

CHAPTER 9

ACCOUNTABILITY OF INDIAN POLICE: NEED OF THE HOUR

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ABSTRACT

In India, the use of force by the police is a major issue. So far, the reforms have mostly focused on the functional autonomy and independence of the police from political demands. However, this raises the question of whether just improving the political–police relationship will result in more accountable cops. While top-down changes have been in the works since independence, they have missed the need for bottom-up methods that focus on police empowerment. In order to rethink police accountability in India, two key areas must be prioritised: community policing and improved training. These institutional changes aim to change the police–public power relationship, signalling a move from a colonial police force to one that adheres to democratic policing principles.

This paper aims to analyse the concept of accountability of the police in India in four parts, starting with describing the main features of the police system established by the Britishers in this country, followed by the post-independence changes and the need to make police accountable, and finally the need for the police reforms. In this research, analytical and descriptive methods were used and data have been collected from the secondary sources.

Keywords: Atrocities, Colonial Act, Community Policing, Police Accountability, Police Reforms.

INTRODUCTION

The assassination of George Floyd by police sparked political pressure to "defund the cops," which also influenced the outcome of the US presidential election. Similar instance was spotted in India, while people protested in Sathankulam, a town in Tamil Nadu's Thoothukudi district, a month after the event, against the deaths of Jayaraj and Fenix in custody (Nath, 2020). Followed by the encounter of Vikas Dubey (Chauhan, 2020), and most recently the instances of handling the Hathras Gang rape case (Dixit, 2021) have time and

again put the spotlight on the criminal justice system of the country. The conduct of the police personnel amid the nationwide protest against the Citizenship (Amendment) Act and the violence in the Lakhimpur Kheri, followed by a week earlier the killing of businessman in Gorakhpur by the police in pretext of midnight hotel search, brought further attention to the Human Rights violation by the police.

The use of force by the police personnel in India is a genuine concern as it is in the United States. The pandemic intensified the problem as in the initial phase of pandemic lockdowns the government embraced the use of police force to implement their strategies (Sircar, 2020). In most cases of casualties by the police personnel, an initial hierarchical coverup (Bhattacharya, 2021) is boosted with liberal dose of compensatory blood money, promptly released by the state government as compensation or transferring of officials which hardly have any effect in ensuring rule of law. These responses are arbitrary, frustrating and misleading for the public because they hardly have any substantial impact in ensuring rule of law.

Against this context, we explore existing accountability mechanisms and the reasons for their failure to achieve intended objectives. In order to rethink police accountability in India, two key areas must be prioritised: community policing and improved training.

MAIN TEXT

POLITICAL PRESSURE: FAILURE OF ACCOUNTABILITY MECHANISM

The government has such tight control over the police that even the Supreme Court's order for the filing of FIRs for cognizable offences is ignored by the police system. The Justice Malimath Committee suggested in 2003 that the police officer's responsibility to register FIRs be made mandatory, and that failure to do so should become an offence punishable by law, in order to prevent officers from abusing their authority. Following that, a Supreme Court decision stated that if the information provided plainly specifies the commission of a cognizable offence, there is no other alternative but to file a FIR right once. Even now, non-registration of complaints requires going to magistrates' courts, where the issues might take months to resolve. As per the 2020 National Crimes Record Bureau Data the total number of complaints made is 192.4 lakhs whereas number of FIR registered is 66 lakhs only (Ministry of Home Affairs, 2021).

Politics has a greater effect on action and inaction than the drive to uphold the rule of law. That is why the political forces have ignored reports on police reforms and criminal law reforms, including the 14-year-old Supreme Court decision in Prakash Singh (*Prakash Singh & Ors. V. Union of India*, 2006). Since the uniformed force is the visible expression of the state's authority, no political party in the centre or the state is willing to relinquish its grip on the police. The Police Act's definition of police supervision (*The Police Act, 1861*) does not imply that the political administration has the authority to overturn operational orders issued by professional police chiefs. It implies that the elected political leadership must keep its eyes and ears open to guarantee that police officers do not abuse their authority to annoy residents (*The Police Act, 1861*).

