Chapter 3

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India is a secular, socialist and democratic country having composition of number of minority communities dwelling in its womb. It is the birthplace of some major and ancient religion of the world and also other famous religion have established itself on its soil and became a part of its family. There has been considerable interaction between various communities residing in India. There are eight major religious communities residing in India namely: Hindus (82.2%), Muslims (11.8%), Christians (2.6 %), Sikhs (2%), Buddhist (0.7%), Jains (0.5%), Zoroastrians (0.3%) & Jews (0.1%). These are the approximate composition of various religious communities in India and the Indigenous people or Adivasis whose beliefs, rituals and recourses are uniquely associated with their forest and ancestors constitute around 7.8% of the population though many indigenous communities have close affinity with Hinduism, sizeable populations among them are converted to Christianity and Islam.

India is a country governs by a single constitution and her constitution contains detailed provisions on the protection of individual rights. The constitutions strongly advocate for the “Equal protection of Law & Equality before the law” (Under Article 14) and the courts have the power to declare any law as invalid passed by the parliament or the state assemblies if they
contravene the constitution. Article 25 to 30 in part III of the constitution extend three guarantees to all categories of minorities – religious, cultural and linguistic. Article 25 related to the freedom of conscience and religion that all persons are equally entitled to profess, practice and propagate religion subject to public order, mortality, health and other provisions of that part. The Indian state is secular in the sense that it is meant to treat all religions equally and keep its distance from every one of them. Article 51 A of the constitution imposes a positive duty on citizens ‘to promote harmony and the spirit of common brotherhood amongst all people of India transcending religion, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women…’

Role of Police and Minorities

The Police in India has the obligatory responsibility to protect the life, property, dignity of all the citizens of the people of this country irrespective of their religion, region, caste and language as they are the executives who have to enforce the law of the land fairly. In spite of all these provisions in India, there is a widespread feeling today that the rights of minorities stand unprotected. Despite the safeguards provided in the constitution and the laws in force, there exist a feeling of inequality and discrimination among the minorities. There is a general feeling that the police, which is meant to protect them impartially, actually play a blatantly partisan role against them especially during the period of communal violence anywhere in the country. Justice Madan Commission
report on Bhiwandi riot (1970) observed\textsuperscript{1} ‘Discrimination was also practiced in making arrest and while Muslims rioters were arrested in large numbers, the police turned a blind eye to what the Hindu rioters were doing. Some innocent Muslims, who went to take shelter at Bhiwandi Town police station, were arrested instead of being giving shelter and protection’.

Justice B.N Srikrishana made the following observations in his report on Bombay riots 1992-93\textsuperscript{2}, ‘The Commission is of the view that there is evidence of police bias against Muslims which has manifested itself in other ways like the harsh treatment given to them, failure to register even cognizable offences’

That there was a general bias against the Muslim in the minds of the average policemen was evident in the way they dealt with the Muslims, and even accepted by V.N Deshmukh an officer of the rank of additional commissioner.

The response of the police to appeals from desperate victims, particularly Muslims, was cynical and utterly indifferent. On occasions the response was that they were unable to leave appointed post; on others, the attitude was that one Muslim killed was one Muslim less. Police officers and men, particularly at the junior level, appeared to have an inbuilt bias against the Muslim, which was evident in their treatment to the Muslims suspects and victims of riots. The treatment given was harsh and brutal and, on occasions, bordering on inhumane hardly doing credit to the force. The bias of the policemen was seen in the active connivance of police constables with the rioting Hindus mobs on occasions, also with adopting the role of passive
onlookers on such occasions, and finally, in their lack of enthusiasm in registering offence against Hindus even when the accused were clearly identified.

While there are a number of useful studies on Hindu-Muslim violence in India, the report of Vibhuti Narain Rai is important as it was authored by a serving senior police officer of the state of Uttar Pradesh, which has a record of persistent Hindu-Muslim violence. Mr Rai studied the role of police in the Hindu-Muslim violence during the pre-independent and post-independent periods in Kanpur (1931), Ranchi (1967), Ahmedabad (1969), Bhiwandi & Jalgaon (1970), Banaras (1977), Jamshedpur (1979), Meerut (1990), Bhagalpur (1989), Ayodhya (1992) and Mumbia (1992-3).

