most fundamental principles of international justice which every civilised country follows: these relate to the power of arrest vested with the police and the safeguards provided to citizens against the misuse of this form of power (Mehra 2006).

Fifth, the Indian (Imperial) Police was transformed into the Indian Police Service in 1948. In 1950, after the enactment of the Constitution of India, it was brought under Article 312 along with the Indian Administrative Service. Among the salient, yet complex, aspects of the police leadership cadre recruited by the Union government following a rigorous selection

⁸ Items 1 and 2 of List II (State List) read with Item 2A of List I (Union List) in the Seventh Schedule of the Indian Constitution.

⁹The CrPC enacted by the British Parliament along with the Indian Police Act 1861. It was amended in 1898 and in 1973. Accessed at <https://timesofindia.indiatimes.com/city/hyderabad/crpc-was-enacted-after-1857-mutiny/articleshow/3010641.cms>.

¹⁰The IPC was also enacted in 1860 (Patra 1961).

¹¹The Indian Evidence Act was passed in 1872 by the Imperial Legislative Council in India. Sir James Fitz James Stephen is acknowledged as the founding father of this comprehensive piece of legislation. He was a lawyer who became the legal member of the Viceroy's Executive Council in India.

¹²Article 21 of the Indian Constitution states:

21. Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law.

process by the Union Public Service Commission and allotted to the states and Union Territories in accordance with a well-defined and well-accepted formula, and training at the Sardar Vallabhbhai Patel National Police Academy located in Hyderabad, is its dual cadre management. The federal cadre (seniority list and so on) is managed by Union Ministry of Home Affairs (MHA), which involves: the direct recruitment of officers as well as induction of state police service officers through a promotion quota; allocation of direct officers to state cadres; training and confirmation in service; pay and allowances; and disciplinary matters. The MHA is also responsible for determining the structure of the various state cadres. Once allotted to states, state governments exercise a minimal role in cadre management. While they are solely responsible for deciding the postings and transfers of officers while they are serving in the state, they have limited powers of disciplinary action. The state governments over the years have managed to impact cadre control through transfers and postings, and in the process, the appointment of the Director General of Police in various states has not been conducted as mandated by the Supreme Court. Both cadre management and the functioning of state IPS officers have come under question and are in dire need of reform; this has emerged as a critical question for the Indian state and the states of India.

Keeping in view that police and policing are part of the State List, and that the federal principle was given significance by both Prime Minister Nehru and Deputy Prime Minister and Home Minister Patel, the Union government left the initiative of police reform to the states. However, this had continued to be a priority area for the Indian state. Hence, in 1950, once the constitutional government came into operation, with its embedded federal republican principles, and the reorganisation of the states was completed in 1956, police reform was brought forward as an important agenda of the states. The appointment of various police commissions followed in the 1960s and 1970s, which made useful recommendations. While states could not change the Indian Police Act 1860, so they could not question the organisational and operational principles of the police, they nevertheless made several useful suggestions.

The quest for police reforms was also carried through by the Union government. The Administrative Reforms Commission in 1966 examined the issue and made its recommendations. The Union government also appointed a Committee on Police Training in 1971 under the chair of the noted sociologist Prof M.S. Gore, which submitted an extremely useful report.

State Police Commissions and Reforms

Since 1960, most states have set up police commissions to recommend police reforms for their respective states. In fact, some states over a decade or so, have appointed more than one police commission; and governed by their own political imperatives in setting up these commissions, have defined their terms of reference accordingly. Although throughout the 1960s and 1970s most states reviewed their police systems, none of them questioned their impact on policing a democratic India, because constitutionally the Police Act, 1861 fell in the federal domain. As a result, solutions suggested by these commissions were made within the existing framework; their recommendations were mainly concerned with details of the administrative set-up, strength of the police force in different wings, pay and allowances of different ranks, educational qualifications for recruitment to various ranks, improved training with upgraded training academies, updated and improved curricula, and so on.

