

# POLICING THE NATION IN THE 21ST CENTURY : AN APPRAISAL OF THE PROPOSED REFORMS

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*The subject matter of this paper deals with the status of police reforms being implemented in India. The issue has been addressed in a number of Supreme Court cases and also in several Committee Reports, which have prepared the groundwork for a radical change in the Indian Police system. These recommendations form the crux of this paper, and we have made a critical analysis of those recommendations to moot a feasible mechanism for the effective implementation of the same. An appraisal of the suggested reforms is all the more important because the new mechanism has been designed to meet the futuristic needs of the new millennium. Recommendations aimed at minimizing political interference in the functioning of the police, have been looked into. Special effort has been made to understand the radical reforms like bifurcation of the force, so as to objectively assess their desirability. In order to have a comprehensive understanding of the subject matter of the paper, the nature of police functions in other countries has been discussed. We have also made a suggestive examination of the feasibility of such drastic changes in the policing system to face the challenges of 21<sup>st</sup> century.*

## I. INTRODUCTION

*“The rule of law in modern India, the frame upon which justice hangs, has been undermined by the rule of politics.”*

— *David H. Bayley*

The police force is arguably one of the most important, and easily the most visible component of the criminal justice system. However, with time, it has been seen that the police force has gone through a phase of moral and professional decadence, which has led to growing concern, and a number of attempts have been made to mend matters before it is too late. In this direction, the past few years have been particularly eventful, with a number of positive developments having taken place towards a fruitful solution of the problem. There has been a general fall

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in the standard of functioning of the police and this had reached its nadir during the Gujarat riots of March 2002, when the police along with the civil administration remained mute spectators to that gruesome massacre of thousands of innocent and unarmed civilians. In fact media reports and several enquiry commissions later confirmed the active connivance of the police in the chain of those horrible events.<sup>1</sup> At that point of time, the ruling party had been accused of influencing the behaviour of the police, which ultimately led to utter maladministration. Thus the whole situation had *ab initio* provoked serious doubts about many basic issues of governance and political manipulation of law enforcing agencies.

Professor M.P. Singh, in his book, *Police Problems and Dilemmas in India* has aptly observed the basic complexities involving the Indian Police system. He holds that the police in India faces tremendous challenges and is under extreme pressure due to a number of reasons, as compared to its counterparts raised in the lines of the Irish constabulary model of policing.<sup>2</sup> According to Professor Singh, some of the reasons are growing unemployment, deterioration in educational environments, conflicting claims of socio-religious components, fluctuations in political order, rampant corruption etc. While discussing the role of police in politics, he has cited Alderson who had observed that police are part of the politics of social control<sup>3</sup> and had simultaneously emphasized for its apolitical objectivity<sup>4</sup>. Professor Singh further observes that police hobnobbing with politicians appears to be a necessary survival technique.<sup>5</sup> Moreover in India the political machination is capable of demoralizing the police just by effecting frequent and arbitrary transfer of police officers to unfavourable positions or locations. In fact, he feels that the district administration of police, which is the backbone of Indian bureaucratic machine, has been run down under political pressure and interference.

There are many instances where the statutory duties of the police have been interfered with by the political players. It is mostly observed in cases involving law and order and investigation of crimes.<sup>6</sup> As has been rightly criticised, there are a long list of illegal orders that the police has to suffer in course of its day to day functioning. For instance, instructions barring the police to promulgate orders under Section 144 Criminal Procedure Code, or not to interfere in *gheraos*, or not to enter the university campus or a place of worship even in face of deteriorating law and order situation unless permitted by the authorities- such illegal orders have made it difficult for the police force to perform their statutory duties.<sup>7</sup> There have

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<sup>1</sup> See KIRPAL S. DHILLON, POLICE AND POLITICS IN INDIA: COLONIAL CONCEPTS, DEMOCRATIC COMPULSIONS: INDIAN POLICE 1947-2002 562 (2005) [hereinafter DHILLON, POLICE AND POLITICS IN INDIA]

<sup>2</sup> See MAHENDRA PAL SINGH, POLICE PROBLEMS AND DILEMMAS IN INDIA 10 (1989)[hereinafter SINGH, POLICE PROBLEMS AND DILEMMAS IN INDIA]

<sup>3</sup> JOHN C. ALDERSON, POLICING FREEDOM: A COMMENTARY ON THE DILEMMAS OF POLICING IN WESTERN DEMOCRACIES (1979), as cited in SINGH, POLICE PROBLEMS AND DILEMMAS IN INDIA (1989).