His main finding with respect to the role of the police in these cases were as follows:

i) The police behave partially during most riots. In all the riots discussion in the study, the police did not act as a neutral law enforcement agency but more as a 'Hindu force'.

ii) Perceptible discrimination was visible in the use of force, preventive arrest, and enforcement of curfew, treatment of detained person at police stations, reporting of facts and prosecution of cases registered during riots. Muslims by and large consider police as their enemies rather than their protector.
iii) An average policeman does not shed his inherent biased and predetermined beliefs at the time of his entry into the force, and this is reflected in his bias against Muslims during communal violence.

iv) The perception by Hindus and Muslims of the police during communal strife is diametrically opposed. Hindus view policemen as their friends while Muslims as their enemy.

v) The expectation of Indian society from an average policeman is communal. The policemen are believed to be a protector of the interest of the majority community.

vi) The inimical relationship between police and the Muslims make them over-react in a confrontation like situation.

Thus, there is clear evidence from various studies indicate the role of police, particularly during communal violence has been far from desirable rather it is ironical. It is a shameful to state that a large number police officers have not just failed to control riot but a number of them have actually given culprits their active support.

Similarly in 1982, N.C Saxena, the then join secretary of the National Commission for Minorities reported after inquiring in Meerut riots, "The district administration best perceived threat to public peace only from Muslims...the order from the senior officers in the district to the police could be summarized in one phase: Muslims must be taught a lesson; the Provincial Armed Constabulary (PAC) which is a state controlled armed unit responsible
to maintain Law & Order and the civil Police have faithfully implemented this policy.

Carrying out a study on the attitudes and perception of the magistrates and senior police officers about various communities, Saxena made the following conclusions:

a) Muslims are excitable and irrational people who are guided by their religious instincts. Where as Hindus, on the other hand, are law abiding and cooperate with the police in controlling communal riots.

b) Riots are started by the Muslims and they invariably take the first opportunity to strike at the other community and the police.

c) In all the previous riots in the country before the current riot, Muslims took the upper hand which resulted in huge loss to the Hindu community. Therefore there is a moral justification if in the current riot, causalities on the Muslims side are heavier.

d) State government attaches a great deal of importance in ensuring quick control of rioting. Since Muslims are aggressive, it is necessary that they are taught a lesson through arrest, firing and of third degree methods.

The study further reports that ‘the PAC treats Muslims as monsters, criminal and suspects’. It has led to loss of faith among Muslims in the fairness of administration. They have started patronizing anti-social elements for their defense and in the recent riots, attacks on police from the Muslims have also increased. Police-Muslim confrontation, if not checked, may lead to terrorism
just as in some countries like Thailand and Philippines, where Muslim terrorism have assume an alarming proportion. The PAC image as an anti-Muslim force dates from the 1980s, not earlier. In fact three Muslim officers headed it; S. U Ahmad (1953-54), S.A Alam (1962-63) and S.A Abbas in 1972.

According to N.C Saxena “It was the (Post-1947) the clear policy of the UP government not to recruit any Muslims to PAC. This was not the fault of the PAC but the Muslims took a dislike to the force since they were kept out of it. The ban was removed later but then Muslims could not be recruited in sufficient numbers because recruitment was made subject to competitive tests in which Muslims failed badly. Recently a number of Muslims have been recruited in the UP Police by giving them highly inflated marks in the interview. Now they form nearly 5 percent of the PAC”

The Sixth report of the National Police Commission (NPC) in 1981 looks into the communally prejudiced attitude and behaviour of the Police and the problem of social composition of the Police force, which makes the following observations:

“We also heard of stringent criticism from many responsible quarters that the police do not often act with impartiality and objectivity. Several instances have been cited where police officers and men appears to have shown unmistakable biases against a particular community while dealing with the communal situation. Serious allegation of high handedness and other atrocities, including such criminal activities as arson, looting, molestation of women etc,
have been leveled against the police to protect the citizens. There is evidence to suggest that in one riot (Muradabad), the police resorted to uncontrolled firing, killing many people of the congregation and later indulged in looting and arson, when some of their colleagues were assaulted by the crowd. In another incident, it is alleged that a group of anti-social elements was able to brutally kill many persons, including women and children, while the Police was present in the vicinity. In yet another recent incident it has been alleged that the force ran amuck after one of their colleagues was stabbed. All these incidents are only symptoms of the underlying malaise. The failure of leadership coupled with the low morale of the force leads to such undisciplined reaction from the force. It has been clearly mentioned in the Prime Minister’s 15 point programme for Minorities that “The State Governments are being advised that in the areas which have been identified as communally sensitive and riot-prone, District and Police officials of the highest known efficiency, impartiality and secular record must be posted. In such areas and even elsewhere the prevention of communal tension should be one of the primary duties of DM and SP. Their performance in this regard should be an important factor in determining their promotion prospects” and also “Good work done in this regard by District and Police officials should be rewarded”.

