

**ACCOUNTABILITY FOR THE INDIAN POLICE:**  
**CREATING AN EXTERNAL COMPLAINTS**  
**AGENCY**



**Written by: Adam Shinar**



**August 2009**

## Table of Contents

- I. Introduction
- II. Normative Source and Structure of India's Police Force
- III. Attempts at Reform
  - A. The National Police Commission Model Bill
  - B. Other Reform Attempts
- IV. Instances of Police Misconduct
  - A. Torture and violence
  - B. Disappearances
  - C. Corruption
  - D. Failure to observe due process
  - E. Non-registration of FIR
- V. Accountability Mechanisms and the Supreme Court
- VI. Internal Accountability Mechanisms
- VII. External Accountability Mechanisms
  - A. Courts
  - B. Parliament
  - C. Independent Statutory Agencies
    - 1. Human Rights Commissions
    - 2. Police Complaints Commissions
      - A. Canada
      - B. United States
      - C. South Africa
      - D. Australia
      - E. Israel
      - F. United Kingdom
- VIII. The varieties of external accountability mechanisms
  - A. Review and appellate models
  - B. Investigative models
  - C. Performance based models
- IX. Guidelines for a successful oversight mechanism
- X. Details of an effective external police oversight mechanism
  - A. A reactive and proactive role
  - B. Structuring the agency
  - C. Particular powers
  - D. Power Sharing and division of labor
  - E. Collaboration with police and other entities
- XI. Reforming the police – further steps
- XII. Summary of recommendations and conclusions

## **I. Introduction**

The purpose of this report, a first in a series, is a modest one. The report outlines the structure of India's police force, its colonial origins, and how these origins are still present today. Indeed, India's police force, in terms of its organizing principles and organizational culture, has essentially remained the same for the past 200 years. This has caused, and is causing, many problems. India's police force is untrained, brutal, unprofessional, and, for the most part, does not live up to modern standards of police service. Numerous attempts at reform have failed. The situation is dire. Unlike many human right issues where there can be a genuine disagreement about the problem, there is a consensus in India among NGO's, media, human rights groups, and the citizenry, that police reform is desperately needed. However, the structure of political power and a cultural conception which is a relic of colonial times prevents any meaningful reform from being undertaken. A Supreme Court decision from 2006 that tried to direct police reform is likely to fail as well. With no real commitment to reform among elected officials and the citizenry, one is unlikely to come about.

This report undertakes one aspect of police reform, that of establishing an external police complaints agency. Although some states have started experimenting with versions of such an agency, in conformity with the Supreme Court decision of 2006, the progress is severely lacking. We describe what a successful and effective police complaints agency must look like, based on comparative experience from the United States, the United Kingdom, Canada, South Africa, Australia, and Israel. We then apply that experience to India's situation and conceptualize a complaints agency.

Throughout this report, we are well aware that a complaints agency is not the only answer to India's police problems. Indeed, it is but one tool in what should be a toolkit of reforms. The real, and more difficult, reforms must take place within the police itself and not just by imposing an external oversight mechanism. Thus, this is but one report in a series, which will comprehensively evaluate the situation and make recommendations. As usual, carrying out our recommendations, or any serious reform recommendations for that matter, requires political will. This is also severely lacking among India's ruling powers, who at present benefit from the structure of the police. Thus, citizen involvement is urgently required to press political forces to initiate reforms. Political parties, including the ruling Congress Party, have promised police reforms, but those are still forthcoming.

Although the situation is indeed dire, we hope that this report will serve as a further stepping stone in the arduous road toward reform and will provoke dialogue and discourse among concerned professionals and the citizenry.

## **II. Normative Source and Structure of India's Police Force**

Under the Indian Constitution, the Police are a state concern.<sup>1</sup> However, there are similarities between the states, due to three main reasons. First, all state polices are structured and regulated by the Police Act of 1861 or they have state statutes that are

---

<sup>1</sup> Section 246 of the Indian Constitution.

modeled after the 1861 Act. Second, the India Police Service is trained, recruited and managed by the central government. The service also deploys the senior offices to the states. Third, the central government maintains a coordinating role,<sup>2</sup> while the state government is in charge of supervising its police force.<sup>3</sup>

At the district level (every state is divided into districts), there is a level of dual control. On the one hand, there is a high-ranking police officer in charge of the district (District Superintendent of Police). On the other hand, that District Superintendent is subject to the general direction and control of the District Magistrate, who belongs to the executive.<sup>4</sup> This was done so as to assure executive rule over the police, which was considered essential for maintaining British rule. However, the system was not always efficient so it was supplemented, gradually, in many cities, with another system, by which the commissioner of police supervises that area.<sup>5</sup> Matters relating to the police at the central level are under the responsibility of the Ministry of Home Affairs.

The relationship between the state and the central government is complex and multifaceted, regulated by the Constitution and framework statutes. However, for our purposes, it is important to establish which entity has control over police conduct itself. The police itself are under the auspices of the Ministry of Home Affairs. And yet, the mechanism which checks police conduct is not to be found there. The police does investigate official misconduct and corruption, but only when it comes to the misconduct of other government officials and not to police misconduct itself.<sup>6</sup> In terms of internal disciplinary investigations, the police are responsible for disciplining their own.

The duties of the police are specified in the Police Act of 1861, a remnant of colonial rule that was designed to be highly militaristic and authoritarian.<sup>7</sup> Section 20 specifies that the police do not have unfettered discretion to commit any act, but only those acts that have been sanctioned by law (the ultra-vires principle). Section 23 specifies the general duties of the police officer.<sup>8</sup> Save for a brief section on neglect of duty,

---

<sup>2</sup> Police Organization in India, Report of the Commonwealth for Human Rights Initiative, p. 10. Available at [http://www.humanrightsinitiative.org/publications/police/police\\_organisations.pdf](http://www.humanrightsinitiative.org/publications/police/police_organisations.pdf)

<sup>3</sup> Police Act of 1861, section 3.

<sup>4</sup> Section 4 of the Police Act of 1861. For a complete organizational structure see CHRI report on police organization, supra note \_\_\_\_.

<sup>5</sup> Id.

<sup>6</sup> This is handled by the Central Bureau of Investigation (CBI), also under the Ministry of Home Affairs. They are governed by the Delhi Special Police Establishment Act of 1946. See Police Organization report, at p. 53. The CBI is supervised by the central government. In 1997, the Supreme Court held, in the Havala case (Writ Petitions (Criminal) Nos. 340-343 of 1993) that the responsibility over the CBI should be placed with the Central Vigilance Committee, but the decision has yet to be implemented.

<sup>7</sup> Report of the Roundtable Conference on Police Reforms (26-27 June, 2003, CHRI) p. 3, available at [http://www.humanrightsinitiative.org/publications/police/rtc\\_report\\_trivandrum.pdf](http://www.humanrightsinitiative.org/publications/police/rtc_report_trivandrum.pdf). See also, S. P. Singh Makkar and Abdul Hamid, *Police Act 1861: A Critique*, 4 Cent. Ind. L. Q. 209 (1991). Interview with Sankar Sen, former director of the national police academy and former Director-General of the National Human Rights Commission (23/6/09).

<sup>8</sup> "It shall be the duty of every police-officer promptly, to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisances; to detect and bring offences to justice and to apprehend all persons whom he is legally authorised to apprehend, and for

however, the Act does not discuss instances of civilian and political control over police when the latter has exceeded or abused its power.<sup>9</sup>

As mentioned above, the police are governed by the state, so most of the regulations will be found in state laws rather than central government laws. For example, the Delhi Police Act of 1978 specifies, in section 19, the powers held by the commissioner of police. The Commissioner may make regulations regarding, among others, the place of residence of members of the police force,<sup>10</sup> and regulations for the purpose of "rendering the police efficient and preventing abuse or neglect of their duties".<sup>11</sup> The Act further provides for punishments in cases of misconduct.<sup>12</sup>

While the various police acts clearly articulate the powers the police forces enjoy, they are less clear, indeed silent, on the processes that can be taken against police misconduct by the aggrieved citizenry.<sup>13</sup> True, the police acts prescribe actions that can be taken against police officers in cases of dereliction of duty, but such action is usually brought by the officer's superior, who also later assigns the punishment, if any. The various police acts do not set up any mechanism for effective political and civic control of the police force. There is no establishment of an institution whose sole purpose and authority is to receive complaints from the public, investigate the complaints, and bring the proper action after the investigation has ended. While the police have internal mechanisms to deal with disciplinary infractions and the like, there is no clearly established external mechanism that makes them accountable to the public which they are in charge of protecting. It is true that citizens can go to the police station and complain against a police officer, but for various reasons, that shall be explored below, this is largely ineffective.

### **III. Attempts at Reform**

At the level of discourse, India is seemingly in the throes of police reform. However, this reform is not geared toward the protection of human rights and fundamental freedoms, as elaborated in the Indian Constitution. The reforms are led either by police personnel or by Home Ministry officials. This is highly problematic because the people who are responsible, or were responsible, for the grave human rights violations are now attempting to reshape the police, thus effectively assuring that concerns relating to human rights will not be handled in a serious manner. For example, one of the major pieces of reform on the agenda has been drafted by the National Police Commission, which is explored below.<sup>14</sup>

---

whose apprehension sufficient ground exists; and it shall be lawful for every police-officer, for any of the purposes mentioned in this section, without a warrant to enter and inspect, any drinking-shop, gaming-house or other place of resort of loose and disorderly characters."

<sup>9</sup> See section 29 of the Act.

<sup>10</sup> Section 19(c) of the Act.

<sup>11</sup> Id. at section 19(h).

<sup>12</sup> Id. at section 21.

<sup>13</sup> For examples of state police acts, see

<http://www.humanrightsinitiative.org/programs/aj/police/india/history/default.htm>

<sup>14</sup> See, The National Police Commission Model Bill (2006), available at [http://www.humanrightsinitiative.org/publications/police/npc\\_bill.pdf](http://www.humanrightsinitiative.org/publications/police/npc_bill.pdf)

## **A. The National Police Commission Model Bill**

In a detailed document, drafted by the National Police Commission in 1980, the proposed bill outlines the constitution of the police force, its governing bodies and authority. The bill, recognizing the need to reform the police, has focused on making the police more independent and on loosening political controls, thought to be toxic by police officials. For example, Chapter III establishes the State Security Commission. Although the police is superintended by the state government,<sup>15</sup> that superintendence would be exercised by the commission, which is comprised of eight members, wherein elected politicians have only three members, a minority.<sup>16</sup> In fact, if a non-political commission member turns to politics by joining a political party, he shall be disqualified from continuing to serve on the commission.<sup>17</sup>

On the one hand, having a commission that is controlled by non-politicians might signal a move toward professionalism and expertise. On the other hand, however, a commission dominated by non-elected persons will allow for very little, if any, political and civil control, which can suggest a lack of accountability to the public. Moreover, the composition of the commission makes no room for representatives of the public in the form of non-government organizations that can provide valuable input regarding the maintenance of human rights standards and sustained attention to issues routinely overlooked by police officials, such as various types of police misconduct. Furthermore, the way by which the Commission is constituted does not allow for input or consultation by civil society groups.

Chapter 4 lists the duties, powers, and responsibilities of the police. Among the list one can find a duty to aid individuals in danger of harm, create and maintain a feeling of security in the community, promote amity, help the weak and poor people of society, and behave in a courteous manner toward the public. More importantly, the police have a duty to ensure that a person taken into custody "is not denied his rights and privileges and in particular ensuring that an arrested person in custody is able to inform a person of his choice the fact of his detention". The police are to "arrange for legally permissible sustenance and shelter to every person in custody and making known to poor persons in custody provisions of legal aid schemes being enforced in the State and also inform the authority concerned to provide such aid".<sup>18</sup>

Indeed, these are important measures. However, reading the Model Bill it is unclear how they will come to be implemented, enforced, and maintained, especially when current corrupt police practices abound. True, Chapter V deals with the regulation, control and discipline of the police force, but the provisions there suffer from the same problems as the Police Act of 1861. Namely, they provide for an internal mechanism for checking police misconduct. But if said misconduct is rampant and pervasive, and indeed has developed into an institutional culture, then checking behavior that is sanctioned by superior officers and police officials is pointless.<sup>19</sup>

---

<sup>15</sup> Section 30(1) of the proposed bill.

<sup>16</sup> Section 29(2) of the proposed bill.

<sup>17</sup> Section 36(1)(c) of the proposed bill.

<sup>18</sup> Sections 44(10) and 44(11) of the proposed bill.

<sup>19</sup> For an extreme example of collusion between police officers see *State of U.P. v. Ram Sagar Yadav* (Criminal Appeal No. 69 of 1975, decided 22<sup>nd</sup> January 1985). A.I.R. 1985 S.C. 416 (March-April).

Indeed, such behavior will likely not even be investigated because it is considered to be the norm.

In conclusion, the NPC Model Bill is inadequate because it does not establish mechanisms for police accountability and transparency. Below will be a survey of possible mechanisms that can be adopted from other countries and adapted to the Indian experience. Second, as part of the project of accountability, the Model Bill does not address how the police can engage with other bodies, especially the community it protects<sup>20</sup>

## **B. Other Reform Attempts**

Besides the National Police Commission Model Bill, recommendations have also been made by the National Human Rights Commission (NHRC), the Law Commission, the Ribeiro Committee, the Padmanabhaiah Committee, the Malimath Committee, and the Soli Sorabjee Committee.

For example, in 1994, The Law Commission took it upon itself to investigate the problem of custodial crime.<sup>21</sup> The problem was not that custodial crime is permitted, for it surely is not,<sup>22</sup> but that torture, coerced confessions, and routine violence were widespread among India's police force; so much so that the enforcement of these provisions was the exception and not the rule. Although the Commission acknowledged that the police cannot investigate their own when it comes to custodial crimes because they would be reluctant to pursue such an investigation, it declined to recommend a complete revamping of the mechanisms for checking police conduct by establishing an agency for that purpose. The Commission wrote:

"... We think it may not be possible or feasible owing to financial considerations to set up another independent agency exclusively for the purpose of investigating complaints relating to the commission of custodial offences."<sup>23</sup>

Instead, the Law Commission believed that

"... there is a need for the higher officers of the police administration to impress upon the police officers in-charge of the police stations the need to record information relating to the commission of custodial crimes and every administrative effort should be made to implement this policy and to take disciplinary action against the erring officials.... We think that it would be desirable and proper to provide by law for the filing of petition on the refusal of the police to register a case of custodial violence before a judicial officer would keep the police under

---

<sup>20</sup> See also, See, generally, Maja Daruwala, G.P Joshi, Mandeep Tiwana, Police Act, 1861: Why we need to replace it? 14 (CHRI, July 2005) available at

[http://www.humanrightsinitiative.org/programs/aj/police/papers/advocacy\\_paper\\_police\\_act\\_1861.pdf](http://www.humanrightsinitiative.org/programs/aj/police/papers/advocacy_paper_police_act_1861.pdf)

<sup>21</sup> Law Commission of India 152<sup>nd</sup> Report on Custodial Crimes (1994), available at

<http://lawcommissionofindia.nic.in/101-169/Report152.pdf>

<sup>22</sup> See, e.g., Articles 21, 22 of the Indian Constitution and sections 166, 167, 220, 330, 331 340-348 of the Indian Penal Code and various provisions in the Criminal Procedure Code.

