

## **Police Reforms : Initiatives and Impediments (Accountability For The Indian Police)**

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### **ABSTRACT**

*“We are responsible for what we are, and whatever we wish our ourselves to be, we have the power to make ourselves. If what we are now has been the result of our own past actions, it certainly follows that whatever we wish to be in future can be produced by our present actions, so we have to know how to act.”*

--Swami Vivekananda

Police, in its professionalized avatar, could reach a new high, in the year 2020. It could then be acceptable standards of service delivery, and could face ever emerging challenges confidently, with several new developments and favourable factors, like: Judiciary’s helpful intervention causing rise in Police Reforms. Growing application of RTI Act, 2005, leading to better transparency and accountability; Development of new science of Criminal Prevent logy, and formulation of National Policy on Crime Prevention; and Adoption of latest techno- managerial tools for Organisational excellence, etc. Taking a balanced view, a success-bound action-plan for future-readiness is outlined. In the present time, apart from the problem of normal law and order, the Indian state is confronted with the situation wherein Jihadi terrorism is posing significant challenge to the security forces on the western frontier and insurgency on the eastern frontier. In addition, menace of Maoist violence is one of the biggest threats to the stability of the country as is perceived by many analysts of internal security. We in the Bureau of Police Research and Development are engaging intelligentsia, academician and thinking fraternity among police personnel to work together as a think-tank, focus on various problems confronting Indian police and suggest possible solutions. “The citizen expects Police Officer to have the wisdom of Solomon, the courage of David, the strength of Samson, the patience of Job, the leadership of Moses, the kindness of the good Samaritan, the strategic training of Alexander, the faith of Daniel, the Diplomacy of Lincoln, the tolerance of the Carpenter of Nazereth and finally, an intimate knowledge of every branch of the natural, biological and social sciences. If he had these entire he might be a Good Policeman” Police, in its professionalized avatar, could reach a new high, in the year 2020. It could then be acceptable standards of service delivery, and could face ever emerging challenges confidently, with several new developments and favourable factors, Adoption of latest Taking a balanced view, a success bound action-plan for future-readiness is outlined.

**Key Words :** Police reforms, Initiatives, Impediments, Indian police

“A developed India by 2020 or even earlier is not a dream; it need not be a mere vision in the minds of many Indians. It is a mission we can all take up - and succeed”. – *APJ Abdul Kalam*

The purpose of this Paper, a first in a series, is a modest one. The paper 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

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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.

Throughout this paper, 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.

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

Under the Indian Constitution, the Police are a state concern.

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 modelled 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, while the state government is in charge of supervising its police force.

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.

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.

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. In terms of internal disciplinary investigations, the police are responsible for disciplining their own.

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. Save for a brief section on neglect of duty, however, the Act does not discuss instances of civilian and political control over police when the latter has exceeded or abused its power.

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.

#### **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.

#### **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.

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.

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, 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 behaviour that is sanctioned by superior officers and police officials is pointless.

Indeed, such behaviour 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.

#### **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.

*“... 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.”*

The problem has become so severe that even when the executive attempts to reform the police, it fails.

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.

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 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”.

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”.

#### **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.

#### **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 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.

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.

It is also worth emphasizing that judicial attempts at prosecuting torture or awarding compensation cannot do the necessary work of eradicating the practice. 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.

#### **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.

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.

#### **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.

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.

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, 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.

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 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.

It is true that corruption has cultural roots that can be traced to the organizational culture of the British Raj, 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.

#### **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.

#### **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 no registration: lack of resources is often cited and the desire for a bribe in exchange for registration is common as well.

#### **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 conduct such as torture and corruption will remain unchecked.

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. 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.

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.

#### **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 mechanisms 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.

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 favourably, there is little chance the 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.

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 in still 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.

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, misbehaviour... by other officers, and the principle of mutual no denunciation (the “blue curtain”)... Hence, the deviant behaviours 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.”

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.

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.

#### **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, we will borrow from the experience of other countries that have established such agencies.

**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, 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.

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”.

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.

**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. 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.

#### **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 in still complete public confidence in the police.

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.

#### **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. 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 police misconduct. The NHRC has the powers of a civil court in terms of summoning witnesses and access to information.

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 lay before the parliament. However, with respect to the armed forces the NHRC's authority is drastically curtailed.

#### **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.

#### **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
- F. Reforming the police – further steps

**Summary of recommendations and conclusion :**

This paper has attempted to propose a structure for a police complaint agency that is geared to the particular problems of Indian policing. The paper 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 behaviour 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 no 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. There is need and scope for a fuller and deeper discussion by concerned citizens, scholars and activists, men and women. This discussion, however, must be organized by an independent, non-partisan agency. An agency not tied to the apron strings of the government in any way but is willing to engage it in a creative dialogue.

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Goa, Kerala and Tamil Nadu have tabled their drafts in the assembly. Arunachal Pradesh, Andhra Pradesh, Delhi and West Bengal have their drafts ready, though some are not in the public domain.

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