Also in the anti-Sikh riot of November 1984, which was followed by the assassination of the Prime Minister Mrs Indira Gandhi by two of her Sikh bodyguards, the death toll of the Sikhs killed in Delhi was 2,733 or one in every 30 seconds. This was also one of the most well organised communal riots
in connivance with the ruling party. Despite the submission of reports by three commission of enquiry- Justice Ragannath Misra Commission Report (1987), Jain-Agarwal Committee report (1990) and Justice R.S Narula Panel report (1994), all of which had indicted 72 police officers, two union ministers and a congress MP, no prosecution has been initiated against any one of them so far.

It is well known that local Congress party MPs instigated the Delhi carnage with the passive complicity of the security forces. Also there are some sporadic incidents of violence against the Christians too, for there missionary activities. In one infamous incident Graham Staines, an Australian missionary, was brutally torched to death along with his two sons inside a jeep in the state of Orissa.

In the year 2002 India experienced its greatest human rights crisis in decade orchestrated violence against Muslim in the state of Gujarat that claimed at least two thousand lives in matter of days. On Feb 27, 2002 an allegedly Muslim mob attack on a train at Godhra railway station carrying Kar Sevaks from Ayodhya on board in which 58 people belonging to majority community were died, though the investigation are still going on for this incident. In the days to follow Govt officials and local media branded the Muslim as terrorist while armed gangs were set out on a four day retaliatory spree. In the post-Godhra violence Muslims homes, places of worship and business were systematically destroyed. Hundred of women and girls were gang-raped and sexually mutilated before being burnt alive. Police is the only main visible organ of the state on whose shoulder responsibility lies to control these riot but
the role of police in controlling all this lawlessness is highly objectionable and they on many instances abetted the rioter to do their act fearlessly. Many victim of the violence have reportedly said that they heard the slogan from the rioter that “Yeh Andar ki Baat Hai Police Hamere Sath Hai”, (This is secret matter that police is with us) attackers roam with impunity threatening more violence if any one dare to speaks against them.

The Gujarat pogrom poignantly brings out the malice that is engulfing police of our country in a communally charged atmosphere. During the continued communal violence in Gujarat, Chief Minister Narender Modi is reported to have said: “I am absolutely satisfied with how the police and the government has handled the backlash. I am happy the violence has been largely constrained”. But the violence that continued unabated proved the Chief Minister wrong. A conscientious civil servant says that any riot like situation can be stopped within three hours if there is a political will among the civil and political administration. It is also pertinent to note that while there were both higher and lower police officials who functioned as communal agents, there were also other police officials on which we can proud who firmly uphold the law of the land like Kutch SP Vivek Seivastava, Ahmedabad DCP Praveen Gondia, Bhavnagar SP Rahul Sharma, Banaskantha SP Himanshu Bhatt and Bharuch SP M.D Antani they tried earnestly to protect the minority community and their establishments in the Gujarat-2002 frenzy but they were penalized and harassed in different ways by the ruling political establishment instead of glorifying their act they were presented bangles to humiliate them allegedly by
the people belonging to Sangh Parivar. Also there was one IPS officer Mr Harsh Mander who after witnessing the highhandedness of the police and politicians in brutalities had resigned from the post and launched an NGO Aman Biradari for the Relief and Rehabilitation of the victims of communal violence of Gujarat and elsewhere. Among the twenty-seven were five senior officers who were among the very few police chiefs in the state who actually ensured the VHP-led mobs were dispersed and unable to carry out any violence

Representation of Minorities

There is a debate going among the legal experts, intellectuals, social and human rights activists that if the Police in our country, which is not proportionally represented, should have the right proportion of people from all the communities especially from Minorities then it can be one of the remedy for the removal of biased and brutal role of police against minorities. This will also help in shedding the biased attitude as well as ill will against the minorities but that is a real remedy for the problem or not is a debatable issue. Justice VM Tarkunde recommended reservation for Muslims in the recruitment of Police constables and officers, as well as in Para-military forces and intelligence gathering and prosecuting agencies to the extent required for neutralization of communal biases in all the wings of law-enforcement machinery. Most of the intelligence agencies and paramilitary forces in India do not mirror the diversity of the national population. According to renowned journalist Inder
as a matter of deliberate policy, the Government has been virtually excluding Muslims from what are called sensitive and strategic services, such as certain section of the armed forces, some departments of the police, especially Intelligence, and the like. Since 1970, there seems to have been some change in this policy but not enough. For example, in 1993, the Union Minister of State for Home confirmed that there has not been a single Muslim in the RAW (Research and Analysis Wing) and IB (Intelligence Bureau) personnel. Contrary to the principles of secularism enshrined in the constitution, the government does not have any Muslims working in the Intelligence Bureau (IB) and the RAW, according to Murali Krishnan as well. In the words of a former CBI director, Vijay Karan, "It is sort of an unwritten code. Everybody knows about it and it is accepted as a fact."