<sup>23</sup> Law Commission Report, supra note \_\_\_\_ at p. 36.

supervision and control and it will inspire people's confidence. What we envisage is proposal whereunder, on refusal by the police to register a case of custodial... offence, it should be possible to approach an appropriate judicial authority who should be empowered to conduct a preliminary inquiry and then (if satisfied that such action is called for) to direct the filing of a complaint before the competent magistrate.... We recommend that a new section... be inserted in the Code of Criminal Procedure, 1973 on the above lines."<sup>24</sup>

Despite the recognition by the Law Commission that the problem of police misconduct is grave and pervasive, these recommendations were not implemented. The problem, therefore, has been a lack of political will to get any meaningful reform passed, despite many reports to that effect. The lack of political will is at least partially traced to the current institutional design which benefits elements that enjoy the status quo, namely, the lack of accountability and impunity.<sup>25</sup> The problem has become so severe that even when the executive attempts to reform the police, it fails. In 1997, the Home Minister of India wrote to all the states' Chief Ministers calling on them to reform their state police forces. This was done against the background of numerous reports detailing police misconduct and a general dissatisfaction with the professional level of the police. However, not a single Chief Minister replied and very few meaningful steps were taken to ameliorate the situation. To be sure, even before the 1997 letter, there were reports and committees calling for police reform.

The various reports were mostly ineffectual and ultimately led to a petition to the Supreme Court by ex-police officers asking the government to implement the recommendations of the National Police Commission. In particular, they demanded that the police be insulated from illegitimate political pressures.<sup>26</sup> The petition essentially echoed the Ribeiro Committee, the Padmanabhaiah Committee and the Malimath Committee, which were dominated by Home Ministry officials. Again, the police believed that the solution is giving more discretion to police officers rather than the imposition of stricter standards or other measures of civil and political control, which are completely absent from their agenda. A recent roundtable on Police Reform, held in June 2003, concluded that, among other things, the police must be freed from illegitimate political control.<sup>27</sup>

A further committee, known as the Soli Sorabjee Committee also issued its recommendations and a model police act in 2006.<sup>28</sup> This was actually a drafting committee of the Ministry of Home Affairs, but it too has not been realized. The reason is partly because of the Supreme Court judgment handed down the same year. The Supreme Court, in an order dated 22.09.06, relying on past reports, said that

---

<sup>24</sup> Id. at 36-37.

<sup>25</sup> See CHRI report at p. 10.

<sup>26</sup> Prakash Singh v. Union of India, Writ Petition (Civil) No. 310 of 1996. See also CHRI report at p. 11.

<sup>27</sup> Report of the Roundtable Conference on Police Reforms (26-27 June, 2003, CHRI), available at [http://www.humanrightsinitiative.org/publications/police/rtc\\_report\\_trivandrum.pdf](http://www.humanrightsinitiative.org/publications/police/rtc_report_trivandrum.pdf). This conclusion also aligns with Sankar Sen's thoughts on the needed reform.

<sup>28</sup> The Model Police Act, 2006, available at <http://www.pucl.org/Topics/Police/2007/The%20Model%20Act.%202006%2030%20Oct.pdf>. It should be noted that the Model Act of 2006 does include a chapter on police accountability and setting up an external complaint commission.



“many of the deficiencies in the functioning of the police had arisen largely due to an overdose of unhealthy and petty political interference” and concluded that it was important “to insulate the police from political interference”.<sup>29</sup> With respect to police misconduct the Supreme Court held that there ought to be a Public Complaints Authority, selected on the basis of recommendations made by the State Human Rights Commission, the Lok Ayukta’s and the State Public Service Commissions.<sup>30</sup> Those recommendations have not been implemented.

It is important to realize that insulating the police force from political control is one thing; establishing independent civilian control is quite another. This report will focus on the latter aspect. True, professionalization and political insulation are highly desirable, especially in a situation like India's where the police are superintended by the state government, i.e. the ruling political party. Almost all state police commissions and the National Police Commissions have found misuse by politicians for partisan ends.<sup>31</sup> Police officers feel compelled to comply with illegitimate political directives because they know that disobedience might lead to their transfer to a different post.<sup>32</sup> The police are generally heavily dependent on the executive for appointments, disciplinary measures, salaries, tenure, physical conditions, residency transfers, and the like. Thus, not only is the police force politicized, but it adopts the positions of those currently in power to the detriment of political minorities, poor persons, scheduled castes and tribes, and the generally disempowered.<sup>33</sup> The political linkage also discourages good officers from doing what is right, for fear of political reprisals.<sup>34</sup> On the other hand, there are documented cases of collusion between politicians and police officers.<sup>35</sup> In a way, given the political control over the police, this is inevitable. Indeed, even though India has been independent for some sixty years, the police are carrying on the colonial British legacy.<sup>36</sup>

These problems are indeed severe, but it is folly to believe that simply severing the connections between the executive and the police will solve the grave problems all the committees and commission have reported on. In a country where the poor face torture by the police on a day-to-day basis, it is imperative that civilian control be

---

<sup>29</sup> The Supreme Court in its Judgment of 31.12.2006 in Writ Petition (Civil) No.310 of 1996.

<sup>30</sup> Id.

<sup>31</sup> Report of the Roundtable Conference on Police Reforms (26-27 June, 2003, CHRI), p.5, available at [http://www.humanrightsinitiative.org/publications/police/rtc\\_report\\_trivandrum.pdf](http://www.humanrightsinitiative.org/publications/police/rtc_report_trivandrum.pdf)

<sup>32</sup> See, e.g., Section 12 of the Police Act of 1861.

<sup>33</sup> See, generally, Maja Daruwala, G.P Joshi, Mandeep Tiwana, Police Act, 1861: Why we need to replace it? (CHRI, July 2005) available at

[http://www.humanrightsinitiative.org/programs/aj/police/papers/advocacy\\_paper\\_police\\_act\\_1861.pdf](http://www.humanrightsinitiative.org/programs/aj/police/papers/advocacy_paper_police_act_1861.pdf).

See also interview with Sankar Sen, who is of the same opinion.

See also the Police Reform Roundtable, supra note \_\_\_ at p. 6.

<sup>34</sup> Most notably, in the aftermath of the anti-Muslim Gujarat riots of 2002, several senior police officials who protected Muslims from Hindu rioters were transferred out. Action was taken against others who disciplined inferior officers for failing to protect Muslims. This was possible because the BJP was the party in control in Gujarat at the time. See, We Have No Orders To Save You: State Participation and Complicity in Communal Violence in Gujarat 49 (Vol. 14(3) April, 2002), available at <http://www.hrw.org/legacy/reports/2002/india/gujarat.pdf>. Residency transfers have been somewhat ameliorated by the establishment, in 1985, of the Central Administrative Tribunal, a special court that deals solely with police service matters and grievances of police officers. Many states have established similar tribunals.

<sup>35</sup> Id. at 6

<sup>36</sup> Interview with Sankar Sen.

clear, independent and a threat to police misconduct everywhere. To place faith in the State Human Rights Commissions which are toothless tigers often subservient to the government and which have been recently criticized by the Chief Justice himself,<sup>37</sup> is to miss the point completely. Indeed, not all states have established a human rights commission, and even those that exist do not function properly.<sup>38</sup> State human rights commissions are also considerably overtaxed. Their purpose is to deal with a variety of human rights abuses and they simply do not have the capacity and resources to focus on police issues. In addition, action by human rights commission can be circumvented once the state adopts an enquiry committee of its own. And, non-implementation of human rights commissions is common.<sup>39</sup>

Moreover, where the elimination of illegitimate political control has been attempted, for example in the state of Kerala, corruption did not decrease. This point was made in the roundtable on police reform in 2003:

"In Kerala, where this simple theory has been enacted as informal policy, the state's police has indeed secured some freedom from the blight of unlawful political control. However, according to some, this has been, to some extent, a mixed blessing. "Faceless middlemen" have replaced the corrupt politicians in debasing policing. Insulation from illegitimate political control has not resulted in reducing police corruption. In fact, corruption at the police station level is alleged to have increased. At least when politicians misbehave, as public figures, they can be forced to answer to the media and eventually to the public. The faceless middle man, who is often more dangerous than a politician, can obstruct democratic policing with no thought to his accountability or a potential media backlash".<sup>40</sup>

Thus it is apparent that a mere disassociation of police from political powers is insufficient to eliminate corruption. In fact, it holds the potential to provide even less accountability than is found at present. To be sure, political isolation and institutional independence is necessary in order to promote professional norms. However, this cannot be done simply by introducing an institutional separation. The police can be autonomous only after, and not before, they have proven themselves to be an organization subject to the rule of law. Thus, the rest of this report will concentrate on the possible schemes that can provide the requisite civil supervision and police accountability. Moreover, this report will focus on external mechanisms of control. Internal mechanisms are largely viewed as ineffectual by the public because it is excluded from the disciplinary process.<sup>41</sup> It should be borne in mind that these mechanisms presently do not even exist, so we are not talking about ensuring compliance with existing laws but the enactment of new measures.

A further issue that will not be addressed directly is the current possible bars for prosecution under Indian law. Section 197 of the Code of Criminal Procedure

---

<sup>37</sup> Citation.

<sup>38</sup> Police Reform Roundtable, p. 8.

<sup>39</sup> Swati Mehta, Human Rights Commissions and Oversight of Police 7, 9, CHRI Report, available at [http://www.humanrightsinitiative.org/programs/aj/police/res\\_mat/hrc\\_oversight\\_of\\_police.pdf](http://www.humanrightsinitiative.org/programs/aj/police/res_mat/hrc_oversight_of_police.pdf)

<sup>40</sup> See Police Reform Roundtable.

<sup>41</sup> Id. at 8.

stipulates that public servants cannot be prosecuted without the sanction of the appropriate government, where the public servant commits an offence "while acting or purporting to act in the discharge of his official duties".<sup>42</sup> Public servants always resort to section 197 claiming that their act was in the scope of official duties and that the court lacks jurisdiction due to lack of government sanction. The Law Commission noted in its 1994 report that, "no court has taken the view that sanction is necessary for the prosecution of a public servant for custodial offences".<sup>43</sup> The Law Commission did recommend, however, that a clarification be inserted that in cases of custodial crimes the section cannot be used, but the recommendation has not been implemented. It is important to note that the main obstacle facing successful prosecution is not section 197 per se, but much earlier, having to do with the culture of covering up and complicity in police misconduct. It should be noted, however, that section 197 does pose a real problem, because even though torture is not considered to be "within the discharge of official duties" by the courts, it does cause cases not to be filed in the first place. In cases of police misconduct, sanction is seldom given or requested.<sup>44</sup>

## **IV. Instances of Police Misconduct**

This section will briefly highlight the varieties of police misconduct that occur on a regular basis in India's police force. What is important to note is the disparity between what the law prohibits and what happens on the ground. Cases of police misconduct are so pervasive and well documented that they have become the norm, rather than the exception. Thus, they will only be briefly mentioned here, for the purpose of pointing out the current harms that need redressing.<sup>45</sup>

### **A. Torture and violence**

Torture and violence is widespread in India and is a routine strategy of police control. It includes custodial violence, physical and mental abuse, rape, threats, humiliations, and deprivations of food and water and medicines. Torture occurs because it is met with acquiescence by the superior officers. Thus, from the eyes of the people, the governmental institutions are granting it a perceived legitimacy. Citizens are usually powerless to report on torture. The police are reluctant to investigate, and when they need to explain why the person died or was injured, they often say that he committed suicide when in custody or they cite an "encounter", meaning that the person either fled or resisted the arrest, which brought about the use of force. Naturally, as with all cases of police misconduct, the ones most affected are poor and socially marginalized who lack the political clout to affect police procedures. Citizens feel insecure and helpless against such repressive measures. Moreover, the complicity of police officers makes filing a complaint impractical. Who would investigate it? Who would press the charges? Who would prosecute the offenders and bring them to justice? Often the

---

<sup>42</sup> Section 197(1) of the Code of Criminal Procedure 1973

<sup>43</sup> Law Commission Report on Custodial Crimes, supra note \_\_\_ at 40. See, e.g. Ganapathy Gounder v. Emperor, AIR 1932 Mad. 214, 315 : 33 Cri. L. J. 557, cited in the Law Commission Report.

<sup>44</sup> Torture in India 2008: A State of Denial 4, 29 (Asian Center for Human Rights, 2008), available at [www.achrweb.org/reports/india/torture2008.pdf](http://www.achrweb.org/reports/india/torture2008.pdf)

<sup>45</sup> See also, Feudal Forces: Democratic Nations: Police Accountability in Commonwealth South Asia, Ch. 3 (2007) available at [http://www.humanrightsinitiative.org/publications/police/feudal\\_forces\\_democratic\\_nations\\_police\\_accountability\\_in\\_cw\\_south\\_asia.pdf](http://www.humanrightsinitiative.org/publications/police/feudal_forces_democratic_nations_police_accountability_in_cw_south_asia.pdf)

police refuse to register a FIR, and even if a FIR is ultimately registered, it is followed by inaction or police harassment of the victim or both. This also results in a basic fear of interacting with the police. Citizens learn that the police are not an entity that is supposed to help them, but rather something that is to be avoided.

To this one should add the inadequacies of the National Human Rights Commission (NHRC) and the State Human Rights Commissions. These bodies have rarely reacted to reports of torture, despite them being responsible for investigating all human rights violations of which they become aware.<sup>46</sup> Furthermore, the NHRC tends to prefer interim monetary compensation over prosecuting the offenders. In one disturbing case, the NHRC denied the complainants access to evidence and proceeded to close the case despite the police agreeing that torture took place. Human rights organizations believe this practice is widespread.<sup>47</sup>

NHRC statistics indicate that in the years between 2003 and 2008, 7,468 persons at an average of 1,494 persons per year of 4 persons per day have died in police and prison custody in India. However, the real numbers are much higher. Cases of persons whose torture did not lead to death are not recorded and the NHRC does not distinguish between "normal" custodial death, such as old age, and death resulting from torture.<sup>48</sup> According to one estimate, there are 1.8 million cases of torture, ill treatment, and inhuman behavior in India every year.<sup>49</sup> The number of actual prosecutions from these numbers is staggeringly low. Despite having about 1,500 cases of (reported) custodial death per year, only 4 police officers were convicted in 2004 and 3 officers were convicted in 2005. The number of indictments was equally low: only 37 officers in 2004 and 25 officers in 2005.<sup>50</sup> This is the picture of immunity.

Two Steps have usually been recommended: ratifying the Convention Against Torture and enacting a national law against torture. However these measures, as important as they are, will not solve the pervasive problem of torture when it remains an "acceptable operational practice" that is sanctioned, implicitly or explicitly, by police officials. Thus, true reform cannot be limited to legislative enactments, but requires a cultural change backed up by the appropriate institutional design that can oversee and implement such change.<sup>51</sup> It is also worth emphasizing that judicial attempts at prosecuting torture or awarding compensation cannot do the necessary work of eradicating the practice.<sup>52</sup> Indeed, as with any piecemeal reform, it will be limited to a specific instance of cases and is unlikely to provide the necessary overhaul of the system.

---

<sup>46</sup> See, e.g., People's Tribunal on Torture, Final Jury Report, West Bengal (9<sup>th</sup>-10<sup>th</sup> June, 2008).

<sup>47</sup> ACHR report, ch. 9.

<sup>48</sup> Reference NHRC reports and ACHR report, p. 7.

<sup>49</sup> Torture and Impunity in India 1 (Peoples Watch, 2008) cited in Feudal Forces: Reform Delayed: Moving from Force to Service in South Asian Policing 34 (CHRI, 2008).

<sup>50</sup> ACHR report, p. 99.

<sup>51</sup> See also the recommendations of ACHR in their comprehensive report on torture in India, supra note

<sup>52</sup> For examples of such cases see Id.