<sup>4</sup> SINGH, POLICE PROBLEMS AND DILEMMAS IN INDIA, *supra* note 2, at 180.

<sup>5</sup> *Id.* at 181.

<sup>6</sup> R. DEB, POLICE AND LAW ENFORCEMENT 101 (1988)

<sup>7</sup> *Id.* at 101

been instances when a police officer receives credible information that a cognizable offence is going to be committed within the precincts of a temple or educational institution. The police officer honestly thinks that such an offence may be prevented only by arresting the person intending to commit it. However even then, the politically interested party may forbid the officer from giving effect to the arrest even though that is a statutory duty of the police officer under Section 149 and 151 of the Criminal Procedure Code.<sup>8</sup> Such sorry state of affairs has led to a decline in the morale of the police force and has further maligned its image in the public eye. It is not a recent phenomenon as can be inferred from the observation of Justice A.N. Mulla of the Allahabad High Court in a judgment five decades back; “there is not a single lawless group whose record of crime comes anywhere near the record of that organized unit, which is known as the Indian police”.<sup>9</sup> Such definitive pronouncements from high judicial authorities should have been more than enough to push the critical issue of police reforms to the centre stage long ago.<sup>10</sup> However regardless of similar observations from both within the judiciary and also other committee reports, the issue of police reforms remained neglected for decades.

In 1997, Indrajit Gupta, the then Union Home minister had despatched letters to the various State governments calling upon the States to rise above the traditionally limited perceptions and bring about drastic changes in the form of reforms and restructuring of the police system before the country was overwhelmed by unhealthy developments.<sup>11</sup> This hands-down approach of the minister was a turning point in the issue, with even the Prime Minister highlighting the fact that the Indian police system is fraught with problems like undue political interference in transfer and posting of police men of different ranks, misuse of police for partisan purposes and political patronage enjoyed by corrupt police officials.<sup>12</sup> This concern has been reflected in the opinion of the judiciary as well, which through a number of decisions, has made a significant contribution to the reforms process in the police system. In September 2006, the Supreme Court of India gave the judgement in the case of *Prakash Singh v. Union of India*.<sup>13</sup> That judgement was a big leap towards a restructured and reformed Indian Police which is capable of not only living up to the expectations of the enlightened Indian polity, but also to face the challenges of the 21<sup>st</sup> century. The decision of the Supreme Court raised expectations to a great high and most people especially those within the civil society welcomed it. The hopes aroused after the Supreme Court decision were taken to a greater high by the submission of the *Model Police Act, 2006*, which has provisions for a possible paradigmatic shift in the approach and composition of the police force.

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<sup>8</sup> *Id.*

<sup>9</sup> DHILLON, POLICE AND POLITICS IN INDIA, *supra* note 1, at 563.

<sup>10</sup> *Id.*

<sup>11</sup> *Police Reforms: Efforts to Scuttle Police Reforms Initiative, a letter from MANITHAM to the PMO*, <http://www.tamilinfoservice.com/manitham/ua/2006/2.htm> (last visited on Sep.8, 2007)

<sup>12</sup> *Id.*

<sup>13</sup> (2006) 8 SCC 1

The said draft was prepared by the Police Act Drafting Committee which was set up on September, 2005 under the chairmanship of the former Attorney General, Soli Sorabji, and comprising of ten other members, with the close involvement of the NGO - Commonwealth Human Rights Initiative (CHRI).<sup>14</sup> If implemented in right spirit, the draft legislation has the potential to write a new chapter in the annals of the Indian Police system. As this paper proceeds, we shall analyse the various developments, with special emphasis on the recently drafted *Model Police Act, 2006*. Due emphasis will be given to the recent, relevant decisions of the Supreme Court, most particularly being the *Prakash Singh v. Union of India*<sup>15</sup> and the *Vineet Narain v. Union of India*<sup>16</sup>. After adequately covering the Indian position, we shall proceed to analyse the international scene with regard to police administration. Hence in course of completion of this research, we propose to prepare a comprehensive paper on the issue.