The issue of socially diverse composition of the police force and other institution of Governance is the most neglected one in the country. Under the false plea of Secularism, community-wise data are generally not published. But there is no denying the fact that Muslims are under-represented in most central and state forces at all levels and in all the area of operation. One of the earliest advocates of police diversity was the senior journalist, Khuswant Singh. Writing after the police complicity in the Ahmedabad massacres of September 1969, he recommended "The only thing to do is to draft substantial numbers of Muslims, Christians, Sikhs, Anglo-Indians and Parsis into our police forces. Let the police force of Kashmir be largely non-Muslims, that of Punjab, Haryana be largely non-Sikh and non-Hindu. In all other states, between 20-25
present should be Muslims, Christians, Sikhs, Parsi and Anglo-Indian. Syed Shahabuddin, a former MP and an articulate politician, similarly urged the government to raise Muslim percentages from the presently meager number to their nearly 12 percent proportion in the national population. Apart from the Durban declaration and POA 2001, to which India is a party, which require socially diverse composition of all institution of Governance especially state forces and the judiciary, the National Commission to Review the Working of the Constitution (NCRWC) in its Report (2002) has made strong recommendation for carrying out 'special recruitment of persons belonging to the under-represented minority communities in the state police, par-military forces'. The commission holds the view that ‘this will instill confidence among minority populations as well as help them to develop responsible attitudes towards security issues confronting the nation’. In 1983 Prime Minister's Fifteen point Programme on Minorities emphasizes the need for such special recruitment. The following were its specific recommendations:

(i) In the recruitment of Police personnel, state government should be advised to give special consideration to minorities. For this purpose, the composition of selection committee should be representatives.

(ii) The central government should take similar action in the recruitment of personnel to the Central Police Forces.
The National Police Commission (NPC) also felt that there is a strong case for encouraging the recruitment of members of the minority community and other weaker section at various levels in the police force.

The following observation of the NPC needs attention:

'We would reiterate here our views already expressed in para 19.30 of our Third Report that the composition of the personnel in the police system as a whole should reflect the general mix of communities as exists in society and thereby command the confidence of the different sections so that the system would function impartially without any slant in favour of any community. In this regard the senior officers, particularly in position of command have an important role to play. If they act in a correct and impartial manner and also discourage emphatically any partial or biased behavior on the part of their subordinates, they can by their example instill confidence in the minds of the people regarding the ability and impartiality of not only themselves but of the entire force.'

The Home Ministry's guidelines for government of all states and union territories to promote communal harmony issued on 22 October 1997 makes the following recommendations:

'It has been commonly observed that the presence of minority community members in the police force deployed in communally sensitive areas goes a long way in winning the confidence of minority communities. This
is of vital importance. The following steps which were recommended from
time to time should be taken earnestly:

(1) Launching of special campaign to recruit more members of minorities in
the state police force.

(2) Creation of composite battalions of armed police which should include
members of all religious communities including SC\ST s, for exclusive use to
maintain communal peace and amity in the sensitive areas.

(3) Starting of special training\orientation programmes for states police
force with a view to maintains communal harmony.

Similarly the senior Police officers Vibhuti Narain Rai, is of the opinion,
based on his through empirical study, that it is only by increased representation
of minorities, especially Muslims, in the police either through reservation or by
developing some in-house methodologies, could their biased attitudes
responsible for hostile behavior towards Muslims be neutralized or rectified.
Justice D Madon’s observation that “it was necessary that in recruitment to the
police adequate representation was given to minorities” is well known. One
more factor in the increase of representation of minorities in forces is that it
provides more employment opportunity to youths belonging to minority
communities thereby act as a welfare measure on the part of Govt for their
economic betterment.