## **B. Disappearances**

Closely related to, and often involving, torture, is the case of disappearances. Thousands of people have disappeared after encountering the police. Some are later found to be dead, and some are never found. Often, the family needs to pay a bribe in order for the prison officials to confirm their relatives are detained. The U.S. State Department, in its human rights practices report, has consistently cited India for cases of forced disappearances, further stating that no real accountability mechanism exists to check police forces.<sup>53</sup> The State Department writes that:

Despite a special investigatory commission, the government made little progress during the year in holding hundreds of police and security officials accountable for disappearances committed during the Punjab counterinsurgency and the Delhi anti-Sikh riots of 1984-94. On February 25, the NHRC criticized the Justice Bhalla Commission for its inability to identify 657 victims still unaccounted for during the Punjab counterinsurgency. The government initially had investigated 2,097 cases of death and cremation during that period.<sup>54</sup>

## **C. Corruption**

The level of police corruption in India is breathtaking. According to a 2005 report by "Transparency International India", more than one tenth (12%) of all households in India have reported to have paid bribes, in that year, to the police to get service, and 87% of those who interacted with the police perceive it to be corrupt.<sup>55</sup> Most people (60%) who encounter the police face an indifferent attitude, which is often a signal that they should pay a bribe. There are also cases where torture would result if the bribe isn't paid.<sup>56</sup> Complaints of bribery are likely to bring about retribution by the police. It should be noted that perceptions of police corruption do not differ dramatically between low police staffed states and high staffed states,<sup>57</sup> thus strengthening the argument that corruption is not merely due to police overextension and lack of suitable infrastructure, even though that is a real concern as well.

Not only is corruption rampant, it is done in the open. 81% of those who paid bribes reported doing so directly to police officers rather than middlemen. This suggests that bribery itself has become institutionalized and that some instances of it are not even perceived as deviant.<sup>58</sup>

The ramifications of corruption are wider than just a diversion of needed resources and the undermining of investigations. It fosters a corrupt culture, the collusion of

---

<sup>53</sup> See, e.g., 2008 Country Reports on Human Rights Practices: India, available at <http://www.state.gov/g/drl/rls/hrrpt/2008/sca/119134.htm>

<sup>54</sup> Id.

<sup>55</sup> Indian Corruption Study to Improve Governance: Volume 9, Corruption in Police Department 1 (2005), available at <http://ipc498a.files.wordpress.com/2008/03/ti-india-police-corruption-study-2005.pdf>

<sup>56</sup> ACHR report, supra note \_\_\_\_ at 20.

<sup>57</sup> Id. at 4.

<sup>58</sup> Id. at 8.

police and criminals, individual crime, organized crime, and the exploitation of already victimized groups such as trafficked persons and refugees. Widespread levels of corruption merely attest to the inability or unwillingness of the authorities to deal effectively with the problem. It also suggests that current mechanisms of police control are ineffective in bringing about an end to corrupt practices.<sup>59</sup>

It is true that corruption has cultural roots that can be traced to the organizational culture of the British Raj,<sup>60</sup> but this is precisely the point: practices that have remained unchanged for over 100 years must be transformed, and it is unlikely that such a transformation can completely come from within.

#### **D. Failure to observe due process**

The police systemically fail to observe due process norms. Many arrests and searches are made without the necessary prerequisites such as a warrant. People are detained for longer periods than permitted or without any reasonable cause. Confessions are often extrapolated through the use of forbidden means, such as violence and threats. In many cases, detainees cannot contact a next of kin or friend and are brought before a magistrate after the 24 hour period allotted by law has expired.<sup>61</sup>

#### **E. Non-registration of FIR**

A FIR (first information report), the most important document without which the police will not initiate an investigation, is often the source of corruption. Under Indian law, the police must register all FIR's. However, cases of non-registration are extremely common. Indeed, it is one of the most widespread grievances of citizens, particularly from the weaker sectors of society. A variety of reasons account for non-registration: lack of resources is often cited and the desire for a bribe in exchange for registration is common as well.

#### **V. Accountability Mechanisms and the Supreme Court**

The problems that have been highlighted above can be divided into two main categories: reforms that have to do with guaranteeing police autonomy, on the one hand, and reforms that ensure police accountability, on the other hand. Autonomy reforms require a professionalization of the police service, less dependency on partisan elements that have the power to direct police action for their own interests, and the allocation of more funds to support police infrastructure, training facilities, salaries, and education on protecting human rights. Accountability reforms are a necessary companion to autonomy reforms. Without accountability reforms, illegal

---

<sup>59</sup> See, Police Accountability: Too Important to Neglect, Too urgent to Delay, report by the Commonwealth Human Rights Initiative (2005), p. 7.

<sup>60</sup> Arvind Verma, Cultural Roots of Police Corruption in India, 22 Policing: An International Journal of Police Strategies & Management 264 (1999).

<sup>61</sup> Feudal Forces: Democratic Nations: Police Accountability in Commonwealth South Asia 26 (2007) available at [http://www.humanrightsinitiative.org/publications/police/feudal\\_forces\\_democratic\\_nations\\_police\\_accountability\\_in\\_cw\\_south\\_asia.pdf](http://www.humanrightsinitiative.org/publications/police/feudal_forces_democratic_nations_police_accountability_in_cw_south_asia.pdf).

conduct such as torture and corruption will remain unchecked.<sup>62</sup> It is thus necessary to expound on how such reforms will look like and what kind of institutions can serve the role of ensuring accountability to the public.

In its judgment dated September 22 2006, the Supreme Court ordered that:

"There shall be a Police Complaints Authority at the district level to look into complaints against police officers of and up to the rank of the Deputy Superintendent of Police. Similarly, there should be another Police Complaints Authority at the State level to look into complaints against officers of the rank of Superintendent of Police and above. The district level Authority may be headed by a retired District Judge while the State level Authority may be headed by a retired Judge of the High Court/ Supreme Court. The head of the State level Complaints Authority shall be chosen by the State Government out of a panel of names proposed by the Chief Justice; the head of the district level Complaints Authority may also be chosen out a panel of names proposed by the Chief Justice or a Judge of the High Court nominated by him. These Authorities may be assisted by three to five members depending upon the volume of complaints in different States/ districts, and they shall be selected by the State Government from a panel prepared by the State Human Rights Commission/ Lok Ayukta/ State Public Service Commission. The Panel may include members from amongst retired civil servants, police officers or officers from any other department, or from the civil society. They would work whole time for the authority and would have to be suitably remunerated for the services rendered by them. The Authority may also need the services of regular staff to conduct field inquiries. For this purpose, they may utilize the services of retired investigators from the CID, Intelligence, Vigilance or any other organization. The 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 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,

---

<sup>62</sup> There is a connection between autonomy and accountability. As a participant in the police reform roundtable has stated: "Plagued by a lack of resources, the police have become accustomed to using underhanded, coercive tactics to "solve" crimes, such as third degree methods and intimidation of family members, in place of more scientific modes of investigation. To make a bad situation worse, this abdication of responsibility on the part of the police can continue unabated as there is no credible redressal system properly in place to deal with public grievances." Police Reform Roundtable, supra note \_\_\_ at 7-8. Similar findings were made by the Law Commission: "...prolonged stress and strain and a long hours of duty in connection with law and order and VIP duty, very little time is left for police to investigate cases for detection of crimes. The police, under pressure of quota of work assigned to them, driven by a desire to achieve quick results, leave the path of patience, reticence, and scientific interrogation, instead they resort to the use of physical force in different forms to pressurize the suspect of accused to disclose all the facts known to him. While the law recognizes the need for use of force by the police in the discharge of their duties on some specific occasions like the dispersal of violent mob or the arrest of a violent bad character who may resist the arrest, they use force against the individual in the custody. Law Commission Report, supra note \_\_\_ at 49.

against a delinquent police officer shall be binding on the concerned authority."<sup>63</sup>

Despite the unequivocal order, things have not improved and states have generally failed to comply with the Court's order.<sup>64</sup> Most importantly, proper complaints authorities have not been established. At present, only 18 states have acted police complaints authorities.<sup>65</sup> But even those states that have legislation (some have established agencies without legislation) have not actually established authorities or have non-functioning authorities. The mandate of every authority varies from state to state and none complies fully with the Court's directive. These authorities suffer from lack of funding and resources, curtailed mandates, limited powers, and understaffing. Some have independent investigative powers, but most do not. Moreover, their composition does not lend to a robust, neutral and impartial oversight role. They are headed by retired judges, who are not in a position to carry out police inquiries. Thus, they often rely on police findings. Some are staffed by former police officers, and some by present police officers and sitting members of parliament. As a result, there is no sufficient institutional separation between the authority and the police.<sup>66</sup>

On a more alarming note, fledgling authorities that have begun to act have received strong criticism from police. In Goa, for example, police officials have complained that the complaint authority has ruffled the police hierarchy and undermined police discipline. The head of the Goa police remarked that officers are paraded before the commission.<sup>67</sup> As a result of police pressure, the Goa government has introduced a new bill which dilutes the authority's powers and divests them with the lok ayukta (general ombudsman) of the state. The problem is that Goa does not have a lok ayukta, and they are generally ineffective bodies because their recommendations are not binding. The police, on their part, are supporting the bill because they do not want to deal with the criticism and oversight of an independent agency.<sup>68</sup>

It is possible that the Supreme Court foresaw the delays and resistance its directive would provoke. After the 2006 judgment, six states filed review petitions. When those were denied, and after the states failed to comply with the Court's directives, the Court set up, in May 2008, a monitoring committee, headed by a former Supreme Court Justice (the two other members are a former police official and a government official from the Union Ministry of Home Affairs). The committee is charged with monitoring the progress of the states in implementing the Court's judgment. However,

---

<sup>63</sup> Prakash Singh v. Union of India, Writ Petition (Civil) No. 310 of 1996. This is only one of seven directives. The other directives, that have yet to be implemented as well, order the states and central government to set up a state security commission, merit-based appointment of the Director General of the Police, granting fixed minimum tenure to police officers, set up a police establishment board which will decide on promotions, transfers and postings, set up a national security commission that will be concerned with the selection of the Chiefs of Police, and separate the investigation and law and order functions of the police.

<sup>64</sup> Pushkar Raj & Shobha Sharma, Culture of encounters - Time to fix accountability on the police, The Tribune, 06 November 2007, available at <http://www.tribuneindia.com/2008/20080106/edit.htm#1>

<sup>65</sup> Assam, Arunachal Pradesh, Jharkhand, Meghalaya, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Kerala, Maharashtra, Rajasthan, Sikkim, Tripura, Orissa, Punjab and Uttarakhand. See, Your Guide to Using Police Complaints Authorities 7 (CHRI, 2009).

<sup>66</sup> Interview with Sharan Srinivas, research officer for police reforms, CHRI, conducted on July 8, 2009.

<sup>67</sup> Id.

<sup>68</sup> Id.



a year after its establishment, it is apparent that the committee has done very little. It has met only 8 times and has sent letters to only 8 states out of the 28 under its charter. These letters have not resulted in any change on the ground.<sup>69</sup> The states have continued to disobey the judgment, and those that have taken steps have either diluted it of its bite or undermined it completely.<sup>70</sup>

Checks on police conduct must be both reliable and effective and must be perceived by the public as such. These checks can be internal or external or both. As Sankar Sen notes, many policing scholars believe that internal control is preferable to external control, thinking that internal control can be more efficient, thorough and effective.<sup>71</sup> However, these scholars recognize that external control is necessary when the police cannot do a satisfactory job in controlling themselves. In addition, the public tends to be more suspicious when the organization being examined is examined by its own personnel. We will first examine the role and value of internal controls and then move on to external controls.

## **VI. Internal Accountability Mechanisms**

Historically, internal accountability mechanism came first. The Police Act of 1861, for example, details disciplinary measures that can be taken against police officers by superior officers for breach of duty. Other internal mechanisms can include standard setting, internal review boards (e.g. an internal investigations department), general guidelines, and designing an environment of discipline. More systematic mechanism include developing and maintaining statistical databases relating to crime and enforcement that the police will periodically monitor and use to draw the appropriate conclusions.

Internal mechanisms are the responsibility of the police, and it is its job to make sure they function properly. This means that such mechanisms will be effective only if there is an organizational commitment to such processes. If the police hold themselves up to high standards then there is a greater chance that such review mechanism will be effective.<sup>72</sup>

In a sense, internal mechanisms can be more important than the external ones because they have to do with the working culture of the police. This is what the police encounter on a day to day basis. The police will always be aware of more faults and failures than an external agency that is removed from the action and relies on reports by complainants. Thus, it is better located, from an institutional perspective, to realize the monitoring role essential for maintaining accountability. Adequate internal mechanisms are thus crucial to a properly functioning police force. If the police leadership does not view such mechanisms favorably, there is little chance the

---

<sup>69</sup> See Saikat Datta, Change Resistance: A Committee Sans Commitment Delays Reform of our Police, Outlook (June 15, 2009) available at [http://www.outlookindia.com/fullprint.asp?choice=1&fodname=20090615&fname=Police+reforms+\(F\)&sid=1](http://www.outlookindia.com/fullprint.asp?choice=1&fodname=20090615&fname=Police+reforms+(F)&sid=1)

<sup>70</sup> Feudal Forces: Reform Delayed: Moving from Force to Service in South Asian Policing 34 (CHRI, 2008).

<sup>71</sup> Sankar Sen, Human Rights and Law Enforcement 51-52 (2002).

<sup>72</sup> See, Police Accountability: Too Important to Neglect, Too urgent to Delay, report by the Commonwealth Human Rights Initiative (2005), p. 52.

subordinate officers will. As a result, internal oversight mechanisms such as internal investigations or an internal complaint bureau might be understaffed or underfunded and receive little, or perfunctory, compliance from the police forces it oversees.<sup>73</sup> Statistical databases, for example, can be manipulated. It should also be noted, however, that even if internal mechanisms function properly, they will inevitably be perceived as unsatisfactory by the public and instill little confidence. This is so because so much of the work by these bodies is secret. Findings are usually not made public and disciplinary proceedings are not meted out in a visible process like judicial trials.<sup>74</sup>

Moreover, there is abundant literature on the ineffectiveness of internal mechanisms. Longstanding empirical research has demonstrated that police officers do not "rat" on their colleagues, but display a high level of loyalty, making internal investigations difficult. This means that police officers are "increasingly expected to tolerate, although not necessarily condone, misbehavior... by other officers, and the principle of mutual nondenunciation (the "blue curtain")... Hence, the deviant behaviors of police officers are mostly not seen merely as the consequence of deviant individual personalities. On the contrary, many of them are likely to be based on perceptions of a wide organizational subculture, which significantly contradicts the declarative formal messages of the organization."<sup>75</sup> A further complication with police officers investigating their colleagues is the tendency of the police to believe police officers and discount the testimony of criminal suspects, whom the police are already predisposed against.

At the same time, some scholars favor internal mechanisms over external ones. Most notably, David Beyley highlights the problems associated with external monitoring. According to Beyley, there are six main problems with external monitoring.<sup>76</sup>

First, it is reactive. It catches people after the act instead of preventing it. Many acts will not be detected and there is no guarantee that other officers will be deterred.

Second, focusing on individual deterrence, as many external agencies do, touches only on the symptoms of the problem. The real issues that lead to police misconduct have to do with organizational and occupational culture, things that are not remedied by having an external authority. As Beyley argues, what people do is more powerfully shaped by what their associates expect of them than by their personal background or personal character.<sup>77</sup> Thus behavior is influenced by the police organization itself and not by external norm enforcement.

Third, an outside agency is likely to do worse than an internal agency. Outside agencies will know less than the police force collectively. They are dependent on others to bring them information. The police are likely to know more about

---

<sup>73</sup> On the low level of cooperation with internal mechanisms and the phenomenon of "closing ranks" see *id.* at 52.

<sup>74</sup> *Id.* at 54.

<sup>75</sup> Sergio Herzog, *Suspect Police Officers Investigated by Former Police Officers: Good Idea, Bad Idea?* 23 *Law & Pol'y* 441, 442-43 (2001) (citing sources).

<sup>76</sup> See David Beyley, *Getting Serious About Police Brutality*, in *Accounting for Criminal Justice* 93-99 (Philip C. Stenning, ed., 1995).