These limitations apart, the state police commission reports contained significant cogitations about police and policing in the respective states. British organisational policy, despite two well-considered police commission reports in four decades, had opened up recruitment channels to accommodate different strata of Indian society. On the one hand, it was economy-driven and, on the other, it sought and enlisted support from various layers of social strata by offering employment to many. It began with the coveted all-India Indian Police (IP) cadre recruited from London in 1861. Since the recruitment tests were held in London, only youth from richer Indian families could afford to compete. Therefore, the post of Deputy Superintendent was created for the upper classes and landed gentry at the provincial level; the rank of sub-inspector was available to the middle classes, and of constables to the illiterate and semi-literate lower classes. Later, recruitment to the IP too was opened to Indians of the privileged classes in 1920.¹³ This recruitment policy created considerable organisational confusion about promotion policies, salaries, and service conditions over the years. The state reports recommended rationalisation in this arena without tampering with the IPS, the all-India service mandated by the Constitution. However, given the socio-economic and educational inequities in India, they did not tamper with the multiple entry points.

The state reports expressed considerable concern over the persisting police culture of corruption, high-handedness and brutality as a carryover of the British colonial era. Improved service conditions and training were suggested to deal with these anomalies. The hiatus between the police and the public, nurtured during the colonial period to inculcate fear of the police

¹³The Indian Civil Service, which emerged as an elite service of administrators, was set up in 1853, but it remained the domain of only British subjects. It allowed the entry of Indians in the ICS only in 1863; Satyendra Nath Tagore was the first Indian officer of the service. Accessed at <https://scotstagore.org/satyendranath-tagore-1842-1923-brother-of-rabindranath-by-christine-kupfer/>

among the public, was also noted in these reports and considerable stress was laid on police-public relations for better policing. Politicisation of the police and its adverse consequences were also strongly stated. Obviously, within a decade of independence this ill continued and in fact intensified with every passing year. This also became a reason for the reports of the commissions in practically every state to eventually be cold-storage.

Whether implementation of the recommendations of these state commissions, which did not question the foundations on which the inherited colonial police system rested, would have led to any substantial improvement in police organisations across the country, is a moot point. They nonetheless represent a desire for change and deserve a space in the post-independence discourse in India on police reforms, and their recommendations, which were not considered, could have heralded some significant changes. In the changing nature of India's competitive electoral politics and the political elites in power, the reforms were ignored.

Union Government Initiatives

Cogitations at the Centre regarding police reforms began in the 1960s with the Union government's Administrative Reforms Commission. Its Working Group on Police Administration (1967), examining police reforms as part of larger administrative reforms, stressed the need for complete systemic reform in the police, even recommending a review of the India Penal Code and the Criminal Procedure Code. Both codes, along with the Indian Evidence Act, were eventually repealed in December 2023, and new ones legislated. However, the Working Group did not review the impact of the Act of 1861 on police organization and performance. It strongly recommended making the police agents of the law and not of the government in power, suggesting its functional independence from both the District Magistrate and 'ministerial interplay'. Other important recommendations included an upgradation of constables from unskilled workers to responsible beat officers, and transitioning police investigations and statements to the police from a zone of distrust to one of trust.¹⁴

In 1971, the Government of India appointed the Committee on Police Training headed by M.S Gore. The Gore Committee was candid in stating that police training was not taken seriously by those who imparted nor by those who received it. It stressed the need for developing social awareness with adequate training materials, as well as for the separation of

¹⁴ <https://www.thehinducentre.com/resources/67838392-ARC-PA-1967.pdf>.

crime and the law and order functions of the police.¹⁵ Its report was widely welcomed, but its recommendations were not implemented comprehensively.

A major step by the Union Government was to appoint the first National Police Commission (NPC) in independent India on 15 November 1977. The first non-Congress government was formed by the hastily glued-together Janata Party, which swept to power on 26 March 1977 in the aftermath of the 18-month Emergency imposed by Indira Gandhi. The resolution appointing the NPC admitted the lack of a “comprehensive review at the national level of the police system after Independence, despite radical changes in the political, social and economic situation in the country.” Stressing constitutional values and the rights of citizens, the government promised that, “A fresh examination is necessary of the role and performance of the Police – both as a law enforcement agency, and as an institution to protect the rights of the citizens enshrined in the Constitution.”¹⁶

The six-member NPC headed by Dharam Vira, ICS (retired) and former Governor of West Bengal, comprised Justice (retired) N.K. Reddy, K.F. Rustomji and N.S. Saksena (both distinguished police officers) and Prof M.S. Gore of the Tata Institute of Social Sciences, Bombay. C.V. Narasimhan, then Director CBI was Member-Secretary. After meticulously collecting data on the police and policing from across the country, the Commission submitted nine reports between February 1979 and May 1981 containing valuable suggestions on the police and policing in India. However, the acceptance and implementation of its recommendations became a victim of the fluid political situation of the time. By the time the final report was submitted, Indira Gandhi, in the aftermath of whose government’s excesses during the Emergency the NPC had been appointed, had been voted back to power.

