Second Administrative Reforms Commission
Government of India

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5

PUBLIC ORDER

FIFTH REPORT

SECOND ADMINISTRATIVE REFORMS COMMISSION

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Justice for each . . . Peace for all

JUNE 2007

GOVERNMENT OF INDIA

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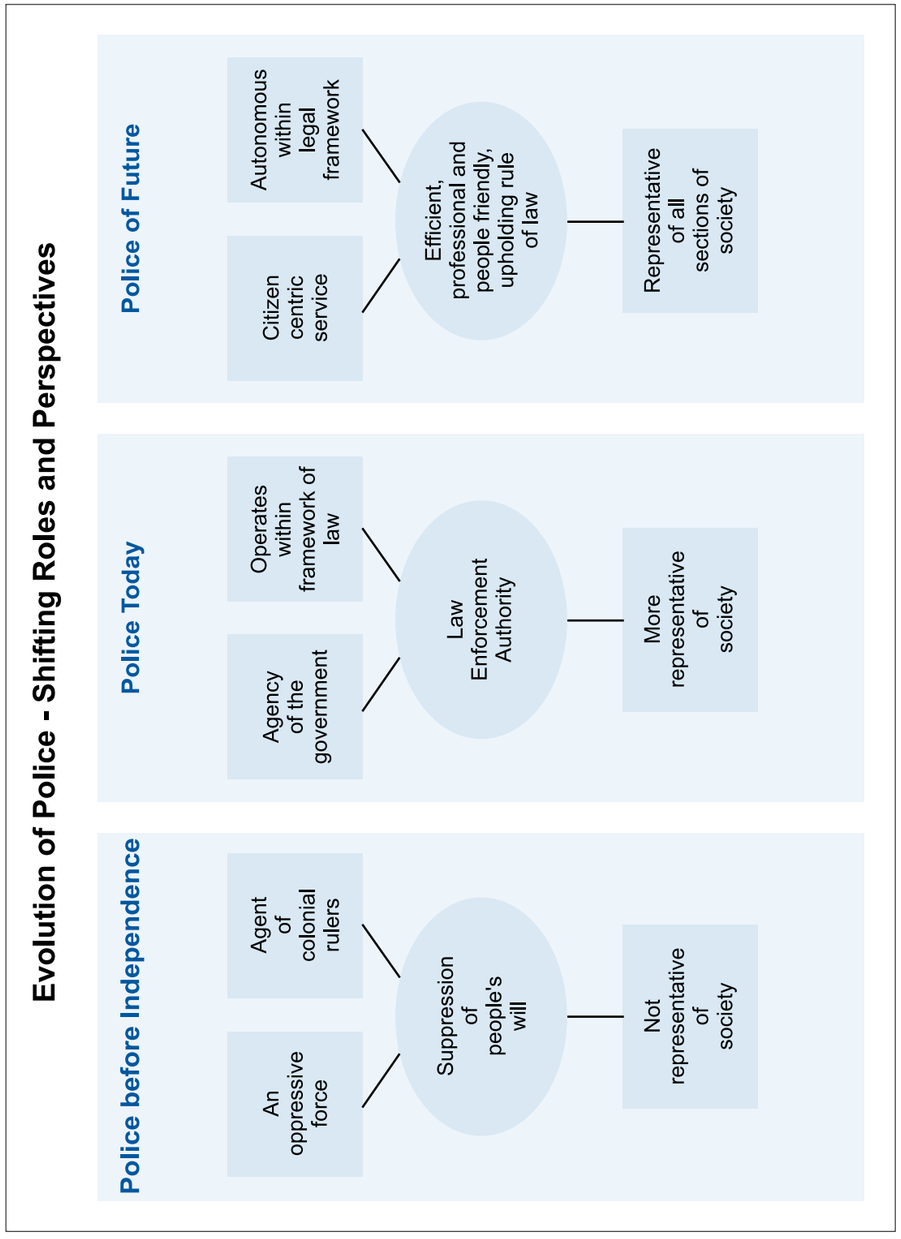

PREFACE

"If real criminals in our society are left without punishment for years, because of delay in criminal justice for various reasons, it will indeed result in the multiplication of people taking to criminal acts."

Dr. A.P.J. Abdul Kalam

Maintenance of public order and the rule of law is a key sovereign function of the State, as important in its own way as defending the nation from external aggression or maintaining the unity and integrity of the nation State. "It is through the rule of law", wrote Harold Laski, "that we have sought to avoid not merely the obvious dangers of unfettered executive discretion in administration, we have sought also to ensure that the citizen shall have his rights decided by a body of men whose security of tenure is safeguarded against the shifting currents of public opinion". Rule of law has been defined by Dicey as "the absolute supremacy and predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative or even wide discretionary authority on the part of government". The eminent jurist, Locke, put it succinctly, "wherever law ends, tyranny begins". By putting the lives and liberty of common citizens at risk, the possible collapse of public order and of the rule of law has the potential to destroy the faith of citizens in its government and erode its legitimacy. Large scale violence and disruption can threaten a country's social fabric, endanger national unity and destroy prospects for economic growth and development. If there is a failure of public order, it is because of the inadequacies of the legislature, the executive and the judiciary and we need to address them holistically in order to change things for the better.

The police have always been recognised as a vital arm of the State, whether in the ancient kingdoms that ruled India or in the city states of Greece. Our colonial rulers recognised the importance of maintaining public tranquility through the use of an armed police force knowing that the tenuous grip of a few thousand British over India's teeming millions would not survive any large scale public upsurge. They did so by establishing good communication links - the railways and the postal services - and by using the strong arm of the State to put down, with the use of force, any sign of challenge to the authority of the British Crown. They therefore developed the police in India as an armed force, as an organisation oriented not to the service of the people of India but principally to maintain the authority of the Crown. It was an agency of oppression, of subjugation, used for protecting British interests and to sustain their empire. The relationship between the police and the public was one of suspicion.

At Independence, Sardar Patel, even though a witness throughout the freedom struggle to the indiscriminate use of the bullet and the lathi by the police, knew that the police and the civil services were but the instruments of the government of the day. He felt that if these services could serve a foreign power, efficiently and effectively, there was no reason why they could not be expected to serve much more efficiently and with a greater sense of dedication, their own

country when free. But, he envisaged quite a different role for the police in independent India. He observed, *"You have served the previous regime under different conditions. The people then had a different attitude to you, but the reasons for that attitude have now vanished. Now the time has come when you can secure the affection and regard of the people."*

However, the transformation that Sardar Patel envisaged is still to be fully achieved in post independence India even after the lapse of more than half a century. As noted by the National Police Commission, " the present organisation of the police, based on the Police Act of 1861, is not suited for the current times because an authoritarian police of the imperial regime cannot function well in a democratic country." The ugly fact is that no one appears to be sincerely interested in moulding the police into what Sardar Patel envisaged. This is particularly unfortunate because new threats to internal security in the form of terrorism and organised crime have emerged while the old problems of communalism, left-wing terrorism/naxalism, parochialism and social divisions and discrimination on the basis of caste, gender, language and ethnic identity still beset us. Religion, which should be a unifying force in society, has become in India, a force for discord and violence. It should be recognised however, that with all these problems, we have still come a long way in our growth and development as a nation. At the time of Independence, many observers wrote us off as a nation state destined to failure, teetering on the edge of anarchy and disintegration, unlikely to survive for long as a united entity. We continue to defy those prophets of doom to this day, maintaining our democratic status among a sea of failed States and repelling the recurrent threats to our unity and integrity by a combination of grit and determination, resilience and fortitude.

Yet, there comes a time when a nation has to achieve and ensure long term stability in order to carry out substantial economic and social transformation. India is poised for an economic upsurge that can potentially change the lives of its people, as it gears up to tap the demographic dividend available from its youthful and talented population. For the economic boom to be sustained, the country has to move not only to a trajectory of high and sustained growth but also to high levels of social stability and public tranquility. For this to happen, governance has to go beyond the daily dose of crisis management and administration has to rise above merely a "holding of the fort".

While threats to national security from such problems as insurgent movements in the North East and the secessionist movement in Jammu and Kashmir have overarching political dimensions as well, which we propose to deal with separately in a report on Conflict Management, many other threats to internal security are exacerbated by our collective failure in providing good governance in vast swathes of the country.

Organised crime in particular has emerged as one of the most menacing challenges faced by this country. Those most successful in the commissioning of crimes are often the best organised and garner the most profit and cause the most harm. While the realm of organised crime is somewhat fluid, its reach runs deep to cover areas like money laundering, drug trafficking, illegal immigration, fraud, armed robbery etc. It is a big business and comes with huge cost.

At the same time, the incidence of prevalent social evils such as untouchability, dowry, child labour and physical and mental violence against women and children has continued unabated. These evils are both a cause and a consequence of deep rooted discriminatory practices against the vulnerable and deprived sections of our society. In particular, violence against women is complex and diverse in its manifestations. Its elimination requires a comprehensive and systematic response. Ending impunity and ensuring accountability for violence against women are crucial to prevent and reduce such violence. Often, the victims of such crimes that are rooted in the discriminatory practices of society suffer secondary victimisation at the hands of the police and it is critical therefore to sensitise police personnel to gender issues as well as other social disparities. This has to be backed by political commitment, systematic and sustained action and strong, dedicated and permanent institutional mechanisms to eliminate such offences that stem from social disparities.

The incidence of crime and violence is a reasonably good index of the efficacy or otherwise of the rule of law. The conviction rate in IPC cases which was 64.8% in 1961, has dropped to 42.4% in 2005. Rampant crime accompanied by low conviction rates attest to our failure in enforcing the rule of law and as a result, we have the phenomenon of glorification of vigilantism in our popular culture as testified by the success of the film – *Rang de Basanti.*

As has been stated by Dicey, "every office, from the Prime Minister to a constable is under the same responsibility for every act done without legal justifications as any other citizen". Rule of law is a fundamental feature of our Constitution. No one, not even the Home Minister in charge of the police administration and answerable to Parliament in the matter, has the power to direct the police as to how it would exercise its statutory powers, duties and discretion. At the same time, as noted by the National Police Commission in its 1981 report, what is required is creation of the awareness of direct accountability to the people at the various levels in the police hierarchy. But this also requires an aware and vigilant citizenry, because, as pointed out by Montesquieu, "the tyranny of a prince in an oligarchy is not as dangerous to the public welfare as the apathy of a citizen in a democracy". Hence the vision for the future has to focus on the citizen as depicted in the accompanying figure (Evolution of Police - Shifting Roles and Perspectives).

In our report, we have tried to chalk out a reform agenda for the principal agencies responsible for enforcing the rule of law and maintaining public order, viz. the police and the criminal justice system. In respect of police reforms, we have tried to rise above the cacophony of the recent, rather sterile, debate on police reforms in the country in the context of the proposed amendments to the Police Act and have come out, instead, with a holistic and long term view of what needs to be done. Our focus is not on pitting one organ of the State against another but on creating new structures, based on the best international examples that would usher in an era of accountability, functional autonomy, transparency, responsiveness and professionalism in the Indian police. The emphasis is on changing the character of the police from a "force" meant to enforce the writ of the State to a "service" meant to secure the lives and liberty and constitutional freedoms of the citizens of a free and democratic country.

That is why, in the context of reforms to the police set-up in the country, we have focused on separation of and independence for, the crime investigation branch of the police from the general law and order branch under the supervision of an independent Board of Investigation. This would insulate crime investigation, which is a specialised function, both from political interference and from the day to day law and order functions that the police are saddled with. At the same time we have recommended an officer oriented civil police with initial recruitment at the level of the Assistant Sub Inspector (ASI). Autonomy for the law and order branch of the police is sought to be ensured by providing for a collegial system for appointments and transfers of police officers, a move that will also ensure security of tenure. Independent accountability mechanisms have been recommended at the state and district levels to look into complaints against the police. The traditional accountability structures such as the practice of the annual performance report of the SPs/Dy SPs being written by the Collectors and of the DGP/IGPs by the Chief Secretary should also be revived. While the ultimate accountability of the police to the elected government of the day cannot be diluted, its operational grip on day to day matters has to be relaxed in order to guarantee operational freedom and autonomy for the police to fulfill their statutory functions without fear or favour.

Most of all, the mindset of negativism has to go. Police stations should become service centres rather than power centres. They have a role which is multi-dimensional, encompassing responsive policing, preventive policing, proactive policing and developmental policing. Police stations have to register complaints immediately even on email, and training of the personnel has to be reoriented to focus not only on structural skills but also the neglected soft skills such as communication, counselling, team building and leadership. The police service is the primary agent of the criminal justice system and its role has to be to protect human rights including the particular rights of the most vulnerable victims, such as women and children. The ethos of the police should reflect accommodation for all, prompt response to emergencies, professional problem solving, courteous behaviour, process based service dealing and public partnership in policing decisions.

Aristotle had said, "It is in justice that the ordering of society is centered". The criminal justice system is in many ways the bedrock of a democratic society since it upholds the rule of law which is a fundamental feature of a true democracy. Our criminal laws have to be sensitive to the changes in social structure and social philosophy, a reflection of contemporary social consciousness and a mirror of our values as a civilization. Delay in justice is justice denied, denial of justice is justice buried and non-accessibility of justice is justice aborted. A study undertaken by Dr. Wolfgang Kohling and the World Bank found a relationship between the quality of the judiciary and economic development based on data for Indian states. Quality was measured in terms of backlog of cases and frequency of appeals. It was found that a weak judiciary has a negative effect on social development, economic activity and on poverty and crime. Our criminal justice system, with a staggering 2.63 crore cases pending in the district and subordinate courts (though the number is less intimidating when we recognize that 29.49 lakh cases pertain to traffic challans and motor vehicle claims) is close to collapse with relatively unimportant cases clogging the judicial system.

In these days when modern technology is available, delays in the courts are unpardonable. Use of e-governance tools to speed up the processing of criminal cases is imperative. The costs involved are quite insignificant when compared to the economic and social costs of the delay.

In a court of law, legal technicalities must not override the basic requirement of providing justice. In this context, wide ranging recommendations have been made on issues such as the constitution of local courts, the right to silence of the accused, the admissibility of a statement made to a police officer, provisions for enhanced penalties for those guilty of instigating and fomenting mob violence, a functional linkage between crime investigation and prosecution to improve conviction rates and facilitating the police and courts to concentrate on their core function of handling serious crimes by outsourcing enforcement of social legislations and minor offences to the concerned departments. Other relevant issues such as guidelines for sentencing so that penalties are deterrent and not discretionary, how to tackle the problem of perjury that bedevils our courts, how to use the preventive provisions of our statutes to preempt mob violence etc. have also been covered in our Report.

The criminal justice system needs to be rearranged to inspire public confidence by serving all communities fairly, to provide consistently high standards of service for the victims and the witnesses, and to bring more offences to justice through a modern and efficient justice system with rigorous enforcement so as to usher in compliance with the rule of law. The criminal justice system should be combined with modern and well run police and other services to render justice for all. It is by ensuring justice for each that we can assure peace for all.

Public order and rule of law should be embedded in the minds of the people from childhood itself. The areas of vulnerabilities will have to be identified and dealt with at a young age by means of appropriate education and by removal of discrimination and fear. This applies to all communities, majority or minorities. The mind is the breeding ground for violation of rules which graduates to conflicts and terrorism.

A new doctrine of policing and criminal justice embedded in an inclusive approach to governance, with zero tolerance towards those who violate the law is what has been propounded here. When we consider reforms in the criminal justice system or in police administration we should go for an integrated and holistic approach and mere tinkering or expediency will disrupt the reform process. The 'justice gap' between the number of crimes committed, recorded by police and the number where an offender is brought to justice in the court needs to be scrupulously bridged and the rule of law should reign in the realm. I may state, in conclusion, that the approach we have taken is to recommend "big bang" reforms that are structural, and not incremental in nature. This is not to state that their implementation cannot be incremental; it can, and probably has to be, on the basis of consensus building among our political parties and more importantly, in public opinion; but the implementation should be with a clear cut idea of what is the eventual outcome envisaged and what is the road map regarding how to get there. If this Report has sent a clear signal to those committing offences that the criminal justice system is united in ensuring their detection, correction and punishment we would have achieved our objective.

In concluding, I would like to thank Justice M. N. Venkatachaliah, former Chief Justice of India, Justice R. C. Lahoti, former Chief Justice of India, Justice Y.K. Sabharwal, former Chief Justice of India, Justice N. Venkatchala, retired Judge of the Supreme Court, Justice B.N. Srikrishna, retired Judge of the Supreme Court and presently Chairman of the Sixth Pay Commission, Shri K. Padmanabhaiah, former Union Home Secretary, Shri Prakash Singh, former DG, BSF, Shri K.T.S. Tulsi, eminent lawyer and Shri Nikhil Kumar, M.P. for sharing valuable insights with us during our discussions. I may emphasise, however, that the views expressed in this Report are of the Commission's alone.

M. Veerappa Moily

New Delhi
June 1, 2007

(M. Veerappa Moily)
Chairman

Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Administrative Reforms and Public Grievances

Resolution

New Delhi, the 31st August, 2005

No. K-11022/9/2004-RC. — The President is pleased to set up a Commission of Inquiry to be called the second Administrative Reforms Commission (ARC) to prepare a detailed blueprint for revamping the public administration system.

2. The Commission will consist of the following :

(i) Shri Veerappa Moily - Chairperson
(ii) Shri V. Ramachandran - Member
(iii) Dr. A.P. Mukherjee - Member
(iv) Dr. A.H. Kalro - Member
(v) Dr. Jayaprakash Narayan - Member
(vi) Smt. Vineeta Rai - Member-Secretary

3. The Commission will suggest measures to achieve a proactive, responsive, accountable, sustainable and efficient administration for the country at all levels of the government. The Commission will, inter alia, consider the following :

(i) Organisational structure of the Government of India
(ii) Ethics in governance
(iii) Refurbishing of Personnel Administration
(iv) Strengthening of Financial Management Systems
(v) Steps to ensure effective administration at the State level
(vi) Steps to ensure effective District Administration
(vii) Local Self-Government/Panchayati Raj Institutions
(viii) Social Capital, Trust and Participative public service delivery
(ix) Citizen-centric administration
(x) Promoting e-governance
(xi) Issues of Federal Polity
(xii) Crisis Management
(xiii) Public Order

Some of the issues to be examined under each head are given in the Terms of Reference attached as a Schedule to this Resolution.

4. The Commission may exclude from its purview the detailed examination of administration of Defence, Railways, External Affairs, Security and Intelligence, as also subjects such as Centre-State relations, judicial reforms etc. which are already being examined by other bodies. The Commission will, however, be free to take the problems of these sectors into account in recommending re-organisation of the machinery of the Government or of any of its service agencies.

5. The Commission will give due consideration to the need for consultation with the State Governments.

6. The Commission will devise its own procedures (including for consultations with the State Government as may be considered appropriate by the Commission), and may appoint committees, consultants/advisers to assist it. The Commission may take into account the existing material and reports available on the subject and consider building upon the same rather than attempting to address all the issues ab initio.

7. The Ministries and Departments of the Government of India will furnish such information and documents and provide other assistance as may be required by the Commission. The Government of India trusts that the State Governments and all others concerned will extend their fullest cooperation and assistance to the Commission.

8. The Commission will furnish its report(s) to the Ministry of Personnel, Public Grievances & Pensions, Government of India, within one year of its constitution.

Sd/-
(P.I. Suvrathan)
Additional Secretary to Government of India

Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Administrative Reforms
and Public Grievances
……

RESOLUTION

New Delhi, the 24th July, 2006

No. K-11022/9/2004-RC (Vol.II) – The President is pleased to extend the term of the second Administrative Reforms Commission by one year upto 31.8.2007 for submission of its Reports to the Government.

Sd/-
(Rahul Sarin)
Additional Secretary to the Government of India

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LIST OF ABBREVIATIONS

Abbreviation	**Full Form**
ACCC	Australian Competition and Consumer Commission
AFP	Australian Federal Police
AFSPA	Armed Forces (Special Powers) Act
ASI	Assistant Sub Inspector
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
CBI	Central Bureau of Investigation
CCRB	Civilian Complaint Review Board
CCTV	Closed Circuit Television
CHRI	Commonwealth Human Rights Initiative
CID	Crime Investigation Department
CMS	Case Management System
CPMF	Central Paramilitary Forces
CPO	Central Police Organisations
CPR	Centre for Policy Research
CrPC	Criminal Procedure Code
CSO	Civil Society Organisation
DGP	Director General of Police
DM	District Magistrate
Dy SP	Deputy Superintendent of Police
EC	European Community
FBI	Federal Bureau of Investigation
FIR	First Information Report
HMCIC	Her Majesty's Chief Inspector of Constabulary
HMIC	Her Majesty's Inspectors of Constabulary
ICAC	Independent Commission against Corruption
ICCPR	International Convention on Civil and Political Rights
ICESCER	International Convention on Economic, Social and Cultural Rights
ICT	Information and Communication Technology
IEA	Indian Evidence Act
IGP	Inspector General of Police
IO	Investigating Officer
IPC	Indian Penal Code
JUDIS	Judgement Information System
LAN	Local Area Network
MCOCA	Maharashtra Control of Organised Crime Act
MPA	Metropolitan Police Authority
MPS	Metropolitan Police Service
NCIS	National Criminal Intelligence Service
NCRB	National Crime Records Bureau
NCS	National Crime Squad
NEC	North Eastern Council
NGO	Non-Governmental Organisation
NHRC	National Human Rights Commission
NIC	National Informatics Centre
NPC	National Police Commission
PACE	Police and Criminal Evidence Act
PADC	Police Act Drafting Committee
PCA	Police Complaints Authority
PCB	Police Complaints Board
PIC	Police Integrity Commission
POTA	Prevention of Terrorism Act, 2002
PPAC	Police Performance and Accountability Commission
RICO	Racketeer Influenced and Corrupt Organisations Act
SAP	South African Police
SHO	Station House Officer
SI	Sub Inspector
SLL	Special and Local Laws
SOCA	Serious Organised Crime Agency
SP	Superintendent of Police
SPCA	State Police Complaints Authority
SPO	Special Police Officer
TADA	Terrorist and Disruptive Activities (Prevention) Act, 1999
TRAC	Transactional Access Clearing House
UKIS	United Kingdom Immigration Service
ULPA	Unlawful Activities (Prevention) Act, 1967
USA	United States of America
USSC	United States Sentencing Commission

1

INTRODUCTION

Public Order, National Security, Economic Development and Social Harmony

1.1 One of the terms of reference of the Second Administrative Reforms Commission pertains to Public Order. The Commission has been asked to specifically:

(i) suggest a framework to strengthen the administrative machinery to maintain public order conducive to social harmony and economic development and
(ii) capacity building measures for conflict resolution.

1.2 The Commission recognizes that there is an inextricable link between the maintenance of public order and conflict resolution in view of the fact that the non-resolution of conflicts manifests itself in public disorder. Further, if conflicts are managed properly, the likelihood of breaches of public order is minimised. Public order is largely a product of efficient general administration, effective policing and a robust criminal justice system. Conflict management is a far more complex issue, involving a compact between the State and its citizens. It entails the effective and harmonious reconciliation of conflicting interests between various groups and also maintaining a delicate balance between various institutions of the State and among several tiers of government – national, state and local. The Commission has therefore decided to examine the two issues separately. This Report deals with public order, policing and attendant issues related to the criminal justice system. A separate Report will be presented on 'Conflict Management'.

1.3 Public order implies a harmonious state of society in which all events conform to the established law and is synonymous with peace, tranquility and the rule of law. 'Public disorder' has several connotations depending upon the nature of the State. In well developed societies, governed by the rule of law, even relatively minor infractions of law may be regarded as a public order problem. In most liberal democracies only serious disturbances which affect the even tenor of life would constitute a breakdown of public order. In autocratic societies, however, even orderly and peaceful protests and demonstrations against the State are often treated as breaches of public order.

Box 1.1: Public Order

"Public order is an expression of wide connotation and signifies that state of tranquility which prevails among the members of a political society as a result of the internal regulations enforced by the government which they have established".

Source: Romesh Thapar v. State of Madras; 1950 SCR 594

1.4 There are many causes of public disorder. Widely prevalent crime is a cause as well as an effect of public disorder. In a pluralistic democracy like ours, political polarisation sometimes throws up issues leading to conflicts which escalate into public disorder. Even demonstrations held on legitimate grounds can sometimes degenerate into public disorder. Given our historical inequities on the basis of caste and other social factors, these can easily lead to conflicts that may degenerate into public disorder. Similarly, divisive impulses based on ethnicity, religion, region, language and the sharing of natural resources can exacerbate tensions. With enhanced citizen awareness and assertion, failure in the delivery of services by the State often leads to frustration manifesting itself in public disorder. This tendency is aggravated by increasing criminalisation of politics and persistent interference in the due process of law. With increasing globalisation and the communications revolution, indigenous and transnational criminal organisations have acquired enormous resources and power with the capacity to cause serious breakdown of public order and even undermine the security of India. As opposed to organised crime, which is motivated by the prospect of illegitimate economic gains, terrorist groups are activated by real or imagined ideological motives. They could be homegrown armed groups like Naxalites holding sway in some pockets, or foreign sponsored secessionist groups indulging in reckless violence and mayhem with the sole objective of spreading terror. The greatest danger to public order emanates from the conjunction of foreign sponsored secessionist terrorists with organised crime networks.

1.5 Whatever be the cause of the breakdown of public order, it is imperative that peace and harmony be maintained. Public order along with the defence of the realm has always been the raison d'etre of the State throughout history. Emphasis on public order in monarchies and feudal oligarchies was often a result of the desire to perpetuate the domination of ruling elites. But in a modern, liberal, democratic, development oriented State, there are other compelling reasons to preserve public order. First, peace and order are necessary pre-conditions for freedom of expression of individuals and for the resolution of conflicting interests in a democratic society. Second, violence and disorder necessarily undermine economic growth and development, perpetuating a vicious cycle of poverty, frustration and violence. Third, rapid urbanization, which is a necessary concomitant of modernisation, tends to promote impersonal lives and create alienation, thus reducing peer pressure and social control. Fourth, the State's constitutional commitment to equitable growth and justice itself may unleash social tensions, as powerful oligarchies attempt to perpetuate the status quo. Fifth, rapid economic growth may sometimes aggravate disparities between individuals, groups and regions leading to escalation of tension and breaches of peace. Sixth, weak enforcement and failure of the criminal justice system create a culture of lawlessness posing a major threat to public order. Finally, organised crime, militancy and terrorism have devastating consequences on the morale of the public; such a situation may even lead

to the unnecessary loss of life as well as serious economic and political dislocation in an interdependent economy and polity.

1.6 The action of non-State players – political parties, media and citizens' groups - have a vital bearing on public order. However, it is well recognised that State agencies such as the administration, police and the criminal justice system have the direct responsibility and the commensurate authority to maintain public order. Among State agencies, police, by the very nature of their role, are the most visible arm of the government. The power of the State is expressed in its capacity to use force. As police are the agency to enforce the will of the State, the capacity of the police agencies to respond to a potential or real challenge to public order - rapidly, efficiently and justly - is of paramount importance. It is equally important to ensure that this power is exercised in a democratic society within the bounds of the Constitution and the law. Ultimately, the manner in which the police functions is an index of society's respect for civil liberty and the rule of law.

1.7 The National Police Commission (NPC, 1977-81), while dealing with public order issues and the police, observed:

"Increasing violence is seen as the most disturbing feature of the contemporary law and order situation in the country. Newspapers frequently report details of violent incidents involving large groups of agitators who clash with the police while articulating some issue of discontent and frustration. Police action to restore order in such situations frequently involves the use of force, including firearms on some occasions, which in turn, draws adverse public reaction and escalates tension and hostility between the public and the law enforcement agency."

Box 1.2: Social Democracy

We must make our political democracy a social democracy as well. Political democracy cannot last unless there is at the base of it, a social democracy. What does social democracy mean? It means a way of life which recognises liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items. They form a union in the sense that, to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, nor can liberty and equality be divorced from fraternity.

On the 26th January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognising the principle of one man one vote and one vote one value. In our social and economic life, we shall by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment else those who suffer from inequality will blow up the structure of democracy which this Constituent Assembly has so laboriously built up.

- Dr. B.R. Ambedkar

1.8 More recently, commenting on the need for revamping the police system in the emerging internal security scenario, the Padmanabhaiah Committee (2000) observed:

> *" Internal security is an important element of national security. It would be prudent for the policy makers to realise that the present-day challenges to internal security, especially those posed by covert designs of the Pakistan ISI, or Maoist-Marxist extremist groups and of the religious fundamentalists are of such a nature that to meet them squarely, meaningfully and effectively, the society and the country need a highly motivated, professionally skilled, infrastructurally self sufficient and sophisticatedly trained police force."*

1.9 However just and efficient policing may be, security agencies alone cannot enforce the rule of law and maintain public order. An effective and impartial criminal justice system is a necessary precondition for order and harmony in society. Therefore, the preventive provisions for maintaining peace and order and matters relating to crime investigation, prosecution and trial need to be examined in detail. It is for these reasons that in this Report the Commission has focused on police reforms and also the attendant reforms in the criminal justice system.

1.10 The issues involved are contentious and complex, generating debate and arousing passions. Several expert Committees and Commissions have made important recommendations and Courts have made significant pronouncements. The Commission has felt it necessary to reconcile the divergent opinions of various stakeholders. The recommendations and pronouncements of expert bodies and Courts need to be harmonised and examined comprehensively to find a balance between the enforcement of law and order and the protection of constitutional liberties. Accordingly, the Commission held a series of workshops and interacted with experts (the details of workshops and interactions are at Annexure-I). The Commission has carefully studied the verdicts of Courts, reports of different Commissions and expert bodies and best international practices. On the basis of these, the Commission has identified the core principles of reforms and has made specific and far reaching recommendations. It is hoped that these would help the country meet the emerging challenges related to public order in the coming decades.

2

PUBLIC ORDER – A GENERAL PERSPECTIVE

"Internal security is the foundation for peace and development of the nation" [1]

2.1 Public Order

2.1.1 A democratic society is necessarily characterised by public expression of dissent. Such dissent arises from a variety of socio-economic, political and cultural factors. In India, the situation is further compounded by factors such as caste, religion, poverty, illiteracy, demographic pressures, ethnic and linguistic diversity. The country has witnessed many disturbances – agrarian unrest, labour and student agitations, communal riots and caste related violence – which sometimes escalate into major disorders, especially when partisan politics come into play and where the administration fails to act early in resolving conflicts. Indeed, lack of good governance and poor implementation of laws are the major factors for public disorder.

2.1.2 Public order implies the absence of disturbance, riot, revolt, unruliness and lawlessness. Irrespective of the nature of a polity – democratic or autocratic, federal or unitary – maintenance of public order is universally recognised as the prime function of the State. Anarchy would result if the State failed to discharge this duty. Such persistent anarchy would lead to decay and destruction and the eventual disintegration of the State.

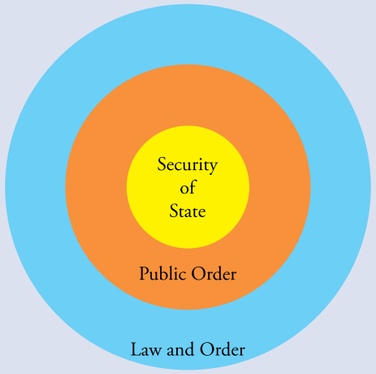
2.1.3 As stated in the earlier chapter, different types of regimes have differing perspectives of public order. For an autocrat any dissent would mean a threat to his existence and he would look at it as public disorder. However, in a liberal democracy every citizen has a right to dissent and the expression of such dissent need not in itself breach public order. Even within a democratic society, a situation viewed as a public disorder by one stakeholder may not be disorder for another stakeholder. For example, if a dominant section of society indulges in degrading forms of exploitation of the underprivileged sections, the resultant protests by the latter are often perceived by law enforcement agencies as public disorder, but for the exploited sections, the injustice is a breach of their human rights against which they have vented their ire. This brings us to the distinction between 'established order' and 'public order'. Established order may not always be as per the tenets of the rule of law. Perpetuating established order does not necessarily constitute public order in a society governed by democratic norms and the rule of law. The law enforcement machinery often

[1] The President of India, Dr. A.P.J. Abdul Kalam; Address at the 150th year of Chennai Metropolitan Police, Chennai (5-01-2007)

tends to concentrate on maintaining status quo, since, for them, public order means 'absence of any disturbance'. Laws and public policies aimed at desirable social change may sometimes lead to disturbance or even violence and yet such laws need to be enforced firmly if the core values of the Constitution and human rights are to be protected. In the ultimate analysis, public order is strengthened by protecting the liberty and dignity of citizens and bringing about social change.

2.1.4 Clarifying the distinction between 'law and order', 'public order' and 'public disorder affecting the security of the State', Justice Hidayatullah observed:

Fig 2.1: Public Order, Law and Order and Security of State



"Just as public order apprehends disorders of less gravity than those affecting the security of state, law and order also apprehends disorders of less gravity than those affecting public order. One has to imagine three concentric circles. Law and order represents the largest circle within which it is the next circle representing public order and the smallest circle represents the security of state. It is then easy to see that an act may affect law and order but not public order, just as an act may affect public order but not the security of state." [Ram Manohar Lohia v. State of Bihar, 1 SCR 7009(746), 1966].

2.1.5 Thus every situation in which the security of the State is threatened is a public order problem. Similarly, all situations which lead to public disorder, are necessarily law and order problems also. But all law and order problems are not public order problems. Thus, petty clashes between groups whose impact is limited to a small area are minor in nature with no impact on public order. But widespread violent clashes between two or more groups, such as communal riots, would pose grave threats to public order. A major terrorist activity could be classified as a public order problem impinging on the security of the State.

2.1.6 While every violation of law should be seen as a challenge to public order, the State should not precipitate a crisis by treating every infraction as a public order crisis. Superstitions and cultural attitudes, for example, take time, patience and education to change. India is an over-legislated country. The temptation to short circuit the process of modernisation by law and use of force should be resisted except when local opinion and

prevailing societal norms are grossly violative of the core principles of the Constitution and democratic governance. For instance, law must be applied with vigour in eliminating all forms of caste discrimination or protecting the vulnerable sections like women and children from exploitation. But when it comes to ending a practice such as, say, animal sacrifice, persuasion and education and not use of force against strong public sentiment, are called for. The problem in such cases is where to draw the line. If a law is violated with impunity, even if it is a minor law, should the State remain a mute spectator and condone violations promoting a culture of lawlessness? Or, should the State risk triggering a major public order crisis in its effort to enforce a law whose gains are minimal and risks are huge? The answer lies in two broad approaches. First, the State should resist the temptation to over-legislate except in crucial areas which constitute the essence of constitutional values or prevent significant public loss or promote vital public good. Persuasion, public education and social movements are the desirable routes to social change in such cases. Second, if such laws do exist, effective enforcement on case-to-case basis through prosecution of offenders is the better route and not the thoughtless precipitation of a public confrontation. If indeed a confrontation is called for, there must be adequate preparation, sufficient deployment of security forces, massive public campaign and preventive action in order to avert major rioting and loss of life.

2.1.7 Although cases of violation of laws and isolated crimes may not, by themselves pose a threat to public order, their cumulative effect may create conditions for the breakdown of public order. Similarly, the generally prevailing feeling of Government being soft, condonation of low intensity crimes by society, weaknesses in the criminal justice system, complacency on the part of the administration and corruption eventually result in public disorders.

2.1.8 In the post-Independence era, India has faced several instances of large scale public disorder, starting with the communal conflagration during Partition. Even now communal riots pose a grave threat to peace and order. The 1950s witnessed violent linguistic riots in some parts of the country. There have been violent secessionist movements in the North-East, Punjab and Jammu and Kashmir. There are numerous instances of agrarian, labour and student unrest. The last decade has seen an upsurge of violence by the left wing extremists, who have extended their influence over large tribal areas. Urbanisation has brought to the fore the shortcomings in the delivery of basic services, which at times, results in violent agitations. With improving awareness levels, conflicts over sharing of resources are increasing in rural and tribal areas. Organised groups, especially those concerned with the supply of essential services, have, on occasion, caused major public disorder by resorting to agitation, obstruction and violence.

2.1.9 The post-independence Indian experience of public order management is marked by successes in controlling violence because of linguistic agitations, dealing with Naxalite violence in West Bengal and Kerala, tackling terrorist violence in Punjab, and, containing several militant movements. Many serious outbreaks of violence have been addressed with commendable efficiency. Notwithstanding these successes, there have also been failures on account of human rights violations and instances of police acting under extraneous influences. Several public order problems have become chronic in nature because the root causes of violence – persistent misgovernance and failure to ensure a fair deal – have not been addressed adequately. When ethnic identity, religious fundamentalism and extra-territorial sponsorship of violence and terror fuel violence and disorder, the challenge becomes particularly grave. Such threats to national security need to be addressed by concerted and consistent State action, backed by swift justice and indeed by competent governance and democratic legitimacy.

2.2 Some Grave Public Order Problems

2.2.1 Communal Riots

Box 2.1: Communalism

Communalism is a way of thinking - the result of the perversions of religions and distortions of history... Today the poison of communalism is made more bitter by a mixture of regionalism and praochialism….. In order to root out this cancer from our country it is necessary to reorient the thinking of the youth of the country and thus save them from communal brain washing by their parents.

Source: Madon Commission Report 1974

2.2.1.1 Communalism in a broad sense implies blind allegiance to one's own communal group – religious, linguistic or ethnic – rather than to the larger society or to the nation as a whole. In its extreme form, communalism manifests itself in hatred towards groups perceived as hostile, ultimately leading to violent attacks on other communities. General amity and the peaceful coexistence of various faiths in India have been the envy of the civilised world. Nonetheless given the diversity of our society and our complex historical baggage, we are often beset with communal tensions which occasionally erupt into violence. At times, either bigoted and fundamentalist leadership, or unscrupulous political operators with an eye on short term electoral advantage, have deliberately and maliciously engineered communal passions, hatred and even violence to achieve sectarian polarisation. Most of the communal flare-ups have been between Hindus and Muslims, though conflicts involving other communities have also occasionally occurred. Similarly, there have been other ethnic clashes from time to time.

2.2.1.2 Though a number of communal riots have been dealt with effectively, there have also been many serious failures on the part of the administration in dealing with communal situations in a prompt and effective manner. A number of Commissions of Inquiry such as the Justice Raghubir Dayal Commission (Ranchi riots, 1967), Justice P Jaganmohan Reddy Commission (Ahmedabad riots, 1969), Justice D. P. Madon Commission (Bhiwandi riots, 1970), Justice Ranganath Misra Commission (Delhi riots, 1984), Justice B N Srikrishna Commission (Bombay riots 1992-93) and also the National Human Rights Commission have gone into the causes of these riots and analysed the causes and response of the administration and the police in handling them.

2.2.1.3 At times, the law enforcement machinery has been accused of gross dereliction of duty. The Commission of Inquiry appointed to inquire into the anti-Sikh riots in Delhi 1984, observed:

> *"The riots occurred broadly on account of the total passivity, callousness and indifference of the police in the matter of controlling the situation and protecting the people of the Sikh community…Several instances have come to be narrated where police personnel were found marching behind or mingled in the crowd. Since they did not make any attempt to stop the mob from indulging in criminal acts, an inference has been drawn that they were part of the mob and had the common intention and purpose… The Commission was shocked to find that there were incidents where the police wanted clear and definite allegations against the anti-social elements in different localities to be dropped out while recording FIRs."* [2]

2.2.1.4 The following observations were made by the National Human Rights Commission on the Gujarat riots in 2002 :

> *"The tragic events in Gujarat, starting with the Godhra incident and continuing with the violence that rocked the State for over two months, have greatly saddened the nation. There is no doubt, in the opinion of this Commission, that there was a comprehensive failure on the part of the State Government to control the persistent violation of the rights to life, liberty, equality and dignity of the people of the State. It is, of course, essential to heal the wounds and to look to a future of peace and harmony. But the pursuit of these high objectives must be based on justice and the upholding of the values of the Constitution of the Republic and the laws of the land. That is why it remains of fundamental importance that the measures that require to be taken to bring the violators of human rights to book are indeed taken".*[3]

[2] Extracted from the Report of the Justice Ranganath Misra Commission on the 1984 anti-Sikh riots in Delhi.
[3] Proceedings of the National Human Rights Commission, 31st May 2002; retrieved from http://nhrc.nic.in/ on 5-4-07

2.2.1.5 The reports of various Commissions, which have inquired into different communal riots, have pointed to the following:

Systemic Problems

- Conflict resolution mechanisms are ineffective;
- Intelligence gathered is not accurate, timely and actionable and
- Bad personnel policies - poor choice of officials and short tenures - lead to inadequate grasp of local conditions.

Administrative Shortcomings

- The administration and the police fail to anticipate and read indicators which precipitated violence earlier;
- Even after the appearance of first signals, the administration and police are slow to react;
- Field functionaries tend to seek and wait for instructions from superiors and superiors tend to interfere in local matters undermining local initiative and authority;
- The administration and police at times act in a partisan manner and
- At times there is failure of leadership, even total abdication on the part of those entrusted with maintenance of public order.

Post-riot Management Deficiencies

- Rehabilitation is often neglected, breeding resentment and residual anger and
- Officials are not held to account for their failures, thus perpetuating slackness and incompetence.

2.2.1.6 While some communal riots could be spontaneous, many are organised and pre-planned. Even in the case of spontaneous riots it is the underlying tensions between the communities, which flare up at the slightest provocation. The Union and State Governments have identified districts/cities/villages which are prone to communal violence because of their past history. Such areas obviously require special attention and preventive measures. It has been observed that while the administration swings into action to suppress riots, sufficient and timely attention is not paid to address the causes leading to such riots. Also, once the riots are controlled, cases against the guilty persons are not pursued with the required degree of urgency and tenacity. Even more reprehensibly, often as a 'compromise' following communal riots, serious cases against the accused are sought to be withdrawn from courts on extraneous considerations. There are also several instances of a new government

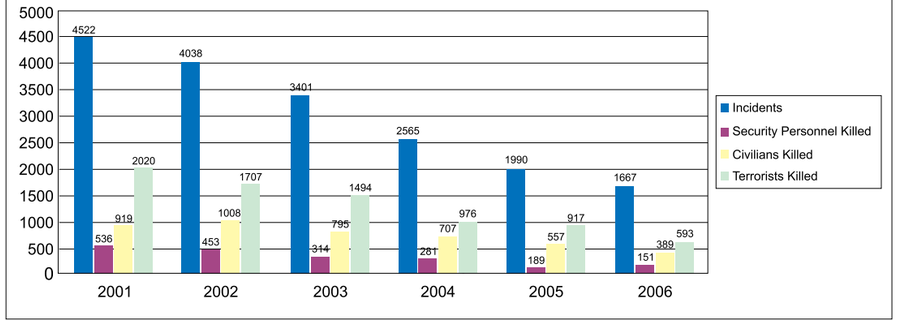
resorting to en masse withdrawal of cases against those involved in earlier riots during the tenure of the previous government. Such political opportunism and short sightedness have seriously contributed to the erosion of public order.

2.2.1.7 Most major communal riots are followed by Commissions of Inquiry. Sometimes, these Commissions of Inquiry take a long time to give their reports and very often the crucial recommendations made by them are not acted upon. All these have led to perpetuation of the causes of public disorder.

2.2.2 Terrorism

2.2.2.1 Terrorism has been defined as the illegal use of force or violence against people to create a wave of terror with the intention of achieving certain political or sectarian objectives. The border State of Jammu and Kashmir and some parts of the North East have witnessed prolonged terrorist activities. Several acts of terror in recent years – hijacking of an aircraft (1999), attacks on the Parliament in New Delhi (2001), on Akshardham Temple in Gujarat (2002), and at the Indian Institute of Science, Bangalore (2005), bomb blasts in market places in Delhi (2005) and in Varanasi (2006), serial bomb blasts in Mumbai (2006) and Malegaon (2006), massacre of labourers in Upper Assam (2007) etc. – all demonstrate that terrorism is not confined to a few pockets and that almost every part of the country is vulnerable. Even when the proximate cause of action or the political objective of the terror group is limited to a part of the country, the existence of sleeper cells, the spread of modern communications, an integrated economy and the increasing use of terror technology and tactics, have made it easy for the merchants of terror to spread their tentacles all over the country. As a result, terrorism is not merely a public order problem but has emerged as a grave threat to national security as well.

Fig 2.2 : Trend of Terrorist Violence in Jammu and Kashmir



2.2.2.2 The country has suffered huge casualties amongst civilians as well as security forces, besides colossal damage to private and public property, due to terrorist incidents. Fig. 2.2 [4] gives an idea about the impact of terrorism in the State of Jammu and Kashmir alone.

2.2.2.3 An analysis of some of the recent terrorist attacks indicates that terrorist organisations have used the existing organised crime networks. Terrorist groups and these crime syndicates have international links with similar organisations and are supported by foreign agencies inimical to our interests. Their activities are being financed through international money laundering and drug trafficking thus creating an intricate web of crime, terror and trafficking in arms and drugs. Experience in some of the chronically insurgency affected states shows that terrorist outfits with initial political objectives sooner or later degenerate into mercenary groups.

2.2.2.4 India is among the worst victims of terrorist violence in recent decades. In the face of this massive threat, despite severe limitations, the Indian State responded with a reasonable degree of success. Extra-territorial sponsorship of terrorism, porous borders, diplomatic complexities in dealing with safe havens across the border and the deficiencies in our own criminal justice system have made the task of countering terrorism extremely arduous and complex. And yet the valour and sacrifice of our security forces, the alertness and high degree of cohesion among various agencies, a broad political consensus backed by strong public opinion, democratic legitimacy of the State and the economic and social strengths that form the bedrock of our nation have greatly helped us withstand the onslaught of terror. The Indian response to terrorism has had significant success. Terrorism was totally eliminated from Punjab; Mizoram, which at one point of time was infested with insurgency, is now a peaceful state; there has been a decline in violence in Jammu and Kashmir, too. Several attempts of terrorists have been thwarted by timely action in many parts of the country.

2.2.2.5 The success of counter-terrorism strategies in Punjab has also highlighted the importance of a well coordinated strategy. The security forces have to win the confidence and support of the local people. High handed action by security forces, especially violations of human rights tend to alienate the local people who may then fall prey to terrorist designs.

2.2.2.6 To tackle the menace of terrorism, a multi-pronged approach is needed. Socio-economic development needs to be taken up on a priority basis so that the local people do not fall into the trap of terrorists; the administration and the service delivery mechanisms

[4] Source: Annual Report, 2006-07; Ministry of Home Affairs, Government of India.

need to be geared up so that the legitimate and long standing grievances of the people are redressed promptly and therefore cannot be exploited by terror groups. Strong measures are required to deal with criminal elements but with respect for human rights. To ensure this, the law enforcement agencies have to be supported with an appropriate legal framework, adequate training, infrastructure, equipments and intelligence. With the spurt in terrorism in recent years, many countries have enacted appropriate and stringent anti-terrorism laws. India too has had two enactments for dealing with terrorism in the past – (i) The Terrorist and Disruptive Activities (Prevention) Act, 1985 (allowed to lapse in 1995), and (ii) The Prevention of Terrorism Act, 2002 (repealed in 2004). However, both these legislations were allowed to lapse/repealed as it was contended that the powers conferred on the law enforcement agencies had the potential for misuse. The Law Commission in its 173rd Report (2000) examined this issue and highlighted the need for a law to deal firmly and effectively with terrorists. It also drafted "The Prevention of Terrorist Activities Bill". The constitutional validity of anti-terrorism laws has also been upheld by the Supreme Court. Many have urged that a strong legal framework be created to deal with terrorism. Clearly there is a felt need to strengthen the hands of security forces in the fight against terror, even as human rights and constitutional values are protected. The Commission would be examining these and other issues related to terrorism in a separate Report.

2.2.3 Militancy in the North East

2.2.3.1 The North East region has more than 200 ethnically diverse groups with distinct languages, dialects and socio-cultural identities. Some parts of this region have been suffering from militancy for several decades. Militancy in the region started with the Naga movement way back in the early 1950s and rose to serious levels in Manipur in the 1960s. Large scale immigration into Tripura gave birth to militancy there in the 1960s. Militancy in Assam, on the 'foreigners issue', has multiplied and spread to many new areas.

2.2.3.2 The numerous militant movements in the region have different objectives. A few movements seek outright secession from the Indian Union, some aspire for separate Statehood while others demand greater autonomy within the existing State. Extortion and abduction are frequently resorted to by some of the militant groups. Apart from causing huge loss of human lives, militancy has hampered economic development of the region. The situation is compounded by the involvement of some foreign intelligence agencies, which are providing material support to the insurgents. Besides, the long porous international borders have facilitated the movement of these groups and the smuggling of arms. Corruption, economic deprivation and unemployment are driving segments of youth into the fold of militant organisations. Ad hoc solutions resulting in widely varying degrees of 'autonomy' to different bodies – sometimes within a single state – have led to competitive demands and when they are not met, to alienation and violence.

2.2.3.3 Another intractable problem has been created by migration from Bangladesh. Initially, this migration represented movement of peasants from the over populated eastern districts of Bengal to the sparsely populated and fertile and fallow Brahmaputra valley constituting Assam. The redrawing of national boundaries following Partition provided an impetus to migrants from East Pakistan for reasons of personal safety to settle in Assam, where their presence gave rise to ethnic and linguistic tensions. This was followed by fresh influx of all communities due to the agrarian crisis in East Pakistan. This migration has continued even after the emergence of Bangladesh. The fear among the local populace that this immigrant population would reduce them to a minority, as has in fact happened in some parts, has fueled militancy in the region.

2.2.3.4 Currently, numerous militant groups are active in different North-Eastern states, particularly in Assam, Manipur, Meghalaya and Tripura. Some of these are: Assam - United Liberation Front of Assam (ULFA) and National Democratic Front of Bodoland (NDFB); Manipur - People's Liberation Army (PLA), United Liberation Liberation Front (UNLF), People's Revolutionary Party of Kangleipak (PREPAK), Kangleipak Communist Party, Kanglei Yaol Kanba Lup (KYKL), Manipur People's Liberation Front (MPLF) and Revolutionary People's Front (RPF); Meghalaya - Achik National Volunteer Council (ANVC) and Hynniewtrep National Liberation Council (HNLC); Tripura - All Tripura Tiger Force (ATTF) and National Liberation Front of Tripura (NLFT); Nagaland - Nationalist Socialist Council of Nagaland (Isak Muivah)-[NSCN(IM)] and Nationalist Socialist Council of Nagaland (Khaplang)-[NSCN(K)].[5]

2.2.3.5 The whole of Manipur (except the Imphal Municipal area), Nagaland and Assam, Tirap and Changlang districts of Arunachal Pradesh and a 20 km belt in the states having a common border with Assam and some parts of Tripura have been declared 'Disturbed Areas' under the Armed Forces (Special Powers) Act. There have also been demands for the repeal of this Act.[6]

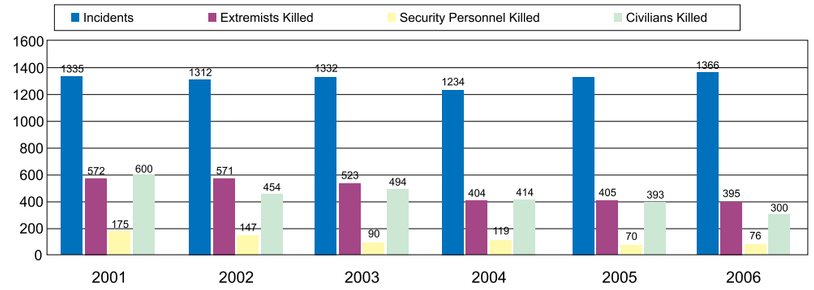
2.2.3.6 The gravity of the problem of militancy in the North-East is indicated in Fig 2.3[7]. The Government of India is engaging some of the militant groups in negotiations while providing financial assistance to the State Governments for upgrading their police for countering violence. It is also holding talks with neighbouring countries for effective border management.

2.2.3.7 Several major initiatives for the development of the North East Region have been launched: (a) The North Eastern Council (NEC) was established in 1972 through an Act of Parliament, The North Eastern Council Act, 1971, for securing the balanced development of the North Eastern Region and for inter-state coordination; (b) The Department for

[5] Source: Annual Report, Ministry of Home Affairs, 2006-07
[6] Source: ibid
[7] Source: ibid

Development of North East Region was set up in September 2001 and became a full-fledged Ministry in 2004; this Ministry acts as the nodal Ministry of the Union Government to deal with matters pertaining to the socio-economic development of the eight states of the North East and (c) All Union Ministries/Departments earmark at least 10% of their budget for specific programme of development in the North Eastern Region; to the extent

Fig 2.3 : Militancy in North East (Source : Annual Report, Ministry of Home Affairs)



of shortfall in the utilisation of this provision by any Ministry/Department (except some exempted ones) according to this norm, the amount is transferred to a new Reserve Fund (Non-lapsable Central Pool of Resources).

2.2.3.8 The problem of militancy in pockets of the North East is obviously very complex. The ethnicity, diversity, geography and history of the region demand a comprehensive nation building approach for resolving the complex issues. Fair reconciliation of conflicting interests in the region, adequate local empowerment with accountability, infrastructure development, economic growth, greater economic linkages with neighbouring regions and better governance and democratic legitimacy must together form the foundation of durable peace and prosperity in the region. However, in the short term, security agencies need to be strengthened, extortion and abductions must be stopped, militancy should be curbed and accountability should be institutionalised in order to protect human rights.

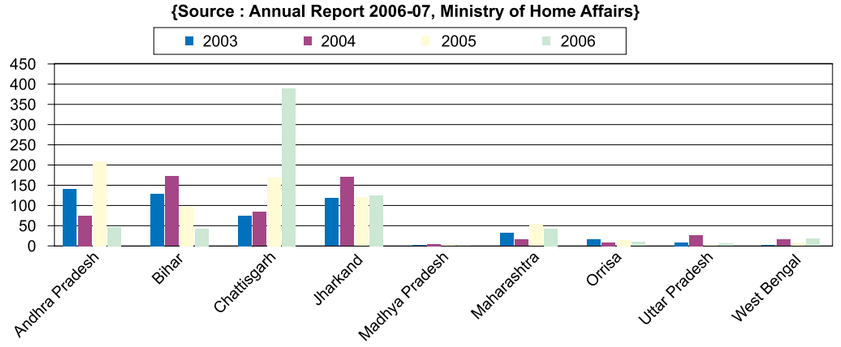
2.2.4 Left-Wing Extremism

2.2.4.1 Naxalism is the name given to radical, violent left wing extremism. This movement took birth in Naxalbari in West Bengal in the 1960s. Naxalites adopted a policy of annihilation of their 'class enemies'. This localised movement was effectively dealt with by the Government. However, in recent years there has been a spread of the Naxalite influence in

several states. The extent of Naxal violence has been tabulated in Fig 2.4[8]. It has come down significantly in Andhra Pradesh in terms of both incidents and casualties but Chhattisgarh has seen higher levels of violence and casualties. It is also reported that Naxal groups have been trying to spread to Karnataka, Kerala, Tamil Nadu and Uttarakhand[9]. Apart from indulging in violence, Naxalites continue to hold Jan-Adalats, a mechanism to dispense crude and instant justice.

2.2.4.2 Naxalism has become an issue of major concern. Naxalites operate in the vacuum created by the inadequacy and ineffectiveness of the administrative machinery. It is a fact that the tribal hinterland of the country has emerged as the bastion of the Naxalite movement. The problems of poverty and alienation, the demand of territorial rights and displacement from traditional forest habitats have aggravated the problem. Besides, unequal sharing of benefits of exploitation of resources has also helped create a fertile breeding ground for the growth of this menace. Naxalites exploit local grievances and take advantage of the sufferings of the deprived sections, gaining local support and recruiting cadres. They have

Fig 2.4 : Statewise Extent of Naxal Violence (No. Of Deaths)
{Source : Annual Report 2006-07, Ministry of Home Affairs}



also successfully mobilised the support of some civil society groups to further their cause overtly. It is reported that they have been able to establish trans-border linkages with like-minded extremist groups for obtaining explosives and arms as also for organising training for their own cadres. These extremists often do not allow major development of the area including infrastructure development for fear of losing their hold over the people. They have also been making use of terror tactics to suppress any opposition and to demoralise the civil administration.

2.2.4.3 Thus what started as an ideological movement with 'romantic sacrificialism' as the main ingredient, has now become increasingly militarised and criminalised. Use of

[8] Source: Annual Report, Ministry of Home Affairs; 2006-07
[9] Source: ibid

sophisticated weaponry, training in use of weapons and explosive devices, including for women and children, resort to abductions, mass killings, extortion rackets, links with secessionist and terrorist groups, assassination of public figures and arms trafficking are now the hallmark of Naxalite violence.

2.2.4.4 Initially, several groups with ideological differences operated separately and at times were in confrontation with each other. In 2004, two of the main left wing extremist groups in the country came together under the single banner of the Communist Party of India (Maoist) (source: Ministry of Home Affairs, Annual Report, 2004-05). They have a command structure with provincial and regional committees and local platoons of weapon-wielding 'soldiers'. They are backed by a chain of 'couriers' and sympathisers and some civil society organisations. The command and control structure, strategic planning and operational efficiency of the Naxalites are impressive. There also seems to be sufficient local delegation, which gives flexibility to the local formations operating mostly in remote and inaccessible areas. The knowledge of the terrain offers a great advantage to Naxalites, but they have also shown the capacity to target individuals in towns and cities. While armed cadres get depleted by liquidation or surrender, there is continuous fresh recruitment to replenish the losses.

2.2.4.5 There is need to upgrade the existing state police forces quantitatively as well as qualitatively with adequate infrastructure, specialised training and sound intelligence support. Effective coordination among the affected states and an overarching national strategy are critical in combating left wing extremism. Care must, however, be taken to institutionalise mechanisms to prevent human rights violations.

2.2.4.6 Government has adopted a multi-pronged strategy to contain this serious threat. Apart from countering violence, it is addressing the political issues involved, attending to the development needs of the affected areas and managing public perception. Strengthening of intelligence structures, financial assistance to the affected states, modernisation of the state police, long-term deployment of Central Police Forces, improved coordination mechanism, Backward District Initiatives and Backward Regions Grant Fund are some of the concrete measures taken by the Government of India. These initiatives need to be closely monitored to ensure that their impact is demonstrated on the ground and due accountability mechanisms for this have to be institutionalised. In dealing with the situation, a comprehensive political and administrative strategy is called for. While violence has to be dealt with by the security forces, other wings of civil administration have an important role to play in promoting development and equity and ensuring prompt action in tackling the problems confronting the people in the affected regions.

2.2.4.7 Past experience of successfully dealing with Naxalite violence by states like Kerala, and West Bengal indicates that a two-pronged strategy of land reforms and socio-economic development coupled with firm police action and systematic investigation and prosecution of cases of violence, is effective in weaning away people from supporting the Naxalite creed of violence.

2.3 Causative Factors of Major Public Order Problems

2.3.1 The classical school in criminology propounded the theory that every human being acts on a rational basis and would try to maximise his gains or minimise his pains. This was the basis of the theory of deterrence. As per this theory the State tries to prevent crimes by institutionalising a system of law enforcement, which would give adequate punishment to the offender to act as a deterrent. The neo-classical school supports the classical viewpoint but places emphasis on reform and rehabilitation of the offender. There have been several other theories of criminology which have added social, psychological and economic dimensions to the causes of crime. As postulated by modern theorists, controlling crime requires a multi-pronged approach involving socio-economic and psychological measures; this does not, however, invalidate the theory of deterrence. Hence the importance of a comprehensive and efficient system of criminal justice administration.

2.3.2 Any serious analysis of public order should recognise the inextricable link between crime control and public order. Deterioration in the 'crime situation' adversely affects public order and vice versa. Unchecked, widespread crime creates a culture of lawlessness. A society, which does not deal with crime swiftly and effectively, in effect rewards criminals and makes life insecure for innocent law abiding citizens. If such a climate persists, more and more people tend to perceive that crime pays, and that there is no penalty or risk attached to it. This can only lead to more crime. Such a climate is conducive to easy recourse to violence and results in the breakdown of public order. In addition, unpunished criminals become the agents of disorder in society. Local criminal gangs are almost always involved deeply in engineering or perpetuating violence in times of breakdown of public order. For instance, in almost all communal riots, the rowdy history sheeters and local criminals are involved in causing violence and mayhem. Any attempt to upgrade the existing arrangements to deal with public order aberrations will be unsuccessful unless accompanied by measures to generally bolster the system of administering criminal justice.

2.3.3 According to David H. Bayley, a well-known authority on the Indian police, in the welter of disorder to which India was subjected, three broad categories of public violence can be discerned: violence of remonstrance, violence of confrontation, and violence of frustration. There are five broad causes of the types of violence mentioned above. These can be categorised as follows:

i. Social: In India, the historical social structures and 'hierarchy' has been a root cause for social unrest. Caste has been a fundamental divisive factor in our society.

ii. Communal: Religious orthodoxy and blind adherence to extreme view points is another fundamental cause for unrest. In India, the existence of every religion side by side has been the matter of strength in our multi-cultural system but fringe elements often create unrest.

iii. Economic: Underdevelopment is arguably a cause of tension. The desire to improve one's position in competition with others, itself creates stress and in India, with 250 million people below the poverty line, the strain is significant.

iv. Administrative: The administrative machinery is not always perceived by people to be objective and fair. Slackness in delivery of services, lethargy in enforcement of laws is at times a major reason for frustration in citizens. Corrupt and self seeking behaviour of some officials compounds the problem further. One of the major causative factors for the eruption of public disorder is the inadequacy of the administration in enforcing the legitimate constitutional, statutory and traditional rights of citizens leading to serious discontentment among them.

v. Political: In a vibrant democratic system, not a totalitarian regime, divergent political view points can lead to tension. More important, however, is the problem of political expediency where a section of the political leadership tries to use the administration for furthering its own political agenda. The increasing propensity to use public office for private gain, unwarranted interference in crime investigation and day to day functioning of police, short-term populism at the cost of durable solutions, complexities of a federal polity – all these make it difficult to address some of the growing threats to public order. Added to this is the relatively low importance attached to public order in our political discourse. All these contribute to breakdown of the public order fabric.

2.3.4 Hostilities arising out of such tensions and conflicts provide opportunity for exploitation by external forces inimical to the country. The situation has also been exploited by radical political groups for furtherance of their own agenda and objectives. Attention has already been drawn to the instigation of militancy by agencies inimical to India. The bomb blasts in Mumbai in 1993 and again the recent bomb blasts in trains in Mumbai city and many other similar occurrences are manifestations of this. In the North-East also, cross-border support to various domestic movements has led to aggravation of anti-national activities. In order to prevent such exploitation of domestic conflicts by external forces, we must be able to manage such conflicts without allowing them to develop into prolonged and grave

disorder. Further, rapid spread of information, through technological developments, has the potential to accentuate the existing ones.

2.4 Lessons from the Past

2.4.1Sixty years have passed since we gained Independence. There is need to now identify the strengths and weaknesses of our institutions and systems based on past experience so as to draw useful lessons from them. Some of the major strengths of the existing legal framework are (a) a clearly laid down democratic, constitutional and legal framework, (b) an independent judiciary and an elaborate criminal justice system and judicial review of executive action, (c) representative institutions to debate issues of public importance, (d) a vigilant media and (e) emerging civil society responsiveness.

2.4.2 The strong points of the administrative framework of the country have been (a) firmly established administrative traditions, (b) a well-organised police machinery, (c) systems of accountability, even if deficient and (d) the existence of a professional bureaucracy which brings about administrative cohesion and uniformity.

2.4.3 We should however recognise that our legal and administrative framework has certain weaknesses:

- delays in the criminal justice system;
- unresponsiveness of the administration;
- lack of functional autonomy for law enforcement and investigation agencies;
- lack of adequate and effective accountability mechanisms;
- outdated and unprofessional interrogation and investigation techniques;
- tendency to use unwarranted disproportionate force and abdication of duties under partisan pressures;
- inadequate training and infrastructure for police;
- lack of coordination between prosecution and investigation;
- insufficiency of laws dealing with terrorism and organised crime;
- people's propensity to perjury; and
- neglect of victim's rights

These are some of the malaise which have to be addressed urgently, boldly and in an innovative manner.

2.4.4 The declining efficacy of the existing systems of investigation and trial is clearly brought home in Tables 2.1 and 2.2. The number of crimes has increased over the years but what is more disturbing is the low rate of conviction. Table 2.2 shows that while the workload and pendency at investigation stage are increasing, a much higher percentage of cases are now

being chargesheeted. But the decline in conviction rates shows that investigation standards are falling, thus indicating that there may be an easy recourse to chargesheeting without adequate application of mind and gathering of evidence. This also reflects on the quality of public prosecution. If convictions resulting from confession of the accused are excluded, the rate of conviction would be even lower.

2.4.5 The lack of accountability has been one of the main reasons for the tardy response of the government machinery. Rarely is an official held to account for his/her acts of omission or commission in dealing with a public order problem. The government machinery rarely attempts to address a brewing conflict. There have been cases, where adequate precautionary steps were not taken even when there was a high probability of outbreak of violence. In several instances, violence was not controlled with the degree of firmness required. One of the reasons for this is that incentives are often skewed in favour of not dealing with a situation firmly even when the situation so demands. Using force to restore order even when

Table 2.1: Disposal of IPC Crime Cases by Police (Decadal Picture)

S.No.	Year	Total No. of Cases for Investigation (including pending cases)	Number of Cases Investigated				Percentage of Cases	
			Found F/NC/MF#	Charge-sheeted	Total True Cases @	Total * (Col. 4-6)	Investigated (Col.7/ Col.3x100)	Charge-sheeted (Col.5x100/ Col.6)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	1961	696155	54128	285059	532151	586279	84.2	53.6
2	1971	1138588	83663	428382	810691	894354	78.5	52.8
3	1981	1692060	127655	740881	1208339	1335994	79.0	61.3
4	1991	2075718	118626	1091579	1530861	1649487	79.5	71.3
5	2001	2238379	105019	1303397	1658258	1763277	78.8	78.6
6	2002	2246845	116913	1335792	1670339	1787252	79.5	80.0
7	2003	2169268	105383	1271504	1586562	1691945	78.0	80.1
8	2004	2303354	103249	1317632	1651944	1755193	76.2	79.8
9	2005	2365658	100183	1367268	1693652	1793835	75.8	80.7

F/NC/MF- False/Non cognizable / Mistake of fact
* Excluding cases where investigation was refused @ Cases charge-sheeted + Final report true submitted.
Source: Crime in India, 2005; NCRB

Table 2.2: Disposal of IPC Crime Cases by Courts (Decadal Picture)

Sl. No.	Year	Total No. of Cases for Trial (Including Pending Cases)	No. of Cases		Percentage of Cases	
			Tried *	Convicted	Trial Completed (Col.4/ Col.3)	Conviction (Col.5 / Col.4)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	1961	8,00,784	2,42,592	1,57,318	30.3	64.8
2	1971	9,43,394	3,01,869	1,87,072	32.0	62.0
3	1981	21,11,791	5,05,412	2,65,531	23.9	52.5
4	1991	39,64,610	6,67,340	3,19,157	16.8	47.8
5	2001	62,21,034	9,31,892	3,80,504	15.0	40.8
6	2002	64,64,748	9,81,393	3,98,830	15.2	40.6
7	2003	65,77,778	9,59,567	3,84,887	14.6	40.1
8	2004	67,68,713	9,57,311	4,06,621	14.1	42.5
9	2005	69,91,508	10,13,240	4,30,091	14.5	42.4

* Excluding withdrawn/compounded cases.
Source: Crime in India, 2005; NCRB

justified, runs the risk of future inquiries whereas soft pedaling may be a 'safer' option. There have, however, been cases where the security forces have over-reacted.

2.4.6 An equally glaring problem is the propensity to use third degree methods and habitual violation of human rights by law enforcement agencies. Reconciliation of the imperatives of public order with a citizen's liberty and dignity is a vital requirement in a liberal society. Training, equipments, procedures and attitudes need to be attuned to the citizens' human rights.

2.4.7 The civil administration including the police, today, have to perform their duties under a far more vigilant and demanding environment. Because of an increasing level of public awareness and expectations, there are greater demands on the administrative machinery, for delivery of better service. There is also greater public scrutiny of their actions because of

enhanced consciousness of the citizens about their rights and privileges and the emergence of a powerful media and citizens' groups.

2.5 The Need for Comprehensive Reforms

2.5.1 The Commission circulated a questionnaire covering various aspects of public order {Annexures II (1) and II (2)}. Only 12% of the respondents stated that they were satisfied with the existing system of management of public order in the country. Another 5% were satisfied with it 'only to some extent'; 79% were categorical in expressing their dissatisfaction. Prominent among the reasons for dissatisfaction mentioned were:

- extraneous influence in public order management;
- the root causes of problems not being addressed by the administrative agencies;
- absence of attempts to find long term solutions to problems;
- administrative decisions being guided by political expediency;
- inadequate involvement of civil society, NGOs and social workers in public order management;
- lack of an institutional mechanism defining the roles and responsibilities of the various stakeholders in conflict resolution;
- lack of empowerment of junior ranks at the cutting edge levels of administration to effectively deal with problems at the nascent stage;
- lack of appropriate training for functionaries of civil administration and the police on public order issues;
- lack of modern technology and equipment with the police;
- absence of computerised databases on criminal, anti-social and anti-national elements;
- lack of specialised, well trained wings in the police organisations of many affected states to deal with problems like left wing extremism;
- lack of a cohesive all India policy and legal framework to deal with problems of public order affecting security of state, such as terrorism and left wing extremism;
- ineffective performance monitoring systems for public order management functionaries; and
- lack of accountability of the police and administration to the public.

2.5.2 Several Commissions of Inquiry have examined the causes and the handling of major instances of public disorder. Some of the important findings of the Commission of Inquiry for the riots in Mumbai in 1992 and the serial bomb blasts 1993, as one example, are as follows:

"The canker of corruption has eaten into the entrails of Indian Society and police department is no exception."

"Frequent transfers of police personnel on grounds other than administrative convenience and nepotism and corruption in the matter of posting, allotment of quarters and even grant of leave, have haunted the police administration for long. Political interference at all levels, have haunted the police administration for long."

"Justice delayed is justice denied, more so, in case of a criminal trial. Very often the delay is on account of the unpreparedness of the investigating officer."

"There should be meticulous and effective consideration of intelligence collected for maintenance of law and order and prevention of crimes."

"Weapons available with the police in the police stations were inadequate in terms of quantity and quality."

"Manpower available with police is extremely inadequate and as a result an average policeman is required to work for at least 12 hours."

"Religious activities in congested areas led to flare up. Similarly, announcements on loudspeakers and religious observances in public places led to avoidable tension among different communities."

These extracts are only illustrative but they emphasise the need for a major overhaul of the public order management mechanism.

2.5.3 The Committee on Reforms of Criminal Justice System has observed:

> *"A former Chief Justice of India warned about a decade ago that the Criminal Justice System in India was about to collapse. It is common knowledge that the two major problems confronting the Criminal Justice System are huge pendency of criminal cases and the inordinate delay in disposal of criminal cases on the one hand and the very low rate of conviction in cases involving serious crimes on the other. This has encouraged crime. Violent and organised crimes have become the order of the day. As chances of convictions are remote, crime has become a profitable business. Life has become unsafe and people live in constant fear. Law and order situation has deteriorated and the citizens have lost confidence in the criminal justice system".*[10]

2.5.4 The Law Commission has given several reports on reforming the criminal justice system. The Committee on Reforms of Criminal Justice System, 2003 went into this issue

[10] Extracted from the Report of the Committee on Reforms of Criminal Justice System

at great length and made wide ranging recommendations. The National Police Commission, several State Police Commissions and State Administrative Reforms Commissions have gone into the issue of police reforms. The National Human Rights Commission has made recommendations for professionalising investigations by the police with a view to minimise human rights violations. Earlier, the All India Committee on Jail Reforms recommended wide ranging prison reforms (1980-83). More recently, the Police Act Drafting Committee, 2006 recommended a Model Police Act to be adopted by the states. The Supreme Court has also issued directions covering several aspects of police reforms[11].

2.5.5 All these reports and pronouncements emphasise the urgency for reforms in the police and the criminal justice system. Attaining a situation where there is perfect public order is no doubt utopian. Perhaps a more realistic target would be to establish the rule of law. It has been said that a State establishes rule of law by making it easier for people to do right and making it difficult for them to do wrong. This is achieved through a combination of preventive and deterrent measures. The State creates a congenial atmosphere by legislating and creating various institutions. Mere existence of good laws does not ensure rule of law. These laws have to be implemented in right earnest. The State has to provide fair, objective and transparent governance so that citizens have faith in it. The State can prevent public disorder by anticipating potential problems and attempting to resolve them. Visible policing is an extremely effective instrument to prevent crimes in society. In spite of all preventive measures, there are elements in society which will violate laws. Therefore in order to ensure justice to the persons wronged and to deter others, the criminal justice system seeks to punish the wrong doers. In order to ensure the rule of law, all the instrumentalities mentioned in the preceding paras have to function effectively and in harmony (Fig 2.5). Also any effort to move towards an ideal public order situation would require a comprehensive look at all the instrumentalities.