<sup>77</sup> *Id.* at 95.

misconduct by other officers. Outside discipline can be counterproductive because it undermines the willingness of the police to discipline itself. Moreover, it threatens the image of police officers as professionals. Police view themselves as skilled professionals who do forensics, use scientific evidence and have legal expertise. Civilian review threatens that status, implying that inexperienced outsiders can evaluate the propriety of police actions.<sup>78</sup>

Fourth, civilian review raises the concern of improper and political influence on the police. The police are usually viewed as an autonomous body that should be removed from partisan considerations. Having civilian review jeopardizes this independence. The police are thus presented with a difficult choice: cooperate with outsiders, which can also undermine command authority, or stand alongside lifelong colleagues. This dilemma, Beyley suggests, is non-existent or is attenuated in internal review settings.<sup>79</sup>

Fifth, the ability of an outside group to affect the behavior of police officers is more limited than that of the police organization itself. An outside agency cannot encourage, inspire, or lead by example, which is what is need to uproot longstanding norms.<sup>80</sup>

Sixth, and echoing the similar concerns raised by the 1994 Law Commission report, an external mechanism might be costlier and more cumbersome than internal review.<sup>81</sup>

Despite these concerns, however, Beyley is not discounting the necessity of external mechanisms. The public needs to know that someone is monitoring the police, especially since internal accountability mechanisms can malfunction. The answer, therefore, is multiple levels of accountability.<sup>82</sup> Moreover, one can easily see why internal mechanisms, in India, would be incomplete. In a culture where misconduct and human rights violation have become the norm, often supported by superior officers and operational practice, it is problematic to see how these same superiors can instill a radically apposite organizational culture without the aid on an external agency. While external agencies can perform worse than internal agencies, this can be overcome through the proper budgeting and training of the external agency. It could also be staffed with policing experts and even retired officers who have the necessary experience.

Similarly, there is less concern of overstepping the boundaries of police autonomy. These concerns might exist in countries where the police are indeed autonomous from the political branches, but, as was discussed above, this is not the case in India. The police do not enjoy a high level of political insulation and institutional independence. Thus, Beyley's concern seems unwarranted in this case. As for the police's lack of will to discipline itself should there be an external agency, one need only point to the

---

<sup>78</sup> Id. at 98.

<sup>79</sup> Id. at 99.

<sup>80</sup> Id.

<sup>81</sup> Id.

<sup>82</sup> Maja Daruwala, G.P Joshi, Mandeep Tiwana, Police Act, 1861: Why we need to replace it? 6 (CHRI, July 2005) available at

[http://www.humanrightsinitiative.org/programs/aj/police/papers/advocacy\\_paper\\_police\\_act\\_1861.pdf](http://www.humanrightsinitiative.org/programs/aj/police/papers/advocacy_paper_police_act_1861.pdf)

current problems of police discipline and misconduct that go on *without* any external mechanism.

The point is not that external mechanisms should replace internal mechanisms, but that the two should co-exist. Internal mechanisms are still required because the police will usually have access to more information and internal norms can go a longer way in instilling operating procedures and a proper organizational culture. Generally, police will have a greater incentive to comply with internal orders that are generated by their own superiors from the same hierarchy than with an external agency that they might view in an adversarial manner. In addition, they are likely to cooperate more with police procedures than civilian ones. External mechanisms, therefore, are necessary because the proximity of the police to the internal investigatory process might subvert a proper supervision.

## **VII. External Accountability Mechanisms**

This section will explore the various ways of achieving police oversight through: courts, legislatures, independent agencies, and civil society. It will mostly focus on the role independent agencies play in the oversight process and the prospect of community policing. Since India does not have an independent civilian review process,<sup>83</sup> we will borrow from the experience of other countries that have established such agencies.

### **A. Courts**

One external mechanism of police oversight is action through the courts. Complainants can directly sue police officers for harms caused to them by the police. Prosecutions can be brought by the state against police officers. Public interest litigation is available. Judges can refuse to convict persons if the evidence was obtained illegally, for example through warrantless searches and coerced confessions. These decisions trickle down to the police forces on the ground and influence the police to alter their conduct. If officers are convicted, and if defendants are not, there is an incentive for the police to mend its ways. In public interest litigation, judges can also issue broad directives in the attempt of reforming failing institutions.

However, judicial oversight has its problems. First, section 197 of the code of criminal procedure is invoked by officers seeking immunity for their acts. While the courts have ruled that in cases of grave misconduct, such as torture, section 197 cannot be used, the reality is that many prosecutions are not even initiated because of this procedural hurdle.

But the problems of oversight through the judiciary run deeper. Courts cannot provide the necessary level of deterrence. Inevitably, courts handle individual cases of individual wrongdoing. These cases rarely possess the gravitas to trickle down through the chain of command. As a result, the necessary level of deterrence will not be met. Few cases reach the courts, and in even fewer instances action is taken. Thus,

---

<sup>83</sup> The NHRC and state human rights commissions, though they handle complaints against the police, are not exclusively designated as such agencies.

police personnel can safely assume that charges will not be brought against them. This is compounded by the usual problems of obtaining evidence and presenting witnesses to the misconduct.

The courts, as a state institution, are not institutionally competent to continually monitor another institution such as the police.<sup>84</sup> Courts are backlogged with millions of cases and cannot give the adequate time and sustained attention that is necessary to oversee such a complex institution as the police. Good evidence of that would be the far reaching court order from 2006. The order has met with resistance and the few states that have responded have tried to "reinforce colonial policing practices in the garb of police reform".<sup>85</sup> Furthermore, dealing with problems one case at a time is a very lengthy, costly, and inefficient process.

Judicial oversight is, of course, a necessary part of the accountability and transparency process. Misconduct will eventually reach the court and it will take the necessary action. However, we cannot expect the courts to do everything or even the bulk of the work. The judiciary cannot engage the police on regular basis and they cannot engineer systemic reform based on intermittent interactions. In addition, the courts do not have the necessary expertise to investigate the police like policing experts would.

## **B. Parliament**

Parliaments can and should play a positive role in ensuring police accountability. Parliaments can legislate accountability mechanisms and establish agencies to deal with police misconduct. They can mandate the police to provide periodic reports to be reviewed by Parliament or a committee. Parliament can also set up inquiry committees to address general or particular problems. In that capacity, they can summon police officials. Parliaments are also in the unique position to approve police budgets, as part of their general role of approving the government's budget. And of course, MP's can provoke debates on police matters. MP's enjoy unique access to media and can thus raise awareness of police misconduct.

Here too, however, and similar to courts, parliaments have not been overly effective in monitoring police conduct.<sup>86</sup> Such monitoring will inevitably be intermittent and not systematic. It will focus on the "big picture" and thus rarely be detailed. Parliaments are overtaxed and politicians are involved in many matters; overseeing the police is just one of them. The power to approve police budget could, in theory, have been used as an oversight mechanism. However, this is a blunt instrument when dealing with specific instances and even systematic problems, some of which have nothing to do with budgetary concerns. Moreover, the police budget is only one item among many the parliament has to approve, which means that little attention will be given to it.

---

<sup>84</sup> See, e.g., ROSS SANDLER AND DAVID SCHOENBROD, *DEMOCRACY BY DECREE: WHAT HAPPENS WHEN COURTS RUN GOVERNMENT* (2003).

<sup>85</sup> Feudal Forces: Democratic Nations: Police Accountability in Commonwealth South Asia 38 (2007) available at

[http://www.humanrightsinitiative.org/publications/police/feudal\\_forces\\_democratic\\_nations\\_police\\_accountability\\_in\\_cw\\_south\\_asia.pdf](http://www.humanrightsinitiative.org/publications/police/feudal_forces_democratic_nations_police_accountability_in_cw_south_asia.pdf)

<sup>86</sup> For a summary see Feudal State, CHRI report.

More importantly, the realities of parliamentary democracy make parliamentary oversight difficult. In such regimes, governments enjoy a majority in the parliament and enforce party discipline on the MP's. Thus, there is less incentive to oversee the government on behalf of the coalition parties. True, the opposition can still attempt to oversee the executive, but oppositions tend to be weak and are usually not in a position, such as heads of committees, that will enable them to perform an effective check on the executive on matters of police reform. MP's are also swayed by the current political winds. Elected officials are mostly interested in being reelected, leading them to favor short term goals over long term projects of which they may not be able to reap the rewards.

Most importantly, any attempt at reform will depend on political will, which traditionally, regarding police reform, has been very weak in India. This was explained above: according to the Police Act of 1861 the party in power superintends the police. Superintendence, a vague concept, has been used by the ruling party to advance its own political aims through the police. Thus, there is no felt need by the political branches to change the situation while they are benefiting from it. This makes the hope for police reform scant. The only way to change that is through an invigoration of civil society that must press for reform and convince the politicians that it is also in their interest to do so.

## **C. Independent Statutory Agencies**

One of the best oversight mechanisms is an independent agency concerned with human rights violations. When the agency is independent, adequately funded and staffed, and can make binding findings and recommendations the potential for oversight increases. Although controversial at first, external agencies are necessary. First, internal mechanisms can and do malfunction. Second, the police are ultimately accountable to the public, thus the public needs to oversee their operations. Third, as a result of an external agency, more information is brought to light regarding police misconduct. Fourth, reforms have a better chance of being followed through if there is an external agency that constantly pushes and oversees them. Finally, internal mechanism cannot instill complete public confidence in the police.<sup>87</sup> Two options will be examined below. First, an external agency in the form of a general human rights commission. Second, an independent agency specifically set up to oversee police conduct.

### **1. Human Rights Commissions**

In addition to courts, the executive and parliament, police misconduct is handled by the National Human Rights Commission (NHRC) and the various State Human Rights Commissions. These are the institutions specifically assigned with protecting human rights in India.<sup>88</sup> The bulk of the work done by the NHRC is handling complaints that are submitted to it, and most of these complaints have to do with

---

<sup>87</sup> See, e.g., Swati Mehta, Police Complaints Agencies in the Commonwealth, available at [http://www.humanrightsinitiative.org/programs/aj/police/papers/police\\_complaints\\_agencies\\_in\\_cw.pdf](http://www.humanrightsinitiative.org/programs/aj/police/papers/police_complaints_agencies_in_cw.pdf)

<sup>88</sup> See The Protection of Human Rights Act, 1993.

police misconduct. The NHRC has the powers of a civil court in terms of summoning witnesses and access to information.<sup>89</sup> The NHRC can award compensation, initiate prosecution, approach the courts for orders or writs, and make recommendations to government. Its reports also go to government and laid before the parliament. However, with respect to the armed forces the NHRC's authority is drastically curtailed.<sup>90</sup>

Despite the powers and independent standing of the NHRC, and despite the fact that it has successfully handled some complaints against the police, there are reasons why the NHRC, and the various state human rights commissions, are insufficient to guard against police misconduct and why an independent agency, dedicated to police oversight, is necessary.

The NHRC is tasked with handling all human rights violations. As such, it is severely overburdened. Establishing an independent complaint agency will lighten the load of the NHRC and make it a more effective body in treating the wide variety of human rights violations. As it stands, the NHRC is limited in its investigatory powers. If more than one year has passed between the incident and the complaint, the NHRC is barred from handling the matter.<sup>91</sup> Further, the NHRC cannot inquire into matters that have been taken up by a state or national enquiry committee,<sup>92</sup> which is sometimes used as a foil to prevent commission investigations.

There is also some misgiving as to the way the NHRC has chosen to handle complaints of police brutality and torture. In a growing trend, the NHRC has opted for awarding compensation to victims.<sup>93</sup> Payment of compensation is usually the wrong remedy if it is the sole remedy. First, justice demands that perpetrators guilty of police misconduct, especially in grave offenses such as custodial deaths, be prosecuted to the full extent of the criminal law. A monetary compensation, which is often not large, does not meet the demand for punishment proportional to the act. Second, awarding damages, as the basic remedy, is unlikely to create deterrence, because the state and not the officer will be the entity that pays the damages. Money damages do a poor job in motivating the government to act. The funds given to the victim are, after all, public funds. Thus the police and officers do not personally suffer. Rather, it is the taxpayer's money that goes to ameliorate the situation. In other words, the government does not participate in the market so it is unresponsive to market incentives like market actors.<sup>94</sup> Thus, whereas monetary incentives might work in the private sector, they will usually be inadequate, as a sole remedy, in the public sector. The resulting injustice is thus double. Not only does the individual officer not suffer the penalty, but the public, whom the police is supposed to protect, ends up paying the victim of police misconduct.

Finally, when evaluating the powers of the NHRC it is important to keep in mind that the Commission only makes recommendations which the government does not have

---

<sup>89</sup> Id. Section 13.

<sup>90</sup> Id. Section 19. This applies to the BSF (Border Security Force) as well.

<sup>91</sup> Id. Section 36(2).

<sup>92</sup> Id. Section 36(1).

<sup>93</sup> For a recent example see: "Three lakh rupees monetary relief in a case of death in police custody", (June 5, 2009) available at <http://nhrc.nic.in/dispArchive.asp?fno=1759>.

<sup>94</sup> Daryl Levinson, Making Governments Pay...

to follow. Indeed, many recommendations are not followed through, especially at the state level where the state human rights commissions are still relatively young.<sup>95</sup> If the NHRC and state commissions have no power to follow through with their recommendations, this bears on their ability to safeguard human rights abuses.

## **2. Police Complaints Commissions**

The most dramatic advance in past decades has been the establishment of independent agencies, or complaints commission, charged exclusively with monitoring the police. These agencies operate differently in different countries and accordingly have different powers. Some of them have full investigatory powers and some leave that to the police. Some work with other agencies, while others are more independent. This section will review a variety of such external mechanism, according to the country in which they are found. It will then proceed to highlight a few guidelines for a successful oversight agency.

### **A. Canada**

Police matters are the responsibility of individual provinces. Thus, police oversight in Canada is arranged in different ways. For the sake of brevity, three provinces will be examined: British Columbia, Manitoba, and Ontario.

In British Columbia the complaints authority does not do the bulk of the oversight work. The investigation procedures are defined in the Police Act.<sup>96</sup> A complainant has a choice in submitting a complaint to either the Police Complaint Commission, the disciplinary authority, i.e. the Chief of Police or the municipal police board, or a senior constable who is on duty when the complaint is filed. The complaint may be dismissed if it is frivolous, or an informal resolution or a formal investigation may be initiated.<sup>97</sup> Despite having the opportunity to submit the complaint to an external authority, almost all investigations are handled internally, by an internal investigations unit in the police. The role of the Police Complaints Commission is mostly supervisory – to review the decisions reached by the discipline authority upon the conclusion of the internal investigation. In cases where the Commissioner disagrees with the disciplinary finding, he has authority to order a public hearing or, in serious cases, recommend a public inquiry in serious cases. These will be handled by the Solicitor General.<sup>98</sup>

The lack of independent investigative ability and the dependence on internal investigations have received criticism by human rights organizations,<sup>99</sup> which called for giving more power to the complaints commission, namely, the ability to initiate and investigate complaints without having to rely on police conducted inquiries and

---

<sup>95</sup> G.P. Joshi, Police Accountability in India 14-15, available at [http://www.humanrightsinitiative.org/programs/aj/police/papers/gpj/police\\_accountability\\_in\\_india.pdf](http://www.humanrightsinitiative.org/programs/aj/police/papers/gpj/police_accountability_in_india.pdf)

<sup>96</sup> Police Act, RSBC 1996, Chapter 367.

<sup>97</sup> Police Act, section 55(1).

<sup>98</sup> Police Act, section 59(1).