The NPC clearly underlined the political misuse of the police across the country during the Emergency. It also explicitly stressed the reduction of the police to an instrument of the state, worse, of the government in power, even of politicians who had lost their legitimacy to rule. The appointment of the Commission had been preceded by the ‘JP movement,’ during which Jayaprakash Narayan gave a call on 26 June 1975 to the police, armed forces, and government servants not to obey the ‘illegal and immoral’ orders of the government.¹⁷ This dangerous and avoidable political call was fortunately not heeded by any police organization. Even so, Indira Gandhi used this as a pretext to present grave portents for India’s internal

¹⁵<https://police.py.gov.in/Police%20Commission%20reports/THE%20GORE%20COMMITTEE%20REPORT%20ON.pdf> (accessed on 25 February 2024).

¹⁶Resolution No. VI-24021/36/77-GPA.I dated 15 November 1977 quoted in National Police Commission (1979, 1).

¹⁷ <https://indianexpress.com/article/opinion/june-26-forty-years-ago-jps-appeal/> (accessed on 26 February 2024).

security and imposed the Emergency under Article 352 of the Indian Constitution on 25 June 1975. Her government conducted a large-scale incarceration of opposition leaders, including Jayaprakash Narayan. Even though the NPC completed its task of submitting its report in four years following an unprecedented comprehensive review of the entire system, the political clock turning full circle had repercussions in terms of its valuable work being confined to the cold storage.

A countrywide police agitation in May-June 1979 reminded the Indian polity and society of the dangers of politicization of the police and ignoring police reforms. It was certainly a candid reminder to the nation of the extent of the rot within the police. The NPC took account of this in its Second Report: “In May-June 1979, the country witnessed the spectacle of policemen’s unrest and agitation in some States in regard to their living and working conditions.” The agitation was ignited by the slapping of a policeman in Punjab by a legislator from the Akali Dal, the party which had been in power for a brief period in the late-1960s to 1977. The event revealed to the NPC the reality that their recommendations could be ignored by the Union Government. Dharam Vira’s letter of 16 August 1979 (accompanying the Second Report of the NPC) to Y.B. Chavan, then Deputy Prime Minister and Home Minister, lamented that the fate of the Commission’s First Report presented in Parliament: *‘we cannot help feeling that if our First Report had been duly published and it was made known that the recommendations were under active consideration of the Government, perhaps the subsequent stir by policemen could have been avoided.* [Italics and emphasis mine]. (National Police Commission 1979a, 1).¹⁸

In making its recommendations, the NPC rightly emphasized the change in the context of policing in India between a colonial rule and a ‘democratic republic,’ which underscored the issue of accountability in role-performance. Stressing the accountability of the police to both the people and the law in its concluding report (May 1981), the Commission presented recommendations with a two-decade perspective till about 2000, as they viewed police reform as a continuous process.

In critiquing the organisation and structure of the police, the NPC rightly rejected the “(t)he hierarchical structure” drawn up post-1857 for supporting imperial rule. The Commission identified four basics in the roles and functions of the police: institutional, organisational, structural, and operational. By identifying the police station, and not the district, as the most important unit and the basic unit of “all police work and policing,” it brought a focus on the

¹⁸Soon after the countrywide police agitation in 1979, I had argued in an article in the *Hindustan Times* that a permanent body for the resolution of police grievances, on the lines of the Whitley Councils in the UK, should be set up in India (see Mehra 1979). In Chapter VII of the First Report, the NPC has discussed Machinery for Redressal of Grievances of Police Personnel.

organisation and its grass-roots functions and on the most-neglected but crucial institutional pivot of policing. The delimitation of a police station's area, including the number of outposts supporting it, allocation of staff, status and plight of the constabulary,¹⁹ the rank and status of the Station House Officer (SHO)/Officer-in-Charge of a police station, infrastructure of police stations – particularly communication and transport – drew its attention.