## II. THE COMMITTEES AND COMMISSIONS ON POLICE REFORMS

The *Model Police Act, 2006* proposes to establish functional autonomy for the police force thereby making it more accountable to the society at large. Before analysing the Act, one has to be acquainted with the history behind it. The first initiative towards a reformation of the police was taken by the state of Kerala way back in 1959 when it set up the Kerala Police Reorganisation Committee.<sup>17</sup> But that initiative met an abrupt end for inexplicable reasons the very next year. The political class as well as some of the IPS and IAS officers do not desire a change in the traditional set up as they can farther their personal interests from the corrupt and inefficient arrangement. At the national level, the reform process started as long back as the 1980s when the National Police Commission (1977-81) submitted its report. The Commission in its report made a number of important observations about matters concerning investigation like inadequacy of staff, and made valuable suggestions regarding restructuring of the police hierarchy. In the years that followed, there have been several high powered Committees and Commissions which examined the issue of Police reforms. The National Human Rights Commission and Law Commission have endeavoured in the past years to find a solution to the issue in question while the Padmanabhaiah Committee, Ribeiro Committee and Malimath Committee on Reforms of Criminal Justice System have submitted reports that have made a strong statement in favour of the reforms. However the political atmosphere of the country has until now kept all such attempts grounded. The political culture is such that it seeks to nurse and sustain itself by

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<sup>14</sup> *Police Act Drafting Committee submits report to Home Minister*, <http://www.indlawnews.com/64f80a15e17243fd6111f0fd309ddf2e> (last visited on Sep. 9, 2007)

<sup>15</sup> (2006)8 SCC 1

<sup>16</sup> AIR 1998 SC 889

<sup>17</sup> See DHILLON, POLICE AND POLITICS IN INDIA, *supra* note 1, at 562.

exploiting the police force at all levels, be it panchayat, district or the state level.<sup>18</sup> Nevertheless, the contemporary critics maintain that the situation at present is conducive to a great extent for a drastic reform in the police functioning and organisation.

### A. THE MALIMATH COMMITTEE REPORT

The Malimath Committee Report submitted in March, 2003 has very articulately laid down the foundation of a restructured and reoriented police system. The Committee in its report observed that the success of the whole process of Criminal Justice Administration depended completely on the proper functioning of the police organisation especially in the investigation stage. Apart from the investigation of offences, the police also have the duty of maintaining law and order. However, it has been observed that the police have serious problems in performing the two important duties simultaneously. More often than not, the investigations of offences suffer due to the priority given to the maintenance of law and order. This criticism should not be interpreted to mean that the latter should be given less importance, but steps should be taken to ensure that the process of criminal investigation does not suffer. In this regard the Malimath Committee Report has provided a comprehensive solution. It envisages a bifurcation in the police organisation so that the dual functions of investigation of offences and the maintenance of law and order are approached separately and systematically.<sup>19</sup> It has been also observed that the ambit and role of police functions and duties in certain parts of the country have changed drastically in light of the new challenges like terrorism as well as organised crimes having inter-state and trans-national dimensions. These diversions in the resources of the police force have a severe impact on the routine criminal investigation work. As such the need for a separation of the investigation wing from law and order wing has become all the more important.

The Malimath Committee has suggested that the staff in all stations in urban areas should be divided into two distinct branches, being the Crime Police, and the Law and Order Police<sup>20</sup> and the strength of the two would depend upon the incidence of crime and other problems in the respective police station areas. It was further suggested that the powers of the officer-in-charge of the police station should be vested not only on the Officer-in-Charge of the station but also on the OC of the Crime Police. Investigating Officers in the Crime Police are to be at least of the rank of Assistant Sub-Inspector and preferably a law graduate with 5 years

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<sup>18</sup> Upreti, D.K., *Will functional autonomy for police ever become a reality?*, <http://www.deccanherald.com/archives/feb122007/panorama224002007211.asp> (last visited on Sep. 9, 2007).

<sup>19</sup> Report of Committee on Reforms of Criminal Justice System Government of India, Ministry of Home Affairs, Chairman Dr. Justice V.S. Malimath, para. 7.9.[hereinafter MALIMATH COMMITTEE REPORT]

<sup>20</sup> MALIMATH COMMITTEE REPORT *supra* note 19, at para. 7.9.8.

experience of police work. The Committee has also emphasised on the need and benefits of team work in the investigation of grave and sensational crimes having inter-state and trans-national ramifications<sup>21</sup>. The Committee has made further suggestions concerning the insularity and integrity of the investigating agency which has a great impact on the quality of the investigation work.<sup>22</sup> The Committee stressed on the fact that for a fair and impartial investigation, political immunity of the investigating machinery is imperative. In the same context the Committee has referred to the alleged '*Desire system*' in the posting of District and Thana level officers, which means that no transfer can be affected without the desire of the local MPs and MLAs, which is not always for altruistic reasons or in public interest. It has strongly condemned such a practice and has marked it as one of the most significant hindrances in the path of free and fair functioning of the police system. The Malimath Committee has forwarded some important suggestions while addressing the above mentioned issue that is, the undue political interference in transfer of not only officials but also the transfer of cases from one investigating officer to another. Some of the important suggestions are discussed below: -