Currently, police officers are held more accountable to the ruling political party than to the general public. Most atrocities go unpunished because of the complicated procedure and necessity of punishment in beginning legal action against police officials, as well as the police's reluctance to probe these charges

against their peers. According to 2020 statistics from the National Crime Records Bureau (NCRB), just 06 of the 20 complaints filed against police personnel for human rights violations, final report had been submitted and only in 3 cases charge sheets had been filed, and no accused police officer was convicted (National Crime Records Bureau, 2021).

The lack of an independent body to deal with civilian complaints against police officers exacerbates the problem of police accountability. The Supreme Court ordered state governments to create the Police Complaint Authority (PCA) in 2006, an independent body that would investigate complaints of police misconduct at the state and district levels. Even after several court orders, many states, including Uttar Pradesh and Andhra Pradesh, have failed to follow the directive.

Police violence is not the same as the authorised use of force by police. It should not be tested on administrative parameters. It is unlawful, yet it is embedded in policing methods and attitudes as one formidable habit that cannot be overcome by training or discipline. To make a difference, the proposed standing committee will have to justify an autonomous and time-limited existence for itself, well beyond the scope of administrative red tape or judicial delays.

THE INDIAN POLICE SYSTEM: A COLONIAL LEGACY

The Police Act of 1861 established the Police as an organised entity in this country. Following the Indian Sepoy Mutiny of 1857, when Indian troops in the colonial army rose against their British leaders, this statute was enacted. The mutiny evolved into an insurgency against British control in India. Though the insurrection was quickly and effectively put down, it jolted the British into taking various efforts to strengthen their power in India, including the development of an authoritarian police force to back the colonial administration.

Section 3 of the 1861 Police Act delegated superintendence authority over state police units to the state governments. The same Act established a system of dual control at the district level (*The Police Act, 1861*, Section 4). The police forces were placed under the authority of District Superintendents of Police, although they were still subject to the District Magistrates' overall control and direction. This was done on purpose since the District Magistrate's role as the district's leading officer was seen as critical to the continuation of British rule in India. The British colonial paradigm of control did not allow for the police to be responsible to the community or other democratic or local indigenous institutions. The police force was taught to be military and dictatorial (Arnold, 1976). There was a strong emphasis on maintaining a regimented sort of discipline that required the lower levels to mindlessly accept commands. While executing their responsibilities, the constabulary were not required to wear their thinking hats. They didn't have to have any at all. That's why, when it came to recruiting for the constabulary, the emphasis was on strength over brains (Maheshwari, 2001). Understandably, the 1861 Act failed to generate a countrywide police force that was efficient, competent, and responsible. The Britishers themselves realised this. Hence, Sir. A.H.L. Fraser, Chairman of the Indian Police Commission appointed in July, 1902 mentioned-

“The police force is far from efficient; it is defective in training and organisation; it is inadequately supervised; it is generally regarded as corrupt and oppressive; and it has utterly failed to secure the confidence and cordial co-operation of the people” (Fraser, 1903).

The Commission offered several suggestions, but failed to recognise or wilfully ignored the reality that the majority of the organisation's problems could be traced back to the structure established by the Police Act of 1861 and the police ideology that it dictated. Despite discovering significant evidence to the contrary, the Commission determined that the 1861 system was, on the whole, a sensible and efficient system (Dhillon, 1998).