Regretting the deployment of police personnel in law and order duties at the expense of investigation work in police stations, which arises primarily from the inadequacy of resources at the police station, the NPC was not in favor of relegating investigation and law and order duties to watertight compartments. They rightly suggested making the SHO the sole in-charge of a police station, with full control over all the personnel at her/his disposal, yet stressed greater specialisation and professionalisation in police work through better training and in-service refresher courses. Fields like investigation, law and order, traffic control, crowd management, etc., were becoming specialist domains due to advancements in technology, increasingly resorted to by criminals.

The NPC's elaborate suggestions regarding the organisational structure of the police department –from the constabulary to police chief and from the police station to police headquarters– are reflective of the overhaul the Indian police needed in the late 1970s and early 1980s. Without going into the details of each of its comprehensive recommendations, it is clear that irrespective of the merits of some of its suggestions, many of which are sound, the Commission went into practically every aspect of police work in India.

For example, the district police have continued under the operational control of the Chief Executive of the district, the District Magistrate, even decades after the country's decolonisation. This administrative arrangement was designed to suit the colonial ruler's need to maintain a tight control over the people of India so that the stability and expansion of British rule was not threatened. The Police Act of 1861 (section 4) unambiguously stated:

The administration of the police throughout the local jurisdiction of the Magistrate of the District shall under the general control and direction of such Magistrate be vested in a District Superintendent and Assistant District Superintendent as the State Government shall consider necessary (National Police Commission 1980, 34).

However, the implication of this arrangement is that “the only areas in which the DM is not expected to control the activities of the Superintendent of Police are drill, arms and armaments,

¹⁹The constabulary continues to remain the most neglected part of policing in India. Despite the fact that service conditions, salaries, and educational qualification of the constabulary have improved, the continuance of the orderly system – a vestige of colonial rule both in the police and the military – make the job demeaning, to say the least. A large segment of the constabulary still stays in barracks, not in family quarters, which dehumanises them.

and discipline....The DM has come to acquire considerable authority to interfere with the internal management of the district police organisation” (National Police Commission 1980, 36-37). While the NPC did not object to the mechanisms for the police coordinating with the DM, it advised against total subordination of the SP to the DM. It proposed amendments in Section 4 of the Police Act, 1861, which vested in the SP administration of the police in the entire or part of a district (National Police Commission 1980, 44). However, the colonial government had organised metropolitan policing in accordance with the specific requirements of urban areas. The system of Police Commissionerate under this had, and continues to have, only a single point of responsibility on law-and-order matters– the Commissioner of Police, who is directly and solely answerable to senior police leaders and the state government for her/his performance.

The Post-NPC Discourse and Concerns

The NPC’s valuable recommendations were confined to the cold storage by seven successive governments,²⁰ but its report left a valuable trail of new ideas on police reforms in India; every commentator and expert on the police in the country and across the world referred to the leads it provided, which were meant to be a point of departure for a fresh start. Therefore, despite a lull on this issue in the government during the 1980s and almost the whole of the 1990s, a PIL created the first stirrings for demands for police reform in India.

²⁰ Indira Gandhi (1980-84) had reasons to ignore it, for it would have vindicated her opponents’ stance on the Emergency excesses (1975-77) and the misuse of the law-and-order machinery. Her son and successor Rajiv Gandhi (1984-89) did not include police reforms in his agenda for India’s march to the 21st century. V.P. Singh (1989-90) was too engaged in trying to survive throughout his brief tenure; his government was so dependent on outside support from two opposing factions, the Left (the Left Front) and the Right (Bharatiya Janata Party) that police reforms were too trivial for his agenda. Chandrashekhar’s (1990-91) rump minority government with ‘outside’ support from the Congress, the largest party in the Lok Sabha, was bound to fall. P.V. Narasimha Rao (1991-96) ran a post-Nehru-Gandhi Congress government, and although he did liberalise and revive an ailing Indian economy, was unlikely to tackle anything sensitive, particularly police reforms. The two-year tenure of the United Democratic Front coalition under two Prime Ministers (H.D. Deve Gowda and I.K. Gujral), again being supported by a larger and politically confused Congress headed by Sitaram Kesri, too had survival as its prime preoccupation.