- It has been suggested that the National Security Commission at the national level and the State Security Commissions at the State level should be constituted, as recommended by the National Police Commission. These Commissions as envisaged shall be the supreme authorities in the matters of investigation of cases and shall be beyond the wily control of the traditional lobbies. The Committee has remarked that the constitution of the aforesaid Commissions would give an element of insularity to the police forces in the country and invoke faith and trust of the people in its functioning.

- The Committee has suggested that Police Establishment Boards comprising of the DGP and three to four other senior police officers should be set up at the Police Headquarters in each State. These Boards shall decide matters relating to posting, transfer and promotions etc. of district level officers. Although the Committee's recommendations are not binding on the Government, it may differ only for reasons to be recorded in writing. Thus, it will ensure that no investigation suffers due to the undue interference of external authorities in the form of transfers and postings.

- The Committee has expressed its view that no case should ordinarily be transferred from one Investigating Officer to another or from the District Police to the Range office or the State Crime Branch by the competent authority unless there are very compelling reasons for doing so, and such reasons should be recorded in writing by the concerned authority.

- The Committee has sought to delimit the ambit and scope of the State Government in the '*superintendence*' of the Police in the State. It has cited

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<sup>21</sup> *Id.* at para. 7.10.

<sup>22</sup> *Id.* at para. 7.12.

the reason for the same as the numerous allegations, not always unfounded, of misuse of that power for extraneous considerations.

Apart from the above changes in the constitution of the Police organisation, the Malimath Committee has comprehensively examined the issue of scientific and efficient investigation with the help of forensic science. While emphasising the importance of application of forensic science to crime investigation the Committee has observed that from the stage of the very first visit by the Investigating Officer to the crime scene, a appropriately trained scientific hand should be involved so that all relevant physical clues, including trace evidence, which would eventually afford forensic science examination, are appropriately identified and collected. In this context the Committee also referred to the standard practice of investigation in most of the advanced countries. It has mentioned how in such countries scientific hands designated as 'Field Criminalists', 'Scene of Crime Officers' (SOCO), Police Scientists etc., are part of the permanent strength of each police station.<sup>23</sup> It has further mentioned that in some cases these specialists are personnel drawn from definite scientific cadre while in some other cases they are policemen themselves, specially selected for their flair for scientific work and their academic background of science subjects. In the latter case the personnel are, after the selection, provided in-depth training in crime scene management and in the identification of different types of scientific clues to be looked for in different types of crimes.

The Malimath Committee in its report has highlighted the significance of the investigation of crimes. It has said that the investigation of crime is a highly specialised task requiring a lot of patience, training and clarity about the legal position of the specific offences and subject matter of investigation.<sup>24</sup> The Committee was of the view that investigation requires specialisation and professionalism of a type not yet fulfilled by the police agencies. In this context, reference may be made to the report of the National Police Commission, 1981, wherein it was stated that a sample survey in six states falling in diverse geographical regions, found that an average Investigation Officer was able to devote only 30% of his time to investigational work while the rest of the time was taken in other duties. Possibly, taking a cue from this, the Malimath Committee went further and recommended the bifurcation of the police force.

### *B. THE 154TH REPORT OF THE LAW COMMISSION OF INDIA*

The Law Commission of India had also discussed the above issue comprehensively in its 154<sup>th</sup> report, and had categorically recommended the separation of the investigating agency from the law and order police. The Law Commission had justified its recommendation for the separation of the police

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<sup>23</sup> MALIMATH COMMITTEE REPORT *supra* note 19, at para 7.16.1.

<sup>24</sup> *Id.* at para. 7.9.2

functions with a number of arguments. One of the grounds supporting its recommendation was that the investigating agency would come under the protection of the judiciary and the undue interferences of the political powers will be checked. That would ensure efficient investigation of offences and the possibility of unjustified and unwarranted prosecutions will be reduced. Secondly, the separation will help in specialisation and it would result in speedier investigation thereby entailing speedier disposal of cases. Another significant recommendation was that the investigating police would be in plain clothes and thus, would be able to develop a good rapport with the public. Moreover, since they would not be involved in law and order duties that involve force, they would not provoke public anger and hatred which stand in the way of public-police cooperation in tracking down crime and criminals and getting information, assistance and intelligence from the public. Thus, the justifications forwarded by the Law Commission are futuristic and at the same time a clear reflection of the current hindrances that the investigation process suffers.