2.5.6 Several stakeholders have to work in harmony to establish the rule of law. Essentially such a rule of law would entail:

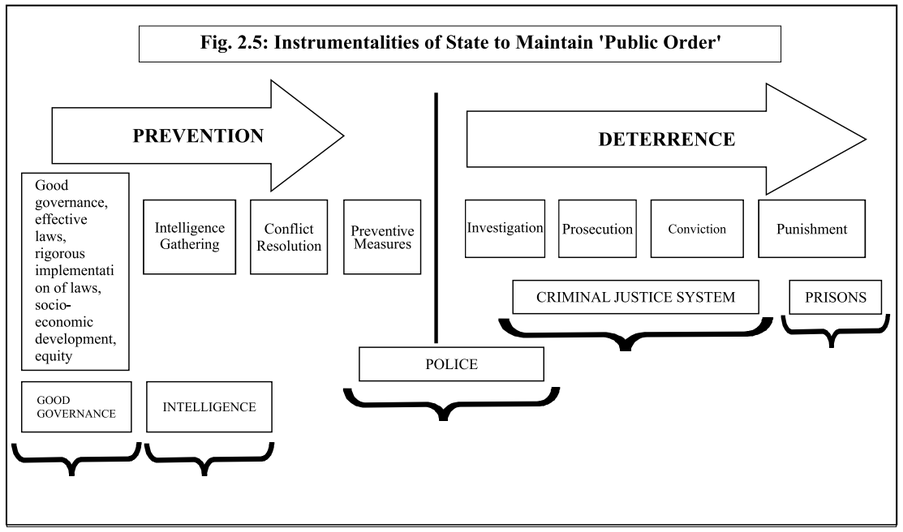
- a legal framework, which is fair and just and provides equal opportunities for all;
- an effective, fair and just civil administration which infuses respect for law;
- an effective, efficient, accountable and well equipped police system which prevents any threat to rule of law;
- a strong, autonomous and effective crime investigation machinery backed by a professionally competent prosecution and a fair and swift criminal justice system;

[11] Writ Petition (Civil) No. 310 of 1996

- a civil society which is vigilant about its rights and duties; and
- an alert and responsible media.

2.5.7 The Commission, in this Report, has looked at all these aspects in a comprehensive and harmonious manner and also examined the linkages between different organisations involved in this process.

Fig. 2.5: Instrumentalities of State to Maintain 'Public Order'



3

THE EXISTING POLICE SYSTEM

3.1 The Police Organisation

3.1.1 'Public order' and 'Police' figure as Entry 1 and 2 respectively, in List II (State List) in the Seventh Schedule of our Constitution, thereby making State Governments primarily responsible for maintaining public order. Invariably, police, which is a part of the civil administration, is at the forefront in maintaining law and order. In the field, the district administration (the District Magistrate and the Superintendent of Police) and in bigger cities in some states the Commissioner of Police assume the responsibility for public order. As explained earlier, the day-to-day policing and crime management also have a profound bearing on the rule of law and thereby public order (see Box 3.1 on The Broken Window Syndrome). This chapter therefore deals with the existing police system as well as public order management.

Box 3.1: The Broken Window Syndrome

In their groundbreaking article in The Atlantic called "Broken Windows: The police and neighborhood safety," Kelling and Wilson argued that rampant crime is the inevitable result of disorder. If a window in a building is broken and left unrepaired, people walking by will conclude that no one cares and that no one is in charge. One unrepaired window is an invitation to break more windows, and lawlessness spreads outward from buildings to streets to entire communities.

In the subways, low-level crimes like fare-jumping act similarly as small but unmistakable signals that, left unchecked, invite further chaos. In such an environment, according to Kelling and Wilson, citizen complaints will often be met with excuses: the police are understaffed, the courts don't punish first-time offenders, etc. Soon, citizens stop calling the police, convinced they can't do anything.

Source: http://www.dmreview.com/article_sub.cfm?articleId=1003792

3.1.2 Article 355 of the Constitution enjoins upon the Union to protect every state against external aggression and internal disturbance and thereby to ensure that the government of every state is carried on in accordance with the provisions of the Constitution. The Police Act, 1861 is still the basic instrument governing the functioning of the Indian police. Under this Act, the Inspector General

Table 3.1 : Police-Population Ratio

Russia	1:28
Thailand	1:228
Malaysia	1:249
United Kingdom	1:290
USA	1:334
New Zealand	1:416
Japan	1:563
Pakistan	1:625
India	1:694

Source: BPR&D

of Police (now designated as the Director General and Inspector General of Police) is the head of a state police. States are divided into districts and a Superintendent of Police heads the district police. A few states have also passed their own State Police Acts. Besides, other laws like the Indian Penal Code (IPC) of 1862, the Indian Evidence Act (IEA) of 1872 and the Code of Criminal Procedure (CrPC) of 1973 also govern the functioning of the police. An idea about the organisation of police in the states can be had from Table 3.2[12].

Table 3.2 Organisational Setup of State Police (2005*)

Sl.No.	State/UT	No. of Zones	No. of Ranges	No. of Police Districts	No. of Sub Divisions	No. of Circles	No. of Rural Police Stations	No. of Urban Police Stations	No. of Women Police Stations	Population per Police Station
1	2	3	4	5	6	7	8	9	10	11
	STATES									
1	Andhra Pradesh	14	10	26	153	496	1159	397	23	48265
2	Arunachal Pradesh	1	2	15	5	17	54	15	0	15913
3	Assam	0	6	27	27	43	116	116	1	114401
4	Bihar	5	12	46	110	202	643	114	0	109641
5	Chhattisgarh	4	4	21	41	0	194	144	3	61096
6	Goa	0	0	2	7	0	9	16	1	51833
7	Gujarat	12	7	30	95	86	388	80	4	107354
8	Haryana	0	5	21	49	0	158	51	1	100688
9	Himachal Pradesh	0	3	12	23	0	58	29	0	69861
10	Jammu & Kashmir	2	6	21	38	0	123	49	2	58297
11	Jharkhand	3	6	24	33	112	250	79	0	81902
12	Karnataka	10	10	31	119	230	447	358	10	64847
13	Kerala	2	4	17	52	192	311	133	3	71233
14	Madhya Pradesh	0	16	51	145	0	600	330	9	64268
15	Maharashtra	32	7	54	263	0	650	292	0	102844
16	Manipur	2	4	9	21	0	45	13	1	36725
17	Meghalaya	0	2	7	12	16	15	12	0	85882

[12] Source: National Crime Records Bureau (Crime in India, 2005)

Sl.No.	State/UT	No. of Zones	No. of Ranges	No. of Police Districts	No. of Sub Divisions	No. of Circles	No. of Rural Police Stations	No. of Urban Police Stations	No. of Women Police Stations	Population per Police Station
18	Mizoram	0	1	8	15	0	15	19	0	26134
19	Nagaland	2	7	10	24	17	19	24	1	45228
20	Orissa	0	9	34	35	91	291	168	6	79150
21	Punjab	3	5	15	96	51	166	93	3	92973
22	Rajasthan	0	8	33	0	172	417	294	13	78049
23	Sikkim	1	1	4	11	0	8	19	0	20032
24	Tamil Nadu	4	12	37	243	287	507	715	196	44010
25	Tripura	1	2	4	20	29	33	22	0	58167
26	Uttar Pradesh	7	17	70	309	376	1106	340	12	113990
27	Uttaranchal	0	2	13	71	34	66	40	2	78605
28	West Bengal	4	8	27	81	106	235	228	0	173167
	Total (States)	109	176	669	2098	2557	8083	4190	291	
	Union Territories									
29	A&N Islands	0	0	2	4	4	18	3	1	16189
30	Chandigarh	0	0	0	3	0	0	11	0	81876
31	D&N Haveli	0	0	1	13	0	1	1	0	110245
32	Daman&Diu	0	0	2	2	0	0	2	0	79102
33	Delhi	0	3	9	41	0	0	129	0	107368
34	Lakshadweep	1	1	1	1	1	9	0	0	6739
35	Pondicherry	0	0	1	6	15	16	24	3	22659
	Total (UTs)	1	4	16	70	20	44	170	4	
	Total (All-India)	110	180	685	2168	2577	8127	4360	295	

**Population figures are as per 'Primary Census Abstract', Census of India 2001 published by Office of the Registrar General, India.

Source: National Crime Records Bureau (Crime in India, 2005)

The strength of the Police Force in various states is given in Table 3.3[13]

[13] Source: National Crime Records Bureau (Crime in India 2005)

Table 3.3: Sanctioned and Actual Strength of Civil Police Including District Armed Police as on 31.12.2005 (Men + Women)
(State & UT-wise)

Sl. No.	State/ UT	DG/Addl DG/ IG/DIG		SSP/Addl.SP/ ASP/Dy.SP		Inspector, SI & ASI		Officers below ASI		Grand Total	
		Sanctioned	Actual	Sanctioned	Actual	Sanctioned	Actual	Sanctioned	Actual	Sanctioned	Actual
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
	STATES :										
1	Andhra Pradesh	72	67	467	411	7398	6783	62964	58303	70901	65564
2	Arunachal Pradesh	5	3	63	59	512	495	2655	2632	3235	3189
3	Assam	34	34	295	269	5008	4876	24696	23162	30033	28341
4	Bihar	50	46	330	200	11096	8231	44540	33736	56016	42213
5	Chhattisgarh	32	32	318	223	2194	1392	15779	11840	18323	13487
6	Goa	2	3	27	26	311	245	2781	2728	3121	3002
7	Gujarat	63	52	271	241	10146	8747	42767	37712	53247	46752
8	Haryana	29	55	171	194	5071	3845	33828	26325	39099	30419
9	Himachal Pradesh	34	33	119	111	1257	1174	7411	6735	8821	8053
10	Jammu & Kashmir	35	38	349	536	5092	6280	36343	39699	41819	46553
11	Jharkhand	0	0	54	77	2113	2422	11642	19652	13809	22151
12	Karnataka	14	11	254	242	5769	4930	52204	45451	58241	50634
13	Kerala	30	26	338	315	3558	3424	32410	31451	36336	35216
14	Madhya Pradesh	60	60	749	749	6743	6743	46573	46573	54125	54125
15	Maharashtra @	70	66	810	589	23250	21046	111940	100835	136070	122536
16	Manipur	15	12	80	55	1152	954	4476	3747	5723	4768
17	Meghalaya	18	10	50	49	976	887	5259	4688	6303	5634
18	Mizoram	6	6	78	78	1013	1013	2519	2519	3616	3616
19	Nagaland	22	22	72	71	473	460	5092	4947	5659	5500
20	Orissa	34	29	304	271	5576	4721	23441	21463	29355	26484
21	Punjab @	39	39	378	378	6127	6127	45598	45598	52142	52142
22	Rajasthan	60	47	706	605	9343	6668	48555	44560	58664	51880
23	Sikkim	16	16	71	71	242	390	1735	1445	2064	1922
24	Tamil Nadu	87	77	883	804	9709	7352	74052	62667	84731	70900
25	Tripura	19	14	159	111	1329	1491	8548	7765	10055	9381
26	Uttar Pradesh	154	144	1306	1010	13476	12743	118659	106242	133595	120139
27	Uttaranchal	10	13	116	54	666	721	8926	8355	9718	9143
28	West Bengal	97	90	468	395	19066	17147	49450	43340	69081	60972
	Total (States)	1107	1045	9286	8194	158666	141307	924843	844170	109302	994716
	UNION TERRITORIES										
29	A&N Islands	2	2	10	15	398	334	1874	1881	2284	2232
30	Chandigarh	1	1	15	16	473	445	3301	3182	3790	3644
31	Dadar & Nagar Haveli	0	0	2	2	17	13	222	208	241	223
32	Daman & Diu	1	1	4	4	23	23	216	216	244	244
33	Delhi	27	29	292	262	10424	9414	35221	34018	45964	43723
34	Lakshadweep	0	0	2	2	53	43	294	228	349	273
35	Pondicherry	2	2	21	19	284	220	1392	1279	1699	1520
	Total (UTs)	33	35	346	320	11672	10492	42520	41012	54571	51859
	Total (All-India)	1140	1080	9632	8514	170338	151799	967363	885182	1148473	1046575

@ Previous year figures repeated in absence of current year data
Source: National Crime Records Bureau (Crime in India, 2005)

3.2 People's Perception of the Police

3.2.1 Max Weber defined 'State' as an organisation that has a "monopoly on the legitimate use of physical force". Use of physical force becomes necessary when other peaceful mechanisms fail to produce results. The police are the instrument of physical force of the State. They have to bear the burden of failure of other instruments of governance as well. Thus the police always has to be at the forefront and face the wrath of the public even for the failure of other instruments of governance.

3.2.2 The police have faced and continue to face many difficult problems. In a country of India's size and diversity, maintaining public order at all times is indeed a daunting task. It is to the credit of the police that despite many problems, they have by and large been successful in maintaining public order. Despite this, the police are generally perceived to be tardy, inefficient, high-handed and often unresponsive or insensitive.

3.2.3 The National Police Commission (NPC) observed:

> *"…in the perception of the people, the egregious features of the police are politically oriented partisan performance of duties, partiality, corruption and inefficiency, degrees of which vary from place to place and person to person … What the Police Commission said in 1903 appears more or less equally applicable to the conditions obtaining in the police today".*

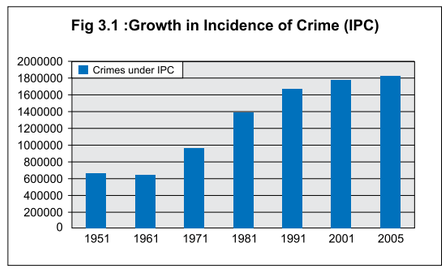
The NPC examined the issue of police-public relations in great detail. It came to the conclusion that police-public relations were in a very unsatisfactory state and police partiality, corruption, brutality and failure to register offences were the most important factors contributing to this situation. People also felt that police often harass even those who try to help them; and while by and large people did not think that police are inefficient, they want a change in the style of their functioning. Policemen, in general, did not believe that they are at fault and blamed the system for deficiencies and deviations.

3.2.4 The NPC cited the reports of the Bihar Police Commission (1961), the Punjab Police Commission (1961-62) and the West Bengal Police Commission (1960-61), all of whom commented on the functioning of police and deterioration in the standards of investigations. The Punjab Police Commission observed that:

> *"…public complained of rudeness, intimidation, suppression of evidence, concoction of evidence and malicious padding of cases."*

3.2.5 A study on petty corruption undertaken by Transparency International India and Centre for Media Studies which involved a sample of 14,405 respondents in 20 Indian states and covered 151 cities and 306 villages revealed that 80% of the respondents had paid a bribe to the police. The study also concluded after a survey of 11 public service agencies that police were regarded as the most corrupt agency and 74% of the respondents who interacted with the police were dissatisfied with the service.[14]

3.3 Declining Conviction Rate



3.3.1 A study of the conviction rate for various types of crimes (Fig 3.2) shows that there has been a general decline in the conviction rate for all types of offences in the period between 1960 and 2005 whereas the number of cases charge-sheeted as a percentage of cases investigated has increased. Data also indicates that conviction rates for murder showed a general decline with a steeper decline noticed in the South Indian states. There is also a disturbing trend of increase in the number of custodial deaths which went up from 207 in 1995 to 889[15] in 1997. This figure rose further in 2002-2003 to 1340. These statistics point to major structural problems which afflict the Indian Police and the criminal justice system. A deeper analysis of these problems would be of value in order to identify the reforms required to set things right.

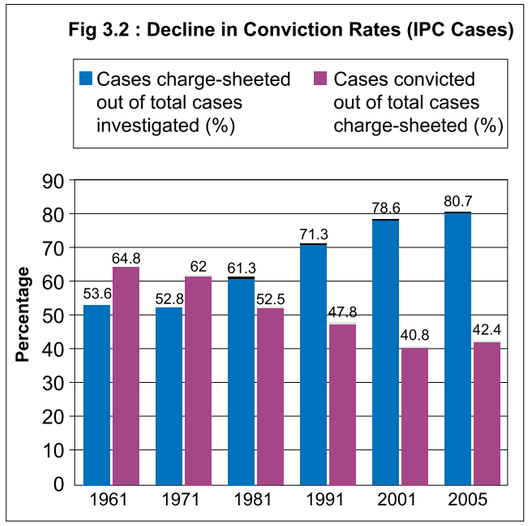
3.4 Problems in the Existing Police Functioning

3.4.1 The major problems in the functioning of the Indian police have been brought to the fore recently through high profile cases such as the disappearance and killings of a large number of children in Nithari Village of U.P. and the Jessica Lal and Priyadarshani Mattoo murder cases, wherein callousness, collusion, shoddy investigation and 'hostile witnesses' made a mockery of the entire criminal justice system. A media-led outcry and interventions by the judiciary have ensured belated remedial action in a few cases. But the failure in countless other cases continues unaddressed.

3.4.2 The instances mentioned above are symptomatic of the deeper malaise that afflicts Indian policing with its focus on maintaining law and order rather than trying to understand and resolve underlying problems. It is argued that the traditional snobbery and system of patronage has continued, corruption levels have gone up and so also the extent of political interference. There is a propensity to resort to physical violence and coercion

[14] India Corruption Study 2005 to improve governance. Retrieved from http://www.cmsindia.org/cms/events/corruption.pdf
[15] Source: Annual Reports, NHRC

even during investigations rather than taking recourse to scientific and sophisticated methods to gather evidence. The emphasis, therefore, is on oral evidence or confession, rather than on forensic evidence.



3.4.3 It is therefore not surprising that the police are often perceived, not as citizen friendly guardians of public security and upholders of the rule of law, but as being biased against the oppressed and dishonest. Perhaps nowhere is the asymmetry of power in a society so evident as in the behaviour and attitude of the police particularly towards the disadvantaged sections of society.

3.4.4 It would not, however, be fair to place the entire blame on the police for the failure of the criminal justice system, because there are many factors responsible for the present situation. These could be broadly classified as follows:

i. Problems related to general administration
- Poor enforcement of laws and general failure of administration;
- Large gap between aspirations of the people and opportunities with resultant deprivation and alienation; and
- Lack of coordination between various government agencies.

ii. Problems related to police
- Problems of organisation, infrastructure and environment;
  - o Unwarranted political interference;
  - o Lack of empowerment of the cutting edge functionaries;
  - o Lack of motivation at the lower levels due to poor career prospects, and hierarchical shackles;
  - o Lack of modern technology/methods of investigation;
  - o Obsolete intelligence gathering techniques and infrastructures; and
  - o Divorce of authority from accountability.

- Problems of organisational behaviour;
  - o Inadequate training; and
  - o Entrenched attitudes of arrogance, insensitivity and patronage.

- Problems of stress due to overburdening;
  - o Multiplication of functions, with crime prevention and investigation taking a back seat;
  - o Shortage of personnel and long working hours; and
  - o Too large a population to handle.

- Problems related to ethical functioning;
  - o Corruption, collusion and extortion at different levels;
  - o Insensitivity to human rights; and
  - o Absence of transparent recruitment and personnel policies.

Box 3.2: Difficulties Expressed by Police

a. Excessive workload due to inadequacy of man power and long working hours even on holidays and the absence of shift system;
b. Non cooperative attitude of the public at large;
c. Inadequacy of logistical and forensic back up support;
d. Inadequacy of trained investigating personnel;
e. Inadequacy of the state-of-the-art training facilities in investigation, particularly in-service training;
f. Lack of coordination with other sub-system of the Criminal Justice System in crime prevention, control and search for truth;
g. Distrust of the laws and courts,
h. Lack of laws to deal effectively the emerging areas of crime such as organised crime, money laundering etc.
i. Misuse of bail and anticipatory bail provisions;
j. Directing police for other tasks which are not a part of police functions;
k. Interrupting investigation work by being withdrawn for law and order duties in the midst of investigation.
l. Political and executive interference;
m. Existing preventive laws being totally ineffective in curbing criminal tendencies of hardened criminals and recidivists.

Source: Committee on Reforms of Criminal Justice System

iii. Problems related to prosecution

- Best talent not attracted as public prosecutors;
- Lack of coordination between the investigation and the prosecution agencies; and
- Mistrust of police in admitting evidence.

iv. Problems related to the judicial process/criminal justice administration

- Large pendency of cases;
- Low conviction rates;

- No emphasis on ascertaining truth; and
- Absence of victims' perspective and rights.

3.5 Review of Recommendations for Police Reforms in the Past

3.5.1 The indigenous system of policing in India was very similar to the Anglo Saxon system; both were organised on the basis of land tenure. As with the system in the medieval days of King Alfred, the *zamindar*[16] was bound to apprehend all disturbers of public peace. The village responsibility was enforced through the headman. If a theft was committed within the village bounds, it was the headman's business to trace the guilty. If he failed to recover the stolen property, he was obliged to make good the amount to the extent his means permitted. The Moghul system of policing followed closely on the lines of the indigenous system.[17] Extortion and oppression flourished through all gradations of officials responsible for the maintenance of peace and order.

3.5.2 To reform the then existing system, the first step taken by the British was to relieve the *zamindars* of their liability for police service and their place was taken over by the Magistrates in the district. Although several attempts were made to reform the police during the British Rule, the first major step was the constitution of the Police Commission of 1860. The Commission recommended the abolition of the military police as a separate organisation and the constitution of a single homogenous force of civil constabulary. The general management of the force in each province was to be entrusted to an Inspector General. The police in each district were to be under a District Superintendent. The supervision and the general management of the police by the District Magistrate was continued. The Commission submitted a Bill, based on the Madras Police Act, to give effect to these recommendations, and this became a law.

3.5.3 The Indian Police Commission was constituted in 1902. It found concrete evidence of rampant corruption in the police department. The Commission observed of *thanedars*[18] in particular: *"This corruption has many forms, and is noticeable at all levels of work in a police station. A police officer accepts fee or gift for every work he does. Generally a plaintiff gives some fee to get his complaint registered. He bribes the investigation officer for an immediate action in his favour. As the investigation progresses, more money is given. When the investigation officer reaches the spot of incident, he becomes a burden not only to plaintiff and witness but to the entire village. People are harassed in such a way that they have to visit the police officer daily for days together. Sometimes he goes to their houses along with his colleagues. Their womenfolk are threatened with dire consequences in case men disagree with the official attitude about their cases. They are told that their houses would be attached and their wealth inquired into. They*

[16] Zamindar is a Hindi/Urdu word meaning a land owner who leased land to tenant farmers 'landlord'
[17] Source: Compendium of the Recommendations of the Police Commissions of India; compiled by the National Crimes Records Bureau
[18] Thanedar means officer in charge of a Police Station

are sometimes imprisoned and humiliated in a number of ways. People bribe policemen in order to get rid of such harassment."[19]

3.5.4 In the post independence period, police reforms have been the subject of a number of Commissions and Committees, appointed by various State Governments as well as the Government of India.

3.5.5 The UP Police Commission, headed by Shri Ajit Prasad Jain, M.P., was appointed in 1960. The Commission came to the conclusion that crimes were increasing but the official statistics for the period 1950 to 1959 showed a decline of 10% in the incidence of crime. It observed that concealment and minimisation of recorded crimes is a natural corollary of a system where the work of the Station House Officer is judged by the number of crimes committed in his jurisdiction. Some of the reasons identified by it for the increase in crime are decline in respect for law, breakdown of the old village police system, ineffectiveness of police, poor quality of investigation and prosecution, political interference, factionalism in the ruling party and association of criminals with political parties. The Commission opposed the proposal to transfer some police functions to local bodies. It observed that – *"There is little doubt that corruption is rampant in the non-gazetted ranks of the police force. Imputations of corruption against gazetted ranks are not wanting, but they are not so pervading in their character".*

Box 3.3 :Some Recommendations of the Indian Police Commission 1902

a. The police force should consist of a European Service, a Provincial Service, an Upper Subordinate Service and a Lower Subordinate Service.
b. Large provinces should be divided into ranges and a DIG to be placed in charge of each range.
c. A Criminal Investigation Department should be constituted in each province.
d. The recruitment to the European Service should be by competitive exam to be held in England.
e. It is of paramount importance to develop and foster the existing village police.
f. Detention of suspects without formal arrest is illegal and must be rigorously suppressed.
g. For every district a police inspector should be appointed as Public Prosecutor.
h. There should be a single Police Act for the whole of India.
i. District Magistrate should not interfere in the matters of discipline.

3.5.6 The West Bengal Police Commission constituted in 1960 recommended that the work of investigation should be separated from other work in the *thanas*[20] at the district headquarters, in heavily industrialised urban areas and in other towns. It also recommended that the Calcutta Police and West Bengal Police should remain separate forces. It observed that the practice of not recording crimes or reducing their gravity arise from a belief among subordinate officers that credit could only be gained by maintaining a low return of crime. They suggested strengthening of the forensic science laboratory and made a number of concrete suggestions to reduce corruption.

[19] http://bprd.nic.in/writereaddata/linkimages/25908814608.pdf; retrieved on 10-4-07
[20] *Thana* means a police station

3.5.7 The Bihar Police Commission, 1961, made wide ranging recommendations ranging from registration of FIRs to the welfare of police personnel. It observed that the general impression seemed to be that the incidence of corruption was considerable in all ranks up to the Inspector of Police; it was rare in the rank of Deputy Superintendent of Police and insignificant in the rank of Superintendent of Police and the administrative ranks of the police force were free from blemish. It emphasised the importance of public cooperation and concluded that principal support to the police should come from the society itself.

3.5.8 The Tamil Nadu Police Commission was appointed in 1969 to go into the conditions of service, duties and responsibilities, modernisation etc. of the police force. It made recommendations for reconstitution of the Service Cadres, improvement of service conditions, reorganisation of police establishments, modernisation and improvement of operational efficiency and the relationship between police, public and politics. It came to the conclusion that the constables were heavily overworked (some of them had to work for over 14 hours a day on an average). The Report concluded by stating – *"… the strains and stresses in the functioning of the Police Force, which have arisen almost entirely as a result of politics are indeed cause for serious concern; but not yet for alarm".*

3.5.9 At the national level, the Gore Committee on Police Training (1971-73) was set up to review the training of the police from the constabulary level to IPS officers. Government of India appointed the National Police Commission in 1977. The Commission submitted eight Reports covering different aspects of police administration in the country.

In the First Report issues relating to the constabulary and internal administration such as pay-structure, housing, orderly system, redressal of grievances, career planning for constabulary, complaints against police etc. were analysed.

The Second Report dealt with welfare measures for police families, police roles, duties, powers and responsibilities; interference in the working of police; Gram Nyayalayas; maintenance of crime records and statistics and how to avoid political and executive pressure on the police force. The recommendations included the constitution of state security commissions and security of tenure for officials.

The Third Report focused on the police force and the weaker sections of society, village police, special law for dealing with serious and widespread breaches of public order, corruption in the police, economic offences and modernisation.

The Fourth Report addressed the issues of investigation, court trials, prosecution, industrial disputes, agrarian problems, social legislation and prohibition.

The Fifth Report analysed and made recommendations on issues pertaining to recruitment of constables and sub-inspectors, training of police personnel, district police and the executive magistracy, women police and police public relations.

The Sixth Report dealt with police leadership – the Indian Police Service, police and students, communal riots and urban policing.

The Seventh Report discussed the organisation and structure of the police, state and district armed police, delegation of financial powers to police officers, traffic regulation, ministerial staff, performance appraisal of police personnel, disciplinary control and role of the Union Government in planning, evaluation and coordination.

The Eighth Report covered the subject of accountability of police performance. It also recommended a draft Police Bill which incorporated several recommendations of the Commission.

3.5.10 The Ribeiro Committee was set up in 1998 on the orders of the Supreme Court following a Public Interest Litigation (PIL) on police reforms. It recommended the setting up of Police Performance and Accountability Commissions at the State level, constitution of a District Complaints Authority, replacement of the Police Act, 1861 with a new Act etc. In 2000, the Padmanabhaiah Committee on Police Reforms was constituted to study, inter alia, recruitment procedures for the police force, training, duties and responsibilities, police officers' behaviour, police investigations and prosecution.

3.5.11 The Government of India constituted in September 2005 a Police Act Drafting Committee (PADC) with Shri Soli Sorabjee as Chairman, to draft a new Police Act to replace the Police Act of 1861. The Committee has drafted a model Police Bill keeping in view the changing role/responsibility of police and the challenges before it, especially on account of the growth and spread of insurgency/militancy/Naxalism etc. The new Bill also has measures for attitudinal changes of police including working methodology to elicit cooperation and assistance of the community. Some of the major features of the draft Bill are:

- Superintendence of State police to vest in the State Government; State Government to exercise superintendence over police through laying down policies and guidelines, facilitating their implementation and ensuring that the police performs its task in a professional manner with functional autonomy.
- Appointment of the Director General of Police by the State Government from amongst three senior most officers, empanelled for the rank. Empanelment to be done by the State Police Board.

- Tenure of minimum of two years for the Director General of Police irrespective of his date of retirement.
- Security of tenure for key police functionaries.
- District Magistrate to have a coordinating role.
- Initial appointment at Civil Police Officer Grade-II and Sub-Inspector levels.
- Constitution of a State Police Board, headed by the Home Minister. The State Police Board to frame broad policy guidelines for promoting efficient, effective, responsive and accountable policing, in accordance with law; prepare panels for appointment of the Director General of Police; identify performance parameters to evaluate the functioning of the police services and review and evaluate organisational performance of the police service in the state.
- Constitution of Police Establishment Committee.
- Definition of the role, functions, duties and social responsibilities of the police.
- Constitution of a village police system.
- Creation of Special Security Zones.
- Constitution of a State Police Accountability Commission to inquire into public complaints against police.
- Constitution of a District Accountability Authority.

3.5.12 The Commission has examined the important recommendations of the Soli Sorabjee Committee. The Commission appreciates the comprehensive exercise undertaken by the Committee, which has been of considerable value to the Commission in formulating its views. The broad framework proposed by PADC is very relevant to making police a useful instrument of public service in the 21st century. The draft Bill prepared by the Committee encompasses virtually all areas of police functioning. The Commission agrees with the formulations in the proposed legislation on grant of functional autonomy, treating police as a 'service', underscoring the functional insulation of the service, security of tenure, insistence on minimum level of infrastructural facilities and the attempt to lay down a broad charter of duties for the police personnel etc. While endorsing the broad direction indicated by PADC, the Commission is of the view that a holistic examination of the functioning of the police and criminal justice system is needed for comprehensive reforms.

3.5.13 The PADC Draft Bill advocates 'One Police Service' for each state. The Commission is of the view that 'police functions' are not performed only by the police. Certain government

departments/agencies have already been given police powers. Currently, the state police have been entrusted with the enforcement of so many laws that they are overburdened and are unable to devote adequate time to their core functions. Thus, there is need to reduce this burden by empowering the departmental agencies to enforce their regulations. Similarly, local governments established pursuant to the Seventy Third and Seventy Fourth Amendments, would gradually require their own enforcement wings. No doubt the state police would continue to play the central role, but the need for other police services should be recognised, and creation of new services needs to be facilitated to meet future requirements.

3.5.14 The two most important functions of the police in addition to crime prevention are investigation of crime and maintenance of law and order. These two functions are quite distinct requiring different capabilities, training and skills. More importantly they require different types of accountability mechanisms and different degree of supervision from the government. The constitution of the State Police Board as recommended by the PADC would give police the required degree of autonomy. But a separate mechanism should be put in place to insulate crime investigation, evidence gathering and prosecution from the vagaries of partisan politics. For this purpose, there will have to be a separate police service to deal with investigation of crimes exclusively with a mechanism to insulate the process from unwarranted interference.

3.5.15 Some other recommendations included in the Draft Bill proposed by PADC may also need modification and these have been dealt with in the succeeding chapters.

3.5.16 The Supreme Court, in Writ Petition (Civil) NO. 310 of 1996, (22-9-2006), observed:

> *" It is not possible or proper to leave this matter only with an expression of this hope and to await developments further. It is essential to lay down guidelines to be operative till the new legislation is enacted by the State Governments.*
>
> *Article 32 read with Article 142 of the Constitution empowers this Court to issue such directions, as may be necessary for doing complete justice in any cause or matter. All authorities are mandated by Article 144 to act in aid of the orders passed by this Court. The decision in Vineet Narain's case ... notes various decisions of this Court where guidelines and directions to be observed were issued in absence of legislation and implemented till legislatures pass appropriate legislations."*

3.5.17 The Supreme Court has directed the Union and the State Governments to take immediate steps for the following:

i. Constitution of the State Security Commissions;
ii. Notifying the procedure for selection and minimum tenure of DGP;
iii. Security of tenure for other Police officers;
iv. Separation of investigation function from law and order;
v. Constitution of a Police Establishment Board in each state;
vi. Establishment of State and District Complaints Authorities;
vii. Constitution of a National Security Commission;

3.5.18 State Governments have started taking action as per the directions of the Supreme Court. A comparative analysis of the Supreme Court's directions, the PADC formulations and the provisions of the Kerala Police Ordinance[21] and the Bihar Police Act, 2007 (as examples of emerging state laws) are summarised in Table 3.4.

[21] The Kerala Police Ordinance was promulgated on 12th February, 2007

Table 3.4 : A Comparative Analysis of Reforms Proposed

S.No	Supreme Court Directions	PADC Formulation	Kerala Police Ordinance	Bihar Police Act, 2007
1	The State Governments are directed to constitute a State Security Commission in every State to ensure that the State Government does not exercise unwarranted influence or pressure on the State police and for laying down the broad policy guidelines so that the State police always acts according to the laws of the land and the Constitution of the country. This watchdog body shall be headed by the Chief Minister or Home Minister as Chairman and have the DGP of the State as its ex-officio Secretary. The other members of the Commission shall be chosen in such a manner that it is able to function independent of Government control. For this purpose, the State may choose any of the models recommended by the National Human Rights Commission, the Ribeiro Committee or the Sorabjee Committee. The recommendations of this Commission shall be binding on the State Government. The functions of the State Security Commission would include laying down the broad policies and giving directions for the performance of the preventive tasks and service oriented functions of the police, evaluation of the performance of the State police and preparing	<u>State Police Board</u> The State Government shall, within six months of the coming into force of this Act, establish a State Police Board to exercise the functions assigned to it under the provisions of this Chapter. (S.41) <u>Functions of the State Police Board</u> The State Police Board shall perform the following functions: (a) frame broad policy guidelines for promoting efficient, effective, responsive and accountable policing, in accordance with the law; (b) prepare panels of police for the rank of Director General of Police against prescribed criteria with the provisions of Section 6 of Chapter II; (c) identify performance indicators to evaluate the functioning of the Police Service. These indicators shall, inter alia, include: operational efficiency, public satisfaction, victim satisfaction vis-à-vis police investigation and response, accountability, optimum utilisation of resources, and observance of human rights standards; and	The Government may, by notification in the Official Gazette, constitute a State Security Commission. The Commission shall have the following functions, namely: — (a) to frame the broad policy guidelines for the functioning of the police force in the State; (b) to issue directions for the performance of the preventive tasks and service, oriented functions of the police; (e) to evaluate, from time to time, the performance of the police in the State in general; (d) to prepare and submit an yearly report of its functions to the Government; and (e) to discharge such other functions as may be assigned to it by the Government. Notwithstanding any guidelines or directions issued by the Commission, the Government may issue such directions as it deems necessary on the matter, if the situation so warrants, to meet any emergency.	<u>State Police Board</u> The Government shall, within six months of the coming into force of this Act, establish a State Police Board to exercise the functions assigned to it under the provisions of this Chapter. (S.23) The State Police Board shall consist of: (a) Chief Secretary - Chairperson (b) Director General of Police - member and (c) Secretary in charge of the Home Department - member-secretary. (S.24) The State Police Board shall perform the following functions: (a) frame broad policy guidelines for promoting efficient, effective, responsive and accountable policing, in accordance with the law; (b) identify performance indicators to evaluate the functioning of the Police Service. These indicators shall, inter alia, include: operational efficiency, public satisfaction, victim satisfaction vis-à-vis police investigation and response, accountability, optimum utilisation of resources, and

S.No	Supreme Court Directions	PADC Formulation	Kerala Police Ordinance	Bihar Police Act, 2007
	a report thereon for being placed before the State legislature.	(d) in accordance with the provisions of Chapter XIII, review and evaluate organisational performance of the Police Service in the state as a whole as well as district-wise against (i) the Annual Plan, (ii) performance indicators as identified and laid down, and (iii) resources available with and constraints of the police. (S.48)		observance of human rights standards; and (c) review and evaluate organisational performance of the Police Service in the state as a whole as well as district-wise against performance indicators as identified and laid down and resources available with and constraints of the police. (S.25)
2	The Director General of Police of the State shall be selected by the State Government from amongst the three senior-most officers of the Department who have been empanelled for promotion to that rank by the Union Public Service Commission on the basis of their length of service, very good record and range of experience for heading the police force. And, once he has been selected for the job, he should have a minimum tenure of two years irrespective of his date of superannuation. The DGP may, however, be relieved of his responsibilities by the State Government acting in consultation with the State Security Commission consequent upon any action taken against him under the All India Services (Discipline and Appeal) Rules or following his conviction in a court of law in a	<u>Selection and term of office of the Director General of Police</u> (1) The State Government shall appoint the Director General of Police from amongst three senior-most officers of the state Police Service, empanelled for the rank. (2) The empanelment for the rank of Director General of Police shall be done by the State Police Board created under section 41 of Chapter V of this Act, considering, inter alia, the following criteria: (a) Length of service and fitness of health, standards as prescribed by the State Government; (b) assessment of the performance appraisal reports of the previous 15 years of service by assigning weightages to different grading, namely, 'Outstanding', 'Very Good', 'Good', &'Satisfactory' ; (c) range of relevant	The Director General of Police shall be appointed by the Government from amongst those officers of the state cadre of the Indian Police Service who have either already been promoted to such rank or are eligible to be promoted to such rank, considering his overall record of service and experience for leading the police force of the state.	<u>Selection and term of office of the Director General of Police</u> (1) The Director General of Police shall be appointed from a panel of officers consisting of the officers already working in the rank of the Director General of Police, or the officers who have been found suitable for promotion in the rank of Director General of Police after screening by a Committee under the rules made under the All-India Services Act, 1951 (Central Act 61 of 1951). (2) The Director General of Police so appointed shall normally have a tenure of two years: Provided that the Director General of Police may be transferred from the post before the expiry of his tenure by the Government consequent upon:

S.No	Supreme Court Directions	PADC Formulation	Kerala Police Ordinance	Bihar Police Act, 2007
	criminal offence or in a case of corruption, or if he is otherwise incapacitated from discharging his duties.	experience, including experience of work in Central Police Organisations, and training courses undergone; (d) indictment in any criminal or disciplinary proceedings or on the counts of corruption or moral turpitude; or charges having been framed by a court of law in such cases. (e) due weightage to award of medals for gallantry, distinguished and meritorious service: (3) The Director General of Police so appointed shall have a minimum tenure of two years irrespective of his normal date of superannuation : Provided that the Director General of Police may be removed from the post before the expiry of his tenure by the State Government through a written order specifying reasons, consequent upon: (a) conviction by a court of law in a criminal offence or where charges have been framed by a court in a case involving corruption or moral turpitude; or (b) punishment of dismissal, removal, or compulsory retirement from service or of reduction to a lower post, awarded under the provisions of the All India Services (Discipline and Appeal) Rules 19- or any other relevant		(a) conviction by a court of law in a criminal offence or where charges have been framed by a court in a case involving corruption or moral turpitude; or (b) incapacitation by physical or mental illness or otherwise becoming unable to discharge his functions as the Director General of Police; or (c) promotion to a higher post under either the State or the Central Government, subject to the officer's consent to such a posting. (d) any other administrative reasons which may be in the interest of efficient discharge of duties. (S.6)

S.No	Supreme Court Directions	PADC Formulation	Kerala Police Ordinance	Bihar Police Act, 2007
		rule; or (c) suspension from service in accordance with the provisions of the said rules; or (d) incapacitation by physical or mental illness or otherwise becoming unable to discharge his functions as the Director General of Police; or (e) promotion to a higher post under either the State or the Central Government, subject to the officer's consent to such a posting. (S.6)		
3	Police Officers on operational duties in the field like the Inspector General of Police in-charge Zone, Deputy Inspector General of Police in-charge Range, Superintendent of Police in-charge district and Station House Officer incharge of a Police Station shall also have a prescribed minimum tenure of two years unless it is found necessary to remove them prematurely following disciplinary proceedings against them or their conviction in a criminal offence or in a case of corruption or if the incumbent is otherwise incapacitated from discharging his responsibilities. This would be subject to promotion and retirement of the officer.	<u>Term of office of key police functionaries</u> (1) An officer posted as a Station House Officer in a Police Station or as an officer in-charge of a Police Circle or Sub-Division or as a Superintendent of Police of a District shall have a term of a minimum of two years and a maximum of three years: Provided that any such officer may be removed from his post before the expiry of the minimum tenure of two years consequent upon: (a) promotion to a higher post; or (b) conviction, or charges having been framed, by a court of law in a criminal offence; or (c) punishment of dismissal, removal,	The Government may ensure a normal tenure of two years from the date of assuming charge of the post to the Director General of Police; and to all officers holding charge of Police Stations, Police Circles. Police Sub-divisions, Police Districts, Police Ranges and Police Zones. The Government or the appointing authority may, without prejudice to any other legal or departmental action, transfer any police officer before completing the normal tenure of two years, on being satisfied prima facie that it is necessary to do so on any of the following grounds, namely:— (a) if he is found incompetent and inefficient in the discharge of duties	<u>Transfers & Postings</u> (i) The transfers and postings of the Police officers and personnel of Supervisory ranks shall be governed by the rules of Executive Business and such other rules framed by the Government from time to time. (ii) The officers shall ordinarily have a tenure of two years. Provided that any such officer may be transferred from his post before the expiry of the tenure of two years consequent upon: (a) promotion to a higher post; or (b) conviction, or charges having been framed, by a court of law in a criminal offence; or (c) incapacitation by

S.No	Supreme Court Directions	PADC Formulation	Kerala Police Ordinance	Bihar Police Act, 2007
		discharge or compulsory retirement from service or of reduction to a lower rank awarded under the relevant Discipline & Appeal Rules; or (d) suspension from service in accordance with the provisions of the said Rules; or (e) incapacitation by physical or mental illness or otherwise becoming unable to discharge his functions and duties; or (f) the need to fill up a vacancy caused by promotion, transfer, or retirement. (2) In exceptional cases, an officer may be removed from his post by the competent authority before the expiry of his tenure for gross inefficiency and negligence or where a prima facie case of a serious nature is established after a preliminary enquiry: Provided that in all such cases, the competent authority shall report in writing the matter with all details to the next higher authority as well as to the Director General of Police. It shall be open to the aggrieved officer, after complying with the order, to submit a representation against his premature removal to the Police Establishment Committee, which shall consider the same on	so as to affect the functioning of the police force; (b) if he is accused in a criminal case involving moral turpitude; (c) initiation of departmental proceedings against him; (d) if he exhibits a palpable bias in the discharge of duties; (e) misuse or abuse of powers vested in him; (f) incapacity in the discharge of official duties."	physical or mental illness or otherwise becoming unable to discharge his functions and duties; or (d) the need to fill up a vacancy caused by promotion, transfer, or retirement; or (e) any other administrative reasons, which may be in the interest of efficient discharge of duties. (S.30)

S.No	Supreme Court Directions	PADC Formulation	Kerala Police Ordinance	Bihar Police Act, 2007
		merit and recommend due course of action to the competent authority. Explanation: Competent authority means an officer authorised to order transfers and postings for the rank concerned. (S.13)		
4	The investigating police shall be separated from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people. It must, however, be ensured that there is full coordination between the two wings. The separation, to start with, may be effected in towns/ urban areas which have a population of ten lakhs or more, and gradually extended to smaller towns/urban areas also.	State Intelligence and Criminal Investigation Departments (1) Every state police organisation shall have a State Intelligence Department for collection, collation, analysis and dissemination of intelligence, and a Criminal Investigation Department for investigating inter-state, inter-district crimes and other specified offences, in accordance with the provisions of Chapter X of this Act. (2) The State Government shall appoint a police officer of or above the rank of Deputy Inspector General of Police to head each of the aforesaid departments. (3) The Criminal Investigation Department shall have specialised wings to deal with different types of crime requiring focused attention or special expertise for investigation. Each of	The Government may, having regard to the population in an area or the circumstances prevailing in such area, by order, separate the investigating police from the law and order police in such area as may be specified in the order to ensure speedier investigation, better expertise and improved rapport with people.	State Intelligence and Crime Investigation Departments (1) There shall be a State Intelligence Department for collection, collation, analysis and dissemination of intelligence, and a Crime Investigation Department for investigating inter-state, inter-district crimes and other specified offences, in accordance with the provisions of this Act. (2) The Government shall appoint a police officer of or above the rank of Inspector General of Police to head each of the aforesaid departments. (3) The Crime Investigation Department shall have specialised wings to deal with different types of crime requiring focused attention or special expertise for investigation. Each of these wings shall be headed by an officer not below the rank of a Superintendent of

S.No	Supreme Court Directions	PADC Formulation	Kerala Police Ordinance	Bihar Police Act, 2007
		these wings shall be headed by an officer not below the rank of a Superintendent of Police. (4) The State Intelligence Department shall have specialised wings, to deal with and coordinate specialised tasks such as measures for counter terrorism, counter militancy and VIP Security. (5) The State Government shall appoint by rules prescribed under this Act, an appropriate number of officers from different ranks to serve in the Criminal Investigation Department, and the State Intelligence Department, as deemed appropriate with due regard to the volume and variety of tasks to be handled. (S.16)		Police. (4) The Government shall appoint an appropriate number of officers from different ranks to serve in the Crime Investigation Department, and the State Intelligence Department, as deemed appropriate with due regard to the volume and variety of tasks to be handled. (S.14) <u>Creation of Special Crime Investigation Units</u> The Government may create, in crime prone areas, Special Crime Investigation Units, each headed by an officer not below the state cadre rank of Sub-Inspector of Police, with such strength of officers and staff as may be deemed necessary for investigating economic and heinous crimes. The personnel posted to this unit shall not be diverted to any other duty, except under very special circumstances with the written permission of the Director General of Police. (S.36) <u>Creation of Special Investigation Cells</u> At the headquarters of each Police District, one or more Special Investigation Cells will be created, with such strength of officers and staff, as the State Government may deem fit to take up investigation of offences of a more serious nature and other complex crimes,

S.No	Supreme Court Directions	PADC Formulation	Kerala Police Ordinance	Bihar Police Act, 2007
				including economic crimes. These Cells will function under the direct control and supervision of the Additional Superintendent of Police/ Deputy Superintendent of Police. (S.41) <u>Crime Investigation Department</u> The Crime Investigation Department of the state shall take up investigation of such crimes of inter-state, inter-district or of otherwise serious nature, as notified by the Government from time to time, and as may be specifically entrusted to it by the Director General of Police in accordance with the prescribed procedures and norms. (S.43) <u>Specialised Units for Investigation</u> The Crime Investigation Department will have specialised units for investigation of cyber crime, organised crime, homicide cases, economic offences, and any other category of offences, as notified by the Government and which require specialised investigative skills. (S.44)
5	There shall be a Police Establishment Board in each State which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police. The Establishment Board	<u>Police Establishment Committees</u> (1) The State Government shall constitute a Police Establishment Committee (hereinafter referred to as the 'Establishment	The State Government may constitute a Police Establishment Board which shall be a departmental body consisting of the Director General of Police as Chairman and four other senior Police Officers of the Department of	<u>Transfer & Posting of Subordinate ranks</u> (1) The Police Officers ranging from the rank of Inspector to Constable will be posted to a particular post within the jurisdiction of the District Superintendent

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	shall be a departmental body comprising the Director General of Police and four other senior officers of the Department. The State Government may interfere with decision of the Board in exceptional cases only after recording its reasons for doing so. The Board shall also be authorized to make appropriate recommendations to the State Government regarding the posting and transfers of officers of and above the rank of Superintendent of Police, and the Government is expected to give due weight to these recommendations and shall normally accept it. It shall also function as a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above regarding their promotion/transfer/ disciplinary proceedings or their being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State.	Committee') with the Director General of Police as its Chairperson and four other senior-most officers within the police organisation of the state as members. (2) Accept and examine complaints from police officers about being subjected to illegal orders. The Establishment Committee shall make appropriate recommendation to the Director General of Police for necessary action: Provided that if the matter under report involves any authority of or above the ranks of the members of the Establishment Committee, it shall forward such report to the State Police Committee for further action. (3) The Establishment Committee shall recommend names of suitable officers to the State Government for posting to all the positions in the ranks of Assistant/Deputy Superintendents and above in the police organisation of the state, excluding the Director General of Police. The State Government shall ordinarily accept these recommendations, and if it disagrees with any such recommendation, it shall record reasons for disagreement.	the rank of Additional Director General of Police as members. The functions of the Board shall be (a) to decide on all transfers, postings, promotions and other service related matters of police officers of and below the rank of Inspector of Police, subject to the provisions of the relevant service laws as may be applicable to each category of police officers; (b) to make appropriate recommendations to the State Government regarding the postings and transfers of officers of and above the rank of Deputy Superintendent of Police;	of Police by the District Superintendent of Police. They will have a tenure of six years in a District, eight years in a Range and ten years in a Zone. Transfers from one district to another within the Range will be done by a committee consisting of the Range DIG and the District Superintendents of Police of the Range. Transfers from one Range to another Range will be made by a committee consisting of the Zonal IG and all the Range DIGs of the Zone. Transfers from one Zone to another Zone will be made by a committee consisting of the Additional Director General of Police and all the Zonal IGs. (2) An officer posted as a Station House Officer in a Police Station or as an officer in-charge of a Police Circle or Sub-Division or as a Superintendent of Police of a District shall have a term of minimum two years: Provided that any such officer may be transferred from his post before the expiry of the tenure of two years or more consequent upon: (a) promotion to a higher post; or (b) conviction, or charges having been framed, by a court of law in a criminal offence; or

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		(4) The Establishment Committee shall also consider and recommend to the Director General of Police the names of officers of the ranks of Sub-Inspector and Inspector for posting to a Police Range on initial appointment, or for transfer from one Police Range to another, where such transfer is considered expedient for the Police Service. (5) Inter-district transfers and postings of non-gazetted ranks, within a Police Range, shall be decided by the Range Deputy Inspector General, as competent authority, on the recommendation of a Committee comprising all the District Superintendents of Police of the Range. (6) Postings and transfers of non-gazetted police officers within a Police District shall be decided by the District Superintendent of Police, as competent authority, on the recommendation of a District-level Committee in which all Additional/Deputy/ Assistant Superintendents of Police posted in the District shall be members. (7) While effecting transfers and postings of police officers of all ranks, the concerned competent authority shall ensure that every officer is ordinarily allowed a minimum		(c) incapacitation by physical or mental illness or otherwise becoming unable to discharge his functions and duties; or (d) the need to fill up a vacancy caused by promotion, transfer, or retirement; or (e) any other administrative reasons which may be in the interest of efficient discharge of duties. (S.10)

S.No	Supreme Court Directions	PADC Formulation	Kerala Police Ordinance	Bihar Police Act, 2007
		tenure of two years in a posting. If any officer is to be transferred before the expiry of this minimum term, the competent authority must record detailed reasons for the transfer. (8) No authority other than the authority having power under this Act to order transfer shall issue any transfer order. (S.57)		
6	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 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 uperintendent 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 of a panel of names proposed by the Chief Justice or a Judge of the High Court nominated by him.	<u>Police Accountability Commission</u> The State Government shall, within three months of the coming into effect of this Act, establish a State-level Police Accountability Commission ("the Commission"), consisting of a Chairperson, Members and such other staff as may be necessary, to inquire into public complaints supported by sworn statement against the police personnel for serious misconduct and perform such other functions as stipulated in this Chapter. (S.159) <u>District Accountability Authority</u> (1) The State Government shall establish in each police district or a group of districts in a police range, a District Accountability Authority to monitor departmental inquiries into cases of complaints of misconduct against police personnel, as defined in Section 167(3). (S. 173)	The Government shall establish a Police Complaints Authority at the State level to look into complaints of grave misconduct against police officers of and above the rank of Superintendent of Police as well as serious complaints including death, grievous hurt or rape or molestation of women in police custody against officers of all ranks. (2) The State Authority shall consist of the following members, namely:— (i) a retired judge of a High Court who shall be the Chairman of the Authority; (ii) a serving officer of the rank of Principal Secretary to Government; and (iii) a serving officer of the rank of Additional Director General of Police. The Government shall establish Police	<u>District Accountability Authority</u> (1) The Government shall establish in each district "District Accountability Authority" for such functions as mentioned in Section 61. (2) The District Accountability Authority shall be presided over by the District Magistrate and shall have Superintendent of Police as a member and senior-most Additional District Magistrate/ Additional Collector as Member-Secretary. (S.59) <u>Functions of District Accountability Authority</u> (1) The District Accountability Authority shall: (a) monitor the status of departmental inquiries or action on the complaints of "misconduct" against officers below the rank of Assistant/ Deputy Superintendent of Police, through a quarterly report obtained periodically

S.No	Supreme Court Directions	PADC Formulation	Kerala Police Ordinance	Bihar Police Act, 2007
			Complaints Authority at the district level to look into complaints against police officers of and up to the rank of Deputy Superintendent of Police. The District Authority shall consist of the following members, namely:— (i) a retired District Judge, who shall be the Chairman; (ii) the District Collector; and (iii) the District Superintendent of Police: The recommendations of the Authority or Authorities, for any action, departmental or criminal, against a delinquent police officer shall be binding in so far as initiation of departmental proceedings or registration of a criminal case is concerned. Such recommendation shall, however, not prejudice the application of mind by the enquiry officer or the investigating officer when he is conducting the departmental enquiry or criminal investigation, as the case may be.	from the District Superintendent of Police; (b) issue appropriate advice to the District Superintendent of Police for expeditious completion of inquiry, if, in the Authority's opinion, the inquiry is getting unduly delayed in any such case; (2) The Authority may also, in respect of a complaint of "misconduct" against an officer below the rank of Assistant/ Deputy Superintendent Police, call for a report from, and issue appropriate advice for further action or, if necessary, a direction for fresh inquiry by another officer, to the District Superintendent of Police when a complainant, being dissatisfied by an inordinate delay in the process of departmental inquiry into his complaint of "misconduct" or outcome of the inquiry if the principles of natural justice have been violated in the conduct of the disciplinary inquiry, brings such matter to its notice; Provided that the provisions contained in sub-sections (1) and (2) above shall not be construed to, in any manner, dilute the disciplinary, supervisory and administrative control of District Superintendent of Police. (S.60)

S.No	Supreme Court Directions	PADC Formulation	Kerala Police Ordinance	Bihar Police Act, 2007
7	The Central Government shall also set up a National Security Commission at the Union level to prepare a panel for being placed before the appropriate Appointing Authority, for selection and placement of Chiefs of the Central Police Organisations (CPOs), who should also be given a minimum tenure of two years. The Commission would also review from time to time measures to upgrade the effectiveness of these forces, improve the service conditions of its personnel, ensure that there is proper coordination between them and that the forces are generally utilized for the purposes they were raised and make recommendations in that behalf. The National Security Commission could be headed by the Union Home Minister and comprise heads of the CPOs and a couple of security experts as members with the Union Home Secretary as its Secretary.			

3.6 Reforms in Other Countries

The Commission has specifically studied the police systems as well as police reforms undertaken in three countries viz. South Africa, United Kingdom and Australia (with particular reference to New South Wales). These countries were selected because they have many commonalities with not only our police system but also with our polity and governance structures. South Africa, for example, restructured their entire governance system, including the police, after the end of apartheid and has thus transformed a repressive colonial force into

a police service accountable to the people. Our present police system has many similarities in its organisation and duties with the police in the UK. That government carried out major reforms in their governance and police structures in the last two decades and today the police in the UK is universally acknowledged for its high standards of professionalism and citizen friendliness. Australia is a federal country with the police being a subject of the provincial government as in our country. They have introduced new mechanisms of police accountability which have been widely acclaimed. Some useful lessons, relevant to our country, have been drawn from all these reforms.

3.6.1 South Africa

3.6.1.1 In the early nineties, South Africa embarked upon an ambitious programme of police reform based on democratic principles. Ever since its establishment, the South African Police (SAP) had performed the colonial role of subjugating the local population. Earlier, the police forces in South Africa were known for their brutality, corruption and ineptitude. The police was structured on military lines. Control of crime was not through investigation and recourse to courts but through heavy handed action of the police. Investigations meant extracting confessions and custodial torture was the norm. However, with the end of apartheid, the South African Police embarked on an internal reform initiative - a response both to the changing political environment signalled by the release of Dr. Mandela, the lifting of the ban on the liberation movements in 1990 and to the pressure of changing crime trends and international scrutiny. The SAP's 1991 Strategic Plan highlighted six areas of change[22] :

- Depoliticisation of the police force;
- increased community accountability;
- more visible policing;
- establishment of improved and effective management practices;
- reform of the police training system (including some racial integration); and
- restructuring of the police force.

3.6.1.2 In 1991, an Ombudsman was appointed to investigate allegations of police misconduct. Besides, the recruitment of black police personnel was increased, a civilian riot-control unit that was separate from the SAP was formed, a code of police conduct was evolved and training facilities were enhanced. In 1992, the restructuring of SAP into a three-tiered force started - a national police, primarily responsible for internal security and for serious crime; autonomous regional forces, responsible for crime prevention and for matters of general law and order; and municipal police, responsible for local law enforcement and for minor criminal matters. Police/community forums were formed in almost every police station.

[22] Police Reform and South Africa's Transition by Janine Rauch Paper presented at the South African Institute for International Affairs conference, 2000; retrieved from http://www.csvr.org.za/papers/papsaiia.htm

3.6.1.3 The Interim Constitution, 1993 laid the foundation of a democratically controlled police system in South Africa. The principles of structuring the police were stipulated by the Constitution of the Republic of South Africa, 1996, which mandates that the national police service must be structured to function in the national, provincial and, where appropriate, local spheres of government. It also provides that a national legislation must establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively, taking into account the requirements of the provinces. The process of transforming a repressive police force into a democratically controlled police service formally started with the enactment of the South Africa Police Services Act, 1995. The salient features of this Act are:

- *The South African Police Service shall be structured at both National and Provincial levels and shall function under the direction of the National as well as Provincial Governments.*
- *National and Provincial "Secretariats for Safety and Security", which would advise the political executives in the provinces on police policy matters, would monitor the adherence of the police to new policy, promote democratic accountability and transparency, evaluate the functioning of police etc.*
- *The Police Service shall liaise with the community through community forums and area and provincial Community Police Boards. (Sections 18-23).*
- *"Independent Complaints Directorate" to be established, which would receive and investigate public complaints of police misconduct. The Directorate would be independent of the police and would report directly to the Minister of Safety and Security (Sections 50-54).*
- *Local governments were empowered to establish municipal or metropolitan police service.*[23]

3.6.2 United Kingdom

3.6.2.1 A structured police force was first established by the Metropolitan Police Act, 1829. The Police Act, 1919 brought in some reforms including a guaranteed pension for the police and prohibition of trade unions among the police (however a Police Federation was set up). The Police Act, 1946 provided for the amalgamation of smaller borough police forces with county constabularies in England and Wales. Following this merger, there were 133 police forces in the UK.

3.6.2.2 As a sequel to a couple of high profile scandals involving borough police forces, the Royal Commission on the Police was appointed in 1960 under the chairmanship of Henry Willink to *"to review the constitutional position of the police throughout Great Britain,*

[23] South Africa's metropolitan municipalities of Ethekwini (Durban), Cape Town, Johannesburg, Ekurhuleni (Greater East Rand) and Tshwane (Pretoria) have established Metropolitan Police Departments. The functions of municipal police include traffic policing, crime prevention and municipal by-law enforcement

the arrangements for their control and administration and, in particular, to consider:- (1) the constitution and functions of local police authorities; (2) the status and accountability of members of police forces, including chief officers of police; (3) the relationship of the police with the public and the means of ensuring that complaints by the public against the police are effectively dealt with; and (4) the broad principles which should govern the remuneration of the constable, having regard to the nature and extent of police duties and responsibilities and the need to attract and retain an adequate number of recruits with the proper qualifications".[24]
Some of its recommendations were[25]:

- *No single national force was to be formed, but central government should exercise more powers over local forces*
- *Retention of small police forces of between 200 and 350 officers "justifiable only by special circumstances such as the distribution of the population and the geography of the area"*
- *The optimum size for a police force was more than 500 members, with the police area having a population of at least 250,000*
- *There was "a case" for single police forces for major conurbations*

3.6.2.3 Following the recommendations of the Royal Commission, the Police Act received Royal assent in 1964. The old county and borough police authorities were replaced with 'police authorities' composed of two-thirds elected representatives and one-third magistrates. These new police authorities had far less powers than the earlier county and borough authorities. The powers of the Home Secretary over the police were increased. One of the effects of this Act was the reduction in the number of police forces.

3.6.2.4 The Police and Criminal Evidence Act, 1984 (PACE) instituted a legislative framework for the powers of police officers in England and Wales to combat crime, as well as provide codes of practice for the exercise of those powers. The aim of the PACE Act was to establish a balance between the powers of the British police and the rights of members of the public. In 1996, an Act to consolidate the Police Act, 1964, Part IX of the Police and Criminal Evidence Act, 1984, Chapter I of Part I of the Police and Magistrates' Courts Act, 1994 and certain other enactments relating to the police, was enacted as the Police Act, 1996. Under this Act, Police Authorities were established for each police force. Every police authority had the responsibility of securing the maintenance of an efficient and effective police force for its area (No Police Authority was constituted for the London Metropolitan City under this Act). Under the Act, the Secretary of State was given the overall powers of superintendence and control of all police forces. It was also stipulated that the chief constable of a police force shall be appointed by the police authority responsible for maintaining the Force, but subject to the approval of the Secretary of State. The Act

[24] Source: http://www.bopcris.ac.uk/bopall/ref10994.html; retrieved on 5-4-07
[25] Source-Wikipedia

also established the Police Complaints Authority. The Police Act, 1997 constituted the National Crime Intelligence Service Authority. The Police Reform Act, 2002 established the Independent Police Complaints Commission.

3.6.2.5 The Greater London Metropolitan Authority Act amended the Police Act, 1996 and established the Metropolitan Police Authority (MPA). The Metropolitan Police Authority has twenty-three members – twelve from the London Assembly appointed by the Mayor, four magistrates appointed by the Greater London Magistrates Courts Association and seven independent members, one appointed directly by the Home Secretary, with other members appointed on the basis of open advertisements. Members are appointed for a period of four years. The Chairperson of the MPA is chosen by the members among themselves.

3.6.2.6 One of the key strategies identified by the Metropolitan Police Service (MPS) is promoting community cohesion and integration. The MPS has constituted a Diversity and Citizen Focus Directorate to consult communities so as to understand and get a feed back from them. Besides, the MPS has also introduced Safer Neighbourhood Teams in all localities.[26]

3.6.2.7 The Serious Organised Crimes and Police Act, 2006 established the Serious Organised Crime Agency (SOCA). The Agency has been formed by the amalgamation of the National Crime Squad (NCS), National Criminal Intelligence Service (NCIS), that part of HM Revenue and Customs (HMRC) which deals with drug trafficking and associated criminal finance and a part of UK Immigration dealing with organised immigration crime(UKIS). This Act seeks to enable SOCA staff and police to compel people to co-operate with investigations; streamline police powers of arrest and search in the Police and Criminal Evidence Act and extend the powers of Community Support Officers and other police support staff.

3.6.3 Australia

3.6.3.1 Organised policing started in New South Wales (NSW) in the early nineteenth century. In 1862, the Police Regulation Act amalgamated several independent police units in one police force. The Police Regulation Act, 1899 replaced the earlier Act and regulated the police force until 1990 when the Police Act, 1990 came into force. As per the provisions of this Act, the Commissioner is the head of the police force and is appointed by the Governor on the advice of the concerned Minister. The Act stipulates that the Minister shall consult the Police Integrity Commission as to the integrity of the person being recommended. The Commissioner holds office for a period specified in the the instrument of appointment. Appointments to executive positions are made by the Governor on the recommendation

[26] Source: Website of the Metropolitan Police Service, London; http://www.met.police.uk/dcf/index.htm

of the Commissioner, while appointments to non executive positions are made by the Commissioner by way of transfer or promotion or otherwise. The Act also authorises the Commissoner to conduct 'integrity testing programmes' to test the integrity of any police officer.

3.6.3.2 Following a debate in the Legislative Assembly in 1994 on police performance, a Royal Commission to look into the New South Wales Police Service was constituted. Among other issues, the Commission was required to investigate the existence or otherwise of systemic or entrenched corruption in the police. At that time the anti-corruption mechanism was a mix of internal and external oversight. The Commission concluded that a state of systemic or entrenched corruption existed and the investigative framework to deal with cases of corruption was seriously inadequate. The Commission recommended the setting up of a permanent Police Integrity Commission. This led to the passage of the Police Integrity Commission Act, 1996. The principal objectives of the Act were:[27]

- to establish an independent, accountable body whose principal function is to detect, investigate and prevent police corruption and other serious police misconduct,
- to provide special mechanisms for the detection, investigation and prevention of serious police misconduct and other police misconduct,
- to protect the public interest by preventing and dealing with police misconduct, and
- to provide for the auditing and monitoring of particular aspects of the operations and procedures of the NSW Police Force.

3.6.3.3 The Police Integrity Commission (PIC) is a one Member Commission appointed by the Governor. Its primary function is to prevent police misconduct. It has been authorised to investigate or oversee other agencies to investigate police misconduct. It has wide ranging powers that include enforcing attendance of witnesses, issuing search warrants, seizure of documents, use of listening devices (such as for tapping phones), and can even recommend punishment for contempt. The right to silence which is generally available to the accused is not available in the proceedings under the Police Integrity Commission Act. It has also been stipulated that the Commission may complete its investigation despite any proceedings that may be before any court. Furthermore, an Inspector (a State Supreme Court Judge) is appointed by the Governor to audit the operations of the Police Integrity Commission for the purpose of monitoring compliance with the law of the State. Both the Police Integrity Commission and the Inspector report directly to the Legislature and have all the powers of investigation and summoning witnesses. Besides, the system fixes responsibility at each level and simultaneously vests them with corresponding authority.

[27] Section 3, Police Integrity Commission Act. 1996

3.6.3.4 The Police Integrity Commission is in addition to the Independent Commission against Corruption (ICAC) and an Ombudsman. However, in order to prevent overlap of jurisdiction it has been provided that any complaint made to ICAC or the Ombudsman should be referred by them to the PIC, if it is connected to police misconduct. The Australian model is a good example of the intricate web of accountability and checks and balances required in dealing with police agencies in a democratic society seeking to harmonize imperatives of public order and effective crime investigation with human rights and integrity.

3.7 In India, recommendations pertaining to police reforms, as mentioned earlier, have been made by a number of Commissions/Committees. However, the follow-up on these recommendations has been somewhat ad hoc and mostly minimal. Therefore, in the absence of a comprehensive approach to police reforms, the police system in most of the states continues to be beset with many shortcomings and the transformation of the Force as envisaged by various Commissions into an effective instrument of public service governed by the rule of law and safeguarding peace and order has not really taken place. The Commission in this Report has tried to redress this situation by taking a comprehensive view of the reports of earlier Commissions, as well as the formulations proposed by PADC, the directions of the Supreme Court and the best practices in various countries.

4

CORE PRINCIPLES OF POLICE REFORMS

That there is need for police reforms in keeping with the requirements of a modern, democratic State is self-evident. A careful examination of the literature on the subject and the suggestions of various expert bodies show, however, that there is significant divergence of opinion on several issues of reform. Also, several recommendations have been made in the past in isolation, without regard to the linkages with other facets of police administration and the judiciary. The Commission therefore feels that it would be useful to outline the overarching principles of reform in the police and criminal justice system. Once such principles find acceptance, a reform package can be evolved in an integrated manner. Police constitute the key element of the power of the State to enforce compliance with the laws of the land and a vital continuing institution to safeguard citizens and public property. Therefore, police reforms must ensure minimal dislocation. Reform must meet the growing challenges of urbanization and emerging threats to constitutional order, even as a humane, effective, citizen-friendly police is institutionalised. On the basis of the analysis and recommendations of various expert bodies and inputs from citizens, civil society groups and professionals, the Commission is of the view that the following eight core principles should form the bedrock of police and criminal justice reforms:

4.1 Responsibility of the Elected Government

4.1.1 In a democracy, the government is elected to serve the people. People transfer a part of the right over their lives to government in order to serve the common goal of ensuring public order and protecting the liberties of all citizens. It is but natural that such an elected government must have authority. In our system, government is accountable to the legislature and to the people. Government must exercise real authority once elected to office. The imperatives of impartial investigation and fair trial demand autonomous functioning of the investigative and prosecution wings. But the overall accountability to the elected legislature and broad direction and supervision of the duly constituted government cannot be diluted. Also, several other functions of police including protection of public property, fight against terrorism, riot control and maintenance of law and order and intelligence gathering to anticipate threats need to be monitored and supervised by the political executive. Any

reform proposal must recognise this requirement of democratic accountability and the responsibility of the political executive and elected legislatures. A police free from political direction can easily degenerate into an unaccountable force with the potential to undermine the foundations of democracy. The coercive power of the police can easily extinguish liberty unless it is tempered by responsible political direction. A corollary or welcome consequence of responsible political direction will be the much needed depoliticisation of the police.

4.2 Authority, Autonomy and Accountability

4.2.1 At the same time, the various wings of police should have the authority and resources to fulfill their responsibilities. Each such wing should have functional and professional autonomy commensurate with its requirements. For instance, intelligence wings need to have the flexibility to recruit personnel at short notice through summary procedures and the authority to procure sensitive intelligence-gathering technology without having to go through normal procurement processes. Traffic police need the resources to deal with the increasingly complex urban transport challenges, the quasi-judicial authority to impose fines on offenders when facts are incontrovertible or uncontested and flexible funding mechanisms without tortuous financial clearances. Police for riot control need a clear and unambiguous framework in which to operate, ready reinforcements when necessary and the confidence that bonafide use of force will not lead to victimisation. For each arm of the police, these requirements of authority and autonomy need to be spelt out clearly and codified. However, such autonomy and authority should be accompanied by clearly defined formal systems of accountability. Ours is an evolving democracy and our institutions need to be constantly refashioned to suit changing needs. In our system of compensatory errors, often the failings and distortions of one institution are compensated by the distortions of another institution. If policemen resort to third degree methods, political oversight of police functioning can unearth such torture and protect the citizen. Therefore any autonomy must be accompanied by strong and verifiable systems of accountability so that the citizen is protected from abuse of authority. In a democracy struggling to reform its colonial institutions, there is nothing more frightening and enfeebling to a citizen than to be at the receiving end of police excesses. Any reform will yield dividends only when the efficacy of the system is enhanced while ensuring that the propensity for abuse of authority is curbed. As Paster Niemoller said *"Man's capacity for justice makes democracy possible; man's inclination to injustice makes democracy necessary!"*

4.2.2 Although no one disputes that the police has to be accountable, there are differing views as to whom the police should be accountable to. It has often been argued that the police are answerable and accountable to too many authorities and institutions. They are

answerable to their higher-ups in the organisation, they are answerable to the judiciary and the executive magistracy, to the political executive and to the public. There is another view that the existing accountability mechanisms especially outside the police hierarchy are in fact too weak to extract any kind of accountability.

4.2.3 There is a school of thought that the police should be accountable to the law and law alone. This, it is argued, would give the police the required autonomy to function in a fair and impartial manner and would totally insulate them from political and bureaucratic interference. This argument is based on Lord Denning's historical judgement[28] (1968):

> *"I have no hesitation in holding that, like every constable in the land, he [the Police Commissioner] should be, and is, independent of the executive. He is not subject to the orders of the Secretary of State, save that under the Police Act, 1964, the Secretary of State can call upon him to give a report, or to retire in the interests of efficiency.*
>
> *I hold it to be the duty of the Commissioner of Police of the Metropolis, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought.*
>
> *But in all these things he is not the servant of anyone, save the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and the law alone."*

4.2.4 The Patten Commission,[29] however, had just the opposite view:

> *"Lord Scarman noted that the constitutional control of accountability meant that, while the police should exercise independent judgment, they were also the servants of the community and could not effectively enforce their judgment without the support of that community. We strongly agree with this, and we disagree with Lord Denning's view that the police officer "is not a servant of anyone, save of the law itself"; accountability to the law is vital but accountability is a much wider concept than that. It raises questions both of structure – the institutional relationship between the police and government both at central and local levels – and the style and purpose of policing. It involves partnerships – "constructive and inclusive partnerships with the community at all levels", in the words of the Agreement. And it involves transparency – the police being open and informative about their work and amenable to scrutiny"*

[28] Extracts from Lord Denning's judgement in R V Metropolitan Police Commissioner; ex parte Blackburn [1968] 2 QB 118;
Annual Report of CBI, 2004; retrieved from http://cbi.nic.in/AnnualReport/CBI_Annual_Report_2004_1.pdf; retrieved on 26-3-07.
[29] The Independent Commission for Policing in Northern Ireland, 1998-99.