<sup>99</sup> See, e.g., David Eby, Jen Metcalfe, John Richardson and Deven Singhal, Towards More Effective Police Oversight (September, 2004). A report by PIVOT, available at [http://www.pivotlegal.org/pdfs/Effective\\_Police\\_Oversight-Sept2004.pdf](http://www.pivotlegal.org/pdfs/Effective_Police_Oversight-Sept2004.pdf)



findings. In his 2003 annual report, the Police Complaints Commissioner himself, joined this call.<sup>100</sup> The need for independent investigative capacities arose from the bias, even if unconscious, of the police investigating itself. Even when the investigation is handled by a special unit within the police, the internal investigations unit, commentators have found evidence of bias, very little separation between the units, and the existence of a "blue shield" between the police and the public.<sup>101</sup>

In contrast to British Columbia, all the other Canadian provinces have established independent investigative bodies. For example, Manitoba has an agency (Law Enforcement Review Agency) devoted to investigating non-criminal police misconduct arising out of the execution of police duties.<sup>102</sup> The agency streamlines the complaint. If it is not resolved, or if there is no admission of wrongdoing by the police, the complaint is referred to a provincial judge and a public hearing is conducted.<sup>103</sup>

Ontario has set up the Special Investigations Unit (SIU), a civilian agency comprised mostly of civilian experts (with some former police officers), which is responsible for investigating circumstances involving police and civilians that have resulted in a death, serious injury, or allegations of sexual assault. The police are required to report to the SIU incidents of serious injuries or deaths that happen under police custody, and the SIU can also initiate investigations suo moto or based on civilian complaints, including complaints by NGO's, media, and coroners. Complaints involving police conduct that do not result in a serious injury or death must be referred to the appropriate police service or to another oversight agency, such as the Ontario Civilian Commission on Police Services.

The SIU has far reaching powers and is the most expansive civilian police oversight agency in Canada. SIU has the power and authority to investigate and charge police officers with criminal offence. It can summon witnesses, collects evidence, meets with medical officials, and employs forensic specialists. Although the findings are reported to the province's attorney general, an executive official, the SIU is institutionally independent. There is no governmental involvement in its decision-making process.<sup>104</sup>

The establishment of the SIU is a marked shift from the past, where the police investigated themselves in such cases. After a fatal shooting of two black men in 1988, the committee was formed and its recommendations were adopted in 1990 in the Ontario Police Services Act.

For lesser offenses there is the Ontario Civilian Commission on Police Services (OCCOPS). Its powers are defined in the Ontario Police Services Act and are summarized thus:

As an independent quasi-judicial agency, the Ontario Civilian Commission on Police Services carries out a number of duties which

---

<sup>100</sup> Id. at 5.

<sup>101</sup> Id. at 7. The investigation and discipline authority are both overseen by the Chief Constable.

<sup>102</sup> Criminal matters are handled by the Crown Attorney's office.

<sup>103</sup> PIVOT report at 14.

<sup>104</sup> For a description of the SIU and its powers, see SIU website at <http://www.siu.on.ca/home.html>

are primarily adjudicative or decision-making in nature. These include hearing appeals of police disciplinary penalties; adjudicating disputes between municipal councils and police service boards involving budget matters; conducting hearings into requests for the reduction, abolition, creation or amalgamation of police services; conducting investigations and inquiries into the conduct of chiefs of police, police officers and members of police services boards; determining the status of police service members; conducting reviews of local decisions relating to public complaints at the request of complainants; and, general enforcement relating to the adequacy and effectiveness of policing services. In Ontario, police services and police services boards are ultimately accountable to the public through the Commission. The mandate and duties of the Ontario Civilian Commission on Police Services are set out in the *Police Services Act*. The Commission reports to the Solicitor General".<sup>105</sup>

However, the OCCOPS has been the subject of criticism precisely because it is not sufficiently independent from the police. As Professor Lorne Sossin notes, the Chief of Police enjoys too much discretion in deciding which complaints are investigated and which are dismissed. A recent audit has disclosed that out of 700 complaints only 2 were referred to formal disciplinary proceedings. As a result of this audit and other criticism, the OCCOPS is now under review by the former Chief Justice of the Ontario Superior Court.<sup>106</sup>

It is important to note that these external bodies do not replace other accountability mechanisms. In almost all Canadian provinces, the police have internal investigations departments. There are police service boards that serve as a buffer between the political establishment and the Chief of Police and are appointed jointly by the provincial government and the relevant municipal locality. Police boards are in charge of policies for effective management of police, though not operational matters. Their purpose is to protect the police from undue political interference on the one hand, while avoiding total insularity which will facilitate lawlessness, on the other hand. Add to that ad-hoc inquiries, and of course there are courts and attorneys who prosecute police officers. Although these multiple levels of accountability are often criticized as overlapping and incoherent, there is a good case to be made that the "more likely abuses of the rule of law will be addressed or deterred and public confidence in the police enhanced".<sup>107</sup>

At the same time, it is important to keep in mind that the function of the oversight mechanisms, and the way they engage with one another, heavily depends on the specific personnel who are staffing them. For example, it is hard to gauge whether Canada's police boards are, on the whole, successful. As Steven Synyshyn notes:

Governing boards are often caught between and feel pressure from competing political interests and priorities. They persist as an obstacle

---

<sup>105</sup> See <http://www.occps.ca/englishwebsite/aboutoccps/1roleofcommission.asp>

<sup>106</sup> Lorne Sossin, *The Oversight of Executive-Police Relations in Canada: The Constitution, The Courts, Administrative Processes, and Democratic Governance*, in *Police and Government Relations: Who's Calling the Shots?* 106 (Margaret E. Beare and Tonita Murray, eds., 2007)

<sup>107</sup> *Id.* at 98, 107.

for politicians who might otherwise intentionally or inadvertently impose certain ideological inclinations on how the police carry out their duty. However, at the same time, Boards comprise both provincially and municipally appointed and similarly elected officials. In some cases, the police chief controls the board when it should be the other way around. In others, mayoral officials can dominate boards as the power of their office is formidable in such settings. Further, police unions, local community advocacy groups and media often take boards to task for being either too soft or too antagonistic towards police practices. In practice, some boards have failed to meet the criteria for an effective governing body. A recent study by the Canadian Association of Police Boards on best practices in police governance found that it is difficult to construct and implement meaningful, standardized benchmarks with which to evaluate boards' quality of governance. Varying degrees of size, access to resources, competence and comprehension of what good governance entails made certain requirements unattainable for some boards and inappropriate for others. Other external factors such as open hostility and mistrust from police, local associations or municipal councils present substantive obstacles to ensuring good governance. In short, the quality of governance is very much contingent upon how the board is able to negotiate the various challenges within the context in which it operates. While board governance is intended to reduce the possibility of political interference, in practice that isn't always the result. Much depends on the specific circumstances including the particular structure of the board (who sits on it and how participants are chosen) and the way it functions. For example, if board terms are short and turnover is frequent, the board is likely to be less effective. By the time board members have learned enough to be effective, their terms are up. This can lead to boards effectively allowing the police chief to take the lead on policy-setting and rubber-stamping the chief's plans. Or it can allow for political appointees, especially where the mayor chairs the board, to have undue influence if they are more knowledgeable than civilian board members. And to some extent, it depends on the individual players involved. Even with a bad structure, boards can be effective if the right people are there for the right reasons. The goal in developing a sound model for governing police boards is to provide a structure and operations that would minimize the potential for political interference while holding the police service accountable.<sup>108</sup>

Similarly, the move to external complaint agencies, in addition to the existing mechanisms, has not proved to be the magic cure in Canada for problems of police misconduct. The problem with civilian complaint commissions is deciding their level of independence. Since most policing experts think that the police should still play a role in investigating itself, the dispute is over how much independence the external

---

<sup>108</sup> Steven Synshyn, *Civilian Oversight of Police in Canada: Governance, Accountability and Transparency*, a paper prepared for the Manitoba Association of Rights and Liberties 4-5 (September, 2007). Available at [http://www.marl.mb.ca/sites/default/files/CIVOVER%20Executive%20Summary%2006-06-2008\\_0.pdf](http://www.marl.mb.ca/sites/default/files/CIVOVER%20Executive%20Summary%2006-06-2008_0.pdf)

agency should have, while acknowledging that more independence means more power.

The recent convergence of opinions among Canadian experts is that the SIU model, described above, comes as close as possible to ideal type of monitoring agency.<sup>109</sup> Among its advantages is that it "employs investigators that were at no point employees of the force under investigation... and it does not require a complaint to start an investigation into an alleged act of misconduct".<sup>110</sup> It is also adequately funded and staffed, and maintains institutional independence from the organization which it supervises. A detailed table of the various oversight mechanisms in Canada can be found in the appendix.<sup>111</sup>

## **B. United States**

The United States has a plethora of police oversight mechanisms. Police issues are a predominantly a local municipal issue and thus each municipality has developed its own oversight mechanism. So, for example, the Los Angeles Police Department has a different oversight mechanism than the San Francisco Police Department, despite them being in the same state. And of course, these two mechanisms will inevitably differ from New York City's mechanism. There are federal police forces, such as the F.B.I. and Border Patrol, but their jurisdiction is limited to defined federal crimes. Although the states have a state police force, that is usually limited to highway patrol. According to one count, there are more than 16,000 local law enforcement agencies in the U.S.,<sup>112</sup> resulting in a great variety in police oversight mechanisms.

Generally, the United States has experimented with various types of external oversight mechanisms. Policing expert Merrick Bobb has divided them into four categories: independent monitors, independent investigators, civilian review boards, and compulsory monitoring and reform headed by the federal government.<sup>113</sup> It should be noted that the categories are not mutually exclusive and several oversight mechanisms can be instituted at the same time.

1. Independent monitors: independent monitors are appointed jointly by the relevant municipality and the police department. Their advantage is that they tend to receive cooperation from the police, since the police agrees to the person who will serve as monitor. Moreover, they are guaranteed access to law enforcement records, files and, personnel. Their task is to review and comment on the use of excessive force by the police. They publish periodic reports that often receive public salience. They work with, not against, the police, in the attempt to improve the services it renders to the community. Merrick Bobb, the monitor for Los Angeles County Sheriff Department, notes that working

---

<sup>109</sup> Id. at 8.

<sup>110</sup> Id. at 9.

<sup>111</sup> David Eby, Jen Metcalfe, John Richardson and Deven Singhal, Towards More Effective Police Oversight 28 (September, 2004). A report by PIVOT, available at [http://www.pivotlegal.org/pdfs/Effective\\_Police\\_Oversight-Sept2004.pdf](http://www.pivotlegal.org/pdfs/Effective_Police_Oversight-Sept2004.pdf)

<sup>112</sup> Merrick Bobb, Civilian Oversight of the Police in the United States, Address to the Police Assessment Resource Center 3 (2003). Available at [http://www.parc.info/client\\_files/Articles/1%20-%20Civilian%20Oversight%20of%20the%20Police%20\(Bobb%202003\).pdf](http://www.parc.info/client_files/Articles/1%20-%20Civilian%20Oversight%20of%20the%20Police%20(Bobb%202003).pdf).

<sup>113</sup> Id.

with police officers in this way helped to decrease instances of police violence and civilian complaints. He stresses that the dialogue between the monitor and the police must be devoid of blame, rhetoric, and ideology for it to be effective, i.e. so that the police will internalize the monitor's findings. Otherwise, the police are mistrustful of an external authority and suspect political motivations or bias. When the critique is presented in a professional manner the problem of being addressed.<sup>114</sup> The downside to the monitors is that it is a voluntary function. It requires a good faith by all involved, and if the police are reluctant to cooperate with the monitor, his recommendations will not be implemented, or will be implemented halfheartedly. Moreover, the monitor's role is that of an overseer. He does not deal with specific violations (though these are the basis for his reports), as much as the underlying problems that give rise to such occurrences. As such, he fulfills one prong of the oversight mechanism, but not the one dealing with specific cases of misconduct.

2. Independent investigators: There are many types of ways to organize independent investigators. In Seattle, there is a civilian attorney who sits in the police department and directs internal affairs investigations. In the Los Angeles County Sheriff's Department, there is a separate office (Office of Independent Review) staffed by six civilian civil rights attorneys who need to sign off before any internal police investigation is closed. The OIR may participate and interject at any stage of the inquiry and monitors all investigations. It can make recommendations on how the case should be decided and whether disciplinary measures should be taken against the offending officers. Importantly, the investigations are still managed by the police (by the internal investigations department) with an overseeing role for the For the Los Angeles Police Department (not to be confused with the country sheriff department), there is an independent Inspector General who has investigatory powers and provides opinions in cases of police shootings.<sup>115</sup> In Washington D.C., there is the Office of Police Complaints (OPC), staffed by civilians (and one veteran police officer). The OPC independently investigates complaints and makes recommendations. In addition, it performs a general monitoring role, pointing out systemic problems that need addressing. During the course of investigations, the OPC has full investigative powers, including the power to subpoena officers and gather evidence. For evidentiary hearings, OPC provides free counsel to the complainants. In cases where a suspicion of a criminal act arises, the OPC refers the case to the U.S. Attorney's office. In lesser cases, the OPC makes disciplinary recommendations which are forwarded to the Chief of Police. In all but one case, in 2007, the police complied with the disciplinary recommendations.<sup>116</sup> The most powerful police complaint commission is San Francisco's Office of Citizen Complaints (OCC). The OCC conducts its own investigations. The police have to cooperate with OCC investigators. If a there is a positive finding, the case can go to a hearing where the OCC itself prosecutes the officer before a non-partisan police commission. In cases of lesser gravity, the

---

<sup>114</sup> Id. at 15.

<sup>115</sup> Id. at 18.

<sup>116</sup>Government of the District of Columbia, Police Complaints Board, Office of Police Complaints: Annual Report, fiscal year 2007. Available at [http://policecomplaints.dc.gov/occr/frames.asp?doc=/occr/lib/occr/pdf/opc\\_fy07\\_annual\\_report.pdf](http://policecomplaints.dc.gov/occr/frames.asp?doc=/occr/lib/occr/pdf/opc_fy07_annual_report.pdf)

OCC presents its findings to the police department which a special unit reviews them. If the unit disagrees with the OCC, no disciplinary action is taken, however the findings remain in the officer's file and cannot be overturned by the police. The OCC also monitors the police as a whole and issues policy reports as well as tracking police officers for multiple offences

3. Civilian Review Boards: Civilian Review Boards have been in use for many years and were the first attempt to provide external accountability. In the past they have been largely ineffectual because they were staffed with civilian non-experts. Furthermore, they only had input after the internal investigation was complete, and even then they could only make non-binding recommendations to the chief of police. They have been unsuccessful in reform attempts, most likely because they had no powers and were staffed by non-experts. Newer versions of civilian review boards have performed slightly better since some have received investigatory power. Still, they are not the final decider and their recommendation is always subject to police action.<sup>117</sup>
4. Compulsory Monitoring and Reform: In the U.S. the federal government can play a role in police issues when those have constitutional implications. The U.S. Congress has passed legislation that gives the Civil Rights Division in the Department of justice the power to bring suits against delinquent police departments that violate constitutional and nationally protected civil rights.<sup>118</sup> If the investigation reveals civil rights abuses, a federal court can issue injunctions mandating reform. Usually a settlement is reached between the federal government and the police department and the court issues a decree to that effect. Examples of reform include ordering the police to monitor use of excessive force and establishing positions and bodies to review internal investigations and continued monitoring.<sup>119</sup>

## C. South Africa

South Africa has undergone a dramatic shift in its policing since the transition to democracy in 1994. The structure of the police force has changed, most prominently by integrating the up until then segregated police forces. This entailed not merely an act of integration, but an overhaul in the police organizational structure, administrative procedures, and culture. Accountability measures were also transformed. Before the transition, police oversight was performed by the parliament

---

<sup>117</sup> Bobb, supra note \_\_\_\_ at 19. See also Review on National Police Oversight Models (Police Assessment Resource Center, 2005) available at [http://www.parc.info/client\\_files/Eugene/Review%20of%20National%20Police%20Oversight%20Models%20\(Feb.%202005\).pdf](http://www.parc.info/client_files/Eugene/Review%20of%20National%20Police%20Oversight%20Models%20(Feb.%202005).pdf)

<sup>118</sup> 42 U.S.C. § 14141:

(a) Unlawful conduct

It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

(b) Civil action by Attorney General

Whenever the Attorney General has reasonable cause to believe that a violation of paragraph (1) has occurred, the Attorney General, for or in the name of the United States, may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.