But if we look at facts and figure in all states of India excluding
Muslim-majority Jammu & Kashmir, Muslims are underrepresented in the
police and in all but one state (J&K) for which data have so far become available; they constitute a larger than proportional share of prisoners. The Sachar committee’s findings have added weight to what have long said that the under-representation of Muslims in Police forces across the country has contributed to institutional Communalism and a persistent failure to defend the community’s basic Human Rights. But it is to be noted that two of the states with the best record of containing communal violence in the post-Independence period – West Bengal and Kerala have a poor record on ensuring adequate representation of Muslims in the Police while a little over a quarter of the population of West Bengal is Muslims, the third highest figure after Jammu & Kashmir and Assam just over 7% of the police force is drawn from the Muslim Community. Kerala, where almost 13% of the police force is Muslim, does somewhat better but that figure also falls short of proportional representation of Muslims. Indeed the percentage point gap between Muslim representation in the police force and among the general population is worse in West Bengal and Kerela than in Gujarat and Maharashtra. Andhar Pradesh has succeeded in ensuring more than adequate representation for Muslims in the Police, but not in containing communal violence or bias. Of the Andhara Pradesh Police’s 77,850 personnel of which 10,312 are Muslims, making it only where the community has a greater representation in service than the population as a whole but Hyderabad city has seen some of the worst and most sustained urban communal violence in India. So what lesson ought to be drawn from these data? Perhaps the most important one is that some of the discourse on the role
of the police in communal violence suffers from the same biases it sets out to
critique. There is no evidence to suggest that police forces necessarily advocate
the interest of their co-religionist. The largely Sikhs Punjab Police ferociously
put down Khalistan terrorist groups in Punjab and contrary to popular myth, the
Muslim majority Jammu and Kashmir police has long been at the cutting edge
of counter terrorist operations targeting Pakistan based Islamist groups.
Similarly Hindu majority police forces have often demonstrated their skill at
preventing or rapidly terminating communal Violence\textsuperscript{22}. It is to be understood
that communalism and communal violence are fundamentally political
phenomenon. Even if there is zero representation of Muslims in police force
but political situation is congenial to communal harmony, there will be no
outbursts of communal violence. And, on the other and, even if there is over-
representation of Muslims in the police force, there is absolutely no guarantee
that there will be no communal violence. It is interesting to note here the
findings of the study done by an IPS officer VN Rai on the perception of police
neutrality during the Hindu Muslims riots in India\textsuperscript{23}. The questions were asked
to the riot-victims of both the community. When they were asked how they
found police during communal riots? Then 97\% of the Minority victims replied
as ‘Enemy’ whereas 71\% of Majority victims replied as ‘Friend’. And when
they were asked Will you approach police for help during communal riots?
Then again 73\% of Minority-victims reply in negation whereas 93\% Majority
victims approach for their help. The normal and logical reaction of a citizen
during a situation like riot, when their life, dignity and property are in danger,
should be to approach to the police the reason behind this are very simple. The police is the only visible arm of the state which is presented in the street during communal violence. A large number of Muslims are apprehended to approach to the police during the gravest hour of their lives, indicate their distrust on the men in uniform. Lack of faith in the police may amount to lack of faith in the state itself.

**Police Reform Policy**

Reforms in the Police policy are long over due after Independence and important in largest democracy of the world and it is a matter of surprise that the Police in India still govern by the colonial Police Act of 1861 which was meant by the ruling colonial masters to suppress the people of the country who in their view were mere subjects not citizens. The 1861 Police Act is colonial hangover on our executive system. There is urgent need to formulate a system to develop a neutral, secular, non-communal police force, which will act as per the law of the land without fear or favour and free from extraneous interference. The nexus among politicians, criminals and the police has to be broken to curb communal violence. In spite of the various recommendations made by Justice Jagmohan Reddy 30 years ago and the VS Dave Commission 10 years ago, the police continue to be sluggish. The simple reason for this is that there is no political will to punish erring police officers and men for dereliction of duty. These officials have abdicated their duties and deserve
strict action: The politicisation of the bureaucracy and police in action has an adverse affect on the administration.$^4$