### C. CRITICISM

Apart from the Malimath Committee and the Law Commission, other Committees have also discussed the question of bifurcation of police functions. The Padmanabhaiah Committee on Police Reforms has observed in its report that most of the police officers agree to the proposal regarding separation of functions, but feel that the separation may not be practical. As such the Committee has proposed that the separation should be initially at the urban areas in all states. It is relevant to note here that this proposed separation has already been effective in Uttar Pradesh where it was initiated in April, 2000. So it is not a completely new system that has been proposed. The Malimath Committee has, as a matter of fact, given a fresh impetus to the move for the separation of police functions. The Committee has in its report mentioned about the existence of separate police stations for law and order on one hand, and investigation of offences on the other hand in states like Tamil Nadu as well as Andhra Pradesh.<sup>25</sup> The Committee has sought to improve upon the same system of separation of functions and has suggested several significant improvements in its report.

However a close observation of the several reports in recent years would show that the recommendations are mere repetitions without any significant outcome. As a matter of fact, some of the recommendations suggested are far away from practical application. As mentioned earlier, the police officers themselves have doubts as to the practical application of the theory of police bifurcation. Moreover the suggestion of giving equal authority to the Officer-in-charges of the general law and order police and that of the crime police may not be very helpful. There is a high possibility of a clash between the two as there shall certainly be circumstances that would make it difficult for the two to function independently of

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<sup>25</sup> MALIMATH COMMITTEE REPORT *supra* note 19, at para. 7.9.6.



another. Another suggestion was that the OC of the crime police shall be a law graduate with 5 years experience in police works. But when it comes to ground realities, availability of eligible candidates willing to do that job will be a problem that the police may have to face. As far as insularity and integrity of the investigating agency is concerned, it has to be confronted not only by reforms in the structure but in the overall mindset of the individuals who are members of the structure. For a change in the 'desire system' mentioned earlier, the approach of the political agencies has to be dealt with. However the attitude of the political players would not change overnight. So it will be a long while in the materialisation of the suggestion of doing away with the 'desire system' since the old political ethos are still very much in place. Another significant fact to be kept in mind is that present laws of the country provide ample opportunities for efficient investigation of crimes, and the problem lies in the failure to make optimum utilisation of such laws. Strictly speaking, the problem lies not with the laws themselves, but because of the fact that the hands of the police are tied down by the iron chains of political interference. This is the same reason which has kept police reforms behind all other issues irrespective of the repeated calls of urgency by innumerable committees and commissions. Unless there is a change in this attitude, no real changes in the ground situation can actually happen.

### III. JUDICIAL PRONOUNCEMENTS ON POLICE REFORMS

The Committees and Commission reports are only a part of the long saga of the movement for police reforms in India. The other significant part of the story is the judicial pronouncements. As mentioned earlier, the cases of *Vineet Narain v. Union of India*<sup>26</sup> and *Prakash Singh v. Union of India*<sup>27</sup> are of great significance in the scheme of police reforms, since in these two cases, the Supreme Court has expressed strong views regarding the unfortunate political and bureaucratic hindrances that the police faces in general, and the issue of police restructuring in particular. Though the first case is primarily concerned with the inability of the CBI and revenue officials to perform their duties due to external pressures, the judgement throws ample light on the difficulties that the police face in general in the present situation India. The second case is a very important one in the context of the present article since it has comprehensively examined and analysed the non-implementation of the suggestions of several Committees and Commissions regarding the restructuring of the police and a shift in the manner of investigation of crime.