POLICE COMPLAINT AUTHORITIES IN INDIA: A SHATTERED SYSTEM

The landmark judgement of the apex court in the *Prakash Singh & ors. versus Union of India and ors. (2006)* case (*Prakash Singh & Ors. V. Union of India, 2006*) led to the introduction of the Police Complaint Authorities (PCA) at every district and state level. The Supreme Court established broad guidelines for the Police Complaints Authority's composition, mandate, and powers. These principles were filled out further in the Model Police Act 2006 (later revised as the Model Police Bill 2015), which was produced by a high-level group appointed by the Ministry of Home Affairs (Bureau of Police Research and Development, 2006). Nevertheless, successive state and union administrations have failed to incorporate the suggested legislative norm into the composition of their complaint's agencies. On paper, it appears to be impressive: Since 2006, 23 states have established State Police Complaints Authorities (SPCAs), and 16 have established District Police Complaints Authorities (DPCAs), either through provisions in their new/amended police statutes or by government decrees. Despite this, not a single authority established completely complies with the Court's directives. Rather than forming a balanced composition, the authorities are controlled by members of the political executive, undermining the objective of operating as an external, independent oversight body. Their mandates have been narrowed. The overall image that emerges is one of political inaction, which appears to be linked to a fundamental opposition within police leadership to enforce accountability, confront police wrongdoing, and act legally against errant officials.

In order to establish Police Complaints Authorities, nine states passed executive ordinance and seventeen states passed legislation through new police laws or legislative amendments.

The lacunas are as follows:

- Disobeying the court's decision begins with the very first step of not establishing a Police Complaints Authorities at multiple levels (Ministry of Home Affairs, 2010).

Table: 1.1 Police Complaint Authority at various levels (Commonwealth Human Rights Initiative, 2020)

<i>Only at State Level</i>	<i>Only at the district level</i>	<i>State and district levels</i>	<i>No authority</i>
Arunachal Pradesh	Bihar	Andhra Pradesh	Uttar Pradesh
Chhattisgarh	Madhya Pradesh	Assam	Jammu and Kashmir
Goa	Himachal Pradesh	Gujarat	Telangana
Meghalaya		Jharkhand	
Sikkim		Karnataka	
Tripura		Kerala	<i>Assigned to Lokayukta</i>
West Bengal		Maharashtra	Odisha
Nagaland		Manipur	Himachal Pradesh
		Mizoram	(State Police complaints Authority)
		Punjab	
		Rajasthan	
		Tamil Nadu	
		Haryana	
		Uttarakhand	Total: 4 states (plus Himachal Pradesh SPCA)
Total: 8 states	Total: 3 states	Total: 14 states	
Number of states with a State PCA: 22			
Number of states with a district PCA: 17			

Hence, 22 states provide for police complaints authorities at state level, 17 states provide for district level police complaints authorities and 14 states provide for police complaints authority at both state and district level. Uttar Pradesh and Jammu & Kashmir do not have police complaints authority at any level.

- Dominance of Political executive in the police complaints authorities. Instead of a balanced composition reflecting a mix of expertise in public administration, judicial services, and civil society, numerous states include serving officials such as civil employees, police officers, and even politicians on both state and district bodies. This is blatantly contrary to the court's and the Model Police Act's obligation to establish independent oversight bodies. Of the states that have constituted State Police complaints authorities, eight states have deviated from the fundamental requirement of having retired judges as chairperson. Whereas the states like Mizoram, Meghalaya, Gujarat and Punjab incorporate retired civil servants of the position of principal secretary/chief secretary or retired IPS officer of the position of Director General of Police as the head, Haryana keeps the criteria broad to include persons of eminence from various fields with twenty years of experience. Tamil Nadu appoints the secretary in charge of the home department as the chairwoman of the state PCA. Rajasthan and Jharkhand each appoint an independent member to serve as chairperson.

With respect to the 17 states that have constituted District Police complaints authority, only 7 states, namely Kerala, Maharashtra, Assam, Andhra Pradesh, Mizoram, Manipur and Uttarakhand included a retired district judge to serve as the head of the District Police Complaints Authority.

Moreover, the District Police Complaints Authority in Himachal Pradesh, Karnataka, Tamil Nadu and Bihar is headed by the District Magistrate/Divisional Commissioner, while in Gujarat the authority is headed by the Superintendent of Police. In the remaining states, such as Rajasthan, Jharkhand, and Punjab, the chairman is either an independent member or a retired civil servant/police officer.