Of late concerns has been raised to shed that hangover to make it a reality and efforts are made regarding this but the voices were raised for the reforms since mid 1970s, the post-emergency period. In the year 1979 National Police Commission (NPC) submitted its Comprehensive report dealing with almost every aspect of police reforms. The commission was set up after the country witness the two years of emergency from 1975-77 during the reign of Mrs Indira Gandhi, the then PM of India, in which the Fundamental as well as other rights are blatantly violated. 'Emergency period’ of 1975-77 witnessed perhaps the most oppressive character of the police in Indian history. Mrs Indira Gandhi faced with the threat of losing her power by a judgment of a high court, declared national emergency and suppressed all democratic processes in the country. Not only were all opponent of Mrs Gandhi brutally treated by the police but its power were also misused for populist measures. Police force was used in the anti-encroachment drives, forced sterilization programs and even for bringing crowds to Mrs Gandhi’s son Sanjay Ghandhi political rallies. After the emergency Moraji Desia of Janata Party after defeating Indira Gandhi came to power and became PM because these opposition parties have tasted bitterly in the emergency period especially at the hands of Police so they constituted a separate commission to make an overhaul of the whole Police system. National Police Commission (NPC) report is complete and comprehensive in itself NPC had recommended many steps to be followed. On
the one hand it had talked about reducing political interference in the police work while on the other it had suggested some strong measures against the rioters. It is pity that the Police leadership comes under heavy pressure from their political bosses as the latter virtually have complete control on their selection, promotion and transfer. Those police officers seen as defying the wishes of the politicians are often shunted out, the politicians thus manage to push the police as much as possible to suite their interest. Police act as the policy enforcer of the ruling establishment rather than the law enforcing body. The NPC has recommended setting up of the State Security Commission (SSC) in every states and the state security commission has to submit the periodic report every year to the state legislature and not to the political executives, who might have had vested interest. The State Security Commission, which should be constituted at the state level, should comprise the following members:

- Chief Minister/Home Minister as Chairman
- Lok Ayukta/Member State Human Rights Commission
- High Court Judge (Retd.) nominated by Chief Justice
- Leader of Opposition in the Assembly
- Chief Secretary/Principal Secretary (Home)
- DGP as ex officio Secretary

*The Commissions functions would include:*

a) Laying down broad policy guidelines and directions for the performance of preventive and service-oriented functions of the police;
b) Evaluation of the performance of the State Police every year and presenting a report to the State Legislature

c) Functioning as a forum of appeal for disposing of representations from any police officer of the rank of Superintendent of Police and above regarding his being subjected to illegal or irregular orders in the performance of his duties;

d) Functioning as a forum of appeal for disposing of representations from police officers regarding promotion to the rank of Superintendent of Police and above; and.

e) Generally keeping in review the functioning of the police in the State.

The Commission would thus, on the one hand, lay down the broad policies and the framework within which the police must function and, on the other hand, act as a shock absorber between the government and the police to ensure that there is no extraneous pressure on its functioning. The Commission must be a statutory body and its recommendations binding on the government.

This was to help the police on their own during crises like riots and regarding the investigation of the riot cases, the NPC had suggested establishment of special squads i.e. comprising officers of proven integrity-under the state CID, which would vigorously investigate the cases and ensure punishment for the culprits. The tendency to withdraw cases on the pretext of promoting communal harmony between the community never proves effective and has to be discouraged, the NPC had said.
The other area of reform relates to the use of force and firearms by the police for mob-control, including communal tension. The police has been routinely using lethal weapons for controlling even unarmed mob- without any intent or capacity of the mob to pose any threat to life. The manuals on riot control encourage such use of firepower even at the initial stage for deterrence. There is a need to prescribe the UN Basic Principles on the use of Force and Firearms by the Law enforcement officials.

On 22nd September 2006, the Supreme Court of India delivered a historic judgment, on a Public interest Litigation (PIL) filed by former police officer Mr Prakash Singh, in Prakash Singh and Others Vs Union of India and Others, laying down six practical directives to kick-start the police reform process. The Court's directives are binding on all state governments to frame appropriate legislation. The Supreme Court in connection with this PIL had set December 31st, 2007 as the deadline for the central and state governments to implement seven proposals that have been part of the recommendations made by various commissions and committees, including the PADC. Again the most important directives of the Supreme Court are Directives 1 and 6 on setting up State Security Commissions and Police Complaints Authorities. Separate from the push coming from the Supreme Court, the Manmohan Singh government had set up a Police Act Drafting Committee (PADC) to draft a new Model Police Act, commonly known as the Soli Sorabjee Committee. The PADC was mandated to take into account the changing role and responsibilities of the police and the challenges before it, and draft a model act that could guide states
while adopting their own legislation. The constitution of the PADC was prompted by the Prime Minister's concern expressed at the Conference of District Superintendents of Police in early 2005 that: “We need to ensure that police forces at all levels, and even more so at the grassroots, change from a feudal force to a democratic service.”