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<sup>26</sup> AIR 1998 SC 889

<sup>27</sup> (2006)8SCC1

*A. VINEET NARAIN V. UNION OF INDIA*<sup>28</sup>: -

This case arose from a Writ petition where the issues were regarding the delay and disruptions in the investigations of the Central Bureau of Investigation and the Revenue Department. The two central agencies had failed to perform their duties regarding investigations into some grievous offences due to the alleged involvement of some important political individuals. The offences had come to light after the seizure of the so called “Jain Diaries” in certain raids conducted by the CBI. It was alleged that the apprehension of certain terrorists led to the discovery of financial support to them by clandestine and illegal means, by use of tainted funds obtained through ‘havala’ transactions. It further disclosed a nexus between several important politicians, bureaucrats and criminals, who were all recipients of money from unlawful sources given for unlawful considerations. However the CBI and other Government agencies failed to fully investigate into the matter and take it to the logical end point of the trial and to prosecute all persons who have committed any crime. It was allegedly done with a view to protect the persons involved, who were very influential and powerful in the political and bureaucratic set up. As such in this case the Supreme Court noticed the urgent need for the State Governments to set up the requisite mechanism and directed the Central Government to pursue the matter of police reforms with the State Governments and ensure the setting up of a mechanism for selection as well as appointment, tenure, transfer and posting of not merely the Chief of the State Police but also all police officers of the rank of Superintendents of Police and above.

*B. PRAKASH SINGH V. UNION OF INDIA*<sup>29</sup>

In this case, the Supreme Court observed the urgent need for the State Governments to set up the mechanism required for police reforms, and directed the Central Government to pursue the matter with the State Governments and ensure the setting up of a mechanism for appointment, tenure, transfer and posting of not merely the Chief of the State Police but also all police officers of the rank of Superintendents of Police and above. It was observed that political control, apart from demoralizing the police force, also has the adverse effect of politicizing the personnel and, therefore, it is essential that prompt measures are taken by the Central Government. Till a new legislation is enacted and put in place, the court laid down certain guidelines to be followed by the government. These guidelines are discussed below:

*State Security Commission*

The Court directed each State to constitute a State Security Commission headed by either the Chief Minister or the Home Minister, with the DGP as the ex-

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<sup>28</sup> DHILLON, POLICE AND POLITICS IN INDIA, *supra* note 1, at 562.

<sup>29</sup> (2006) 8 SCC 1

officio Secretary. The chief function of the Security Commission was also to ensure that the State police are able to function impartially and efficiently, independent of unwarranted external influence. Another function of the Commission is to evaluate the performance of the police structure, and then submit its report before the State legislature. The criteria according to which other members of the Commission were to be selected will depend on either of the models prescribed by the National Human Rights Commission,<sup>30</sup> Ribeiro Committee<sup>31</sup> or the Sorabjee Committee.<sup>32</sup>

*Police Establishment Board to determine the service conditions of police officers*

In order to deal with transfer, promotion, postings and other related matters below the rank of Deputy Superintendent of Police, the court felt the need to establish the Police Establishment Board comprising of the DGP and four other senior officials. The Board would be the forum for appeal with regard to the transfer and postings of other senior officials i.e. above Superintendent of Police. The proposed Board would also have a say in the issue of transfer of senior officials.

*Police Complaints Authority*

The court felt the need to establish Police Complaint Authority at the district level as well as the state levels. The District Level Authority to be headed by a retired District Judge<sup>33</sup> was to look into complaints against police officers up to the rank of Deputy Superintendent of Police. The State level Authority may be headed by a retired Judge of the High Court or the Supreme Court,<sup>34</sup> and was to

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<sup>30</sup> The NHRC recommended that the Chief Minister or the Home Minister should be the Chairman of the Commission, with the DGP as ex-officio Secretary. The other members of were to include the Lok Ayukta or, in his absence, a retired Judge of High Court to be nominated by Chief Justice or a Member of State Human Rights Commission. The other members were to be a sitting or retired Judge nominated by Chief Justice of High Court, and also the Chief Secretary, Leader of Opposition in Lower House.

<sup>31</sup> The Ribeiro Committee suggested that the Commission should be headed by the Minister-in-charge of the state police, and the DGP as the Secretary, while the other members included the Leader of Opposition, or a sitting or retired Judge of the High Court so nominated by the Chief Justice; the Chief Secretary, and three non-political citizens of proven merit and integrity.

<sup>32</sup> The Sorabjee Committee's recommended structure was on similar lines, with the Minister-in-charge of the state police being the Chairman, the DGP being the Secretary, and the other members including the Leader of the Opposition, the Chief Secretary, apart from five independent members.

<sup>33</sup> The head of the District level Complaints Authority shall be chosen by the State Government out of a panel of names proposed by the Chief Justice of the High Court having jurisdiction over the state.