- Presence of limited number of independent members in the State/District Police Complaints Authority. Among the independent members, the proportion of members from civil society or academics is significantly lower than that of retired police officers and retired public workers. Moreover, in as many as eight states, there is no provision for women to be included in the complaint authority.
- Transparent selection process of the chairperson and members of the authorities is the cornerstone of a democratic and efficient authority. Only five states namely Karnataka, Maharashtra, Sikkim, Andhra Pradesh and Manipur, provides for the chairperson of the state police complaints authority to be chosen from a panel of names proposed by the chief justice. With respect to the appointment of members, Sikkim is the only state to adhere with the process laid down by the court.
- Lack of adequate staff for investigations of complaints against police. The court acknowledged the necessity for a dedicated team of investigators formed by the authorities themselves to help the authorities in performing the tough work of investigating suspected police wrongdoing. "The Authority may also require the services of regular workers to undertake field investigations," the court stated. They may use retired investigators from the CID, Intelligence, Vigilance, or any other group for this purpose." A handful of states, namely Goa, Tamil Nadu, Haryana, Maharashtra, Assam, Mizoram, Sikkim and Tripura have a separate wing of investigators to carry out inquiry and investigations.
- The inability of state governments to endow them with enforceable powers, despite the Supreme Court's unambiguous mandate, is one of the most serious flaws in the complaints authorities' construction. PCAs are to suggest, upon conclusion of an investigation, either departmental inquiries or the filing of a First Information Report (FIR) against the erring police officer, or both. Because these complaints agencies are not courts, their investigations can only establish prima facie if there is enough evidence of wrongdoing to continue further. Giving them the authority to make enforceable recommendations helps guarantee that those further procedures are initiated, with some evidence already acquired, reviewed, and documented. The substance and conclusions of their investigations can easily be dismissed without binding authority.
- The need for an expeditious trial. Until yet, only a few states have set a deadline for the authorities to conclude their investigations. One of the basic ideas of criminal law is that investigations, trials, and

processes should be completed as expeditiously as feasible (*The Code of Criminal Procedure 1973*, Section 309). While the 2006 Model Police Act did not set a deadline, the 2015 Model Police Bill mandates that both the state and district authorities conduct the investigation as quickly as feasible and provide final directives no later than 90 days after receiving the complaint (Ministry of Home Affairs, 2015).

ACCOUNTABILITY MECHANISMS AND POLICE DEVIANCE

In India, there is significant evidence of rising police misbehaviour. In Indian media, incidents of police brutality, extortion, and other crimes perpetrated by policemen in various regions of the nation are gaining attraction. As per the statistics of National Human Rights Commission the number of complaints relating to cases of “Death in Police encounter” have increased from 137 in the year (2013-14) to 164 in the year (2017-18) (National Human Rights Commission, India, 2018). The National Human Rights Commission (NHRC) receives the bulk of complaints against law enforcement officers. Official figures show that police agencies get a large number of public complaints against officers. According to the National Crime Records Bureau (NCRB), the police committed 20 incidents of human rights violations in 2020, including encounter killings, deaths in custody, wrongful imprisonment, torture, and extortion (Thomas, 2021). Public complaints against the police can be categorised into:

- Corruption;
- Police atrocities by means of using force;
- Non registration of complaint;
- Prejudice.

The present means for holding police accountable for their acts may be divided into two categories i.e., Internal Accounting Mechanism and External Accounting Mechanism.

Internal Mechanism for Accountability

Internal means for holding individual police personnel accountable for their conduct are outlined in the 1861 Police Act, state government Police Acts, and state police manual guidelines. Senior police officers of the rank of Superintendent of Police and above have the authority under the Police Act of 1861 (*The Police Act, 1861*, Section 7) to dismiss, suspend, or reduce the rank of any police officer of subordinate ranks whom they believe has been remiss or negligent in the discharge of his or her duties or is unfit for the same. They may also impose one or more of the following penalties: (a) confinement to quarters for not more than 15 days, (b) a fine of not more than one month's pay, (c) denial of good behaviour pay, and (d) removal from any post of distinction or special emolument.