4.2.5 This Commission is of the considered view that accountability to law means allegiance to the law of the land and this is unexceptionable. The mode and manner of accountability of public servants, including police personnel has, however, to be laid down by law itself for the obvious reason that without the enabling framework, accountability would be rendered meaningless. In our sovereign democratic republic the citizen is the focus of all public service and it is therefore imperative that all government functionaries have citizen centered accountability laid down in sufficient detail in the laws of the land. This is all the more necessary in a scenario where all public services are best executed in a participative mode. The Commission, therefore, feels that apart from being accountable to law, public servants are also accountable to the public and public institutions established by law.

4.3 Disaggregation and Deconcentration

4.3.1 One of the major problems impeding police reforms stems from the traditional approach of clubbing a variety of disparate functions in a single police force and concentrating all authority at one level. A single, monolithic force now discharges several functions: maintaining law and order, riot control, crime investigation, protection of State assets, VIP protection, traffic control, ceremonial and guard duties, service of summons and production of witnesses in courts, anti-terrorist and anti-extremist operations, intelligence gathering, *bandobast*[30] during elections, crowd control and several other miscellaneous duties. Often, even fire protection and rescue and relief are treated as police functions. In addition, giving support to state functionaries in removal of encroachments, demolition of unauthorised structures and such other regulatory activities are also treated as police responsibilities. Aggregation of all these functions in a single police force is clearly dysfunctional for four reasons: First, the core functions are often neglected when the same agency is entrusted with several functions. Second, accountability is greatly diluted when duties cannot be clearly and unambiguously stated and performance cannot be measured and monitored. Third, the skills and resources required for each function are unique and a combination of often unrelated functions undermines both morale and professional competence. Fourth, each function requires a different system of control and level of accountability. When a single agency is entrusted with all functions, the natural propensity is to control all functions by virtue of the need to control one function.

4.3.2 As already stated, mere mechanical and uniform application of law in all situations will do irreparable damage to public interest. Therefore, the elected government and executive magistracy should broadly guide the use of force in riot situations. Crime investigation is a quasi-judicial function of the police, and painstaking professional methods are involved

[30] *bandobast* is a Hindi/Urdu word, meaning arrangements

in interrogation, gathering of evidence and forensic examination. There is no case here for supervision by the political executive or executive magistracy. However, as civilian supervision of police is inevitable in order to guide riot control and deployment of forces, such supervision will inevitably transgress into crime investigation when the same police force discharges both functions. By horizontal fusion of disparate functions, the executive control necessary for law and order and other service functions also spills over to the domain of crime investigation.

4.3.3 Traditionally the police forces have been structured on the pattern of the armed forces. Insignia similar to those of the armed forces, hierarchical control extending from the SHO to DGP, a culture of demanded obedience, and a structure of units and formations have made police a highly centralised force. Inevitably, the Inspector General of Police in the earlier decades and now the chief of police designated as the Director General and Inspector General (DG & IGP) has become the focus of authority of a vast police force discharging diverse functions. Much therefore hinges on the personality of the DG & IGP, the method of appointment, tenure, competence, integrity and ability to command loyalty of the force. While such a focus of authority has certain advantages like potential for coordination, it is arguably dysfunctional because of over-centralisation.

4.3.4 At the same time, disaggregation and deconcentration cannot be pushed to the extreme. There is need to strike a balance between authority and accountability, and between autonomy and coordination. Excessive fragmentation of the police force is as detrimental to public good as over-concentration. The Commission is of the view that three broad categories of functions can be clearly identified and the police force can be structured on those lines, while setting up mechanisms for effective coordination to prevent water-tight compartmentalisation; no agency of state can be an island, and each must support and draw strength from others. The three categories are:

Crime investigation – this function would, in particular deal with serious offences. Crime investigation can be treated as a quasi-judicial function and an elite agency can be created to discharge this crucial function.

Law and order – maintenance of law and order is another important function of police. This function includes intelligence gathering, preventive measures and riot control. Performance of this function requires close interaction with other government agencies, especially the Executive Magistrates. This function should be with the 'law and order' police. Besides, all crimes not investigated by the Crime Investigation Agency could also be handled by this police Agency. These functions and other service functions can be combined under the control of the chief of Law and Order police in the state. Other

peripheral services like protection of State assets, ceremonial duties, service of summons etc. can be progressively outsourced.

Local policing - Many functions like enforcement of civic laws, traffic control, investigation of petty crime, patrolling and management of minor law and order problems can be effectively supervised by local governments. Apart from these local functions, other functions performed by law and order police can be progressively transferred to elected local governments over a definite period of time, but with adequate institutional checks and safeguards to prevent abuse of office.

4.4 Independence of Crime Investigation

4.4.1 The perception of an average citizen is that the police is essentially a crime prevention and investigation agency. Unearthing evidence in a crime, identifying the culprit, establishing the means, motive and opportunity, presenting evidence in a court of law through the prosecution, and securing a conviction are all critical functions of the police. Many citizens, fed on a staple of detective fiction, crime thrillers and television serials portraying police functioning, regard painstaking crime investigation and police assistance in prosecution as the key functions of the police. However, in real life this core function, often, is relegated to the background. Excessive reliance on 'brawn' in other areas has blunted the professional skills required for effective investigation. The use of third degree methods to extract a confession from an accused or obtain cooperation of the culprit to recover stolen goods or unearth other evidence sometimes replace analytical investigation. Failure to link all the threads in a criminal case and produce clinching evidence often leads to over-reliance on oral testimony in court. In our country, where perjury does not have serious legal or social consequences, witnesses often turn hostile because of inducement or fear. This again leads to lower conviction rates. The net result of deficiencies in crime investigation is the widespread belief that crime pays and the perpetrator can escape the clutches of law. It is usually the poor and illiterate who are victims of third degree methods and are convicted on the basis of oral evidence. The well-connected and better-off sections of society often find it easy to escape the consequences of their crimes as they are able to subvert crime investigation and the due process of law.

4.4.2 Over the years, the failure of the criminal justice system has led to a pervasive atmosphere of lawlessness. There has been a proliferation of criminal groups providing rough and ready justice through brutal means. There is a growing 'market demand' for such gangs to 'settle' land disputes, 'enforce' contracts, or collect 'dues'. There are instances of financial institutions hiring musclemen to recover dues from borrowers. Over time, these

'crime lords' who make a profitable career out of dispensing rough and ready 'justice' have found politics attractive as a second career. This is because experience has taught them that once a person dons political robes, he can 'control' the police and influence crime investigation to his advantage. What is worse, police can at times even be protectors and allies of crime syndicates. This process has led to the criminalisation of politics. It is in this background that many expert bodies and jurists have been urging that crime investigation should be separated from other police functions and needed autonomy, professional skills and improved infrastructure provided to deal with the challenges of rising crime.

4.4.3 When a police force is believed to be unresponsive to common citizens and pliant to politicians, the innocent victims of crime are forced to seek the help of politicians and middlemen even for the registration of an FIR, or pursuing an investigation. The lack of professionalism in an overburdened, under-funded and poorly-skilled police force, coupled with undue interference has led to lower level of trust in law enforcement. Many honest and hard-working policemen and officers do their best to serve society, but they are powerless to reverse the decline in standards of crime investigation. As a result, enforcement of rule of law and prosecuting and punishing the guilty have become major challenges in our governance.

4.4.4 Given these circumstances, the Commission is of the view that a separate, elite crime investigation agency of police should be created in each state and it must be completely insulated from undue political and partisan influences. While separating crime investigation from other functions, care must be taken to ensure that the crime investigation agency is not overburdened with petty offences, unable to apportion sufficient time for the investigation of serious crimes. It is therefore advisable to entrust only specified cases to the separately created elite crime investigation agency. Such an investigative agency must be well-trained and supported by adequate infrastructure including a network of forensic laboratories. This would in effect mean that the existing set-up for special investigation of crimes (crime branch/CID/COD etc) would be replaced by an autonomous crime investigation agency with statutory jurisdiction.

4.4.5 The crime investigation agency will be impervious to political and partisan influences only when the recruitment, placements and supervision are professionally managed in a transparent and efficient manner. Yet, the political executive must have the opportunity to give broad guidelines.

4.5 Self-esteem of Policemen

4.5.1 Nearly 87% of all police personnel are constables[31]. The constable is the lowest level at which recruitment takes place. The educational requirement for selection of a constable is a school leaving certificate. A constable can generally expect only one promotion in a life time and normally retires as a head constable. An average constable has little hope of becoming a Station House Officer (SHO). The statutory powers of investigation are with the Station House Officer who is usually a sub-inspector in rural police stations, and an inspector in urban police stations. As a result, constables have become 'machines' carrying out the directions of their superiors with little application of mind or initiative. Constant political interference in transfers, placements and crime investigation, long and difficult working hours, the menial duties they are often forced to perform as orderlies to senior officers, and the emphasis on brawn rather than brain in most situations tend to brutalise and dehumanise policemen. A constable devoid of dignity, lacking opportunities for vertical mobility, constantly pilloried by superiors and politicians, often derided by the public and habituated to easy recourse to violence and force cannot generally be expected to sustain his/her self-esteem or acquire the professional skills to serve the citizens.

4.5.2 Apart from the constabulary, the police force is top heavy. There is over-crowding at the top with no real strength at middle-management levels. Recruitment in most states is at several levels – constabulary, sub-inspector, deputy superintendent of police, and the Indian Police Service. Several tiers of recruitment have diminished opportunities for promotion and the level of recruitment by the accident of an examination often determines career progression, not competence, professionalism, integrity and commitment. Lateral entry to the police is not feasible, as rigorous training, experience, expertise and knowledge of peers and colleagues are vital to the police service. Since this is a sovereign function, no agency or experience outside government prepares outsiders for police work. At the same time, incentives for performance within the police agencies are feeble.

4.5.3 The Commission is of the view that police recruitment needs to be restructured significantly in order to enhance motivation and morale, professionalism and competence of the personnel. This would require empowerment of the cutting edge functionaries and commensurate upgradation of their calibre and skills.

4.6 Professionalisation, Expertise and Infrastructure

4.6.1 Effective crime investigation, competent law and order management and useful intelligence gathering demand high standards of professionalism and adequate infrastructural and training support. Specialised training facilities are vital to hone skills and constantly

[31] Source: The Padmanabhaiah Committee Report, 2000.

upgrade them. Forensic laboratories need to be established for every district or a group of districts – at least one per 3 to 4 million population. Only such well-endowed forensic facilities will help police agencies to meet the growing challenge of combating crime in a rapidly urbanising society. Strong communications support, state-of-the-art weapons, non-lethal, modern tools for riot control and a high degree of mobility are prerequisites for modern policing. Adequate resources, technology and manpower need to be deployed on a continuing basis to meet these requirements. Like national defence, internal security and public order cannot be compromised under any circumstances, if the integrity of the State and constitutional values are to be protected.

4.7 Attendant Criminal Law Reform

4.7.1 Police reforms by themselves, though necessary, are not sufficient. There is a growing perception in the minds of people that getting a criminal punished is a difficult proposition. The low conviction rates and the delays in disposal of cases reaffirm this belief. It is therefore necessary that other parts of the criminal justice system are also made effective and efficient.

4.7.2 The number of courts is India is inadequate to meet the requirement of justice. It is well-known that our judge-population ratio is of the order of 11 to 1 million[32], whereas in many developed democracies it is of the order of 100 to 1 million, or nearly ten times that of the strength of the Indian judiciary. The resultant inaccessibility, coupled with archaic and complex procedures has made our justice system slow, inaccessible and in reality unaffordable. The pendency of over 25 million cases is a testimony to this. It is therefore not surprising that people, particularly the poor and vulnerable, have little faith in the system's capacity to deliver justice or enforce their rights. Consequently, they hesitate to approach courts and are often forced to accept injustice and suffer silently. Some even resort to extra-legal methods to obtain rough and ready justice through musclemen and organised gangs. This is leading to a culture of lawlessness in society and is a serious threat to public order in the broader sense of the term. Therefore, enhancing the strength of judges and creation of local courts to settle disputes and punish crimes swiftly are vital.

4.7.3 In addition, there is need to amend procedural aspects of law in keeping with the times. Once the police act independently but with accountability, there would be need to trust them and amend the provisions of law to restore this trust, such as by making statements recorded by the police, admissible. Given the propensity of witnesses to perjure themselves in our courts, we need to strengthen the law against perjury, and make truthful evidence the norm in courts. The challenge posed by terrorists and armed groups to national unity and integrity must be countered by appropriate legal provisions. The role of the Union

[32] The sanctioned strength of subordinate judges was 14582 and the working strength was 11723 on 30th April, 2006. Extracted from the speech of Hon'ble Justice Y K Sabharwal, Chief Justice of India, 25th July 2006.

government in respect of inter-state crimes, organised crime, terrorism etc also needs to be redefined to be able to protect national interests.

4.8 Police to be a Service

4.8.1 The preamble of the United Nations Basic Principles on the use of Force and Firearms recognises that "the work of law enforcement officials is a social service". The European code of Police Ethics states that the police shall be organised with a view to earning public respect. During the colonial era the police was primarily used as a 'force' in the hands of the government of the day to suppress any uprisings by the locals. Even today the police is not totally free from this stigma. In a democracy, the police has to function as any other public service, which renders services to the community and not as 'force'. In this connection it has been stated:

> *"Every member of the force must remember his (sic) duty is to protect and help members of the public, no less than to apprehend the guilty persons. Consequently, whilst prompt to prevent crime and arrest criminals, he must look upon himself as the servant and guardian of the general public and treat all law abiding citizens, irrespective of their position, with unfailing patience, courtesy and good humour".*[33]

4.8.2 Prime Minister Dr. Manmohan Singh has observed:

> *"Today, police forces have to serve the interests of the people, not rulers. In a democratic framework as we are in today, there is a need to have in the police forces a managerial philosophy, a value system and an ethos in tune with the times. I had emphasized the need to ensure that police forces at all levels change from a feudal force to a democratic service. The spirit of public service, of respect for the rights of individuals, of being just and humane in one's actions must permeate the entire police force".*[34]

4.8.3 The Police Act Drafting Committee has also suggested that "There shall be a Police Service for each State". The Commission is also of the view that this transformation is an urgent necessity. But this would require both legal and structural changes that would bring people closer to the police, involve citizens in policing and give citizens some say in policing. Besides, a total change in the mindset of the police as well as the citizenry would be required. The reorientation of all police would be essential.

4.8.4 The concept of police as a 'Service' instead of a 'Force' encompasses the ideas of effective accountability, citizen centricity and respect for human rights and the dignity of the individual, These values should permeate all aspects of policing. Arguably the inordinate emphasis on police as the coercive apparatus of the State and its undeniable role in crime

[33] Patten Commission Report, quoting the very first Metropolitan Commissioners, Charles Rowan and Richard Mayne.
[34] Prime Minister's address to the Annual Conference of DGPs / IGPs of States and UTs; October 6, 2005; New Delhi; retrieved from http://pmindia.nic.in/speech/content.asp?id=207

investigation contributes to an impression that the cherished rights of individuals are somehow subsidiary to the classical concept of police duties. It must be recognised that the power of the State to use force is not an absolute power. It is tempered with the Fundamental Rights incorporated in Part III of the Constitution. A balance needs to be struck between the imperative to use force, to uphold the law and respect the human rights of all concerned – the victim, the accused and the society at large. This is the essence of the rule of law. The recommendations of the Commission have been formed by this perspective of police as a service and the inviolability of human rights in a civilised, modern democracy.

5 POLICE REFORMS

5.1 Organisational Structure of the Police of the Future

5.1.1 Based on the core principles outlined in the preceding chapter, the Commission, after exhaustive consultations and discussions has evolved a conceptual framework for the police of the future. The future police organisation and functioning should address the emerging challenges in a competent, honest, humane and fair manner. Piece-meal attempts must give way to a comprehensive and holistic approach. Interest of the State must be balanced by protection and promotion of constitutional values, respect for human rights, and recognition of victim's rights. The police of the future should focus much more on crime investigation and prosecution. Centralised, hierarchical control should yield place to functional specialisation, local accountability and a citizen-centric approach. Hierarchical relationships and a culture of unquestioned obedience should be balanced by horizontal linkages and focus on tasks and teams. Given the awesome power of the police and its authority to use force when needed, an intricate web of institutions needs to be created to enforce accountability and prevent abuse of authority or obstruction of justice.

5.1.2 The reforms envisaged and the rationale for the changes proposed are discussed in detail in the following pages. However, a bird's eye view of the holistic restructuring of the police as envisioned by the Commission will bring clarity and facilitate better understanding. Accordingly, the key features of police reform envisaged are outlined here, and Fig 5.1 illustrates the reforms, linkages and relationships proposed by the Commission.

5.1.3 Investigation of crimes (except offences entailing a prescribed punishment of, say, three years prison term or less) would be entrusted to a separate, fully autonomous, elite, professional, investigation agency in each state. This agency and the prosecution wing, would be managed by an independent Board headed by a retired High Court Judge, and appointed by a high-powered collegium. Crime investigation will be completely insulated from partisan influences and political control. It will be a highly professional, well-equipped, adequately staffed corps of officers, with its units at the district and sub-district levels. Officers of this agency cannot be transferred to other police agencies.

5.1.4 An independent prosecution wing, staffed by serving trial judges on deputation, special prosecutors appointed from time to time, and public prosecutors appointed for a renewable five year term would function under the supervision of the same Board, and work in close coordination with the crime investigation agency.

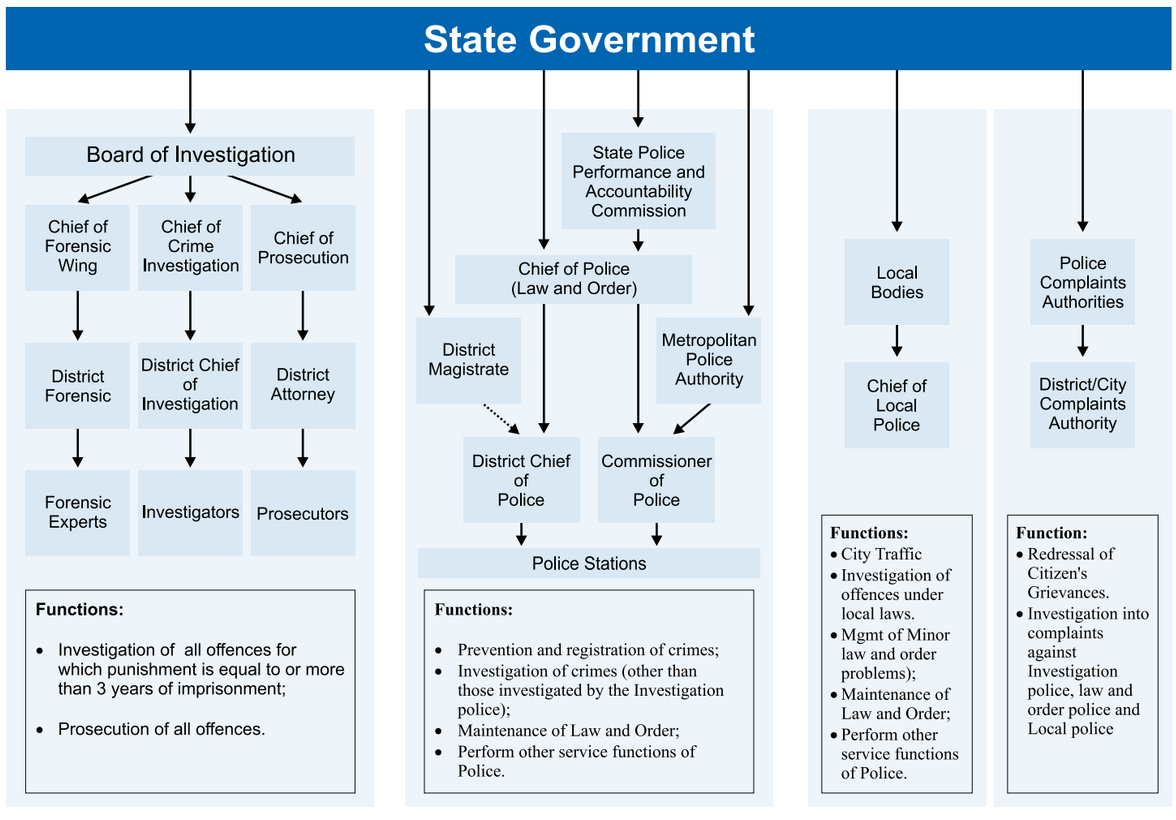
5.1.5 The police station (a part of the law and order police), would be the first point of contact for citizens. All crimes (entailing prescribed punishment of less than three years imprisonment) would be investigated by the law and order police, and more serious offences will be transferred to the independent Crime Investigation Agency. There would be effective mechanisms for coordination between local police, crime investigation agency, and riot control (law and order) police. A system of local courts would ensure speedy justice through fair, but summary procedures (covering cases entailing prescribed punishment of up to one year). These local courts would be an integral part of the independent judiciary and would function under the full control of the High Court and Subordinate Courts. Many functions which need not be discharged by the police directly – service of summons, escort and general duties, etc. – would be outsourced or transferred to appropriate agencies. Duties under special laws would be transferred progressively to the concerned departments.

5.1.6 Local police (under local authorities), in addition to investigation of petty crimes, would attend to other local police functions including traffic management and minor local law and order maintenance. More police functions would be progressively brought under the supervision of local governments.

5.1.7 There would be a strong forensic division, with well-equipped laboratories in each district, to support the Crime Investigation Agency (and other police agencies). The Forensic division would be under the control of a Board of Investigation which is discussed later in this Report.

5.1.8 The rest of the police (excluding crime investigation and local police) would constitute the law and order agency. The Commission envisages ultimate transfer of most police functions along with the personnel to the local governments over a period of time. Metropolitan cities with over one million population can be entrusted with some of these duties immediately. Until the local police are transferred to local governments, the law and order agency would continue to supervise all local police stations. This agency would be headed by a police officer and supervised by an autonomous State Police Performance and Accountability Commission. As law and order cannot be fully insulated from the political executive, this Commission would have both official representatives and independent members and the elected government would have a legitimate say in decisions to the extent required for effective maintenance of law and order, and democratic accountability.

Figure 5.1: Structure of Police in Future



5.2 Police Accountability Mechanism - Balancing Autonomy and Control

5.2.1 State Government and the Police

5.2.1.1 The first and foremost issue required to be addressed in police reforms is the relation between the State Government and the Police. Public Order and Police are state subjects. The main instrument which lays down the framework of the police system in India is the Police Act, 1861 (a few states have enacted their own Police Acts, but the underlying principles are similar). The Act gives the power of control and superintendence of the police to the State Government.

5.2.1.2 The National Police Commission (NPC) examined the issue of control of government over the police in great detail in its Second Report and stated that the arrangement that existed between the police and the foreign power before Independence was allowed to continue with the only change that the foreign power was substituted by the political party in power. The NPC also studied issues of structure of the Police Department and its interface with the State Government and other civil authorities. It stated as follows:

> *"After long years of tradition of law enforcement subject to executive will under the British rule the police entered their new rule in Independent India in 1947. The foreign power was replaced by a political party that came up to the democratic process laid down in our constitution. For a time things went well without any notice of any change, because of the corrective influences that were brought to bear upon the administrative structure by the enlightened political leadership. However, as years passed by there was a qualitative change in the style of politics as the fervour of the freedom struggle and the concept of sacrifice that it implied faded out quickly yielding place to new styles and norms of behaviour by politician to whom politics became a career by itself. Prolonged one party rule at the centre and in the states for over 30 years coupled with the natural outcome of ruling party men to remain in positions of power resulted in the development of a symbiotic relationship between politicians on the one hand the civil services on the other. What started as a normal interaction between politicians and the services for the avowed objective of better administration with better awareness of public expectations, soon de-generated into different forms of intercession, intervention and interference with malafide objectives unconnected with public interest."*

5.2.1.3 The NPC was therefore not in favour of section 3 of the Police Act of 1861, which reads as follows:

> *"Section 3. Superintendence in the State Government:- The superintendence of the police throughout a general police-district shall vest in and shall be exercised by the State Government to which such district is subordinate, and except as authorized under the provisions of this Act, no person, officer of Court shall be empowered by the State Government to supersede or control any police functionary."*

5.2.1.4 The NPC stated that the powers of the superintendence of the State Government over the police should be limited for the purpose of ensuring that police performance is in strict accordance with law. The NPC also suggested the constitution of a statutory Commission in each state to be called the State Security Commission. This Commission was to lay down broad policy guidelines, evaluate performance of state police and function as a forum for appeal from police officers and also review the functioning of the police in the state.

5.2.1.5 This issue has also been examined by the Police Act Drafting Committee (PADC), 2005. The PADC has given a formulation to define the relationship between the State Government and the police by suggesting Section 39 of the draft Bill which reads as follows:

> *"Superintendence of police to vest in the State Government:*
>
> *(1) It shall be the responsibility of the State Government to ensure an efficient, effective, responsive and accountable Police Service for the entire state. For this purpose, the power of superintendence of the Police Service shall vest in and be exercised by the State Government in accordance with the provisions of this Act.*
>
> *The State Government shall exercise its superintendence over the police in such manner and to such an extent as to promote the professional efficiency of the police and ensure that its performance is at all times in accordance with the law. This shall be achieved through laying down policies and guidelines, setting standards for quality policing, facilitating their implementation and ensuring that the police performs its task in a professional manner with functional autonomy."*

The formulation has achieved a salutary balance between the government's power of superintendence and the autonomy required by the police. The Commission broadly agrees with the above formulation suggested by the PADC with the caveat that there should be several police agencies – law and order, crime investigation, local police, special laws enforcement agency etc. to deal with different functions – as explained earlier.

5.2.1.6 However, considering the fact that formal and informal instructions (sometimes blatantly illegal) on every detail are issued, it has been urged that mere incorporation of a provision, *"The State Government shall exercise its superintendence over the police in such*

manner and to such an extent as to promote the professional efficiency of the police and ensure that its performance is at all times in accordance with the law…" would not suffice. The Commission has considered this and is of the view that a provision in the law should be made that issuing illegal or malafide instructions/directions by any government functionary to any police functionary and obstruction of justice would be an offence. This has been dealt with in the Commission's Fourth Report on 'Ethics in Governance'.

5.2.1.7 The Commission in its Report on Ethics in Governance has observed that obstruction of or perversion of justice by unduly influencing law enforcement agencies and prosecution is a common occurrence in our country. Again in most such cases, partisan considerations, nepotism and prejudice, and not pecuniary gain or gratification may be the only motive. The resultant failure of justice undermines public confidence in the system and breeds anarchy and violence. The Commission is of the view that the issue of illegal or malafide instructions by any government functionary to any police functionary should be made an offence.

5.2.1.8 Recommendations :

a. The following provision should be incorporated in the respective Police Acts :

It shall be the responsibility of the State Government to ensure efficient, effective, responsive and accountable functioning of police for the entire state. For this purpose, the power of superintendence of the police service shall vest in and be exercised by the State Government in accordance with the provisions of law.

The State Government shall exercise its superintendence over the police in such manner and to such an extent as to promote the professional efficiency of the police and ensure that its performance is at all times in accordance with the law. This shall be achieved through laying down policies and guidelines, setting standards for quality policing, facilitating their implementation and ensuring that the police performs its task in a professional manner with functional autonomy.

No government functionary shall issue any instructions to any police functionary which are illegal or malafide.

b. 'Obstruction of justice' should also be defined as an offence[35] under the law.

[35] Refer the Recommendation made by the Commission in para 3.2.1.10 in its Report on Ethics in Governance.

5.2.2 Separation of Investigation from other Functions

5.2.2.1 Accountability means an obligation or willingness to accept responsibility or to account for one's actions.[36] It is also defined as the principle that individuals, organisations and community are responsible for their actions and may be required to explain them to others.[37] Accountability in the context of governance means that public officials have an obligation to explain their decisions and actions to the citizens. This accountability is achieved through various mechanisms - political, legal, and administrative.

5.2.2.2 A police functionary is accountable to his/her internal departmental hierarchy and thus to the elected government. He/she is also accountable to the courts for any wrongful act and with the setting up of various Statutory Commissions like the Human Rights Commissions, he/she is also accountable to them. With this multiple system of accountability the issue which arises is whether the accountability mechanism existing today is effective and sufficient or excessive.

5.2.2.3 Excessive accountability has got several negative fallouts. It may curb initiative and in a uniformed service like the police it may also demoralise the force. Therefore, setting up effective accountability mechanisms requires a delicate balance between control and initiative.

5.2.2.4 Several State Police Commissions have reiterated the problems caused by undue political interference in police functioning.

5.2.2.5 The Kerala Police Reorganisation Committee (1959) said:

> *"The greatest obstacle to efficient police administration flows from the domination of party politics under the State administration. Pressure is applied in varying degrees and so often affects different branches of administration. The result of partisan interference is often reflected in lawless enforcement of laws, inferior service and in general decline of police prestige followed by irresponsible criticism and consequent widening of the cleavage between the police and the public affecting the confidence of the public in the integrity and objectives of the police force."*

5.2.2.6 The National Police Commission also stated:

> *"In the process, individual crimes affecting the interest of individual citizens by way of loss of their property or threat to their physical security got progressively neglected. Police got progressively nearer to the political party in power and correspondingly farther from the uncommitted general public of the country. Since most of the law and order*

[36] Meriam-Webster's Online Dictionary,
[37] www2.warwick.ac.uk/services/archive/rm/policies/rmpolicy/glossary/

situations tended to have political overtones, the political party in power got habituated to taking a direct hand in directing and influencing police action in such situations. This has led to considerable misuse of police machinery at the behest of individuals and groups in political circles. Police performance under the compulsions of such an environment has consequently fallen far short of the requirements of law and impartial performance of duties on several occasions".

5.2.2.7 The National Police Commission came to the conclusion that:

i. political interference is seen by the public as a major factor contributing to the poor image of the police and manifests itself in the misuse and abuse of police powers and disregard of the law by police;
ii. people consider political interference with police as a greater evil than even corruption; and
iii. political interference appears more pronounced in rural than in urban areas.

5.2.2.8 The Commission has examined the system of police accountability in some other countries. In the UK, the police are not a unitary body. In England and Wales, 43 forces undertake territorial policing on a geographical basis. In Scotland, there are eight regional police forces. In Northern Ireland, the Police Service of Northern Ireland (PSNI) was constituted in 2001 following the recommendations of the Patten Commission.

5.2.2.9 The UK has a tripartite system of police accountability. This system was established under the Police Act, 1964 and reaffirmed by the Police Act 1996 and the Police Reform Act, 2002. In this tripartite system, accountability to Parliament is through the Home Secretary (who has responsibility for policing policy formalised through a National Policing Plan). The police is accountable to the local citizens through the local police authorities, which comprise elected local councillors, magistrates and eminent persons. The third arm of this tripartite arrangement is the Chief Constable, to whom his entire police force is accountable for their performance. This arrangement is summarised in Table.5.1[38]

[38] Source: http://www.humanrightsinitiative.org/programs/aj/police/res_mat/police_accountability_in_uk.pdf

Table 5.1: The Tripartite System under the Police and Magistrates' Courts Act 1994 and the Police Reform Act, 2002

Home Secretary / Home Office	Local Police Authority	Chief Constable
Determines key National Policing objectives. Produces Annual National Policing Plan and presents it to the Parliament	Responsible for maintaining an effective and effecient force	Responsible for direction control of the force
Directs Police authorities to establish performance targets. Can require a Police Force to take remedial action if HMIC judges them ineffecient or ineffective	Determines local policing priorities. Produces a 3 year strategy consistent with National Policing Plan	Responsible for Operaional Control
Determines Cash grant for police authorities	Determines arrangements for public consultation	Drafts local policing plan in conjunction with local police authority
Approves appointment of chief constables	Established as percepting body responsible for budgeting and resource allocation	Responsible for achieving local and natinoal policing objectives
Issues statutory codes of practice and directions to police authorities	Responsible for appointment and dismissal of the chief constable (subject to ratification by the Secretary of State). Can require suspension of early dismissal on public interests grounds	Responsible for resource allocation
Issues statutory codes of practice to Chief Officers	Membership of 17 (usually) : 9 from local government 5 local independents 3 magistrates	Chief constables and deputy/ assistant chief constables on fixed term contracts
Has authority to order amalgamations		
Source : Mawby and Wright 2003		

5.2.2.10 In the US, there are 17,000 police forces and each is under the control of their respective local governments. The Federal Government and the States also have certain specialised forces. However, local police forces are totally accountable to the elected local governments.

5.2.2.11 Thus there is a complex task of balancing controls over the use of police powers to hold them accountable and the need for operational autonomy. In order to appreciate this problem in its totality, it is necessary to examine the functions performed by the police. For the ease of analysis, police tasks can be categorised as follows:[39]

(a) Prevention;
(b) Investigation; and
(c) Service provision.

5.2.2.12 Preventive tasks cover actions such as preventive arrests under Section 151 of CrPC, initiation of security proceedings, arrangement of beats and patrols, collection of intelligence and maintenance of crime records to plan and execute appropriate preventive

[39] This categorisation is based on the Report of the National Police Commission

action, deployment of police force as a preventive measure when breach of peace is threatened, handling of unlawful assemblies and their dispersal, etc. Investigative tasks include all actions taken by the police in the course of investigating a case under Chapter XII of the Code of Criminal Procedure. The National Police Commission was of the view that the investigative tasks require complete professional independence and to that extent the investigative tasks of the police cannot be brought under any executive control or direction. Service-oriented functions will include rendering service of a general nature during fairs and festivals, rescuing children lost in crowds, providing relief in distress situations arising from natural calamities, etc. The National Police Commission observed that in the performance of preventive tasks and service oriented functions, the police will need to interact with other governmental agencies and service organizations; here the police should be subject to the overall guidance from the Government, which should lay down broad policies for adoption under different situations from time to time but there should be no instructions in regard to actual operations in the field.

5.2.2.13 The Commission is of the view that the issue of accountability of the police is very sensitive. There is no doubt that the police have to be accountable, but to whom should the police be accountable and to what extent? The police perform different functions and the accountability required for each one of these is quite different. For example, for crime investigation, the police should not be subjected to executive control, whereas the preventive and service functions require civilian oversight.

5.2.2.14 The National Police Commission recommended as follows:

> *"The deployment of police personnel in law and order at the expense of investigational work in police stations arises primarily from inadequacies of manpower resources at the police station. There is not always a separate allocation of staff on law and order duties and these make heavy demand on police manpower resources. Once adequate manpower resources are available at the police station, the need for utilization of investigation staff or law and order duties may not arise so frequently as is presently taking place. [Para 50.21]"*

5.2.2.15 The Committee on Reforms of Criminal Justice System (2003) recommended:

> *"The staff in all stations in urban areas should be divided as Crime Police and Law and Order Police. The strength will depend upon the crime & other problems in the PS area.*

a. In addition to the officer in-charge of the police station, the officer in charge of the Crime Police should also have the powers of the officer in charge of the police station.

b. The investigating officers in the Crime Police should be at the least of the rank of ASI and must be graduates, preferably with a law degree, with 5 years experience of police work.

c. The category of cases to be investigated by each of the two wings shall be notified by the State DGP.

d. The Law & Order police will report to the Circle officers/SDPO. Detective constables should be selected, trained and authorised to investigate minor offences. This will be a good training ground for them when they ultimately move to the crime police.

e. A post of additional SP (Crimes) shall be created in each district. He shall have crime teams functioning directly under him. He will carry out investigations into grave crimes and those having inter-district or inter-state ramifications. He shall also supervise the functioning of the Crime Police in the district.

f. There shall be another Additional SP (Crime) in the district who will be responsible for (a) collection and dissemination of criminal intelligence; (b) maintenance and analysis of crime data: (c) investigation of important cases; (d) help the Crime Police by providing logistic support in the form of Forensic and other specialists and equipment. Investigations could also be entrusted to him by the District SP.

g. Each state shall have an IG in the State Crime Branch exclusively to supervise the functioning of the Crime Police. He should have specialised squads working under his command to take up cases having inter district. & and inter-state ramifications. These could be (a) cyber crime squad; (b) anti -terrorist squad; (c) organised crime squad; (d) homicide squad; (e) economic offences squad; (f) kidnapping squad (g) automobile theft squad; (h) burglary squad etc. He will also be responsible for (a) collection and dissemination of criminal intelligence (b) maintenance and analysis of crime data (c) co-ordination with other agencies concerned with investigation of cases".

5.2.2.16 The Padmanabhaiah Committee (2000) also recommended separation of the investigation work from law and order and other duties. Each district SP should be given an additional SP exclusively to supervise the work relating to investigation [Para 103]. This recommendation has also been made by the Committee on Reforms of Criminal Justice System and earlier by the Gore Committee on Police Training.

5.2.2.17 The Law Commission in its 154th Report (1996) also recommended separation of investigation from maintenance of law and order for the following reasons:

> *"Firstly, it will bring the investigating police under the protection of judiciary and greatly reduce the possibility of political or other types of interference. The Punjab Police Commission (1961-62), the Delhi Police Commission (1968), the Gore Committee on Police Training (1972), the National Police Commission (1977-80), the MP Public Police Relations Committee (1983) have unanimously criticised political interference in the work of the police.*
>
> *Secondly, with the possibility of greater scrutiny and supervision by the magistracy and the public prosecutor, as in France, the investigation of police cases are likely to be more in conformity with the law than at present which is often the reason for failure of prosecution in courts.*
>
> *Thirdly, efficient investigation of cases will reduce the possibility of unjustified and unwarranted prosecutions and consequently of a large number of acquittals.*
>
> *Fourthly, it will result in speedier investigation which would entail speedier disposal of cases as the investigating police would be completely relieved from performing law and order duties, VIP duties and other miscellaneous duties, which not only cause unnecessary delay in the investigation of cases but also detract from their efficiency.*
>
> *Fifthly, separation will increase the expertise of investigating police.*
>
> *Sixthly, since the investigating police would be plain clothes men even when attached to police station will be in a position to have good rapport with the people and thus will bring their co-operation and support in the investigation of cases.*
>
> *Seventhly, not having been involved in law and order duties entailing the use of force like tear gas, lathi charge and firing, they would not provoke public anger and hatred which stand in the way of police-public co-operation in tracking down crimes and criminals and getting information, assistance and intelligence which the police have a right to get under the provisions of Sections 37 to 44 of the Code of Criminal Procedure.*
>
> *There should be a separate cadre of investigating agency in every district, subject to supervision by the higher authorities. When a case is taken up for investigation by an officer of such agency, he should be in charge of the case throughout till the conclusion*

> *of the trial. He should take the responsibility for production of witnesses, production of accused and for assisting the prosecuting agency. As observed in the Fourteenth Report of the Law Commission, there need not be absolute separation between the two branches.*
>
> *We recommend that the police officials entrusted with the investigation of grave offences should be separate and distinct from those entrusted with the enforcement of law and order and other miscellaneous duties. Separate investigating agency directly under the supervision of a designated Superintendent of Police be constituted. The hierarchy of the officers in the investigating police force should have adequate training and incentives for furthering effective investigations. We suggest that the respective Law and Home Departments of various State Governments may work out details for betterment of their conditions of service".*

5.2.2.18 The Supreme Court in Writ Petition (Civil) No.310 of 1996 in Prakash Singh and others vs. Union of India and others has issued the following directions:

> *"The investigating police should be separated from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people. It must however be ensured that there is full coordination between the two wings. The separation, to start with, may be effected in towns/urban areas which have a population of ten lakhs[40] or more, and gradually extended to small towns/urban areas also."*

5.2.2.19 Separation of 'crime investigation' from other duties already exists to some extent in those police stations where there are separate 'crime' and 'law and order' wings. But this separation does not preclude personnel from one wing performing duties in the other wing, which in fact they do. Existence of the Criminal Investigation Department in states is also a type of separation. But here also there is frequent inward and outward movement of officers, which does not help in development of the required degree of specialisation in and total commitment to crime investigation. In any case, the professional requirements of an investigation agency are quite different from that of a 'law and order' maintenance machinery.

5.2.2.20 The Commission has carefully examined this issue and feels that a clear separation of investigation from law and order duties is required. The entire police would have to be restructured so as to have two separate agencies - one dealing with 'Investigations' and the other dealing with 'Law and Order'. The Commission is aware of the close linkages required between crime investigation and maintenance of law and order. This could be achieved through appropriate coordination mechanisms/linkages at various levels. But the agencies

[40] 1 million is equal to 10 lakhs

have to be separate and personnel should be non-transferable for the reasons explained earlier.

5.2.2.21 Once the investigation function is separated from 'law and order', creating separate accountability mechanisms for the two functions and providing each the required degree of autonomy, becomes possible. The investigation police should be placed under an independent Police Chief who would in turn be supervised by a Board of Investigation. This Board of Investigation should oversee the investigation and hold the investigation police accountable. This arrangement would completely insulate the investigation police from unwarranted political and administrative interference as the Board of Investigation would have full administrative control over the Investigation Police. The role of the State Government vis-a-vis the Board would be to lay down broad policy framework and guidelines within which the Board should function. The Board of Investigation should also supervise the Forensic Department and the Prosecution Department.

5.2.2.22 The Board of Investigation should have a retired High Court Judge as its head, and an eminent lawyer, an eminent citizen, a retired police officer, a retired civil servant, the Home Secretary (ex-officio), the Director General of Police (ex-officio), the Chief of Investigation (ex-officio) and the Chief of Prosecution (ex-officio) as Members. The Chairman and non official Members of the Board should be appointed by a high powered collegium, headed by the Chief Minister and comprising the Speaker of the Assembly, Chief Justice of the High Court, Home Minister and Leader of the Opposition in the Legislative Assembly. The Board of Investigation should furnish annual reports on its functioning to the State Legislature. Such a mechanism will institutionalise autonomy, impartial investigation and professional competence while ensuring effective accountability.

5.2.2.23 The Chief of Investigation should be appointed by the State Government from a panel of officers recommended by the Board of Investigation. The Chief of Investigation should be appointed for a minimum tenure of three years, and he shall not be removed before the expiry of this tenure except with the approval of the Board of Investigation.

5.2.2.24 The investigation agency should be staffed with persons with adequate qualification and knowledge in investigation, good analytical ability and sound training. The Crime Investigation Agency will be an officer corps, and the officers will be drawn from the existing police agencies on a one-time selection basis. Subsequently, the agency will have its own recruitment processes to appoint investigators. Serving policemen in other wings can join by selection but once they join the Crime Investigation Agency, they would be not transferable to other police wings. Gradually, the Board can start appointing and training its own cadre of officers.

5.2.2.25 It is not necessary to entrust all crimes to this specialised agency. A large majority of crimes are minor offences which could be easily handled by the 'law and order' police at the police station level (and the local police) with its established supervisory hierarchy (The Commission in a subsequent paragraph has examined the possibility of entrusting the investigation of crimes under certain special State Laws to the department administering the law). The Crime Investigation Agency should be entrusted with investigation of only such crimes for which the prescribed punishment is above a certain limit (say equal to or more than three years of imprisonment) and this should be stipulated under law. However, because of the existing spread of police stations, registration of crimes should continue to be with the regular police station. On receipt of any information the initial work of investigation could be commenced by the law and order police till the matter is taken over by the Crime Investigation Agency, so that valuable time and evidence is not lost.

5.2.2.26 The Commission envisages that the law and order police will investigate all offences entailing a prescribed punishment of less than three years imprisonment. Such a division of jurisdiction will ensure that the bulk of the criminal cases will be handled by the law and order police. Only the remaining cases, which constitute a small fraction of the total criminal cases registered, will fall under the jurisdiction of the Crime Investigation Agency. But these cases demand high professional competence and significant deployment of resources. Therefore, the Crime Investigation Agency may have about 5000-10000 trained officers in the larger states of the country, and will have to be backed by strong forensic and other infrastructure. This would also help curb the tendency to have increasing number of cases from all over the country, transferred to an over-burdened Central Bureau of Investigation.

5.2.2.27 Currently, most major states have the CID wings with a staff of a few hundred including constables, and with minimal forensic support. The Commission's proposal would mean a substantial enhancement of strength along with specialised training infrastructure and full autonomy and accountability in functioning.

5.2.2.28 This arrangement can be institutionalised in cities with a population of more than one million immediately and within a period of three years all urban areas could be covered. Within five years, all rural and urban areas could be covered under this new arrangement, ensuring complete separation and autonomy of crime investigation.

5.2.2.29 To ensure that the various agencies – crime investigation, law and order and local police function in close coordination, mechanisms would need to be devised at the State and the District levels.

5.2.2.30 Recommendations:

a. **Crime Investigation should be separated from other policing functions. A Crime Investigation Agency should be constituted in each state.**
b. **This agency should be headed by a Chief of Investigation under the administrative control of a Board of Investigation, to be headed by a retired/sitting judge of the High Court. The Board should have an eminent lawyer, an eminent citizen, a retired police officer, a retired civil servant, the Home Secretary (ex-officio), the Director General of Police (ex-Officio), Chief of the Crime Investigation Agency (ex-officio) and the Chief of Prosecution (ex-officio) as Members.**
c. **The Chairman and Members of the Board of Investigation should be appointed by a high-powered collegium, headed by the Chief Minister and comprising the Speaker of the Assembly, Chief Justice of the High Court, the Home Minister and the Leader of Opposition in the Legislative Assembly. The Chief of Investigation should be appointed by the State Government on the recommendation of the Board of Investigation.**
d. **The Chief of the Crime Investigation Agency should have full autonomy in matters of investigation. He shall have a minimum tenure of three years. He can be removed within his tenure for reasons of incompetence or misconduct, but only after the approval of the Board of Investigation. The State Government should have power to issue policy directions and guidelines to the Board of Investigation.**
e. **All crimes having a prescribed punishment of more than a defined limit (say three or more years of imprisonment) shall be entrusted to the Crime Investigation Agency. Registration of FIRs and first response should be with the 'Law and Order' Police at the police station level.**
f. **The existing staff could be given an option of absorption in any of the Agencies – Crime Investigation, Law and Order and local police. But once absorbed, they should continue with the same Agency and develop expertise accordingly. This would also apply to senior officers.**
g. **Once the Crime Investigation Agency is staffed, all ranks should develop expertise in that field and there should be no transfer to other Agencies.**
h. **Appropriate mechanisms should be developed to ensure coordination between the Investigation, Forensic and the Law and Order Agencies, at the Local, District and the State levels.**

5.2.3 Accountability of Law and Order Machinery

5.2.3.1 It is necessary now to turn to the functioning of the law and order machinery. As described earlier, the maintenance of law and order (and other preventive and service functions) requires close civilian oversight and coordination, but this civilian control should not extend to the operational control of the police.

5.2.3.2 The Directions of the Supreme Court and the proposals of the Police Act Drafting Committee, provisions of the Ordinance promulgated by the Government of Kerala and provisions of the Bihar Police Act pursuant to the Supreme Court Directions have been summarised in Table 3.4.

5.2.3.3 The Commission is of the view that a mechanism similar to the State Board of Investigation is required for providing supervision and guidance to the other wings of police. The National Police Commission had also recommended the constitution of a similar Authority - the State Security Commission. 'Security' is a wide term, and with the type of functions that are sought to be assigned to 'this supervisory body', it would be more appropriate to name the body as "Police Performance and Accountability Commission" (PPAC).

5.2.3.4 The Commission agrees with the composition and the manner of appointment of the Chairman and Members suggested by the PADC (with a minor change as given in the recommendation in paragraph 5.2.3.7) It may however be noted that the powers and functions of this Commission should be different from those of the Board of Investigation. As recommended by PADC, it should perform the following functions:

- *frame broad policy guidelines for promoting efficient, effective, responsive and accountable policing, in accordance with law;*
- *prepare panel for the post of Director General of Police against prescribed criteria;*
- *identify performance indicators to evaluate the functioning of the police service; and*
- *review and evaluate organisational performance of the police service.*

5.2.3.5 The Commission feels that the State Police Performance and Accountability Commission should prepare a panel only for the 'office' of Director General of Police and not for the 'rank' of Director General of Police. The Commission agrees with the procedure recommended by the PADC for appointment of the Director General of Police. The Commission feels that the Director General of Police should have a minimum tenure of three years.

5.2.3.6 In order to ensure further stability for the office of the Director General of Police, the PADC has stipulated that the Director General of Police may be removed by the State Government consequent to a conviction; or on imposition of a penalty of dismissal, removal or compulsory retirement; or on suspension; or on incapacitation; or on promotion. The Commission feels that while it is necessary to ensure a stable tenure to the Director General of Police, if the incumbent is found to be not competent, acts illegally or commits misconduct, the State Government should be able to remove him/her without any difficulty. The procedure suggested in the PADC formulation is complicated and time consuming. Therefore, it is necessary to achieve a balance between the State's power to remove an incompetent or a delinquent officer and ensuring a stable tenure for the Director General of Police. This could be achieved by prescribing that the State Government shall have the powers to remove the Director General of Police but shall not do so unless the State Police Performance and Accountability Commission agrees to it.

5.2.3.7 Recommendations

a. **A State Police Performance and Accountability Commission should be constituted, with the following as Members:**
   - **Home Minister (Chairman)**
   - **Leader of Opposition in the State Assembly**
   - **Chief Secretary**
   - **Secretary in charge of the Home Department;**
   - **Director General of Police as its Member Secretary**
   - **(For matters pertaining to Director General of Police, including his appointment, the Home Secretary shall be the Member Secretary)**
   - **Five non-partisan eminent citizens**

b. **The State Police Performance and Accountability Commission should perform the following functions:**
   - **frame broad policy guidelines for promoting efficient, effective, responsive and accountable policing, in accordance with law;**
   - **prepare panels for the office of Director General of Police against prescribed criteria;**
   - **identify performance indicators to evaluate the functioning of the police service; and**
   - **review and evaluate organizational performance of the police service.**

c. **The method of appointment of the Chairman and Members of the State Police Performance and Accountability Commission should be as stipulated in the Draft Model Police Act.**

d. **The State Government should appoint the Chief of Law and Order Police from the panel recommended by the State Police Performance and Accountability Commission. The panel will be for the 'office' of Director General of Police and not to other posts of the 'rank' of DGP.**

e. **The tenure of the Chief of the Law and Order Police as well as the Chief of the Crime Investigation Agency should be at least three years. But this tenure should not become a hindrance for removal in case the Chief is found to be incompetent or corrupt or indulges in obstruction of justice or is guilty of a criminal offence. The State Government should have powers to remove the Police Chief but such order of removal should be passed only after it has been cleared by the State Police Performance and Accountability Commission (or the State Investigation Board, in the case of Chief of Investigation).**

5.2.4 Police Establishment Committees

5.2.4.1 A closely related aspect of efficient functioning and autonomy of the police is the posting of officers based on merit and professional experience. Posting of police officers on considerations other than merit is a major reason which hampers efficient functioning of the police. Linked to this is the short tenure of police officers. The Commission has already given its recommendation for the appointment of the Chief of Police (Law and Order Agency) in paragraph 5.2.3. In order to bring objectivity in matters of posting of other police officers, the draft Bill recommended by PADC has stipulated the setting up of a Police Establishment Committee. According to the PADC, the Establishment Committee shall recommend names of suitable officers to the State Government for posting to all the positions in the ranks of Assistant/Deputy Superintendents and above in the police organization of the state, excluding the Director General of Police. The State Government shall ordinarily accept these recommendations, and if it disagrees with any recommendation, it shall record reasons for disagreement. In the formulation given by PADC it is also stipulated that postings and transfers of non-gazetted police officers within a Police District shall be decided by the District Superintendent of Police, as competent authority, on the recommendation of a District-level Committee in which all Additional/Deputy/Assistant Superintendents of Police posted in the District shall be members.

5.2.4.2 The Group of Ministers on National Security (2000-2001) recommended that a state level Police Establishment Board, headed by the State Chief Secretary/Home Secretary should be set up in each State to decide transfers, postings, rewards, promotions, suspension, etc. of gazetted police officers. Another Board, under the State DGP, should decide these matters in respect of non-gazetted police officers.

5.2.4.3 The Supreme Court has directed that there shall be a Police Establishment Board in each state which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police. The Board shall also be authorised to make appropriate recommendations to the State Government regarding the postings and transfers of officers of and above the rank of Superintendent of Police, and the Government is expected to give due weightage to these recommendations and shall normally accept them. The Supreme Court has further directed that the State Government may disagree with the decision of the Board in exceptional cases only after recording its reasons for doing so.

5.2.4.4 The Commission has carefully examined the matter and is in broad agreement with the approach adopted therein viz. to decide posting of officers and other personnel through collegial processes which rule out the possibility of unwarranted extraneous interference. Before making specific recommendations, the Commission would like to spell out certain relevant factors to formalise the structure at various levels:

(a) The police organization does not exist in isolation. The top management of the organization, in particular has as much responsibility in dealing with the rest of the government and the general public, as within their organisation.
(b) In a multi-member establishment committee, it is quite possible that some of the members would be of the same seniority as the candidates being considered for appointments. This may lead to avoidable heart-burning besides the apprehension of bringing in personal biases and prejudices. Moreover, it is also possible that the members of the establishment committee are themselves in the zone of consideration for similar senior posts.

5.2.4.5 Keeping in view the above relevant factors, the Commission would recommend that the composition of the Police Establishment Committee should be more broad based in respect of appointments to the top management. Therefore, the Police Establishment Committee in matters relating to officers of the rank of Inspector General of Police and above should have the Chief Secretary as Chairperson, the Chief of Law and Order Police as Member Secretary and the Home Secretary and a nominee of the State Police Performance and Accountability Commission as Members.

5.2.4.6 Similarly, the Police Establishment Committee for matters dealing with officers of the ranks of DySP/ASP (or gazetted officers) and above, up to the rank of Deputy Inspector General of Police, should have the Director General of Police as its Chairman and two other police officers to be nominated by the State Police Performance and Accountability Commission as members. Besides, the State Police Performance and Accountability

Commission should also nominate one of its members on this Committee. Similarly there should be a District Police Committee headed by the Superintendent of Police and have the Additional Superintendent(s) of Police, and an Assistant Superintendent/Deputy Superintendent of Police as members to deal with matters related to non-gazetted officers and all staff.

5.2.4.7 The Police Establishment Committees should deal with all matters relating to postings and transfers, promotions and grievances on establishment matters. For matters of postings and transfers, the State Police Establishment Committees should make recommendations to the State Government and the State Government should normally accept such recommendations. The State Government may, however, return the recommendations for reconsideration after recording its reasons. However in case of District Establishment Committees, their decision shall be final. In matters of promotion and grievances, the role of the Establishment Committees should be to give its recommendations to the Competent Authority. In case the Competent Authority is a part of the Establishment Committee, then such recommendation should be binding. For inter-district transfers of non-gazetted officers, the State level Establishment Committee may deal with it or delegate it to a Zonal or a Range level Committee. Similar Committees should also be constituted on the Investigation side.

5.2.4.8 In respect of the Crime Investigation Agency, the Commission envisages that the Board of Investigation should have full and final control on all personnel matters. Therefore, the Board should act as the establishment committee for all senior functionaries in investigation and prosecution. Appropriate committee may be constituted at the district level, by the Board for dealing with non-gazetted officials.

5.2.4.9 Recommendations:

a. A State Police Establishment Committee should be constituted. It should be headed by the Chief Secretary . The Director General of Police should be the Member Secretary and the State Home Secretary and a nominee of the State Police and Accountability Commission should be the Members. This Committee should deal with cases relating to officers of the rank of Inspector General of Police and above.
b. A separate State Police Establishment Committee should be set up with the Chief of Law and Order Police as its Chairperson and two senior police officers and a member of the State Police Performance and Accountability

Commission as Members (All Members of this Committee should be nominated by the State Police Performance and Accountability Commission) to deal with cases relating to all gazetted officers up to the rank of Deputy Inspector General of Police.

c. These Committees should deal with all matters of postings and transfers, promotions and also grievances relating to establishment matters. The recommendations of these Committees shall normally be binding on the Competent Authority. However, the Competent Authority may return the recommendations for reconsideration after recording the reasons.

d. Similarly, a District Police Establishment Committee (City Police Committee) should be constituted under the Superintendent/Commissioner of Police. This Committee should have full powers in all establishment matters of non-gazetted police officers.

e. For inter-district transfers of non-gazetted officers, the State level Establishment Committee may deal with it or delegate it to a Zonal or a Range level Committee.

f. All officers and staff should have a minimum tenure of three years. Should the Competent Authority wish to make pre-mature transfer, it should consult the concerned establishment committee for their views. If the views of the establishment are not acceptable to the Competent Authority, the reasons should be recorded before the transfer is affected, and put in the public domain.

g. The Board of Investigation should have full and final control on all personnel matters of Crime Investigation Agency. Therefore, the Board should act as the establishment committee for all senior functionaries in investigation and prosecution. An appropriate committee may be constituted at the district level by the Board, for dealing with non-gazetted officials.

5.3 Competent Prosecution and Guidance to Investigation

5.3.1 Investigation and prosecution of serious offences involve several key elements – complete fairness and objectivity, skills and training of the investigating team, adequate forensic capabilities and infrastructure, expert legal counsel regarding acceptable methods of investigation and admissibility of evidence, and fair and diligent documentation of the investigative process. Fairness and objectivity can be guaranteed only when the investigating team is completely free and unhampered by political or hierarchical considerations. Skills and professionalisation can only be assured when a lot of time, resources, and training are invested in an investigator, and there is constant updating and regular application of those

skills. Judged against these criteria, there are many shortcomings and deficiencies in our system, which explain the failure of prosecution in many cases. For example, our present forensic infrastructure is both inadequate and outdated. The investigator's training and professional skills are poor; as a result he is often unaware or unmindful of the due processes of law. Even the elementary principles of admissibility of evidence are often ignored. The documentation is usually of poor quality, and there are glaring inconsistencies on account of shoddy work. In the current system, the police investigate the case on their own, and their role largely ends with the filing of a charge sheet before the court. The prosecution then takes over. Because of lack of coordination between the police and the prosecution, each blames the other when the prosecution fails. The net result is that justice suffers and public faith in the criminal justice system gets severely eroded.

5.3.2 Under the Constitution, Criminal law and Criminal procedure are Entries 1 and 2 respectively in List III of the Seventh Schedule to the Constitution, under which both the Parliament and the State Legislatures can legislate. In our criminal justice system, the duty of investigation and prosecution for any crime is that of the State. The State discharges this responsibility through the police and the public prosecutor respectively. The public prosecutor thus plays a very important role in the dispensation of criminal justice. About the role of the Public Prosecutor, the Supreme Court has observed:

> *"A public prosecutor is an important officer of the state government and is appointed by the state under the CrPC. He is not a part of the investigating agency. He is an independent statutory authority. The public prosecutor is expected to independently apply his mind to the request of the invstigating agency before submitting a report to the court for extension of time…"* [41]

5.3.3 In the pre-independence period, even police officers officiated as public prosecutors. This situation continued till 1973 when the CrPC was amended and it was made mandatory that a public prosecutor should be a lawyer (Section 24 of Cr PC). A landmark judgement was delivered by the Allahabad High Court in Jai Pal Singh Naresh vs State of Uttar Pradesh (1976 CrLJ 32). In this case, the Court quashed a UP government order placing the Assistant PPs under the administrative and disciplinary control of the Superintendent of Police and the Inspector General of Police. The High Court held:

> *"Applying the principles laid down by the Supreme Court and having regard to legislative history and the object and purpose which was sought to be achieved by the enactment of Section 22, there can be no manner of doubt that if administrative and disciplinary control over the public prosecutors was entrusted to the officers of the police department, the very purpose for which Section 25 was enacted would be frustrated".*

[41] Supreme Court, Hitendra Vishnu Thakur v. State of Maharashtra (1994) 4 SCC 602

5.3.4 This was subsequently upheld by the Supreme Court in S B Shahane v. State of Maharashtra (AIR 1995 SC 1628). In this case, the Supreme Court directed the Government of Maharashtra:

> *"to constitute a separate cadre of Assistant Public Prosecutors either on district-wise basis or on state-wise basis, by creating a separate Prosecution Department for them and making the head to be appointed for such Department directly responsible to the State Government for their discipline and the conduct of all prosecutions by them before the Magistrates' courts and further free such Prosecutors fully from the administrative and disciplinary control of the Police Department or its officers, if they still continue to be under such control".*

5.3.5 The Code of Criminal Procedure (Amendment) Act, 2005 provides for the establishment of a Directorate of Prosecution to be headed by a Director. The Director has to be an advocate with a minimum of ten years experience. Thus, over the years there has been a total change in the institution of the public prosecutor from being a part of the police to a totally independent Directorate.

5.3.6 The National Police Commission argued that making the prosecution totally independent has adversely affected conviction rates. To improve coordination between the investigation and the prosecution it recommended that a supervisory structure over the district prosecuting staff be developed with Deputy Directors of Prosecution at the regional level under the administrative purview of the Range DIGs and a Director of Prosecution at the State level under the administrative control of the IG of the police. The Padmanabhaiah Committee recommended that each State may create a Directorate of Prosecution under the Home Department.

5.3.7 This issue was also examined by the Law Commission in its 154th Report (1996). The Law Commission relied on a Supreme Court ruling in S B Shahane vs State of Maharashtra which held that the prosecution agency should be autonomous having a regular cadre of prosecuting officers. The Law Commission observed as follows:

> *" It is a matter of common knowledge, that a public prosecutor has a dual role to play, namely, as a prosecutor to conduct the trial and as a legal adviser to the police department in charge of investigation. For some reason or the other, in the recent administration, the latter part is not given due weight and a virtual communication gap exists. The police officers also strongly feel that the concept of autonomy has done considerable harm, not from the point of objectivity but in reducing the scope for securing appropriate legal advice at the investigation stage. While nobody doubts the need for objectivity, it is felt*

> *that they should provide legal guidance at the stage of investigation. It is also noticed that some of the mistakes committed by investigating officers could have been avoided, if there had been some mechanism to provide legal guidance and assistance during the course of investigation".*

5.3.8 Earlier, the Law Commission in its 14th Report had considered this issue, and it suggested that the prosecuting agency should be completely separated from the Police Department. The Law Commission (164th Report) examined the recommendations of the National Police Commission and accordingly recommended the insertion of a new Section 25A of CrPC which stipulates that the State Government may establish a Directorate of Prosecution under the administrative control of the Home Department in the state.

5.3.9 The Committee on Reforms of Criminal Justice System in its report (March 2003) identified, inter alia, some weaknesses in the prosecution machinery and its functioning. It pointed out that there is inadequate coordination between the prosecution and investigation; the professional competence and commitment of prosecutor is also not up to the mark. In order to achieve coordination, the Committee recommended that a senior police officer with the requisite qualification of the rank of Director General may be appointed as the Director of Prosecution in the State in consultation with the Advocate General. The Committee also recommended that the Director of Prosecution function under the guidance of the Advocate General of the State. The duties of the Director of Prosecution, inter alia, would be to facilitate effective coordination among the investigating and prosecuting officers, and review the working of the prosecutors.

5.3.10 In most developed countries after completion of investigation, the case is transferred to the office of the Attorney or the Prosecutor. The District Attorney in the USA is elected for a term of four years. In some States, the District Attorney can also conduct further investigations if he/she feels that some more evidence is required.

5.3.11 The Commission is of the considered view that a system should be evolved at the district level which ensures professional competence, fair trial and close coordination between investigation and prosecution. A system similar to the District Attorney must be evolved in the country. The Commission feels that given our conditions, elected District Attorneys are neither desirable nor acceptable to society and the judiciary. We need highly competent, credible, impartial prosecutors who carry conviction with the public, can effectively guide investigation and control prosecution. Therefore, the Commission recommends that judicial officers of the rank of District Judge may be appointed as District Attorneys who in turn would guide investigation and control prosecution and also ensure proper coordination and understanding between the two. All the prosecutors in the district would work under the

administrative and technical control of the District Attorney who would function under the overall guidance of the Chief Prosecutor of the State.

5.3.12 There should be a Chief Prosecutor for each state to be appointed by the Board of Investigation. The Chief Prosecutor should be a senior eminent criminal lawyer and should be appointed for a period of three years. The Chief Prosecutor should guide and supervise the District Attorneys.

5.3.13 Recommendations:

a. **A system of District Attorney should be instituted. An officer of the rank of District Judge should be appointed as the District Attorney. The District Attorney shall be the head of Prosecution in a District (or group of Districts). The District Attorney shall function under the Chief Prosecutor of the State. The District Attorney should also guide investigation of crimes in the district.**
b. **The Chief Prosecutor for the State shall be appointed by the Board of Investigation for a period of three years. The Chief Prosecutor shall be an eminent criminal lawyer. The Chief Prosecutor would supervise and guide the District Attorneys.**

5.4 Local Police and Traffic Management

5.4.1 Crime investigation and bringing criminals to book is as important a function of the police as crime prevention. In India, however, maintenance of law and order because of its emergent nature invariably takes precedence over other police functions. As a result, investigations are given lower priority. With the separation of Investigation from Law and Order, this problem would be obviated to some extent. But as mentioned earlier, the Investigation Agency would be dealing with only specified cases. A large number of cases under the IPC as well as State and Special Laws would still come under the domain of the Law and Order police. Between 1999-2001, on an average, about 50 lakh crimes were registered in each year in the States and Union Territories. One-third of these were IPC crimes, and the rest were offences under various Special and Local Laws (SLL). Another reason for crime investigation of IPC related offences getting a low priority is the large number of special laws which the police have to handle. It is estimated that more than 70% of the total cases registered are under special laws. Moreover the conviction rate under the special laws is 86% whereas under the IPC it is only 37%.[42]

5.4.2 The Padmanabhaiah Committee recommended that investigation of offences under certain penal statutes should be entrusted to agencies other than the police. It

[42] Padmanabhaiah Committee Report 2000

was recommended that investigation of offences under the Motor Vehicles Act, Forest Conservation Act, Essential Commodities Act etc could be undertaken by senior officers of the concerned departments. The Committee further suggested that the powers of investigation can be given to Executive Magistrates under Section 202 of CrPC, who in turn may even authorize some reputed NGOs to carry out investigations in respect of offences under social legislations.

5.4.3 As a large number of special laws are legislated by the states, it is suggested that an inter-disciplinary group may be constituted by the Home Department of each state to study all laws and thereafter suggest transfer of investigation powers to the concerned departments. Similarly, a group may also be set up at the Union level to examine this issue in respect of Union Laws.

5.4.4 Local governments also enforce a large number of Rules and Regulations. These extend to maintaining sanitation and hygiene, controlling public nuisance, removing encroachments etc. The power to investigate such minor offences should be given to the local bodies. This would reduce the burden on the local police and at the same time make local governments more effective. In South Africa, which has a National Police, the law has provided for the establishment of Municipal Police Forces. The relevant provision in the South Africa Police Services Act 1996 is as follows:

"64. (1) Any local government may, subject to the Constitution and this Act, establish-

(a) a municipal police service; or

(b) a metropolitan police service.

(2)(a) The Minister shall prescribe which provisions of this Act shall apply mutatis mutandis to any municipal or metropolitan police service.

(b) The Minister may make regulations regarding the establishment of municipal and metropolitan police services, including which categories of local governments may establish municipal police services and which categories of local governments may establish metropolitan police services.

(3) The National Commissioner shall determine the minimum standards of training that members of municipal and metropolitan police services shall undergo.

(4) Legal proceedings in respect of any alleged act performed under or in terms of this

Act or any other law, or an alleged failure to do anything which should have been done in terms of this Act or any other law, by any member of a municipal or metropolitan police service, shall be instituted against the local government concerned and Section 57 shall not be applicable to such legal proceedings.

(5) The establishment of a municipal or metropolitan police service shall not derogate from the functions of the service or the powers, duties or functions of a member in terms of any law.

(6) Where a municipal or metropolitan police service has been established, such service shall be represented by at least one of its members designated by such service for that purpose on every community police forum or sub-forum established in terms of section 19 in its area of jurisdiction."

5.4.5 The Commission is of the view that there is need to constitute a similar local police service in bigger cities with populations more than one million and this should be extended to other cities and rural areas in a phased manner. The local police should be empowered to deal with offences prescribed under municipal and local Laws.

5.4.6 Traffic management is a rapidly evolving function especially in the light of rapid urbanisation. With the increasing number of vehicles leading to both congestion and environmental pollution, traffic management in cities is a major task. In almost all major cities there is a wing of the city police dealing with traffic control. Although regulation of flow of traffic is done by the traffic police, there is a multiplicity of agencies dealing with the broader issue of urban traffic management. Providing engineering solutions, management of parking, providing pedestrian facilities etc comes within the purview of urban local bodies. Town planning, which impacts traffic density, is done by the Development Authorities, licensing of drivers and registration of motor vehicles is done by the Motor Vehicles Department and traffic violations are handled by the traffic police. In the fragmented structure that exists at present an integrated approach to traffic management is not possible. Therefore, it is recommended that all aspects of traffic management should be entrusted to the urban local bodies. To begin with this could be done in metropolitan cities with population exceeding one million and gradually extended to other urban and rural areas. This move would also require the provision of the much needed enforcement wing to the city governments. This is also in line with democratic decentralisation and strengthening of local bodies. However as patrolling and traffic management on the National Highways is becoming increasingly important, that should be entrusted to the Law and Order police. Within the city limits, this function may be discharged by the urban local body.

5.4.7 Recommendations:

a. A task force may be constituted in the Ministry of Home Affairs to identify those laws whose implementation, including investigation of violations could be transferred to the implementing departments. A similar task force should look into the state laws in each state.

b. To start with, departments like the State Excise, Forest, Transport and Food with enforcement divisions may take some officers from the police department of appropriate seniority on deputation and form small investigation outfits by drawing departmental officers from corresponding ranks for the purpose of investigating cases of violations of appropriate laws; after a transition period, the concerned department should endeavour to acquire expertise and build capacity to cope with the investigation work with its own departmental officials.

c. A Municipal Police Service should be constituted in Metropolitan cities having population of more than one million. The Municipal Police should be empowered to deal with the offences prescribed under the municipal laws.

d. The function of Traffic control (along with traffic police) may be transferred to the local governments in all cities having a population of more than one million.

5.5 The Metropolitan Police Authorities

5.5.1 With rapid urbanisation and with some cities having population of more than that of a small state, it is unfortunate that there is no mechanism of accountability of the police to the people of the city. The absence of such a mechanism alienates the people from the police on the one hand and makes police less responsive to citizens' needs on the other. There have been efforts to have Mohalla Committees but these are not an adequate substitute for proper accountability mechanisms where citizens have a voice in policing. In the USA the local governments have total control over the police. There are Police Authorities to supervise all polices in the UK; even the London Metropolitan Area whose Police Chief directly reports to the Home Secretary, now has a Metropolitan Police Authority. The Metropolitan Police Authorities in UK have wide ranging powers including powers to recommend appointment of the Police Chief.

5.5.2 The Commission therefore feels that if our police has to become 'community-centric', a beginning must be made by giving a voice to its citizens in matters of policing. This

could be done by having Metropolitan Police Authorities in all cities with population over one million. This Authority should have nominees of the State Government, elected municipal councilors, and eminent non-partisan persons to be appointed by the government. Although, giving sweeping powers to such Authority as in some countries like the UK, immediately, may not be desirable, it could be given some powers initially and gradually its role and powers could be expanded.

5.5.3 This Authority should have powers to plan and oversee community policing, improving police-citizen interface, suggesting ways to improve quality of policing, approve annual police plans and to review the working of such plans. The Authority should not, however, interfere in the 'operational functioning' of police. In order to safeguard this, it should be stipulated that individual members will have no executive functions nor can they inspect or call for records or interfere in matters of transfers or postings.

Box 5.1: Metropolitan Police Authority, London

The establishment of the MPA marked a fundamental change in the policing of London. The Authority gives Londoners a regime of local democratic accountability for policing that previously did not exist – its duties and responsibilities formerly rested directly with the Home Secretary. Members of the Authority scrutinise and support the work of the Metropolitan Police Service (MPS).

The Authority's tasks are to:

- increase community confidence and trust in London's police service;
- secure continuous improvement in the way policing is provided in London;
- publish an Annual Policing Plan in consultation with London's communities;
- set policing targets and monitors performance regularly against those targets;
- oversee the appointment and discipline of senior police officers;
- oversee formal inquiries and the implementation of their recommendations; and
- be accountable for the management of the police budget.