The committee's work and its model Act also provides a sound legislative guide for state governments to follow in forming their own Acts. Many states are under the process of drafting new Police Acts while some have already passed them. Many states have made statements that they support the spirit of reform behind the Court's directives, but have made several arguments against immediate implementation of the apex court's directives, particularly in their current form. A point to note is the complete lack of transparency, community consultation or civil society input in this process by most states. In many states, members of the public are completely unaware that their state government is in the process of reforming the police laws. The first directive of the Supreme Court on the police reform process is that States should constitute a State Security Commission to ensure that the State government does not exercise unwarranted influence or pressure on the police. The State Security Commission is also expected to lay down broad policy guidelines and evaluate the performance of the state police. In determining the composition of this Commission, governments may choose from any of the models recommended by the National Human Rights Commission, the Ribeiro Committee or the Sorabjee Committee.
The second and third directives require the Director-General of Police to be appointed through a merit-based, transparent process. He and some other police officers are also to have a minimum tenure of two years. Andhra Pradesh, Uttar Pradesh, Gujarat and Nagaland have argued that a fixed two-year tenure for the DGPs, irrespective of their superannuation date, will block opportunities for other eligible senior officers, who will be demoralised. Further, the directives take away the right of the government to transfer police officers to meet administrative exigencies, they feel. Fixed tenure is not important for good performance and short tenure does not result in inefficient functioning feels Andhra Pradesh. The fourth directive is that investigation and law and order functions of the police should be separated. The fifth directive stipulates that a Police Establishment Board be set up, which will decide all transfers, postings, promotions and other service-related matters of police officers of and below the rank of Deputy Superintendent of Police and make recommendations on postings and transfers of officers above the rank of Deputy Superintendent of Police. A Police Establishment Board will duplicate existing systems, would run contrary to the democratic functions of the government and result in the creation of a separate power center, comprising bureaucrats who are not answerable to the people, say Gujarat and Uttar Pradesh.

The sixth and last directive is very significant as it calls for the setting up of independent Police Complaints Authorities (PCA) at the State and district levels to look into public complaints against police officers in cases of serious
misconduct, including custodial death, grievous hurt or rape in police custody. It is necessary especially to look into the role of the police during communal and religious violence. According to the Soli Sorabjee Model, the State-level PCA is to be chaired by a retired judge of the High Court or Supreme Court, to be chosen by the State government out of a panel of names proposed by the Chief Justice. It must also have three to five other members (depending on the volume of complaints) selected by the State government out of a panel of names prepared by the State Human Rights Commission, the Lok Ayukta and the State Public Service Commission. Members of the PCA may include members of civil society, retired civil servants or police officers or officers from any other department. Similar authorities are to be constituted at the district-level to be chaired by a retired district judge.

Nagaland initially maintained that the commission of excesses by the police is a very rare occurrence. Andhra Pradesh has opined that the establishment of Complaints Authorities may lead to the police being demoralised, failing to implement various laws and becoming ineffective out of a fear of being prosecuted by yet another agency. Gujarat, Uttar Pradesh, Andhra Pradesh, Karnataka and Tamilnadu feel that creating new District and State Complaints Authorities would duplicate the work of existing fora and would be a financial burden. It would cost over Rs.40 crores to the exchequer, says Karnataka.
Karnataka also states that there are five different independent institutions like the Lok Ayukta, SC & ST Commission, Backward Classes Commission, Women’s Commission and the Minorities Commission, which look into the grievances against the police personnel apart from the departmental committees headed by an IGP (Human Rights & Grievances) and that these state institutions “effectively and fully meet the sprit behind the directives issued by the Hon’ble Court regarding police complaints” and the government has already initiated steps for constituting the State Human Rights Commission. Never mind that all these existing bodies are toothless with only recommendatory and no binding powers at all. In total negation of Directive 6 on the State-Level Complaints Authority, Karnataka has submitted that it shall consist of only currently serving officers, namely: the Chief Secretary to the Government as Chairperson, the Principal Secretary, Home Department, the Director General of Police, and a police officer nominated by the Government not below the rank of Inspector-General of Police as members and the Inspector-General of Police (Grievance Cell) as the Member-Secretary.

See Appendices for more details on Model Police Act.

Police Accountability

The concept of accountability is of paramount importance in the institution like Police especially in a largest democratic set up like India. The voices are raised to make our police force more accountable and transparent in its actions. Insulating the police from the unhealthy political influence is one
thing and making it accountable is another. Establishing independent civilian control is quite another. In a country where the poor face torture by the police on the day-to-day basis, it is imperative that civilian control be clearly spelt and credibly independent so as to act as a deterring safeguard against police.

Some important recommendations of the National Police Commission (NPC) need to be implemented urgently at the State level to check any further deterioration in the policing system affecting the lives and liberties of the citizens: (i) constitution of a statutory commission in each State called the State Security Commission; (ii) laying down broad policy guidelines and directions for the performance of preventive tasks and service-oriented functions by the police.