As if to shake the government out of its lassitude on the issue, two retired police officers – Prakash Singh (who headed the police in India’s largest state Uttar Pradesh and the Border Security Force) and N.K. Singh (who headed the Bureau of Police Research and Development) – and a civil servant-turned-consumer-activist H.D. Shourie, filed a writ petition in April 1996 in the Supreme Court, asking it to direct the government to implement the NPC’s recommendations. On the orders of the Supreme Court, the government appointed a committee in 1998 under the distinguished police officer J.F. Ribeiro, to recommend measures for police reforms based on the NPC report.

The Ribeiro Committee’s two reports – in 1998 and in 1999 – proposed comprehensive measures to frame accountability structures for the police to minimize the misuse of power and use of violent methods in role performance. One was the creation of a security commission, titled the Police Performance and Accountability Commission (PPAC) in each state. Members of the PPAC would comprise the Minister-in-charge of the police (Chair), Chief Secretary of the state and the Director General of Police as the Secretary and Convener, respectively (each as an ex-officio office bearer), and four members – a sitting or retired judge nominated by the Chief Justice of the High Court and three non-political citizens chosen by a committee set up by the Chairperson of the National Human Rights Commission (NHRC) – nominated for three years with advisory and recommendatory powers. Its role was to oversee police performance, ensure accountability to the law and keep abreast of transfers and postings of officers at the level of Superintendent of Police and above, for whom it recommended a fixed tenure under normal circumstances. It also suggested the constitution of non-statutory districts Police Complaints Authorities – comprising the Principal Districts and Sessions Judge, District Magistrate, and Senior Superintendent of Police – in each police district to examine complaints of police excesses and to make recommendations to the PPAC, state governments and NHRC. The Committee recommended constitution of a Police Establishment Board – consisting of the state Director General of Police (DGP) and the four senior-most officers – with legal authority under the rules to monitor all transfers, promotions, rewards, and punishments and other service-related matters. It suggested that the DGP of a state, who would be appointed for a three-year tenure, be selected from a panel of three names recommended by the Union Public Service Commission, Union Home Secretary, Director of the Intelligence Bureau, and the incumbent DGP, which would consult the Chief Vigilance Commissioner, and appointed for a three-year tenure. In order to make the recruitment process more streamlined and scientific, the Committee recommended the creation of a Police Recruitment Board in each state and emphasised better training for police personnel. It also reiterated these paration of the

investigation and law and order wings of the police for better, in-depth, scientific investigations. In line with the NPC recommendations, the Rebeiro Committee laid great emphasis on introducing institutional and scientific approaches in order to streamline the functioning of police departments across the country.

In January 2000, the Atal Bihari Vajpayee-led NDA government appointed a committee headed by former Union Home Secretary K. Padmanabhaiah to recommend police reforms based on the NPC and Rebeiro committee reports. The new committee followed the institutional approaches of the earlier two, and its recommendations in October 2000 made suggestions with minor variations such as a two-year minimum term for a state police chief, instead of the three-year term recommended by the Rebeiro committee. Some of its recommendations such as the recruitment of more sub-inspectors than constables were debatable, but it rightly emphasized comprehensive criminal justice reform as a precondition for meaningful police reform in India. It also suggested changes in the Sections 25 and 26 of the Indian Evidence Act (repealed in 2023) to make confessions to the police inadmissible in a court of law.

The Union Government constituted the Committee on Reforms of the Criminal Justice System (CJS) chaired by Justice V.S. Malimath on 24 November 2000 as a first step for larger criminal justice system reform. Its wide terms of reference promised institutional and procedural reforms, which would also impact the police. It compared the adversarial Anglo-Saxon system that India follows with the inquisitorial system prevalent in continental Europe, concluding that it would be possible to incorporate good aspects from both for a balanced approach. Strongly recommending a new Police Act to replace the 1861 Act, it recommended reforms in the police organisation and their practices, particularly those relating to the CJS. It emphasised the empowerment of courts for uncovering facts. In its effort to protect the rights of the accused, the Malimath Committee recommended that the requirement of proof beyond reasonable doubt currently existing in Indian criminal jurisprudence be done away with for a fair trial. The Malimath committee backed the NPC recommendations for scientific investigations being conducted by a separate wing of investigators in the police, and placing the responsibility for investigation on a police team rather than a single investigating officer. However, the Committee, whose mandate was a comprehensive and critical look at the CJS rather than on the police alone, came under heavy attack for its recommendations that were 'human rights' insensitive, such as the increase in the period of police remand (Baxi 2003).²¹

²¹ Furthering the task begun with the Malimath Committee, the Union government appointed a committee under Professor N.R. Madhava Menon on 3 May 2006 to draft a paper on a national policy on criminal justice.