Source : http://www.mpa.gov.uk/about/default htm

5.5.4 Recommendations:

a. **All cities with population above one million should have Metropolitan Police Authorities. This Authority should have powers to plan and oversee community policing, improving police-citizen interface, suggesting ways to improve quality of policing, approve annual police plans and review the working of such plans.**
b. **The Authorities should have nominees of the State Government, elected municipal councilors, and non partisan eminent persons to be appointed by the government as Members. An elected Member should be the Chairperson. This Authority should not interfere in the 'operational functioning' of the police or in matters of transfers and postings. In order to ensure this, it should be stipulated that individual members will have no executive functions nor can they inspect or call for records. Once the system stabilizes, this Authority could be vested with more powers in a phased manner.**

5.6 Reducing Burden on Police - Outsourcing Non Core Functions:

5.6.1 As mentioned earlier, the police perform a number of functions, which do not require the special capability and knowledge of police functions. It has been suggested that these functions can therefore be outsourced either to government departments or to private agencies so that the police can concentrate on its core functions. Some of the functions that can be outsourced are the delivery of court summons, verification of antecedents and addresses, which are required in the context of passport applications, job verifications etc. In the latter case, such verifications can also be done by the revenue or other local authorities with inputs from the police station regarding a criminal record if any. The Commission is of the view that some of these non core functions of the police should be outsourced or redistributed to other government departments or private agencies. A suggested list of such functions is given in Table 5.2.[43]

Table 5.2 Outsourcing Some Police Functions

Sl. No.	Domain Police Work	Police functions found amenable to privatization
1.	Crime prevention/routine policing	• Traffic Management • Patrolling the streets • Collection of intelligence/cultivating agents/appointing Special Police Officers (SPOs) • Surveillance • Antecedent checks/character verifications • Counselling • Domestic violence response • serving notices and bonds for good behaviour • Cash escort services • Risk management • Investigation of disability claims, family disputes • Delivery of legal papers
2.	Crime investigation and control	• Collection of physical evidence • Disposal of dead bodies • Maintenance of case exhibits and records • Forensic Services • Medical services • Cyber crimes investigation
3.	Prosecution	• Execution of summons and processes • Excorting and production of prisoners in courts
4.	Law and Order	• Supply of crowd control weapons • Maintenance of equipment and arsenal • Disaster rescue management, security of vital installations including highways and railways • Non-lethal weapons • Vehicle backup • Law and order related intelligence
5.	In-house support outsourcing	• Housing • Inventory control maintenance and supply • Accounts • File management • Dispatch • Data processing

Source: (Privatisation and demilitarization in policing; S N Pradhan; Journal of SVP National Police Academy; January-June 2002)

5.6.2 Recommendations:

a. **Each State Government should immediately set up a multi-disciplinary task force to draw up a list of non-core police functions that could be outsourced**

[43] Source: *Privatisation and demilitarization in policing;* S N Pradhan; Journal of SVP National Police Academy; January-June 2002.

to other agencies. Such functions should be outsourced in a phased manner.

b. Necessary capacity building exercise would have to be carried out for such agencies and functionaries in order to develop their skills in these areas.

5.7 Empowering the 'Cutting Edge' Functionaries

5.7.1 As per the Indian Police Commission of 1902, the duties prescribed for the cutting edge functionary of police, i.e. the constable, were of a mechanical type, bereft of any discretion or application of mind. Today, the constable has to interact with people, and citizens expect to be treated with respect and sensitivity to their problems. There may be occasions when a constable has to take decisions without waiting for instructions from his superiors. As the constabulary is usually the first interface of the police with the public, any reform to be meaningful has to begin at this level.

Box 5.2: The Constabulary

The police force is constable dominated (87% of the force). The teeth to tail ratio varies from state to state and ranges from 1.7 to 1.15. No correlation between teeth to tail ratio and efficiency could be established. However, the constable is the first point of contact and needs to be well trained as a good communicator. His present educational level and training do not qualify him for this role, and hence, presently he mostly plays a mechanical role. We need to reduce the fresh intake of constables, and instead go in for more recruitment of sub-inspectors. Recruitment to constabulary should be restricted till a teeth to tail ratio of 1:4 is reached.

(Report of the Padmanabhaiah Committee on Police Reforms, 2000)

5.7.2 The National Police Commission (1977) recommended major improvements in the service conditions of constables and suggested equating a constable to a skilled worker for determining his/her pay structure. The Padmanabhaiah Committee (2000) recommended that a candidate should have passed the 10th standard for being eligible to be appointed as a constable. It also suggested two years of rigorous induction training.

5.7.3 The PADC in the draft legislative formulation has recommended:

Box 5.3: Police Functions

Based on the Code of Criminal Procedure and the different Police Acts the function of the police can be classified into the following categories:

(a) Prevention of crime including intelligence gathering.
(b) Investigation of crimes.
(c) Maintenance of Public Order.
(d) Assistance in criminal trial.
(e) Providing security to vital installations and important persons.
(f) Service oriented functions:
- Emergency duties during natural calamities.
- Providing assistance to other agencies
- Assisting in conducting elections.
- Traffic control.
- Verification of antecedents.
- Helping enforcement of laws.

"Rank structure at the primary levels of Civil Police

(1) The rank structure of Group 'C' posts in the Civil Police, in the ascending order, shall consist of Civil Police Officer grade II, Civil Police Officer Grade I, Sub-Inspector and Inspector.

(2) The direct recruitment to group 'C' posts in the Civil Police, other than in the ministerial and technical cadres, after the coming into force of this Act, shall be made only to the ranks of Civil Police Officer Grade II and Sub-Inspector: Provided that the quota for direct recruitment to these two ranks shall be so fixed as to provide a fair balance between different ranks and prospects for promotion to eligible and meritorious officers at each level within a period of 8 to 10 years.

(3) Every Civil Police Officers Grade II will undergo three years intensive training before being posted to the Service as a stipendiary cadet, and will, upon successful competition of training, have a graduation degree in police studies. Their scales of pay and conditions of service shall therefore be commensurate with ranks in other services under the state, which require similar levels of educational qualifications and training."

5.7.4 A serious and persisting malady in the civil police structure is the undue reliance on numbers - quantity, rather than the quality, of the personnel. The growing emphasis on the armed wing of the police as distinct from reliance on the civil police is an indicator of this. This distortion needs to be rectified. The allied aspect is the unthinking adherence to the lopsided police strength – majority of the total police strength in most states is composed of the armed wing and nearly 80-83% of the civil police is composed of personnel belonging to the ranks of constables and head constables. In other words, field level policing, whether urban or rural, is expected to be done through this lowest level of police.

5.7.5 The situation is further aggravated by the unsatisfactory living and working conditions and the demeaning manner in which constables are often treated by their superiors as well as politicians and the public. It is, therefore, not surprising that the self respect, morale and confidence with which they start their career, gets eroded in a very short time. Added to this is the continuation of the orderly system which reduces constables to the status of domestic servants. It would obviously be unrealistic to expect such a Force to be healthy, motivated, sensitive or citizen centric. As stated at the start of this chapter, reforms in the organisation of the police have to be the critical first step in bringing about a lasting and substantive change in police practices and behaviour, especially at lower levels. The first step would be to upgrade the skills and training to the cutting edge level of the police service so that they are appropriately engaged to handle the challenges of present day policing. Further, the removal of the orderly system would also help the constabulary focus on their prime duty, policing. The orderly system should also be immediately abolished.

5.7.6 Presently, the constables are generally matriculates. A policeman today requires higher analytical skills, more initiative, broader thinking and better decision making capabilities. With increasing awareness among the citizens the emphasis in police is shifting from 'brawn to brain'. As a part of the reforms process, an immediate and important first step would be to restructure the present levels of recruitment to the police service on the civil police side. Instead of recruiting constables who are generally matriculates it would be better to recruit graduates at the starting point in the Civil Police and give them the nomenclature of Assistant Sub-Inspectors (ASI).

5.7.7 It is estimated that nearly 700 graduate Assistant Sub-Inspectors could be recruited annually against a vacancy of about 1000 constables, and that too without any financial burden. These officers upon completion of rigorous induction training could be assigned to various branches. These ASIs could then expect to be promoted up to the level of DySPs over a period of time. This by itself would serve as an effective motivating factor for such personnel to maintain high levels of integrity, professionalism and personal behaviour.

5.7.8 The recruitment to the Armed Police units/Battalions may continue as at present but the procedure for recruitment should be so designed as to ensure that it is totally transparent and free from any stigma of corruption, casteism, gender, communalism and similar other biases. Their training will have to be drastically refashioned and imparted on a continuing basis.

5.7.9 An important aspect in the recruitment procedure of policemen and police officers is that it should be totally objective and transparent. To inspire confidence in all sections of society it is equally important that the composition of the police force should reflect the composition of the society they are required to serve. To achieve this, police service should have fair representation from all sections of society including women. It has been observed that unless recruitment camps are organised in a widely dispersed manner, certain sections of society may hesitate to come to the traditional recruitment centres. A more proactive approach is therefore required to attract persons from all sections of the society to join the police force.

5.7.10 Recommendations:

a. The existing system of the constabulary should be substituted with recruitment of graduates at the level of Assistant Sub-Inspector of Police (ASI).
b. This changeover could be achieved over a period of time by stopping recruitment of constables and instead inducting an appropriate number of ASIs.
c. Recruitment of constables would, however, continue in the Armed Police.
d. The orderly system should be abolished with immediate effect.
e. The procedure for recruitment of police functionaries should be totally transparent and objective.
f. Affirmative action should be taken to motivate persons from different sections of society to join the police service. Recruitment campaigns should be organised to facilitate this process.

5.8 Welfare Measures for the Police

5.8.1 Improvements in police performance are closely linked to the morale of policemen, particularly of cutting edge functionaries, which in turn depends on their working environment and service conditions. Long working hours, tough working conditions, mechanical nature of job, inadequate welfare measures and insufficient housing means that the police officials are constantly under pressure, sapping their morale and motivation. Radical improvements in the recruitment, training, emoluments, working and living conditions are essential to improve their morale, reduce their frustration and increase their professionalism. Earlier in the Report, recommendations have been made for raising the qualifications for the entry level posts in police and undertaking recruitment at a higher level than at present and for abolition of the degrading orderly system. These combined with better working conditions, improved promotion prospects and job enrichment can go a long way towards improving morale and performance. In addition, priority has to be given to welfare measures such as better education for children, medical care, housing etc. so that the there is an overall improvement in their working and living conditions.

5.8.2 The National Police Commission had divided welfare measures for the police into two broad categories, the first covering items such as pension/gratuity, medical facilities, housing etc. which are to be funded entirely by the government and the second comprising miscellaneous welfare measures such as recreational and entertainment facilities, welfare centres to provide work for members of the families, financial aid for their children etc. for which it suggested the institution of a welfare fund to be partly funded by the government and partly by the police personnel themselves.

5.8.3 Time bound measures for improving satisfaction levels among police personnel by provision of adequate housing and other welfare measures are required to be taken up on an urgent basis. Provision of adequate leave, at least for one month each year, on the pattern of the armed forces would also help provide a safety valve for police personnel suffering from physical and psychological exhaustion due to trying working conditions.

to the District Magistrate and the State Government. However, accountability to the District Magistrate has eroded with the passage of time. The setting up of the National Human Rights Commission and the States Human Rights Commissions has brought in some element of accountability for human rights violations.

5.9.4 The National Police Commission went into the issue of departmental accountability at great length. They concluded that effectiveness of internal accountability systems is totally dependant on the determinants used for evaluating police performance. They suggested that a comprehensive set of determinants be used for evaluating police performance at various levels. As regards complaints against the police, the National Police Commission recommended that all complaints should be dealt with by the police department. The Padmanabhaiah Committee also endorsed the view of the National Police Commission but made a distinction that where a complainant is not satisfied with the action taken by the police, he should have access to an independent Complaints Authority. The Committee recommended the Constitution of a non-statutory authority to be headed by the District Magistrate with an Additional Sessions Judge, the Superintendent of Police and an eminent citizen as members.

Box 5.4: Fake Encounters

In the past, policing as a part of the criminal justice system was considered corrupt and inefficient, today there is an added element of criminalisation and dehumanisation that characterises the working of a fringe. Dehumanisation of the guardians of law and order can be disastrous. Reports of the fake encounters in Gujarat reek of supari killings arranged by the police on behalf of the wealthy. This is nothing less than the subversion of the police force by criminal elements. (Source: Indian Express, 9th May, 2007)

The fact that the extra judicial killings of this type have taken place in areas as far apart as Kashmir, Mumbai, Gujarat and several other states also reflect a deeper malaise in our police which cannot be explained away by using arguments such as "special circumstances" in the fight against terror or extremism etc.

It is apparent that whole sale reforms in the criminal justice system as well as in the police organisation and structure are essential for the practice of 'fake encounters' to be permanently stopped.

5.9.5 The Padmanabhaiah Committee also suggested the constitution of an independent Inspectorate of Police. Attention was drawn to Her Majesty's Inspectorate of Constabulary which has been functioning very effectively in the United Kingdom and advises the Minister on the efficiency of the police force.

5.9.6 The Supreme Court in Writ Petition (Civil) No.310 of 1996, Prakash Singh and others vs Union of India has directed the constitution of State and District Complaints Authorities.

5.9.7 The PADC has suggested that in addition to the already existing mechanisms, accountability of the police should be further ensured through the Police Performance and Accountability Commission and the District Accountability Authority. The PADC

has recommended the setting up of a State Police Accountability Commission headed by a retired High Court Judge. This Commission would enquire into allegations of serious misconduct against police personnel. It has also been suggested that there should be a District Accountability Authority to monitor departmental enquiries into cases of complaints of misconduct against police personnel.

5.9.8 The Commission has analysed the systems prevailing in other countries. In the UK, the first statutory complaints system was introduced in England and Wales when the Police Act, 1964 granted Chief Officers sole responsibility for taking action on complaints against the police. The Police Act, 1976 created the Police Complaints Board (PCB), an independent body based in London with responsibility for reviewing completed investigations of complaints. The PCB did not have any investigative powers, but it could review an investigation and ask a Chief Officer to commence disciplinary proceedings, which would be heard by a disciplinary tribunal consisting of two PCB members. As the PCB was not found to be effective enough, the Police and Criminal Evidence Act,1984[44] constituted the Police Complaints Authority (PCA). The PCA's structure and responsibilities were essentially the same as the PCB but the principal change was that its members could supervise police investigations into complaints. A mechanism for local resolution of less serious complaints was also provided. In May 2000, the government started consultation on a new complaints system for complaints against the police and a consultation document setting out the emerging framework – 'Complaints against the Police - Framework for a New System' – was published. This culminated in the Police Reform Act, 2002[45]. Section 9 of the Police Reform Act, 2002 established the Independent Police Complaints Commission. Its functions include:

Box 5.5: CCRB New York

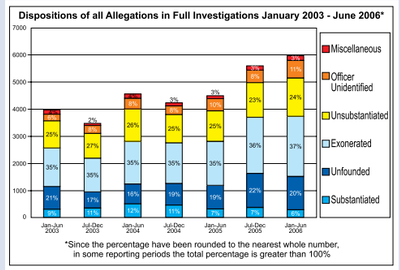
The CCRB has jurisdiction over New York City Police Department officers. The agency has the authority to investigate complaints falling within any of four categories: *force, abuse of authority, discourtesy, and offensive language.*

Force refers to the use of unnecessary or excessive force, up to and including deadly force.

Abuse of authority refers to improper street stops, frisks, searches, the issuance of retaliatory summonses, and unwarranted threats of arrest and other such actions.

Discourtesy refers to inappropriate behavior or language, including rude or obscene gestures, vulgar words, and curses.

Offensive language refers to slurs, derogatory remarks, and/or gestures based upon a person's sexual orientation, race, ethnicity, religion, gender or disability.



Source : http://www.nyc.gov/html/ccrb/pdf/ccrb-semi_2006.pdf

[44] Source: http://swarb.co.uk/acts/1984PoliceandCriminalEvidenceAct.shtml
[45] Extracted from the website of IPCC: http://www.ipcc.gov.uk/

- *"(a) the handling of complaints made about the conduct of persons serving with the police;*
- *(b) the recording of matters from which it appears that there may have been conduct by such persons which constitutes or involves the commission of a criminal offence or behaviour justifying disciplinary proceedings;*
- *(c) the manner in which any such complaints or any such matters as are mentioned in paragraph (b) are investigated or otherwise handled and dealt with."*

5.9.9 The South African Police Act also established an Independent Complaints Directorate.[46] The New York City Police has an independent Civilian Complaints Review Board. New South Wales in Australia passed the Police Integrity Commission Act in 1996. The principal objective of the Act was *"to establish an independent, accountable body whose principal function is to detect, investigate and prevent police corruption and other serious police misconduct".*

5.9.10 The Prime Minister Dr. Manmohan Singh, while addressing Superintendents of Police on 1st September, 2005, stated that:

> *"The Home Minister may also consider setting up an independent oversight mechanism to handle complaints against police misconduct."*

5.9.11 In the model Act suggested by PADC, the District Accountability Authority has to be constituted to monitor departmental enquiries into cases of complaints of misconduct against police personnel. This is not quite in line with what has been directed by the Supreme Court. The Supreme Court has directed that the recommendations of the Complaint Authorities at the District and the State levels shall be binding. In its Report on Ethics in Governance, the Commission has recommended the constitution of a Local Bodies Ombudsman to look into complaints against officials of local bodies. Since the Local Bodies Ombudsman would have to investigate complaints against all the urban and rural local bodies and their officials, it may not be desirable to burden it any further. A separate District Police Complaints Authority should therefore be constituted for allegations against the police. This may be constituted for a district or a group of districts. The District Police Complaints Authority should not inquire into complaints relating to corruption which come under the purview of Lok Ayukta but should focus on other types of public grievances against the police such as non registering of complaints, general highhandedness, etc. The District Police Complaints Authority should have an eminent citizen as its Chairperson, with an eminent lawyer and a retired government servant as its members. The Chairperson and Members of the District Police Complaints Authority should be appointed by the State Government in consultation with the Chairperson, State Human Rights Commission or with the State Lok Ayukta. A government officer should be appointed as Secretary of the District Police

[46] Chapter 10, South African Police Act, 1995.

Complaints Authority. This Authority should have powers to enquire against misconduct or abuse of power against the police officers up to the rank of Deputy Superintendent of Police. It should exercise all the powers of a civil court. The Authority should be empowered to investigate any case itself or ask any other agency to investigate and submit a report. The Disciplinary Authorities should by and large accept the recommendations of the District Polic Complaints Authority.

5.9.12 A State Police Complaints Authority (SPCA) should be constituted to look into cases of serious misconduct by the police. It should also look into complaints against officers of the rank of Superintendent of Police and above. The State Police Complaints Authority should have a retired High Court Judge as Chairman. Nominees of the State Government, the State Human Rights Commission, State Lok Ayukta, the State Womens' Commission, and an eminent human rights activist should be the members of the Complaints Authority. The Chairperson and the eminent human rights activist should be appointed by the State Government based on the recommendations of the State Human Rights Commission. In case the State Human Rights Commission has not been constituted, then the State Lok Ayukta may be consulted. A government officer should officiate as Secretary of the Authority. It should have the authority to ask any agency to conduct an enquiry or do the inquiry itself. It should also be empowered to enquire into or review a case which is before any District Police Complaints Authority if it feels that it is necessary to do so in public interest. The State Authority should also monitor the functioning of the District Police Complaints Authorities.

5.9.13 In order to prevent frivolous and vexatious complaints, it may be provided that if upon an enquiry it is found that the complaint was frivolous or vexatious, then the Complaints Authority should have the power to impose a reasonable fine on the complainant.

5.9.14 The Complaints Authority proposed above would be effective only if they are easily accessible to the aggrieved person. The procedure for lodging a complaint should be made very simple. Technology provides various solutions for this. The filing of complaints could be 'web-enabled'. As telephone connectivity is more widely available than internet, the Complaints Authority should have facilities for recording complaints over telephone also. This could even be automated through the use of Interactive Voice Recorder (IVR) systems.

5.9.15 Recommendations:

a. A District Police Complaints Authority should be constituted to enquire into allegations against the police within the district. The District Police Complaints Authority should have an eminent citizen as its Chairperson, with an eminent lawyer and a retired government servant as its Members. The Chairperson and Members of the District Police Complaints Authority should be appointed by the State Government in consultation with the Chairperson of the State Human Rights Commission. A government officer should be appointed as Secretary of the District Police Complaints Authority.

b. The District Police Complaints Authority should have the powers to enquire into misconduct or abuse of power against police officers up to the rank of Deputy Superintendent of Police. It should exercise all the powers of a civil court. The Authority should be empowered to investigate any case itself or ask any other agency to investigate and submit a report. The Disciplinary Authorities should normally accept the recommendations of the District Authorities.

c. A State Police Complaints Authority should be constituted to look into cases of serious misconduct by the police. The State level Authority should also look into complaints against officers of the rank of Superintendent of Police and above. The State Police Complaints Authority should have a retired High Court Judge as Chairperson and nominees of the State Government, the State Human Rights Commission, the State Lok Ayukta, and the State Women Commission. An eminent human rights activist should be also be the member of the Complaints Authority. The Chairperson and the Member of the Authority (eminent human rights activist) should be appointed by the State Government based on the recommendations of the State Human Rights Commission. (In case the State Human Rights Commission has not been constituted, then the State Lok Ayukta may be consulted). A government officer should officiate as the secretary of the Authority. The Authority should have the power to ask any agency to conduct an enquiry or enquire itself. The Authority should also be empowered to enquire into or review any case of police misconduct, which is before any District Police Complaints Authority, if it finds it necessary in public interest to do so.

d. It should be provided that if upon enquiry it is found that the complaint was frivolous or vexatious, then the Authority should have the power to impose a reasonable fine on the complainant.

e. The State Police Complaints Authority should also monitor the functioning of the District Police Complaints Authority.

f. The Complaint Authorities should be given the powers of a civil court. It should be mandated that all complaints should be disposed of within a month.

5.10 An Independent Inspectorate of Police

5.10.1 At present, the departmental hierarchy is responsible for ensuring that the police functions efficiently. However, the system of rigorous inspection of police stations and the functioning of police officers by higher departmental officers, has, over the years, become a routine ineffective exercise. Cases like 'Nithari'[47] bring to the fore the weaknesses of departmental inspection mechanisms. The Commission would reiterate the need for effective internal inspections. It is however recognised that routine inspections would not lead to substantial systemic changes as needed from time to time. In some countries like the UK an independent Inspectorate of Police has been constituted to promote efficiency and effectiveness of policing and also to ensure that agreed standards are achieved and maintained. The Padmanabhaiah Committee recommended the setting up of an independent Inspectorate of Police. The Commission feels that there are advantages in setting up of an independent Inspectorate of Police in each state under the supervision of the State Police Performance and Accountability Commission.

Box 5.6: HMIC (UK)

Her Majesty's Inspectors of Constabulary are appointed by the Crown on the recommendation of the Home Secretary and report to Her Majesty's Chief Inspector of Constabulary (HMCIC), who is the Home Secretary's principal professional policing adviser.

Purpose: To promote the efficiency and effectiveness of policing through inspection of police organisations and functions to ensure that agreed standards are achieved and maintained.

Functions: They carry out inspections of all the police forces in the United Kingdom. Besides they also render professional advice on policing matters.

(Extracted from the website of HMIC)

5.10.2 At present, though the criminal laws are uniform throughout the country, there are variations in police functioning from state to state. Though some variations are necessary considering the local conditions, there should also be some common standards for functions of police, especially the quality of services provided by them. The task of identifying these common standards could be entrusted to the Bureau of Police Research and Development. These standards could then be updated regularly in the light of experience gained and adopted as the benchmark for inspections.

5.10.3 The recent incidents of death in stage-managed police encounters have once again underscored the need for a strong accountability mechanism. The proposed Complaints Authority, no doubt, would investigate any compaints in this regard, however, in order to totally eliminate this unacceptable practice, a professional accountability mechanism should also be institutionalised. Therefore all cases of deaths in encounters, irrespective of whether

[47] In Nithari village in Uttar Pradesh, about 20 children disappeared over a period, and subsequently, several bodies were recovered from a drain. The police was accused of apathy and indifference.

a complaint has been made or not, should be inquired into by the proposed Inspectorate as an ongoing exercise to ensure police accountability. The Inspectorate of Police would submit its inquiry report to the PPAC and also to the SPCA. The SPCA should use the report as an input, in case it is conducting an inquiry in to any such incident.

5.10.4 Recommendations:

a. In addition to ensuring effective departmental inspections, an Independent Inspectorate of Police may be established under the supervision of the Police Performance and Accountability Commission to carry out performance audit of police stations and other police offices through inspections and review of departmental inspections. It should render professional advice for improvement of standards in policing and also present an annual report to the Police Performance and Accountability Commission.

b. For all cases of deaths during 'encounters' the Independent Inspectorate of Police should commence an enquiry within 24 hours of the incident. The Inspectorate should submit its report to the PPAC and the SPAC

c. The working of the Bureau of Police Research and Development needs to be strengthened by adequate financial and professional support, so that it could function effectively as an organization for inter alia analysis of data from all parts of the country and establish standards regarding different aspects of the quality of police service.

5.11 Improvement of Forensic Science Infrastructure - Professionalisation of Investigation

5.11.1 As pointed out earlier, India, which had the first fingerprinting laboratory in the world in 1897, has proportionately fewer forensic laboratories than other developed countries. Inadequate infrastructure leads to transporting of case material to distant places, resulting in delays and giving scope for tampering, corruption, and incompetence. As a result, there is over-dependence on either oral evidence which can be unreliable (witnesses are often bought or coerced) or recourse to brutal third degree methods to extract confessions. Finally, the absence of legal counsel at the stage of crime investigation is leading to appallingly low rates of convictions.

5.11.2 Forensic science which is highly advanced in developed countries is not adequately used by our police in investigation of crime. A large number of cases are investigated based on admissions and confessions by the accused often extracted under duress. In the long run,

most such cases result in acquittal besides causing violation of human rights and brutalising the police on the one hand and letting go of the criminals on the other. Optimum utilisation of the tools of forensic sciences can lead to better investigation of crimes on the one hand and minimisation of abuse of human rights on the other.

5.11.3 The Padmanabhaiah Committee went into this aspect at great length. It observed:

"There are four issues relating to forensic science, which needs to be examined. The first one is how to build world class forensic science facilities. The second is how to ensure that the police use the forensic science facilities in criminal investigation. The third one is to ensure that the forensic reports achieve a reputation for integrity, impartiality and accuracy of their findings. The fourth one is to see that the forensic science reports are available very quickly".

5.11.4 A Core Group was constituted by the National Human Rights Commission to make a comprehensive examination of all aspects of forensic science services in India and to make appropriate recommendations. The Core Group, which submitted its Report[48] in 1999, has also made several recommendations on effective use of forensic science in the criminal justice delivery system. The Core Group examined institutional, legal, personnel, financial and technical issues and made comprehensive recommendations on each one of these.

5.11.5 With regard to the organisation of the forensic science institutions, the Core Group stated that the structure within these organisations is very hierarchical, compartmentalised, insensitive, bureaucratic and rigid and that the internal culture is influenced by the police environment. The Core Group observed that in most states, the forensic organisations are a part of the police set up and this affects their scientific work. They are also woefully short of funds and qualified staff. All this coupled with indiscriminate references made by investigating officers has led to a large pendency at the forensic laboratories.

5.11.6 The Core Group also noted the legal lacunae in the use of forensic science services in investigation and trial. It pointed out that the CrPC and the Indian Evidence Act do not provide for mandatory collection, preservation, examination of forensic material, and for its appropriate legal status in the criminal justice process.

5.11.7 The Commission has examined the report of the Core Group and agrees with it. Based on the recommendations made by the Core Group, the Commission makes the following recommendations:

[48] State of the Art Forensic Sciences: For Better Criminal Justice

5.11.8 Recommendations:

a. There is need to set up separate National and State Forensic Science Organisations as state-of-the-art scientific organizations. At the state level these organisations should function under the supervision of the Board of Investigation.

b. There is need to expand the forensic facilities and upgrade them technologically. Every district or a group of districts having 30 to 40 lakhs population should have a forensic laboratory. This should be achieved over a period of five years. Government of India should earmark funds for this purpose for assisting the states under the police modernisation scheme. All the testing laboratories should be accredited to a National Accreditation Body for maintaining quality standards.

c. The syllabus of MSc Forensic Science should be continuously upgraded in line with international trends.

d. Necessary amendments should be effected in the CrPC and other laws to raise the level and scope of forensic science evidence and recognize its strength for criminal justice delivery.

5.12 Strengthening Intelligence Gathering

5.12.1 Intelligence is clearly one of the most important inputs for maintaining public order. In the states, intelligence gathering is done by the Special Branch (Intelligence Wing) of the police and the regular police stations. It is generally observed that the intelligence gathering efforts are devoted mainly to gathering information about major law and order problems, namely, likely agitations from students, labour unions, social and communal groups etc. Experience indicates that adequate attention is not paid to collection of intelligence relating to commission of crimes. It is imperative that the intelligence gathering machinery should give adequate attention to prevention of crimes also.

5.12.2 Even today, the basic source for all conceivable information remains the police station, although there are Special Branchs in all the states for gathering intelligence. Indeed, collection of intelligence is the responsibility of all policemen. Information is collected through various sources - the beat constable, the traffic policemen, field visits, interaction with officials of other departments, study of FIRs, use of informants etc. Nevertheless, due to pressure of law and order duties, such efforts remain inadequate. Pressure of work - law and order duties - has considerably slackened such efforts in intelligence gathering.

5.12.3 The system of the beat police which worked well in the past has fallen into disuse and in big cities patrolling is done mainly in vehicles. The beat police apart from giving a sense

of security to the citizens, was also an important source of information. The Commission feels that this system needs to be restored and strengthened.

5.12.4 Moreover, with the constitution of specialised wings in each state, the police stations sometimes feel that collection of intelligence is no longer their responsibility. It has also been observed that often the information collected as 'intelligence' is about an event which has already taken place. The Padmanabhaiah Committee summarised its observation about intelligence as follows:

> *" Presently, the intelligence apparatus is not integrated with well defined hierarchical or collateral linkages. It is neither obligatory on the part of the state police to share intelligence with other intelligence gathering agencies or vice-versa, nor mandatory to act upon it with seriousness that it deserves. The existing amorphous arrangements which heavily rely on personal equations and subjective appreciation needs to be replaced by professionally worked out institutional arrangements."*

5.12.5 In recent years, substantial measures have been taken to strengthen intelligence gathering and coordination mechanisms have been set up at various levels. The Commission would however like to emphasise that the police station and its functionaries should be the prime source for gathering intelligence. Rapid advancements in technology should be fully exploited for intelligence gathering. Also a mechanism for fixing accountability of intelligence officials and other executive officials who utilise such intelligence, needs to be evolved.

5.12.6 Recommendations:

a. **The intelligence gathering machinery in the field needs to be strengthened and at the same time, made more accountable. Human intelligence should be combined with information derived from diverse sources with the focus on increased use of technology. Adequate powers should be delegated to intelligence agencies to procure/use latest technology.**
b. **Intelligence agencies should develop multi-disciplinary capability by utilising services of experts in various disciplines for intelligence gathering and processing. Sufficient powers should be delegated to them to obtain such expertise.**
c. **Intelligence should be such that the administration is able to use it to act in time by resorting to conflict management or by taking preventive measures.**

d. **Instead of monitoring public places by posting a large number of policemen it would be economical as well more effective if devices like video cameras/CCTVs are installed in such places.**
e. **The beat police system should be revived and strengthened.**
f. **Informants giving information should be protected to keep their identity secret so that they do not fear any threat to life or revenge. However, they could be given a masked identity by which they could claim their reward at an appropriate time and also continue to act as informants as the situation develops.**
g. **In case of major breakdown of public order, the State Police Complaints Authority should take appropriate action to fix responsibility on the police officers for lapses in acting upon intelligence or on the intelligence officers in case there has been a failure on their part.**

5.13 Training of the Police

5.13.1 Recruitment to the Police is done at four levels - viz., the constables, Sub Inspectors (SI), Deputy Superintendent of Police (DySP) and Assistant Superintendent of Police (ASP). Recruitment to the ranks of Constable, SI, DySP are done by the states concerned. Normally the constables and SIs are recruited by the Department, DySPs are recruited by the State Public Service Commission {ASPs (IPS) are recruited by the UPSC}.

5.13.2 Training has by and large been a neglected area so far as the large number of subordinate functionaries are concerned. In 1971, a Committee on Police Training[49] was constituted. This Committee came to the conclusion that police training had been badly neglected over the years and training arrangements left much to be desired.

5.13.3 Often the State Police Training Schools where a large majority of policemen undergo training are ill equipped, starved of funds and staffed by unwilling instructors. Furthermore, training methodologies are often outdated and focus is more on discipline and regimentation while attitudinal and behavioural improvements are relegated to the background.

5.13.4 Training is important not only for building capacity but also for bringing attitudinal change. The capacity of the police to go beyond their individual economic and social background, to become aware, thinking, humanitarian and sensitive to weaker sections, can be inculcated by continuing capacity building measures. While the Commission does not wish to go into the technical details of training, it would like to emphasise its importance in police functioning.

[49] This Committee was headed by Shri M S Gore.

5.13.5 Recommendations:

a. **Deputation to training institutions must be made more attractive in terms of facilities and allowances so that the best talent is drawn as instructors. The Chief of Training in the state should be appointed on the recommendation of the Police Performance and Accountability Commission.**
b. **The instructors should be professional trainers and a balanced mix of policemen and persons from other walks of life should be adopted.**
c. **Each state should earmark a fixed percentage of the police budget for training purposes.**
d. **For each level of functionary, a calendar of training for the entire career should be laid down.**
e. **There should be common training programmes for police, public prosecutors and magistrates. There should also be common training programmes for police and executive magistrates.**
f. **Training should focus on bringing in attitudinal change in police so that they become more responsive and sensitive to citizens' needs.**
g. **All training programmes must conclude with an assessment of the trainees, preferably by an independent agency.**
h. **Modern methods of training such as case study method should be used.**
i. **Impact of training on the trainees should be evaluated by independent field studies and based on the findings the training should be redesigned.**
j. **All training programmes should include a module on gender and human rights. Training programmes should sensitise the police towards the weaker sections.**

5.14 Police and Human Rights

5.14.1 Human rights issues have been placed centre stage in the last decade or so in discussions on police reforms. The General Assembly of the United Nations Organisation adopted the Universal Declaration of Human Rights on 10th December, 1948. India became a signatory to the International Convention on Economic, Social and Cultural Rights (ICESCR) and the International Convention on Civil and Political Rights (ICCPR) in 1966. The National Human Rights Commission (NHRC) was established on 12th October, 1993 as mandated by the Protection of Human Rights Act, 1993.

5.14.2 In recent years, reports of occurrence of human rights violations have become increasingly related to counter-insurgency and counter-terrorism activities of the law

enforcement authorities. That terrorism has become a serious threat to national integrity, national security, rights of the citizens and social harmony cannot be over-emphasised. The National Human Rights Commission has laid stress on both aspects. It accepts that *"A man in "khaki"*[50] *does not shed off his basic human right to life on wearing "khaki" – violation of his human rights at the hands of terrorists is as much condemnable as the assault on human rights of other citizens"* (Para 3.13, Annual Report, 2004-2005, NHRC). But it also reiterates the view of the Supreme Court of India in D.K. Basu vs the State of West Bengal [1997(1) SCC 416]: *" Challenge of terrorism must be met with innovative ideas and approach. State terrorism is no answer to combat terrorism. State terrorism would provide legitimacy to 'terrorism'. That would be bad for the State, the community and above all for the Rule of Law. The State, therefore, must ensure that various agencies deployed by it for combating terrorism act within the bounds of law and not become law unto themselves. That the terrorist has violated the human rights of innocent citizens may render him liable for punishment but it cannot justify the violation of his human rights except in the manner permitted by law".*

5.14.3 Other matters related to policing and human rights are concerned with custodial deaths, encounter deaths and torture. The NHRC has stated in its Annual Report for 2004-2005 that 74,401 cases were registered in the Commission during that year of which 1500 cases related to intimations of custodial deaths, 4 cases of custodial rapes and 122 related to police encounters (para 4.3).

5.14.4 The NHRC has made it very clear that *"with every passing year, the evidence before the Commission mounts that there must be major police reforms in the country if the human rights situation is to be improved…"*[51] It has stressed that modernisation per se would not lead to redressal of the situation. The most important element, in its view, is insulating the investigation work of the police from 'extraneous influences' and putting a stop to arbitrary transfers of police officials which is used to weaken the capacity of the police to function without fear or favour[52]. In fact, in the light of complaints received about police wrong doings and their complicity in the violation of human rights, it has urged the Union and State Governments to act with determination and implement the reforms recommended by it.[53]

5.14.5 The Commission agrees with the views of the NHRC. The Commission has already examined the issues identified by the NHRC in the foregoing paragraphs. The Commission has recommended a structure so as to insulate police from unwarranted interference; the emphasis on professional investigation and use of forensic science would dissuade investigating officers from taking recourse to coercive methods; the emphasis on training is likely to bring about an attitudinal change in police; the complaints authorities would provide an effective grievance redressal mechanism against police high handedness. All

[50] 'Khaki' is generally the colour of police uniforms in India.
[51] Para 4.50, Annual Report of NHRC, 2002-2003.
[52] Ibid, Para 4.53
[53] Para 4.39, Annual Report of NHRC, 2003-2004.

these measures would go a long way in ushering a culture of upholding human rights by all enforcement agencies. The Commission would also emphasise that the human rights of the victims and the security agencies should be given equal importance.

5.15 Community Policing

5.15.1 Community Policing has been defined as:

> *"Community Policing is an area specific proactive process of working with the community for prevention and detection of crime, maintenance of public order and resolving local conflicts and with the objective of providing a better quality of life and sense of security".*[54]

5.15.2 According to David H Bayley[55], community policing has four elements:

(1) Community-based crime prevention;
(2) Patrol deployment for non-emergency interaction with the public;
(3) Active solicitation of requests for service not involving criminal matters; and
(4) Creation of mechanisms for grassroots feedback from the community.

Box 5.7: Citizen focussed policing in the United Kingdom

A radical change in police approach

It is this simple: the needs and concerns of citizens should always be integral to the way policing is conceived, managed and delivered.

Five critical elements

There are five key workstreams to the citizen-focused policing programme:

- improving the experience of those who have contact with the police
- rolling out a neighbourhood policing approach across all forces by 2008
- effective community engagement – which includes consultation, marketing and communications, and public involvement
- public understanding and local accountability of policing
- organisational and cultural change to bring about increasingly responsive services where feedback from frontline staff and the public is used continuously.

Extracted from http://police.homeoffice.gov.uk/community-policing/citizen-focused-policing/?view=Standard)

5.15.3 The basic principle underlying community policing is that 'a policeman is a citizen with uniform and a citizen is a policeman without uniform'. The term 'Community Policing' has become a buzzword, but it is nothing new. It is basically getting citizens involved in creating an environment which enhances community safety and security.

5.15.4 Community policing is a philosophy in which the police and the citizens act as partners in providing security to the community and controlling crime. It involves close working between the two with police taking suggestions from people on the one hand and using the citizens as a first line of defence on the other.

[54] Source: Community Policing; Ashish Gupta & PM Mohan; Journal of National Police Academy; Jan-June 2004
[55] Source: Community policing in Australia -An appraisal: Working paper: www.acpr.gov.au

5.15.5 Many states in India have taken up community policing in some form or the other. Be it 'Maithri' in Andhra Pradesh, 'Friends of Police' in Tamil Nadu, Mohalla Committees in Bhiwandi (Maharashtra), there have been several success stories from all over the country. Without going into details of each one of these, the Commission would like to lay down a few principles which should be followed in community policing:

- It should be clearly understood that community policing is a philosophy and not just a set of a few initiatives.
- The success of community policing lies in citizens developing a feeling that they have a say in the policing of their locality and also making the community the first line of defence. Community policing should not become a mere 'public relations' exercise but should provide an effective forum for police-citizen interaction.
- Interaction with people should be organised through 'community liaison groups' or citizen's committees at different levels.. It should be ensured that these groups are truly representative. The idea of community policing would be a success if it is people driven rather than police driven.
- Convergence with activities of other government departments and organisations should be attempted.

Box 5.8: Gender Violence throughout the Life Cycle*

Prebirth	Sex-selective abortion, female foetiocide
Infancy	Female infanticide; emotional and physical abuse; differential access to food and health care for girl infants which manifest in higher mortality rates and adverse sex ratio.
Girlhood	Child marriage; sexual abuse; differential access to food and medical care; child prostitution.
Adolescence	Marriage below legal age; trafficking in girls.
Reproductive Age	Dowry abuse and murders, psychological abuse; sexual abuse of women in the workplace; sexual harassment; rape and trafficking; domestic violence by spouse/in-laws.
Elderly	Discriminatory practices against widows

*Source: Based on World Bank Discussion Papers, "Violence Against Women: The Hidden Burden" by Lori L. Heise with Jacqueline Pitanguy and Adrienne Germain

5.16 Gender Issues in Policing

5.16.1 In spite of the constitutional, legal and institutional provisions, women continue to be victims of crime and oppressive practices throughout their life. The National Policy on Empowerment of Women acknowledges that there still exists a wide gap between the goals enunciated in the Constitution, in legislation, policies, plans and programmes, on the one hand and the situational reality of the status of women in India on the other. It notes that major gender gaps exist in key areas affecting women empowerment and well-being, e.g. mortality rates, sex ratio and literacy. It also states that a major manifestation of gender

disparity is domestic and societal violence against women. The high rate of incidence of crimes is evident from the statistics published by the National Crime Records Bureau. Even more alarming are the lower rates of conviction in cases of offences against women than in case of other offences.

Box 5.9: Crime Clock

1 Molestation case every 15 Minutes

1 Rape case every 29 Minutes

1 Dowry Death case every 77 Minutes

1 Sexual Harassment case every 53 Minutes

1 Case of cruelty by husband and relatives every 9 Minutes

(Source: National Crime Records Bureau)

5.16.2 The Centre for Social Research undertook a study to assess how effectively police training academies in four states have incorporated gender sensitisation into the training programmes and have made a number of excellent recommendations. Briefly, the main recommendations are that gender training should be given as much time as other training and all training should have a gender component. They should also be specific to the special gender requirements of the States/regions (for example, trafficking of women in Andhra Pradesh, female foeticide and dowry deaths in large parts of North and West India, etc). It further recommended that the National Police Academy should formulate a gender policy for police training. It was highlighted that there are five essentials for a successful gender strategy for the police: education, training, awareness campaigns, research analysis and annual audits. These need to be properly evaluated and enforced.

Box 5.10: Comparative Conviction Rates

Offence	Conviction Rate
Murder	34.6%
Attempt to murder	30.5%
Culpable Homicide	32.6%
Burglary	35.8%
Molestation	30.0%
Rape	25.5%
Cruelty by husbands and relatives	19.2%

Conviction rate (2005) {Source: NCRB)

5.16.3 Various surveys and research studies have revealed that women are often reluctant to approach the police in matters relating to violence/cruelty against them. Even when a case has been registered, low conviction rates point to deficiencies in the investigation and the prosecution. The Tenth Plan sought to address this problem in a number of ways:

i) strict enforcement of all relevant legal provisions and speedy redressal of grievances with a special focus on violence and gender-related atrocities;
ii) measures to prevent and punish sexual harassment at the work place, protection for women workers in the organised/un-organised sectors and strict enforcement of relevant laws such as Equal Remuneration Act, 1976 and Minimum Wages Act, 1948;

iii) regular review of crimes against women, their incidence, prevention, investigation, detection and prosecution etc. by the Centre and States at district level;
iv) strengthening of Women's cells in Police Stations, Women Police Stations, Family Courts, Mahila Courts, Counselling Centres, Legal Aid Centres; and
v) Widespread dissemination of information on all aspects of legal rights, human rights and other entitlements of women.

5.16.4 Since the police is the primary agency of the criminal justice system which protects human rights, it is essential to sensitise police personnel to gender issues. A well designed gender training, which internalises responses, can play a major role in changing mindsets, biases and entrenched attitudes.

5.16.5 Another aspect of gender disparity of the criminal justice system is the low representation of women in all wings and especially the police. It is estimated that women constitute only about 2% of the civil police.[56] This situation needs to be redressed through affirmative actions. The National Commission on Women has made various recommendations regarding the changes to be made in different laws. They have also made suggestions about sensitizing the entire criminal justice system. While the reform of the criminal justice system as suggested in this Report would help in making investigation more professional and help the victims including women to get justice, the Commission feels that police at all levels needs to be sensitized on gender issues.

5.16.6 Recommendations:

a. The representation of women in police at all levels should be increased through affirmative action so that they constitute about 33% of the police.
b. Police at all levels as well as other functionaries of the criminal justice system need to be sensitised on gender issues through well structured training programmes.
c. Citizens groups and NGOs should be encouraged to increase awareness about gender issues in society and help bring to light violence against women and also assist the police in the investigation of crimes against women.

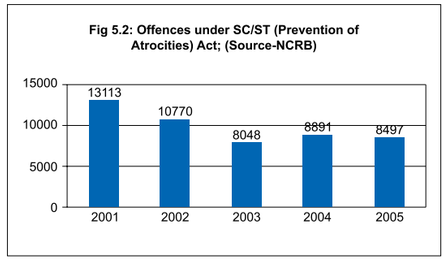
5.17 Crimes against Vulnerable Sections

Crimes against Scheduled Castes and Scheduled Tribes

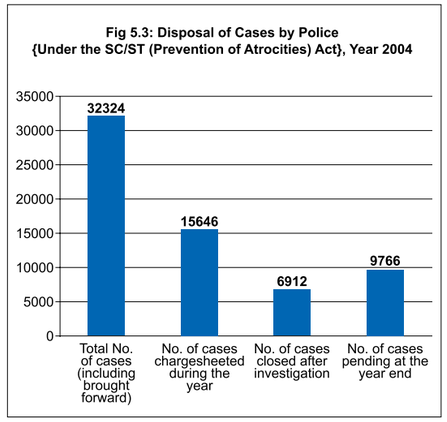
5.17.1 Certain sections of society like the Scheduled Castes, Scheduled Tribes and children are more vulnerable to exploitation and are often easy victims of crime. In these cases, maintenance of the established order or the status quo which may be exploitative does not

[56] Source: The Padmanabhaiah Committee on Police Reforms.

ensure justice and therefore is not a guarantee of permanent peace and public tranquility. Protection and enforcement of the rights of these sections would amount to a rule of law and justice in the real sense of the term. In their case, therefore, the role of the administration and police becomes all the more important. These sections, particularly the Scheduled Castes and Scheduled Tribes, in addition to being victims of other crimes, are also victims of atrocities, discrimination and prejudices perpetrated by other sections of society. Article 17 of the Constitution of India abolished untouchability and in furtherance of the Constitutional provision, the Protection of Civil Rights Act was enacted in the year 1955 providing for punishment for untouchability offences. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was enacted in 1989 to curb atrocities on these sections.

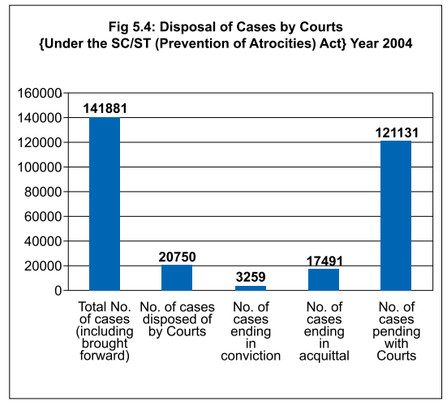


5.17.2 The Government of India and the State Governments have taken several measures to prevent exploitation of the Scheduled Castes and Scheduled Tribes. The Commission for Scheduled Castes and Scheduled Tribes was established in 1978 through an administrative order and was given Constitutional status in 1992, vide the Sixty Fifth Amendment of the Constitution. The Eighty Ninth Amendment of the Constitution brought in to existence a separate Commission for the Scheduled Tribes in 2004. To assist the State Governments in implementation of the provisions of the two Acts mentioned above, the Union Government provides financial assistance for strengthening of the administrative, enforcement and judicial machinery, awareness generation and relief and rehabilitation measures. The State Governments on their part have constituted 'Civil Rights Enforcement Cells' for enforcement of these Acts. State and District level Committees periodically review the implementation of these Acts.



5.17.3 However, the implementation of these provisions as measured by the pace of disposal of cases under these Acts leaves much to be desired. Under the SC/ST (Prevention

of Atrocities) Act, 32324 cases were under investigation (including those brought forward) in all States in 2004; of which 48.4% were chargesheeted in courts, 21.38% closed after investigation and 30.22% were pending with the police at the end of 2004[57]. Moreover, the conviction rate under The SC/ST (Prevention of Atrocities) Act (30.5%) and Protection of Civil Rights Act (19.7%) is significantly lower than the same under special and local laws (86%) as well as IPC crimes (40.6%). This trend, coupled with the high pendency ratio, needs to be addressed. These figures moreover do not capture a substantial number of offences which are not reported or registered.



5.17.4 At times, the assertion of civil rights by the Scheduled Castes and Scheduled Tribes is met with hostile reprisal against them by other sections of society. Sometimes even enforcement agencies are reluctant to enforce the civil rights of the weaker sections for fear of further trouble. This tendency in the administration and the enforcement agencies needs to be strictly curbed. The administration should understand that civil rights of all, more so of the weaker sections need to be respected and enforced. The administration and the police have to play a more proactive role in detection and investigation of these crimes, particularly in remote rural areas where the awareness levels are low and victims often do not come forward to lodge complaints. The recommendations on police reforms in this report are geared towards making the police service in India more professional, responsive and citizen-friendly. However, the police will have to be specially sensitised to the problems of the Scheduled Castes and Scheduled Tribes. This could be achieved through appropriate training programmes.

5.17.5 In areas with a history of communal and linguistic violence, as well as violence against Scheduled Castes and Scheduled Tribes, these vulnerable groups often harbour a sense of insecurity. Such apprehensions can be allayed to a large extent if the local police have adequate representation from these communities.

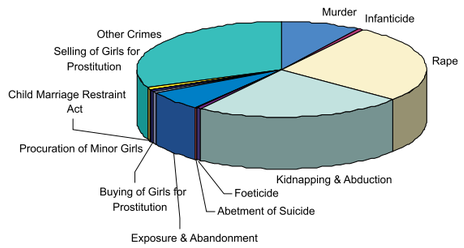
Crimes against Children

5.17.6 A recent study commissioned by the Ministry of Women and Child Welfare, Government of India, based on a survey of 13 States and 12,447 children, has come out

[57] Source: Annual Report on The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act

with startling data on oppression and cruelty towards its most vulnerable segment i.e. children. The survey reveals that over half the children interviewed (53%) have been sexually abused with 23% being severely abused. Children who are working as well as street children are seen to be particularly vulnerable. While the findings from the study need to be moderated since they focused on the most vulnerable groups of children and not on a representative sample of the Indian child population, nonetheless it does point to a serious problem that has remained in the closet. Fig. 5.5 gives figures (for the year 2005) regarding incidence of various types of crimes against children. Time series data on these figures also show a general increase in all categories of crimes particularly those relating to trafficking of girls for prostitution as well as cases of child marriage and rape.

Fig 5.5: Types of Crimes against Children
{2005; Source : NCRB; Crime in India}



5.17.7 The Government has taken some important steps recently for improving the condition of children including the passing of comprehensive amendments to the Juvenile Justice (Care and Protection of Children) Act, 2000 and setting up of National and State Commissions for the protection of child rights as well as Children's Courts for providing speedy trials of offences or violation of children's rights. However, as the survey referred to earlier indicates, much remains to be done.

5.17.8 Tackling crimes directed at the most vulnerable sections of our society requires a combination of professionalism and sensitivity to ensure that the victims are not subjected to secondary victimisation even as they suffer from post traumatic stress. Unlike other victims, children often do not even realise that they are being wronged, and even if they do realize this, very few would complain about it to the authorities. Therefore, the enforcement agencies should themselves detect such violations and book the guilty. The normal approach of beginning an investigation only on receipt of an FIR would not suffice for dealing with crimes against children.

5.17.9 Recommendations:

a. The administration and police should be sensitised towards the special problems of the Scheduled Castes and Scheduled Tribes. Appropriate training programmes could help in the sensitising process.

b. The administration and police should play a more pro-active role in detection and investigation of crimes against the weaker sections.

c. Enforcement agencies should be instructed in unambiguous terms that enforcement of the rights of the weaker sections should not be downplayed for fear of further disturbances or retribution and adequate preparation should be made to face any such eventuality.

d. The administration should also focus on rehabilitation of the victims and provide all required support including counselling by experts.

e. As far as possible the deployment of police personnel in police stations with significant proportion of religious and linguistic minorities should be in proportion to the population of such communities within the local jurisdiction of such police station. The same principle should be followed in cases of localities having substantial proportion of Scheduled Castes and Scheduled Tribes population.

f. Government must take concrete steps to increase awareness in the administration and among the police in particular, regarding crimes against children and take steps not only to tackle such crimes, but also to deal with the ensuing trauma.

5.18 National Security Commission

5.18.1 The Supreme Court has directed that the Union Government should set up a National Security Commission:

> *"The Central Government shall also set up a National Security Commission at the Union level to prepare a panel for being placed before the appropriate Appointing Authority, for selection and placement of Chiefs of the Central Police Organisations (CPOs), who should also be given a minimum tenure of two years. The Commission would also review from time to time measures to upgrade the effectiveness of these forces, improve the service conditions of its personnel, ensure that there is proper coordination between them and that the forces are generally utilized for the purposes they were raised and make recommendations in that behalf. The National Security Commission could be headed by the Union Home Minister and comprise heads of the CPOs and a couple of security experts as members with the Union Home Secretary as its Secretary".*

5.18.2 The tasks assigned to the said Commission are to recommend a panel of names for appointment of the Chiefs of the Central Police Organisations and to ensure coordination between these forces and also to review measure to upgrade the effectiveness of these forces.

5.18.3 The Central Police Organisations include several armed forces of the Union, each constituted under a separate statute as indicated below:

Border Security Force:

Constitution of the Force: There shall be an armed force of the Union called the Border Security Force for ensuring the security of the Borders of India.[58]

Indo-Tibetan Border Police:

There shall be an armed force of the Union called the Indo-Tibetan Border Police Force for ensuring the security of the borders of India and performing such other duties as may be entrusted to it by the Central Government.[59]

Central Industrial Security Force:

Constitution of the Force : There shall be constituted and maintained by the Central Government an Armed Force of the Union to be called Central Industrial Security Force for the better protection and security of Industrial undertakings owned by that Government and to perform such other duties entrusted to it by the Central Government.[60]

Central Reserve Police Force:

There shall continue to be an armed force maintained by the Central Government and called the Central Reserve Police Force.[61]

5.18.4 From the above it is evident that all these 'Forces' are in effect armed forces of the Union though they are bracketed together as Central Police Organisations. Having the Chief of one of these Forces to recommend a panel of names for selection of the Chief of another Force may not be appropriate. For one, he/she will not be familiar with the working of other Forces. More over, a Chief of one of these Forces may also be in the zone of consideration for being appointed as Chief of another Force.

5.18.5 These Forces work in close coordination with the Army in the border areas and in areas affected by insurgency. Therefore, coordination mechanisms are required at the

[58] The Border Security Force Act; Section 4.
[59] The Indo-Tibetan Border Police Act, 1992; Section 4
[60] Central Industrial Security Force Act, 1968; Section 3
[61] Central Reserve Police Force Act, 1949; Section 3

operational level. Furthermore, when they are deployed to assist the civil administration, coordination is required with the state authorities and the State Police. It is thus necessary to have operational coordination mechanisms rather than a coordination mechanism at the national level in which neither the Army nor the State Governments are represented. Similarly, measures for upgrading the effectiveness of each of these Forces should be reviewed for each force separately.

5.18.6 Another aspect which needs to be emphasised is that the 'set up' recommended for the State Police cannot be replicated for the Central Police Forces as the Armed Forces of the Union cannot be compared with the State Police. The State Police enforce laws and investigate crime. The Armed Forces of the Union do not investigate crime.

5.18.7 In the light of the facts mentioned above, it is clear that the answer to the question of appointment of the Chief of these Armed Forces of the Union does not lie in the creation of a National Security Commission. More so because, for dealing with all aspects of national security, there already exists the high powered National Security Council, headed by the Prime Minister. The Commission is of the view that the existing institutional mechanism of the oversight of the central police forces may continue to be discharged by the Ministry of Home Affairs of the Government of India. The selection of the Chiefs of these Central Polices Forces is done finally at the highest level of the Governmernt of India through the established procedure of the Cabinet Committee on Appointments.

5.18.8 The Commission also notes that the Union Government is placing the relevant facts before the Supreme Court.

5.18.9 Recommendation:

a. There is no need for a National Security Commission with a limited function of recommending panels for appointment to Chiefs of the Armed Forces of the Union. There should be a separate mechanism for recommending the names for appointment as Chief of each one of these forces, with the final authority vesting in the Union Government.

5.19 Union-State and Inter-State Cooperation and Coordination

5.19.1 Crime has no respect for state boundaries or even international borders. With rapid expansion of transport and communication facilities, several major crimes like organised crimes, terrorism, acts threatening national security, trafficking in arms and human beings and serious economic frauds are posing a serious threat to the society. In the past also, there was movement of criminals across the state borders posing jurisdictional and operational

challenges to the state police, but these were mostly confined to the inter-state border areas. Mechanisms have been evolved between the states for proper coordination in dealing with inter-state crimes and these have been in the form of coordination committees between states as well as at operational levels. There are also arrangements between the states which facilitate certain operations within a state by the police of another state. However, despite these arrangements, at times, issues come up which have to be resolved by higher levels of police or even by the State Government. This leads to delay which may hamper police operations. Apart from delay, there may be issues over which there are disagreements between the police of two or more states and this situation is liable to be exploited by criminals who are today far better organised and have a wide network.

5.19.2 Dealing with crimes, which have inter-state as well as national dimensions, calls for effective coordination at the national level in addition to cooperation between the states. This is also necessary because the resources (technical, professional and financial) of the states are not adequate to meet the challenging requirements of these crimes. In certain cases like in dealing with Naxalism, there are national level coordination mechanisms including a few Union–State and Inter-State protocols for coordinated functioning. In most cases, however, there are hardly any institutional arrangements apart from periodic conferences and meetings which are obviously inadequate.

5.19.3 Useful lessons can be drawn from the European example, where the countries are comparable in size to the Indian states. These countries have different criminal justice systems, different structures of police and still they have been able to evolve mechanisms to deal with crimes which have international ramifications. When the EC (European Communities) was constituted it focused on economic integration. This brought in free movement of persons, goods and services. Though this move benefited the member countries, it also eased movement of criminals and development of international criminal networks. The first step to curb this menace was the 1992 Maastricht Treaty which extended the mandate of the European Communities to include cooperation in justice and home affairs. Cooperation in criminal matters is termed as the 'third pillar' of the European Union. An international body, Europol (similar to Interpol) coordinates cross-border investigations, and seeks to provide support to domestic law. The Schengen agreement is much more effective and it includes sharing of information, cross-border supervision, "hot pursuit" across borders into the territory of another Member State etc. Though these arrangements have certain limitations, they have worked satisfactorily.

5.19.4 In the United States, there are a large number of local and State police forces. Cooperation between the various police systems is achieved through inter-state compacts. The Federal Bureau of Investigation looks into several crimes which have inter-state

ramifications. It investigates into various Federal Crimes such as organised crime, drug trafficking, espionage, terrorism, bank robbery, extortion, racketeering, kidnapping, money laundering, bank fraud and embezzlement. It investigates inter-state criminal activity and can arrest fugitives who cross state lines to avoid prosecution.

5.19.5 The Commission is of the view that though each state may have its own structure of police, quite understandable in a country of sub-continental dimensions, with the basic criminal laws being the same nationaly, it is possible and highly necessary to have national level coordination institutions for various types of major crimes. It is also necessary to draw standard protocols for cooperation and coordinated functioning between the Union and the states. These protocols should cover issues like information sharing, joint investigation, joint operations, inter-state operations by a state police in another state, regional cooperation mechanisms and the safeguards required.

5.19.6 Recommendation:

a. The Ministry of Home Affairs should proactively and in consultation with the states, evolve formal institutions and protocols for effective coordination between the Union and the states and among the states. These protocols should cover issues like information/intelligence sharing, joint investigation, joint operations, inter-state operations by a state police in another state, regional cooperation mechanisms and the safeguards required.

6 MAINTAINING PUBLIC ORDER

6.1 Public Order Management

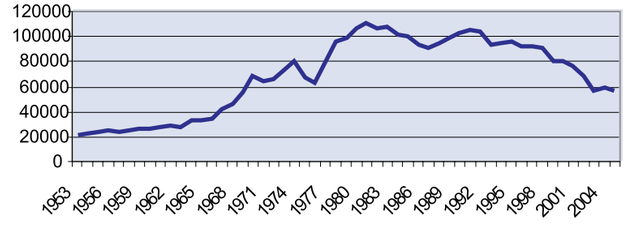
With wide-ranging reforms in the police and the criminal justice system, the magnitude and frequency of major public disorders such as riots should reduce, but expecting that they would not occur would be obviously unrealistic. Therefore, the proper management of riots would continue to be an important function of the police as well as the administration. The measures required to deal effectively with riots or riot-like situations are examined in this chapter.

6.1.1 Dealing with Mob Violence

6.1.1.1 The number of cases of riots reported since Independence has shown an increase up to the 1990s and then a gradual decline (Fig 6.1). A riot or mob violence is an extreme manifestation of public disorder. It may be due to a clash between two or more sections of society, or demonstration of anger against the established authority. Although every effort has to be made to avoid mob violence, often despite best intentions mob violence does take place. The administrative machinery, particularly the law enforcement machinery must be geared to face any such eventuality.

6.1.1.2 Government of India as well as State Governments have issued instructions from time to time outlining the steps to be taken for dealing with mob violence[62]. Several Commissions of Inquiry, which enquired into incidents of mob violence, particularly communal riots, have also made a large number of recommendations to prevent the recurrence of such incidents and also for effectively dealing with such outbreaks of violence.

Fig 6.1: Number of Rioits Per Annum (Source : NCRB; Crime in India 2005)



[62] The Ministry of Home Affairs issued detailed guidelines in 1997 to promote communal harmony.

6.1.1.3 It may appear that riots, especially communal riots, break out spontaneously, but a deeper analysis would reveal that generally there is an incubation period during which the underlying cause develops and the discontent/distrust keeps on simmering. The spark is provided by an incident, which may even be accidental, causing the situation to flare up. The administration and police have to take measures as appropriate during different stages. Broadly, these measures could be classified as follows:

a. Measures to be taken during normal times to address any situation so that it does not develop as a cause for rioting.
b. Measures to be taken when an outbreak of riot is apprehended.
c. Measures to be taken once a riot has started.
d. Measures to be taken once the riot has been controlled.

6.1.2 Measures to be Taken during Peace Time

6.1.2.1 Preventing a riot is very important, since once it starts, it can cause irreparable damage to life, property and harmonious social relations. Therefore every effort must be made to address all events/issues which may lead to outbreak of riots and violence. For this, the first and foremost requirement is that the administration must win the trust of all sections of society by being responsive, transparent, vigilant and fair in their dealing with all sections of society. The grievances of individuals as well as groups should be promptly attended to. The police should act in a firm and fair manner against all law breakers without coming under the influence of any person or authority. The District Officer can play an important role here by providing leadership as well as coordinating and monitoring the activities of various departments/agencies. There are several examples wherein the administration and police have effectively used the mechanism of peace committees to reduce and even eliminate violence. Such fora improve mutual understanding among members of different communities and also between them and the administration.

6.1.2.2 While the governance measures detailed above would go a long way in preventing breakdown of law and order, it is equally necessary to ensure that specific riot control plans based on ground realities are in place to meet any eventuality. In this connection it is necessary to ensure that each state and district has prepared riot control/internal security plans which are duly updated and are based on consultations with all stakeholders in the light of previous episodes. Further, it is important that these plans are explained to all functionaries including the police, the executive magistracy and community leaders so that they are fully aware of the roles required of them and their response is both quick and judicious in times of crisis. The Justice B N Srikrishna Commission had observed:

" Though in the Communal Riot Scheme of 1986, and the 'Guidelines' there has been identification of the communal organisations in Maharashtra, and it is required that the police stations maintain an accurate and updated list of communal goondas, there has been scant attention paid to these. That is one of the weaknesses in the present Riot Control Scheme, which, though envisioned as efficacious, failed in practice".

6.1.2.3 Intelligence gathering should not slacken during this phase. As per the guidelines issued by the Ministry of Home Affairs, apart from the regular intelligence agencies, the District Magistrate and the police should also develop independent sources of information. This exercise should be carried out at micro level in the district. The Government of India and the State Governments have identified sensitive district/cities which should be given special attention. Justice B N Srikrishna Commission has recommended:

"The officers at all levels must realise that the best way of feeling the pulse of the people is by moving with them and not travelling in vehicles with excessive security. Officers must continuously get an input of the judgement of the public of their role and keep correcting themselves and their subordinates to ensure that there is no deviation from acceptable standards".

It is the vigil and alertness maintained during normal peace times by having contacts with different sections of society, gathering, checking and counter-checking intelligence, and enhancing the level of preparedness, which can ultimately prevent the breakdown of public order. Effective implementation of regulatory laws by all public agencies will increase their compliance and thereby also assist in mitigating the factors leading to disorder.

6.1.2.4 Recommendations:

a. The administration should be responsive, transparent, vigilant and fair in dealing with all sections of society. Initiatives such as peace committees should be utilised effectively to ease tensions and promote harmony.
b. The internal security plan/riot control scheme should be updated periodically in consultation with all stakeholders and in the light of previous episodes. The role of all major functionaries should be clearly explained to them.
c. A micro analysis should be carried out in each district to identify sensitive spots and this should be regularly reviewed and updated.
d. The intelligence machinery should not slacken during normal times and credible intelligence should be gathered from multiple sources.
e. Regulatory laws such as the Arms Act, 1959, Explosives Act, 1884 and Municipal Laws related to construction of structures should be enforced rigorously.
f. Public agencies should follow a zero tolerance strategy in dealing with violations of laws.

6.1.3 Measures to be Taken When an Outbreak of Riot is Apprehended

The administration, especially the police, is put to real test in this phase. Anticipating a riot requires vital inputs of intelligence as well as alertness and sound judgement particularly on the part of the police and the Executive Magistrates. Such an apprehension may be on the basis of past occurrences, some crucial intelligence input, religious festivals especially including processions, etc. Once it appears that an outbreak of riot is likely, the police has got powers which can be used to prevent the outbreak. These include:

- Launching security proceedings against the suspects; preventive arrests (Sec 151 CrPC) and preventive detention; depositing firearms;
- Resolving disputes relating to possession of land by using Section 145 CrPC;
- Regulating processions and gatherings;
- Imposing prohibitory orders (Section 144 CrPC); and
- Deploying police in sensitive areas/increased patrolling and searching of suspected places.

6.1.3.1 Security Proceedings

6.1.3.1.1 Chapter VIII of The Indian Penal Code lists out (in Sections 141-158) various types of offences against public order and prescribes penalties against the same. The importance of bringing the offenders to book lies in creating a salutary and deterrent effect against those prone to committing such offences. Besides, the law also provides for a string of preventive measures in the statute books which, if used judiciously, can greatly help the administration in maintaining public order. Such preventive measures are outlined in Chapter VIII of the Criminal Procedure Code, 1973 (CrPC). For prevention of future commission of offences against public order, the provisions of this chapter authorize the Judicial/Executive Magistrates to obtain bonds from suspected trouble makers. Under Section 106, the Judicial Magistrate may order a previously convicted person to execute a bond for good behaviour. Section 107 authorises an Executive Magistrate to require a person/persons to execute a bond with or without sureties for keeping peace (Section 107). The Executive Magistrate can obtain similar bonds from persons disseminating seditious matter (Section108), suspected persons (Section109) as well as habitual offenders (Section110). In urgent cases of nuisance

or apprehended danger to public tranquility, the Magistrate is empowered under Section 144 CrPC to bar public assemblies and direct person/s to abstain from specified acts that may cause a breach of public peace. Finally, Section 151 CrPC empowers a police officer to arrest without a warrant any person suspected to commit an offense including any offence against public order.

6.1.3.1.2 Despite the availability of such wide powers to the authorities to take preventive measures against those trying to breach public tranquility, the timely, well planned and judicious use of these provisions by the local police and magistracy is often lacking. The field functionaries, both in the executive magistracy and police, are often not fully aware of the manner in which these provisions should be used. In many states, no detailed guidelines for their use have been prescribed for the Police and the Executive Magistrates and the two often work at cross purposes when it comes to taking preventive measures. There are instances where the Executive Magistrate rejects the information report submitted by the police without proper appreciation of the facts. There are also instances of the police resorting to preventive measures more for rounding up vagrants and boosting their case statistics than initiating such measures against real trouble makers. Most often these proceedings once initiated are not taken to their logical conclusion and are allowed to lapse after the prescribed period of six months. It is therefore necessary that the police and especially the Executive Magistrates understand the importance of these provisions in the maintenance of public order.

6.1.3.1.3 Recommendations:

a. **The use of preventive measures in a planned and effective manner needs to be emphasized. Training and operational manuals for both Executive Magistrates and police need to be revised on these lines.**
b. **Regular supervision and review of these functionaries by the DM and the SP respectively should be done to focus attention on effective use of these provisions. For this purpose, a joint review on a periodic basis by the DM and SP should be done.**

6.1.3.2 Addressing Property Disputes to Prevent Disruption of Public Order

6.1.3.2.1 A variety of factors including fragmentation and more frequent transfer of land, unsatisfactory status of land records and above all, exceedingly long drawn out civil proceedings concerning property disputes in the civil courts, account for the steadily increasing instances of breach of public order and tranquility due to disputes over properties. While property disputes always prominently figured as motives for crime, the tendency,

of late, is for such disputes to provoke group violence as with increasing pressure on land, property disputes gain prominence and involve more people. There are also indications that increasing tendencies of faction formation in villages is also responsible for property disputes leading to group clashes. Lastly, in isolated pockets where waste land or unsettled land is still available, delays in removing or regularising encroachments, too, have led to serious breaches of peace.

6.1.3.2.2 Disputes over title or ownership are normally to be adjudicated in accordance with the provisions of the Civil Procedure Code read with applicable laws like the Indian Evidence Act, the succession laws, the personal laws governing the subject and other relevant provisions. However, there are two broad exceptions to these provisions. First is the powers of the Revenue Courts to carry out mutations and land records based on prima facie evidence (Revenue Courts in the eastern parts of the country are however generally, discouraged from granting mutations once acquisition of interest is disputed). The other exception is the power of Executive Magistrates to take immediate preventive action when a person in possession of a immovable property apprehends forcible dispossession or is dispossessed within a period of two months preceding the date of filing a complaint with the concerned Executive Magistrate. The relevant provisions for dealing with such complaint are found in Sections 145, 146 and 147 of the Code of Criminal Procedure. Section 145 is invoked when there is apprehension of breach of peace on account of property dispute and the Executive Magistrate, on being satisfied about the veracity of such information, is required to call upon the disputing parties to submit their claim in the form of written statements. Without going into the merits of the rival claims to title, the Magistrate is to determine who was in actual physical possession from the date of complaint or whether the complainant was forcibly evicted in the preceding two months from the date of complaint. Based on his/her objective determination, the Magistrate can then issue an order directing that the party in possession shall not be disturbed (except by the due process of law) or the party wrongfully dispossessed shall be restored possession. If the Magistrate is unable to satisfy himself as to who was in possession, the property is attached and a receiver is appointed till the rights are decided by the Civil Court.

6.1.3.2.3 While these provisions have often proved effective in preventing property disputes from causing breach of public tranquility, recent pronouncements of courts have diluted their utility. Thus, although the provisions of the CrPC nowhere suggest that the Executive Magistrate should refrain from using these provisions solely on the ground of subsistence of a civil suit in respect of the property in question, certain pronouncements of the Supreme Court and High Courts {Mahant Ram Sumer Puri vs State of UP AIR 1985 SC472, and Shanti Prasad vs Shakuntala Devi 2004 (1)SCC 438} have led to the view that in case of pending litigation in Civil Courts, proceedings under Section 145 would not lie and the

Civil Court itself must be approached for appropriate interim relief. It has further been propounded that in case of apprehension of breach of peace, the provision under Section 107 CrPC should be used in place of Section 145 CrPC. These recent orders of the Supreme Court are at variance with earlier pronouncements in Deo Kuer vs. Sheoprasad 1965(3) SCR 655 and Bhinka vs Charan Singh 1959 SCR (Supp) 798 which took the classical view that proceedings under Section 145 CrPC before the Executive Magistrate are maintainable even if the substantive matter is pending before the Civil Court.