<sup>119</sup> Bobb, supra note \_\_\_\_ at 19-21.

and executive at the national and provincial level. As has been established, these are usually considered to be poor oversight mechanisms. Under the new scheme, the government of South Africa added a national secretariat for safety and security and enacted enabling legislation for the establishment of provincial secretariats. The legislation also required the creation of a "community police forum" at every police station. Those institutions, however, are now considered largely ineffective in providing oversight.<sup>120</sup> In addition, South Africa has also established an independent investigative agency, called the Independent Complaints Directorate (ICD).<sup>121</sup>

The ICD operates on the national and provincial level. It issues bi-annual reports providing statistical data on police misconduct and takes civilian complaints on all issues of police misconduct. It also publishes topical reports on issues such domestic violence and police violence.<sup>122</sup>

Upon receiving a complaint, or suo moto the ICD determines which category it belongs to, among five available categories, arranged according to severity. Class I complaint alleges a custodial death or death resulting from police action. Class II complaint are complaints referred by the Minister of a provincial official. Class III complaints deal with serious bodily injury requiring hospital treatment. Class IV is reserved for all other types of misconduct, and class V is a complaint outside the scope of the ICD.<sup>123</sup>

The assignment into categories determines how the complaint will be treated. Classes I and II are handled by the ICD itself, utilizing its statutory investigative powers. Class II may be handled either by the ICD or the police, according to the discretion of the ICD, depending on the circumstances and particular factors that are to be taken into account, such as the severity of the injury, ICD capacity to investigate and the public importance of the incident. Class IV complaints are referred to the police with the ICD reverting to a monitoring role, unless the ICD believes that it should perform the investigation. Class V complaints are not handled by the ICD.<sup>124</sup>

The ICD investigates police misconduct and decides whether to pursue a criminal or disciplinary path. If a criminal path is pursued, the case goes to the state's prosecutorial authorities and ICD investigators will then likely appear as witnesses. If the ICD recommends disciplinary action, the case goes back to the police. However, the ICD's recommendation is not binding, and there is some inconsistency between

---

<sup>120</sup> David Bruce writes: "The experience with CPFs has generally been that they have not really played a significant oversight role in relation to the police. While it initially sought to have an impact on the South African Police Service the national civilian secretariat was considerably weakened by government following the second democratic elections in 1999. Furthermore there is little evidence that the provincial governments have played a significant oversight and accountability role relating to police even though they have all established provincial 'secretariats of safety and liaison' to, amongst other things, monitor the police". See, David Bruce, Accountability and Civilian Oversight of Police in South Africa: cases received by the Independent Complaints Directorate 3 (April, 2003) available at [http://www.humanrightsinitiative.org/publications/police/papers/civilian\\_oversight.doc](http://www.humanrightsinitiative.org/publications/police/papers/civilian_oversight.doc)

<sup>121</sup> David Bruce and Rachel Neild, The Police that we Want: A Handbook for Oversight of Police in South Africa 6 (2005). Available at <http://www.policeaccountability.co.za/home/>

<sup>122</sup> ICD website, at <http://www.icd.gov.za/about/index.html>. ICD was established in legislation. See Section 53(2) of the South African Police Act (Act no 68 of 1995).

<sup>123</sup> ICD Investigative Priorities, Standard Operating Procedure, available at <http://www.icd.gov.za/policies/sop.htm>

<sup>124</sup> Id.

ICD recommendations and further action taken by the police. As the ICD states in its 2007 annual report, there is a glaring disparity between the time spent in criminal hearings and disciplinary hearings. For the implementation of their recommendations, they rely on the good will of police officers, but that, on its own, is insufficient for them to be taken seriously by the police, thus the ICD called for amending legislation that will make their recommendations binding upon the police:

For the period under review we spent no less than 575 days in criminal court hearings and 28 days in respect of disciplinary hearings. The huge difference between the days spent in the criminal courts as opposed to disciplinary hearings can be attributed to the existing legislative lacuna in the South African Police Service Act. Until such time that there is an amendment to the legislation, SAPS management will continue to ignore our recommendations which is the reason why the ICD is viewed as “toothless”. As matters stand SAPS management are under no obligation to report back on their decision regarding our recommendations and those that do, just do it out of courtesy. But of course this is not enough and we cannot rely on goodwill by some managers within the service while the majority continues to ignore our recommendations. The ICD need a strong legislative muscle to enforce its recommendations and in the event where there is difference of opinion on a recommendation, with SAPS management, to compel the latter to furnish reasons why they cannot implement.<sup>125</sup>

The ICD is designed in such a way as to enable it to perform various tasks. In addition to its investigatory powers, ICD undertakes a community outreach program, through which it visits many communities in South Africa with the purpose of educating them about the ICD and their rights when interacting with the police. In 2007/2008, for example, the ICD visited 218 communities.<sup>126</sup> The ICD also conducts research on various issues that attempt to look at police practices holistically and make policy recommendations. For example, the ICD issued four reports in 2007/2008, on female members of the South African Police Service, suicides in police custody, non-compliance of police with the South African Domestic Violence Act, and a report on the police's compliance with ICD recommendations.<sup>127</sup>

The ICD is clearly the most significant institution out of all the police oversight mechanisms established in post-apartheid South Africa. To be sure, there are still issues that need to be addressed, such as adequate funding and staffing to meet the demands of the workload. Moreover, most complaints to the ICD have focused on citizens dissatisfied with the quality of service they received and not from citizens who were victims of police misconduct.<sup>128</sup> Given time, and depending on the success of the community outreach program, this might change as well.

---

<sup>125</sup> Independent Complaints Directorate Annual Report 2007/2008, at p. 39, available at <http://www.icd.gov.za/documents/2008/icd-annual-%20rpt0708.pdf>

<sup>126</sup> Id. at 42.

<sup>127</sup> Id. at 44.

<sup>128</sup> Bruce, *supra* note \_\_\_\_ at 13.



## D. Australia

Similarly to the United States, Australia does not have a centralized police oversight system. Due to its federalist structure, police are a matter for the states and territories. Generally, Australia has also moved away from a model that left all police oversight to the police. In addition to internal accountability mechanisms, the various states established external mechanism to oversee police action.<sup>129</sup>

The first steps of police reforms included external oversight mechanisms that were not very successful. The Police Complaints Authority in Victoria was closed down in 1986 due to police resistance. In Queensland the Police Complaints Authority was viewed as ineffective in combating police corruption. In New South Wales, police oversight was given to the ombudsman in 1979, but that institution did not conduct many independent investigations and had limited review powers.<sup>130</sup>

Most states have established external agencies with independent investigative powers. The specific designs vary from state to state. The most advanced agency is in New South Wales. In addition to its ombudsman, the New South Wales parliament established the Police Integrity Commission (PIC) in 1996. Similar to South Africa, The PIC is exclusively in charge of investigating serious offence, whereas less serious offences are investigated by the police or ombudsman, while the PIC may oversee these investigations. The PIC is also equipped with police investigative powers such as applying for search warrants and wire taps. It can compel the production of documents and witnesses and can hold public hearings.<sup>131</sup> Even though the powers of the PIC are not binding in the sense that the police do not have to follow its recommendations, the PIC may require the police to submit a report of action, detailing the actions that have been taken to comply with the PIC's recommendations. The police, on their part, must inform the PIC on the actions that were taken and, in cases where no action has been taken, explain the reasons for inaction.<sup>132</sup>

Just like its South African counterpart, the PIC is charged with auditing aspects of police activities that may be conducive to police misconduct and to "monitor to quality of the management of investigations conducted within the NSW Police Force". It also makes recommendations on police education programs and can advise the police generally on methods of eliminating misconduct.<sup>133</sup> Unlike other states, where external oversight has met with police resistance, the police in New South Wales have expressed support and approval for the PIC.<sup>134</sup> The police favorably note that "the probity of the oversight process is maintained because all complaints are recorded, assessed and dealt with on a fully transparent information system. All new

---

<sup>129</sup> Colleen Lewis and Tim Prenzler, *Civilian Oversight of Police in Australia*, 141 *Trends & Issues in Crime and Criminal Justice* (1999).

<sup>130</sup> *Id.* at 2.

<sup>131</sup> *Feudal States Report*, *supra* note \_\_\_\_ at 75.

<sup>132</sup> Swati Mehta, *Human Rights Commissions and Oversight of Police 5*, CHRI Report, available at [http://www.humanrightsinitiative.org/programs/aj/police/res\\_mat/hrc\\_oversight\\_of\\_police.pdf](http://www.humanrightsinitiative.org/programs/aj/police/res_mat/hrc_oversight_of_police.pdf)

<sup>133</sup> *Police Integrity Commission Act of 1996*, section 14.

<sup>134</sup> See, NSW Police submission to the ten year review of the police oversight system in NSW by the Parliamentary Joint Committee regarding complaints oversight 14, available at [http://www.parliament.nsw.gov.au/prod/PARLMENT/committee.nsf/0/3531f2c725046fe6ca2571e20005160a/\\$FILE/NSW%20Police%20Submission%20No.11.pdf](http://www.parliament.nsw.gov.au/prod/PARLMENT/committee.nsf/0/3531f2c725046fe6ca2571e20005160a/$FILE/NSW%20Police%20Submission%20No.11.pdf)

matters are reviewed by the Professional Standards Command, dealt with by a local Complaint Management Team and are subject to oversight.<sup>135</sup>

## **E. Israel**

In Israel, police violence has been a problem for many years. Owing to its longstanding security issues and its inner diversity, police have been known to exercise undue force. Several public inquiry committees and comptroller reports have pointed to the problem of police brutality over the years, noting the inadequacy and laxness of the then existing internal disciplinary mechanism.<sup>136</sup>

Up until 1992, all complaints against police were handled internally by the police. Following a state comptroller report that criticized the police's unit of internal investigations, an inter-ministry steering committee was established to examine the report. It recommended that a new department be created in the Ministry of Justice which will undertake the role of police investigations. Moreover, the committee recommended that the department be staffed with state attorneys rather than police officers. In 1992, the Department for Police Investigations (called "Machash" in Hebrew) was established in the Ministry of Justice.<sup>137</sup>

Machash's operational model is similar to other countries discussed in this report. It has a central headquarters and representations throughout Israel. Its mandate is to investigate complaints against police officers for which the minimum punishment exceeds one year in prison. Thus, Machash has authority to investigate only criminal acts, rather than general police misconduct. The latter type of cases is still handled by the police's internal investigations unit. However, the police are strictly precluded from handling complaints within Machash's scope of authority.

Machash's powers are broad. According to the Police Ordinance, a Machash investigator has all the powers and immunities of a police officer, including the authority to perform wiretaps. Machash is also entitled to police assistance.<sup>138</sup> The department is staffed by state attorneys and by former police investigators lent by the police, who may or may not return to active police duty.<sup>139</sup>

Once a complaint is filed, a Machash attorney determines whether there is a need for further investigation. Upon completion of the investigation, Machash decides whether to dismiss the complaint, press criminal charges, or remove the case to the disciplinary track, in which case the case is transferred to the police so it can take the

---

<sup>135</sup> Id.

<sup>136</sup> Sergio Herzog, Evaluating the New Civilian Complaints Board in Israel, in *Civilian Oversight of Policing: Governance, Democracy, and Human Rights 127* (Andrew Goldsmith and Colleen Lewis, eds., 2000).

<sup>137</sup> See, sections 49I, 49K of the Police Ordinance of 1971. For a detailed examination of the process that led to Machash's establishment, see, Sergio Herzog, *Treatment of illegal-use-of-force complaints against police officers in Israel: The beleaguered path to civilian involvement*, 2(4) *Police Quarterly* 477-501 (2000).

<sup>138</sup> Sections 49J, 49K(a) of the Police Ordinance of 1971.

<sup>139</sup> According to the Machash website, advanced plans are in place to make Machash a completely civilian agency and to stop the reliance on borrowed police investigators. See, <http://www.justice.gov.il/MOJHeb/PraklitotHamedina/MehozotHapraklitutVehamachlakot/Rashit/Mahash.htm> (Hebrew).

proper action. If Machash decides that criminal prosecution is necessary then, in cases where the maximum punishment is 7 years in prison, Machash is the indicting authority and its attorneys serve as prosecutors. In more serious offences, where the punishment exceeds 7 years, non-Machash state attorneys handle the case and they decide whether to press charges.<sup>140</sup>

There has been concern that Machash's impartiality might be jeopardized as a result of police officers participating in the investigations.<sup>141</sup> On the scale between minimal external oversight and aggressive external oversight, Israel has adopted an intermediate model, one that enables independent external investigations, but conducted by police officers on loan from the national police service. The state is supposedly reforming that aspect by making the department completely civilian, but this has not happened yet, despite plans to do so since 2005. The concern is that the solidarity found in internal accountability mechanisms has been replicated into Machash, thus not addressing the main problem arising from internal investigations.

However, recent empirical findings suggest that the institutional separation, coupled with other factors such as rank and experience, does make a difference between police officers and Machash investigators. For example, although both groups perceive of complainants as offenders, Machash investigators view them as people who feel genuinely aggrieved, whereas police officers view them as intentionally vengeful and slanderous.<sup>142</sup> Once an investigation begins, promotion is automatically frozen. Whereas both police officers and Machash investigators viewed this as an effective deterrent, police officers viewed the measure negatively, whereas Machash investigators viewed it favorably.<sup>143</sup> Despite Machash investigators being police officers, police officers still view them as working against them, meaning that the solidarity one attributes to police officers did not cross over into the new department.<sup>144</sup> Finally, police officers were more tolerant of the use of illegal force than Machash investigators.<sup>145</sup>

The explanation given by Herzog to these disparities is that police officers can occupy different subcultures. The low and mid level police officers are the street cops who face the daily reality of the streets. But once police officers are assigned different roles and are placed in an institution with a different organizational culture, their outlook changes as well. Also important is the position of the ranking superiors who are in charge of creating and instilling the particular culture. The fact that Machash is dominated by experienced investigators who are relatively senior is important as well.<sup>146</sup>

---

<sup>140</sup> See Machash website, available at <http://www.justice.gov.il/MOJHeb/PraklitotHamedina/MehozotHapraklitutVehamachlakot/Rashit/Mahash.htm> (Hebrew).

<sup>141</sup> For discussion on the problematics of police officers investigation other police officers, see section "internal mechanisms of accountability".

<sup>142</sup> Herzog, supra note \_\_\_\_ at 452

<sup>143</sup> Id.

<sup>144</sup> Id.

<sup>145</sup> Id. at 453.

<sup>146</sup> Id. at 459-463.

Herzog's tentative conclusion<sup>147</sup> then is that police officers serving as investigators in a police complaints authority might actually be beneficial. Contrary to expectations, there is less of the solidarity and collusion once the officers are taken from one environment and placed in a different organizational culture.