The churning on police reforms towards the close of the 20th century continued in the first decade of the current (21st) century. The Congress-led United Progressive Alliance government appointed a committee to draft a new Police Act in September 2005 to replace the Police Act of 1861 in six months. The ten-member committee chaired by Soli Sorabjee, former Attorney General of India, (was):

... tasked to draft a new Police Act in view of the changing role/responsibility of police and the challenges before it especially on account of the growth and spread of insurgency/militancy/naxalism, etc. The new Act is also to include measures for attitudinal changes of police including working methodology to elicit cooperation and assistance of the community; the new Police Act should also reflect the expectations of the people regarding the police in a modern democratic society. The use of scientific investigation methods to strengthen the criminal justice system, enabling the police to tackle futuristic trends and organized crime including cybercrime and technological additions in the hands of the criminals, etc., also have to be properly incorporated in the new Act. Besides, the concern for human rights, weaker sections, women and the people belonging to Scheduled Castes/Scheduled Tribes have to be addressed.²²

It put forward a comprehensive draft that suggested structural changes with considerable emphasis on accountability structures within the organisation.²³

In the meantime, on 22 September 2006 the Supreme Court delivered its judgement on the Writ Petition (Civil) No. 310 of 1996 filed by Prakash Singh *et. al.*, requesting the court to direct the Union Government to effect reforms in the police. As if echoing the prophetic warning given by the then Union Home Minister Indrajit Gupta in 1997,²⁴ the court directed the Union Government and state governments to comply with a set of seven directives laying down practical mechanisms to initiate police reform. Based on the exercises carried out by various committees, its recommendations aimed at ensuring accountability (both for organisational performance and individual misconduct), responsiveness, and the loosening of political control to spur depoliticisation of police organisation (through security of tenure, streamlined appointment and transfer processes, and the creation of a 'buffer body' between the police and the government). The Court directed governments to comply with its directives by 31 December 2006 and to file affidavits of compliance by 3 January 2007.²⁵The appointment of a

²² <http://www.mha.nic.in/padc/npolice-act.pdf>

²³ <https://cbc.gov.in/cbcdev/pi-2005/pi-2005-1.html>(accessed on 13 March 2024).

²⁴ In his letter dated 3 April 1997 to Chief Ministers and Lt. Governors with a note on police reform, veteran communist leader Indrajit Gupta said, "...if the political executives do not take the desired measures even now to bring about suggested reforms and restructuring of the police, the day may not be far off when the judiciary may intervene decisively to force such socially desirable changes down the throat of the political executives."

²⁵After requests from state governments pleading for time, on 11 January 2007, the Supreme Court rejected their objections and stated that its directions had to be complied with without any modification. It allowed a three-month extension to comply with four of its directives, but insisted that the others be complied with immediately.

State Security Commission “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” was made imperative. The directive was binding on state governments, but the apex court allowed the mto select one of three bipartisan models (listed in Table 1) for the commission, so as to ensure non-partisan police performance.

Table 1: Models of State Security Commissions

NHRC	Rebeiro Committee	Sorabji Committee
1. Chief Minister/ HM as Chairperson	1. Minister i/c police as Chairperson	1. Minister i/c police (ex-officio Chairperson)
2. Lok Ayukta ²⁶ 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
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 of the state government
4. Chief Secretary of the state government	4. Chief Secretary of the state government	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	**

Where Do We Stand?

The above models of State Security Commissions (SSCs) were presented 17 years ago, but the police are still nowhere near any substantive reform measures – institutionally, structurally, attitudinally or in terms of role performance. If anything, in the past decade or so, the police across the country have become more politically and socially partisan and schismatic. Aside from the SSCs, the 2006 Supreme Court judgment made seven directives for institutionalised role

²⁶ Ombudsman at the state level.

performance by the police, as laid down in the Constitution and to minimize the interplay of politics and communal sentiment the police have been accused of since independence:

1. Constitute a State Security Commission (SSC) to ensure that the state government does not exercise unwarranted influence or pressure on the police; lay down broad policy guideline and evaluate the performance of the state police.
2. Ensure that the Director General of Police is appointed through a merit-based transparent process, with a minimum tenure of two years.²⁷
3. Ensure that other police officers on operational duties (including superintendents of police in charge of a district and station house officers in charge of a police station) also have a minimum tenure of two years.
4. Separate the investigation and law and order functions of the police.
5. Set up a Police Establishment Board (PEB) to decide transfers, postings, promotions, and other service-related matters for police officers of and below the rank of deputy superintendent of police and make recommendations on postings and transfers above the rank of deputy superintendent of police
6. Set up a Police Complaints Authority (PCA) at the state level to inquire into public complaints against police officers of and above the rank of deputy superintendent of police in cases of serious misconduct, including custodial deaths, grievous hurt, or rapes in police custody; and at the district levels to inquire into public complaints against police personnel below the rank of deputy superintendent of police in cases of serious misconduct.
7. Set up a National Security Commission (NSC) at the center to appoint a panel for the selection and placement of Chiefs of Central Police Organisations (CPOs) with a minimum tenure of two years.

This note grades states/UTs on compliance based on a set of specific parameters for each directive. The grading refers only to compliance on paper (as provided for in the Police Act or the government order) and does not address implementation on the ground. States and Union Territories are marked either as compliant, partially compliant or non-compliant.²⁸

Since the police in every state continue to function despite all the existing complaints of malfunction, brutality, etc., the seven prerequisites obligated by the Supreme Court have not brought about the required institutional and behavioural reforms. They have also been unable to shackle the political class that operates the machinery of the Indian state and the states of the Indian Union. Disappointed, in May 2008, the Supreme Court set up a Monitoring Committee comprising Justice K.T. Thomas (a retired judge of the Supreme Court), Kamal Kumar (retired

²⁷The appointment of state police chiefs has increasingly become highly politicised. Most state governments, irrespective of the party in power, change police chiefs without following Supreme Court (SC) guidelines. Several of them appoint acting DGPs in order to by pass these guidelines. Facing media criticism on this, the Ministry of Home Affairs issued a directive to state governments to avoid naming acting DGPs and to follow SC guidelines (see *The Indian Express*, 1 February 2024 and 18 February 2024).

²⁸ https://prsindia.org/files/policy/policy_analytical_reports/Police%20Reforms%20in%20India.pdf (accessed on 12 March 2024).

IPS officer and former Director of the SVP National Police Academy), and Dharmendra Sharma (Joint Secretary of Police Modernisation). The Committee was required to submit six-monthly compliance reports to the Court, but despite field visits to four large states – Maharashtra, Uttar Pradesh, West Bengal and Karnataka – it could not persuade states into compliance. By 2010, various states were going through fruitless motions, despite both the apex court and various high courts pushing them towards meaningful police reforms. Only 11 states have enacted new Police Acts to replace the old legislation and two have amended their earlier laws to accommodate the new directives of the Court. Assam, Bihar, Chhattisgarh, Haryana, Himachal Pradesh, Punjab, Rajasthan, Sikkim, Tripura, Uttarakhand, and Meghalaya have passed new police legislations; Kerala and Gujarat have passed Amendment Acts. In others, the processes continued as a reflection of their reluctance.²⁹ The Ministry of Home Affairs claimed to have filed a status report by way of an affidavit in the Supreme Court on 26 February 2013.³⁰

A September 2021 assessment by the Commonwealth Human Rights Initiative (CHRI) presents a rather gloomy picture of states' compliance with the Supreme Court directives on police reforms:

- Only six states provide security of tenure for their police chief.
- Only seven states provide for independent shortlisting of candidates in the process of appointing police chiefs; everywhere else, the heads of the police continue to be handpicked by the state government.
- Only 13 states have set up an internal mechanism to enable the police leadership to make decisions on transfers and postings of state police officers without political interference.
- Only eight states retain an impartial selection process to appoint independent members to state Police Complaints Authorities (PCAs), and only five states for district PCAs.
- Only Karnataka provides its State Security Commission the power to make binding recommendations.
- Serving police and government officers are adjudicating members on police complaints bodies even though these are for the public and meant to be independent of the police department.³¹

Obviously, either institutionalisation of the accountability structures recommended by the Supreme Court has not been complied with, or if at all some semblance of the structures have

²⁹ https://www.humanrightsinitiative.org/programs/aj/police/india/initiatives/seven_steps_to_police_reform.pdf (accessed on 13 March 2024).