6.1.3.2.4 The Commission has carefully considered the matter. Considering the time taken in disposal of civil suits, the preventive and interim nature of proceedings under the CrPC and the fact that proceedings under this section entail only a temporary remedy, there does not appear to be any justification to deny the opportunity of quick redressal to the wronged party on the ground that a civil court is looking at the long term solution of the dispute. Given the time taken by the average civil suit, there is always a possibility that one of the parties may take the law into its own hands and cause a breach of peace by attempting to dislodge the other party of possession. The court of the Executive Magistrate has a very limited role in cases which does not abrogate from the undoubted powers of the civil court to adjudicate on questions of title or even issue declarations on possession, based on detailed examination of evidence. The wholesome provision of Section 145 CrPC must be permitted to operate in the limited sphere laid down therein and not further restricted.

6.1.3.2.5 Proceedings under Section 107 CrPC are no substitute to those under Section 145 where the cause of an apprehended breach of peace is a dispute over possession of immoveable property or boundaries thereof. It is clear that the scope of inquiry available under the former Section is not suitable for determination of questions of physical occupation or forcible ouster of possession within sixty days. It is also clear to the Commission that if, in cases already under litigation in the civil courts, the Executive Magistrates were to proceed under Section 107 CrPC the nature of their inquiries will be practically the same as is laid down under Section 145 CrPC.

6.1.3.2.6 There is little doubt that disputes relating to possession, particularly with regard to boundaries of land and water, arise more frequently where land records, including maps, are not periodically updated. As far as urban areas are concerned, in a large number of states there is no provision for maintenance of land records properly and property records for the purpose of municipal taxation reflect the ground position poorly, contributing to disputes about boundaries and demarcation of properties. The Commission proposes to consider this aspect in its report on urban governance.

6.1.3.2.7 Recommendations:

a. An Explanation may be inserted below Section 145 of the Code of Criminal Procedure clarifying that when from the evidence available with the Executive Magistrate it is clear that there is an attempt to dispossess a person or where a person has been illegally dispossessed of his property within sixty days of filing the complaint and that such acts cause a reasonable apprehension of a breach of the peace, such magistrate can pass an order contemplated in sub-section (6) of the aforesaid Section notwithstanding pendency of a civil case between the parties involving the same property.

b. A time frame of six months may be stipulated for concluding the proceedings.

c. Specific but indicative guidelines may be issued by the Ministry of Urban Development to the State Governments to lay down the minimum standards for maintenance of land records in urban areas including municipal ward maps so as to minimize possibility of disputes about possession and boundary of immoveable property.

d. Detailed guidelines already exist in almost all states to periodically update land records in rural areas. Strict compliance of such guidelines needs to be ensured as out of date land records contribute to disputes and resultant breaches of peace.

6.1.4 Regulating Processions, Demonstrations and Gatherings:

6.1.4.1 A large number of communal riots have their origin in religious processions. Sometimes, religious processions become a show of strength for a community and the organisers of such processions deliberately wish to take the processions through communally sensitive areas. It has been observed that when such processions pass through sensitive areas, even small incidents, accidents, or rumours result in outbreak of major communal violence. It is, therefore, necessary that such processions are properly regulated and all precautions are taken so that the scope for any communal flare up is minimised. Other processions and demonstrations also, if not regulated properly, have the potential of precipitating violence.

6.1.4.2 Justice D P Madon Commission on the Bhiwandi, Jalgaon and Mahad Riots in May 1970, observed:

> *"Processions in one form or another, particularly by way of demonstration or a protest march or morchas, have become the regular feature of ones daily life, dislocating traffic,*

preventing other citizens, tired after a day's hard and honest work, from going home at reasonable hour, and causing anxiety to police and the law and order agencies. What was once the the King's highway for his subjects to pass and repass has today become the venue for demonstrations and morchas and a battleground for political and communal forces. Even processions taken out on religious and festive occasions today stand on no different footing, but pose an equal law and order problem. The spirit of festivity has long gone out of them and what was once a season of festivals has now become a season of tension and disorder".

6.1.4.3 Processions can be regulated under the Indian Police Act, the State Police Acts or even under CrPC. Processions, especially religious ones, should be regulated and properly escorted. Commissions of Inquiry, in the past have made several recommendations to regulate processions.

6.1.4.4 Guidelines need to be framed in advance to lay down the norms of conduct for organizers and participants of processions and demonstrations. Recourse may be taken to existing provisions of law to enforce the guidelines, if required. Violation of such guidelines/orders should entail action under Section 188 IPC. There is a strong case for levying exemplary 'damages' on organizations or individuals found to have instigated rioting and group violence. The punitive fines may be in proportion to the damage caused and its proceeds disbursed among the victims.

6.1.4.5 Recommendations:

a. **Based on the experience with major riots and the recommendations of various Commissions of Inquiry and pronouncements of the Supreme Court and the High Courts, fresh and comprehensive guidelines may be drawn up for regulation of processions, protest marches and *morchas*[63].**
b. **The guidelines should include preparatory steps (through intelligence sources), serious consultation and attempts to arrive at agreement with the groups/ communities involved, regarding route, timing and other aspects of procession. They should also cover prohibition of provocative slogans or acts as well as carrying of lethal weapons. It should be specifically stated in the guidelines that all processions or demonstrations should be dealt with the same degree of fairness and firmness.**
c. **Organisations and persons found guilty of instigating violence should be liable to pay exemplary damages. The damages should be commensurate with the loss caused by such violence. The law should provide for distribution of the proceeds of damages to the victims of such violence.**

[63] Morcha: It is a Hindi word which connotes an organised demonstration

6.1.5 Imposition of Prohibitory Orders:

6.1.5.1 Section 144 CrPC empowers the Executive Magistrates to impose several kinds of prohibitory orders. This is a very effective tool in the hands of the administration to prevent outbreak of violence. However, it is found that often such orders are promulgated only after outbreak of violence. Although, the imposition of prohibitory orders, even after the outbreak of violence helps in containing violence, such orders can be very successful if they are promulgated and enforced effectively before the outbreak of violence. As prohibitory orders have far reaching consequences, they are sometimes challenged in courts of law. It is therefore necessary that the orders are correctly drafted. Executive Magistrates should be properly trained to pass orders which can withstand judicial scrutiny. It would be desirable if a manual for Executive Magistrates is issued by the State Governments for the guidance of the Executive Magistrates. Such manuals should also contain various case laws on the subject.

6.1.5.2 It has been brought to the notice of the Commission that at times prohibitory orders are not strictly enforced. Such a practice may become counter productive. All violators of prohibitory orders should be prosecuted under Section 188 IPC. Once prohibitory orders are imposed, all subsequent events should be video-graphed in sensitive areas. This would act as a deterrent as well as be available as evidence in prosecuting the offenders.

6.1.5.3 Recommendation:

a. **Prohibitory orders once imposed, should be enforced effectively. Videography should be used in sensitive areas.**

6.1.6 Measures to be Taken Once a Riot has Started

6.1.6.1 Though there is a laid down drill for the management of law and order problems, certain measures need to be re-emphasised here. As soon as breach of peace is apprehended, the police force available in the district/city should be properly mobilised. If considered necessary, additional force may be requisitioned and if the situation so warrants there should be no hesitation or delay in alerting, requisitioning and deployment of central forces. It should be ensured that police officers with knowledge of local areas are deployed in sensitive spots. Despite preventive measures, if violence erupts, the first priority would obviously be to suppress this violence. In case of communal violence the situation should be brought under control by effective use of force. Prohibitory orders, if not already imposed, should be promulgated forthwith and enforced firmly. There would be need for vigilance even if there is a lull because it has been noted that this period of temporary respite is often used by the trouble makers and rioters to re-organise themselves and carry out subsequent attacks. Vulnerable areas need to be patrolled and protected even after peace has been restored.

6.1.6.2 The police often resort to rounding up rowdy and mischievous elements to bring the situation under control. While this is necessary, it is equally important to ensure that the instigators are also arrested.

6.1.6.3 It appears that there is a tendency to delay the deployment of armed forces even if the situation so warrants. Justice B N Srikrishna Commission has observed:

> *"The top officers and the State Administration should not treat the calling out of the army or any other force as infra dig or as a blow to their pride. In a contingency where it is required, after honest and self searching appraisement, the army authorities should at once be moved for operational duties for dispersal of unlawful assemblies".*

6.1.6.4 The Commissioner of Police or the District Magistrate and the Superintendent of Police should be given a free hand in dealing with the situation. Unwarranted political interference should not be allowed at any cost while dealing with mob violence or, later, while investigating cases. During riots, visits by political leaders should be need based. Even well intended visits require VIP bandobast efforts which take away essential police staff from the much needed deployment for maintenance of law and order. Also, any provocative acts like public display of the dead or wounded should be totally banned. The media should be briefed with correct facts and figures so that there is no scope for rumour mongering.

6.1.6.5 Once peace has been restored, relief measures should be taken up immediately. Any delay in doing so (even on grounds of sheer fatigue) can result in prolonged suffering of the victims which may further aggravate tensions. During extended periods of prohibitory orders, the District Magistrate should ensure that essential supplies are maintained, especially in the vulnerable areas.

6.1.6.6 Recommendations:

a. If violence erupts, then the first priority should be to quickly suppress the violence. In cases of communal violence, the situation should be brought under control by effective use of force.
b. Prohibitory orders must be enforced rigorously.
c. If the situation so warrants, the forces of the Union and the Army should be requisitioned and used without any reluctance or delay.
d. The Commissioner of Police or the District Magistrate and the Superintendent of Police should be given a free hand to deal with the situation in accordance with law.

e. The media should be briefed with correct facts and figures so that there is no scope for rumour mongering.
f. The police needs to be equipped with state-of-the-art crowd dispersal equipments.
g. The District Magistrate should ensure that essential supplies are maintained and relief is provided, especially in vulnerable areas and particularly during prolonged spells of 'curfew'.

6.1.7 Measures to be Taken Once Normalcy has been Restored

6.1.7.1 This is an important phase in dealing with mob violence, as positive steps taken during this phase could reduce the possibility of future riots. Investigation and prosecution of offences is an important part of this phase. Public memory being short, this phase is often not taken seriously and as a result the real culprits escape punishment. Sometimes, political and other extraneous influence is brought on the police so that cases against the culprits are not registered, or if such cases have already been registered, not properly investigated. The Commission has already recommended separation of investigation from other functions of police and the grant of substantial autonomy to the investigation agency. It is hoped that this would insulate the investigation from any unwarranted influence.

6.1.7.2 A large number of riots including communal riots are often incited by vested interests who attempt to promote enmity between different religious or social groups. All such acts constitute an offence under Section 153A of IPC:

> *"153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.*
>
> *(1) Whoever*
>
> *(a) By words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place or birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or*
>
> *(b) Commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility, 2[or]*

Shall be punished with imprisonment which may extend to three years, or with fine, or with both."

An obstacle in the speedy investigation of cases related to public order, especially against the instigators is because of the need to obtain sanction for prosecution under Section 196 CrPC.

"196. Prosecution for offences against the State and for criminal conspiracy to commit such offence.

(1) No Court shall take cognizance of-

(a) any offence punishable under Chapter VI or under section 153A, of Indian Penal Code, or 2[Section 295 A or sub section (1) of section 505] of the Indian Penal Code (45 of 1860) or*

(b) a criminal conspiracy to commit such offence, or

(c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government."

6.1.7.3 A suggestion was made before the Madon Commission that no sanction should be necessary for a prosecution under Section 153A of the Indian Penal Code. The Madon Commission, however did not agree with this suggestion and stated that the power to grant sanction to prosecute should rest only with the Union Government or the State Government as now provided by Section 196(i) of the CrPC.

6.1.7.4 This issue has been examined by the Commission. It is felt that the sanction prescribed under Section 196 CrPC does not serve any useful purpose. Moreover, once a case is chargesheeted by the police, the magistrate would frame charges only if there is a prima facie case, and this is adequate and reasonable protection against any malicious prosecution. Moreover, with the checks and balances suggested in this Report with regard to police functioning, such a provision becomes even more unnecessary. Therefore, such sanction should not be necessary for prosecution.

6.1.7.5 It has been brought to the notice of the Commission that, not infrequently, cases launched against persons for rioting have been sought to be withdrawn on grounds of 'public interest'. Justice B N Srikrishna Commission recommended that once a prosecution has been launched against a person for rioting or other communal offence, it should under no circumstances be withdrawn. The Commission fully agrees with this view.

6.1.7.6 Commissions of Inquiry are usually instituted following large scale riots. Often these Commissions take unduly long to submit their reports. Such delays are not in public interest since this could lead to delay in follow up action by the authorities against those who were responsible for the riots. It should therefore be mandated that such Commissions of Inquiry submit their reports within six months and in no case later than one year. The government should act upon the recommendations immediately. If for some reason, government does not agree with the recommendations/observations in the report, it should record its reasons and make them public.

6.1.7.7 All riots should be documented properly and analysed so that lessons could be drawn from such experiences. The manual for instructions for police and executive magistrates for dealing with law and order problems should be periodically revised in the light of experience gained.

6.1.7.8 Last but not the least, the existing arrangements for long term relief and rehabilitation of victims of riots leave much room for improvement. Sanction of ex-gratia payments for loss of life and property, apart from being inadequate are often alleged to be arbitrarily distributed. The insurance system is so far not geared to recompense loss of property. Concrete steps need to be taken to formulate rehabilitation packages in vulnerable areas.

6.1.7.9 Recommendations:

a. **No sanction of the Union Government or the State Government should be necessary for prosecution under Section 153(A). Section 196 Cr PC should be amended accordingly.**
b. **Prosecution in cases related to rioting or communal offences should be not sought to be withdrawn.**
c. **Commissions of Inquiry into any major riots/violence should give their report within one year.**
d. **The recommendations made by a Commission of Inquiry should normally be accepted by the Government and if the Government does not agree with any observation or recommendation contained in the report of the Commission, it should record its reasons and make them public.**
e. **All riots should be documented properly and analysed so that lessons could be drawn from such experiences.**
f. **There is need for adequate follow up to ensure proper rehabilitation of victims.**

6.2 Accountability of Public Servants Charged with Maintaining Public Order

6.2.1 The Gujarat riots of 2002 have rekindled the debate about the role of public servants who have a constitutional duty to maintain public order but who, by their inaction, allegedly due to political interference, allowed large scale breach of public tranquility to go virtually unchecked. At the other extreme, bona fide actions of public servants who order the use of force to quell rioting may lead to setting up of a Commission of Inquiry to go into their conduct. The net result is a skewed incentive that seems to penalise action and reward inaction. As a result, many key field functionaries hesitate to take decisions on the spot, even though they are empowered to do so and prefer to wait for instructions 'from the top'.

6.2.2 Despite the setting up of a large number of Commissions of Inquiry, including the two historical ones following the anti-Sikh riots in Delhi in 1984 and the post-Godhra riots in Gujarat in 2002, there have hardly been any instances of quick and sure justice being meted out to the rioters as well as their instigators. Similarly, rarely is a senior police or administrative officer punished for inaction. This situation underscores the need for a system that ensures penalty for inaction and at least protection, if not reward, for those who take decisive action in good faith.

6.2.3 In general, most states fix the responsibility on the DM and the SP for major breakdowns in law and order. Usually, this takes the form of summary transfers or suspensions, neither of which can be considered a penalty given that such suspensions are only temporary. Inquiry Commissions that are often set up in the aftermath of major public disorder are a useful tool for the state to deflect public anger but often their proceedings are too long drawn and their findings too delayed for them to serve any useful purpose. Therefore, a permanent and independent accountability body as proposed by the Commission would have the twin benefit of affording protection to public servants who act in good faith in trying to maintain public order and fixing responsibility on those who shirk even their lawful duties.

6.2.4 Recommendation:

a. The State Police Complaints Authority should be empowered to identify and fix responsibility in cases of glaring errors of omission and commission by police and executive magistrates in the discharge of their duties relating to the maintenance of public order.

6.3 The Executive Magistrates and the District Magistrate

6.3.1 An Executive Magistrate is an officer of the District administration who has been assigned certain responsibilities under the CrPC, the State Police Acts and also under certain special laws. Executive Magistrates are authorized to use force against people. They can also take the assistance of the Armed Forces to quell a riot. The executive magistracy has a hierarchy – Executive Magistrate (Taluka/Tehsil/Special), Sub-Divisional Magistrate, Additional District Magistrate and District Magistrate.

6.3.2 The Police Act, 1861 states:

> *The administration of the police throughout the local jurisdiction of the Magistrate of the district shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant District Superintendents as the State Government shall consider necessary.*[64]

6.3.3 The State Police Acts (wherever they exist) also provide a similar structure and control mechanism.

> *The Superintendent of Police shall be the head of the Police in the district or part of the district for which he is appointed as Superintendent. (2) The administration of the Police in a district or part of a district by the Superintendent of Police shall be subject to the general control of the District Magistrate of the District. (3) In exercising such control, the District Magistrate shall be governed by such rules and orders as the Government may make in this behalf .*[65]

6.3.4 The District Magistrate (DM) is the head of district administration and is also responsible for the maintenance of law and order in the district. The Police Act/State Police Acts give the DM power of superintendence, direction and control over the district police. An issue which has been raised often is to what extent, if at all the District Magistrate should control the District Police. This issue has engaged the attention of almost every Police Commission and they have given different views.

6.3.5 The West Bengal Police Commission (1961) observed:

> *"We think it important that the District Magistrate's position, as the officer ultimately responsible for police administration in the district, should not be whittled away or allowed, to be whittled away in any manner although he may have other duties to attend to. Law and order and prevention and detection of crime are no less important*

[64] Section 4, Police Act, 1861
[65] Section 16, The Karnataka Police Act, 1964

than any development activities with which he may be concerned, and it seems to us wholly undesirable that police officers should come to regard him as interloper or intermeddler in a field which they should have all to themselves."

6.3.6 The Tamil Nadu Police Commission examined this issue and stated:

"We believe that existing arrangements are working well in practice. There is, however a feeling among the higher police officers to which expression has been given in the memorandum furnished to us by the Madras branch of the Indian Police Service Association, that the role assigned to the District Collector, in relation to the working of the Police Department in the districts is anamolous; that it constitutes, somehow a reflection on the competence of the police department to perform the functions assigned to it; and that the District Collector should be divested of powers of "direction and control" relating to the field of responsibility assigned to the Superintendent of Police.

The functions vested in the District Collector under existing rules and standing orders quite clearly are not intended in order to enable the former to interfere with the internal administrative independence of the Superintendent of Police or with the functioning of the chain of authority from top to bottom of the police department. It is intended to fulfil overall policy requirements of the government at the district level through a single authority. The simplest way in which the relationship between the District Collector and the Superintendent of Police may be described is that it is intended to reproduce at the district level the relationship between the Chief Minister and the Home Minister at the State political level".

6.3.7 The Bihar Police Commission (1961) observed:

"The Commission feels that the relationship between the District Magistrate and the Superintendent of Police should be that of two colleagues working to a common end but they are of the view that time is not ripe for recommending that the general control of the District Magistrate as contemplated in Section 4 of the Police Act, 1861 should be modified. They however, express the hope that if all the improvements that have been suggested in this Report for a better police administration are given effect to, the police force should come up to the required standard and a time may come when their officers may be in a position to exercise greater and greater executive power."

6.3.8 The Uttar Pradesh Police Commission recommended:

"In principle we do not agree that there is anything basically wrong with controls exercised by the District Magistrate over the Police….. We fully endorse the following observations made by the Indian Police Commission, 1902.

"It is true that the absolute necessity of maintaining the responsibility of District Magistrate demands that he should receive the fullest assistance from the Superintendent of Police, and the latter should promptly carry out his orders. But the administration of the police is vested in the Superintendent of Police. He is the Head of Police in the District. Though he must carry out all lawful orders of the District Magistrate, he is not his assistant in the sense his Assistant Collector is; and it destroys police work to put him in that position. No unnecessary interference with the Superintendent of Police should be allowed. The Police Force, though bound to obey the Magistrates orders in regard to criminal administration, should be kept as far as possible departmentally distinct and subordinate to its own officers. And the District Magistrate should avoid so as to weaken the influence and authority of the Superintendent of Police; for discipline is one of the most important features of police work."

6.3.9 The National Police Commission (1977) stated:

"The new police which we hope to create should have a self-contained organizational structure where there is no distortion of command and no dilution of accountability. We have also noted that police functions both in the investigative and preventive areas fall under the law and are subject to judicial scrutiny. Therefore, the police should perform with full accountability to the law of the land. The activities of the police organization require a high degree of interactive and multi-directional communicative skills with the community. Hence the police should have direct contact with the people whom they profess to serve. We are, therefore, of the view that the new police organization should function with a high degree of operational independence subject only to the control and direction of its own departmental hierarchial levels.

We recommend that the role of the District Officer as the Chief Coordinating Authority in the district be recognised and respected by the police. The District Officer should have the capability to generally advise the police regarding the extent and quantum of performance required from them for the purpose of achieving developmental targets and also to maintain administrative standards. The District Officer is in a unique position of being responsible for the overall welfare of the people of the district and the overall effectiveness of administration in the district. In discharging his responsibility he has a large measure of public contact and as such is likely to have substantial information regarding the mood and temper of the population and its various other requirements. We are of the view that the District Collector should not only share his information with the police in the district but should also be in a position to ascertain the steps taken by the police to ensure that quick solutions to problems are found to public satisfaction and the level of administration is maintained at a high pitch of efficiency.

We do not think that subordination of any agency to another is essential or inescapable to bring about healthy cooperation between the two agencies. On the contrary we feel that subordination is extremely unsuitable factor to generate satisfactory coordination. Subordination pre-supposes the carrying out of orders and hence instead of there being any dialogue, discussion and thereafter a decision, the only implicit compliance where one party performs under resentment and the other under apprehension. Therefore, if, as we have recommended subordination of the police to the District Officer is removed, would bring about better coordination in a cordial and congenial atmosphere where identification of a common interest and orientation of action towards that interest would become automatic".

6.3.10 The First Administrative Reforms Commission (1967) also went into this issue and recommended that the Collector and the District Magistrate as the head of the regulatory administration in the district should exercise general supervisory control over the police organization in the district. Except in an emergency, he should not interfere with the internal working of the police administration.

6.3.11 The Rajasthan Administrative Commission also examined this issue and was of the view:

"Lastly, rightly or wrongly, Collector has since the beginning come to be regarded as the key coordinator and representative of the Government at the district level. Both these capacities as coordinator and representative of Government postulate certain overriding powers that can help in satisfactory redressal of people's grievances and generate faith in their minds that on behalf of Government the Collector will look after their general welfare. Erosion of this feeling will directly affect his responsibility as the coordinator on behalf of Government and to that extent give a cruel blow to the entire administrative set-up in the society. With the trend now irrevocably in the direction of democratic decentralisation, Collector's role and powers in the sphere of general developmental activities are in any case on the wane. In other words, the authority and power of patronage that he derived from his role in welfare activities will no longer be available to him. This situation makes it all the more desirable that his say and influence in other spheres of general administration is retained so as to enable him to discharge his role as the coordinator and representative of Government. Therefore, looking to the above it appears that on the balance, non-integration of magisterial powers with police is more convenient as well as in keeping with democratic values of our society."

6.3.12 The Police Act Drafting Committee, while drafting the model police Act, defined the relationship between the DM and SP as follows:

"Coordination within the District Administration

(1) For the purpose of efficiency in the general administration of the district, it shall be lawful for the District Magistrate, in addition to the provisions of the Code of Criminal Procedure, 1973 and other relevant Acts, to coordinate the functioning of the police with other agencies of district administration in respect of matters relating to the following:
(a) the promotion of land reforms and the settlement of land disputes;
(b) extensive disturbance of the public peace and tranquility in the district;
(c) the conduct of elections to any public body;
(a) the handling of natural calamities and rehabilitation of the persons affected thereby;
(b) situations arising out of any external aggression or internal disturbances;
(c) any similar matter, not within the purview of any one department and affecting the general welfare of the public of the district; and
(d) removal of any persistent public grievance.

(2) For the purpose of such coordination, the District Magistrate may call for information of a general or special nature, as and when required, from the Superintendent of Police and heads of other departments of the district. Where the situation so demands, the District Magistrate shall pass appropriate orders and issue directions in writing, to achieve the objective of coordination.

(3) For the purpose of coordination, the District Magistrate shall ensure that all departments of the district, whose assistance are required for the efficient functioning of the police, will render full assistance to the Superintendent of Police."

6.3.13 The Commission is of the view that police administration is very much a part of civil administration. Diluting the role of the district magistrate is neither desirable nor practical. Governance requires coordinated efforts of various wings of government and this necessitates the existence of a coordinating agency. Coordination becomes ineffective if the coordinating agency has no authority over the departments involved. Moreover, as police represents the coercive power of the State, there is need to temper this power by a government functionary who can take a holistic view of the situation. There is need to achieve a balance between the imperative to use police force and the rights of citizens. This could be best achieved when such a balancing is done by an independent functionary. The Commission is however of the view that this control should not spill over to operational matters for which the District Police Chief should have full authority and responsibility.

6.3.14 The Commission is of the view that the formulation proposed by the PADC needs to be changed so that there is no ambiguity in the role of police and the District Magistrate. Although the circumstances under which the District Magistrate can issue directions to the police have been listed in the Model Bill, there is need to widen this List. It needs to be provided that the District Magistrate should be able to issue directions for implementation/ enforcement of laws and government policies and programmes. It should also be stipulated that such directions shall be binding on the police.

6.3.15 Recommendation:

a. The position of the District Magistrate vis-à-vis the police, and as a coordinator and facilitator in the district needs to be strengthened. The District Magistrate should be empowered to issue directions under the following circumstances:

i. promotion of land reforms and settlement of land disputes;
ii. extensive disturbance of public peace and tranquility in the district (The decision of the DM as to what constitutes extensive disturbance of public peace should be final);
iii. conduct of elections to any public body;
iv. handling of natural calamities and rehabilitation of the persons affected thereby;
v. situations arising out of any external aggression or internal disturbances;
vi. any similar matter, not within the purview of any one department and affecting the general welfare of the public of the district;
vii. removal of any persistent public grievance (as to what constitutes persistent public grievance, the decision of the DM shall be final); and
viii. whenever police assistance is required to enforce/implement any law or programme of the government.

b. These directions shall be binding on all concerned. Directions in respect of item No. ii should normally be issued in consultation with the Superintendent of Police.

6.4 Capability Building of Executive Magistrates

6.4.1 It has been observed that Executive Magistrates are often inadequately trained to discharge their legal responsibilities which require them to work closely with the police, be

sensitive to the concerns of the citizens and the police and have a thorough knowledge of laws and rules. As they have to conduct legal proceedings and pass quasi-judicial orders, it is very necessary that they have the capability to pass speaking orders, which can withstand judicial scrutiny. This could be achieved by properly designed training programmes. Besides, having a Manual for Executive Magistrates, periodically updated, on the lines of the police manual would go a long way in guiding them in their tasks.

6.4.2 Recommendations:

a. All officers likely to be posted as Executive Magistrates should be specially trained in the relevant laws and procedures and should be eligible for posting only after qualifying in an examination.
b. On the lines of a police manual, each state should also evolve a Manual for Executive Magistrates.

6.5 Inter-Agency Coordination

6.5.1 As stated earlier, maintenance of peace and order is the cornerstone of good governance and has several stakeholders. It follows therefore that even in 'peace time' various governmental agencies need to be involved to rule out any threat to public order. It has been the experience that where the police and magistracy do not enlist the support of other agencies, full anticipation and forestalling of untoward incidents is often not achieved. Agencies involved with the normal tenor of social and economic activities also have an equally important role. Where there is breach of peace, the role of all such agencies assumes even greater significance, in restoring normalcy. Institutional mechanisms need to be evolved at all levels to ensure such coordination.

6.5.2 In parts of the country which are facing problems of militancy, extremism and terrorism, apart from the agencies of civil administration, Central Police Forces and even the Army have remained deployed for long periods. Needless to say, effective institutional mechanisms for coordination between all agencies operating in a common area, covering central and state agencies, would have to be put in place, at different levels. Further, the role and responsibilities of each agency, as far as possible, should be clearly spelt out keeping in mind the overall objective of maintaining public order.

6.5.3 The need for coordination is even more necessary for sharing of intelligence. This needs special attention in 'sensitive' areas where there is a multiplicity of intelligence agencies, each required to communicate inputs vertically within their own hierarchies. This often reduces

the efficacy of the local administration to respond to any emerging crisis. There should be a mechanism providing for intelligence inputs of an operational nature which are also concurrently shared with the local administration. Both formal and informal mechanisms could be used for this purpose.

6.5.4 In the districts, the institution of the District Magistrate provides a forum for effective coordination, though over the years, its efficacy has been eroded. In bigger cities there is no formal coordination mechanism. The Police Act Drafting Committee has in their Model Bill recommended the inclusion of the following section:

> *"In order to ensure proper liaison, consultation and coordination between the police, the municipal authorities, the district administration and such other departments of the government, whose functioning impacts the working of the police, the State Government by notification, will constitute appropriate coordination machinery and lay down procedures. The structure of the machinery will be as notified."*

6.5.5 Some states have notified Ministers to be in charge of districts. This has been done to review specific developmental programmes and also to achieve coordination. At times, such authorities transgress their powers and issue operational directions to the law enforcement machinery. This practice needs to be discouraged. The statutory authorities entrusted with the responsibility for maintenance of law and order should be given freedom to act in accordance with law.

6.5.6 However, in bigger cities, which have the Police Commissioner System, there is no effective coordination mechanism. In urban areas there are a large number of service providers and proper coordination becomes very important in situations of crisis or a major law and order situation. In such cases, the State Government normally coordinates the efforts of all agencies. It would be desirable to create a permanent structure to ensure such coordination. This Commission in its Report on Crisis Management has recommended that the Mayor assisted by the Municipal Commissioner and the Police Commissioner should be directly responsible for any crisis management. The same structure should be used for coordination during law and order problems also, with all the service providers being represented on the Coordination Committee, to be headed by the Mayor. A similar structure should be evolved at sub-district/town levels.

6.5.7 Recommendations:

a. In a District, the District Magistrate should coordinate the role of all agencies at the time of crisis.

b. In major cities, with the Police Commissioner System, a coordination committee should be set up under the Mayor, assisted by the Commissioner of Police and the Municipal Commissioner. All major service providers should be represented on this Coordination Committee.

6.6 Adoption of Zero Tolerance Strategy

6.6.1 As mentioned in para 3.1.1 while citing the so called "Broken Window Syndrome" and as highlighted in Box 6.1, fighting crime and upholding the rule of law requires a multi-dimensional approach in order to instill in the citizens of any local community a healthy respect for law. Thus, in New York, the successful crime fighting strategy tried to address the issues of urban decay and alienation in the inner cities by trying to place a policing strategy within a broader framework of urban regeneration. This was ensured by action directed not just against serious crimes but at all types of offences including petty "quality of life" offences like graffiti, vagrancy, littering etc. A similar zero tolerance strategy has been followed over a much longer period by Singapore and in both cities, substantial reduction in the rates of crime could be achieved.

Box 6.1: Zero Tolerance Policing

The "zero tolerance" policing involved a robust and proactive approach by the police towards petty criminals and those guilty of degrading the urban environment.

This more aggressive style of policing was combined with making local commanders directly accountable for their performance. Twice weekly "Compstat" meetings had local precinct commanders gathered in the NYPD war room to review crime statistics and be cross-examined on their performance. Some officers performed well. Some did not, and were told to return with proof that the problem had been tackled effectively. Some were demoted or resigned. The sole objective of the exercise at every stage was clear: the reduction of crime. The crime figures responded extremely well to this zero-tolerance approach.

- Overall crime fell by 54 per cent between 1992 and 2000 (Source: Civitas)
- Between 1993 and 2000, New York underwent a 67 per cent decrease in the total amount of robberies.
- The manslaughter and murder rate also decreased by 72 per cent in the same period.

Zero tolerance policing is not enough in itself. Political leaders need to give the police unswerving political support as they take determined action to reduce crime. This was the case in New York, where Mayor Guiliani gave his full backing to the police in their fight against crime.

Source: http://www.reform.co.uk/website/reformaroundtheworld/newyork.aspx

6.6.2 In our country there is a tendency for some enforcement agencies not to rigourously enforce the provisions of law. This is quite evident in case of traffic related violations, civic offences, infringement of pollution control laws etc. For their part, sometimes, the

common citizen is equally to blame for flouting rules with impunity and without regard to public health, safety and consideration for others. A crackdown on these types of offences in some cities like Delhi, whether enforced by Courts or otherwise, have tended to operate as campaigns and may therefore be unable to create and sustain a long term impact because they are driven by personalities or by court verdicts rather than by the institutions themselves.

6.6.3 Institutionalising a zero tolerance strategy toward offences in the cities requires a combination of proactive leadership and organisational reforms fused with incentives and penalties for the field level functionaries of the various agencies involved (including the police). Independent monitoring mechanisms would have to be evolved which would hold public functionaries answerable for non-enforcement of laws/rules. Modern technology including the use of IT, GIS mapping, satellite imagery and electronic surveillance can facilitate this exercise. Despite the fact that many enforcement agencies pay lip service to the type of accountability mechanisms as mentioned above, there is reluctance to confront the status quo by going beyond the generalities to formulate and apply simple parameters designed to evaluate the performance of the enforcement officials and then create appropriate incentives and penalties for them. The COMPSTAT[66] strategy used by the New York Police provides one such model which could be suitably adapted not just by the police but also by other agencies in order to implement a broad based zero tolerance strategy to reduce all types of offences including serious crimes and create conditions in which public tranquility can be preserved on a long term basis. At the same time, a zero tolerance policing strategy should be combined with initiatives to involve the community in policing and crime prevention functions so that abuse of civil rights and liberties are avoided.

6.6.4 Recommendations:

a. All public agencies should adopt a zero tolerance strategy towards crime, in order to create a climate of compliance with laws leading to maintenance of public order.

b. This strategy should be institutionalised in the various public agencies by creating appropriate statistical databases, backed up by modern technology, to monitor the level and trends of various types of offences and link these to a system of incentives and penalties for the officials working in these agencies. It should be combined with initiatives to involve the community in crime prevention measures.

[66] COMPSTAT is the name given to the internal accountability mechanism to monitor crimes in New York Police Department. It makes extensive use of Information Technology tools.

7 REFORMS IN THE CRIMINAL JUSTICE SYSTEM

7.1 Role of the Criminal Justice System

7.1.1 A strong and effective criminal justice system is a fundamental requirement of the Rule of Law. The criminal justice system comprises the police (investigation), the prosecutor (prosecution), the courts (trial) and the prison (punishment and reforms). The role of the police is, no doubt, important in dealing with imminent threats to peace and order as well as in tackling violence when it erupts. However, for sustaining peace and order in society on a long term basis, the role of other wings of the criminal justice system is even more important. It is the criminal justice system which protects a law abiding citizen and deters a potential law breaker. The essence of an efficient criminal justice system is that the trial of an accused should be swift and punishment for a criminal should be certain and deterrent. In this regard, our track record has been rather dismal, with delays, mounting pendency and falling conviction rates being major shortcomings. There are innumerable examples of culprits, including those committing heinous offences, going scot-free. A former Chief Justice of India observed:

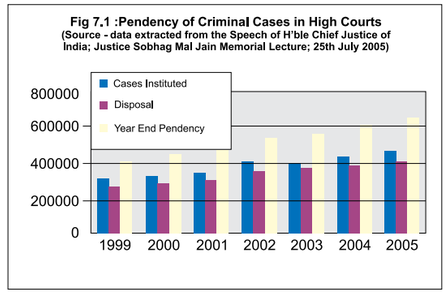
> *"The criminal justice delivery system appears to be on the verge of collapse due to diverse reasons. Some of the responsibility will have to be shared by the Executive branch of the State. Not much has been done for improvement of the investigative & prosecution machinery. Significant suggestions for separation of Investigative wing from Law & Order duties and changes in rules of evidence still lie unattended. The public outrage over the failure of the criminal justice system in some recent high profile cases must shake us all up into the realisation that something needs to be urgently done to revamp the whole process, though steering clear of knee jerk reactions, remembering that law is a serious business."*[67]

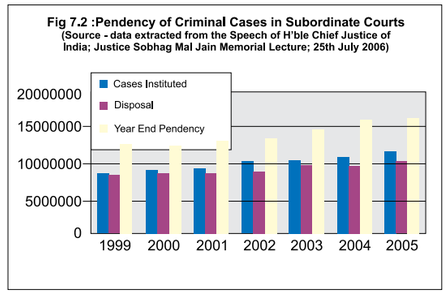
Box 7.1: Analysis of Crime Statistics

1. There is a slow growth in the total number of crimes registered. However, if taken as a ratio per unit population, it has shown a declining trend.
2. Of the total cases registered, the number of cases charge sheeted in a year has increased from 53% in 1961 to 80% in 2005.
3. The average conviction rate is about 42%.
4. There has been a steady decline in the conviction rate from 64.8% in 1961 to 42.4% in 2005.
5. The total number of cases pending trial has shown a steady increase.

[67] Speech at the inauguration of the Joint Conference of Chief Justices and Chief Ministers held on 11th March 2006 by Hon'ble Mr. Justice Y.K. Sabharwal; Chief Justice of India

7.1.2 To quote from *India's Legal System: Can it be Saved?* (2006), authored by the veteran legal expert, Fali S. Nariman, "The pendency of criminal cases in the subordinate courts is in the region of 1,32,00,000 cases and the effective strength of judges in subordinate courts is only 12,205. Courts are able to dispose of, on an average, only 19 per cent of the pending criminal cases each year."





7.1.3 There is a general perception that one can commit an offence with impunity. The proliferation of crime has generated a feeling that criminal activity has become a high return and low risk activity and thus a profitable venture. Enforcement of even simple civic laws is so poor that it gives rise to the 'Broken Window Syndrome'. For a victim, it is an uphill task to get justice. In the first instance, it is difficult to get an FIR registered. Even after the FIR is registered, investigation proceeds in a casual and an unprofessional manner. Once the case is charge-sheeted it may take several years for the conclusion of the trial. Making repeated visits to the court is usually an unpleasant experience for the victim and the witnesses. During trial, witnesses often resile from their original statements. Prosecution is often ineffective because of lack of coordination with investigation. The net result in many cases is the acquittal of the culprit who had actually committed the crime. This, apart from emboldening the accused, also leads to cynicism in the minds of law abiding citizens. The recent public outcry against the acquittal of the accused in some high profile cases is a pointer to this deeper malaise. Immediate restoration of the people's faith in the criminal justice system is therefore vital in the interests of public order and a just society.

7.1.4 The reforms required in the criminal justice system would include the following:

- facilitating access to justice;
- proper investigation;
- effective prosecution;
- better and swift trial; and
- improving the prison system.

7.2 Measures Taken in the Recent Past

7.2.1 Some measures have already been taken in recent years to expedite disposal of both civil and criminal cases. Plea bargaining has now been recognised by the Criminal Law Amendment Act, 2005. This measure would help in dealing with the large pendency of criminal cases and would also provide relief to undertrial prisoners. The 'shift system' has been mooted for the functioning of courts. On July 25, 2006, the Chief Justice of India proposed that courts work in two shifts. The basic idea of the shift system is that the infrastructure available can be put to use during the 'idle' time of the day. Gujarat has started the system of evening courts in which petty cases are being heard and decided. The Law Commission in its 125th Report (1988) had observed:

> *"The buildings available to courts are hardly fully utilised, especially the building of the Supreme Court. Courts assemble at 10:30 am and leave at 4 O' clock. Therefore, if some Courts start functioning at 8:30 am, then without spending a farthing on building, additional courts can effectively operate in the same building.…There will be slight rise in the expenditure for providing some additional staff to the additional courts".*

Box 7.2 A Tale of Two Terror Trials

Four British Pakistanis and another man were convicted of conspiracy in the United Kingdom last week, for being involved in an Al Qaida linked terror plot that could have caused mayhem and death. The convictions and life sentences were the culmination of Britain's longest-running terror trial. And it lasted all of three years.

The UK trial had 105 witnesses, Mumbai's trial had 648. The London case cost an estimated 50 million pounds to complete; there is yet no estimate drawn for the Mumbai case. Compare that with India's longest-ever criminal trial for the 1993 serial blasts in Mumbai; the sentencing is yet to begin over 14 years after a dozen blasts killed 258 and injured over 700.

The British courts and prosecutors painstakingly compiled audio and video evidence, using a total of 33,800 man-hours to secure the guilty verdicts. The man-hours that prosecutors put into the case in Mumbai would easily run into a few lakhs; and the evidence, none of which is on tape, spans about 64,000 pages and court records easily exceed 75,000 closely typed pages.

The British jury, in an indication of the complexity spent a record 27 days deliberating; The Judge spent about a year after the last submission was made before beginning with the convictions. All these are differences in degree. But there are also more fundamental differences in kind between the two cases and trials.

Source: Times of India; 10th May, 2007

7.2.2 On the recommendations of the 11th Finance Commission, 1734 Fast Track Courts were sanctioned for disposal of long pending Sessions and other cases and a grant of Rs 502 crore was also provided for disposing these cases. The scheme envisages the appointment of ad hoc judges from among retired sessions/additional sessions judges, as well as judges promoted on ad hoc basis and posted in these courts from among members of the Bar. Selection of judges would be done by the High Courts. State Governments would have to fill the consequential vacancies resulting from ad hoc promotion of judges through a special drive. The Fast Track Courts of Sessions Judge disposed of 133475, 168861 and 171626 cases in 2003, 2004 and 2005 respectively. The Lok Adalats, constituted under the Legal

Services Authority Act, 1987, have been successful in settling a large number of cases, particularly the claims under the Motor Vehicles Act. Fast Track Courts have also proved to be successful.

7.2.3 Apart from strengthening the infrastructure and increasing the number of courts, a large number of suggestions have been made to expedite disposal of cases in courts of law. Former Chief Justice of India, Justice Y K Sabharwal has made several suggestions[68]. Notable among these are:

Box No.7.3: Delay in Completing Trial Proceedings

We, in India, accustomed that we are to decades of law's delays, would find it strange that Lord Falconer considers it unconsciounable that in 2005, cases in the Magistrates' Courts took on average 153 days from offence to completion. We may be stunned to know that "not too long ago ……. Magistrates' Courts were regularly dealing on Monday mornings with cases relating to crimes which had taken place over the weekend."

In this background, the aim of revamping the criminal justice system – crime today, court tomorrow, disposal the day after! – must take our breath away!

The paper covers the full range of what it means to 'do law differently'. Lord Falconer produces it in April, 2006 and the reforms are on their way to fruition in April 2007. Can India beat this? No. Because we suffer from paralysis by analysis' and are experts at losing ourselves in a flurry of 'activities without action'.

Source: B.S. Raghavan, Hindu Businessline, May 18, 2007

- Carrying out a Judicial Impact Assessment of each new legislation and making appropriate provisions for resources for augmentation of the judiciary;
- Adopting case management techniques which include[69]:
  - o Identifying key issues in a case;
  - o Encouraging parties to settle cases or agree on issues;
  - o Summary disposal of weak cases and trivial issues;
  - o Deciding the order in which the issues are to be resolved;
  - o Fixing a time table for parties to take specific steps;
  - o Allocating each case to specific track (Fast Track/Multi Track) courts;
- Adopting Court Management Techniques;
- Classification and assignment of cases;
- Managing cause lists in a rational manner so that unnecessary cases are not posted merely for the sake of being called out;
- Making use of Alternate Dispute Resolution methods;
- Modernisation and computerisation of courts;
- Video conferencing;
- Setting up Fast Track subordinate courts;
- Transfer of petty cases from regular courts to special courts;
- Adopting discretionary prosecution;
- Using modern means of communication for service of summons;
- Conducting pre-trial hearings;

[68] Justice Sobhag Mal Jain Memorial Lecture on delayed Justice Delivered by Hon'ble Shri Y.K. Sabharwal, Chief Justice of India on Tuesday, the 25th July, 2006

[69] Case Management as stated by Lord Woolf in his report "Access to Justice"

- Enlarging the list of compoundable offences; and
- Submission of 'Statement of Prosecution' followed by a 'Statement of Defence'.

7.2.4 The former Chief Justice has also stated that a large number of cases involving petty offences (41,34,024) were pending before magisterial courts. He has suggested that since the pendency before Magisterial Courts is very high, there is need to transfer such cases to Courts of Special Magistrates, to be staffed by retired Judicial Officers/retired senior Government servants.

7.2.5 The Commission without going into the details of each of these measures, would reiterate that the suggestions should be given urgent attention and implemented on a priority basis.

7.2.6 Although the substantive, legal and procedural issues pertaining to the reforms in the criminal justice system are very complex, the Commission has examined some key elements which have a direct bearing on the maintenance of public order.

7.3 Facilitating Access to Justice - Local Courts

7.3.1 The measures enumerated above are essential but not sufficient in themselves to improve access to justice for a common citizen. Providing citizens with improved access to justice also requires a major thrust on increasing the number of courts; equipping the courts with required human, material and technological resources; simplifying their cumbersome procedures and placing an increased emphasis on use of the local language to deliver swift justice at lower costs.

7.3.2 The Law Commission in its 120th Report (1987) had recommended that the number of judges should be increased so that there are 107 judges per million population by the end of year 2000. This ratio was achieved by USA in 1981.The Supreme Court, in the All India Judges Association case (March 2003; citation:2002 SOL Case No.204), held as follows:

> *"Under the circumstances, we feel it is our constitutional obligation to ensure that the backlog of the cases is decreased and efforts are made to increase the disposal of cases. Apart from the steps which may be necessary for increasing the efficiency of the judicial officers, we are of the opinion that time has now come for protecting one of the pillars of the Constitution, namely, the judicial system, by directing increase, in the first instance, in the judge strength from the existing ratio of 10.5 or 13 per 10 lakh people to 50 judges for 10 lakh people. We are conscious of the fact that overnight these vacancies cannot be filled. In order to have additional judges, not only the posts will have to be*

created but infrastructure required in the form of additional court rooms, buildings, staff, etc., would also have to be made available. We are also aware of the fact that a large number of vacancies as of today from amongst the sanctioned strength remain to be filled. We, therefore, first direct that the existing vacancies in the subordinate courts at all levels should be filled, if possible, latest by 31st March, 2003, in all the states. The increase in the judge strength to 50 judges per 10 lakh people should be effected and implemented with the filling up of the posts in a phased manner to be determined and directed by the Union Ministry of Law, but this process should be completed within a period of five years from today. Perhaps increasing the judge strength by 10 per 10 lakh people every year could be one of the methods which may be adopted thereby completing the first stage within five years before embarking on further increase if necessary".

7.3.3 The issue of the large pendency of criminal cases with subordinate courts was discussed in the Chief Justices' Conference held on 9th &10th March 2006 and it was suggested that petty offences including traffic and municipal challans be transferred to the Courts of Special Metropolitan Magistrates/Special Judicial Magistrates to be staffed by retired Judicial Officers and retired senior government officers.

7.3.4 While serious offences require highly skilled and thorough investigation, such high level of expertise and diligence are not required in most petty offences or offences under local laws. Efforts are also underway to create a system of local courts with summary procedures and adequate safeguards of appeal and inspections, to deal with the large number of minor cases at the local level. The Commission understands that the Union Government is contemplating the introduction of a Bill creating such local courts with the following features:

- One court (honorary magistrate) for every 50000 population;
- Summary procedures and trial at the scene of offence where possible;
- Exclusive jurisdiction of cases of up to one year's imprisonment and all other cases specified by law;
- Integral part of independent justice system;
- Provision for appeal; and
- Verdict within 90 days.

7.3.5 Earlier, there was a system of second class magistrates which worked fairly well. There were also honorary magistrates and mobile courts. Panchayats and Village Courts were also empowered to dispense justice in petty cases in some parts of the country. All these no longer exist except that in some backward areas, Panchayats (mostly caste-dominated) still

Retired judges or retired government officers (with appropriate experience) could be appointed.

d. These courts may function from government premises and could also be in the form of mobile courts.

e. These local courts may be constituted by a law passed by the Parliament to ensure uniformity.

7.4 Using Information and Communication Technology (ICT) to Modernize the Indian Courts

7.4.1 The National Informatics Centre (NIC) has been supporting the computerisation programme of the Supreme Court, High Courts and the subordinate courts for over a decade now. It has set up COURTNIC which provides information through NIC's network, on pending cases including case lists, status reports, daily cause list etc as well as JUDIS (Judgement Information system) which is an online case law library containing all reportable judgements of the Supreme Court from 1950 onwards.

7.4.2 An e-Committee was constituted by Government in 2004 under Dr. Justice G.C. Bharuka to assist the Chief Justice of the Supreme Court in formulating a national plan on the Computerisation of the Indian Judiciary and to advise on the attendant technological, communication and management reforms required. It made the following observation in its report:

> *"With the enormous case load and workload, increase of courts, piling of arrears and erosion of values and work culture, the governance and administrative control over the judicial institutions through manual process has become extremely difficult resulting in systematic failure. This has directly impeded judicial productivity leading to disappointment and dissatisfaction among the justice seekers. The systematic failure has occasioned many vices and ill practices bringing disrepute to this constitutional organ."- Report on Strategic Plan for implementation of ICT in Indian Judiciary prepared by the E-Committee constituted by the Government."*

7.4.3 The status and extent of implementation of ICT in the Indian judiciary was recently assessed[70] as follows:

> *"The Indian judiciary comprises of nearly 15,000 courts situated in approximately 2,500 court complexes throughout the country. Of these, it was found that the Supreme Court already had an extensive ICT infrastructure which is in the process of further innovation and expansion. Similarly, most of the High Courts are using information technology since 1990 and onwards although the extent of usage varies. There is a demand for upgradation of the ICT tools and to make it uniform across the country. Some of the district courts are also using computers but it is essentially for digital transcriptions of court orders and judgments. In states like Karnataka, Delhi and Maharashtra, the ICT environment was better at all levels of state judiciary.*
>
> *The Supreme Court and all High Courts at their principal seat and benches have internet connectivity, computer rooms equipped with machines and related peripherals. All the Judges of these courts have even been provided with laptops. Desktops/PCs are available with Judges as also the court officials in some of the States for judicial and administrative work. The judgements and orders of the Supreme Court and some of the High Courts are available on the internet. The cause lists of Supreme Court and High Courts are being hosted on their websites."*

[70] Dr. Justice G. C. Bharuka - Modernising Indian Courts - Concepts and Challenges

7.4.4 In accordance with the National Policy and Action Plan prepared by the e-Committee, a five-year National Programme for Computerisation of the Indian judiciary was launched in 2005 to be carried out in three phases.

7.4.5 In the first phase, the Action Plan envisages the following : provision of laptops to all judges; awareness and introduction of ICT and computer-based environment in the judicial system; video-conferencing between court and prisons at 100 locations; a fully developed and informative website – www.indianjudiciary.in; creation of a National Judicial Data Grid; creation of Committees and High Court Level Committees to monitor and guide the ICT implementation in the Court complexes; implementation of Wi-Fi at the Supreme Court and High Court premises and creation of Computer Rooms at Court complexes.

7.4.6 Phase II of the Action Plan includes: coordination of ICT infrastructure for the judicial system; implementation of Software for Judicial Processes at all levels; creation of reliable critical infrastructure and continuation of IT training activities and extension of training programmes.

7.4.7 Phase III includes: use of advanced ICT tools, intensive training, warehousing and mining tool customization to crystallize change management, Biometric facilities, Gateway interface with other agencies; upgradation of centralized facility and Digital Archive of the record room and a Digital Library Management System.

7.4.8 The Commission is of the view that modernisation of the Indian judiciary through use of information technology needs to be given much greater impetus, particularly focusing on the lower courts where the impact of ICT at present is limited and where much of the delay occurs. Increasing the efficiency of the trial courts will have a major impact on disposal of cases and will have a multiplier effect in terms of improving public order and instilling respect for the rule of law.

7.4.9 In particular, there is an urgent need to focus on the critical procedures that need to be modernised such as the outmoded methods of recording oral evidence which should be replaced by digital sound and video-recording combined with text transcription by transcribers working outside the court rooms. A fully developed IT-enabled case management system, including on-line payment gateways for payment of fees and issue of authenticated copies of court records, and a full-fledged reengineering of judicial processes to be combined with use of modern technology tools would improve performance of the justice delivery system. Virtual courts or e-Courts without the physical presence of all the key participants viz. lawyers, accused, witnesses, judges etc in the same place and real time multi-media transcripts to replace paper should be the ultimate goal. Prioritization and selection of courts for the programme of computerisation based on levels of pendency and use of a clustering approach to provide common physical infrastructure to proximate subordinate courts through the use of local area networks(LANs)would be an appropriate implementation strategy. This has to be carried out in conjunction with large-scale expansion and upgradation of physical infrastructure, phasing out the old and outdated court buildings and replacing them with modern, state-of-the art buildings with the latest facilities and fixtures. A National Judicial Infrastructure Plan has reportedly been drawn up by the National Judicial Academy and has been endorsed by the Annual Conference of Chief Justices in April, 2007. Implementing such an infrastructure upgradation plan for our courts in synergy with the already approved National Plan for Computerisation of the Judiciary would have a significant and positive impact on judicial efficiency and productivity. And by providing modern databases and technology tools to assess the performance of Judges, such modernization will help to enhance judicial accountability as well.

7.4.10 The Commission without going into further details of each of these initiatives and suggested measures would reiterate that these need to be implemented in a phased manner early.

7.5 Reforms in Investigation

Once a crime is registered, investigation by the police begins, which prepares the ground for prosecution and trial. As mentioned earlier, it has been observed that very often investigations are done in a superficial manner with little reliance on modern forensic science. State Governments have prescribed detailed police manuals which contain elaborate provisions regarding investigation procedures. These manuals are often not followed and supervision and monitoring of criminal investigations has also become ineffective. The Nithari killings confirm that there is large scale non-registration of FIRs due to both rampant corruption as well as deficiencies in the current departmental methods of monitoring and review of crimes. The Commission has made wide-ranging recommendations regarding grant of autonomy to police, emphasis on professional investigation, focus on 'brain' rather than 'brawn', improving training of the police, taking steps to improve the morale of the cutting edge functionaries etc. It is expected that with these changes, the quality of investigations would improve vastly. The Commission has examined in detail two important aspects of investigations – registration of FIRs and conduct of inquests – in the following paragraphs.

7.5.1 Citizen Friendly Registration of Crimes

7.5.1.1 Section 154 of the Code of Criminal Procedure, 1973 deals with the formalities pertaining to the recording of the First Information Report, more popularly known as the FIR. When information relating to the commission of a cognizable offence is given orally to an officer in charge of a police station, that officer is required to reduce it in writing. The FIR so written shall be read over to the informant. Such information whether given in writing or reduced to writing, shall be signed by the person giving the said information and a copy of the FIR should be given to the complainant. After registering the FIR, the officer in charge of the police station shall immediately send a copy of the FIR to the jurisdictional court. The police officer is bound to register the FIR and if he/she refuses to do so, then the aggrieved person can approach the superior police officers. Registration of an FIR sets the criminal justice system in motion.

7.5.1.2 The National Police Commission in its Fourth Report (1980) observed:

> *"A complaint often heard against the police is that they evade registering cases for taking up investigation when specific complaints are lodged at the police station. In the study conducted by the Indian Institute of Public Opinion, New Delhi, regarding "Image of the Police in India", over 50% of the respondents have mentioned "non-registration of complaints", as a common malpractice in police stations. Among the several malpractices,*

it is ranked third, the first two being (i) showing particular bias towards rich or influential people in cases involving them or reported by them, and (ii) shielding 'goondas' and other criminal elements involved in gambling dens, illicit distillation, etc. This malpractice stems from several factors, including the extraneous influences and corruption that operates in the system, as well as the disinclination of the staff to take on the additional burden of investigative work in the midst of heavy pressure of several other duties. Among all such factors, the most important one which, in our view, accounts for a substantial volume of crime going unregistered is the anxiety of the political executive in the State Government to keep the recorded crime figures low so as to claim before the State Legislature, the public and the press that crime is under control and is even going down as a result of 'efficient' police administration under their charge. The Chiefs of Police and other senior police officers also find it easy and convenient to toe the line of the Government in developing such a biased and distorted statistical approach for assessing the crime situation and evaluating police performance. As a consequence, this attitude of 'burking' permeates the entire hierarchy down the line and is reflected at the police stations in their reluctance and refusal to register cases when crimes are brought to their notice." [71]

7.5.1.3 The NPC suggested the setting up of reporting centres, especially in urban areas where specified citizens may be authorized to register FIRs and then pass these on to the concerned police station.

7.5.1.4 The Commission is of the view that since registering the FIR is the first step in the criminal justice system and unless shortcomings in the registration procedure are set right, other reforms particularly in the subsequent stages would have limited impact. Therefore, a system has to be evolved in which registration of FIRs is totally transparent and instances of refusal to register FIRs are eliminated.

7.5.1.5 With the rapid spread of communication facilities, several states have tried the use of technology to make the process of registration transparent. Rajasthan has introduced an innovative project called 'Aarakshi' that aims to improve the efficiency of police procedures. Each complainant is given a token number at the time of registration of his/her complaint which can be used for future referencing. Citizens can then access the police stations through the internet and ascertain the status of the complaint. The supervising officers can also monitor the progress in investigation. This brings a greater degree of accountability in the investigation. Andhra Pradesh has launched a state-wide computerized network of police stations – 'e-cops' (e-Computerised Operations for Police Services). Thus, after a case is registered in the computer of the nearest Police Station, a printout of the FIR is given to the complainant. Once registered, the status of the FIR could be viewed by the

[71] National Police Commission Report.

complainant from anywhere by accessing e-cops. The Thiruvananthapuram City Police has developed a system to receive certain types of complaints electronically through its website. Citizens can register any type of complaint such as traffic problems, petty thefts, communal disturbances, eve-teasing, pick- pocketing, illicit distillation of liquor.

7.5.1.6 The Commission feels that with the rapid expansion of communication facilities, especially the internet, all types of communications to a police station should be taken cognisance of. At the same time, a complainant should have the option of registering complaints through various modes. As mentioned, several methods have been tried to ensure smooth registration of FIRs. In order to ensure that the registration of crime becomes totally hassle-free, a 'call centre' approach is one option. This call centre should receive complaints from citizens by means of voice recordings or faxes. All such information would get registered. These complaints could then be scrutinised by an authorized police officer and redirected to the concerned police station for registration. Such a system would have the added advantage of preventing 'burking' (i.e. not registering cases). Another option could be to set up suitable outposts, kiosks or '*Kobans*' (as in Japan) to facilitate lodging of complaints. Such kiosks could also be given other tasks.

7.5.1.7 Even after such technological interventions, a large number of people would still go to police stations for registering their complaints. It would, therefore, be desirable to have a continuous video-recording of the citizen-police interaction in a police station and such videos should be monitored randomly by the supervising officers.

7.5.1.8 Apart from the issue of registration of FIR, another major issue is the contents of the FIR. It is said that *"A good FIR must address the six issues of what is the nature of the incident, where and when did it happen, who is reporting and against whom and why did the incident happen. These six W's begin the process of data collection, collation and analysis that hopefully results in the arrest and prosecution of the involved person or persons. In this investigation, additional information gathered from the witnesses, common citizens, informers and even other police officers is an important step for solving the case."*[72]

7.5.1.9 As noted by the National Police Commission (NPC) (1980), FIRs have drawn a number of court rulings that have tended to give undue importance to the omission of any salient fact in the FIR even if such omission was due to the disturbed or confused state of mind of the complainant. As a result, according to the NPC, police officers resort to the malpractice of delaying the FIR in order to obtain additional details because of the inordinate evidentiary value placed by the courts on the FIR. The NPC therefore recommended the following amendments in Section 154 CrPC to remedy the situation:

[72] The Indian Police, Arvind Verma, 2005

- Police should be allowed to query the informant to obtain additional details and clarifications;
- Make it clear that registration of FIR is mandatory, whether or not the alleged offence has taken place within the jurisdiction of the police station; and
- Allow constituent units of the police station such as police outposts etc to also record FIRs.

7.5.1.10 Government and senior police officers quite rightly lay emphasis on keeping the crime situation under control. Unfortunately, this message has often been misinterpreted down the line and results in burking to keep the number of cases low. This undue emphasis on crime statistics to assess performance of a police station thus needs to be discouraged. The Commission is of the view that a more objective criteria should be evolved for evaluating the performance of the police station. Emphasis should be on the number of cases successfully detected and prosecuted and not necessarily on the number of crimes registered.

The Commission is of the view that the above mentioned steps and use of technology would go a long way in making the registration of FIRs hassle-free.

7.5.1.11 Recommendations:

a. **Registration of FIRs should be made totally citizen friendly. Technology should be used to improve the accessibility of police stations to the public. Establishing call centers and public kiosks are possible options in this regard.**
b. **Police stations should be equipped with CCTV cameras in order to prevent malpractice, ensure transparency and make the police more citizen-friendly. This could be implemented in all police stations within a time frame of five years.**
c. **Amendments to the CrPC should be made as suggested by the National Police Commission.**
d. **The performance of police stations should be assessed on the basis of the cases successfully detected and prosecuted and not on the number of cases registered. This is necessary to eliminate the widely prevalent malpractice of 'burking' of cases.**

7.5.2 Inquests

7.5.2.1 Section 174 of the Code of Criminal Procedure prescribes what should be done when an unnatural death is discovered or reported.

7.5.2.2 Section 176 CrPC provides for mandatory magisterial enquiries in specific cases. Executive Magistrates (who often are not thorough with law, untrained and lack investigative skills) generally have not been conducting these inquests in a professional manner and routinely fill up the prescribed forms. Thus the basic purpose of inquest – finding the cause of death – is defeated by such perfunctory enquiry.

7.5.2.3 The State Government of Karnataka has issued Rules[73] under Section 174 CrPC which prescribe the manner in which investigations into all unnatural deaths have to be conducted. The highlight of the Rules is that the inquest has to be done in an open and accountable manner assisted by a professionally qualified group. The Executive Magistrate has to record a finding based on appreciation of evidence collected as to whether the unnatural death is to be considered an accident, suicide or homicide. The Commission is of the view that the conduct of inquests should be open and transparent and involve citizens' groups and professionals, so that proper enquiry is conducted in all cases of unnatural deaths.

Box 7.4: Inquest Rules in Karnataka

What is required is institutional strengthening to introduce public accountability and transparency in the investigation of violent crimes, especially unnatural deaths. Such a system has already been developed and put into place in Karnataka which has recently notified rules under Section 174 CrPC (after detailed consultations with legal experts and concerned activists), providing for modification of the existing investigation procedures to ensure that the decision about classifying an unnatural death as an accident, suicide or homicide is made through an open and accountable process. This was possible by issuing rules under Sections 174 and 176 of the CrPC, a step which is simpler and faster than amendment of the Code itself.

Inquests have now to be conducted in all cases of unnatural deaths in an open and transparent manner. This has made the relevant investigating requirements prescribed in manuals enforceable as these are now a part of the rules. A professionally qualified group (including a forensic expert) has to collect evidence on the spot, the post-mortem has to be conducted before the inquest immediately after discovery of the death and a designated magistrate has to conduct an open enquiry within a specified period from the date of death to confirm that all investigating requirements under the manual have been met. After the inquiry, the magistrate must record a specific finding based on appreciation of the evidence collected (including the post-mortem report) as to whether the unnatural death is to be considered an accident, suicide or homicide. This finding is binding on the police investigator for preparation of an FIR where required. It is also to be reported to the judicial magistrate.

7.5.2.4 Recommendation:

a. **All State Governments should issue Rules prescribing in detail the procedure for inquests under Section 174 CrPC.**

7.5.3 Statements Made before a Police Officer

7.5.3.1 One issue which was brought before the Commission particularly by police officers, was the distrust of the police built into the criminal justice system. A manifestation of

[73] The Rules have been issued vide Notification No. HD 95 COD 99(Part-I), dated 24th January, 2004

this is the provision in the Code of Criminal Procedure that a statement made before the police shall not be signed by the person making the statement and that it could be used in the Court only to contradict the witness and not to corroborate. The prime reasons for including this provision in the CrPC was to ensure that police does not obtain statements through coercion.

7.5.3.2 The Code of Criminal Procedure (chapter XIV) along with the Indian Evidence Act deals with all aspects of investigation:

> *161. Examination of witnesses by police.-*
>
> *(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.*
>
> *(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.*
>
> *(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.*
>
> *162. Statements to police not to be signed: use of statements in evidence.-*
>
> *(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872; (1 of 1872) and when any part of such statement is so used, any part thereof may also be used in the re- examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.*

7.5.3.3 Regarding this matter, three major issues have drawn the attention of successive Law Commissions. These are:

1. Whether witnesses should be made to sign their statements,
2. whether the Investigating Officer should record everything that each witness states or he/she should record the statement of only those witnesses whose statement are relevant and to the extent the statement is relevant, and
3. could the statement by the witness be used to corroborate any other evidence?

7.5.3.4. It has been argued that this distrust towards the police implicit in Sections 161 and 162 CrPC quoted above, unnecessarily favours the accused as the witnesses conveniently make use of this to turn hostile at the trial stage. Such distrust towards the police also lowers their self-respect and leads to unethical practices and consequent damage to the criminal justice delivery. This has been vividly brought out in a number of sensational murder cases during the past decade or so. The Committee on Reforms in the Criminal Justice System recommended as follows on this issue :

> *"In the circumstances, the Committee is of the opinion that:*
>
> *a. Section 161 CrPC should be amended to make it obligatory to record statements made by the witnesses during investigation in the narrative or in the question and answer form. The statement should be read over if admitted correct should be got signed by the witness;*
> *b. a copy of the statement should be immediately given to the witness.*
> *c. Section 162 of the Code should be amended so that the statement can be used both for corroboration and contradiction."*

7.5.3.5 The Law Commission in its 14th Report (1958) recommended:

> *"When a police officer records a statement under Section 161 of CrPC, the person making the statement, if he is able to read it for himself, should be required to read what has been written and sign and date it and certify that it is correct record of his statement.*

The law should be amended so as to provide that the investigating officer should record the statement of every person that the prosecution proposes to examine as a witness, and the statement should as far as possible be in the witness's own words".

7.5.3.6 The Law Commission in its 37th Report (1967) stated:

"the signature of the witness in these circumstances, add very little to the strength of the statement recorded by the police officer. It is true that the statement could be used to contradict the evidence of the witness in court, to the extent permitted by Section 162. But, then, it can reasonably be envisaged that in every case where a witness is confronted with the statement before the police officer by showing him the signature to it he would invariably take the plea that his signature was given under duress or without reading what was recorded. It is not a statement made on oath. The strength given by the signature of the witness below such a statement would be very little.

It has been said, that a literate person can read the signed statement himself, and see whether it is correct, whereas an illiterate person cannot read his statement and could be duped by the police officer. But there is no assurance that the literate persons will not be threatened by him. If a witness challenges a police officer that the statement which has been recorded is not correct according to his version, he cannot urge that an amendment should be made, by filing an affidavit.

Upon a reconsideration of the question, thus, we are unable to accept this recommendation of the 14th Report. Our reasons in this respect may be briefly re-stated-

a. the calibre of persons who are in the Police has not improved, and mal-practices in police investigation still continue to exist;
b. the requirement that witnesses making statements before the police should sign the statements, will not serve any useful purpose;
c. such requirement may even deter the witnesses from making such statement."

7.5.3.7 The Law Commission in the 41st Report (1969), however, expressed different views. They observed:

"The permissive and discretionary provisions now contained in Section 161 {"may examine orally" in Section 161(1) and "may reduce in writing" in Section 161(2)} should not be fettered down in any way.

The word truly should be inserted after the words 'bound to answer'.

That a witness who can read his statement should be required to sign it.

Police statements are, at present, available for contradicting a witness, and to make them available for corroborating the same witness seems merely to complete the picture. Actually, however, there is a material difference between contradiction and corroboration; and what is good enough for contradicting a witness is not always good enough for corroborating him. It is obvious that if a witness says one thing at one time and another at another time, it is a prima facie good ground for distrusting him; but if a witness says the same thing every time he is questioned, the reason for trusting him is not so obvious: many liars are consistent. The policy of law in permitting a witness to be contradicted by a police statement and not permitting him to be corroborated by the same statement is basically sound and sensible. On the other hand, there seems to be considerable risk (in the existing circumstances) in extending the scope of the proviso along the suggested lines.

We are, therefore, not attracted by either proposal; and, apart from the change we have suggested above in regard to the first part of section 162(1), we are content, like the previous Law Commission to leave the substance of the second part and proviso unchanged."

7.5.3.8 The National Police Commission also examined this issue and was of the view that instead of recording the statement of witnesses, the investigating officer should make a statement of facts. It was also suggested that a great measure of credibility could be imparted to the statement of facts if it is provided that a copy of the statement, if desired by the witness, should be handed over to him/her under acknowledgement.

7.5.3.9 The Law Commission in its 154th Report (1996), revisited this issue once again:

"After giving our earnest consideration and in view of the fact that there is unanimity in respect of the need for making substantial changes in the law, we proposed that there should be changes on the following lines:

"As recommended by the National Police Commission in its 4th Report, the Investigating Officer can make a record of the facts as ascertained by him on examination of witnesses which statements could be in the third person in the language of the Investigating Officer himself. This ensures that the material witnesses have been examined at the earliest moment. Such a statement recorded in third person cannot be treated as a previous statement and consequently cannot be used for contradiction or corroboration. To that extent, a change in section 162 CrPC is necessary. The signature of the witness on the statement thus recorded need not be obtained. But, if the witness so examined desires a

copy of such statement so recorded shall be handed over to him under acknowledgement. To reflect the shift in emphasis, a corresponding amendment to Section 172 should also be made to the effect that the Investigating Officer maintaining the case diary should mention about the statement of the circumstance thus ascertained, and also attach to the diary for each day, copies of the statement of facts thus recorded under Section 161 CrPC Neither the accused nor his agent shall be entitled to call for such diaries which can be put to a limited use as provided under Section 172 CrPC Under the existing provisions of the Code, the preparation of the earliest recorded of the statement of witness is left in the hands of Investigating Officer and as the mode of recording as provided in Section 162 does not ensure the accuracy of the record (It is well known that many good cases are spoiled by insidious incorrect entries at the instance of the accused and it is also well known that many innocent persons are sent up along with the guilty at the instance of the informant's party) it is necessary amend Section 164 CrPC so as to make it mandatory for the Investigating Officer to get statements of all material witnesses questioned by him during the course of investigation recorded on oath by the Magistrate. The statements thus recorded will be of much evidentiary value and can be used as previous statements. Such recording will prevent the witnesses turning hostile at their free will. Such a change will also help the police to complete the investigation and submit a final report on the basis of such statements made on oath and on other facts and circumstances, such as recovery, etc.). On the above mentioned lines, the relevant Sections can be amended as follows:

7.5.3.10 The Law Commission concluded by stating:

> *"As recommended, if a separate investigating agency manned by officers of high caliber and integrity is established, the statements of facts by them will be more authentic. Keeping in view that the witness may prevaricate and the handicaps the defence may face, it is desirable that the statements should be recorded under Section 164 of the Code".*

7.5.3.11 The Commission discussed this issue with a group of human rights activists in a workshop co-organised with the Commonwealth Human Rights Initiative (CHRI). The human rights activists were against the grant of any more powers to the police and were not in favour of the recommendations made in the Report of the Committee on Reforms of Criminal Justice System.

7.5.3.12 The Commission has examined this issue in detail. With the implementation of large scale reforms proposed in this Report, it is expected that police investigation would become much more professional and unbiased and will be supervised by a body of legal and other experts. The literacy levels in India have improved tremendously and will improve

further. There should therefore be no difficulty in making witnesses sign their statements. This would bring more seriousness in the witnesses, while deposing before the police and would reduce the possibility of witnesses turning hostile at a later stage. The Commission is of the considered view that as a part of the reforms regarding investigation, Sections 161 and 162 of CrPC should be amended to provide for signing of the statement given by witnesses, which would be used for both corroboration and contradiction. In the case of important witnesses, in addition, there should be audio or video recording of their statements.

7.5.3.13 Recommendations:

a. Sections 161 and 162 of CrPC should be amended to include the following:
   - **i. The statement of witnesses should be either in narrative or in question and answer form and should be signed by the witness.**
   - **ii. A copy of the statement should be handed over to the witness immediately under acknowledgement.**
   - **iii. The statement could be used for both corroboration and contradiction in a Court of Law.**

b. The statements of all important witnesses should be either audio or video recorded.