As for Machash's effectiveness, empirical research has shown that following its establishment, the number of complaints spiked and then decreased, though the number of complaints was still greater than the number of complaints filed when the police had exclusive jurisdiction over discipline. This rise is not attributed to an actual worsening of police conduct, but to the change the new external oversight agency created.<sup>148</sup> However, the establishment of Machash did not lead to a rise in sustained files and formal actions against police officers.<sup>149</sup> This has also been the case in other countries.<sup>150</sup> The reasons behind this phenomenon are complex, but one reason could be the rigorousness of the civilian investigation and the requirement to press charges only if there is a likelihood of conviction (Machash is headed by an attorney, not a police officer). This might also account for the reason why both police officers and complainants are not satisfied with Machash's functioning. Police usually resist external investigations, more files have been opened. Complainants are displeased with the ultimate disposition of the case, feeling aggrieved by the perceived injustice of not sustaining their complaint.<sup>151</sup>

## **F. United Kingdom**<sup>152</sup>

The U.K. has a decentralized police system with multiple levels of accountability. There are various agencies and standard setting organizations that are responsible for the maintenance of police accountability.<sup>153</sup> In terms of an external complaints authority, the U.K., similar to other countries, continues to investigate complaints internally. In 1984, the government created the Police Complaints Authority (PCA), which was charged with overseeing the internal investigations process. The PCA, however, did not gain public confidence. It was questioned for its lack of independence and the high level of proof it required to sustain a complaint.<sup>154</sup>

---

<sup>147</sup> One of the reasons it is tentative is because all the people he surveyed were officers. We do not know what the level of commitment would have been had Machash been staffed by pure civilians. It is possible that they would have an even more anti-police-misconduct attitude than Machash investigators.

<sup>148</sup> See, Sergio Herzog, *Police violence in Israel: Has the establishment of a civilian complaints board made a difference?*, 3(2) *Police Practice and Research: An International Journal* 119-133 (2002).

<sup>149</sup> Only 13% of complaints culminate in formal recommendations for punitive action, compared with 16% in pre-Machash days. See Sergio Herzog, *Evaluating the new civilian police complaints board in Israel*, in *Civilian oversight of complaints against police: Governance, democracy and human rights* 125-146 (Andrew Goldsmith & Colleen Lewis, Eds., 2000).

<sup>150</sup> Sergio Herzog, *Police violence in Israel: Has the establishment of a civilian complaints board made a difference?*, 3(2) *Police Practice and Research: An International Journal* 119-133 (2002).

<sup>151</sup> Sergio Herzog, *Evaluating the new civilian police complaints board in Israel*, in *Civilian oversight of complaints against police: Governance, democracy and human rights* 125-146 (Andrew Goldsmith & Colleen Lewis, Eds., 2000).

<sup>152</sup> This foregoing applies to England and Wales only.

<sup>153</sup> For a survey see Rob Mawby and Alan Wright, *Police Accountability in the United Kingdom* (2005) available at

[http://www.humanrightsinitiative.org/programs/aj/police/res\\_mat/police\\_accountability\\_in\\_uk.pdf](http://www.humanrightsinitiative.org/programs/aj/police/res_mat/police_accountability_in_uk.pdf)

<sup>154</sup> *Id.* at 9.

A major reform in 2002 dismantled the PCA and introduced a new complaints authority, the Independent Police Complaints Commission (IPCC), which was established in 2004 and has jurisdiction over 43 local police forces in England and Wales.<sup>155</sup> The IPCC enjoys institutional independence from other government departments and is separate from the police. Its decisions are binding, to be overturned only by a court. It also guarantees occupational independence. Its 18 commissioners must not have previously worked for the police. The IPCC can conduct its own investigations if it so chooses, and can act suo moto in the absence of a complaint. For example, recently the IPCC initiated an investigation in the killing of Nassar Hussain, to check whether his murder could have been prevented by the police.<sup>156</sup> In comparison, the former PCA did not enjoy these investigative powers. Although the bulk of investigations remain with the police, the IPCC can supervise or manage the investigation conducted by the police. In cases where a complainant is dissatisfied with the result reached by the police, she may appeal to the IPCC, and the police must comply with the IPCC'S finding on appeal. Appeals may be filed regarding the failure of the police officer to record a complaint, the local resolution of a complaint (cases handled by the police not involving disciplinary or misconduct proceedings), or the outcome of a local or supervised investigation. Last, the IPCC also serves a policy role by auditing the police as whole and setting standards.<sup>157</sup> For example, the IPCC recently issued a report calling for a consistent police pursuit policy to help reduce the number of traffic related deaths.<sup>158</sup> In its investigative capacity, the IPCC enjoys regular police powers of entry and evidence collection. The police are required to cooperate and assist the IPCC when called upon to do so.<sup>159</sup> The complainant is kept informed of the investigation's progress. The IPCC, however, does not have independent prosecutorial powers. It can only recommend prosecution to the Crown Prosecution Service, which decides on the action to be taken.

It is too soon to tell if the establishment of the IPCC has brought about an increase in public confidence. The IPCC undertakes annual surveys that show a gradual increase of public confidence. The 2008 survey showed a slight increase in happiness of those in contact with the police, especially ethnic minorities. Respondents have showed a greater awareness of the IPCC, as is also evidenced by its rising caseload, and felt that were they to file a complaint, it would be taken seriously and handled fairly and impartially. However, 40% of respondents expressed doubts whether they would actually complain, the reasons being a concern that the complaint would be futile, too time consuming, or result in police harassment.<sup>160</sup> A different survey, conducted by the Institute for Criminal Policy Research in 2008, found that 80% of complainants were either dissatisfied or very dissatisfied with the handling of complaints. Police officers and complainants felt that the IPCC investigators were insufficiently

---

<sup>155</sup> See Police Reform Act 2002 (Ch. 30). The IPCC can have jurisdiction over other police forces by contracting with them. For a survey of police reforms over the past 40 years, see Graham Smith, *A Most Enduring Problem: Police Complaints Reform in England and Wales*, 35 *Jnl. Soc. Pol.* 121-141 (2005).

<sup>156</sup> See, IPCC announce independent investigation following murder of Nasar Hussain, available at [http://www.ipcc.gov.uk/news/pr150709\\_murderofnasarhussain.htm](http://www.ipcc.gov.uk/news/pr150709_murderofnasarhussain.htm).

<sup>157</sup> Section 22 of the Police Reform Act 2002. See also IPCC website at [http://www.ipcc.gov.uk/index/about\\_ipcc/guardianship.htm](http://www.ipcc.gov.uk/index/about_ipcc/guardianship.htm).

<sup>158</sup> [http://www.ipcc.gov.uk/news/pr160709\\_ipcc\\_annual\\_report\\_published.htm](http://www.ipcc.gov.uk/news/pr160709_ipcc_annual_report_published.htm).

<sup>159</sup> See, e.g. sections 17, 18 of the Police Reform Act of 2002.

<sup>160</sup> Confidence in the police complaints system: a survey of the general population in 2008 (IPCC, 2008) available at [http://www.ipcc.gov.uk/public\\_confidence\\_survey\\_2008.pdf](http://www.ipcc.gov.uk/public_confidence_survey_2008.pdf)

experienced in police matters.<sup>161</sup> This can be explained by the fact that the IPCC is relatively new and its investigators undergo a short period of training (6 weeks).

It is equally difficult to tell if the establishment of the IPCC has been effective. In 2004, IPCC's first year of operation, the number of custodial deaths was 36. Four years later, the number drastically dropped to 15 (a 60% decrease). While it is impossible to establish causality, the correlation is striking.<sup>162</sup> In 2007-2008 the IPCC handled 29,000 complaints. Most of the complaints were handled by the local police force and did not involve the IPCC. The IPCC conducted 100 independent investigations (compared with 31 in its first year). It also opened 152 managed investigations and supervised 245 other. In its first year, the IPCC handled 1000 appeals. By 2008, the number more than quadrupled and stood at 4,141 appeals.<sup>163</sup> Thus, there is definitely more awareness of the IPCC. However, there has also been criticism on behalf of civil society groups, mostly civil rights lawyers who sit on IPCC's advisory board, that IPCC staff needs to undergo more rigorous training and that the quality of decisions has been poor. In addition, there have been complaints of agreements reached between the IPCC and the police without the involvement of civil society.<sup>164</sup>

A glaring difference between the IPCC and other modern police complaints authorities is the capability to undertake independent investigations. Scholars and policing experts have been stressing the importance of independent external investigations, as opposed to management and supervision. While the IPCC can conduct its own investigations, the operating model is geared toward management and supervision. This could be a policy choice, but it also results from the staffing and resource issues that prevent the IPCC from undertaking a more aggressive investigative role. The hope is that best practices can be met through supervision and management, which require police cooperation.<sup>165</sup>

## **VIII. The varieties of external accountability mechanisms**

Each country discussed above adopted its own particular version of an oversight agency. However, oversight agencies can generally be divided into three groups. Of course, these categories are not mutually exclusive. An agency can have features that borrow from several categories. Generalizing from the models described above, we can put forward a common typology of oversight mechanisms.<sup>166</sup>

---

<sup>161</sup> Cite. Colin's red file.

<sup>162</sup> IPCC annual report 2008/2009, available at [http://www.ipcc.gov.uk/ipcc\\_annual\\_report\\_2008-09\\_-\\_full.pdf](http://www.ipcc.gov.uk/ipcc_annual_report_2008-09_-_full.pdf).

<sup>163</sup> Cite, report in Colin's red folder.

<sup>164</sup> See, letters from Police Action Lawyers Groups to IPCC, in Colin's red folder.

<sup>165</sup> Graham Smith, Police Complaints in the Reform Era, 63 *The Centre For Crime and Justice Studies* 26 (2006).

<sup>166</sup> See, Review on National Police Oversight Models (Police Assessment Resource Center, 2005) available at

[http://www.parc.info/client\\_files/Eugene/Review%20of%20National%20Police%20Oversight%20Models%20\(Feb.%202005\).pdf](http://www.parc.info/client_files/Eugene/Review%20of%20National%20Police%20Oversight%20Models%20(Feb.%202005).pdf)

## **A. Review and appellate models**

The investigation is conducted by the police and is reviewed by an external agency that can make recommendation whether the findings should be reversed or sustained, or recommend further inquiries. The agency usually examines individual complaints and does not look at the police as a whole. Consequently, it lacks independent investigative powers. Such models might allow for civic participation by non-experts but are correspondingly limited in their authority and power, partly due to the involvement of non-experts.

## **B. Investigative models**

Investigative powers are given to the external agency. The agency will usually have some form of subpoena and evidence collection powers. It will conduct its own investigations and make recommendations, which may or may not be binding. In some cases, such as San Francisco's OCC and Israel's Machash, the agency will also have some independent prosecutorial power. The agency will usually be staffed by non-police officers (such as UK's IPCC), though it is possible for it to have former police officers as well (for example, Israel's Machash).

## **C. Performance based models**

Instead of focusing on individual violations, performance based models attempt to solve systemic and residual problems that afflict the police. This model leaves the individual disciplinary aspect to the police. Its supporters argue that taking discipline away from the police actually undermines the accountability of senior police officials. Proponents argue that "unless the police are held strictly accountable up and down the chain of command for actively managing the risk of police misconduct, the self-protective habits of the police will never change. It is one thing to achieve a fair result in a given investigation; it is far more powerful, these reformers contend, to change police culture in general by requiring strict accountability."<sup>167</sup> This goes together with the police's commitment to grant access to records so that at least public representatives will be informed of the internal disciplinary measures that have been taken against offending officers. This model entails appointing independent professionals to oversee the police as a whole and to submit reports to a police board on the police's management of risks of police misconduct. They collect data, track performance, and highlight worrisome trends. The auditor also evaluates the overall performance of the internal disciplinary system. The advantage of this model is its ability to address entrenched problems that will go untreated, or even unobserved, in the individualistic case by case models.<sup>168</sup>

## **IX. Guidelines for a successful oversight mechanism**

Accountability is admittedly a broad subject and there are many ways and institutional designs to achieve police accountability. Undoubtedly, choosing a particular scheme

---

<sup>167</sup> Id. at 21.

<sup>168</sup> Similar ideas have been expressed in India as well. See, police reform roundtable, at 9.

will also depend on the particular social and legal context in which the police operate. External authorities arose because there was public perception that internal mechanisms are unthreatening to the organization which they oversee. Most complaint systems have focused on the bad apple theory, meaning that there are individual officers that are not functioning properly, and not systemic malfunctions.

In our discussion of external complaint commissions, we need to think about the range of matters to be overseen. Making sure the police comply with procedural and substantive standards is a very incomplete approach. It is important not to be preoccupied with only identifying wrongdoing, but to make sure the accountability mechanism is helpful in setting standards of propriety, conformity with legal requirements, and establishing policies. Accountability should be concerned with system wide issues as well as individual cases.<sup>169</sup>

The effectiveness of a police force is closely linked with its moral authority and is dependent in large part on community support. However, public support will be wanting if the police are only accountable to themselves. Independent agencies are a source of valuable information on police conduct, which contributes to public trust. The public distrusts internal investigations, and correspondingly there are fewer complaints. When the police command so much power and authority, complaining to them about their own misconduct is tremendously difficult for those who are intimidated by that authority.<sup>170</sup>

At the same time, complaints mechanisms are not enough. The experience with most complaint commissions has left something to be desired. In some countries, the complaint commission is understaffed or underresourced. In another, it does not enjoy the necessary level of investigative independence. And in another, there is public dissatisfaction with the disposition of complaints. Thus, although complaint agencies need to be designed properly, in and of themselves they are probably insufficient to remedy all the ills of bad policing.

Which of the models described above is the best? What constitutes a successful oversight mechanism? From analyzing the various models, it appears that the most successful mechanisms share a few common characteristics. They are institutionally independent from the police in terms of staff, funding, and resources. They are adequately staffed and resourced so as to ensure an adequate complaint process. They possess an ability to compel compliance with their decisions. They empower the public by emphasizing victim involvement and notification. These considerations – independence, adequacy, public scrutiny, and victim involvement – have also been adopted by the European Court of Human Rights.<sup>171</sup>

It is our position that no one mechanism is "the best". Rather, the choice of oversight mechanism is context specific. According to policing expert Merrick Bobb, in

---

<sup>169</sup> Andrew Goldsmith, *Necessary but not Sufficient: The Role of Public Complaints Commissions in Police Accountability*, in *Accounting for Criminal Justice* 113 (Philip C. Stenning, ed., 1995).

<sup>170</sup> *Id.* at 120, 122-123.

<sup>171</sup> See, Opinion of the Commissioner for Human Rights Concerning Independent and Effective Determination of Complaints Against the Police (12 March, 2009), available at <https://wcd.coe.int/ViewDoc.jsp?id=1417857&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>.



minimally damaged communities, where the relationship between the police and citizenry is strained but not at breaking point, review and appellate models are the best. Minimal measures will be needed to restore trust. If the bonds of trust have been substantially eroded, but there exists a level of good will, a more aggressive model is needed, such as outsourcing disciplinary investigations to an external agency. In places where there is no or very little trust and a complete overhaul is needed, the appointment of an auditor will be needed as well.<sup>172</sup>

It seems clear that the situation in India, in terms of police misconduct, is dire. Report after report, committee after committee, have all pointed out the same problems. Widespread torture, rampant corruption, lack of knowledge about human rights and the rule of law, violence and lack of accountability. Moreover, these phenomena are pervasive. The views held by the lowest ranking officer are the views essentially held by the higher ups. Indeed, the reason low ranking officers come to practice torture and corruption is because they are taught that these are acceptable ways for an officer to conduct himself. The organizational culture is such that it is actually difficult for an officer to behave differently.