Furthermore, the Police Act of 1861 lists the following offences for which a police officer can be disciplined: (i) wilful breach or neglect of any rule, regulation, or lawful order; (ii) withdrawal from duties of the office or absence without permission or reasonable cause; (iii) engaging in any employment other than his police duty without authority; (iv) cowardice; and (v) causing any unwarranted violence to any person in his custody. The penalty for these offences can range from a fine of up to three months' wages to incarceration for up to three months, or a combination of the two (*The Police Act, 1861*, Section 29). The guidelines

categorise sanctions as major and minor. Though the standards vary by jurisdiction, dismissal, removal, reduction in rank or pay, and forfeiture of service are typically recognised as serious punishments. They cannot be imposed on any police officer without a normal departmental investigation.

Miserable political meddling has damaged the authority of police leadership in India over time, resulting in a loss of discipline in the force and the encouragement of a propensity at all levels within the force to seek outside patronage for rewards and protection from punishment.

Any mechanism for investigating complaints against the police must be fair and equitable in the eyes of both the police and the public. The National Police Commission, proposed in its First Report that investigations be undertaken by departmental authorities as well as an independent entity outside of the police. The National Police Commission suggested vast proportion of complaint against police officers to be resolved by superior police officer in the hierarchy, but suggested judicial enquiry in the following cases:

- Rape of women in Police Custody;
- Death or serious injury in police custody;
- death of two or more persons resulting from police firing in the dispersal
- of unlawful assemblies.

The government, on the other hand, has refused to embrace these proposals. The government's reaction to the NPC's recommendations has never been made public.

In any event, the departmental systems in place to deal with police misbehaviour do not often inspire public trust. There are claims that police agencies may hide incidents of misbehaviour by individual officers because revealing the truth could harm the organisation's reputation. The fact that the police handle the investigations has created widespread public scepticism. The former Prime Minister Manmohan Singh while addressing at a conference of CMs on Internal Security pragmatically mentioned:

“... Serious internal security challenges remain. Threats from terrorism, left wing extremism, religious fundamentalism, and ethnic violence persist in our country. These challenges demand constant vigilance on our part. They need to be tackled firmly but with sensitivity” (Prime Minister's Office: Government of India, 2012).

External Mechanism for Accountability

Judiciary

One of the most significant external instruments for guaranteeing police accountability is the courts. While writs and public interest lawsuits can be brought in higher courts, criminal prosecutions can be initiated in lower courts. A number of significant judgments have been passed by the higher courts, prescribing safeguards or guidelines to regulate police conduct during arrest, interrogation, and other stages of investigation, requesting compensation from the government in cases of custodial violence, criticising the police for discrimination in the handling of communal and caste conflicts, and passing strictures in many cases where defective or inadequate police investigation was found.

Non-government Organisation

Non-governmental Organisation activities pertaining to the police are essentially divided into two categories:

- Matters concerned with abuses of Human Rights perpetrated by the police officers; and
- Matter concerned with changes in the operation of the police organisation.

The typical police or government response to NGO charges is denial. Documenting human rights crimes perpetrated by police officers, on the other hand, is a significant difficulty for non-governmental organisations.

The task is intimidating not just because of the nature of the labour, but also due to a lack of competence.

The police are extremely hesitant to disclose information with outsiders, particularly non-governmental organisations (NGOs). This impedes the operation of non-governmental organisations (NGOs), particularly in the area of police reform.