The State Security Commission should have the Minister in charge of Police as Chairman and six more members. Two of these should be from the State Legislature (one from the ruling side and the other from the opposition) and four should be appointed by the Chief Minister, subject to the approval of the State legislature, from amongst retired High Court Judges, retired senior Government officers and eminent social scientists or academicians.

The National Human Rights Commission (NHRC) had also called for reforms as it felt that "an efficient, honest police force is the principal bulwark of the nation against violations of human rights." And one of measures for this purpose was to provide a statutory tenure of office for the Chief of Police in the State.
Thereafter the Ribeiro Committee was constituted in May 1988. But its recommendations remained in cold storage. Again we have the Padmanabhaiah Panel constituted by Government in January 2000. But the same inertia continues. Now the Soli Sorabjee committee has drafted the Model Police Act 2006. It has also recommended creation of a state level accountability as well as district level authorities to ensure police accountability. Many senior police leaders as well as state governments have unfortunately frowned upon the creation of these mechanisms. But their objections do not stand scrutiny. Senior police officers should draw lesson from international experience. The oversight mechanism, if they function properly, will enhance police credibility, restore public confidence in police and also ensure fair play for the police officers. There is a lack of public confidence in the police force ability to investigate complaints against its own members. Public demand for civilian supervision of the police stimulus from the widely held perception that the 'police cannot police themselves'. There are strong reasons in favour of civilian review of police complaint. First complainants feel more comfortable and free to air grievances. Second, a civilian’s perspective promotes fairness. Third, greater objectivity and thoroughness in investigation leads to higher number of substantiated complaints and more appropriate disciplinary action against corrupt officers. Indeed civilian review is critical to the legitimacy of the police. Its purpose is not simply to punish errant police officers but to demonstrate to the public that it functions as a responsible institution. Police accountability is required to be fixed and enforced in accordance with the norms of democracy,
which mean supremacy of the rule of the law. The police must be made accountable to the law of the land and answerable to the people through Parliament and State legislature. The inability of the internal accountability mechanism world over to prevent the abuse of power by police has given rise to the need for external accountability mechanism having expertise, experience and stature to scrutinize police actions and look into the citizen’s complaints. This role has been assigned to the National and State Human rights commission constitute under the Protection of Human Rights Act, 1993. These bodies are meant to ensure “better protection of human rights” by effectively dealing with the complainants of (a) violation of human rights and (b) negligence in the prevention of violation of human rights by public servants including the police personnel.

Police reforms in India are critical now, more than ever before because there is an urgent need to formulate a system to develop an honest, neutral and non-communal police, which must uphold the law of the land and should be free from any fear, favour and political meddling. Commission after commission and one agency after other have continually been stressing the need for this\(^{29}\). But police reforms in India are susceptible as it is complained by India’s first women IPS officer that “Believe me, actually the police reform policies formulated by the Home Ministry are a part to sabotage it completely,”\(^{30}\)
The police are meant to protect the political, civil and other rights of the minorities and other weaker sections of the society against any physical violence for that purpose they are more likely to succeed if they are, impartial and neutral, not wholly at the mercy of the politicians and the politicians are best checked if the people are able to monitor police work at the cutting edge without the power of command but with the power to expose suspected malfeasances to universal gaze. At the same time an overhaul of the criminal justice system is absolutely necessary is that ordinarily talented but honest and diligent policeman can bring all manner of criminals to book through due process of law but with a greater degree of certainty and in real time and thereby discourage putative miscreants.

Representation of Minorities in the police force is also one possible solution of the problem sincere efforts should also be made to make our Police force adequately representative of personnel belonging to minority community that will act in winning the confidence of the people of the area in which the police force is deployed and also provide them employment. State Govts must enact new laws for reorganizing the Police making it to enjoy functional independence and accountable to law, as is envisaged in the Model Police Act 2006, framed by the Drafting Committee headed by Mr Soli J Sorabjee.

Provision of the component of Human Rights and eradication of prejudices and human rights control methods in the training program of the Police and other law enforcement agencies. Police organization can certainly
help the reform process if they can discover the reason why they could not redeem their image when there was no political interference and when police officers had secure tenures and evolve procedures to overcome the problems and if they could pay greater heed to rewards and punishments so that they reflect commitment to public good rather than loyalty to the superiors. They also need to pay much greater attention to intangibles like organizational cultures and leadership at the police station and districts levels to make reforms measures more meaningful. All these voices of police reforms, accountability and impartiality will remain mere slogans until and unless there is sincere political will to achieve this irrespective of ideological affiliations.
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