7.5.4 Confessions before Police

7.5.4.1 Another provision of law which distrusts the police is Section 25 of the Indian Evidence Act. This provides that no confession made to a police officer shall be used against a person accused of any offence except that portion of confession which leads to discovery of material evidence. This bar applies to recording of confession by a police officer irrespective of his rank. It has been argued by police officers that in certain heinous crimes and organised crimes, getting independent eye witnesses is extremely difficult and that this embargo has led to many unethical practices.

7.5.4.2 The Law Commission in its 48th Report (1972) stated as follows:

> *"(1) In the case of a confession recoded by a Superintendent of Police or higher officer, the confession should be admissible in the sense that the bar under sections 25 -26, Evidence Act, should not apply if the following conditions are satisfied:-*
>
> *(a) the said police officer must be concerned in investigation of the offence;*
>
> *(b) he must inform the accused of his right to consult a legal practitioner of his*

choice, and he must further give the accused an opportunity to consult such legal practitioner before the confession is recorded;

(c) at the time of the making and recording of the confession, the counsel for the accused, if he has a counsel must be allowed to remain present. If the accused has no counsel or if his counsel does not wish to remain present, this requirement will not apply;

(d) the police officer must follow all the safeguards as are now provided for by section 164, CrPC in relation to confessions recorded by Magistrates. These must be followed whether or not a counsel is present;

(e) the police officer must record that he has followed the safeguards at (b), (c) and (d) above.

(2) In the case of a confession recorded by an officer lower than a Superintendent of Police, the confession should be admissible in the above sense if the following conditions are satisfied:-

(a) the police officer must be concerned in investigation of the offence;

(b) he must inform the accused of his right to consult a legal practitioner of his choice, and he must further give the accused an opportunity to consult such legal practitioner before the confession is recorded;

(c) at the time of the making and recording of the confession, the counsel for the accused must be present. If the accused has no counsel or if his counsel does not wish to remain present, the confession should not recorded;

(d) the police officer must follow all the safeguards as are now provided for by section 164, CrPC in relation to confessions recorded by Magistrates.

(e) the police officer must record that he has followed the safeguards at (b), (c) and (d) above."

7.5.4.3 The Law Commission in its 69th Report (1977) revisited this issue and re-affirmed the suggestion made in the 48th Report.

7.5.4.4 Once again the Law Commission examined this subject in great detail in its 185th Report (2003).

> *"The Court quoted an article saying that "the technology of torture all over the world is growing ever more sophisticated – new devices can destroy prisoner's will in a matter of hours – but leave no visible marks or signs of brutality." The Court observed, "Many police officers, Indian and foreign, may be perfect gentlemen, many police stations, here and elsewhere, may be wholesome. Even so, the law is made for the generality and*

Gresham's law does not spare the police force." The Court quoted from Miranda vs. Arizona 384 US 436 and form the Wickersham Commission Report and cases of interrogation by police to extract confessions. The police, the Court said must give rest to its fists and restlessness to its wits. The Court referred to Art.20(3) and to the right against 'self incrimination' and the right to silence. The Court referred to Art.22(1) and the right to consult a lawyer which is available even if a person is not under arrest. The Court finally emphasized (see para 68 of SCC):

> *"Special training, special legal courses, technological and other detective updating, are important. An aware policeman is the best social asset towards crimelessness… More importantly, the policeman must be released from addiction to coercion and be sensitized to constitutional values."*

The experience of the Law Commission in seminars held in relation to the 'Law of Arrest' during the year 2000 showed that several senior police officers suggested that the suspicion and stigma against arrest by police or in regard to police investigation while in custody is no longer warranted. The plea was that arrest should be allowed to be made on mere suspicion and that confessions to police must be made admissible. These suggestions, in our view, do not take into consideration the ground realities today as disclosed by the press and Court judgments as to what is happening inside a police station and these suggestions overlook the importance of clause (3) of Art.20 and Art.21. Further, the annual reports of the National Human Rights Commission are abundant evidence of the violence police are inflicting on prisoners and the said Commission has recommended to government in several cases to pay compensation to the victims of police violence. These are also widely reported in the press.

Therefore, we are compelled to say that confessions made easy, cannot replace the need for scientific and professional investigation. In fact, the day all confessions to police, in all types of offences (other than those relating to a few specified categories like confessions by terrorists to senior police officers) is permitted and becomes the law, that will be the day of the demise liberty. The police will no longer depend on scientific techniques of investigation.

It is true, the provisions of certain special Acts dealing with terrorists or organised crime (such as the TADA or the POTA or the Maharashtra Organised Crime Act and other similar State Acts) contain provisions for recording confessions by and before senior officers of the level of Superintendents of Police and for treating them as admissible, subject to certain conditions. There is good reason for doing so. In the case of such grave offences, like terrorism, it is normal experience that no witness will be forthcoming to give evidence

against hard-core criminals. Further, these offender belong to a class by themselves requiring special treatment and are different from the usual type of accused.

The exception made in cases of 'terrorists' should not, in our view, be made applicable to all accused or all types of offences. That would erode seriously into Article 21 and sections 24 and 25 of the Evidence Act and violate Art.14. Exception cannot become the rule."

7.5.4.5 The Committee on Reforms of Criminal Justice System, 2003 also went into this issue and recommended:

"Hence, we recommend that section 25 of the Evidence Act may be suitably substituted by a provision rendering admissible, the confessions made before a Police Officer of the rank of Superintendent of Police and above. Provision should also be made to enable audio/video recording."

7.5.4.6 The Commission discussed this issue with some human rights activists. They were opposed to any such power being given to the police and were of the view that the existing provision of taking an accused before a magistrate for recording confessional statements should continue.

7.5.4.7 The Commission studied the position in different countries and its findings are summarized as follows:

- China (Hong Kong, SAR): Confessions and statements are not admissible where it is shown that they were not voluntarily given. However, they can be admissible in circumstances where there is only a procedural irregularity in their taking down.[74]
- United Kingdom: Police and Criminal Evidence Act 1984, Section 76(2) provides:
  "If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained—
  (a) by oppression of the person who made it; or
  (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,
  the court shall not allow the confession to be given in evidence against him except in so far as

[74] World Factbook of Criminal Justice Systems; http://www.ojp.usdoj.gov/bjs/pub/ascii/wfbcjhon.txt

the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid".

- Germany: Police interrogations of a suspect are governed by procedural law (StPO s 136, 136a). At the initial interrogation, the accused must be told of the charges against him and of his right to consult with an attorney. Statements made during the interrogation will be admitted in court provided they have been obtained without the following disqualifiers: the use of force, trickery or deceit, threats, drugs, hypnosis or exhaustion.[75]
- South Korea: For confessions made before the police to be used as evidence of guilt, there must be a showing of (1) the voluntary nature of the confession, (2) due process being followed in obtaining the confession, (3) the establishment of the truth of the documents, (4) the reliability of the confession, and (5) existence of supporting evidence.[76]
- USA: The landmark judgement Miranda v. Arizona {384 U.S. 436 (1966)}, clarified the position:
  "To summarize, we hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardised. Procedural safeguards must be employed to protect the privilege, and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him".[77]

- South Africa: Section 217 of the Criminal Procedure Act stipulates:
  "(1) Evidence of any confession made by any person in relation to the commission of any offence shall, if such confession is proved to have been freely and voluntarily made by such person in his sound and sober senses and without having been unduly influenced thereto, be admissible in evidence against such person at criminal proceedings relating to such offence: Provided –

[75] World Factbook of Criminal Justice System; http://www.ojp.usdoj.gov/bjs/pub/ascii/wfbcjger.txt
[76] World Factbook of Criminal Justice System; http://www.ojp.usdoj.gov/bjs/pub/ascii/wfbcjsko.txt
[77] http://www.tourolaw.edu/patch/Miranda/#F71; retrieved on 5-4-07

(a) that a confession made to a peace officer, other than a magistrate or justice, or, in the case of a peace officer referred to in section 334, a confession made to such peace officer which relates to an offence with reference to which such peace officer is authorized to exercise any power conferred upon him under that section, shall not be admissible in evidence unless confirmed and reduced to writing in the presence of a magistrate or justice; and ..."

7.5.4.8 There are several laws in India where the investigating officer has been given the power to record confessions of the accused:

1. Sections 8 and 9 of the Railway Property Unlawful Possession Act, 1996; {Every such inquiry as aforesaid, shall be deemed to be a "judicial proceeding" within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860)}.
2. Section 108 of Customs Act, 1962; "Apex Court has held that:- A Custom Officer is under the Act of 1962 not a Police Officer within meaning of Section25 of the Evidence Act and statements made before him by a person who is arrested or against whom an inquiry is made are not covered by Section 25 of the Indian Evidence Act"[78]
3. Section 18 of TADA of 1987 (the Constitutionality of the same was upheld by the Supreme Court in Kartar Singh v State of Punjab: (1994) 3 SCC. 569. The Act has since lapsed.)
4. Section 18 of the Maharashtra Control of Organised Crime Act, 1999:

"18. Certain confessions made to police officer to be taken into consideration. --

(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not below the rank of the Superintendent of Police and recorded by such police officer either in writing or on any mechanical devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator:

Provided that, the co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

(2) The confession shall be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him.

[78] Romesh Chanra Mehta vs State of West Bengal, AIR 1970 SC 940

(3) The police officer shall, before recording any confession under sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he is satisfied that it is being made voluntarily. The concerned police officer shall, after recording such voluntary confession, certify in writing below the confession about his personal satisfaction of the voluntary character of such confession, putting the date and time of the same.

(4) Every confession recorded under sub-section (1) shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Special Court which may take cognizance of the offence.

(5) The person from whom a confession has been recorded under sub-section (1) shall also be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under sub-section (4) along with the original statement of confession, written or recorded on mechanical device without unreasonable delay.

(6) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate shall scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon.

5. Section 32 of Prevention of Terrorism Act, 2002[79]

"Certain confessions made to police officers to be taken into consideration.-(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical or electronic device like cassettes, tapes or sound tracks from out of which sound or images can be reproduced, shall be admissible in the trial of such person for an offence under this Act or the rules made thereunder."

[79] This has been repealed by the Prevention of Terrorism (Repeal) Act, 2004.

7.5.4.9 The Commission has suggested wide-ranging reforms in the structure of the police. It has been proposed that the investigation agency should be separated from the State law and order agency. It has also been recommended that the investigation agency should be supervised by an autonomous Board of Investigation. This would ensure that the Investigation Agency is insulated against any extraneous influences and it would function in a professional manner. It has also been recommended that the staff of the investigation agency should be specially trained for their job with emphasis on collecting evidence through use of forensic tools and eschewing coercive methods. Moreover the Commission has recommended the setting up of a District Complaints Authority and also a State Police Complaints Authority which would effectively deal with cases of any misconduct by police. With these elaborate safeguards there should be no reason to continue to distrust the police with regard to admissibility of statements made before them. The Commission is of the view that confessions before the police should be made admissible. The Commission would however recommend certain additional safeguards similar to those provided under the POTA.

7.5.4.10 Recommendations:

a. **Confessions made before the police should be admissible. All such statements should be video-recorded and the tapes produced before the court. Necessary amendments should be made in the Indian Evidence Act.**
b. **The witness/accused should be warned on video tape that any statement he makes is liable to be used against him in a court of law, and he is entitled to the presence of his lawyer or a family member while making such a statement. If the person opts for this, the presence of the lawyer/family member should be secured before proceeding with recording the statement.**
c. **The accused should be produced before a magistrate immediately thereafter, who shall confirm by examining the accused whether the confession was obtained voluntarily or under duress.**
d. **The above-mentioned recommendations should be implemented only if the reforms mentioned in Chapter 5 are accepted.**

7.6 Prosecution

7.6.1 The Commission has already recommended the introduction of a system of District Attorneys. It is expected that this would improve coordination between the investigation and prosecution, enhance the quality of prosecutors and increase accountability in the prosecution machinery.

7.7 Trial

7.7.1 The Judge's Obligation to Ascertain the Truth

7.7.1.1 We have continued with the adversarial criminal justice system inherited from the British as opposed to the inquisitorial system prevalent in countries such as France. In the adversarial system the judge allows the prosecution and the defence to present the rival evidences and contentions and truth is arrived at by the weight of such presentations, whereas in the inquisitorial system the judge participates in ascertaining the truth. In the adversarial system, the balance is tilted against the prosecution and the victim. It follows that the chances of a criminal getting acquitted under the adversarial system are higher than in an inquisitorial system. However, strictly speaking, in the adversarial system the judge may still play a more active role. In the case of Mohanlal vs Union of India the Supreme Court observed as follows: *for consideration is whether the presiding officer of a Court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the parties to take an active role in the proceedings in finding the truth and administering justice? It is a well accepted and settled principle that a Court must discharge its statutory functions- whether discretionary or obligatory – according to law in dispensing justice because it is the duty of a Court not only to do justice but also to ensure that justice is being done.*

7.7.1.2 The Supreme Court, in Smt. Shakila Abdul Gafar Khan vs. Vasant Ragunath Dhoble and Another[80], observed:

> *"As pithily stated in Jennison v. Backer (1972 (1) All E.R. 1006), " The law should not be seen to sit limbly, while those who defy it go free and, those who seek its protection lose hope". Courts have to ensure that accused persons are punished and if deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the deficiencies, deal with the same appropriately within the framework of law. Justice has no favourite, except truth. It is as much the duty of the prosecutor as of the Court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice".*

[80] Criminal Appeal No. 857 of 1996; (2003)7SCC749

7.7.1.5 Eminent jurist Fali Nariman has observed:

> *"The main problem in our criminal justice system is that there is little room for proactive trial judge to make all manner of procedural orders for ascertaining the truth. The tools are there, but they are seldom used. Section 311 of the Code of Criminal Procedure of 1973 provides that any court may, at any stage of inquiry, trial or other proceedings, summon any person as a witness, examine any person present though not summoned as witness, recall and re-examine any person already examined, and goes on also to provide that the Court shall summon and examine, or recall or re-examine any such person 'if his evidence appears to be essential for a just decision of the case'. And the Supreme Court had observed that the requirement of 'a just decision of the case' did not limit the action of the Court to something in the interest of the accused only – 'the action may equally benefit the prosecution'. But despite this decision, this provision remains a dead letter. In practice, rarely does the trial magistrate or the sessions judge ever summon on his own a material witness in a criminal case. He or she leaves it to the prosecution, and if the prosecution fails to call essential witnesses, the accused is acquitted."* [81]

7.7.1.6 Section 311 of the Code of Criminal Procedure empowers the courts to get additional evidence. It reads as follows:

> *"Any court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."*

7.7.1.7 The Supreme Court in Kulwant Rai Sharma v Union of India (1995 Supp(4) SCC 451), sought a report from a District Judge on the mysterious death of a person in the custody of the Directorate of Enforcement. The Kerala High Court also took a similar stand in the case of the custodial death of one Varghese and that of Rajan.

7.7.1.8 The Committee on Reforms of Criminal Justice System recommended that it is necessary to amend Section 311 CrPC imposing a duty on every court to suo motu cause production of evidence for the purpose of discovering the truth and requiring every court to take into account the evidence so collected, in addition to the evidence produced by the prosecution.

[81] Jurist Fali Nariman in his book 'India's Legal System : Can it be Saved?', 2006.

7.7.1.9 After considering all these factors, the Commission is of the view that there is a strong and compelling case for the judge to question the accused and the witnesses to ascertain the truth and arrive at a just conclusion based on such questioning along with the other evidence before him. Such a provision is particularly critical in the trial of terrorism cases and organised crimes which affect society at large. Amendments to the CrPC, as suggested by the Committee on Reforms of Criminal Justice System, would go a long way to improve the quality of evidence and therefore of decisions.

7.7.1.10 Recommendation:

a. It is necessary to amend Section 311 CrPC and impose a duty on every court to suo motu cause production of evidence for the purpose of discovering the truth, which should be the ultimate test of the criminal justice system. Suitable amendments to the Indian Evidence Act, 1872 may also be made to facilitate this.

7.7.2 Right to Silence

7.7.2.1 A central issue facing all criminal justice systems is to strike a balance between the extent to which an accused could be used as a source of information and his/her right against self incrimination. Right to silence is a natural corollary of the maxim that no person can be forced to give evidence against one's own self. The right to silence is a legal protection enjoyed by an accused person during investigation or trial. This right mandates that adverse inferences cannot be drawn by the judge from a refusal to answer questions before or during a trial or hearing. The right generally includes the following:

a. *A general immunity, possessed by all persons and bodies, from being compelled on pain of punishment to answer questions posed by other persons or bodies.*
b. *A general immunity, possessed by all persons and bodies, from being compelled on pain of punishment to answer questions the answers to which may incriminate them.*
c. *A specific immunity, possessed by all persons under suspicion of criminal responsibility whilst being interviewed by police officers or others in similar positions of authority, from being compelled on pain of punishment to answer questions of any kind.*
d. *A specific immunity, possessed by accused persons undergoing trial, from being compelled to give evidence, and from being compelled to answer questions put to them in the dock.*

e. *A specific immunity, possessed by persons who have been charged with a criminal offence, from having questions material to the offence addressed to them by police officers or persons in a similar position of authority.*
f. *A specific immunity (at least in certain circumstances, which it is unnecessary to explore), possessed by accused persons undergoing trial, from having adverse comment made on any failure (a) to answer questions before the trial, or (b) to give evidence at the trial.*[82]

7.7.2.2 The Law Commission of India in its 180th Report, 2002 has elaborated about the Right to Silence:

> *The right to silence has various facets. One is that the burden is on the State or rather the prosecution to prove that the accused is guilty. Another is that an accused is presumed to be innocent till he is proved to be guilty. A third is the right of the accused against self incrimination, namely, the right to be silent and that he cannot be compelled to incriminate himself. There are also exceptions to the rule. An accused can be compelled to submit to investigation by allowing his photographs taken, voice recorded, his blood sample tested, his hair or other bodily material used for DNA testing etc.*[83]

7.7.2.3 Articles 20 and 21 of the Constitution provide the basis of the right to silence in India:

> *" 20 (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law or in force at the time of the commission of the offence.*
>
> *20 (2) No person shall be prosecuted and punished for the same offence more than once.*
>
> *20 (3) No person accused of any offence shall be compelled to be a witness against himself.*
>
> *21 No person shall be deprived of his life or personal liberty except according to procedure established by law".*

7.7.2.4 The Law Commission has also pointed out that the earlier history of these provisions under the Code of Criminal Procedure, 1898, is quite revealing. Section 342(2) of the said Code contained a provision which reads as follows:

[82] R v Director of Serious Fraud Office, Ex Parte Smith [1993] AC 1, [1992] 3 All ER 456, [1992] 3 WLR 66, [1992] BCLC 879, 95 Cr App Rep 191
[83] Law Commission of India, 180th Report, 2002

"Sec. 342(2): The accused shall not render himself liable to punishment by refusing to answer questions or by giving false answers to them; but the court and the jury (if any) may draw such inference from such refusal or answers as it thinks fit."

7.7.2.5 This provision was not, however, repeated in the Code of Criminal Procedure of 1973 and was dropped obviously because of the guarantee under clause (3) of Article 20 of the Constitution of India which came in to force in 1950.

7.7.2.6 The legal position regarding the right to silence varies in different countries. The American and Canadian Courts have not permitted any inroads into the right to silence while British, European and Australian Courts permit the jury and the Courts to take the silence of the accused into consideration before arriving at a finding of guilt beyond reasonable doubt, of course where a prima facie case is made out and the accused is informed of his right to an attorney.[84]

7.7.2.7 The Law Commission concluded as follows:

"The law in India appears to be same as in USA and Canada. In view of the provisions of clause (3) of Art. 20 and the requirement of a fair procedure under Art. 21, and the provisions of ICCPR to which India is a party and taking into account the problems faced by the Courts in UK, we are firmly of the view that it will not only be impractical to introduce the changes which have been made in UK but any such changes will be contrary to the constitutional protections referred to above. In fact, the changes brought about in the Criminal Procedure Code, 1973 leaving out the certain provisions which were there in 1898 Code, appear to have been the result of the provisions of clause (3) of Art. 20 and Art. 21 of our Constitution. We have reviewed the law in other countries as well as in India for the purpose of examining whether any amendments are necessary in the Code of Criminal Procedure, 1973. On a review, we find that no changes in the law relating to silence of the accused are necessary and if made, they will be ultra vires of Art. 20(3) and Art. 21 of the Constitution of India. We recommend accordingly."

Box 7.5: Right to Silence

It cannot be disputed that accused is good source of information about the commission of the offence. But unfortunately this source is not fully tapped may be for the fear of infringing the accused's right to silence granted by Article 20(3). To ascertain if there is any scope for tapping this source and to find out ways and means of enhancing contribution of the accused for better quality of criminal justice it is necessary to examine the true scope and limits of the Right to silence.

Source : Committee on Reforms of Criminal Justice System

[84] ibid

7.7.2.8 The Committee on Reforms of Criminal Justice System has argued against the right to silence:-

"Right granted by Article 20(3) is in reality an immunity to the accused from compulsion to speak against himself. Even when the accused is not compelled to speak, he has the discretion to speak or not to speak. If he chooses to speak, the court can draw appropriate inferences from his statement. Article 20(3) does not in terms speak of any immunity from drawal of appropriate inference when the accused refuses to answer. It is difficult to infer how immunity from drawal of appropriate inference including adverse inference flows from or is a part of the immunity against testimonial compulsions. If the court can draw an adverse inference against the accused from his silence there would be less incentive for the police to resort to compulsion or trickery to obtain a confession. If drawing of such adverse inference is not permissible it would tend to encourage such behaviour. Immunity from compulsion to be a witness against himself is a concept of ancient origin long before the time of the Star Chamber. The concept of immunity from adverse inference however is of the 20th century. This would suggest that immunity from adverse inference on silence of the accused would not flow from immunity against compulsion. It may not be right to say that adverse inference should always be drawn from the silence of the accused. Adverse inference should be drawn only where an answer is reasonably expected from the accused and not mechanically in every case. That adverse inference would be drawn by a trained judicial mind is sufficient to guarantee that it would be exercised reasonably and on irrelevant considerations.

In the considered view of the Committee, drawing of adverse inference against the accused on his silence or refusing to answer will not offend the fundamental right granted by Article 20(3) of the Constitution as it does not involve any testimonial compulsion. Therefore the Committee is in favour of amending the Code to provide for drawing appropriate inferences from the silence of the accused."

7.7.2.9 The Committee, therefore, recommended:

"Section 313 of the Code may be substituted by Section 313-A, 313-B and 313-C on the following lines :-
i) 313-A In every trial, the Court shall, immediately after the witnesses for the prosecution have been examined, question the accused generally, to explain personally any circumstances appearing in the evidence against him.
ii)313-B(1): Without previously warning the accused, the Court may at any stage of trial and shall, after the examination under Section 313-A and before he is called on his

defence put such questions to him as the court considers necessary with the object of discovering the truth in the case. If the accused remains silent or refuses to answer any question put to him by the court which he is not compelled by law to answer, the court may draw such appropriate inference including adverse inference as it considers proper in the circumstances.
313-C(1): No oath shall be administered when the accused is examined under Section 313-A or Section 313-B and the accused shall not be liable to punishment for refusing to answer any question or by giving false answer to them. The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, or any other offence which such answers may tend to show he has committed."

7.7.2.10 The British jurist, Jeremy Bentham, almost 170 years ago said :

"If all criminals of every class had assembled, and framed a system after their own wishes, is not this rule the very first which they would have established for their security? Innocence never takes advantage of it. Innocence claims the right of speaking, as guilt invokes the privilege of silence." [85]

7.7.2.11 It has been argued that the accused is an important source of information and there are many facts which are solely within the knowledge of the accused. Under such circumstances, the right to silence comes in the way of getting these vital information. It is also urged that 'professional' criminals seek shelter under this right and are exploiting this weakness in the judicial system.

7.7.2.12 Singapore curtailed the right to silence by amending its Criminal Procedure Code in the mid seventies. In the UK, the right to silence was curtailed by the Criminal Justice and Public Order Act 1994. The Act permits the court hearing the charge against the accused to draw such inferences as may appear proper from the fact of silence of the accused under certain circumstances:

7.7.2.13 The Commission on examining all these views and on balance is of the view that though there should be a right to silence in all cases but in cases related to organised crimes and terrorism there is need to empower courts to draw inference from the silence of the accused. The Commission therefore recommends that Courts should have power to draw inference from the silence of the accused during trial in case of specified offences like terrorism and organised crime.

[85] Treatise on Evidence at 24; extracted from Balance in the Criminal Law; Review Group on the Right to Silence; Interim Report; January 31st, 2007;

7.7.2.14 Recommendation:

a. Regarding grave offences like terrorism and organised crimes, in the case of refusal by the accused to answer any question put to him, the court may draw an inference from such behaviour. This may be specifically provided in the law.

7.7.3 Perjury

7.7.3.1 In the aftermath of the Zahira Sheikh and Jessica Lall cases, the critical need to tackle perjury as a crime which can subvert justice, has come to the forefront. Perjury is generally considered a major factor in bringing down conviction rates (for all IPC crimes) in India from 64.8% in 1961 to 42.4 % in 2005. During the same period, for murder cases the comparable rates were 49% and 34%.

7.7.3.2 Contrary to popular belief, presumably arising from the infrequent application of these laws, perjury in India is a crime and its definition is laid down under Section 191 of the Indian Penal Code. The definition states that *"whoever being legally bound by the oath or by any express provision of law to state the truth or being bound by law to make a declaration on any subject makes any statements which is false and which he either knows or believes to be false or does not believe to be true, is said to give a false evidence"*. The punishment for giving such false evidence in judicial proceedings has been laid down under Section 193 of the IPC which states that such an offence should be punishable with imprisonment for a term which may extend up to seven years.

7.7.3.3 Keeping the growing instances of perjury in mind, Section 195A was inserted in Chapter XI of the Indian Penal Code by Act 2 of 2006, thereby providing for a punishment of imprisonment for a term up to seven years, or with fine, or with both to a person who threatens any person to give false evidence. It also provides that if an innocent person is convicted and sentenced in consequence of such false evidence with death or imprisonment for more than seven years, the person who threatens shall be punished with the same punishment and to the same extent.

7.7.3.4 Chapter XXVI of CrPC deals with provisions pertaining to offences affecting the administration of justice. Section 344 therein provides for summary procedure for trial for giving false evidence. The punishment to a person giving false evidence under this Section, is imprisonment up to three months or fine extending to five hundred rupees, or with both. Evidently, these provisions are inadequate in checking witnesses turning hostile on their own volition or through inducement or threat. To act as a deterrent, the punishment under Section 344 CrPC should be enhanced to a minimum of one year imprisonment. Further,

it should be ensured that the existing perjury laws are effectively applied by the trial courts without waiting for the main trial to come to a conclusion.

7.7.3.5 Proving that a hostile witness has given false evidence is a time consuming and cumbersome task and there are broader issues such as the need to protect the anonymity of witnesses and to give physical protection to them, so that the phenomenon of witnesses turning hostile is controlled. These broader issues, including that of signing of statements by witnesses and the evidentiary value of their statements before the police have already been dealt with separately in Chapter 6.

7.7.3.6 Recommendations:

a. **The penalties provided under Section 344 CrPC for those found guilty of perjury after a summary trial should be enhanced to a minimum of one year of imprisonment.**

b. **It should be made incumbent upon the Courts to ensure that existing perjury laws providing for summary trial procedure are unfailingly and effectively applied by the trial courts, without awaiting the end of the main trial.**

7.7.4 Witness Protection

7.7.4.1 Witness protection and ensuring the anonymity of witnesses is necessitated by two sets of factors, one due to cases of intimidation and threats to the personal safety of the witness and, second, due to the particular vulnerability of the witness on account of age, sex or due to the trauma that he or she may have suffered.

7.7.4.2 In India, courts have recognised the need for and granted witnesses anonymity on a case by-case basis, to a limited extent. They have also at various times reiterated the need for a comprehensive legislation and an institutionalized witness protection program in the country.

7.7.4.3 Many countries, notably the United States, Australia and South Africa have comprehensive witness protection programs. The US witness protection program was established by the Organised Crime Control Act,1970 and outlines the modalities by which the US Attorney General may provide for relocation and protection of a witness in an official proceeding related to organised crime or other serious offences. The program offers witnesses a new name and location as well as physical protection by the US Marshals' service or the FBI.

7.7.4.4 The Supreme Court of India in its observations in the case of NHRC vs The State of Gujarat (2003) regretted that "no law has yet been enacted for giving protection to witnesses". Later, the Court while transferring the Best Bakery case (2004) from the Gujarat High Court to Mumbai also ordered protection to the witnesses in the matter. The Apex Court again observed in Zahira Habibullah Sheikh and another vs State of Gujarat and Ors. (2006) 3 SCC 374 that:

> *"Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth is presented before the Court and justice triumphs and that the trial is not reduced to a mockery."*

The need for legislation on the matter was again felt by the Court which stated:

> *"Legislative measures to emphasise prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the Courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society."*

The Seventeenth Law Commission took up the two issues of witness anonymity and witness protection and released a detailed Consultation paper on this issue in 2004 which emphasized the need to "balance the right of an accused to an open and fair trial with the need for fair administration of justice in which the victims and witnesses can depose without fear or danger of their lives or property or those of their close relatives".

7.7.4.5 The problem with implementing an American style witness protection program in India is that an individual Indian's identity is so inextricably linked with his social group, joint family and place of origin that it may be practically impossible to extricate him from the same and relocate him with a fresh identity somewhere else in the country. It is also extremely costly. Consequently, witness protection programs of that type and scale may not be feasible except in a small number of very rare cases. Nevertheless, there is need for a statutorily backed witness protection programme.

7.7.4.6 Recommendation:

a. **A statutory programmme for guaranteeing anonymity of witnesses and for witness protection in specified types of cases, based on the best international models should be adopted early.**

7.7.5 Victim Protection

7.7.5.1 There is a general impression that the criminal justice system favours the accused and the interests of victims are not protected at all. The victim of a crime is merely a witness in the entire proceedings since prosecution is a State monopoly with the victim having little say in the matter. While there are a large number of safeguards for the accused, there is virtually no special dispensation for victims. A victim who has been wronged, apart from the mental and physical agony because of the crime, has to undergo hostile questioning by defence lawyers, intimidation by the accused and is also treated just like any other witness by the courts. With the low rate of conviction in criminal cases, the victim is often disillusioned as he/she often finds the criminals being let off without punishment. This also demoralizes the victim and erodes his/her confidence in the criminal justice system. The Supreme Court has also expressed concern over the plight of victims.

"There has been lately, lot of criticism of the treatment of the victims of sexual assault in the court during their cross-examination. The provisions of Evidence Act regarding relevancy of facts notwithstanding, some defence counsel adopt the strategy of continual questioning of the prosecutrix as to the details of the rape. The victim is required to repeat again and again the details of the rape incident not so much as to bring out the facts on record or to test her credibility but to test her story for inconsistencies with a view to twist the interpretation of events given by her so as to make them appear inconsistent with her allegations. The court, therefore, should not sit as a silent spectator while the victim of crime is being cross-examined by the defence. It must effectively control the recording of evidence in the court. While every latitude should be given to the accused to test the veracity of the prosecutrix and the creditability of her version through cross-examination, the court must alsoensure that cross-examination is notmade a means of harassment or causing humiliation to the victim of crime. A victim of rape, it must be remembered, has already undergone a traumatic experience and if she is made to repeat again and again, in unfamiliar surroundings what she had been subjected to, she may be too ashamed and even nervous or confused to speak and her silence or a confused stray sentence may be wrongly interpreted as discrepancies and contradictions' in her evidence." [86]

Box 7.6: Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

Adopted by the United Nations General Assembly resolution 40/34 of 29 November 1985

Access to justice and fair treatment

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.
5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.
6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:
   (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
   (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
   (c) Providing proper assistance to victims throughout the legal process;
   (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation.

7.7.5.2 Section 357 of the Code of Criminal Procedure, 1973 empowers the court to order the accused to pay compensation to any person for any loss or injury caused by the offence. However, this provision has been used sparingly and only in a nominal sense.

7.7.5.3 Several countries have passed victim's rights protection laws. For example, the Victims Rights Act 2002, in New Zealand has given several rights to the victims of crime. These include: treating victims with courtesy and compassion, respecting their dignity and privacy, keeping them informed about the proceedings, taking the victim's views on grant of bail to the accused, victim's participation for grant of parole etc.

7.7.5.4 The Law Commission in its 144th Report examined this issue and recommended that a new section, 357A may be inserted in the Code of Criminal Procedure. Under this proposed section it is provided that every state government would prepare a scheme for providing funds for the purpose of compensating the victim or his/her dependents who have suffered loss or injury as a result of the crime.

7.7.5.5 The Commission is of the view that there is need for a law for the protection of victims' rights. Such a law should recognize the vulnerable position of the victim, respect the sensitivities of the victim and treat him/her with dignity. The law should also provide that the prosecution shall consult the victim in case of grant of bail to the accused in heinous offences. Similarly, even for the release of prisoners on parole the views of the victim must be taken into account. The law should also explicitly provide for payment of compensation to the victims and for this purpose a special fund may be created.

[86] Source: State of Punjab vs Gurmit Singh and Others (1996) 2 SCC 384.

7.7.5.6 Recommendations:

a. A new law for protecting the rights of the victims of the crimes may be enacted. The law should include the following salient features:
   i. Victims should be treated with dignity by all concerned in the criminal justice system.
   ii. It shall be the duty of the police and the prosecution to keep the victim updated about the progress of the case.
   iii. If the victim wants to oppose the bail application of an accused he/she shall be given an opportunity to be heard. Similarly, for release of prisoners on parole, a mechanism should be developed to consider the views of the victims.
   iv. A victim compensation fund should be created by State Governments for providing compensation to the victims of crime.

7.7.6 Committal Proceedings:

7.7.6.1 The law governing committal proceedings has undergone major changes after Independence. Until 1955, the magistrate was required to take all the evidence – oral and documentary – that was produced in support of the prosecution, or on behalf of the accused, satisfy himself that there were sufficient grounds for committing the case to the Sessions Court, frame charge(s) against the accused, and thereafter commit the case to the Court of Session. If he was not so satisfied, he would discharge the accused. The main purpose of the committal proceedings was to ensure that an innocent person was not harassed by being made to face a sessions trial.[87]

7.7.6.2 There was a proposal to abolish committal proceedings in police cases in 1954. However, this was not accepted by Parliament and a modified form of committal proceedings was introduced (Section 207 A, CrPC). The Law Commission in its 14th Report (1958) examined the issue of committal proceedings. It did not favour abolition of committal proceedings for the following reasons: (i) there are bound to be some cases in which the magistrate could discharge the accused thereby saving the precious time of the sessions court. (ii) committal proceedings offer a chance to the accused person to satisfy the magistrate that there is no case against him/her. (iii) the evidence recorded in the committal proceedings is of great value as the earliest record on oath of their statements and delays in recording the evidence will encourage the tendency which already exists in witnesses to swerve from the truth.

7.7.6.3 This issue was once again examined by the Law Commission in its Forty-first Report, 1969. The Commission was of the unanimous opinion that committal proceedings

[87] Law Commission of India; Forty-First Report 1969

are largely a waste of time and effort and do not contribute appreciably to the efficiency of the trial before the Court of Session. It further observed that the primary object of protecting the innocent accused from the ordeal of a sessions trial has not been achieved in practice. The Law Commission also recommended that the prosecuting agency should be separated from and made independent of its administrative counterpart, that is the police department, and that it should not only be responsible for the conduct of prosecution in the court but it should also have the liberty of scrutinizing the evidence particularly in serious and important cases before the case is actually filed in court. The Law Commission recommended the abolition of committal proceedings. The law was again amended in 1978. Section 209 of the Code of Criminal Procedure, 1973 provides for committal proceedings. It reads as follows:

> *"209 Commitment of case to Court of Session when offence is triable exclusively by it – when in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall*
>
> *a. commit, after complying with the provisions of Section 207 or Section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;*
> *b. subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of the trial;*
> *c. send to that Court the record to the case and the documents and articles, if any, which are to be produced in evidence;*
> *d. notify the Public Prosecutor of the commitment of the case to the Court of Session".*

7.7.6.4 It may be noted that though the law formally provides for commitment of a case by a Magistrate, the Magistrate has to only comply with the provisions of Sections 207 and 208 of the CrPC and commit the case to the Court of Session. Under Section 207 and 208 it has been stipulated that the Magistrate should supply copies of certain documents to the accused. Thus, under the present dispensation the Magistrate is not supposed to record the evidence of the witnesses. It has been urged before the Commission that abolition of detailed committal proceedings (in which the evidence of the witnesses of the prosecution could be recorded) has increased the time lag between the commitment of an offence and the recording of evidence on oath by the court. It has been argued that when the system of detailed committal proceedings was in vogue the evidence of crucial witnesses were recorded by the Magistrate and then the case was forwarded to the Court of Session. Thus,

the recording of evidence took place at an early date; this bound the witnesses down and they were less vulnerable to extraneous influences and coercion to change their statements later.

7.7.6.5 The Commission has examined this issue. It has also studied the system prevailing in other countries. In most countries, the system of committal proceedings has been abolished. The Commission feels that one of the major reasons for declining conviction rates is because prosecution witnesses turn hostile. In such cases, the witnesses are either won over or coerced to resile from their earlier statements made before the police. However, if these statements are recorded on oath before a Magistrate the chances of witnesses resiling from these statements would be much less. Moreover, if the witness gives contradictory evidence later, he would also be liable for perjury. Therefore, the Commission is of the view that committal proceedings wherein the statements of the witnesses for the prosecution are promptly recorded should be reintroduced. The Commission is aware that this may lead to some delay but the advantages of such proceedings outweigh the disadvantages. This is particularly because the deposition of witnesses is vital in criminal proceedings.

7.7.6.6 Recommendation:

a. Committal proceedings should be reintroduced where the magistrate should have powers to record the evidence of prosecution witnesses. Suitable amendments may be carried out in Chapter XVI of the Code of Criminal Procedure.

7.8 Classification of Offences

7.8.1 A cognizable offence is one in which the police can arrest a person without a warrant. They are also authorised to start investigations into a cognizable offence on their own and do not need any orders from a Magistrate to do so. A non-cognizable offence is one where a police officer does not have the authority to arrest without a warrant and cannot investigate such an offence without the order of a Magistrate having the power to try such cases or commit the same for trial. Compoundable offences are those that can be compounded with or without the permission of the court while non-compoundable offences cannot be compounded. Offences are also classified as bailable and non-bailable depending on whether bail is to be granted automatically or is a matter of discretion for the Courts.

7.8.2 Whether the classification of offences into the above categories mentioned above is useful or not has been a point of considerable debate. The Committee on Reforms of Criminal Justice System has made the following observation on this issue:

> *"It is necessary to reclassify crimes in such a way that many of the crimes – which today take up enormous time and expense – are dealt with speedily at different levels by providing viable and easily carried out alternatives to the present procedures and systems."*

7.8.3 It therefore recommended as under:

> *"It is recommended that non-cognizable offences should be registered and investigated and as arrestability shall not depend on cognizability, the present classification has further lost its relevance.*
>
> *However the Committee feels that when reviewing the Indian Penal Code it may be examined whether it would be helpful to make a new classification into i) The Social Welfare Code, ii) The Correctional Code, iii) The Criminal Code and iv) Economic and other Offences Code. Hence the following recommendations:-*
>
> - *To remove the distinction between cognizable and non-cognizable offences and making it obligatory on the Police Officer to investigate all offences in respect of which a complaint is made.*
> - *Increasing the number of cases falling within the category of cases triable by following the summary procedure prescribed by Sections 262 to 264 of the code.*
> - *Increasing the number of offences falling in the category of 'Petty Offences' which can be dealt with by following the procedure prescribed by Section 206 of the Code .*
> - *Increasing the number of offences for which no arrest shall be made.*
> - *Increasing the number of offences where arrest can be made only with the order of the court and reducing the number of cases where arrest can be made without an order or warrant from the Magistrate.*
> - *Increasing the number of offences which are bailable and reducing the number of offences which are not bailable.*
> - *Increasing the number of offences that can be brought within the category of compoundable / settlement category.*
> - *The Committee recommends a comprehensive review of the Indian Penal Code, the Evidence Act and the Criminal Procedure Code by a broad based*

Committee representing the functionaries of the Criminal Justice System, eminent men and women representing different schools of thoughts, social scientists and vulnerable sections of the society and to make recommendations to the Parliament".

7.8.4 The Commission is in broad agreement with the views of the Committee on Reforms of Criminal Justice System.

7.8.5 Recommendations:

a. A comprehensive reclassification of offences may be done urgently to reduce the burden of work for both the Courts and the Police. A mechanism for ensuring regular and periodic review of offences should also be put in place to make such reclassification an ongoing and continuing exercise.

b. The objective of this exercise should be to ensure that crimes of a petty nature including those which require correctional rather than penal action should be taken out of the jurisdiction of the police and criminal courts so that they are able to attend to more serious crimes. Such offences should, in future be handled by the local courts.

7.9 Sentencing Process

7.9.1 Sentencing of guilty persons is an important and ultimate phase of the criminal justice system. Criminal laws normally provide for a maximum sentence that may be imposed if an offence is proved. There is a certain category of offences where a minimum punishment is prescribed. The courts have a wide discretion in deciding the quantum of punishment. It is contended that such discretion is necessary in order to enable the judge to impose a punishment depending upon the circumstances of each case. It has been argued however, that there are instances when such wide discretion has resulted in varying punishments for similar crimes in similar circumstances. It has been urged that there should be suitable guidelines to help judges in arriving at the quantum of punishment in each case.

7.9.2 There is a view that in India there is a real problem arising from a lack of consistency in sentencing practices across the country. This is also compounded by broad executive discretion in commuting sentences and granting pardon. It is not as if the criminal courts have total discretion in deciding the amount of sentence. Apart from the law, the rulings of the High Courts and the Supreme Court also act as guidelines for the subordinate courts. But still the issue remains whether the existing 'guidelines' are sufficient or is there need to

have more elaborate guidelines with statutory backing. There is another school of thought which argues that in a big and diverse country like India it may not be possible to codify each and every situation, and it would be best to leave it to the judgement of the Court.

7.9.3 This issue has emerged in other countries also. The sentencing frameworks prevailing in other countries vary from highly prescriptive ones where detailed guidelines have been laid down to systems where total discretion has been given to the courts. In the US, the United States Sentencing Commission (USSC), an independent agency in the Judicial Branch of the federal government, was created through the Sentencing Reform Act 1985. The objective of the Act is:

"To provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualised sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices; 28 U.S.C. § 991(b)(1)(B)".

7.9.4 In the US, the Sentencing Commission lays down broad guidelines to help and guide the courts in fixing the punishment in conviction cases. A Sentencing Manual and Table lay down a sentencing range in months, within which the Court may sentence a defendant based on the relationship between two primary factors viz., nature of the offence and the defendants' criminal history. While Federal Sentencing Guidelines in the United States were originally stated to be mandatory, a subsequent decision of the United States Supreme Court in 2005 found that the guidelines violate the constitutional right to trial by jury and therefore the guidelines cannot be mandatory and should be considered as discretionary, which means judges may consider them but are not required to necessarily adhere to them.

7.9.5 In the UK, a Sentencing Advisory Panel and a Sentencing Guidelines Council was constituted by the Criminal Justice Act, 2003. The Secretary of State may at any time propose to the Council- that sentencing guidelines be framed or revised by the Council (i) in respect of offences or offenders of a particular category, or (ii) in respect of a particular matter affecting sentencing[88]. The Act also stipulates that every court must (a) in sentencing an offender, have regard to any guidelines which are relevant to the offender's case, and (b) in exercising any other function relating to the sentencing of offenders, have regard to any guidelines which are relevant to the exercise of the function.

[88] Section 170 (2); Criminal Justice Act 2003, UK; retrieved from-http://www.opsi.gov.uk/acts/acts2003/30044--o.htm#167

7.9.6 The Commission is of the view that it is necessary to have a framework of sentencing guidelines, to ensure similar treatment in similarly placed cases. This would also help in increasing people's confidence in the criminal justice system, as when people hear of wide variations in the amount of sentence for similarly placed cases, their confidence in the system gets eroded. The Commission also feels that instead of bringing in such guidelines through a statutory mechanism it would be better to have them within the judicial framework, specially since some sort of guidelines have already evolved through judicial decisions.

7.9.7 Recommendations:

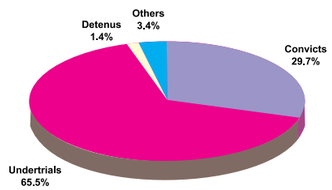
a. **The Law Commission may lay down 'Guidelines' on sentencing for the Trial Courts in India so that sentencing across the country for similar offences becomes broadly uniform.**

b. **Simultaneously, the training for trial court judges should be strengthened to bring about greater uniformity in sentencing.**

7.10 Prison Reforms

7.10.1. India's prison population stood at 331,391 as on 31.12.2004 reflecting a jail population of 30 per hundred thousand Indians and jail occupancy levels which stood at 139% of capacity with the proportion of undertrial prisoners standing at 65.5%. Jharkhand had the highest overcrowding in its prisons (300.9%) followed by Delhi with 249.7%. The number of jail establishments in India stood at 1147 which were categorised as Central Jails, District Jails, Sub-Jails, Juvenile and Women Jails as well as open Jails/Camps. In comparison to the United States, which had a prison population of 2,193,798 (and a prison rate of 724 per 100,000 population) or China, which had a prison population of 1,548,498 in the same period, India's jail population is quite low, both as a proportion of the population and in absolute terms. Despite this, our jails suffer from serious overcrowding with the bulk of the inmates comprising undertrial prisoners as shown in Fig. 7.3. These are often people from disadvantaged backgrounds involved in minor and technical violations of the law who are incarcerated due to their

Fig. 7.3: Prison Inmates at the end of 2001
(Source: Prison Statistics India 2004, NCRB)



inability to pay for bail and/or for good legal representation. Thus, hardened convicts as well as petty offenders like ticketless travellers could end up being imprisoned together for long periods in crumbling buildings with inadequate accommodation and sanitary facilities. The situation in many prisons is appalling enough to be considered a violation of human dignity as well as the basic human rights of the inmates. Paradoxically, a few individuals, who are powerful are allowed to enjoy extraordinary facilities not permitted under the rules.

7.10.2 The case of Machan Lalung who was released in 2005 at the age of 77 from a jail in Assam after 54 years in prison for an IPC offence, for which the maximum sentence is not more than 10 years, puts a human face to the statistics mentioned above. The fact that over 65% of our prison population comprises undertrial prisoners (with the undertrial population reaching 90% in the states of UP, Manipur and Meghalaya) means that there could be a large number of comparable cases where similar injustice is being meted out to individuals by an impersonal and sometimes cruel criminal justice system.

7.10.3 The report of the All India Committee on Jail Reforms (1980-83) chaired by Justice A.N. Mulla, had observed that *"Over-crowded prisons, prolonged detention of under trial prisoners, unsatisfactory living conditions, lack of treatment programs and allegations of an indifferent and even inhuman approach of prison staff have repeatedly attracted the attention of critics over the years".*

7.10.4 Modern prison reforms in the country is normally considered to have begun from the Indian Jails Committee of 1919-20. For the first time, its report identified reformation and rehabilitation as the true objective of prison administration. The Committee made the important recommendation that separate jails should be earmarked for various categories of prisoners, prescribing a minimum area of 75 square yards per inmate within the jail walls. It took strong objection to the presence of children in jails meant for adults. It recommended the creation of special courts for hearing of cases of juvenile delinquents and their housing in remand homes. It urged the holding of a conference of Inspectors General of Prison every alternate year. But many of its recommendations were not implemented as the subject of prisons was within the purview of the provincial governments. In a sense, the situation today remains almost unchanged.

7.10.5 While prison reforms has been a neglected area for administration in India, Courts have intervened to lay down specific rules and guidelines in regard to matters like the right to physical protection, protection against physical assault, restrictions on handcuffing and fetters, solitary confinement, the right to speedy trial, freedom of expression etc. The Supreme Court has also issued directions regarding the procedure to be followed when a

person is arrested. In Joginder Kumar vs State of UP and others (1994), the Court referred to the National Police Commission's finding that 60% of all arrests were either unnecessary or unjustified and laid down four requirements to be strictly followed:

i. The right of the arrested person to request that a friend, relative or other persons be informed of his arrest and the place where he is detained;
ii. The duty of the police officer to inform the arrested person of this right;
iii. The need for an entry to be made in the police station diary as to who was informed of the arrest;
iv. The duty of the Magistrate before whom the arrested person is produced, to satisfy himself that these requirements have been complied with.

7.10.6 Besides, a police officer making an arrest should record in the case diary the reasons for making the arrest, implying thereby that every arrest by the police has to be justified in law.

7.10.7 Despite such judicial interventions and the efforts made in some jails like Delhi's Tihar Jail, to make the conditions for the prisoners more humane, in respect of most jails in the country the description of the prison system as being antiquated and overstretched remains valid. As mentioned earlier, India's prison population (both in absolute terms and as a proportion of its population) may be low by international standards, but this may, regrettably, be a function of our declining conviction ratios. Nonetheless, this means that giving better facilities to inmates and promoting a professional and reformative approach in our prison administration should be possible and now certainly within our resources. Such change requires a concerted attempt to put prison reform on top of the agenda for the Union and State Governments. Reforms in prison administration requires provision of adequate resources for modernization of jail infrastructure as well as procedural reforms (through changes in the relevant statutes and rules) in the entire criminal justice system to reduce the number of arrests for petty offences and increase the availability of bail, speeding up of trials, providing alternatives to incarceration (such as community service) for less heinous offences, creation of an impartial and professional system to consider remission of sentences and parole etc.

7.10.8 The Mulla Committee had examined all aspects of prison administration and made wide-ranging recommendations on issues such as the organisational structure of the prison services, the need for a common Jail Manual, the need to involve experts and NGOs in the field of treatment, care and rehabilitation of offenders, the need for more open prisons etc, which, if implemented, would go a long way to make prison administration more efficient, humane and professional. Subsequently, the NHRC has also prepared a model Prison Bill.

The Ministry of Home Affairs had circulated a model Bill to the States in 1998 and some States have adopted new legislation for prisons such as the Rajasthan Prisons Act, 2001. A new model Jail Manual has also been circulated to all States by the Union Government in 2003.

7.10.9 Without going into the finer details of these individual reforms proposals, the Commission is of the firm view that prison reforms is an integral part of any attempt to reform our criminal justice system in order to make it more humane and reformative. For this purpose, the Union and State Governments should be asked to fast-track modernisation, upgradation and reforms of our prison systems based on the report of the Mulla Committee and the various legislative proposals mentioned in the preceding paragraphs.

7.10.10 In addition, the issue of misuse of the provisions for parole and for remission of sentences has significant implications for public order because indiscriminate and reckless grant of parole or remission of sentences can impact public order adversely. There is an urgent need to put in place a non-partisan and professional mechanism for taking decisions on these issues rather than leaving it to the discretion of individual functionaries.

7.10.11 This is of particular relevance given the recent allegations of abuse of these powers on partisan and political lines in states like Kerala, Andhra Pradesh and Haryana and also the recent case of an Orissa police officer, whose son, a convicted rapist, jumped parole in Rajasthan and has been untraced for over several months now. In Kerala state, a Division Bench of the High Court is currently examining the power of the Home Minister and the Cabinet to grant parole to life-term convicts and has reportedly observed that the relevant provisions in the Kerala Prison Rules to grant parole to convicts is beyond the legislative competence of the State Governments on the ground that there is no such provision in the parent Prison Act. The case itself centres on certain cases of murder convicts who happened to be workers of particular political party and who were allegedly granted parole without justification on partisan considerations.

7.10.12 Such cases have adverse ramifications for public order as well as the citizens' respect for the rule of law because they create an impression that influential segments of society can obtain preferential treatment before the law.

7.10.13 In order to ensure impartiality and uniformity in decision-making, it is felt that an Advisory Board to be chaired by a retired Judge of the High Court with the State DGP

and the IG (Prisons) as members should be set up to make recommendations to the State Government on grant of parole to convicts. The recommendations of the Board should normally be accepted by the State Government. If the State Government differs with the Board, it should express its difference of opinion in writing and obtain fresh advice of the Board before taking a final decision in the matter. Similarly, for grant of remission of sentences, states should constitute Sentence Remission Boards as advisory bodies so that the decisions on this issue can be taken in an impartial and judicious manner.

7.10.14 Recommendations:

a. **The Union and State Governments should work out, fund and implement at the earliest, modernisation and reforms of the Prison System as recommended by the All India Committee on Jail Reforms (1980-83).**

b. **The attendant legislative measures should also be expedited.**

c. **Rules regarding Parole and Remission need to be reviewed. An Advisory Board with a retired judge of the High Court, the DGP and the Inspector General of Prisons should be set up to make recommendations on parole. The recommendation made by the Board should normally be accepted. In case of difference, State Government should obtain the advice of the Board again, stating its own views in writing. A similar or the same Board may deal with cases of remissions.**

7.11 Amendment to Criminal Laws

7.11.1 Laws dealing with the criminal justice system, especially the Indian Penal Code and the Indian Evidence Act were enacted in the 19th century. The very fact that these laws are still working establishes that these have stood the test of time. However, rapid developments have taken place in the country after Independence. It is therefore necessary to have a comprehensive re-look at these laws, particularly the Indian Penal Code, in the context of the current socio, economic and political situation. The 'definitions' have to be revisited and the entire Act has to be made more gender-friendly. Offences against the State (Chapter IV) – the definitions and the punishments – have to be modified keeping in mind terrorist, insurgency, organised crimes, Naxalism and other disrupting activities affecting the security and integrity of the country. Offences against the Public Tranquility have to be revisited so as to make section such as 153 (A) of IPC more effective and stringent. Offences relating to Elections (Chapter IX A) require major changes keeping in mind the current political developments in the country. Chapter XI on False Evidence and Offences

against Public Justice needs a fresh look. Offences relating to Coin and Government Stamps (Chapter XII) – have become obsolete in the background of the 'Telgi Scam' and would have to be recast. Offences relating to Religion (Chapter XV) have to be so modified to make a distinction between crimes committed with communal motives and normal crimes. Similarly, the Indian Evidence Act would also have to be revisited to reflect 21st century social values.

8 CONSTITUTIONAL ISSUES AND SPECIAL LAWS

Under our Constitution the responsibility for maintaining public order rests mainly with the State Governments. This does not dilute the overall constitutional obligation of the Union Government to preserve order throughout the country. Major public order crises can threaten our social fabric and endanger national security. The proliferation of organised crimes and terrorism, the rise of insurgent movements in certain parts of the country and the nexus among these, throw up challenges that require a coherent national response in the form of new laws and administrative structures. The Union Government is seized of these matters and has initiated several steps. These have often raised contentious jurisdictional issues. Some of these issues are dealt with in this chapter.

8.1 Should Public Order be Included in the Concurrent List?

8.1.1 Under the Constitution, 'Public Order' and 'Police' are in the State List (List II) of the Seventh Schedule. One issue that is often raised is whether public order should continue to be in List II or whether it should be brought in List III (Concurrent List). At present various subjects listed in the Seventh Schedule related to 'Public Order' are as follows:

List-I

Entry 2A: Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil powers; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment.

Entry 5: Arms, firearms, ammunition and explosives.

Entry 8: Central Bureau of Intelligence and Investigation.

Entry 9: Preventive detention for reasons connected with Defence, Foreign Affairs, or the security of India; persons subjected to such detention.

Entry 80: Extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside that State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the Government

of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State.

List II

Entry 1: Public order (but not including the use of any naval, military or Air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of the civil power.

Entry 2: Police including railway and village police subject to the provisions of entry 2A of List I.

List-III

Entry I: Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect of any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.

Entry 2: Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.

Entry 3: Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention.

Entry 4: Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons specified in entry 3 of this List.

8.1.2 Thus, in our constitutional scheme, police as well as public order comes within the exclusive jurisdiction of State Governments. The Union Government helps by providing the necessary legal framework and also by providing armed and para-military forces of the Union whenever required. It is also the responsibility of the Union to ensure that the executive power of every state be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that state. Article 256 empowers the Union to issue directions to a state to ensure such compliance. Under Article 355, a duty is cast on the Union 'to protect every state against external aggression and internal disturbance and to ensure that the Government of every state is carried on in accordance with the provisions of this Constitution'. In addition to these powers, Article 356 confers extraordinary powers on the Union to deal with a constitutional breakdown in a state whereupon all functions of the State Government may be assumed by the Union Government.

8.1.3 Arguments for inclusion of 'Public Order' in the Concurrent List

8.1.3.1 A collapse of 'public order' has wide ramifications for national security, economic development and even on the legitimacy of the State. The absence of a clear-cut role of the Union Government in such situations means that it is often powerless to intervene in major crisis situations even when they threaten the social fabric and national security. As a result, the Union Government can either use the extreme provision of Article 356 of the Constitution or merely be a passive spectator till such time that the State Government seeks its assistance. A statutory mechanism that provides for a more proactive role for the Union Government, short of imposition of President's rule, therefore appears necessary. It is argued that this can be provided by including 'Public Order' in the Concurrent List.

8.1.3.2 Another reason often cited for bringing public order in the Concurrent List is that inter-state crime is on the increase. Differences in the legal and the administrative framework among the States can be easily exploited by organised criminal gangs. Due to the rapid growth in communication facilities and the use of modern technologies, organised crime and terrorism often operate on a national or even international scale and can best be tackled by providing for a unified legal, administrative and operational framework for police forces across the country. This would require certain uniform and effective legislations to deal with both organised crime and terrorism which can be best undertaken if 'Public Order' is in the Concurrent List.

8.1.4 Arguments against bringing 'Public Order' in the Concurrent List

8.1.4.1 As stated earlier, 'Public Order' and 'Police' are the first two entries in the State List of the Seventh Schedule. This makes maintenance of public order the prime responsibility of the State Government. The principle of subsidiarity demands that these functions be exercised by State Governments. In most of the large developed countries, the national government does not handle law and order which is left to the provincial and even local governments. States in India are administered by responsible, elected governments whose willingness to uphold public order and the rule of law should not be doubted. Any move to bring public order into the Concurrent List would also amount to duality of responsibility which may be detrimental to the efficient handling of serious public order situations.

8.1.4.2 In an era of democratic decentralisation a move to bring public order into the Concurrent List would be a retrograde step and is likely to be resisted by State Governments as they would view this as an encroachment on their legitimate jurisdiction. The size and diversity of our country is another reason why 'Public Order' and 'Police' have been kept in the State List so that State Governments are in a position to enforce rule of law as per local requirements.

8.1.5 The Commission has examined the arguments in favour and against the proposal of bringing 'Public Order' into the Concurrent List. On balance, the Commission is of the view that the existing constitutional responsibilities between the states and the Union which have stood the test of time should not be disturbed. Given the size and diversity of India, public order should continue to be the responsibility of State Governments. Moreover, with democratic decentralisation, there is need to entrust the responsibility to deal with minor public order issues to local governments. A move to place 'Public Order' in the Concurrent List may also bring in duality of responsibility. This would heighten and not lessen any confusion that may exist today in the role of the two levels of government. The existing provisions of the Constitution maintain a very fine balance between the responsibility of the State Government to maintain public order and the overall responsibility of the Union to ensure constitutional governance in each state. Therefore public order should continue to be in the State List. The Union Government should continue to assist the State Governments in maintaining public order.

8.2 Obligations of the Union and States

8.2.1 The Constitution contains specific provisions to deal with situations where the State Governments fail to fulfill their Constitutional obligations. The relevant Articles are 256, 352, 355, 356 and 365 and read as follows:

> ***256. Obligation of States and the Union.*** *– The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.*
>
> ***352. Proclamation of Emergency.*** *– (1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or armed rebellion, he may, by Proclamation, make a declaration to that effect in respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation….*
>
> ***355. Duty of the Union to protect States against external aggression and internal disturbance.*** *– It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution.*

356. Provisions in case of failure of constitutional machinery in States. *– (1) If the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation –*

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State;

(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State: Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.

365. Effect of failure to comply with, or to give effect to, directions given by the Union. *– Where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution.*

Box 8.1: Article 355

" When once the Constitution makes the provinces sovereign and gives them plenary powers to make any law for the peace, order and good government of the province, really speaking, the intervention of the Centre or any other authority must be deemed to be barred, because that would be an invasion of the sovereign authority of the province. That is a fundamental proposition which we must accept by reason of the fact that we have a Federal Constitution. That being so, if the Centre is to interfere in the administration of provincial affairs, it must be by and under some obligation, which the Constitution imposes upon the Centre. [The] article ….. says that it shall be the duty of the Union to protect every unit …. Similar clauses appear in the American Constitution. They also occur in the Australian Constitution where the Constitution, in express terms, provides that it shall be the duty of the Central Government to protect the units or the States from external aggression or internal commotion. All that we propose to do is to add one more clause to the principle enunciated in the American and Australian Constitutions, namely, that it shall be the duty of the Union to maintain the Constitution in the provinces as enacted by this law".

Dr. B R Ambedkar in the Constituent Assembly, explaining the principle behind Article 355.

8.2.2 While prescribing the obligations of the Union and the States, Article 256 casts a responsibility on the Union to

uphold the rule of law. Article 256 has hardly been used. It has often been argued that during the Ayodhya crisis (1992) the Union Government could have invoked this Article.

8.2.3 Deployment of Forces of the Union including Armed Forces is made on the request of or with the concurrence of the concerned State Government. In such circumstances the Armed Forces assist the civil administration in restoring order. The issue, which arises, is whether the Union can deploy its Forces and/or order that the these Forces act on their own without depending on the State Government machinery.

8.2.4 On the question of the use of Article 356, the Sarkaria Commission proposed:

> *"6.8.01 Article 356 should be used very sparingly, in extreme cases, as a measure of last resort, when all available alternatives fail to prevent or rectify a breakdown of constitutional machinery in the State. All attempts should be made to resolve the crisis at the State level before taking recourse to the provisions of Article 356. The availability and choice of these alternatives will depend on the nature of the constitutional crisis, its causes and exigencies of the situation. These alternatives may be dispensed with only in cases of extreme urgency where failure on the part of the Union to take immediate action under Article 356 will lead to disastrous consequences.*
>
> *(paragraph 6.7.04)*
>
> *6.8.02 A warning should be issued to the errant State, in specific terms, that it is not carrying on the government of the State in accordance with the Constitution. Before taking action under Article 356, any explanation received from the State should be taken into account. However, this may not be possible in a situation when not taking immediate action would lead to disastrous consequences.*
>
> *(paragraph 6.7.08)*
>
> *When an 'external aggression' or 'internal disturbance' paralyses the State administration creating a situation drifting towards a potential breakdown of the constitutional machinery of the State, all alternative courses available to the Union for discharging its paramount responsibility under Article 355 should be exhausted to contain the situation."*

8.2.5 On the issue of deployment of the Armed Forces of the Union, the Sarkaria Commission observed and recommended:

> *" 7.5.01 Clearly, the purpose of deployment which is to restore public order and ensure that effective follow-up action is taken in order to prevent recurrence of disturbances, cannot be achieved without the active assistance and cooperation of the entire law-enforcing*

machinery of the State Government. If the Union Government chooses to take unilateral steps to quell an internal disturbance without the assistance of the State Government, these can at best provide temporary relief to the affected area and none at all where such disturbances are chronic.

7.5.02 Thus, practical considerations, as indicated above, make it imperative that the Union Government should invariably consult and seek the cooperation of the State Government, if it proposes either to deploy suo motu its armed forces in that State or to declare an area as 'disturbed', the constitutional position notwithstanding. It need hardly be emphasized that without the State Government's cooperation, the mere assertion of the Union Government's right to deploy its armed forces cannot solve public order problems.

7.5.03 We recommend that, before deploying Union armed and other forces in a State in aid of the civil power otherwise than on a request from the State Government, or before declaring an area within a State as a 'disturbed area', it is desirable that the State Government should be consulted, wherever feasible, and its cooperation sought by the Union Government. However, prior consultation with the State Government is not obligatory".

> *7.5.03 "The existing relationship between the Union armed forces and the State civil authorities and the manner of their functioning as prescribed in the relevant Union laws and procedures do not need any change. However, before the Union Government deploys its armed and other forces in a State in aid of the civil power otherwise than on a request from the State Government or declares an area within a State as "disturbed", it is desirable that the State Government should be consulted, wherever feasible, and its cooperation sought, even though prior consultation with the State Government is not obligatory. (paras 7.5.03 and 7.7.22)."*

8.2.6 The National Commission to Review the Working of the Constitution recommended:

> *"8.19.4 The Commission feels that in a large number of cases where Article 356 has been used, the situation could be handled under Article 355 i.e. without imposing President's rule under Article 356. It is most unfortunate that Article 355 has hardly been used."*

8.2.7 The Supreme Court in Naga People's Movement of Human Rights vs Union of India ruled that:

"... After the Forty-second Amendment the legislative power of Parliament in respect of deployment of armed forces of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power flows from Entry 2-A of the Union List. The expression "in aid of the civil power" in Entry 1 of the State List and in Entry 2-A of the Union List implies that deployment of the armed forces of the Union shall be for the purpose of enabling the civil power in the State to deal with the situation affecting maintenance of public order which has necessitated the deployment of the armed forces in the State. The word "aid" postulates the continued existence of the authority to be aided. This would mean that even after deployment of the armed forces the civil power will continue to function. The power to make a law providing for deployment of the armed forces of the Union in aid of the civil power in the State does not comprehend the power to enact a law which would enable the armed forces of the Union to supplant or act as a substitute for the civil power in the State. We are, however, unable to agree with the submission of the learned counsel for the petitioners that during the course of such deployment the supervision and control over the use of armed forces has to be with the civil authorities of the State concerned or that the State concerned will have the exclusive power to determine the purpose, the time period and the areas within which the armed forces should be requested to act in aid of civil power. In our opinion, what is contemplated by Entry 2-A of the Union List and Entry 1 of the State List is that in the event of deployment of the armed forces of the Union in aid of the civil power in a State, the said forces shall operate in the State concerned in cooperation with the civil administration so that the situation which has necessitated the deployment of the armed forces is effectively dealt with and normalcy is restored.

.....This would show that the powers that have been conferred under Section 4 of the Central Act do not enable the armed forces of the Union to supplant or act as substitute for the civil power of the State and the Central Act only enables the armed forces to assist the civil power of the State in dealing with the disturbed conditions affecting the maintenance of public order in the disturbed area.

The expression 'in aid of the civil power' in Entry 2-A of List I and in Entry 1 of List II implies that deployment of the armed forces of the Union shall be for the purpose of enabling the civil power in the State to deal with the situation affecting maintenance of public order which has necessitated the deployment of the armed forces in the State.

The word 'aid' postulates the continued existence of the authority to be aided. This would mean that even after deployment of the armed forces the civil power will continue to function.

The power to make a law providing for deployment of the armed forces of the Union in aid of the civil power of a State does not include within its ambit the power to enact a law which would enable the armed forces of the Union to supplant or act as a subordinate for the civil power in the State. The armed forces of the Union would operate in the State concerned in cooperation with the civil administration so that the situation which has necessitated the deployment of armed forces is effectively dealt with and normalcy is restored."

8.2.8 A Committee[89] was constituted to review the Armed Forces (Special Powers) Act, 1958. While giving its recommendations on this Act the Committee suggested that a new chapter may be inserted in the Unlawful Activities (Prevention) Act, 1967. One of the Sections of the proposed chapter is as follows:

" If the Central Government is of the opinion that on account of terrorist acts or otherwise a situation has arisen in a State or a Union Territory or in a part of a State, as the case may be, where deployment of a force under its control or any other armed forces of the Union, including army, navy or air-force have become necessary to quell internal disturbance, it may do so notwithstanding that no request for such force is received from the State Government concerned. While deploying the forces under sub-sections (2) or (3), the Central Government shall by a notification published in the Gazette, specify the State or the part of the State in which the forces are to operate and the period of deployment (not exceeding six months). At the end of the period so specified, the Central Government shall review the situation in consultation with the State Government and may extend the period of deployment, if found necessary, provided however, that such extension shall not be for more than six months at a time. It shall also be competent for the Central Government to vary the area of deployment where the earlier notification is for a part of the State. Every notification extending the period of deployment or the area of deployment, shall be laid on the table of both Houses of Parliament, within one month of publication of such notification.

The force deployed under sub-section (2) or sub-section (3), shall act in aid of civil power and shall, to the extent feasible and practicable, coordinate their operations with the operations of the Security Forces of the State Government. However, the manner in which such forces shall conduct their operations shall be within the discretion and judgement of such forces."

Box 8.2: The Mississippi Crisis

When an intrepid black man, James Meredith, won a federal lawsuit to gain admission to the University of Mississippi in 1962, Governor Ross Barnett personally blocked his way. It was Kennedy's job to ensure Meredith be allowed entry. Though he ultimately won the battle to get Meredith into "Ole' Miss," JFK was forced to do the one thing he most wanted to avoid: send federal troops to the South.

Source : http://americanradioworks.publicradio.org/features/prestapes/kennedy.html

[89] The Committee was headed by Justice B.P. Jeevan Reddy.

8.2.9 There are two main issues in the deployment of the Forces of the Union. First, whether these Forces can be deployed without the consent of the State Government and second whether the Forces, upon such deployment, can act on their own or need to receive instructions from the State Government or other authorities of the State Government. According to one view, Article 355 empowers the Union to unilaterally deploy its forces. They argue that as per the said Article, the Union is bound to protect a state from internal disturbance to ensure that the government of every state is carried out in accordance with the Constitution. A natural corollary of this is that the Union has the authority to use the Forces at its command to ensure this. Therefore the Union can deploy as well as command the Forces, if the situation so demands. Similar provisions exist in the US Constitution, and the US President has used Federal Troops, even against the wishes of the State.

Box 8.3: Provisions Similar to Article 355 Exist in Other Countries as well

United States Constitution-Article IV Section 4:

The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

Commonwealth of Australia Constitution Act-Section 61: The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.

8.2.10 The other view is that Article 355 does not empower the Union to deploy its Forces against the wishes of the State Government. The contention is that since the Constitutional framework lays down the principle of civilian control over use of forces, this control has to be provided by the State Government. This is all the more necessary as investigation and prosecution has to be done by agencies which are in the purview of State Governments. Thus the Forces of the Union, when deployed cannot supplant the State Government.

8.2.11 The Commission has examined this issue seriously. While there is no doubt that maintenance of public order comes within the domain of State Governments, at the same time, the Union also has a constitutional responsibility i.e. to ensure that the government of every state is carried on in accordance with the provisions of the Constitution. Indeed, if the Union is of the considered view that the government of a state cannot be carried on in accordance with the provisions of the Constitution, it may impose 'President's Rule' in the state. A major breakdown of public order would definitely signal a constitutional breakdown in the state, and the Union would be well within its rights to invoke its powers under Article 356 and go to the extent of dismissing an elected State Government. Once

President's Rule is imposed, the Union can deploy and direct the police and the Union Forces. Thus, the founding fathers of the Constitution have ensured that the Union is sufficiently empowered to protect the Constitution. Extending the same logic, the Union cannot be a silent spectator to a major public order crisis. Under such circumstances it has to assist the State Government by providing all necessary support. If, however, it finds that the State Government is not willing to accept any such assistance, or is failing in its duty to maintain public order and the rule of law, then it has no option but to take charge of the situation and deploy and direct its Forces to bring the situation under control and prevent a constitutional breakdown in the state.

8.2.12 The Union in the performance of its duty to protect the state from external aggression and internal disturbances, can invoke - after passing through various steps - Article 356. However, this would be an extreme step. Not acting in pursuance of the duty on grounds of 'constitutional helplessness' would be the other extreme. Therefore the Commission is of the view that the Union should have unambiguous powers to deploy and direct its Forces in case of a major public order crisis in a state if the State Government is clearly failing to meet its constitutional obligation to maintain public order and the rule of law. This is the underlying principle behind the constitutional provisions and it would be desirable if the ambiguity relating to this issue is removed.

8.2.13 The Commission has carefully considered this issue and is of the view that a law could be enacted to empower the Union Government to deploy its forces and to direct such forces in case of major public order problems, regarding which steps under Article 256 read with Article 355 have been taken.

8.2.14 At the same time sufficient safeguards need to be provided to prevent partisan misuse of this provision. The safeguards would also include a step-by-step approach under Articles 256 and 355, explaining the facts and giving directions and requiring the state to adopt certain measures. Any such deployment of Union Forces should be on a temporary basis not exceeding three months which could be extended by another three months after authorisation by Parliament. The law should also lay down the civilian hierarchy which would control the use of the Forces in such an event. If such a law does not withstand judicial scrutiny, it is necessary that Entry 2-A of List I is amended to make the position clear. A similar arrangement exists during the time of elections, when the Election Commission superintends and controls the state election machinery, for proper conduct of elections.