Human rights Commission

The human rights commissions created under The Protection of Human Rights Act, 1993 (the Act) provide another avenue for holding the police responsible in incidents of misbehaviour. The National Human Rights Commission (NHRC), founded on October 12, 1993, is the most significant of these commissions. The Commission is meant to operate fully independently, although several elements in the Act highlight the Commission's reliance on the government. The Act requires it to rely on the government for some of its needs, such as manpower and funding (*Protection of Human Rights Act, 1993*, Section 11 and 32).

More crucially, the Act does not authorise the Commission to investigate accusations of human rights breaches perpetrated by members of the armed forces. The term "Armed Forces," as defined in the Act, includes not only the naval, military, and air forces, but also some central armed police formations, such as the Border Security Force (*Protection of Human Rights Act, 1993*, Section 2). The Act clearly reduces the NHRC's ability to provide recourse to the public in situations where breaches have been committed by personnel of paramilitary forces, who are frequently deployed on law-and-order duty in troubled regions. In such circumstances, the Commission's only option under the Act is to request reports from the Central Government and then offer recommendations to the Government, or not 'continue with the complaint' at all (*Protection of Human Rights Act, 1993*, Section 19). Furthermore, the Commission lacks the authority to enforce its determinations under the Act. According to the Act, if the Commission's investigation reveals a violation of human rights, it can only urge the government to take action against the responsible parties or give remedy to the victim. If a state government refuses to accept the Commission's opinion, there is no mechanism in the law that allows the Commission to compel the government to follow its advice (*Protection of Human Rights Act, 1993*, Section 18). Human rights commissioners have served as a check in different ways. However, in a country the size of India, an institution like the NHRC becomes too far removed from the situation to be effective in many cases. A high number of police atrocities are committed in India's small towns and villages, where people are unaware of the Commission's existence or processes. Out of 37 states (here states include Union Territories), till now only 25 states have set up their own commission. Even among those that have been created, most of their key positions remain vacant. Neither, proper contact details reflect in their websites. It was also noticed that not all human rights commissions that had been

constituted were receiving enough financial and human resource assistance (Dhavan, 2000). Similar facts have been mentioned in the subsequent reports as well.

Media

The media is one of the most rigorous watchdogs of the police in our nation. In India, the media has a great deal of independence. It possesses immense reach and strength. Technological breakthroughs in the last several decades have altered the world of communications and opened up frontiers that were previously unknown to or beyond the grasp of the media. Any violation of human rights occurring somewhere in the country can quickly become known to the rest of the country if the media covers it. Media have proactively reported many instances of human rights violation.

In general, mainstream national media outlets have done a far better job than regional media outlets in covering human rights abuses and holding government agencies accountable. The government has sought to intimidate or pressurise the media, which has uncovered corruption and abuse of power by politicians and top bureaucrats on occasion. Recalcitrant members of the media have been subjected to income tax and law enforcement raids, as well as other forms of harassment (Pandey & Gunasekar, 2021).

CONCLUSION

Formation of a police force that is efficient, honest, and professional is essential for providing a sense of security to ordinary individuals and attending to their problems. The results of numerous commissions and committees, complaints received by human rights bodies, events recorded in the press, and experiences of ordinary citizens on the streets all point to the reality that such a police force does not exist in India. Need for police reform is obvious and pressing. The issue of police reform must be pushed in two ways at the same time.

The first is to create statutory institutional procedures to ensure that the state government's power of superintendence over the police force is restricted to ensure that police performance is strictly in conformity with the law. In other words, the police serve to establish the rule of law rather than the rule of politics. This would need isolating them from illegitimate authority and granting them functional autonomy. Once the police have functional independence, they must be held accountable for any wrongdoing. The present accountability measures must be enhanced and improved.

Furthermore, new procedures must be formed that act independently to oversee the operation of the police and investigate public complaints against the police. The functioning of the police as an organisation, as well as the behaviour of police officers as people, must be constantly monitored.

The other approach is to do all possible to enhance and improve policing within the present framework. Aside from improving recruiting, training, and leadership standards, the working and living circumstances of lower-level police officers require significant improvement—a process that should begin with boosting the standing of constabulary.

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