³⁰ <https://www.mha.gov.in/sites/default/files/PoliceReforms%28E%29181013.pdf> (accessed on 13 March 2024).

³¹ <https://www.humanrightsinitiative.org/download/1632218542Government%20Compliance%20with%20SC%20Directives%20On%20Police%20Reforms%20An%20Assessment.pdf> (accessed on 14 March 2024).

been provided, the essence of the institutional mechanisms has been tampered with or they are signified by disuse.

Redefining the Criminal Justice System

The most important change that has recently been undertaken by the Narendra Modi government, which will come into effect on 1 July 2024, is to repeal the three core laws that formed the basis of the criminal justice system – the Criminal Procedure Code, the Indian Penal Code, and the Indian Evidence Act. These 19th century colonial laws brought into effect after the 1857 revolt, continued to be in operation even after independence with minor amendments from time to time. Voices have been raised on various occasions for their replacement with laws appropriate for independent India. Their repeal and the enactment of the *Bhartiya Nagarik Suraksha Sanhita (Criminal Procedure Code) 2023*, *Bhartiya Nyaya Sanhita (Indian Penal Code) 2023*, and *Bhartiya Sakshya Adhiniyam (Indian Evidence Act) 2023* on 25 December 2023 following presidential assent fulfils that demand. However, questions have been raised regarding the haste with which these three acts have been drafted and enacted without sufficient consultation and discussion with different sections of society and stakeholders, as well as their nature and scope. The three bills were introduced in the Lok Sabha on 11 August 2023 and referred to the Standing Committee on Home Affairs the same day. On 6 December 2023, the suggestions of the Standing Committee were incorporated and the bills were passed on 21 December 2023.

It is beyond the scope of this essay to conduct a detailed comparison of the new laws with the old ones and examine their democratic content. A quick look at the new laws makes two things clear. First, a large part of the content of the old laws has been retained. Further, the changes appear to strengthen and expand the police power of the state, particularly regarding new developments relating to the cyber world. The expansion of police powers relating to search and seizure in such cases portends further police interventions in the life of citizens. We will, however, have to await a more informed critique of the new laws and see their operation on the ground once they are rolled out.

Conclusion

Despite a continuous desire for reform and better police administration in India, the police continue to be among the most controversial institutions of the Indian state. If they were controversial and maintained as such before independence to suit colonial rule, they have become no less contentious since. The lament is that this has happened despite leaders being aware of the need for police reforms, and the Indian police having one of the most educated and well-trained institutional cadre-based leaderships. Indeed, the police organisation deserves a focus to improve the ground-level personnel and their functioning.

The vast literature on police reforms in India singles out one of the weakest spots in the administration of the police – its politicisation. From state police commission reports to the voluminous report of the NPC to a vast literature produced by scholars, all have pointed out that everyone from grass-roots leaders, to state-level leaders and functionaries to those controlling political power at the national level, has been unable to fire wall the police from politics. Even recommended institutional designs by various committees and commissions for this insulation have been followed in exception. Obviously, the demand for police reforms and depoliticisation must emerge from the people to compel leaders, parties and governments to take note of the popular desire for police reforms.

Last, but not least, the Indian police even in its colonial origin, emerged as a federal set up. This happened despite the fact that colonial rule designed a centralised leadership, which was retained by the government in independent India. The contribution of Sardar Vallabhbhai Patel in federalising a centrally appointed and trained leadership is immense. Lately, there have been disturbing trends damaging this federal dimension, the most important being the plea to shift the police from the State List in Schedule VII to the Concurrent List. The chair of the prime minister's Economic Advisory Council, in a signed article titled 'The Good Cop' in *The Indian Express* on 12 May 2022 made this argument, an argument that had been presented earlier in a 2016 NITI Aayog paper. Such a change in the name of police reform will not suit the constitutional design of Indian federalism. Even if we admit that India is a 'strong-centre' federalism, such a denuding of police powers of the state from Indian states to the Indian state, will create an avoidable imbalance. In fact, we need to find ways to strengthen the federal structure of the Indian police system.

As India journeys to complete 77 years of its independence and 74 years as a republic, police reforms emerge as a major area on which political consensus needs to be developed to democratise police structures, functioning, and attitudes.

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