<sup>34</sup> The head of the State level Complaints Authority shall be chosen by the State Government out of a panel of names proposed by the Chief Justice of the High Court.

look into complaints against officers of the rank of Superintendent of Police and above. These Authorities may be assisted by three to five members to be selected by the State Government from a panel comprising of retired civil servants, police officers or officers from any other department, or from the civil society.<sup>35</sup> For their efficient functioning, the Authorities were offered the services of regular staff to conduct field inquiries. They could also utilize the specialized services of retired investigators from the CID, Intelligence, Vigilance or any other organization. The State level Complaints Authority would take cognizance of only allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt or rape in police custody. The district level Complaints Authority would, apart from the above cases, may also inquire into allegations of extortion, land/house grabbing or any incident involving serious abuse of authority. The recommendations of the Complaints Authority, both at the district and State levels, for any action, departmental or criminal, against a delinquent police officer shall be binding on the concerned authority.

#### *National Security Commission*

A National Security Commission was proposed to be constituted, which would be entrusted with the task of upgrading the effectiveness of the police forces, and improve the service conditions of its personnel. It would also look into effective measures to ensure that there is proper coordination between the police forces of different states, so that resources can be utilized for the purposes of national security. The National Security Commission could be headed by the Union Home Minister and comprise of heads of the Central Police Organisations, and other security experts as members with the Union Home Secretary as its Secretary.

#### IV. MODEL POLICE ACT, 2006 - A CRITICAL ANALYSIS

As has been mentioned earlier, the Central Government had set up a Police Act Drafting Committee (PADC) also known as the Soli Sorabjee Committee to draft a new model Police Act, in September 2005. The Committee had eleven members headed by Former Attorney General of India, Shri Soli Sorabji, and comprising of other members including Dr. N.C. Saxena, Prof. N.R. Madhav Menon, Prof. Ranbir Singh, Shri Ajai Raj Sharma, Shri M.N. Buch, Shri Harminder Raj Singh, Shri V.N. Gaur, Shri. Kamal Kumar, Smt. Kiran Bedi, and the Secretary to the Committee was retired IPS officer, Dr. U.N.B. Rao. The Commonwealth Human Rights Initiative (CHRI), an NGO, was also associated by the Committee in its deliberations. The PADC was mandated to take into account the changing role and responsibilities of the police, and draft a model Act that could guide the states while adopting their own respective legislations. The PADC submitted its Model Police Act, 2006 to the Home Minister on 30 October 2006.

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<sup>35</sup> The panel was to be prepared by the State Human Rights Commission or the Lok Ayukta or the respective State Public Service Commission.

### *A. CRITICISM OF THE MODEL POLICE ACT*

The PADC can be said to have succeeded to a great extent in realising its goals in the Model Police Act, 2006. However, the Model Police Act, 2006 has been criticised on a number of grounds. Critics including the CHRI<sup>36</sup>, a NGO which was closely involved with the PADC, has expressed some concerns regarding some aspects of the Model Act. The issues regarding which concerns have expressed are discussed below:

- The first concern expressed is that some of the words and phrases used in the Model Act have been defined very broadly in Chapter I of the Act. For instance, words and phrases like terrorist activity, militant activities, insurgency and organized crime have been used throughout the Model Act with concomitant police duties as well as powers of the state to declare areas as Special Security Zones. The definition of these terms is not sufficiently precise. Instead, definitions are inclusive- the terms are defined to include activities. It means that many other activities that are not specified can fall within the terms of the definition. This has the potential to impact heavily on the fundamental rights of the community, and broaden the application of the Act well beyond what was anticipated by the Committee.

- Secondly, grave reservations are expressed regarding the inclusion of Section 22 in Chapter II of the Model Act. Section 22 empowers the Superintendent of Police to appoint any able-bodied and willing person he considers fit to be a Special Police Officer to assist the Police Service. A Special Police Officer appointed under Section 22 would have the same powers and immunities as ordinary police officers, but would not have the opportunity to undertake the comprehensive training a regular officer is required to undergo, in subjects as diverse as the use of fire arms, the principles of law relating to use of force and the legal rights of the public. Experience in Punjab, where a system of Special Police Officers led to high levels of public complaints of police misconduct, shows that the scope for abuse of powers would be very high. If more police officers are required in a given situation, proper recruitment and appointment procedures must be followed to induct new officers. An effective police service is a professional, trained police service. This is a minimum standard that must not be breached.