8.2.15 Recommendations:

a. A law should be enacted to empower the Union Government to deploy its Forces and to even direct such Forces in case of major public order problems which may lead to the breakdown of the constitutional machinery in a state. However, such deployment should take place only after the state concerned fails to act on a 'direction' issued by the Union under Article 256 of the Constitution. All such deployments should be only for a temporary period not exceeding three months, which could be extended by another three months after authorisation by Parliament.

b. The law should spell out the hierarchy of the civil administration which would supervise the Forces under such circumstances.

8.3 Federal Crimes

8.3.1. As mentioned earlier, rapid economic development and improvement of transport and communication infrastructure has added another dimension to crimes. Increasingly, major crimes like organised crimes, terrorism, trafficking in arms and serious economic offences have inter-state and even international ramifications and they often threaten national security. Though 'Criminal law' is in the Concurrent List, 'Police' is in the State List. As a result the state police investigates all major crimes in the country. Though the Central Bureau of Investigation has been constituted, it can investigate criminal cases only with the consent of the respective State Governments. It has been argued that the state police, with its jurisdiction confined to the respective state finds it difficult to carry out investigations across state borders. This is not to belittle the fact in some cases the state police have successfully carried out investigations with the help of the other state police(s). It is also argued that with an overburdened state police, there is need to entrust such major crimes to a specialised federal agency. Another reason cited is that at times crimes have international ramifications, and gathering information and investigation would require the expertise and resources which ordinarily are not available with the state police.

8.3.2 The term 'Federal Offence' immediately draws attention to the US Criminal Justice System where a federal crime or federal offence is a crime that is either made illegal by US federal legislation or a crime that occurs on US federal property. The US Constitution is based on principles of federalism with the Federal Government having jurisdiction over national defence, foreign affairs and currency. All other powers are vested with the State Governments. At the beginning of the twentieth century, with the spread of transportation and communication networks, the Federal Government started assuming investigative

powers in certain inter-state crimes. Today the Federal Bureau of Investigation (FBI) is the investigative arm of the US Department of Justice and an important agency for fighting major crimes. The FBI's investigative authority can be found in Title 28, Section 533 of the US Code. Additionally, there are other statutes, such as the Congressional Assassination, Kidnapping, and Assault Act (Title 18, US Code, Section 351), which give the FBI responsibility to investigate specific crimes.[90]

8.3.3 The Federal Bureau of Investigation has the following priorities:[91]

1. Protect the United States from terrorist attack;
2. Protect the United States against foreign intelligence operations and espionage;
3. Protect the United States against cyber-based attacks and high-technology crimes;
4. Combat public corruption at all levels;
5. Protect civil rights;
6. Combat transnational and national criminal organizations and enterprises;
7. Combat major white-collar crime;
8. Combat significant violent crime;
9. Support federal, state, county, municipal, and international partners;
10. Upgrade technology to successfully perform the FBI's mission.

8.3.4 The Australian Constitution does not give the Australian Parliament a general power to make criminal laws. However, the Australian Parliament may make criminal laws in relation to the subject matter of other powers granted to it by the Constitution.[92] In Australia, the states have jurisdiction over criminal laws. These laws are generally concerned with offences against persons or property, public order offences and social offences. Federal offences correspond with the Commonwealth's areas of legislative responsibility, and have a national or international focus. Although the Australian Federal Police (AFP) is the principal law enforcement arm of the Australian Government, other federal agencies also exercise investigatory powers in regard to particular areas of federal responsibility. These are the Australian Taxation Office (ATO), the Australian Customs Service, the Department of Immigration and Multicultural Affairs, the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investments Commission (ASIC). Similarly, several other countries have also put into place appropriate legal and institutional framework for dealing with national and international crimes.

8.3.5 In the context of 'federal crimes', the Padmanabhaiah Committee, inter alia, examined the following issues:

[90] http://www.fbi.gov/priorities/priorities.htm
[91] Source: website of FBI.
[92] ALRC; http://www.austlii.edu.au/au/other/alrc/publications/reports/103/7.html#fnB37

- Whether there is a need to declare certain offences as Federal Offences?
- Should a Federal Investigative Agency have exclusive jurisdiction over such cases?
- What type of Federal Agency (CBI or independent) should investigate such cases?

8.3.6 As regards the first point, the Committee observed that there is a case for declaring a few selected categories of cases as federal offences and recommended the following criteria for categorising such offences:

- *"They have international implications.*
- *They relate to security of nation.*
- *They relate to the activities of the Union Government.*
- *They relate to corruption in All India Services.*
- *Protecting Government currency.*
- *Controlling National borders."*

8.3.7 As regards the agency to investigate such cases, the Committee observed:

> *" We have mentioned above that a central investigating agency as big as the CBI can only investigate about 600 cases (these are under the PC Act and related Sections of IPC) in a year. In addition, CBI investigated 918 cases under PC and related provisions of IPC. There are 1335 IPC cases and 1295 PC Act cases pending investigation in CBI at the end of 1999. If any central agency is to take up investigation of cases under more heads than the ones listed above, or take up cases under the above heads without proper justification, we need to have a huge set-up with staff spread throughout the country. Such an organization would compete with State police forces for scarce financial and human resources. If important cases are, as a matter of routine, to be taken up by the federal agency, the state police would be relegated with investigation of only less important cases, which, in course of time, can create a question of credibility of state police forces in public perception. Researchers at Syracuse University's Transactional Access Clearing House (TRAC) in one of their studies of FBI from 1993 to 1997 have found that FBIs conviction rate is the worst among major federal law agencies."*

8.3.8 The Committee cited the Report of the Task Force of the American Bar Association on Federalisation of Criminal Laws (1997), which identified many adverse effects of inappropriate federalisation as follows:

- *It generally undermines the state-federal fabric and disrupts the important constitutional balance of federal and state systems.*

- *It has the potential to relegate the less glamorous prosecutions to the state system, undermine citizen perception, and diminish citizen's confidence in state law enforcement mechanisms.*
- *It creates an unhealthy concentration of policing power at federal level.*
- *It gives discretion to the federal agency, to pick and chose, in choosing what crimes and which people to prosecute.*

8.3.9 The Padmanabhaiah Committee recommended that there is no need to create a separate organisation at the national level for the time being, and investigation of federal crimes should be handed over to the special crimes/economic offences division of CBI.

8.3.10 The Committee on Reforms of Criminal Justice System however recommended:

> *"Time has come when the country has to give deep thought for a system of Federal Law and Federal Investigating Agency with an all-India Charter. It would have within its ambit crimes that affect national security and activities aimed at destabilising the country politically and economically. The creation of the Federal Agency would not preclude the State Enforcement Agencies from taking cognizance of such crimes. The State Enforcement Agencies and the Federal Agency can have concurrent jurisdiction. However, if the Federal Agency takes up the case for investigation, the State agencies' role in the investigation would automatically abate. The State agencies may also refer complicated cases to the proposed Federal Agency."*

- *That in view of legal complexity of such cases, underworld criminals/crimes should be tried by federal courts (to be established), as distinguished from the courts set up by the State Governments.*
- *That Government must ensure that End User Certificate for international sales of arms is not misused (as happened in the Purulia Arms Drop).*
- *The banking laws should be so liberalized as to make transparency the corner-stone of transactions which would help in preventing money laundering since India has become a signatory to the U.N. Convention against Transnational Organised Crime.*
- *That a Federal Law to deal with crimes of inter-state and / or international / trans-national ramification be included in List I (Union List) of the Seventh Schedule to the Constitution of India.*

8.3.11 The Commission notes that all the offences proposed to be included in the category of so called 'Federal Crimes' are already included as offences under the Indian penal laws.

However, as the gravity and complexity of such offences have increased, it would be necessary to put in place appropriate procedures for dealing with such offences. This would necessitate the enactment of a new law to deal with a category of offences which have inter-state and national ramifications. This would also facilitate their investigation by a specialised State or Central agency. The following offences may be included in the proposed new law:

- Organised Crime
- Terrorism
- Acts threatening national security
- Trafficking in arms and human beings
- Sedition
- Major crimes with inter-state ramifications
- Assassination (including attempts) of major public figures
- Serious economic offences.

8.3.12 The Commission agrees with the approach suggested by the Padmanabhaiah Committee that such crimes should be investigated by a specialised wing in the Central Bureau of Investigation. Entry 8 of List I deals with 'Central Bureau of Intelligence and Investigation'. The Central Bureau of Investigation presently functions as a Special Police Establishment under the Delhi Special Police Establishment Act, 1946 as amended from time to time.

Box 8.4: Federal Crimes – a Viewpoint

Noted constitutional expert Dr. Rajiv Dhavan, however, does not agree. "It is an American concept. In the US, all crimes are state crimes and therefore, they had to create a category of federal crimes. But in India, all crimes are federal crimes created by Central enactments. The only difference is that the enforcement is entrusted to the state police. The CBI comes in only with the consent of the state police or when there is a court order," he says. But he agrees that the CBI is over-burdened and, therefore, not able to perform efficiently. He sees a huge potential threat to civil liberties in such a move and advises a careful scrutiny before any crime is listed as a 'federal crime'.

B.B. Pandey, a retired professor of law and criminology at Delhi University's faculty of law, shares Dr. Dhavan's concern on the possible threat to the civil society. It is nothing but an attempt to escape responsibility, he says, and cautions against getting carried away by jargon like 'federal crimes' and 'specialised agency'. He argues, "We have even more basic concerns to address. Nithari happened not due to some terrorist organization but because of the refusal of the NOIDA police to register FIRs on the complaints lodged by the poor people whose children went missing.

Source : Satya Prakash in Hindustan Times, New Delhi Edition, 18.02.2007.

8.3.13 Most of the offences mentioned in para 8.3.11 are of a relatively recent origin and the state police with its restricted territorial jurisdiction and limited resources is likely to find it difficult to investigate such crimes effectively. Even though "Police' and 'Public Order' figure in the State List in the Constitution, it is felt that this category of crimes with inter-state and national ramifications would fall under the 'residuary' powers of the Union. The Commission

kidnappings for ransom, gun running, illicit trafficking in women and children, narcotics trade, money laundering using the hawala network etc. Organised crime includes both violations of personal life and liberty and economic offences. There are no exact estimates available about the amount of money involved but evidently the figures are mind-boggling. What gets reported and investigated by the law enforcement agencies is only a minuscule percentage of the overall quantum of organised criminal activity. If not checked, these crimes have the potential of threatening national peace and security.

Box 8.5: Magnitude of Organised Crime in the US

The cost to communities and individuals, in terms of pain and suffering caused by the violence and exploitation associated with these organizations, is incalculable. Also the damage to society resulting from these criminal organizations and their influence on labor unions, political institutions, financial markets, and major industries is immeasurable. In fact, a look at the economic impact alone gives a glimpse of the importance of this issue. The Center for Strategic and International Studies, Global Organized Crime Project, Financial Crimes Task Force estimates global organized crime reaps profits of close to $1 trillion per year.

Source: FBI - http://www.fbi.gov/hq/cid/orgcrime ocshome.htm; retrieved on 12-11-06

8.4.2 Interpol has defined organised crime as *"Any group having a corporate structure whose primary objective is to obtain money through illegal activities, often surviving on fear and corruption". (Paul Nesbitt, Head of Organised Crime Group, Bresler 1993, 319).*

8.4.3 The United Nations views organised crime to be a large-scale and complex criminal activity carried on by groups of persons, however loosely or tightly organised, for the enrichment of those participating and at the expense of the community and its members. Such crime is frequently accomplished through ruthless disregard of any law, including offences against the person, and frequently in connection with political corruption.

8.4.4 In essence, organised crime can be regarded the unlawful activities indulged in by a group of individuals with a degree of planning and resources not fount in case of ordinary gangs of criminals. Unlike groups of terrorists, the objective of such groups is pecuniary gain rather than subversion of established order.

Box 8.6: Definition of Organised Crime

The Maharashtra Control of Organised Crime Act, 1999 (MCOCA) defines 'organised crime' as "any continuing unlawful activity by an individual, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any person or promoting insurgency" {(Section 2 (e)}.

8.4.5 In India, organised crime in its current form had its genesis in Mumbai. After the introduction of prohibition, bootleggers started organizing themselves into groups and forming syndicates. The situation got aggravated following the introduction of the Gold Control Order a few years later. The

quick money these criminals earned attracted more people and these loosely organised groups started taking the shape of gangs with strong leadership and well organised structure. With increasing money and muscle power they diversified their activities into extortions, drug trafficking, providing 'protection', flesh trade etc. The last decade has seen a major transformation in the operation of these organised gangs into more dangerous outfits often with transnational terrorist links.

8.4.6 The globalisation of the economy has definitely helped the crime syndicates carry out their illegal activities across the borders with great ease. This has been further facilitated by the phenomenon of 'digital money'. Such organisations, very conveniently find safe havens outside the country.

8.4.7 In the US also, organised crime started with bootlegging. The Twenty-first Amendment to the US Constitution repealed the Eighteenth Amendment, which had mandated Prohibition in the country. Thereafter crime groups and families that had been bootlegging moved on to other moneymaking crimes by controlling legitimate businesses and using some of them as fronts for criminal activity. Organised crime reached its peak in the 1960s.

8.4.8 Over the years, the US Congress had enacted several statutes authorising increased punishment for typical organised crimes such as gambling, loan sharking, transportation of stolen goods, and extortion. Organised Crime Control Act was enacted in 1970. Title IX of the Act is the Racketeer Influenced and Corrupt Organisations Statute (18 U.S.C. § § 1961-1968), commonly referred to as the "RICO" statute.

8.4.9 Section 1961 (RICO) defines "racketeering activity" as any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under state law and punishable by imprisonment for more than one year. It also includes several other offences under the federal and state laws. Section 1962 prohibits a list of activities like receiving any income directly or indirectly, from a pattern of racketeering activity. It also prescribes that it shall be unlawful for any person employed by or associated with any enterprise to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

8.4.10 Section 1963 stipulates that whoever violates any provision of section 1962 shall be fined or imprisoned for not more than 20 years (or for life if the violation is based on

a racketeering activity for which the maximum penalty includes life imprisonment), or both, and shall forfeit to the United States all benefits the person has derived by violation of Section 1962. In addition to these criminal law provisions, RICO also authorises civil suits, both by the government and by private individuals who are economically injured by a RICO violation. Section 1964 provides *"Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee…"*.

8.4.11 In the early nineties, the Government of India constituted the Vohra Committee "to take stock of all available information about the activities of crime syndicates/ Mafia organisations which had developed links with and were being protected by Government functionaries and political parties." The Vohra Committee submitted its report in 1993. It observed:

> *"An organised crime Syndicate/Mafia generally commences its activities by indulging in petty crime at the local level, mostly relating to illicit distillation/ gambling/organised satta prostitution in the larger towns. In port towns, their activities involve smuggling and sale of imported goods and progressively graduate to narcotics and drug trafficking. In the bigger cities, the main source of income relates to real estate – forcibly occupying lands/buildings, procuring such properties at cheap rates by forcing out the existing occupants/tenants etc. Over time, the money power thus acquired is used for building up contacts with bureaucrats and politicians and expansion of activities with impunity. The money power is used to develop a network of muscle-power which is also used by the politicians during elections."*

Box 8.7: Impact of Zero Tolerance Strategy

Worldwide too, the organized and systemic drive against organized crime has reaped rich dividends. In New York City for example, in the early 1990s, the city was known as one of the most dangerous cities in America. Enter Rudy Giuliani. The charismatic and innovative mayor of New York introduced the concept of "Zero Tolerance to Crime". The statistics speak for themselves. In the period 1993-97 there was a marked decline in crime:

a 50 per cent drop in overall Crime
b. 60 per cent drop in Murder
c. 16.5 per cent drop in Rape
d. 25.5 per cent drop in Felony
e. 48.7 per cent drop in Robbery
f. 45 per cent drop in Burglary
g. 33.7 per cent drop in Grand Larceny
h. 53.6 per cent drop in Car Thefts

Source: http//www.nyc.gov/html/om/html/97/sp393-97.html

8.4.12 The Committee on Reforms of Criminal Justice System had also examined issues related to 'organised crime' and recommended that:

i. Government release a paper delineating the genesis of organised crime in India, its international ramifications and its hold over society, politics and the economy of the country.
ii. Enabling legislative proposals be undertaken speedily to amend domestic laws to conform to the provisions of the UN Convention on Transnational Organised Crime.
iii. An inter-Ministerial Standing Committee be constituted to oversee the implementation of the Convention.
iv. The Nodal Group recommended by the Vohra Committee may be given the status of a National Authority with a legal frame-work with appropriate composition.
    a. This Authority may be mandated to change the orientation and perception of law enforcement agencies, sensitise the country to the dimensions of the problem and ensure that investigations of cases falling within the ambit of the Authority are completed within a specified time-frame;
    b. The Authority should be empowered to obtain full information on any case from any agency of the Central or the State Governments;
    c. It should also have the power to freeze bank accounts and any other financial accounts of suspects/accused involved in cases under its scrutiny.
    d. The power to attach the property of any accused.
v. Suitable amendments to provisions of the Code of Criminal Procedure, the Indian Penal Code, the Indian Evidence Act and such other relevant laws as required be made to deal with the dangerous nexus between politicians, bureaucrats and criminals.
vi. A special mechanism be put in place to deal with cases involving a Central Minister or a State Minister, Members of Parliament and State Assemblies to proceed against them for their involvement.
vii. That the Code of Criminal Procedure provide for attachment, seizure and confiscation of immovable properties on the same lines as available in special laws.
viii. A Central, special legislation be enacted to fight Organised Crime with a uniform and unified legal statute for the entire country.

8.4.13 The State of Maharashtra, which for long has borne the brunt of organisd crime enacted a special law called the Maharashtra Control of Organised Crime Act, 1999 (MCOCA). The statement of objects and reasons of MCOCA mentions the following:

"Organised crime has been for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fuelled by illegal wealth generated by contract, killing, extortion, smuggling in contrabands, illegal trade in narcotics, kidnappings for ransom, collection of protection money and money laundering, etc. The illegal wealth and black money generated by the organised crime being very huge, it has had serious adverse effect on our economy. It was seen that the organised criminal syndicates made a common cause with terrorist gangs and foster narco terrorism which extend beyond the national boundaries. There was reason to believe that organised criminal gangs have been operating in the State and thus, there was immediate need to curb their activities.

It was also noticed that the organised criminals have been making extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission would be an indispensable aid to law enforcement and the administration of justice.

2. The existing legal framework i.e. the penal and procedural laws and the adjudicatory system were found to be rather inadequate to curb or control the menace of organised crime. Government, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organised crime.

It is the purpose of this Act to achieve these objects."

8.4.14 MCOCA defines 'organised crime' in Section 2(e) (Box: 8.6) and provides for :

a) Enhanced punishment for organised crime and for possessing unaccountable wealth on behalf of a member of organised crime syndicate (Sections 3 & 4).
b) Constitution of Special Courts for trial of offences punishable under MCOCA (Section 5).
c) Authorisation of interception of wire, electronic or oral communication, appointment of a Competent Authority for it and constitution of a Review Committee for review of authorisation orders (Sections 13,14 & 15).
d) Special rules of evidence for the purpose of trial and punishment of offences under the Act (Section 17).
e) Certain confessions made to police officer not below the rank of the Superintendent of Police to be taken into consideration (Section 18).
f) Protection of witness (Section 19).

g) Forfeiture and attachment of property (Section 20).
h) Presumption by the Special Court that any accused has committed offence under the Act in certain cases (Section 22).
i) Information about commission of an offence under the Act to be recorded with the prior approval of police officer not below the rank of Deputy Inspector General of Police; investigation to be carried out by an officer not below the rank of a Deputy Superintendent of Police and Special Court to take cognizance of any offence only when there is a previous sanction of an officer not below the rank of Additional Director General of Police (Section 23).

8.4.15 Thus, it is evident that MCOCA has provided for a very elaborate mechanism to tackle organised crime. It is also seen that adequate safeguards are provided in this Act against misuse. For example, orders for authorising interception of communication have been put under the purview of a Review Committee; for confessions to be considered during trials, they have to be made before an officer not below the rank of a Superintendent of Police etc. This law however has enough teeth in the form of special rules of evidence, protection of witnesses, forfeiture of property, presumption against the accused in some cases, enhanced punishments etc.

8.4.16 Recently, Karnataka, Andhra Pradesh and Delhi have enacted similar laws. Gujarat had also passed a similar law which is awaiting the assent of the President. The Commission has examined this issue and is of the view that such provisions as contained in MCOCA can be a major tool in the fight against organised crime. Further, as organised crime is increasingly having inter-state ramifications as well as links with transnational terrorist groups, the Commission feels that it is now essential to have a Central law. Such legislation should basically follow the pattern of MCOCA by providing for enhanced punishment, special courts, public prosecutors, authorisation for interception of communication, regulation and review of such authorisations, special rules of evidence, circumstances under which confessions to police officers can be admissible in trials, protection of witnesses, forfeiture and attachment of property, presumption of offence, cognizance of and investigation into an offence, etc. The Commission has already recommended major safeguards in its recommendations on police reforms in earlier paragraphs. With the reformed organisational structure of the police as prescribed in this Report and the additional safeguards which would be built in the Union law dealing with organised crime, potential for misuse of its provisions would be minimal.

8.4.17 Recommendation:

a. Specific provisions to define organised crimes should be included in the new law governing 'Federal Crimes'. The definition of organised crime in this law should be on the lines of the Maharashtra Control of Organised Crime Act, 1999.

8.5 Armed Forces (Special Powers) Act, 1958

8.5.1 In the wake of serious disturbances following Partition, deployment of the Armed Forces in large areas and over long periods became inevitable. It was also realised that the normal provisions of CrPC (Section 130 and 131), which envisaged that the officer in-charge of the detachment of the Armed Forces present on the spot would use force and arrest members of an unlawful assembly, were not sufficient to control the situation. It was under these circumstances that the Armed Forces were given special powers with enactment of laws like the Bengal Disturbed Areas (Special Powers of the Armed Forces) Ordinance, 1947 and East Punjab Disturbed Areas (Special Powers of the Armed Forces) Ordinance, 1947. Essentially these laws empowered even non-commissioned officers to use force which could extend to causing death, searching premises without a warrant or rescuing persons wrongfully restrained and to provide immunity from prosecutions in respect of such acts.

8.5.2 Though these enactments ceased to operate a few years after the situation in the affected states stabilized, the arrangements made therein were deemed very useful for situations requiring deployment of the armed forces etc for 'internal security duties' *for prolonged periods*. When deployment of the Army and the para-military forces in large numbers and for an indeterminate period to deal with the situation arising because of insurgency by the 'Nagaland National Council' became necessary, a law on the lines of the 1947 enactments was also considered to be indispensably required. The result was the Armed Forces (Assam and Manipur) Special Powers Act, 1958. The Naga inhabited areas affected by insurgency fell in the then Naga Hills District in Assam and three sub-divisions (Ukhrul, Tamenglong and Mao) in the then Union Territory of Manipur. The law was subsequently used to deal with insurgency in the then Mizo Hill District, and also in Assam and Tripura. Following the reorganization of the North-Eastern region in 1972 entailing, inter alia, a constriction of the territory of the State of Assam, the Act was amended and renamed the Armed Forces (Special Powers) Act (AFSPA).

8.5.3 AFSPA now extends to all the states of the North East except Sikkim. It comes into operation after a declaration is made under Section 2 that a particular area is "disturbed". Earlier, only the Governor/Administrator was competent to issue such declaration (in reality, the State or the Union Territory concerned); the 1972 amendment now vests a similar power with the Union Government. The Act applies to the Army, the Air Force and Central paramilitary forces etc. Once the declaration is issued, 'special powers', become available to commissioned or non-commissioned officers of the Armed Forces. The 'special powers' under Section 4 are:

(a) Power to use force, including opening fire, even to the extent of causing death if prohibitory orders banning assembly of five or more persons or carrying arms and weapons etc are in force in the disturbed area;
(b) Power to destroy structures used as hide-outs, training camps or as a place from which attacks are or likely to be launched etc;
(c) Power to arrest without warrant and to use force for the purpose;
(d) Power to enter and search premises without warrant to make arrest or recovery of hostages, arms and ammunition and stolen property etc.

8.5.4 Section 5 of AFSPA requires that persons arrested by the Armed Forces be handed over to the nearest Police Station "with the least possible delay" along with a report of "circumstances occasioning the arrest". Section 6 gives members of the Armed Forces discharging duties under the Act immunity from prosecution and other legal proceedings except with the previous sanction of the Union Government.

8.5.5 The Act has been used in Manipur and Nagaland since 1958 and in Mizoram, Assam and Tripura from later dates. Attempts have been made to seek judicial review of this law with a view to seek its annulment on grounds that it is repugnant to the right to equality and the federal structure of the Constitution etc. The matter has received a quietus following a unanimous pronouncement by a five Judge Constitution Bench of the Supreme Court in Naga Peoples' Movement of Human Rights vs Union of India (1998) 2 SCC 109 holding the enactment to be Constitutionally valid. As regards powers vested in the Union Government, the Supreme Court noted that Section 3 was amended by Act 7 of 1972 by virtue of which the power to declare an area to be a 'disturbed area' has also been conferred on the Central Government.

8.5.6 The five-judge bench of the Apex Court arrived at, inter alia, the following conclusions after taking into consideration various arguments:

i. Parliament was competent to enact AFSPA in exercise of the legislative power conferred on it under Entry 2 of List I (pertaining to naval, military and air forces and also any other armed forces of the Union) and Article 248 of the Constitution read with Entry 97 of List I (pertaining to residuary powers of legislation). After the insertion of Entry 2A in List I by the Forty-Second Amendment to the Constitution, the legislative power flows from Entry 2A of List I (pertaining to deployment of any armed force of the Union or any other force subject to the control of the Union in any state in aid of the civil power etc).
ii. It is not a law in respect of maintenance of public order falling under Entry 1 of List II.
iii. While AFSPA is not a law under Entry 1 of List II, the expression "in aid of the civil power" in Entry 2 A of List I and Entry 1 of List II, implies that deployment of the armed forces of the Union shall be for the purpose of enabling the civil power in the State to deal with the situation affecting maintenance of public order which has necessitated the deployment of the armed forces in the State. It does not displace the civil power of the state by the armed forces of the Union.
iv. AFSPA is not a colourable legislation or a fraud on the Constitution. It is not a measure intended to achieve the same result as contemplated by a Proclamation of Emergency under Article 352 or a proclamation under Article 356 of the Constitution.
v. A declaration under Section 3 has to be for a limited duration subject to periodic review before the expiry of six months.
vi. The conferment of power to make a declaration under Section 3 of AFSPA on the Central Government is not violative of the federal scheme as envisaged by the Constitution. Further, a similar conferment on the Governor of the State cannot be regarded as delegation of the power of the Central Government.
vii. Although a declaration under Section 3 can be made by the Central Government suo motu without consulting the concerned State Government, it is desirable that the State Government should be consulted by the Central Government while making the declaration.
viii. The powers conferred under Clauses (a) to (d) of Sections 4 and 5 of AFSPA on the officers of the armed forces, including a Non-Commissioned Officer are not arbitrary and unreasonable and are not violative of the provisions of Articles 14, 19 or 21 of the Constitution.
ix. A person arrested and taken into custody in exercise of the powers under Section

4(c) of AFSPA should be handed over to the officer-in-charge of the nearest police station with least possible delay so that he can be produced before the nearest magistrate within 24 hours of such arrest excluding the time taken for journey from the place of arrest to the Court of Magistrate.

8.5.7 There was a serious outcry against the Act in Manipur in July 2004 following the alleged custodial death of a woman arrested by the Armed Forces. The agitation virtually paralyzed the Manipur valley and the Union Government appointed the Committee to Review the Armed Forces (Special Powers) Act, 1958 with Justice B.P Jeevan Reddy, a retired Judge of the Supreme Court, as its Chairman. The terms of reference of the Committee were to recommend amendments in the Act to *"bring it in consonance with the obligations of the Government towards human rights or to replace the Act by a "more humane Act"*. In other words, implicit behind the setting up of the Committee was the recognition that the provisions of the Act needed a fresh look.

8.5.8 The above Committee examined the provisions of Section 4(a) of AFSPA and found that the powers conferred therein are not absolute and could only be invoked in the disturbed area if there was already a prohibitory order in force. Furthermore, the opinion formed by the officer concerned must be honest and fair. It also examined the provisions of Section 4(c) and found that the power conferred therein is circumscribed by Section 5. The Committee was of the view that the phrase 'with the least possible delay' as used in Section 5 has to be construed in the light of Article 22(2) of the Constitution which confers a right upon the person arrested and detained in custody to be produced before the nearest Magistrate within a period of 24 hours of such arrest (excluding journey time). The Committee took note of clauses (a) and (b) of Article 33 of the Constitution which empowers the Parliament to make a law determining to what extent any of the Rights conferred by Part 3 of the Constitution shall in their application to the members of the Armed Forces or the members of the Forces charged with the maintenance of public order be restricted or abrogated to ensure proper discharge of their duties. It felt that as Parliament had not chosen to make any such laws, the right conferred by Article 22(2) remains untrammelled.

8.5.9 The Committee also noted that Article 355 of the Constitution places an obligation on the Union of India to protect every state against 'external aggression and internal disturbance'. It also noted that prior to the Constitution (44th Amendment) Act the expressions 'external aggression' and 'internal disturbance' were common to both Articles 352 and 355. With the substitution of 'internal disturbance' by the expression 'armed rebellion' by the said Amendment, the power under Article 352 may not be available with the Union in case of an 'internal disturbance'.

8.5.10 The Committee felt that every 'public order' problem does not necessarily amount to 'internal disturbance' while the converse would be true. The Committee was of the view that this distinction should be kept in mind while interpreting the expression 'Public Order' as found in Entry 1 of List II of the Seventh Schedule to the Constitution. It also pointed out that Entry 2 A in the Union List speaks of deployment of the Armed Forces of the Union in any State in aid of civil power but it does not speak of or refer to 'Public Order'.

Box 8.8 : Definition of 'terrorist act' under the Unlawful Activities (Prevention) Act, 1967

"Whoever, with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people in India or in any foreign country, does any act by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community in India or in any foreign country or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and threatens to kill or injure such person in order to compel the Government in India or the Government of a foreign country or any other person to do or abstain from doing any act, commits a terrorist act". (Section 15).

8.5.11 Apart from the above, the Committee also examined the provisions of the Unlawful Activities (Prevention) Act, 1967 (ULPA) as amended by the Unlawful Activities (Prevention) Amendment Act, 2004. It took note of the definition of a 'terrorist act' as provided in Section 15 and the terrorist organizations listed out in the Schedule to this Act, which includes various organizations from the North-Eastern States. The Committee observed that Section 49(b) of this Act gives protection to any serving or any retired member of the armed forces or the para military forces in respect of action taken in good faith in the course of any operation directed towards combating terrorism. The Committee was of the view that Section 49(b) indicates that Parliament did take note of the fact that in many cases it may be necessary to deploy the armed forces or para military forces to combat terrorism and terrorist activities.

8.5.12 The Committee after considering the views of various stakeholders came to the conclusion that AFSPA should be repealed. It was also of the view that it would be more appropriate to recommend insertion of appropriate provisions in the Unlawful Activities (Prevention) Act, 1967 (ULPA) instead of suggesting a new legislation. The reasons for this recommendation are summarised as under:

a. The ULPA defines terrorism in terms which cover the activities carried out by several insurgent groups in the North Eastern states.
b. The ULPA not only defines 'terrorism' in expansive terms but also lists some of the organisations engaged in insurgent activities in the North East as is apparent from the Schedule appended to the Act.
c. On the basis of the provisions of Section 49(b) of the ULPA it can be said that this Act envisages the deployment of the armed forces or para military forces in control of the Union for fighting insurgent activity carried on in some or all North Eastern states.
d. Repeal of AFPSA would remove the feeling of discrimination and alienation among the people of the North Eastern states.
e. The ULPA is a comprehensive law unlike the AFPSA which deals only with the operations of the armed forces of the Union in a disturbed area.

8.5.13 The Committee, therefore proposed the insertion of Chapter VI A in the ULPA. A brief summary of the proposed insertion is reproduced below:

a. If the State Government is of the opinion that on account of terrorist acts or otherwise, a situation has arisen where public order cannot be maintained in the state or in any part of the state except with the aid of armed forces in control of the Union, it may request the Union Government to deploy them for a period (not exceeding six months) as it may specify.
b. It shall be open to the State Government to review the situation at the end of the period as specified and request the Union Government to extend the period of deployment for such period (not exceeding three months) as it may deem necessary. Such review can take place from time to time but each request shall be placed on the table of the Legislative Assembly (if there are two Houses, then on the table of both Houses) of the state.
c. On receipt of such request from the State Government, the Union Government may deploy such forces under its control which are necessary for restoration of public order. This may be done by way of a notification published in the Gazette. On the basis of the request of the State Government the period of deployment and area of deployment can be extended or varied.
d. If the Union Government is of the opinion that on account of terrorist acts or otherwise a situation has arisen in a state (or a part of the state)/UT, where deployment of forces under its control is required to quell internal disturbance, it may do so notwithstanding that no request for the same

is received from the State Government concerned. The Union Government shall do so by way of a notification published in the Gazette specifying the state or part of the state and the period of deployment (not exceeding six months). At the end of the specified period, it shall review the situation in consultation with the State Government and may extend the period of deployment. Such extension shall not be for more than six months at a time. Every notification extending the period of deployment or the area of deployment shall be laid on the table of both Houses of Parliament within one month of publication of the notification.
e. The forces so deployed shall act in aid of civil power. In the course of undertaking operations, as are deemed necessary for the purpose of restoring public order or to quell internal disturbance, any officer not below the rank of non-commissioned officer may use force or fire upon person(s); enter and search without warrant any premises to arrest any person; enter, search and seize without warrant any premises and destroy firearms etc. (except where such premises happens to be in an uninhabitated area, the entry and search seizure operations shall be effected in the presence of the elders of the locality or the head of the household, and in case of his/her absence, any two independent witnesses) within the context of activities mentioned in Section 15 of the ULPA.
f. The person arrested as mentioned above shall be handed over to the officer in charge of the nearest police station.
g. The Union Government shall constitute a Grievances Cell in each district of a state where such forces are deployed. This shall be an independent body and shall be competent to enquire into complaints of violations of rights of citizens.

8.5.14 The proposed Chapter VI A also includes an Appendix which incorporates the 'Do's and Don'ts' issued by the Army and mentioned in paras 58 and 59 of the referred judgment of the Supreme Court and also the conclusions mentioned in paras 79(17) and 79(21) of that Judgment.

8.5.15 There is no doubt that the definition of a 'terrorist act' as provided in the ULPA is quite exhaustive as it also takes it into its purview, inter alia, acts committed with intent to 'threaten the unity, integrity, security or sovereignty of India'. In fact, the instances under which any area can be declared a 'disturbed area' under the AFSPA necessitating the deployment of the armed forces of the Union therein would necessarily be the outcome of activities which are covered under the definition of a 'terrorist act' under the ULPA. Thus there is little need for a separate Act. The proposed insertion of Chapter VI A in the ULPA

basically provides a mechanism through which the Armed Forces of the Union could be deployed in situations and areas where its need is felt. As indicated above, the proposed amendment incorporates the directions of the Supreme Court of India on the matter with regard to deployment of armed forces of the Union and the conduct of such armed forces during such deployment. It also provides for a grievance redressal mechanism. Most importantly it does not in any way dilute or compromise the paramount importance of ensuring national security in these disturbed insurgency affected areas.

8.5.16 The Commission agrees that for reasons indicated in the foregoing paras, the AFSPA should be repealed. As recommended by the Committee to Review the Armed Forces (Special Powers) Act, 1958, a new chapter VI A could be inserted in the ULPA incorporating the provisions governing the deployment of armed forces of the Union in aid of civil power. However, the proposed insertion of Chapter VI A should apply only to the North-East.

8.5.17 Recommendation:

a. The Armed Forces (Special Powers) Act, 1958 should be repealed. To provide for an enabling legislation for deployment of Armed Forces of the Union in the North-Eastern states of the country, the Unlawful Activities (Prevention) Act, 1967 should be amended by inserting a new Chapter VI A as recommended by the Committee to Review the Armed Forces (Special Powers) Act,1958. The new Chapter VI A would apply only to the North-Eastern states.

8.6 The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005

8.6.1 The proposed Bill is intended to tackle the problem of communal disturbances and violence. Clause 3 of this Bill confers the power on the State Government to declare an area to be a communally disturbed area whenever one or more scheduled offences are being committed in that area in such a manner and on such a scale which involves the use of criminal force of violence against any group, caste and community, resulting in death and destruction of property. The State Government is required to take all possible measures to control communal violence. In order to enforce the provisions of this Bill the State Government shall appoint Competent Authorities who would be entrusted with various powers like power to take preventive measures, power to order deposit of arms, ammunition etc., power to search, detain and seize arms etc. in disturbed areas, power to prohibit certain acts and the power to make orders regarding conduct of persons in communally disturbed areas. Strict punishments for violating these orders have also been provided.

8.6.2 The Bill provides for enhanced punishment for communal violence. In terms of Clause 19 of the Bill, whoever commits any act of omission or commission which constitutes a scheduled offence on such scale or in such manner which tends to create internal disturbance within any part of the state and threaten the secular fabric, unity, integrity or internal security of the nation is said to commit communal violence. Punishment for such offences other than in the case of an offence punishable with death or imprisonment for life is twice the longest term of imprisonment and twice the highest fine provided for that offence in the IPC or in any other Act specified in the Schedule to the Bill. In case of a public servant the punishment will not be less than five years and whosoever is found guilty shall be disqualified from holding any post or office under the government for a period of six years from the date of conviction.

8.6.3 Chapters V and VI of the Bill deal with Investigation and Special Courts respectively. The notable feature is that there are provisions for constitution of a review committee, and special investigation teams. In terms of Clause 22, if a charge sheet is not filed within 3 months from the date of the registration of FIR, the case shall be reviewed by a committee headed by an officer of the level of an Inspector General of Police. This Committee has the authority to order a fresh investigation by another officer not below the rank of Dy. Superintendent of Police. The State Government can also constitute one or more Special Investigation Teams, if it comes to the conclusion that the investigation of offences committed in any communally disturbed area was not carried out properly.

8.6.4 The Bill provides for institutional arrangements for relief and rehabilitation in the form of State Communal Disturbance Relief and Rehabilitation Council to be constituted by every State Government. In addition to the relief and rehabilitation work the Council shall also prepare a plan for every state to be called the state communal harmony plan for promotion of communal harmony and prevention of communal violence. There is also a provision for constitution of a District Communal Disturbance Relief and Rehabilitation Council. In terms of Clause 45, there will be a National Communal Disturbance Relief and Rehabilitation Council to be constituted by the Central Government. The National Council shall give its recommendations to the Government regarding relief and rehabilitation of the victims of the communal violence. The Council shall also submit reports to the Union Government recommending the steps required to be taken to deal with the situation giving rise to communal violence.

8.6.5 The Bill also has provisions for setting up of a fund by every State Government to be called the State Communal Disturbance Relief and Rehabilitation Fund and there shall be credited thereto – (a) all moneys received from the Central Government, (b) all moneys received from the State Government and any other amount received as gifts or donations

or financial aid etc. In addition to that every State Government shall establish a fund to be called the Victims Assistance Fund in each district and place the same at the disposal of the District Council. The Councils at the District and the State levels are empowered to utilize these funds for relief and rehabilitation.

8.6.6 One of the important provisions of the proposed Bill is the special powers of the Union Government to deal with communal violence in certain cases. In terms of Clause 55, the Central Government has been given power to give directions to the State Government in case of communal disturbances and to issue notifications declaring any area within a state as a communally disturbed area and to deploy armed forces wherever necessary. Where it is decided to deploy armed forces, an authority known as Unified Command may be constituted by the Central Government or the State Government for the purpose of coordinating and monitoring such deployment. Every notification declaring any area within a state as a communally disturbed area by the Union Government has to be laid before each House of Parliament. Clause 56 of the Bill provides that such notification shall also specify the period for which the area will remain so notified which shall not exceed in the first instance, 30 days. The Central Government may extend this period by notification but the total period during which an area may be notified as a communally disturbed area shall not exceed a total continuous period of 60 days.

8.6.7 The Bill deals with all aspects of tackling communal violence ranging from preventive measures to rehabilitation measures. The Commission would be examining these measures along with the Bill in its Report on Conflict Management.

public grievances. These groups can also play a role in resolving conflicts between different sections of society. They also play an important role in relief and rehabilitation measures after the major crises. Last but not the least, community policing has emerged as a major civil society response to increased crimes.

9.1.3 In its Report on Ethics in Governance, the Commission has recommended that citizens be involved in the assessment and maintenance of ethics in important government institutions and offices. This would very much apply to police stations and other police offices. Based on the perception of citizens who have approached the police station for any service, a periodic rating of all police stations should be done.

9.1.4 The efforts of civil society need to be supported and acknowledged by the administration. To facilitate their contribution, institutional mechanisms may have to be created. Sometimes they may require statutory backing.

9.1.5 Recommendations:

a. **Citizens should be involved in evaluating the quality of service at police stations and other police offices.**
b. **Government should incentivise citizens' initiatives.**
c. **Formal mechanisms should be set up at the cutting edge level to involve citizens/ citizen's groups in various aspects of public order management.**

9.2 The Role of the Media in Public Order

9.2.1 The Fourth Estate has always played an influential role in the public sphere. Historically, the press has been a formulator of public opinion, been instrumental in bringing about change and has also provided a powerful platform for addressing national and public sentiments.

9.2.2 While maintaining public order is an important aspect of the State's effort to earn the approval of its people, equally important, for the purpose of legitimacy, is the people's perception regarding its ability to do so. This perception cements the people's faith in the State – a necessary input in legitimising the existence of the State. It is here that the positive role of the media emerges quite significantly. The increasing exposure of the general public to audio-visual and print media influences people's perception towards the capabilities of the State.

9.2.3 Technology has endowed the electronic media with three major attributes – instantaneity, spontaneity and locality. Instantaneity has provided it with a ringside view in real time, spontaneity has allowed it cover events as they unfold and locality has provided it with the power to bring the farthest corner of the globe into a household. This has also enhanced the reach and, therefore, the hold of the electronic media over the viewers' minds. It has, however, also given rise to a multiplicity of players in this field, with consequential concerns of accountability, responsibility and public good. It is, therefore necessary to ensure that the media is prompt, responsible, sensitive, accurate and objective in its presentation of news. In the context of maintenance of public order, the role of the media could go a long way in preventing rumour mongering and incorrect or mischievous coverage by a small section of the media which could be supportive of partisan elements.

9.2.4 The central issue, thus, is how to have an effective interface with the media. Given the technological environment in which the media functions today, the fact that there is no monopoly over sources of information and the need to have an informed public, control measures are neither feasible nor desirable. Thus, it is incumbent on the administration to continuously provide the media with immediate, accurate and reliable information so that the public is not left with gaps in their information which might be filled by sensational and biased news reporting. This requires capability building at various levels of the administrative machinery so as to provide a transparent and responsive administration.

9.2.5 To ensure that government officials interact with the media in a professional manner, media management modules should be integrated in various training programmes. Media persons may also be associated with such training modules. Emphasis on local language media would obviously be useful.

9.2.6 In hierarchical structures within the government, interaction with the media is generally regulated to avoid confusion and contradictions. To overcome such hindrances, officials should be designated at appropriate levels to interact with the media and their accessibility should be ensured.

9.2.7 Recommendations:

a. **The Administration must make facts available to the media at the earliest about any major development, particularly activities affecting public order.**
b. **In order to have better appreciation of each other's view points there should be increased interaction between the Administration and the media. This could**

be inter alia in the form of joint workshops and trainings.

c. The Administration should designate points of contact at appropriate levels (a spokesperson) for the media which could be accessed during whenever required.

d. Officers should be imparted training for interaction with the media.

e. A cell may be constituted at the district level which may analyse media reports about matters of public importance.

9.3 Role of Political Parties

9.3.1 Our democratic polity encourages the resolution of conflicts and disputes through discussion, debate and consensus. This is ensured by participation in the political process institutionalised by the Constitution. There have been many instances where political outfits which once promoted the attainment of political and social objectives through violent means have accepted the democratic set-up of the country and have participated in the electoral process, thereby reducing conflicts.

9.3.2 The most effective method of expressing collective concern is through organisation of peaceful assemblies and rallies. We have the good fortune of being heir to Mahatma Gandhi's doctrine of non-violence. And yet, the number of instances where the exercise of the fundamental right of peaceful assembly has led to a break down of public order has been increasing over the years. Hooliganism and anti-social behaviour sometimes becomes a necessary accompaniment of many political rallies or demonstrations. The responsibility of political parties in such situations and their attitude towards the police involved in maintaining law and order needs to be redefined. This necessarily brings to centre-stage the relationship between politicians and the police. While the police have to be responsible and accountable to the people at large in a democratic set up, their efficiency and impartiality cannot be allowed to be impinged upon by extraneous political interventions.

9.3.3 After more than five decades of Independence, a plethora of social, economic and political issues still exist and many grievances of the people remain unresolved. Political parties should act as a vehicle for mainstreaming such grievances through participation in the democratic process so that they could be resolved through discussion and debate. However, when political parties fail to act as the medium of expression of such concerns, a political vacuum is created which encourages the resolution of issues through conflict and leads to the breakdown of public order. The rise and growth of Naxalism in various parts of the country is a classic example of this.

9.3.4 As the Commission has stated in its Report on 'Ethics in Governance', "Democratic maturity needs time, patience, and genuine efforts to find rationale answers to complex problems and willingness to reconcile conflicting views".The Commission hopes that the political leadership of the country would come together to evolve a consensus on political conduct which would enable peaceful resolution of of conclicts for overall maintenance of public order.

CONCLUSION

Public order goes beyond being just another issue in the realm of good governance. It is indeed at the core of it, the most vital aspect of our democracy, of our very existence as a nation. The rule of law, in its widest sense, creates, and is also the effect of, an orderly, cultured, wise and equitable society.

The importance of this Report lies in the attempt of the Commission to find new ways by which the rule of law would be upheld and our democracy strengthened. The Commission has tried to move beyond the straitjacket of the existing structures and systems of those wings of government which are directly involved in the maintenance of public order. Our recommendations, in their implementation, would require restructuring of the police in India and the involvement of not merely the Union and the States, but also of the third tier of governance, the local bodies. At the center of our proposals is the citizen, especially the vulnerable sections of our society.

In our task, we have had the benefit of the thinking and the advice offered by previous Commissions and Committees. The pronouncements of the Supreme Court and the various High Courts have been before us and have guided the Commission in its deliberations. The issues that have been considered by such eminent bodies have greatly facilitated the Commission in arriving at its recommendations for holistic and overarching reform.

Public order is a critical necessity for progress. An unruly society would be a recipe for economic disaster. Ultimately the quality of life of our citizens is in great measure dependent upon the maintenance of public order. There is a gowing concern that in the eyes of the law enforcing agencies some are more equal than others. It has been the endeavour of this Commission to propose changes which would substantially remove such a perception, reduce the scope for extraneous influences to bear upon the functioning of the police and make them professional, fair and citizen-friendly.

The Commission notes that some of the changes proposed may take time to implement. But every long journey begins with a small step. There is need for an enlightened political will to accept and bring about these changes, which we believe are fundamental and essential for the maintenance of public order and a harmonious society.

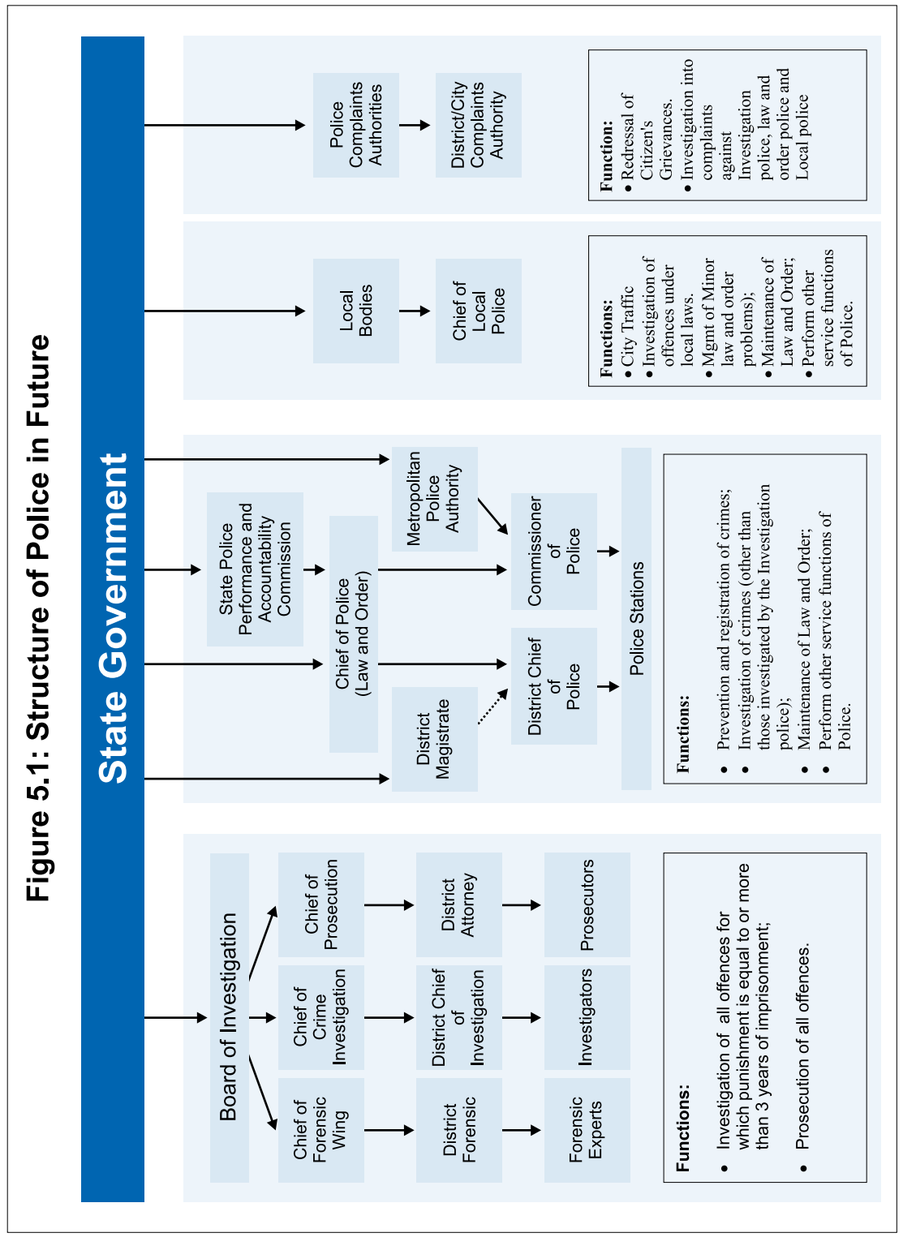


Figure 5.1: Structure of Police in Future

SUMMARY OF RECOMMENDATIONS

1. (Para 5.2.1.8) State Government and the Police

a. The following provision should be incorporated in the respective Police Acts:

It shall be the responsibility of the State Government to ensure efficient, effective, responsive and accountable functioning of police for the entire state. For this purpose, the power of superintendence of the police service shall vest in and be exercised by the State Government in accordance with the provisions of law.

The State Government shall exercise its superintendence over the police in such manner and to such an extent as to promote the professional efficiency of the police and ensure that its performance is at all times in accordance with the law. This shall be achieved through laying down policies and guidelines, setting standards for quality policing, facilitating their implementation and ensuring that the police performs its task in a professional manner with functional autonomy.

No government functionary shall issue any instructions to any police functionary which are illegal or malafide.

b. 'Obstruction of justice' should also be defined as an offence under the law.

2. (Para 5.2.2.30) Separation of Investigation from other Functions

a. Crime Investigation should be separated from other policing functions. A Crime Investigation Agency should be constituted in each state.

b. This agency should be headed by a Chief of Investigation under the administrative control of a Board of Investigation, to be headed by a retired/ sitting judge of the High Court. The Board should have an eminent lawyer,

an eminent citizen, a retired police officer, a retired civil servant, the Home Secretary (ex-officio), the Director General of Police (ex-Officio), Chief of the Crime Investigation Agency (ex-officio) and the Chief of Prosecution (ex-officio) as Members.

c. The Chairman and Members of the Board of Investigation should be appointed by a high-powered collegium, headed by the Chief Minister and comprising the Speaker of the Assembly, Chief Justice of the High Court, the Home Minister and the Leader of Opposition in the Legislative Assembly. The Chief of Investigation should be appointed by the State Government on the recommendation of the Board of Investigation.

d. The Chief of the Crime Investigation Agency should have full autonomy in matters of investigation. He shall have a minimum tenure of three years. He can be removed within his tenure for reasons of incompetence or misconduct, but only after the approval of the Board of Investigation. The State Government should have power to issue policy directions and guidelines to the Board of Investigation.

e. All crimes having a prescribed punishment of more than a defined limit (say three or more years of imprisonment) shall be entrusted to the Crime Investigation Agency. Registration of FIRs and first response should be with the 'Law and Order' Police at the police station level.

f. The existing staff could be given an option of absorption in any of the Agencies – Crime Investigation, Law and Order and local police. But once absorbed, they should continue with the same Agency and develop expertise accordingly. This would also apply to senior officers.

g. Once the Crime Investigation Agency is staffed, all ranks should develop expertise in that field and there should be no transfer to other Agencies.

h. Appropriate mechanisms should be developed to ensure coordination between the Investigation, Forensic and the Law and Order Agencies, at the Local, District and the State levels.

3. (Para 5.2.3.7) Accountability of Law and Order Machinery

a. A State Police Performance and Accountability Commission should be constituted, with the following as Members:

- **Home Minister (Chairman)**
- **Leader of Opposition in the State Assembly**
- **Chief Secretary**
- **Secretary in charge of the Home Department;**
- **Director General of Police as its Member Secretary**
- **(For matters pertaining to Director General of Police, including his appointment, the Home Secretary shall be the Member Secretary)**
- **Five non-partisan eminent citizens**

b. The State Police Performance and Accountability Commission should perform the following functions:

- **frame broad policy guidelines for promoting efficient, effective, responsive and accountable policing, in accordance with law;**
- **prepare panels for the office of Director General of Police against prescribed criteria;**
- **identify performance indicators to evaluate the functioning of the police service; and**
- **review and evaluate organizational performance of the police service.**

c. The method of appointment of the Chairman and Members of the State Police Performance and Accountability Commission should be as stipulated in the Draft Model Police Act.

d. The State Government should appoint the Chief of Law and Order Police from the panel recommended by the State Police Performance and Accountability Commission. The panel will be for the 'office' of Director General of Police and not to other posts of the 'rank' of DGP.

e. The tenure of the Chief of the Law and Order Police as well as the Chief of the Crime Investigation Agency should be at least three years. But this tenure should not become a hindrance for removal in case the Chief is found to be incompetent or corrupt or indulges in obstruction of justice or is guilty of a criminal offence. The State Government should have powers to remove the Police Chief but such order of removal should be passed only after it has been cleared by the State Police Performance and Accountability Commission (or the State Investigation Board, in the case of Chief of Investigation).

4. (Para 5.2.4.9) Police Establishment Committees

a. A State Police Establishment Committee should be constituted. It should be headed by the Chief Secretary . The Director General of Police should be the Member Secretary and the State Home Secretary and a nominee of the State Police and Accountability Commission should be the Members. This Committee should deal with cases relating to officers of the rank of Inspector General of Police and above.

b. A separate State Police Establishment Committee should be set up with the Chief of Law and Order Police as its Chairperson and two senior police officers and a member of the State Police Performance and Accountability Commission as Members (All Members of this Committee should be nominated by the State Police Performance and Accountability Commission) to deal with cases relating to all gazetted officers up to the rank of Deputy Inspector General of Police.

c. These Committees should deal with all matters of postings and transfers, promotions and also grievances relating to establishment matters. The recommendations of these Committees shall normally be binding on the Competent Authority. However, the Competent Authority may return the recommendations for reconsideration after recording the reasons.

d. Similarly, a District Police Establishment Committee (City Police Committee) should be constituted under the Superintendent/Commissioner of Police. This Committee should have full powers in all establishment matters of non-gazetted police officers.

e. For inter-district transfers of non-gazetted officers, the State level Establishment Committee may deal with it or delegate it to a Zonal or a Range level Committee.

f. All officers and staff should have a minimum tenure of three years. Should the Competent Authority wish to make pre-mature transfer, it should consult the concerned establishment committee for their views. If the views of the establishment are not acceptable to the Competent Authority, the reasons should be recorded before the transfer is affected, and put in the public domain.

g. The Board of Investigation should have full and final control on all personnel matters of Crime Investigation Agency. Therefore, the Board should act as the establishment committee for all senior functionaries in investigation and prosecution. An appropriate committee may be constituted at the district level by the Board, for dealing with non-gazetted officials.

5. (Para 5.3.13) Competent Prosecution and Guidance to Investigation

a. A system of District Attorney should be instituted. An officer of the rank of District Judge should be appointed as the District Attorney. The District Attorney shall be the head of Prosecution in a District (or group of Districts). The District Attorney shall function under the Chief Prosecutor of the State. The District Attorney should also guide investigation of crimes in the district.

b. The Chief Prosecutor for the State shall be appointed by the Board of Investigation for a period of three years. The Chief Prosecutor shall be an eminent criminal lawyer. The Chief Prosecutor would supervise and guide the District Attorneys.

6. (Para 5.4.7) Local Police and Traffic Management

a. A task force may be constituted in the Ministry of Home Affairs to identify those laws whose implementation, including investigation of violations could be transferred to the implementing departments. A similar task force should look into the state laws in each state.

b. To start with, departments like the State Excise, Forest, Transport and Food with enforcement divisions may take some officers from the police department of appropriate seniority on deputation and form small investigation outfits by drawing departmental officers from corresponding ranks for the purpose of investigating cases of violations of appropriate laws; after a transition period, the concerned department should endeavour to acquire expertise and build capacity to cope with the investigation work with its own departmental officials.

c. A Municipal Police Service should be constituted in Metropolitan cities having population of more than one million. The Municipal Police should be empowered to deal with the offences prescribed under the municipal laws.

d. The function of Traffic control (along with traffic police) may be transferred to the local governments in all cities having a population of more than one million.

7. (Para 5.5.4) The Metropolitan Police Authorities

a. All cities with population above one million should have Metropolitan Police Authorities. This Authority should have powers to plan and oversee community policing, improving police-citizen interface, suggesting ways to improve quality of policing, approve annual police plans and review the working of such plans.

b. The Authorities should have nominees of the State Government, elected municipal councilors, and non partisan eminent persons to be appointed by the government as Members. An elected Member should be the Chairperson. This Authority should not interfere in the 'operational functioning' of the police or in matters of transfers and postings. In order to ensure this, it should be stipulated that individual members will have no executive functions nor can they inspect or call for records. Once the system stabilizes, this Authority could be vested with more powers in a phased manner.

8. (Para 5.6.2) Reducing Burden of Police - Outsourcing Non Core Functions

a. Each State Government should immediately set up a multi-disciplinary task force to draw up a list of non-core police functions that could be outsourced to other agencies. Such functions should be outsourced in a phased manner.

b. Necessary capacity building exercise would have to be carried out for such agencies and functionaries in order to develop their skills in these areas.

9. (Para 5.7.10) Empowering the 'Cutting Edge' Functionaries

a. The existing system of the constabulary should be substituted with recruitment of graduates at the level of Assistant Sub- Inspector of Police (ASI).

b. This changeover could be achieved over a period of time by stopping recruitment of constables and instead inducting an appropriate number of ASIs.

c. Recruitment of constables would, however, continue in the Armed Police.

d. The orderly system should be abolished with immediate effect.

e. The procedure for recruitment of police functionaries should be totally transparent and objective.

f. Affirmative action should be taken to motivate persons from different sections of society to join the police service. Recruitment campaigns should be organised to facilitate this process.

10. (Para 5.8.4) Welfare Measures for the Police

a. Rational working hours should be strictly followed for all police personnel.

b. Welfare measures for police personnel in the form of improved working conditions, better education facilities for their children, social security measures during service, as well as post retirement should be taken up on priority.

c. Major housing construction programmes for police personnel should be taken up in a time bound manner in all states.

11. (Para 5.9.15) Independent Complaints Authorities

a. A District Police Complaints Authority should be constituted to enquire into allegations against the police within the district. The District Police Complaints Authority should have an eminent citizen as its Chairperson, with an eminent lawyer and a retired government servant as its Members. The Chairperson and Members of the District Police Complaints Authority should be appointed by the State Government in consultation with the Chairperson of the State Human Rights Commission. A government officer should be appointed as Secretary of the District Police Complaints Authority.

b. The District Police Complaints Authority should have the powers to enquire into misconduct or abuse of power against police officers up to the rank of Deputy Superintendent of Police. It should exercise all the powers of a civil

court. The Authority should be empowered to investigate any case itself or ask any other agency to investigate and submit a report. The Disciplinary Authorities should normally accept the recommendations of the District Authorities.

c. A State Police Complaints Authority should be constituted to look into cases of serious misconduct by the police. The State level Authority should also look into complaints against officers of the rank of Superintendent of Police and above. The State Police Complaints Authority should have a retired High Court Judge as Chairperson and nominees of the State Government, the State Human Rights Commission, the State Lok Ayukta, and the State Women Commission. An eminent human rights activist should be also be the member of the Complaints Authority. The Chairperson and the Member of the Authority (eminent human rights activist) should be appointed by the State Government based on the recommendations of the State Human Rights Commission. (In case the State Human Rights Commission has not been constituted, then the State Lok Ayukta may be consulted). A government officer should officiate as the secretary of the Authority. The Authority should have the power to ask any agency to conduct an enquiry or enquire itself. The Authority should also be empowered to enquire into or review any case of police misconduct, which is before any District Police Complaints Authority, if it finds it necessary in public interest to do so.

d. It should be provided that if upon enquiry it is found that the complaint was frivolous or vexatious, then the Authority should have the power to impose a reasonable fine on the complainant.

e. The State Police Complaints Authority should also monitor the functioning of the District Police Complaints Authority.

f. The Complaint Authorities should be given the powers of a civil court. It should be mandated that all complaints should be disposed of within a month.

12. (Para 5.10.4) An Independent Inspectorate of Police

a. In addition to ensuring effective departmental inspections, an Independent Inspectorate of Police may be established under the supervision of the Police Performance and Accountability Commission to carry out performance

audit of police stations and other police offices through inspections and review of departmental inspections. It should render professional advice for improvement of standards in policing and also present an annual report to the Police Performance and Accountability Commission.

b. For all cases of deaths during 'encounters' the Independent Inspectorate of Police should commence an enquiry within 24 hours of the incident. The Inspectorate should submit its report to the PPAC and the SPAC

c. The working of the Bureau of Police Research and Development needs to be strengthened by adequate financial and professional support, so that it could function effectively as an organization for inter alia analysis of data from all parts of the country and establish standards regarding different aspects of the quality of police service.

13. (Para 5.11.8) Improvement of Forensic Science Infrastructure - Professionalisation of Investigation

a. There is need to set up separate National and State Forensic Science Organisations as state-of-the-art scientific organizations. At the state level these organisations should function under the supervision of the Board of Investigation.

b. There is need to expand the forensic facilities and upgrade them technologically. Every district or a group of districts having 30 to 40 lakhs population should have a forensic laboratory. This should be achieved over a period of five years. Government of India should earmark funds for this purpose for assisting the states under the police modernisation scheme. All the testing laboratories should be accredited to a National Accreditation Body for maintaining quality standards.

c. The syllabus of MSc Forensic Science should be continuously upgraded in line with international trends.

d. Necessary amendments should be effected in the CrPC and other laws to raise the level and scope of forensic science evidence and recognize its strength for criminal justice delivery.

14. (Para 5.12.6) Strengthening Intelligence Gathering

a. The intelligence gathering machinery in the field needs to be strengthened and at the same time, made more accountable. Human

intelligence should be combined with information derived from diverse sources with the focus on increased use of technology. Adequate powers should be delegated to intelligence agencies to procure/use latest technology.

b. Intelligence agencies should develop multi-disciplinary capability by utilising services of experts in various disciplines for intelligence gathering and processing. Sufficient powers should be delegated to them to obtain such expertise.

c. Intelligence should be such that the administration is able to use it to act in time by resorting to conflict management or by taking preventive measures.

d. Instead of monitoring public places by posting a large number of policemen it would be economical as well more effective if devices like video cameras/ CCTVs are installed in such places.

e. The beat police system should be revived and strengthened.

f. Informants giving information should be protected to keep their identity secret so that they do not fear any threat to life or revenge. However, they could be given a masked identity by which they could claim their reward at an appropriate time and also continue to act as informants as the situation develops.

g. In case of major breakdown of public order, the State Police Complaints Authority should take appropriate action to fix responsibility on the police officers for lapses in acting upon intelligence or on the intelligence officers in case there has been a failure on their part.

15. (Para 5.13.5) Training of the Police

a. Deputation to training institutions must be made more attractive in terms of facilities and allowances so that the best talent is drawn as instructors. The Chief of Training in the state should be appointed on the recommendation of the Police Performance and Accountability Commission.

b. The instructors should be professional trainers and a balanced mix of policemen and persons from other walks of life should be adopted.

c. Each state should earmark a fixed percentage of the police budget for training purposes.

d. For each level of functionary, a calendar of training for the entire career should be laid down.

e. There should be common training programmes for police, public prosecutors and magistrates. There should also be common training programmes for police and executive magistrates.

f. Training should focus on bringing in attitudinal change in police so that they become more responsive and sensitive to citizens' needs.

g. All training programmes must conclude with an assessment of the trainees, preferably by an independent agency.

h. Modern methods of training such as case study method should be used.

i. Impact of training on the trainees should be evaluated by independent field studies and based on the findings the training should be redesigned.

j. All training programmes should include a module on gender and human rights. Training programmes should sensitise the police towards the weaker sections.

16. (Para 5.16.6) Gender Issues in Policing

a. The representation of women in police at all levels should be increased through affirmative action so that they constitute about 33% of the police.

b. Police at all levels as well as other functionaries of the criminal justice system need to be sensitised on gender issues through well structured training programmes.

c. Citizens groups and NGOs should be encouraged to increase awareness about gender issues in society and help bring to light violence against women and also assist the police in the investigation of crimes against women.

17. (Para 5.17.9) Crimes against Vulnerable Sections

a. The administration and police should be sensitised towards the special problems of the Scheduled Castes and Scheduled Tribes. Appropriate training programmes could help in the sensitising process.

b. The administration and police should play a more pro-active role in detection and investigation of crimes against the weaker sections.

c. Enforcement agencies should be instructed in unambiguous terms that enforcement of the rights of the weaker sections should not be downplayed for fear of further disturbances or retribution and adequate preparation should be made to face any such eventuality.

d. The administration should also focus on rehabilitation of the victims and provide all required support including counselling by experts.

e. As far as possible the deployment of police personnel in police stations with significant proportion of religious and linguistic minorities should be in proportion to the population of such communities within the local jurisdiction of such police station. The same principle should be followed in cases of localities having substantial proportion of Scheduled Castes and Scheduled Tribes population.

f. Government must take concrete steps to increase awareness in the administration and among the police in particular, regarding crimes against children and take steps not only to tackle such crimes, but also to deal with the ensuing trauma.

18. (Para 5.18.9) National Security Commission

a. There is no need for a National Security Commission with a limited function of recommending panels for appointment to Chiefs of the Armed Forces of the Union. There should be a separate mechanism for recommending the names for appointment as Chief of each one of these forces, with the final authority vesting in the Union Government.

19. (Para 5.19.6) Union-State and Inter-State Cooperation and Coordination

a. The Ministry of Home Affairs should proactively and in consultation with the states, evolve formal institutions and protocols for effective

coordination between the Union and the states and among the states. These protocols should cover issues like information/intelligence sharing, joint investigation, joint operations, inter-state operations by a state police in another state, regional cooperation mechanisms and the safeguards required.

20. (Para 6.1.2.4) Measures to be Taken during Peace Time

a. The administration should be responsive, transparent, vigilant and fair in dealing with all sections of society. Initiatives such as peace committees should be utilised effectively to ease tensions and promote harmony.

b. The internal security plan/riot control scheme should be updated periodically in consultation with all stakeholders and in the light of previous episodes. The role of all major functionaries should be clearly explained to them.

c. A micro analysis should be carried out in each district to identify sensitive spots and this should be regularly reviewed and updated.

d. The intelligence machinery should not slacken during normal times and credible intelligence should be gathered from multiple sources.

e. Regulatory laws such as the Arms Act, 1959, Explosives Act, 1884 and Municipal Laws related to construction of structures should be enforced rigorously.

f. Public agencies should follow a zero tolerance strategy in dealing with violations of laws.

21. (Para 6.1.3.1.3) Security Proceedings

a. The use of preventive measures in a planned and effective manner needs to be emphasized. Training and operational manuals for both Executive Magistrates and police need to be revised on these lines.

b. Regular supervision and review of these functionaries by the DM and the SP respectively should be done to focus attention on effective use of these provisions. For this purpose, a joint review on a periodic basis by the DM and SP should be done.

22. (Para 6.1.3.2.7) Addressing Property Disputes to Prevent Disruption of Public Order

a. An Explanation may be inserted below Section 145 of the Code of Criminal Procedure clarifying that when from the evidence available with the Executive Magistrate it is clear that there is an attempt to dispossess a person or where a person has been illegally dispossessed of his property within sixty days of filing the complaint and that such acts cause a reasonable apprehension of a breach of the peace, such magistrate can pass an order contemplated in sub- section (6) of the aforesaid Section notwithstanding pendency of a civil case between the parties involving the same property.

b. A time frame of six months may be stipulated for concluding the proceedings.

c. Specific but indicative guidelines may be issued by the Ministry of Urban Development to the State Governments to lay down the minimum standards for maintenance of land records in urban areas including municipal ward maps so as to minimize possibility of disputes about possession and boundary of immoveable property.

d. Detailed guidelines already exist in almost all states to periodically update land records in rural areas. Strict compliance of such guidelines needs to be ensured as out of date land records contribute to disputes and resultant breaches of peace.

23. (Para 6.1.4.5) Regulating Processions, Demonstrations and Gatherings

a. Based on the experience with major riots and the recommendations of various Commissions of Inquiry and pronouncements of the Supreme Court and the High Courts, fresh and comprehensive guidelines may be drawn up for regulation of processions, protest marches and morchas.

b. The guidelines should include preparatory steps (through intelligence sources), serious consultation and attempts to arrive at agreement with the groups/ communities involved, regarding route, timing and other aspects of procession. They should also cover prohibition of provocative slogans or acts as well as carrying of lethal weapons. It should be specifically stated in the guidelines that all processions or demonstrations should be dealt with the same degree of fairness and firmness.

c. Organisations and persons found guilty of instigating violence should be liable to pay exemplary damages. The damages should be commensurate with the loss caused by such violence. The law should provide for distribution of the proceeds of damages to the victims of such violence.

24. (Para 6.1.5.3) Imposition of Prohibitory Orders

a. Prohibitory orders once imposed, should be enforced effectively. Videography should be used in sensitive areas.

25. (Para 6.1.6.6) Measures to be Taken Once a Riot has Started

a. If violence erupts, then the first priority should be to quickly suppress the violence. In cases of communal violence, the situation should be brought under control by effective use of force.

b. Prohibitory orders must be enforced rigorously.

c. If the situation so warrants, the forces of the Union and the Army should be requisitioned and used without any reluctance or delay.

d. The Commissioner of Police or the District Magistrate and the Superintendent of Police should be given a free hand to deal with the situation in accordance with law.

e. The media should be briefed with correct facts and figures so that there is no scope for rumour mongering.

f. The police needs to be equipped with state-of-the-art crowd dispersal equipments.

g. The District Magistrate should ensure that essential supplies are maintained and relief is provided, especially in vulnerable areas and particularly during prolonged spells of 'curfew'.