But the problem goes even deeper. In a sense, the police are themselves trapped in a vicious circle created by the colonial Police Act of 1861 that conceives of the police not as a force to maintain law and order and prevent crime, but as an organization that practices institutionalized violence and quashes dissent.<sup>173</sup> The colonial rulers themselves realized this. The Indian Police Commission appointed in 1902 (the Fraser Committee) concluded:

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 cooperation of the people.<sup>174</sup>

Not much has changed. Despite persistent criticism and calls for reform, the Police Act has not been repealed or reconceptualized by the central government or the states. There is a reason for this. Transforming the way the police is structured comes into conflict with deep seated political interests held by politicians of both the coalition and opposition. The ability to control the police carries with it great political strength. Relinquishing power is something elected officials are loath to do. Thus, the greatest problem is that of political will, which is not only confined to the political establishment. The police themselves do not believe that anything is wrong with their conduct. They tend to blame the problems on civil society, lack of cooperation, and a basic misunderstanding by the public of police work.<sup>175</sup>

---

<sup>172</sup> See, Review on National Police Oversight Models 26-27 (Police Assessment Resource Center, 2005) available at [http://www.parc.info/client\\_files/Eugene/Review%20of%20National%20Police%20Oversight%20Models%20\(Feb.%202005\).pdf](http://www.parc.info/client_files/Eugene/Review%20of%20National%20Police%20Oversight%20Models%20(Feb.%202005).pdf)

<sup>173</sup> Interview with M.K. Subramanian (date???)

<sup>174</sup> Cited in T.N. Dhar, *Governance, Policing, and Human Rights*, in *Policing India in the New Millennium* 337 (P.J. Alexander, ed., 2002).

<sup>175</sup> Id.

It is thus a good question whether even the most aggressive external oversight mechanism will actually make a significant difference. If the political branches will not set up such an agency, or if the police will not cooperate with an oversight agency should it be created, what will be the result of having such an agency?

The truth is that in such a case, we cannot expect significant progress to be made simply in virtue of having a complaints agency.<sup>176</sup> Police reform can succeed only through the combination of multiple efforts, one which is an external complaints agency. The other prongs are a sustained political commitment, pressure from civil society, and a transformation of the police structure and organization itself. Although the Supreme Court has initiated a modest reform process, it seems clear that that in itself is insufficient. The monitoring that has been set up in the wake of the Prakash Singh decision has been ineffective, to say the least.

For the time being, and for the purposes of this report, we are of the opinion that an aggressive and vigorous external agency is but one necessary facet of a complete overhaul in the provision in police services.

## **X. Details of an effective external police oversight mechanism**

### **A. A reactive and proactive role**

The goal of an effective complaint agency is twofold. First, investigating individual complaints against police officers and the creation of individual deterrence. Second, restoring public confidence in the police. For the latter, the complaint agency must be involved in the effort to achieve systemic change rather than exclusively focused on individual corrections that are unlikely to bring about a comprehensive change. The problem with focusing on individual misconduct is that it ignores larger problems and looks only at personal responsibility while overlooking more pervasive issues that might have given rise to the problematic behavior. In such cases, the problem must be dealt with holistically. Indeed, commentators have often stressed the need for such a role in countries that confine themselves to a purely investigative function. Such a function must be done in collaboration with the police.<sup>177</sup>

In other words, the complaint agency must have a proactive as well as a reactive role. The reactive branch responds to complaints filed by the public, NGO's, and the like. The proactive branch initiates investigations on matters it deems important, oversees larger longer term police processes, recommends reforms, and works with the police and other entities to see them implemented.

---

<sup>176</sup> The experience in various Indian states after the 2006 Supreme Court judgment is instructive. For details, see in *Feudal Forces: Reform Delayed: Moving from Force to Service in South Asian Policing* 34-53 (CHRI, 2008).

<sup>177</sup> See, e.g., Goldsmith, *supra* note \_\_\_\_ at 116.

## **B. Structuring the agency**

It is best if the complaint agency adopts the following structure. The agency must be institutionally separate from the police. It should be funded by parliament and not the executive, or its budget should at least be overseen by parliament. It must be adequately staffed with qualified investigators and, insofar as possible, not be staffed by former police officers. There is some empirical evidence that suggests that former police officers do not suffer from the same biases internal investigations officer do, however, most countries insist on such a separation. It is possible that initially the involvement of some former police officers will be inevitable, but the agency must provide rigorous training to equip its investigators with the necessary skills. Similarly, staffing an agency or commission with former judges is not effective. Former judges can play a role in formulating agency policy, but they cannot do the investigative work on their own.

The agency must also maintain contact with civil society generally and with complainants, specifically. Engaging with NGO's and communities is important for the promotion of public confidence in the new agency and consciousness raising. Moreover, civil society can often provide information that would otherwise not be available to the agency. Thus, such collaboration can bring about new actions and reforms. The inclusion of complainants serves both purposes. First, as a commitment of due process and accountability by the agency itself. Second, as a form of victim empowerment.

As stated above, the agency must also have a policy and research branch that will undertake long term projects and reform. That branch will track police performance and detect entrenched problems that require systemic treatment.

## **C. Particular powers**

In terms of particular powers the complaint agency should possess, we believe the following capacities are essential. The agency should have the power to investigate all aspects of police activity and all police bodies, including paramilitary bodies that provide police and quasi-police services. The agency must be able to conduct its investigations freely, for which it will need powers to subpoena witnesses (including police officers), powers to compel the production of documents, power to access police stations and facilities, and power to conduct wiretaps (pending judicial approval). We further recommend that the onset of an investigation against an officer shall result in a freeze of promotion and salary, until the complaint can be ascertained. The agency shall have the power to conduct public hearing on issues of public importance related to the police and to initiate inquiry committees.

Upon completion of the investigation, the agency's recommendation shall be binding in the following way. In a case where the agency decides the matter is best handled by the police, that determination shall be binding on the police, which must initiate an inquiry. Similar to the system in the UK, we believe that that the agency must maintain either a supervisory or managerial role over the police investigation, depending on the case. The police will have to periodically report to the agency on the investigation's progress and outcome. If the case is investigated by the agency, we

believe that the agency may retain prosecutorial power, at least over some cases. At the same time, we realize that issues of staff and resources may prevent this. Thus, the agency must work in close cooperation with prosecution authorities. Although their recommendation to initiate criminal proceedings may not be binding, it shall be treated as presumptively binding, unless there is a strong justification to deviate. In this context, we also recommend repealing section 197 of the Code of Criminal Procedure, which presently serves as a bar to prosecuting deviant police officers.

## **D. Power Sharing and division of labor**

Given the dismal track record of internal investigations in India, we believe that initially at least, the bulk of investigations must be carried out by the external agency. However, it is possible that the agency will decide whether there are cases that can suffice with police investigations, for example very minor infractions.

We acknowledge that although the police have intrinsic problems investigating itself, stripping it of all disciplinary powers will undermine systemic reform attempts and impact the hierarchical nature and the chain of command. In addition to police accountability to the public, there also needs to be accountability to the organization and to superiors. This type of accountability can only be achieved through internal oversight. At the same time, law enforcement is not the police's business; it is the public's business. Thus, we believe that although the police can, in principle, be in charge of investigating some complaints, the decision which complaint will be investigated by which authority will be made by the external agency. Moreover, there should be a category of complaints that will be exclusively handled by the agency, namely serious violations such as custodial death, torture, rape and corruption/extortion. We recognize that over time, and upon assessment and given the police's performance, it may be the case that a higher caseload of internal investigations will be warranted.

Although this report is mainly concerned with external oversight, it is clear that internal investigations must be reformed as well. Firstly, internal investigation must become more transparent. The police must keep the public informed and publicize the outcomes of disciplinary proceedings. There must be clear standards for police conduct. It is advisable that these standards be set after consultation with a broad range of organizations, including NGO's, and that the external agency assume a leading role in the drafting of such standards, jointly with the police.

## **E. Collaboration with police and other entities**

One of the most important, and difficult, conditions for a successful oversight mechanism is ensuring police cooperation, without which the agency's work becomes confrontational and less effective. Research shows that police are always resistant and skeptical toward external agencies. This often leads to a lack of cooperation of the placement of various hurdles on the external agency's work. Thus, there needs to be a way for the external agency to be both aggressive and vigorous and at the same time maintain good working relations with the body it oversees, without also being captured by it. To be sure, the problem is that getting cooperation will be harder the more the agency is independent.

This point cannot be stressed enough. Even a perfect institutional design will be ineffective without police cooperation.<sup>178</sup> There are several ways to achieve and maintain good working relations. First, ample training and education must be provided to police officers on the role of the external agency. Though the police may not be convinced of its necessity, it is crucial that they understand its purpose and their corresponding duty to cooperate. Regular meeting should be held between senior police officials and agency personnel to ensure dialogue and open channels of communication where both sides can express grievances and attempt to work through them rationally.

Finally, there should be some sanctions in place for non-cooperation. Police officers should be held accountable if they do not cooperate with the external agency's investigation. In cases where the officer obstructs an investigation, for example by refusing to talk to an investigator or by refusing to produce evidence, that officer should be held accountable. Moreover, the officer's superiors should also be held accountable, since many times it will be them ordering the non-cooperation. The sanctions must account for these cases as well. However, because the goal is to promote a good working relationship, these sanctions should not be used lightly. It is highly desirable that the promulgation of such sanction be done by the police rather than the external agency, to signal to police officers that the police are taking the matter seriously. This will also make cooperation more likely.<sup>179</sup>

## **XI. Reforming the police – further steps**

An external complaint agency, such as the one discussed here, is but one arrow in a quiver. Serious reform must take into account not just supervising and deterring police officers after a violation has occurred, hoping that aggressive prosecution will prevent further abuse, but taking heed of the organizational culture that gives rise to these offenses in the first place.

A particular problem that speaks to this issue is that, across the board, independent of institutional design, the substantiation rates of complaints remain alarmingly low, even with aggressive external agencies. One response is to say that complainants are

---

<sup>178</sup> See, e.g. Washington D.C. Annual Report, supra note \_\_\_ at 11. Police failed to follow OPC recommendations and lack of cooperation was prevalent. The OPC pursued this issue by publicizing it and meeting with senior police officials. See also, Eileen Luna and Samuel Walker, *Institutional Structure v. Political Will: Albuquerque as a Case Study in the Effectiveness of Civilian Oversight of Police*, in *Civilian Oversight of Policing: Governance, Democracy, and Human Rights* 83 (Andrew Goldsmith and Colleen Lewis, eds., 2000).

<sup>179</sup> This was done by the Washington D.C. police in April 2007: "After meeting with OPC and the chairman of the District Council's Committee on Public Safety and the Judiciary to discuss these concerns, the Chief issued directives to the department indicating that she expected employees to cooperate fully with OPC and that she would discipline anyone who did not cooperate. Since that time, the number of instances of non-cooperation has fallen dramatically – from 42 in the first half of the year before the directives to six in the second half, almost all within a month of the directives – and discipline has been imposed regularly for non-cooperation that did occur. OPC is satisfied with MPD's prompt and effective response to this issue, and given its importance to the effective operation of the District's police accountability system, OPC will continue to monitor the imposition of discipline by MPD." OPC Annual Report, supra note \_\_\_\_ at 11.

eager to complain, even in trivial cases. But this is not correct. Most complainants are not out to exact revenge. They complain because they want their grievance to be addressed and that the misconduct will not recur. It is difficult to substantiate cases because, no matter who investigates, it is often one word against another, plus the usual difficulties of obtaining evidence from police officers and their colleagues. These problems give rise to a different line of inquiry. If substantiation rates are low and will most likely continue to be low, something must be done to prevent police misconduct in the first place as opposed to only investigating and punishing it ex post. It is true that investigations and punishment carry deterrent effects, but those may not be considerable if the complaints authority is understaffed and under-resourced and the size of the police is large. In such cases, emphasis must be given to the police structure itself and its training.

The problem with relying exclusively on complaint authorities is that they tend to take the existing police structure as a given. This is apparent in India, where the order issued by the Supreme Court in 2006 merely attempted to impose a complaints authority without changing the basic organizational structure and culture of the police. To be sure, such a change cannot come from the Court as it has no powers to implement its decision. This transformative move must be taken up by the police and the political establishment. The lack of political will, coupled by a lack of a push from civil society, is what stands between real reform and merely the "tweaking" of an ailing system.

Thus, serious thought must be given to comprehensive reform and not just creating a complaints agency. This direction cannot be taken up here, but we offer some points be considered more fully in later reports. First, the Police Act of 1861 must be abolished and replaced with a modern police bill to ensure police accountability and transparency. The bill should also include provisions on the training of police officers and guarantee that policy decisions are not improperly tainted by partisan interests. In addition, the bill should seek to establish relationships between the police and civil society.

Second, we believe that a large part of the problem that plagues the police is over centralization. When decisions are centralized, this gives power to a select group of people, which then brings about abuse of that power. The police needs to organize and manage itself in such a way that will discourage abuses of power. Decentralizing the police has the potential to endow lower ranked officers with more responsibility and enhance experimentation and cross-institutional learning. Moreover, it also has the potential for civic and community involvement in police matters, thus making good on a promise for a more democratic police force. In western countries, this is known as community policing.<sup>180</sup> Police have started to involve affected citizens in their operations. For example, police meet regularly with community members, hear their grievances, receive information from them, and together formulate a list of priorities to be tackled by the police. The community monitors police progress to make sure decisions are implemented. In India, there is already, in principle, a system in place to realize the vision of community policing. Here we are speaking of reforming the police system itself through a decentralization process by using the Panchayati Raj

---

<sup>180</sup> For an analysis of community policing and its practice See Archon Fung, *Empowered Participation: Reinventing Urban Democracy* (2004).

Institutions. The Panchayati Raj Institutions, which became a part of India's constitution in the 73<sup>rd</sup> and 74<sup>th</sup> amendments, outline a system of local governance by devolving authority to village councils, a form of democratic empowerment. At present, the Panchayati Raj Institutions are not authorized to deal with police affairs. They are mostly concerned with matters of economic development and social justice. However, there is no reason why their authority cannot be extended to cover police matters as well. Serious thought must be given to how this will be done on an institutional level.

## **XII. Summary of recommendations and conclusions**

This report has attempted to propose a structure for a police complaint agency that is geared to the particular problems of Indian policing. The report highlighted the current problems plaguing the Indian police service and discussed the many reform attempts that, overwhelmingly, have not been carried out. We then turned our attention to the experience of different countries when moving from internal police investigations to external oversight mechanisms. This move is fraught with difficulties, and the overall success is mixed. Police tend to resist external oversight agencies and substantiation rates remain low. Indeed, a major hurdle is the level of cooperation the agency receives from the police. This has been a problem that institutional design alone cannot deal with effectively. Rather, it depends on the good will and good faith of those at work and the establishment of good working relationships between the two bodies. This suggests that what is necessary is not just an effective institutional design, but a revamping of the institutional culture that underlies that design. Again, this process is transformative and for it to succeed it requires a change of attitude, something that is not present among police reformers at the moment.

As for the structure of the complaints agency, we recommend that such an agency be independent from the police in terms of staff, infrastructure, and resources. This should be guaranteed in legislation. The agency should receive broad powers to conduct investigations effectively. Though it is possible that it will not be able to handle all complaints, it should, in the minimum, supervise or manage internal investigations. However, the preference is for independent investigations conducted by agency personnel. The agency's recommendations should be binding upon the police in terms of disciplinary matters. In criminal matters, the agency may assume a prosecutorial role or recommend action to the prosecuting authorities, who must give a presumptive weight to the agency's recommendation to prosecute.

The agency's powers should be extensive: full investigative powers, subpoena powers, access to documents, personnel and records, and wiretap. Moreover, we recommend that, in order to bring about more extensive reform, the agency must play a proactive role as well. It must seek bad practices, systemic problems, and entrenched behavior that must be altered. It must work with the police and civil society to root out such practices, even when not grounded in a particular complaint.

Further, we recommended that reforms be made in the internal investigation process as well. Since some investigations will still be carried out by the police, the investigation must be made more transparent and accountable. We suggested steps in that direction: promulgation of standards, proceedings, and disciplinary outcomes. We

also recommended that there will be sanctions against non-cooperation with external agencies.

Finally, we recommended that mechanisms be put in place to engage police with non-police elements such as civil society and NGO's. In that spirit we briefly invoked the model of community policing and how that could be done through the Panchayati Raj Institutions. More research needs to be done on this part of our proposal.