- Thirdly, the concern expressed is regarding the police presence in rural India which continues to be minimal. The rural policing system advocated by the Committee in Chapter VII is based on assistance from local villagers who are appointed as Village Guards and Village Defense Parties. Their functions broadly include: (a) preventive patrolling; (b) securing and preserving scenes of crime; (c) remaining alert and sensitive to any information about any suspicious activity, or movement of suspicious persons or development of any conspiracy in the village, that is likely to lead to a crime or breach of law and order, and promptly passing on

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<sup>36</sup> Commonwealth Human Rights Initiative

such information to the police; (d) making arrests and handing arrested people to the police without delay. It has been observed that these provisions have vast scope for abuse. Questions like, “who are suspicious persons?”, and “what is suspicious activity?” are bound to arise. Authorizing Village Guards to arrest and hand over a suspect to police is also an issue. Concern has been expressed regarding the absence of any provision requiring the Village Guards to hand over the suspect within twenty-four hours of arrest, which is the general standard followed in the Cr.P.C. It might result in a concentration of power in the hands of the dominant groups within villages that might be steeped in gender, caste or religious bias. The scope for abuse is vast; especially given the fact that most villagers would not be aware of the ambit of powers of the Village Guard and Defense Party or of their rights vis-à-vis these power structures within the village. Apart from the grave dangers of abuse of power, lack of appropriate skills, experience and training would also mean inefficient, ineffective and unresponsive policing in rural areas. Doubts have been raised about the skills of a villager while preserving and securing crime scenes or in preventive patrolling. It has also been observed that there is no excuse for the failure to provide regular police cover to villages where the majority of Indian population resides.

So, despite being desirable, the model Police Act suffers from certain lacunae, which need to be looked into before final enactment.

## V. CONCLUSION

As the paper approaches its conclusion, we think it proper to summarize the basic points and findings of the research. From the discussion so far in the paper, it is clear that there is an urgent need to implement the Model Police Act, 2006 so as to plug out the loopholes and create an ideal police system which aims at maintaining law and order so that the societal functions can be carried on effectively.

The Police system reflects the criminal justice system in any country and so it is essential that this agency of the State can deliver to the best of its potential, so that it can fulfill the purpose of its creation. In this article, special emphasis has been given to the Model Police Act, 2006, which if implemented would ensure a more flexible system, though it admittedly has its own shortfalls. In the past, there have been a number of committees like the Malimath, Ribeiro and Padmanabhaiah Committees which have aimed at reforming the police system. Even after continuous suggestions for radical reforms, there seems to be complete ignorance on the part of the policy makers to create such an efficient organisation.

While dealing with the Indian position, it has been mentioned above that the Indian structure of the police system has been infested with a number of loopholes as a result of which there has been a plethora of examples where the police force has fallen short of expectations. As have been already mentioned, several Commissions were established to counter the problems infesting the police organisation. One of the reasons for the passage of many Police Acts and

Commissions has been to free the police from the clutches of the politicians and to make it more accountable in its discharge of duty. However, even after continued insistence of several commissions, there has hardly been any improvement in the ground scenario. Although the Police have always been used as a political instrument in almost all the countries, the political influence has been greater in the India.<sup>37</sup> In some developed countries such as Japan, U.K, Sweden, Canada, U.S.A., the police have been accorded Constitutional protection which prevent them from being influenced by external control, especially from the politicians so as enable them to discharge their functions independently and effectively.<sup>38</sup>

To combat crime, countries like the USA and UK have adopted a modern approach keeping in mind the changing socio-economic scenario by bringing together the police, community and the media to function effectively in dealing with crime. There has been an emergence of the concept of “community policing” in countries like UK, USA and Australia due to the shift from a bureaucratic set-up to a more market and network oriented governance. In USA, the crime stoppers of Hancock County is one such body which tries to bring in these three essential elements together so as to combat crime by functioning together as a collective unit, and by awarding cash rewards to those who provide information related to solving the crime. In Australia, there is a proper coordination between the government, law enforcement agencies and the intelligence agencies, which has helped the police utilize its resources efficiently and to combat crime in a much more efficient manner. This type of a system has so far been missing in the India, and may be viewed as a model that can be emulated.

In conclusion, we contend that it is a high time for the policy makers to take cognizance of the fact that in a dynamic world, right policies are required keeping in mind the changing conditions and the global context. However, mere policy making would hardly make any difference if it is not implemented. This is definitely not desirable, and steps are required to remedy the situation.

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<sup>37</sup> See generally ARVIND VERMA, *THE INDIAN POLICE: A CRITICAL EVALUATION* (2005).

<sup>38</sup> (2006) 8 SCC 1.