26. (Para 6.1.7.9) Measures to be Taken Once Normalcy has been Restored

a. No sanction of the Union Government or the State Government should be necessary for prosecution under Section 153(A). Section 196 Cr PC should be amended accordingly.

b. Prosecution in cases related to rioting or communal offences should be not sought to be withdrawn.

c. **Commissions of Inquiry into any major riots/violence should give their report within one year.**

d. **The recommendations made by a Commission of Inquiry should normally be accepted by the Government and if the Government does not agree with any observation or recommendation contained in the report of the Commission, it should record its reasons and make them public.**

e. **All riots should be documented properly and analysed so that lessons could be drawn from such experiences.**

f. **There is need for adequate follow up to ensure proper rehabilitation of victims.**

27. (Para 6.2.4) Accountability of Public Servants Charged with Maintaining Public Order

a. **The State Police Complaints Authority should be empowered to identify and fix responsibility in cases of glaring errors of omission and commission by police and executive magistrates in the discharge of their duties relating to the maintenance of public order.**

28. (Para 6.3.15) The Executive Magistrates and the District Magistrate

a. **The position of the District Magistrate vis-à-vis the police, and as a coordinator and facilitator in the district needs to be strengthened. The District Magistrate should be empowered to issue directions under the following circumstances:**

i. **promotion of land reforms and settlement of land disputes;**

ii. **extensive disturbance of public peace and tranquility in the district (The decision of the DM as to what constitutes extensive disturbance of public peace should be final);**

iii. **conduct of elections to any public body;**

iv. **handling of natural calamities and rehabilitation of the persons affected thereby;**

v. **situations arising out of any external aggression or internal disturbances;**

vi. **any similar matter, not within the purview of any one department and affecting the general welfare of the public of the district;**

vii. **removal of any persistent public grievance (as to what constitutes persistent public grievance, the decision of the DM shall be final); and**

viii. **whenever police assistance is required to enforce/implement any law or programme of the government.**

b. **These directions shall be binding on all concerned. Directions in respect of item No. ii should normally be issued in consultation with the Superintendent of Police.**

29. (Para 6.4.2) Capability Building of Executive Magistrates

a. **All officers likely to be posted as Executive Magistrates should be specially trained in the relevant laws and procedures and should be eligible for posting only after qualifying in an examination.**

b. **On the lines of a police manual, each state should also evolve a Manual for Executive Magistrates.**

30. (Para 6.5.7) Inter-Agency Coordination

a. **In a District, the District Magistrate should coordinate the role of all agencies at the time of crisis.**

b. **In major cities, with the Police Commissioner System, a coordination committee should be set up under the Mayor, assisted by the Commissioner of Police and the Municipal Commissioner. All major service providers should be represented on this Coordination Committee.**

31. (Para 6.6.4) Adoption of Zero Tolerance Strategy

a. **All public agencies should adopt a zero tolerance strategy towards crime, in order to create a climate of compliance with laws leading to maintenance of public order.**

b. This strategy should be institutionalised in the various public agencies by creating appropriate statistical databases, backed up by modern technology, to monitor the level and trends of various types of offences and link these to a system of incentives and penalties for the officials working in these agencies. It should be combined with initiatives to involve the community in crime prevention measures.

32. (Para 7.3.7) Facilitating Access to Justice - Local Courts

a. A system of local courts should be introduced as an integral part of the judiciary. There should be one such court for a population of 25,000 in rural areas (this norm could be modified for urban areas).

b. The local courts should have powers to try all criminal cases where the prescribed punishment is less than one year. All such trials should be through summary proceedings.

c. The judge of the local court should be appointed by the District and Sessions Judge in consultation with his/her two senior-most colleagues. Retired judges or retired government officers (with appropriate experience) could be appointed.

d. These courts may function from government premises and could also be in the form of mobile courts.

e. These local courts may be constituted by a law passed by the Parliament to ensure uniformity.

33. (Para 7.5.1.11) Citizen Friendly Registration of Crimes

a. Registration of FIRs should be made totally citizen friendly. Technology should be used to improve the accessibility of police stations to the public. Establishing call centers and public kiosks are possible options in this regard.

b. Police stations should be equipped with CCTV cameras in order to prevent malpractice, ensure transparency and make the police more citizen-friendly. This could be implemented in all police stations within a time frame of five years.

c. Amendments to the CrPC should be made as suggested by the National Police Commission.

d. The performance of police stations should be assessed on the basis of the cases successfully detected and prosecuted and not on the number of cases registered. This is necessary to eliminate the widely prevalent malpractice of 'burking' of cases.

34. (Para 7.5.2.4) Inquests

a. All State Governments should issue Rules prescribing in detail the procedure for inquests under Section 174 CrPC.

35. (Para 7.5.3.13) Statements Made before a Police Officer

a. Sections 161 and 162 of CrPC should be amended to include the following:

i. The statement of witnesses should be either in narrative or in question and answer form and should be signed by the witness.

ii. A copy of the statement should be handed over to the witness immediately under acknowledgement.

iii. The statement could be used for both corroboration and contradiction in a Court of Law.

b. The statements of all important witnesses should be either audio or video recorded.

36. (Para 7.5.4.10) Confessions before Police

a. Confessions made before the police should be admissible. All such statements should be video-recorded and the tapes produced before the court. Necessary amendments should be made in the Indian Evidence Act.

b. The witness/accused should be warned on video tape that any statement he makes is liable to be used against him in a court of law, and he is entitled to the presence of his lawyer or a family member while making

such a statement. If the person opts for this, the presence of the lawyer/ family member should be secured before proceeding with recording the statement.

c. The accused should be produced before a magistrate immediately thereafter, who shall confirm by examining the accused whether the confession was obtained voluntarily or under duress.

d. The above-mentioned recommendations should be implemented only if the reforms mentioned in Chapter 5 are accepted.

37. (Para 7.7.1.10) The Judge's Obligation to Ascertain the Truth

a. It is necessary to amend Section 311 CrPC and impose a duty on every court to suo motu cause production of evidence for the purpose of discovering the truth, which should be the ultimate test of the criminal justice system. Suitable amendments to the Indian Evidence Act, 1872 may also be made to facilitate this.

38. (Para 7.7.2.14) Right to Silence

a. Regarding grave offences like terrorism and organised crimes, in the case of refusal by the accused to answer any question put to him, the court may draw an inference from such behaviour. This may be specifically provided in the law.

39. (Para 7.7.3.6) Perjury

a. The penalties provided under Section 344 CrPC for those found guilty of perjury after a summary trial should be enhanced to a minimum of one year of imprisonment.

b. It should be made incumbent upon the Courts to ensure that existing perjury laws providing for summary trial procedure are unfailingly and effectively applied by the trial courts, without awaiting the end of the main trial.

40. (Para 7.7.4.6) Witness Protection

a. A statutory programmme for guaranteeing anonymity of witnesses and for witness protection in specified types of cases, based on the best international models should be adopted early.

41. (Para 7.7.5.6) Victim Protection

a. A new law for protecting the rights of the victims of the crimes may be enacted. The law should include the following salient features:

i. Victims should be treated with dignity by all concerned in the criminal justice system.

ii. It shall be the duty of the police and the prosecution to keep the victim updated about the progress of the case.

iii. If the victim wants to oppose the bail application of an accused he/she shall be given an opportunity to be heard. Similarly, for release of prisoners on parole, a mechanism should be developed to consider the views of the victims.

iv. A victim compensation fund should be created by State Governments for providing compensation to the victims of crime.

42. (Para 7.7.6.6) Committal Proceedings

a. Committal proceedings should be reintroduced where the magistrate should have powers to record the evidence of prosecution witnesses. Suitable amendments may be carried out in Chapter XVI of the Code of Criminal Procedure.

43. (Para 7.8.5) Classification of Offences

a. A comprehensive reclassification of offences may be done urgently to reduce the burden of work for both the Courts and the Police. A mechanism for ensuring regular and periodic review of offences should also be put in place to make such reclassification an ongoing and continuing exercise.

b. The objective of this exercise should be to ensure that crimes of a petty nature including those which require correctional rather than penal action should be taken out of the jurisdiction of the police and criminal courts so that they are able to attend to more serious crimes. Such offences should, in future be handled by the local courts.

47. (Para 8.3.14) Federal Crimes

a. There is need to re-examine certain offences which have inter-state or national ramification and include them in a new law. The law should also prescribe the procedure for investigation and trials of such offences. The following offences may be included in this category:

i. Organised Crime (examined in paragraph 8.4)
ii. Terrorism
iii. Acts threatening National security
iv. Trafficking in arms and human beings
v. Sedition
vi. Major crimes with inter-state ramifications
vii. Assassination of (including attempts on) major public figures
viii. Serious economic offences.

b. A new law should be enacted to govern the working of the CBI. This law should also stipulate its jurisdiction including the power to investigate the new category of crimes.

c. The empowered committee recommended in the Commission's Report on 'Ethics in Governance' (para 3.7.19) would decide on cases to be taken over by the CBI.

48. (Para 8.4.17) Organised Crime

a. Specific provisions to define organised crimes should be included in the new law governing 'Federal Crimes'. The definition of organised crime in this law should be on the lines of the Maharashtra Control of Organised Crime Act, 1999.

49. (Para 8.5.17) Armed Forces (Special Powers) Act, 1958

a. The Armed Forces (Special Powers) Act, 1958 should be repealed. To provide for an enabling legislation for deployment of Armed Forces of the Union in the North-Eastern states of the country, the Unlawful Activities (Prevention) Act, 1967 should be amended by inserting a new Chapter VI A as recommended by the Committee to Review the Armed Forces (Special Powers) Act, 1958. The new Chapter VI A would apply only to the North-Eastern states.

50. (Para 9.1.5) The Role of Civil Society

a. Citizens should be involved in evaluating the quality of service at police stations and other police offices.

b. Government should incentivise citizens' initiatives.

c. Formal mechanisms should be set up at the cutting edge level to involve citizens/ citizen's groups in various aspects of public order management.

51. (Para 9.2.7) The Role of the Media in Public Order

a. The Administration must make facts available to the media at the earliest about any major development, particularly activities affecting public order.

b. In order to have better appreciation of each other's view points there should be increased interaction between the Administration and the media. This could be inter alia in the form of joint workshops and trainings.

c. The Administration should designate points of contact at appropriate levels (a spokesperson) for the media which could be accessed during whenever required.

d. Officers should be imparted training for interaction with the media.

e. A cell may be constituted at the district level which may analyse media reports about matters of public importance.

Annexure-I Contd.

The Commission would also like to express its gratitude to a number of eminent persons who generously spared time to discuss matters related to Public Order with the Commission. These include Shri Madhukar Gupta, Union Home Secretary, Shri P.K.H. Tharakan, Secreatary (R), Shri E.S.L. Narsiman, Director, Intelligence Bureau, Shri Vijay Shankar, Director, CBI, Shri P.C. Haldhar, Director Intelligence Bureau, Dr. N. Seshagiri, former Director General, NIC; Shri R.B. Sreekumar, former Director General of Police, Gujarat; Shri M.A. Basith, DG & IGP, Andhra Pradesh; Shri R. Srikumar, DGP and CMD Karnataka State Police Housing Corpotation; Shri K.K. Paul, Commissioner of Police, Delhi; Shri A.N. Roy, Commissioner of Police, Mumbai; Shri S.T. Ramesh, ADGP, Karnataka; Shri Sanjoy Hazarika, eminent journalist and Ms. Teesta Setalvad, eminent lawyer and activist. The Commission would also like to place on record its gratitude to Shri K. Asungba Sangtam, former Member of Parliament for preparing a report on the problems associated with law and order in North East India and Shri Shastri Ramachandaran, eminent journalist for preparing a Report on role of media in terrorism. These discussions and reports have been utilized by the Commission in this Report. The Commission also visited several States and had useful discussions. The Commission has benefited immensely from these discussions.

Annexure-I(1)

Workshop on Public Order
2-3 February, 2006
Centre for Policy Research, New Delhi

List of Panelists/Participants

Panelists

1. Mr. B.G. Verghese, Honorary Visiting Professor, CPR
2. Mr. Ved Pratap Vaidik, Journalist
3. Mr. Uday Sahai, IPS
4. Mr. N.N. Vohra, Representative of Govt.of India for J&K
5. Mr. T.V. Somanathan, IAS, Chennai
6. Mr. Afzal Amanullah, Joint Secretary (Films), Ministry of Information & Broadcasting, GOI
7. Mr. Suresh Khopade, Commissioner of Police, Railways, Mumbai
8. Dr. Arnab Kumar Hazra, Consultant, Asian Development Bank
9. Dr. Usha Ramanathan, Advocate

Participants

1. Mr. K.C. Sivaramakrishnan, Chairman, Executive Committee, CPR
2. Dr. Pratap Bhanu Mehta, President & Chief Executive, CPR
3. Dr. Ajit Mozoomdar, Honorary Research Professor, CPR
4. Mr. Ramaswamy R. Iyer, Honorary Research Professor, CPR
5. Prof. Partha Mukhopadhyay, Senior Research Fellow, CPR
6. Dr. Shylashri Shankar, Honorary Research Professor, CPR
7. Dr. B.N. Saxena, Honorary Research Professor, CPR
8. Mr. T. Ananthachari, Former Director General, BSF
9. Mr. G.P. Joshi, Senior Programme Coordinator, Commonwealth Human Rights Initiative
10. Mr. K.S. Dhillon, IPS (Retd.), Bhopal
11. Mr. R.C. Arora, Director (R&D), Bureau of Police Research & Development
12. Mr. Vivek Kumar Tiwary
13. Mr. Arbind Prasad
14. Mr. Satish Sahney, IPS (Retd.), Chief Executive, Nehru Centre, Mumbai
15. Mr. Ajay S. Mehta, Director, National Foundation for India

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16. Mr. Rakesh Jaruhar, Director (Training), Bureau of Police Research & Development
17. Mr. Amiya K. Samanta, IPS (Retd.), Kolkata
18. Mr. Anjaneya Reddy, IPS (Retd.), Hyderabad
19. Mr. Nasir Kamal, Deputy Director (Training), Bureau of Police Research & Development
20. Mr. R.K. Raghavan, Former Director, CBI
21. Mr. Ved Marwah, Former Commissioner of Police, Delhi
22. Mr. Kamal Kumar, Director, Sardar Vallabhai Patel National Police Academy, Hyderabad
23. Shri Sankar Sen, IPS (Retd.)
24. Mr. Y.S. Rao, Consultant, ARC
25. Mr. R. Viswanathan, Consultant, ARC

Administrative Reforms Commission

1. Mr. M. Veerappa Moily, Chairman
2. Mr. V. Ramachandran, Member
3. Dr. A.P. Mukherjee, Member
4. Dr. A.H. Kalro, Member
5. Dr. Jayaprakash Narayan, Member
6. Ms. Vineeta Rai, Member Secretary

Annexure-I(2)

Recommendations Made at the Workshop on Public Order

February 2nd-3rd, 2006
Centre for Policy Research, New Delhi

A common theme was that "public order" had to be understood in a certain perspective. An appreciation of the difference between "order" and "established order" was required. The enforcement mechanisms and also public institutions seem more interested in perpetuating the established order of things, as it were and concentrate their activities in maintaining this status quo. It is important to recognize that in many instances a situation which is classified as a public order problem, is in actuality, an expression of popular discontent or a means of drawing attention to particular grievances and are, perhaps, extra-constitutional processes of social emancipation and change. In a democratic civil society, there must therefore be space for various forms of participation and dissent, which should be non-violent and preferably non-obstructive. The following suggestions were made during the workshop:

I. Role of Media

- The administration must make as much verified information available as soon as possible to ensure that accurate information reaches the people as soon and as effectively as possible. In light of this, the administration must develop a degree of competence to deal with issues brought to fore by media attention.

- It has become imperative to have public officials who are able to professionally interact with the media. This could be incorporated in various training processes that various officials undergo. Furthermore, it could be beneficial to insource media professionals to assist the administration.

- There needs to be sufficient delegated authority to local officials to interact with the media. In addition, there needs to be secure and quick flow of information that allows senior officials, who not at the site, to interact with the media with real-time information.

- Communication with the vernacular media is a very important part of administrative interaction with the media and the administration needs to build up the capability to do this is a proactive and regular manner.

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- In a situation of competitive media, there is a vital need for a vibrant and non-partisan Public Broadcasting System (PBS). The PBS should function autonomously, for which independence to generate revenue is essential, yet revenue generation should not be its raison d'etre.

- Government cannot play a major regulatory role in the media and it is fundamentally undesirable for it to extend its jurisdiction in this regard. The media should have its own mechanisms of self-regulation. The Press Council does need to be more pro-active in regulating infractions of its code. In addition, the Press Council has no jurisdiction over electronic media and a suitable mechanism needs to be devised.

II. Role of the Civil Administration

- Measures such as requiring bonds and sureties are currently under-utilised, though they are low-key, effective, and time-tested. Used intelligently, such measures can impose personal financial costs on troublemakers and ringleaders and discourage them from disrupting public order. Criminal Procedure Code Section 107 could perhaps be amended to allow the obtaining of bonds from organisers of processions.

- The executive magistracy's knowledge of laws relating to public order and its ability to write enforceable legal orders can be improved, since many orders are set aside on judicial review. An Executive Magistrate's Manual containing model orders for various situations that cover judicial requirements, explain procedural steps, etc. could be developed and translated into Hindi and other state languages.

- It is necessary to ensure adequate quantities of non-lethal technologies non-lethal crowd-dispersal technologies, such as water cannons and rubber bullets are available or able to be made available, preferably requiring not more than one hour's notice, in all sensitive areas. Central funding for such measures can be considered, as well the possibility of outsourcing the maintenance and upkeep of equipment to private contractors, in order to ensure the equipment's effectiveness if and when needed.

- In gathering evidence, video technology ought to be utilised in potential trouble spots. Granting each station their own video equipment, however, might not be the best solution because of maintenance problems, instead, outsourcing, with adequate delegation of financial powers, ought to be considered.

- The Centre using extant powers under the All India Services Act and Rules could declare that officers who receive strictures from the National Human Rights Commission or Commissions of Inquiry for failure to maintain public order will not be empanelled for Central posts. The Centre could (after consultation with the states) amend Rule 7 of the All India Services (Discipline & Appeal) Rules in order to empower itself to level charges against officers serving under the states in specified breaches of public order.

III. Role of NGOs and Civil Society

- It was suggested that the new Police Act incorporate a mandate to seek the "willing civic cooperation of the people" in situations of public disorder. The Mohalla Committee model of Bhiwandi could be explored a possible institutional model for people's participation with appropriate refinements for other parts of the country.

IV. Role of Judiciary

- To increase the strength of the courts and reduce the administrative burden of judges, the initiation of the recruitment process could be separated from the selection process, which would remain within the judiciary as now. A mechanism for judge rostering and workforce planning would make knowledge about future vacancies available in advance and can enable the process of recruitment to begin automatically.

- Basic infrastructure support needs to be provided for court support services and courts need to be assisted to develop separate well-equipped and trained staff for human resource, accounts, information technology systems and infrastructure management.

- Backlogged cases should be targeted specifically through case management techniques like the removal of inactive cases by summary administrative means such as dismissal rules. Case flow management measures such as use of

Annexure-I(2) Contd.

specialised tracks with time standards appropriate for those cases and automatic monitoring and generation of appropriate notices to ensure that cases that are outside time standards are identified and acted upon is also an important tool for reducing case backlogs.

- A fully developed IT enabled Case Management System (CMS) will be able to reduce case delays through more accurate and timely reporting on case status. An automated CMS can improve upon system of manual files by way of offering real-time update into the status of cases.
- New processes can be introduced to perform key tasks in a more cost-effective manner, like early case conferences in complex cases.
- Use of strict adjournment policy that encourages litigants and counsel to be prepared on the date set for them to appear.
- Improving the efficiency with which specific processes are peformed, like use of video remand instead of transportation to court for hearing bail applications.

Annexure-I(3)

National Workshop on Public Order
11th-12th March, 2006
S.V.P. National Police Academy, Hyderabad

Speech on Public Order by the Chairman, ARC

India is a country whose democratic polity is founded on the bedrock of rule of law. The basic ingredient of rule of law is maintenance of peace and order. This was well recognised by the founding Fathers of our Constitution. The Indian Constitution, while according a pre-eminent position for the fundamental rights of citizens, recognizes the importance of public order, by providing for legislation imposing reasonable restrictions in the interest of public order. Under the Constitution of India, the Union and the federating units, that is, the States have well-defined areas of responsibility. 'Public Order' and 'Police' are essentially the responsibilities of State Governments. However, the Central Government assists them by providing Central Paramilitary Forces (CPMFs) as and when required.

The Administrative Reforms Commission is looking at 'Public Order' with a view to suggest a framework to strengthen administrative machinery to maintain public order conducive to social harmony and economic development. ARC is looking into all aspects of the subject therefore the focus is on studying the causes of public disorder, how early symptoms of disorder should be detected and addressed well in time, what should be the role of various stakeholders in maintenance of public order, how the enforcement machinery should be made more effective to deal with public disorder. The Commission is examining the subject by focusing on its components namely causes of conflicts and their resolution, secondly the role of civil administration, media, society, Judiciary and NGOs in maintaining public order, and thirdly the role of police and the need for reforms. Accordingly, each one of these is being discussed in great length in three separate workshops. In the first workshop which was organised jointly with the Centre for Policy Research (CPR), the role of civil administration and other stakeholders was discussed; in the second workshop, which was organised jointly with CPR and the Kannada University, Hampi, the different types of conflicts in the Indian Society were discussed; and in this third workshop, which is being organised jointly with the National Police Academy the Role of Police would be discussed.

The first two workshops have already identified various issues for the consideration of the Commission. The groups formed at these workshops have crystallised a number of suggestions on these. The ARC will deliberate on them before finalising its recommendations.

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In this third workshop, which is being organised jointly with the National Police Academy, the focus will be on examining the role of the State and organised violence, terrorism and extremism; role of the Government, Executive Magistracy and Judiciary in Public Order management; role of the Police in Public Order management, and finally, the Criminal Justice System including the legal framework, and the need for reforms in all these areas will be explored and measures will be identified.

At this juncture, I would like to clarify the meaning of the word public order. Any violation of Law is a problem of Law and Order, but every such violation is not a case of disturbance of public order. The dividing line between 'Public Order' and 'Law and Order' is very thin. The Apex Court has explained the concept of public order. It is the potentiality of an act to disturb the even tempo of the life of the community which makes it "prejudicial to the maintenance of public order". If the contravention in its effect is confined only to a few individuals directly involved, as distinct from a wide spectrum of public, it would raise the problem of "law and order" only. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it "prejudicial to the maintenance of public order".

Importance of Maintaining Public Order

India today is poised to emerge as a global economic power with all its high growth rate of economy and all-round economic development. For realising our legitimate aspirations of economic development, it is essential that the problems of peace and order are managed efficiently in the country. No developmental activity is possible in an environment of insecurity and disorder. Failure to manage the multifarious problems arising out of violent conflicts based on religious, caste, ethnic, regional or any other disputes, can lead to unstable and chaotic conditions. Such conditions not only militate against realisation of our economic dream, but also would jeopardise our survival as a vibrant democracy. We have to look at the problem of public order management and the role of law enforcement in that regard, in this perspective. We should not forget that it is the weaker sections which suffer the most in any public disorder. There is also a need for greater transparency in the law enforcement agencies.

Demands on the State

The birth of the nation itself was marred by large-scale violence and one of the most traumatic instances of mass migration of population in modern history. Since independence, recourse to violent methods of agitation by groups and communities have incessantly put pressure on the State machinery in management of public order. Substantial parts of the country continue to suffer from attempts by various groups to tinker with public order in one way or another. Some public order issues also get aggravated due to exploitation by hostile external elements with a design to disintegrate the nation. The police in India have, time and again, come under severe strain and have had to really stretch themselves in safeguarding the unity and integrity of the country and by restoring peace and order whenever it was disrupted. In the process, they have also suffered considerable loss of life and limb of their personnel. In addition to the state police forces, the central police forces have also had to be deployed extensively from time to time. The demands and pressures of public order management have, thus, contributed to large-scale expansion of state and central police forces. The Indian experience of public order management, since Independence, is marked by some outstanding successes like tackling the terrorist violence in Punjab, Naxalite violence in West Bengal and Kerala, large-scale communal violence in different parts of the country, militant movements of a wide variety, etc. However, the police also have come under severe criticism, often not unjustifiably, for a series of omissions and commissions. Allegations of excessive use of force, violation of human rights etc. have been quite frequent. Probably, what has marred the police image most is allegations of partisan attitude and collusion with political parties in power while dealing with many public order situations.

The country has had to tackle the problems of public order management during the last six decades under a legal and administrative framework which, it is vastly felt, is archaic and not suited to the emerging socio-political and economic environment. Many of the allegations against our administrative and law enforcement agencies emanate from their failure to achieve a delicate balance between the requirements of public order and the imperative need for respecting the citizens' fundamental rights and their susceptibilities, in a democratic polity. Undoubtedly, the task of public order maintenance is also rendered more difficult by the general lack of recognition that some restrictions on the rights of individuals and some inconvenience to them are the price to be paid for the overall good of society.

Further, the civil administration, today, has to perform its duties under a far more restraining environment. On the one hand, because of an increasing level of public awareness, there are greater demands of delivery of service with efficiency as well as speed on our administrative

machinery, including the law enforcement agencies. On the other hand, as a result of the processes of democracy, there is far greater scrutiny of their actions or inactions, on account of greater consciousness of the citizens' rights and human rights among the people, besides judicial activism, emergence of a powerful media, role of NGOs, international pressures etc.

Terrorism and Extremism

Terrorism – both of domestic and international hues - has emerged as a major threat to not only public order but even to national security. The use of terror as a tool to furthering separatist interests has been the scourge of the country for the past quarter century. The marriage of religious and ethnic ideologies with separatist movements has complicated the issues involved in countering terrorism and the fightback itself has become a public order issue in some instances. Further, nexus of terrorism with organised crime as evidenced in the infamous Mumbai serial blast cases and riots of 1992-93, and the phenomenon described as narco-terrorism, only aggravates its threat potential. The problem of terrorism is no longer confined to some border states but even our political institutions, economic assets and scientific establishments in the hinterland have become vulnerable terrorist targets.

Many states in the country - from UP to Tamilnadu and Maharashtra to West Bengal - are today affected by left wing extremism in varying degrees. The creation of Naxalite groups and a steady expansion of their base across the country in a systematic and coordinated manner, are matters of serious implications for public order as well as national security. By exploiting administrative inadequacies and socio-economic issues domestically while engaging into strategic linkages with other militant and criminal groups across the border, these groups are able to spread the reign of terror and lawlessness, in pursuit of their so-called ideological objectives. In such cases, matters have gone beyond the general issues involved in maintenance of public order and our ability to address various complex issues relating to socio-economic development of the people of the affected areas itself is being tested. As a large part of the affected area is tribal, their rights and sensitivities have also got to be addressed.

A Holistic Approach: the Need of the Hour

Despite our efforts and more than five decades of planning, regional imbalances and economic disparities between rural and urban regions have grown, leading to disaffection and dislocation. The expectations and aspirations of the people have also risen with globalisation

and liberalisation. While the new economic policies have contributed to growth on the whole, conflicts stem from disparity in patterns of development, giving rise to perpetual tensions. Many sections of the society, such as the labourers and the poorer sections, living in villages and largely dependent on agriculture, have felt neglected. Politically motivated groups often exploit their sense of grievance – real or perceived. This is already leading to major conflicts and often confrontations in different parts of the country, adversely affecting public order.

While violent manifestations of all such problems will have to be inevitably tackled by the law enforcement agencies, given their socio-economic and political roots, these problems, most of the times demand a concerted response from different wings of the civil administration – both regulatory & developmental - for resolution in the long run. Indeed, the response of the police as the main law enforcement agency, is of crucial importance not only as a bulwark against eruption or escalation of violence but also in resolution of conflicts at the nascent stage itself, to prevent minor discords from turning into public order situations. All the other concerned wings of the civil administration too must be enabled and empowered to play their role in consonance with an efficient police response. Lack of a coordinated approach among different agencies, for instance, often proves to be a bane and this calls for institutionalized mechanisms of formal and informal coordination between all concerned agencies.

There is need for national consensus among all the agencies apart from the political parties. Unless there is clarity and commitment on these issues, there would not be a convergence of national purpose. What is also required is a holistic approach towards managing such issues. For example, communal riots must be accepted as a failure of governance. We have to uncover the chemistry of these riots and suggest long-term measures.

Reforms in the Criminal Justice System

In recent times, there has been a serious erosion of the people's faith in the Criminal Justice System. One of the essential requirements for preservation of peace and order in a sustained manner is deterrence emanating from certainty and speed of punishment for those who indulge in crimes against society. Our Criminal Justice System is crippled currently with so many shortcomings that anti-social and anti-national elements are able to commit their nefarious criminal activity almost with a sense of impunity. An illustrative example is the snail's pace of judicial process in the infamous Mumbai riot cases of 1992-93. The inadequacies of our Criminal Justice System, therefore, need to be comprehensively examined.

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In this regard, the recommendations made repeatedly by various Committees/Commissions, such as the National Police Commission, the Malimath Committee, the Padmanabhaiah Committee etc. have to be urgently considered. More specifically, the recommendations regarding amendments in the CrPC in respect of recording of the statement of witnesses, and in the Evidence Act in respect of recording confessional statements, need to be speedily acted upon.

The ineffectiveness of our Criminal Justice System in dealing with criminal elements, also contributes to alienation of the public from the law enforcement agencies, making their task of public order management even more difficult. In such a scenario, it is imperative to search for the various legislative and administrative measures needed for better management of public order.

The Committee on Reforms of Criminal Justice System (the Malimath Committee) has given an in-depth consideration to the phenomenon of growth of organised crime, terrorism etc. and their invisible co-relationship with the avowed objective of the latter to destroy the secular and democratic fabric of the country, and has specifically recommended enactment of a federal law to deal with certain categories of serious offences with inter-state and transnational ramifications. This needs immediate attention and proper appreciation.

Public Order and Reforms in the Police

Legally, the police are required to take cognizance of a public order issue only at a stage where a cognizable offence has taken place or where there is imminent threat to peace and order. There is no obligation placed on the police to explore possibilities of peaceful resolution of problems in the incipient stage itself, with or without involvement, as the case may be, of other stakeholders in the society. A time has perhaps come when, through appropriate provisions of law, it needs to be made obligatory on the police to adopt a more proactive approach, involving also other stakeholders, where necessary and feasible. But all this will have to be preceded by a change in public perception of the police.

Building of a people-friendly police force will require changes in the recruitment process, training programmes and service conditions.The need for improving investigation skills, specialisation and improving the morale of the force is also constantly being voiced in various quarters.

Annexure-I(3) Contd.

It is the role of the police, as the principal law enforcement agency, to preserve public order. Although the magistracy and the judiciary too have a vital role in preserving public order, it is the police, which have to bear the brunt of violations of the laws and also the ensuing violence. But in a large number of situations, addressing the root cause is much beyond their purview. The case of recent demolitions in Delhi is an example. The main cause there has been the non-enforcement of the building regulations by the officials who were entrusted this task. Another example is the 'Ulhasnagar demolitions'. A large number of public disorders have administrative reasons as their root cause. Our response to public disorder should commence at the very initial stage, and it is here that the role of entire civil administration, including both regulatory and developmental agencies, becomes important. The challenge here is what institutional mechanisms are required to ensure that all wings of the Government realise their responsibility in maintaining public order.

Need for Greater Coordination

For efficient and effective tackling of the public order issues, the importance of cooperation and coordination among various agencies cannot be overemphasised. The capabilities of different intelligence agencies, state police and their specialised wings, other enforcement agencies as well as other wings of civil administration, have to be harmoniously integrated for achieving the larger objective of peace and order and security. Similarly, inter-state cooperation and centre-state cooperation also have to be promoted in an institutionalised manner.

Conclusion

Development and security are truly mutually inter-related. We need therefore, to evolve a combined strategy to deal simultaneously with the twin challenges of development and security within the framework of a democratic polity committed to respect for all fundamental human freedoms and also committed to upholding the rule of law. Internal conflict management is the key to the success of participative democracy, strengthening national solidarity and cohesion and firming up the nation's resolve and capability to meet any external threats to its security and territorial integrity. The deficiencies in this vital area need to be plugged through judicial and police reforms, better citizen participation in governance, transparency and more effective and integrated approach to public order maintenance.

Annexure-I(3) Contd.

Violations of public order, given their socio-economic, political and administrative causes demand a concerted response from different wings of the civil administration. When this is done at the nascent stage itself, minor discords can be prevented from turning into major public disorders. The challenge lies in institutionalising a mechanism so that all wings of the civil administration as well as other stakeholders work in a coordinated fashion. I hope that this workshop would be able to come up with substantial recommendations for a framework and a roadmap for maintaining public order.

Annexure-I(4)

National Workshop on Public Order
11th-12th March, 2006
S.V.P. National Police Academy, Hyderabad

List of Participants

Member of Parliament

1. Shri Chandan Mitra, Editor, The Pioneer

Judiciary/Advocates

2. Dr. Justice V.S. Malimath, Former Chief Justice of Karnataka & Kerala High Courts
3. Shri D.V. Subba Rao, Former Chairman, Bar Council of India
4. Shri K.T.S. Tulsi, Senior Advocate, Supreme Court of India
5. Dr A. Lakshminath, Dean & Registrar, NALSAR University of Law

Journalists

6. Shri Manoj Mitta, Senior Editor, The Times of India
7. Shri K. Srinivas Reddy, City Editor, The Hindu

IAS Officers (Retd)

8. Shri K. Padmanabhaiah, Representative of Government of India for Naga Peace Talks
9. Shri K.R. Venugopal, IAS (Retd)

Annexure-I(4) Contd.

10. Shri C.R. Kamalanathan, IAS (Retd)
11. Shri K. Madhava Rao, Former Chief Secretary, Government of M P,

IAS Officers (serving)

12. Shri A.K. Srivastava, Joint Secretary (CS), Ministry of Home Affairs
13. Shri R.H. Khwaja, Chairman & Managing Director, Singarenni Collieries Co. Ltd
14. Shri L.V. Subrahmanyam, V C & M D, INCAP

IPS Officers (Retired)

15. Dr A.K. Samanta, IPS (Retd)
16. Shri Satish Sahney, Chief Executive, Nehru Centre
17. Shri S.V.M. Tripathi, Member, U P Human Rights Commission
18. Shri R. Prabhakar Rao, Former DGP, Andhra Pradesh
19. Shri P.S. Rama Mohana Rao, IPS (Retd)
20. Shri C. Anjaneya Reddy, IPS (Retd)
21. Dr. S. Subramanian, IPS (Retd)
22. Shri Prakash Singh, Former Director General, BSF
23. Shri Mahmood bin Muhammed, Former Ambassador to Saudi Arabia
24. Shri M.M. Khajooria, Former DG of Police, J&K
25. Shri V.N. Singh, IPS (Retd)
26. Dr. D.R. Karthikeyan, Former Director, CBI & DG, NHRC
27. Dr. P.S.V. Prasad, IPS (Retd)
28. Dr. U.N.B. Rao, Secretary, Police Act Drafting Committee

Annexure-I(4) Contd.

IPS Officers (serving)

29. Smt Kanchan Choudhry, Director General of Police, Bhattacharya, Uttaranchal
30. Shri Rakesh Jaruhar, Director (Training), BPR&D
31. Shri K. Koshy, Director General of Police, Haryana
32. Smt Manjari Jaruhar, Inspector General (HQ), CISF
33. Shri S.T. Ramesh, Addl. DGP (Rectt & Trg), Government of Karnataka
34. Shri Suresh Abaji Khopade, Commissioner of Police (Railways), Mumbai
35. Shri M. Mahender Reddy, Commissioner of Police, Hyderabad
36. Shri C. Balasubramanian, IGP, CRPF Southern Sector, Hyderabad

Defence

37. Lt. Gen. M.A. Zaki, PVSM, AVSM, VrC (Retd)

Academics

38. Dr. Asha Bajpai, Associate Professor, Tata Institute of Social Sciences
39. Prof. Aswini K. Ray, Professor (Retd)
40. Prof. F.D. Vakil, Professor of Political Science
41. Prof. G.R.S. Rao, Chairman, Centre for Public Policy and Social Development
42. Prof. Gautam Pingle, Dean of Research & Consultancy, Administrative Staff College of India
43. Prof. G. Hargopal, Professor

Annexure-I(4) Contd.

Representatives of NGOs

44. Ms. Maja Daruwala, Chairperson, CHRI

45. Shri G.P. Joshi, Senior Programme Coordinator, CHRI

Nominations from State Governments

IAS Officers

1. Shri Vivek Kumar Singh, Secretary, Information & Public Relations, Government of Bihar
2. Dr. Amar Jit Singh, Commissioner of Health and Secretary, Family Welfare, Government of Gujarat
3. Shri S.M. Vijayanand, Principal Secretary, CLSG& AR, Government of Kerala
4. Shri Neeraj Mandloi, Collector & District Magistrate, Ujjain
5. Shri Pankaj Jain, Commissioner & Secretary, IT Department, Government of Meghalaya
6. Dr. Ashok Dalwai, Revenue Divisional Commissioner, Sambalpur
7. Shri R. Venkat Ratnam, Special Secretary, School Education, Government of Punjab
8. Shri R.M. Srivastava, Secretary, Home Department, Government of Uttar Pradesh
9. Shri Trilochan Singh, Secretary, Personnel & Administrative Reforms, Government of West Bengal

IPS Officers

10. Shri M. Bhaskar, Additional Director General of Police, Government of Andhra Pradesh
11. Shri Manoj Kumar Lall, DIG / West Range, Government of Arunachal Pradesh
12. Shri D.N. Gautam, Addl. DGP, Government of Bihar
13. Shri Amrik Singh Nimbran, Inspector General of Police (Railways), Bihar
14. Shri Kuldip Sharma, Additional Director General of Police (Training), Government of Gujarat.
15. Shri Rakesh Malik, Additional Director General of Police (Reforms), Government of Haryana
16. Shri Ashkoor Ahmed Wani, SSP, Baramulla, Jammu & Kashmir
17. Shri Syed Ashaq Hussain, SSP, Anantnag, Jammu & Kashmir Bukhari
18. Shri Jacob Punnoose, Additional Director General of Police, Government of Kerala
19. Shri P.L. Pandey, Additional Director General of Police, Government of Madhya Pradesh
20. Shri K.L. Prasad, Joint Commissioner of Police (SID), Government of Maharashtra
21. Shri Sanjeev Kalra, DIG of Police (Admn), Punjab Police Headquarters
22. Shri Kanhaiya Lal, Addl. Director General of Police, (Admn, Law & Order), Government of Rajasthan
23. Shri S.D. Negi, IG of Police, Law & Order, Government of Sikkim

Annexure-I(4) Contd.

24. Shri K.V.S. Murthy, Addl. Director General of Police (Law & Order), Government of Tamil Nadu
25. Shri A. Ch. Rama Rao, Addl. Director General of Police (Law & Order), Government of Tripura
26. Shri Shailja Kant Misra, Inspector General of Police, Lucknow
27. Shri Bhupinder Singh, Addl. Director General of Police, Government of West Bengal
28. Shri Ramnivas Meena, Addl. Superintendent of Police, Daman & Diu and Dadra & Nagar Haveli
29. Shri S.K. Jain, Joint Commissioner of Police, Delhi
30. Shri Bipin Gopalakrishna Secretary, PCAS, Home, Government of Karnataka

SVP National Police Academy

1. Shri Kamal Kumar, Director
2. Shri Santosh Macherla, Joint Director
3. Shri A. Hemachandran, Deputy Director
4. Shri Ashish Gupta, Deputy Director
5. Dr S. Darvesh Saheb, Deputy Director
6. Ms Tilotama Varma, Deputy Director
7. Dr A.K. Saxena, Professor (T.M.)
8. Shri G.H.P. Raju, Assistant Director
9. Shri Rakesh Aggarwal, Assistant Director
10. Shri N. VenugopalAssistant Director
11. Shri B. Bala Naga Devi, Assistant Director

12. Shri Abhishek Trivedi, Assistant Director
13. Smt Satwant Atwal, Assistant Director
14. Shri G.A. Kaleem, Assistant Director
15. Dr A.K. Bapuly, Assistant Director

Others

1. Shri R. Viswanathan, Consultant, ARC
2. Shri Y.S. Rao, Consultant, ARC
3. Shri Ashwin Mahesh, Consultant, ARC

Administrative Reforms Commission

1. Shri M. Veerappa Moily, Chairman
2. Shri V. Ramachandran, Member
3. Dr A.P. Mukherjee Member
4. Dr A.H. Kalro, Member
5. Dr Jayaprakash Narayan, Member
6. Ms Vineeta Rai, Member Secretary

Annexure-I(5) Contd.

Recommendations Made at 'National Workshop on Public Order'
March 11th-12th 2006
SVP National Police Academy, Hyderabad

I. Organised Violence, Terrorism & Extremism: Role of the State and Reforms

- A national forum should be set up for formulation of policy and strategy for dealing with terrorism.
- A stable, comprehensive, all India anti-terrorist legislation, having adequate safeguards against abuse, must be put in place.
- While terrorist violence has to be effectively dealt with by the security forces, people's grievances – genuine and perceived – which get exploited, have to be redressed by concerned agencies with a sense of urgency.
- A stable, effective and responsive administration is an antidote to terrorism.
- For effectively dealing with violence, outdated laws (eg., The Explosive Act), containing irrelevant provisions resulting in delay in investigation and prosecution of offenders, must be amended.
- Developmental activities should be planned and executed with due regard to problems of displacement of people, resettlement etc., so that violent eruption of conflicts on such issues can be avoided.
- For tackling the root causes of Left Wing Extremism, relevant socio-economic issues such as land reforms, alienation of tribals from forest land etc. should be addressed and relevant laws must be strictly enforced.
- An all-India legislation should be enacted for tackling the growing menace of organised crime.
- Terrorism has to be fought by the security forces with the cooperation of the people. Appropriate sensitisation training should be given to security forces for avoiding alienation of the people and for enlisting their cooperation.
- The administrative response to the problem of the North-East needs a thorough re-examination. The All India Service Cadre of North East has to be streamlined to make it effective and responsive to the problems of the people. A common cadre for the entire North-East would be desirable.

- Administration should be sensitised to problems and denial of the existence of problems should not be the approach.
- Administrative reforms should aim at achieving zero tolerance of corruption. Increasing manifestation of frauds/scams involving the highest levels of the government has assumed the character of organised crime. Administrative reforms should address this issue.
- Administrative reforms should adequately focus on improving the conditions of the poor and the deprived, in tune with our constitutional values. The civil administration should be sensitized on this through proper training, and the tendency of denial of grave issues/problems should be checked.

II. Role of Government, Executive Magistracy & Judiciary in Public Order Management: Need for Reforms

- Regular meetings should be held between the DM and the SP which can help anticipate and prevent public disorder situations.
- There should be proper training for Executive Magistrates at the State level for effective discharge of their functions.
- The police must proactively invoke participatory engagement of the communities they serve, and rebuild public confidence in the institution.
- Modern methods of riot response need to be studied and adopted. While use of force may become unavoidable in some situations, the endeavour should be to avoid loss of lives in dealing with Public Order situations.
- Public Order should be included in the Concurrent List under the Seventh Schedule of the Constitution.
- The possibility of land-related conflicts becoming acute with potential for public disorder should be taken note of the initial stages itself, and measures should be taken for resolving the same through policy measures and other means.
- Commissionerate of Police system which allows greater functional autonomy for the police is needed in urban areas. However, restructuring the police along these lines need not be linked to the municipal status itself.
- The impact of judicial decisions on Public Order need to be recognised. The judiciary has to be sensitised to the same.

Annexure-I(5) Contd.

- Under the police-magistracy relationship, the following divergent viewpoints emerged:
  - SDPOs should be empowered under the CrPC. to exercise the authority of an Executive Magistrate.
  - Police being a coercive agency, civilian control is necessary and unavoidable and the same should be with Executive Magistrates.
  - Civilian control should be exercised through independent enquiry commissions like in the UK.
  - Emphasis should be on professional supervision of police work through a police hierarchy which should be made accountable.
  - The National Police Commission recommendations regarding coordination at the district level between SP and Collector need to be implemented.
  - When major decisions likely to have an impact on Public Order are taken by the government, there must be prior consultation with law enforcement agencies.
  - Before the police is given authority under new legislations, the capability and wherewithal of police for enforcing the same should be taken into account.
  - There should be codification of functions and responsibilities of different agencies involved in the Criminal Justice System, as envisaged in the Crime and Disorder Act, 1998 of UK.

III. Role of the Police in Public Order Management: Need for Reforms

- The recommendations made by the various Committees / Commissions, such as the National Police Commission, Rebeiro Committee, Padmanabhaiah Committee, Justice V.S. Malimath Committee etc. and the observations of NHRC with regard to the role of police in Public Order management, must be taken into account.
- The core duties of police should be specified within a new legal framework (Police Act).
- Basic facilities for strengthening police stations – infrastructure, forensic science field units, non-lethal weaponry, adequate staffing etc. – must be provided.
- Separation of investigation from law and order at police station levels should be done This may begin with urban police stations.

- Provisions for sanction for prosecution envisaged in Section153(A) IPC and power to withdraw prosecution u/s 321 CrPC must be revisited and revised.
- Greater avenues are needed for empowerment and career progression of constables. Direct recruitment at Dy SP level to be stopped to enable this. However, this suggestion on direct recruitment of Dy SPs was not unanimous.
- There should be a thorough screening for career progression at all levels in the police (from constable to IPS).
- The Police Act of 1861 should be replaced with another law for making police accountable to law and community.
- State Security Commissions, as recommended by NPC, should be established.
- There should be security of tenure for police officers from the level of Station House Officer to DGP.
- Local community should be involved in Public Order management.
- Police should be made a plan subject and brought under the Concurrent List of the Constitution.
- Certain crimes with inter-state ramifications and national security implications should be categorized as 'Federal Crimes' and a dedicated agency for its investigation should be established. This could be achieved through the enlargement of the role and infrastructure of the present CBI.
- Police performance indicators should be standardised. Surveys on public safety, fear of crime etc. should be included as parameters for this purpose.
- Recruitment process in the police should emphasise on testing of aptitude, psychological screening including IQ/EQ.
- More and more scientific and technological aids and e-governance measures should be adopted in policing.
- There is greater need for civil police than militarising it. Training should aim at preparing the police for adopting humane approach in their work.
- The teeth-to-tail (officer:constabulary) ratio in the police should be suitably altered to avoid disconnect between officers and constabulary.
- Peripheral police duties should be outsourced.
- Induction of more women should be effected in the police.

Annexure-I(5) Contd.

- There is an urgent need to address the issue of low self-esteem of the constabulary. This requires a series of organisational/governmental measures such as better status and salary, improved working conditions, other measures of empowerment like entrusting the constables with more professional work than only mechanical chores.
- A holistic culture of law enforcement should be created across different organisations.
- Standard guidelines for exercise of power must be evolved based on best practices. The same should be inculcated through appropriate training.
- Good initiatives promoting community participation in policing should be sustained through legal and institutional framework.
- Benchmarks for police performance should be evolved and utilized for proper assessment.
- Credibility of the police as a professional, functionally-autonomous agency should be established by insulating them from extraneous interferences.
- Arbitrary exercise of authority by police should be curbed through strict disciplinary control.
- Over-burdening the police with powers under numerous special and local laws needs a review and wherever feasible other appropriate agencies can discharge the function.
- Any violation of the law by the police themselves needs to be seriously dealt with.
- The police should be given greater service orientation.
- The Right to Information Act should be fully implemented effectively in the police organisation.

Annexure-I(5) Contd.

IV. Public Order: Need for Reforms in the Criminal Justice System

- Prosecution wing to be headed by an officer of rank of DGP under the overall administrative control of the Advocate General of the State. There was also a view that this measure in itself may not lead to strengthening the prosecution.
- The judges should try to find out the truth instead of acting merely as an umpire.
- Witness should be treated with dignity. This should include providing a seat for the witness, while giving evidence.
- Witness should be compensated for the loss due to attendance in court.
- Effective programmes of witness protection including that of their families should be introduced.
- Situations in which witnesses are unnecessarily called again and again in the courts must be avoided.
- Expert evidence should be taken on affidavit.
- The law of perjury should be made more stringent and effective.
- All the amendments in criminal laws, as suggested by the Malimath Committee, should be implemented.
- Every police station should have a proper interrogation room with audio-video facilities.
- Mobile forensic units should be deployed adequately in police set-ups.
- An Integrated Court Complex at every police station similar to the pattern in UK, should be adopted.
- All the regulatory authority under the law should be vested with the police; quasi-judicial authority and functions should be left to the Magistrates.
- Legal aid system should be strengthened.
- For reducing the huge pendency in the courts, a pragmatic approach is needed. A system of discarding further action in respect of cases of a minor nature after careful scrutiny by a duly constituted independent committee was recommended.
- The system of plea bargaining should be introduced for speedy disposal of criminal cases.

Annexure-I(5) Contd.

- A National Arbitration Commission may be constituted for resolving contentious issues with potential for serious public order problems.
- The number of days on which the courts are closed are far too many due to large number of holidays for the judiciary. Further, after the hearing is completed, sometimes there is inordinate delay for pronouncing the judgements. These issues need to be gone into objectively and remedial measures introduced.
- A tendency on the part of judiciary to micromanage executive functions leading to practical problems, needs appropriate moderation.

Annexure-I(6)

Roundtable on Policing and Public Order
10th June, 2006
Commonwealth Human Rights Initiative (CHRI), New Delhi

List of Participants

Sl. No.	Name	Designation
1.	Mr. Justice Rajinder Sachar	Former Chief Justice, Delhi High Court
2.	Ms Teesta Seetalvad	Advocate, Mumbai
3.	Mr Imtiyaz Ahmed	Social Activist, Delhi
4.	Mr Ram Narayan Kumar	Social Activist, Delhi
5.	Mr Suhel Tirmizi	Advocate, Ahmedabad
6.	Mr Suhas Chakma	Social Activist, Delhi
7.	Mr Vineet Narain	Journalist, Delhi
8.	Mr Sanjoy Hazarika	Social Activist, Delhi
9.	Dr V. Suresh	Advocate, Chennai
10.	Mr Justice H. Suresh	Former Judge, Bombay High Court
11.	Mr Pradip Prabhu	Social Activist
12.	Mr Asghar Ali	Social Activist, Mumbai
13.	Ms Usha Ramanathan	Advocate, Delhi
14.	Mr K.S. Dhillon	Former Director General of Police
15.	Mr Mihir Desai	Advocate, Mumbai
16.	Mr S.R. Sankaran	Former Secretary to the Government of India
17.	Mr Umakant	Social Activist, Delhi
18.	Mr B.N. Jagdish	Advocate, Bangalore
19.	Mr Bikramjeet Batra	Advocate, Delhi
20.	Mr K.G. Kannabiran	Advocate, Hyderabad

Annexure-I(6) Contd.

Administrative Reforms Commission

Sl. No.	Name	Designation
1.	Shri M. Veerappa Moily	Chairman
2.	Shri V. Ramachandran	Member
3.	Dr A.P. Mukherjee	Member
4.	Dr A.H. Kalro	Member
5.	Ms Vineeta Rai	Member Secretary

Annexure-I(7)

Recommendations made at the Roundtable on Policing and Public Order

10th June, 2006

Commonwealth Human Rights Initiative (CHRI), New Delhi

I. Minimising the Possibility of Disorder

- Good and equitable governance is required to sustain public order. Laws that empower people rather than the government should be enacted. Emphasis should be placed on creating "consensual equilibrium rather than cohesive equilibrium".
- The reasons behind occurrences of large-scale disorder should be clearly analysed and publicly debated to prevent recurrence. The focus should be on managing state power and not on managing people.
- Instead of giving more powers to law enforcement agencies, focus should be placed on conditioning the exercise of existing powers. The police will have to be made more accountable, and stricter punishment has to be imposed. Laws that provide impunity for law enforcement agencies should be repealed.
- Administrative Reforms efforts must help marginalised sections of society – the poor, Dalits, Adivasis, and minorities – realise their rights. Existing provisions to safeguard the rights of vulnerable groups should be properly enforced.
- Every aspect of police functioning, administrative functioning and judicial functioning should be made public and transparent immediately, and on a regular basis. The institutional culture has to be changed.

II. Democratise Governance

- The whole culture, legal system and the manner in which government has been carried out needs to be understood, revamped, and brought in tune with modern times.
- Policing should be fashioned towards addressing the growing needs and changing face of society.
- The police should be trained on secular values.
- Instead of looking towards the recommendations of the Malimath Committee

Annexure-I(7) Contd.

that seek to weaken fair trial guarantees, emphasis should be placed on making the state machinery more accountable.

- Space for public protest, legitimate dissent has to be zealously protected by the government.
- Constitutional discipline needs to be reinforced in the police, bureaucracy and the judiciary.
- When crimes are established by the process of law, whether by courts or commissions, then irrespective of culpability, reparation principles must be guided by rationality, justice and completeness. Reparation to victims to torture should be built into the law through the enactment of a special Act on compensation.
- A caste study should be conducted to see which castes are dominating and who are exploiting to formulate a policy on representation in the police, judiciary, medical and educational fields.
- If reform exercises are to be made meaningful, each proceeding should be widely publicized in regional language newspapers and suggestions invited from ordinary people.

III. Enhance Responsiveness of the Police Administration

- Landmark rights, affirming court directives, should be incorporated into the Code of Criminal Procedure, police manuals, and rules.
- The government must exercise its control over the police strictly in accordance with the law. Day-to-day interference in police work – particularly in transfers, postings and criminal investigations – needs to be done away with.
- The role and responsibility of the political executive and the head of the police should be clearly delineated and prescribed in law, to minimise the possibility of external influence in policing.
- There should be proper procedures to ensure merit based appointments and transfers in the police. Transfers of senior officers should not be done by the Chief Minister or Home Minister, but by a committee consisting of the Chief Minister, the Leader of the Opposition, a High Court Judge and prominent citizens.
- The role of the police, in terms of public order maintenance, must be clearly defined. Things like preventing gambling should be taken out of the ambit of police duties.

- The police must reflect the composite mix of society. Efforts should be made to ensure that women, minorities and Dalits are represented in the police.
- More women should be included in the police and given key posts to bring improvements in attitude and approach towards gender issues.
- The police should be made accountable under the Right to Information Act, 2005. Everyone registering an FIR should have the right to know what action has been taken on their FIR, and what is the current stage in investigations.
- There should be annual evaluation of police performance by an independent board. Parameters should include police response to crime, particularly public satisfaction, victim satisfaction and operational efficiency. A social audit of the police should be undertaken at the state, district, city, and mohalla levels.

IV. Make the Police Accountable for Wrongdoing

- The requirement of having to obtain prior sanction before prosecuting police officers for wrongdoing should be done away with.
- Disciplinary proceedings should be completed expeditiously and swift action should be taken against errant officers.
- A District Complaints Authority to inquire into important cases, referred by the National Human Rights Commission and State Human Rights Commissions, should be considered.
- There should be an independent human rights complaints monitoring mechanism at the police station level that is accountable to the human rights commissions, but in their rejuvenated form.
- A credible external mechanism to address complaints against the police should be put in place. Either the existing human rights commissions should be adequately strengthened, or an exclusive body to deal with police related complaints should be established as in other jurisdictions.
- Human Rights Courts as mandated by the Protection of Human Rights Act, 1993 should be properly constituted and operationalised through the enactment of rules.
- The police should be rigorously made to obey Supreme Court guidelines laid down in the D.K. Basu case.

Annexure-I(7) Contd.

- Anomalies in the Indian Evidence Act, 1872 that reject the admissibility of confessions made to police officers [Section 25], but make admissible, recoveries made by the police through the very same confessions [Section 27], should be removed by repealing Section 27.

V. Apart from the above, there was strong opposition to the recommendations suggested in the Report of the Committee on Reform of the Criminal Justice System (Malimath Committee Report).

Annexure-II (1)

Questionnaire for Gathering Views & Opinions
on 'PUBLIC ORDER'

Background

Public order is synonymous with peace, safety and tranquility of the community. Maintenance of public order is a core function of governance. Any contravention of law affects peaceful order to varying degrees and can be referred to as a problem of law and order. It becomes a public order issue, when it affects the even tempo of life of the community. Public order is also linked with the security of the State. When a public order problem is not promptly and effectively resolved, it can assume grave proportions, threatening even the unity and integrity of the country and security of the State. A plethora of issues ranging from agitation by students to terrorism and insurgency come under the scope of public order issues.

2. India today is poised to emerge as a global economic power with all its high growth rate of economy and all-round economic development. For realising our legitimate aspirations of economic development, it is essential that the problems of peace and order be managed efficiently in the country. No developmental activity is possible in an environment of insecurity and disorder. Failure to manage the multifarious problems arising out of violent conflicts based on religious, caste, ethnic, regional or any other disputes, can lead to unstable and chaotic conditions. Such conditions not only militate against realisation of our economic dream, but also would jeopardise our survival as a vibrant democracy. We have to look at the problem of public order management and the role of law enforcement in that regard, in this perspective.

QUESTIONNAIRE

1. Which are the problems and issues in our country that can be termed as 'Public Order Issues', in your opinion? Please name them in descending order of their importance.

2. Are you satisfied with the system and the manner in which Public Order issues / situations are being managed in the country? If not, please specify reasons.

3. Are you aware of the broad legal framework and administrative arrangements for Public Order Management in the country?

Annexure-II(1) Contd.

4. If so, what do you think are the strengths of our legal framework and administrative arrangements in this regard?

5. What, in your opinion, are the weaknesses or inadequacies of the legal framework and administrative arrangements for managing Public Order issues/situations?

6. Do you think any changes are necessary in our laws (substantive, procedural laws or the law of evidence) dealing with Public Order management? If so, please specify.

7. Further, do you think our administrative arrangements/rules to deal with Public Order management are adequate and efficacious? If not, what are the inadequacies in your view and what should be done to rectify the same?

8. There is a perception that in dealing with many public order situations, the root cause of the problem is not adequately addressed. In this regard, the role of the entire civil administration – both regulatory and developmental agencies – assumes importance. What institutional mechanisms, in your view, are required to ensure that all wings of the Government effectively discharge their responsibility in the management of public order?

9. What should be the role of Executive Magistracy in the management of public order situations? Would you like to suggest any improvements in this regard?

10. In a democratic system of governance, local authorities, such as Panchayats, have an important role. Could the local authorities be legally entrusted with responsibilities relating to conflict resolution?

11. Do you think Non-Governmental Organisations (NGOs), social organisations/ groups, social workers, etc., if structurally involved, can play a meaningful role in Public Order Management, including resolution of conflicts in incipient stages, mitigating surcharged atmospheres and/or healing the wounds for long-term peace? If so, what are those Public Order issues/situations in which their help should be enlisted by the concerned agencies?

12. What in your opinion, should be the structured mechanism (also duly suggesting their role as well as accountability) to involve the above-mentioned organisations/groups/ individuals in the periods preceding, during and following a Public Order situation?

13. The media – print as well as visual – have an important role in Public Order situations. Responsible actions by media can substantially contribute to resolution of conflicts and alleviating tensions. Unmindful reporting can lead to undesirable consequences. What are your views and suggestions in this regard?

14. Similarly, what are your views and suggestions with regard to the role of political parties – be it the ruling party or those in opposition – in Public Order management? What measures are needed to strengthen that role?

15. Many of the challenges to Public Order today have their manifestation in phenomena like Terrorism, Organised Crime and other serious crimes of inter-state dimensions. There is a view that to ensure uniformity of response to such crimes, across-the-States, we need to adopt the concept of categorising such crimes as 'Federal Crimes' and have a federal law to deal with them. What is your view in this regard?

16. In our constitutional scheme, Public Order Management is primarily the responsibility of the States. Do you feel satisfied with this arrangement or would you think that in view of the emerging scenario of many public order issues having serious implications for national security and economic development, the Union Government should play a more visible role in the handling of such issues/situations?

17. 'Public Order' is a subject included in List II (State List) under the Seventh Schedule of the Constitution. This denies to the Parliament and the Central Government even a legislative/policy-making role in matters relating to Public Order. There is a view that since now many public order situations having ramifications on national security and other national interests, 'Public Order' and 'Police' (being the main instrument of maintenance of Public Order) should be brought under List III (Concurrent List), without diluting, in any manner, the federal nature of our polity. Do you concur with this view or not? Please specify reasons also.

18. What other measures, if any, need to be taken, in your view, to ensure that the Central Government is able to fulfill its due role in management of Public Order issues/situations having dimensions of national interest?

19. The police being the principal law enforcement agency of the country, are in the forefront of management of Public Order situations. The functioning of the police is primarily governed by the Police Act of 1861, which is now being perceived as archaic and not reflective of our constitutional/democratic aspirations. Would you think that this law needs to be replaced?

20. If so, what new provisions, if any, would you like incorporated in a new Police Act?

21. The role of police in Public Order Management, at present, is on a reactive mode, as per the statutory provisions under the current laws. There is no obligation on the police to explore possibilities of peaceful resolution in the early stages, with or without the

Annexure-II(1) Contd.

involvement of other stakeholders in the society. Also could the police be given a facilitator's role in such cases? Do you think it is necessary to change the laws in this regard?

22. How to gear up the civil administration and the police to enable them to take effective preventive action to avail major public disorder situations?

23. There is a view that the functional capabilities of the police and other concerned agencies need to be augmented to enable them to deal with growing dimensions of public order problems efficiently and effectively. What would you think are such capacity building measures, needed to be put in place?

24. It is widely felt that the police machinery in the country, to day, is over-burdened with rising magnitude and complexities of their duties. Do you think some of the duties and functions currently performed by the police can be outsourced, to enable the police to concentrate on their core functions? If so, please specify functions that can be outsourced.

25. What, in your view, are the other measures needed to improve the working and living conditions, as well as morale and motivation of policemen at the cutting edge levels of constabulary and other field police officers, to enable them to tackle complex Public Order Issues with professional efficiency but with a human face?

26. In a democratic set up, the police are accountable to the public and the law, for efficient performance of their duties. What do you think should be the measures and mechanism for ensuring the accountability of the police to the people and the law?

27. Efficient management of Public Order situations/issues requires involvement of several other agencies besides the police. In this context, the importance of inter-agency cooperation and coordination cannot be over-emphasized. What measures, in your opinion, are needed to promote inter-agency, inter-State and Centre-State cooperation in an institutionalised measure, to ensure synergy in the management of public order issues/situations?

Annexure-II(2)

Analysis of the Replies to the Questionnaire on Public Order

1. Which are the problems and issues in our country that can be termed as 'Public Order Issues', in your opinion? Please name them in descending order of their importance.

Following are the public order issues in our country, in descending order of importance:

a) Religious fundamentalism and communal strife

b) Caste and regional conflicts

c) Terrorism

d) Left Wing extremism

e) Organised crime

f) Armed insurgencies in the North East

g) Labour/agrarian/student/political agitations

h) Violent demonstrations against government policies

i) Conflicts over sharing of resources

j) Disasters – natural and man-made

k) Strikes in essential service sector

l) Factionalism

m) Kidnapping

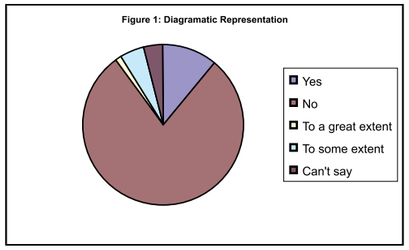
n) Political murders

Annexure-II(2) Contd.

2. Are you satisfied with the system and the manner in which Public Order issues / situations are being managed in the country? If not, specify reasons.

Table 1 : Satisfied with the management of public order issues

Yes	11%
No	79%
To a great extent	1%
To Some Extent	5%
Can't Say	4%



Reasons for dissatisfaction:

(a) Administration is not proactive

(b) Administration does not address the root causes of the problems. There is no attempt to find long term solutions

(c) Everyone's opinions and viewpoints are not considered while resolving issues – NGOs, media and social workers are hardly ever involved

(d) Lack of accountability to public

(e) Obsolescence of the system wherein the district magistrate is at the helm of the law and order machinery

(f) Inadequate and ineffective laws to handle public order issues

(g) Lack of equipment, inadequate training and legal knowledge of law enforcement agencies affects the manner in which public order issues are handled

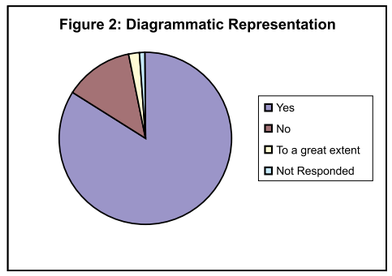
(h) Multifarious controls and interference of extraneous powers

(i) No enforceable guidelines for media leads to their spreading misinformation and over sensationalisation of issues

3. Are you aware of the broad legal framework and administrative arrangements for Public Order Management in the Country?

Table 2

Yes	84%
No	13%
To a great extent	2%
To Some Extent	1%



4. If so, what are the strengths of our legal framework and administrative arrangements in this regard?

Strengths in legal framework:

1. Clearly laid down legal framework
    a. Constitution of India
    b. Civil and Criminal Procedure Code

2. Criminal Justice System working under a functional democracy and a well-documented Constitution
    a. Several layers of judiciary
    b. Proactive judiciary
    c. Separation of judiciary from executive

3. Multifarious democratic and legislative fora are available to discuss issues of public importance

4. Legal strength with the police and executive
    a. Power with the SHO and his subordinate staff to initiate preventive actions to combat public order problems
    b. Discretion to decide quantum of force while handling public order issues

Annexure-II(2) Contd.

c. Promulgation of prohibitory orders

d. Preventive detentions

e. Power to regulate processions

f. Provisions of immunity to the police officer while discharging legitimate functions in dealing with public order issues

5. Judicial / administrative review of police action

Strengths in administrative framework:

1. Firmly established traditions
2. Well spread intelligence network
3. Trained police machinery
4. Political accountability of the police
5. All India Services bring uniformity to dealing of public order issues
6. A strong administrative system is able to handle public order issues against heavy odds

5. What, in your opinion, are the weaknesses or inadequacies of the legal framework and administrative arrangements for managing Public Order Issues/situations?

Weakness in legal framework

(a) Delays in delivery of justice by the criminal justice system

(b) The Criminal justice system favours the accused; the rich and powerful are able to manipulate it to their benefit

(c) Evidence Act need to be re-examined in the context of public order issues

i. Provision of onus of proof on prosecution

ii. Guilt to be proved beyond all reasonable doubt

(d) Inadequate and ineffective preventive laws.

(e) Inadequate and ineffective laws to deal with difficult problems like terrorism and organised crime

(f) Inadequate protection to victims and witnesses

(g) Withdrawal of cases for reasons of expediency

(h) No penal provision, other than departmental action, exists for dereliction of duty to maintain public order

Weaknesses in administrative framework

a) Administrative decisions are based on political expediency

b) Lack of autonomy and freedom from interference

c) Overlapping jurisdiction of police and magistracy leads to inordinate delays, confusion and duality of control

d) Police have the responsibility of tackling public order problems but not given adequate role in conflict resolution and negotiation process

e) Lack of an institutional mechanism defining the roles and responsibilities of the various stakeholders in conflict resolution

f) No system of identification of citizens like unique identity cards, etc

g) No central computerised database on criminals, especially anti-nationals

h) Not many States have specialised wings to handle public order problems like left-wing extremism

i) Lack of cohesive policy between the Centre and the States and between the States – ambiguity in federal system in dealing with public order issues

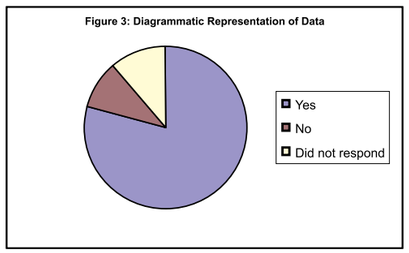
j) Lack of use of technology and trained manpower

Annexure-II(2) Contd.

6. Do you think any changes are necessary in our laws (substantive, procedural laws or the law of evidence) dealing with Public Order management? If so, please specify.

Table 3 : Is there a need to make changes in law?

Yes	79%
No	10%
Did Not Respond	11%



Specific changes recommended

Most of the respondents felt that recommendations of the Malimath Committee in this regard needs to be implemented.

Changes in substantive laws

(a) Remove distinction between cognizable and non-cognizable offences

(b) Strengthen preventive detention law and other specific acts dealing with public order issues

(c) Enhance punishment for offences related to public order

(d) Stringent punishment needed for willful dereliction of duty by public servants

Changes in procedural laws

(a) Getting 161 CrPC statements signed by witnesses

(b) Adjournments during trials be made more stringent and specific reasons be cited for the same

(c) A definite time frame should be fixed for completion of trials in cases relating to public order issues

(d) Police officers be given powers for binding down persons u/s 106-110 CrPC

(e) Provision of witness protection

(f) Provision of withdrawal of cases (Section 321 CrPC) should be removed

(g) Provision of anticipatory bail be made more stringent

(h) Sections 147, 148, 149, 152, 188 (for violation of prohibitory orders under Section 144 CrPC) IPC should be made non-bailable

(i) Enhance time to keep a person in custody under Section151 CrPC to 15 days

(j) Power of award of compensation to the victims of riots out of the confiscation of property of the convicts in riot cases or fine on conviction

(k) Increase time of producing the arrested person before a Magistrate from 24 hours to at least 48 hours.

Changes in law of evidence

(a) Proactive role of the judges in "finding the truth" rather than merely shifting evidence

(b) Convictions should be based on preponderance of possibilities rather than beyond all reasonable doubts

(c) Confessions before senior police officers be made admissible

(d) Suitable amendments be brought about to avoid acquittal on grounds of lapses in investigation – judiciary should become more proactive to order further investigation

(e) Adverse inference should be drawn if certain information/document/object which is in the sole custody of the accused is not produced

(f) Subsequent change in statement by a witness, once it has been recorded before a judicial magistrate, should be treated as perjury. Procedure to deal with perjury be simplified and punishment therefore be made more stringent.

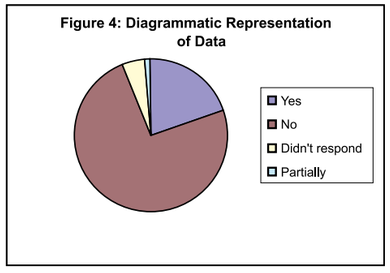
(g) Circumstantial evidence and motive behind the crime should be given equal weightage as direct evidence

Annexure-II(2) Contd.

7. What are the inadequacies in our administrative arrangements/rules to deal with Public Order management and what should be done to rectify the same?

Table 4 : Are existing administrative arrangements/rules adequate and effective?

Yes	20%
No	74%
Did Not Respond	5%
Partially	1%



Inadequacies

(a) Functional control of the police by the executive

(b) Police has no functional autonomy

(c) Extraneous interference in public order management

(d) Lack of training

(e) Lack of modern equipments

(f) Lack of empowerment of lower ranks

(g) Improper performance monitoring systems and lack of guidelines for fixing accountability

(h) Thrust of rules/administrative arrangements for public order management should change from 'law-centric' to 'people-centric'

(i) Inadequate participation of civil society in public order management

(j) No provision for rehabilitation of victims of public disorder

Solutions

Apart from measures to remove the above inadequacies, other solutions suggested are as follows:

(a) Constitute a State Security Commission

(b) Make police a plan subject for budgetary allocation

(c) Provide for adequate manpower in police stations

(d) Changes required in police recruitment, promotion and transfer

(e) Reservation for women in police

(f) The Superintendent of Police should be made the head of the law and order and the District Magistrate should be given a coordinating role

8. What institutional mechanisms, in your view, are required to ensure that all wings of the Government effectively discharge their responsibility in the management of public order?

Constitutional mechanisms to ensure that all wings of the government effectively discharge their duties:

a) Conflict resolution should be clearly specified in the charter of duties of various wings of the government

b) Broad guidelines to handle public order problems, once framed by a think tank of eminent people, should remain the same irrespective of the party in power

c) Establishment of National and State Arbitration Councils, comprising retired judges with a senior administrator, police officer and some distinguished citizens as advisors, to propose policy and strategies to handle serious law and order issues so that there is a continuity of approach despite change of governments

d) A mechanism should be devised to make bureaucrats accountable for law and order problems that emanate from lack of implementation of developmental policies and programmes

e) Village panchayats should be made responsible for law and order

f) Police should be made party to planning and implementation of developmental work in left wing extremist affected areas

g) Public scrutiny of the performance by the citizens should be introduced

h) NGOs should be encouraged; civil society should assist and guide the police in dealing with sensitive issues

Annexure-II(2) Contd.

i) Better coordination between all wings of the government

j) Devise better and empathetic ways to deal with public grievances

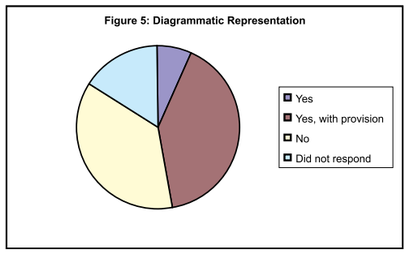
k) An independent 'Ombudsman' will inspire public confidence

l) Transparency in administration should be ensured

9. What should be the role of Executive Magistracy in the management of public order situations?

Table 5 : Is there a role of Executive Magistracy in public order management?

Yes	7%
Yes, with provision	40%
No	37%
Did Not Respond	16%



There are two view points with respect to the role of the Executive magistracy.

Role of executive magistrates should be reduced

(a) Powers be vested with police officers under Sections 106-110, 129, 133, 144 CrPC preventive detention

(b) Decision making in public order issues should be vested with the police

(c) Their role should be limited to mitigating the causes of public disorder

(d) Duality of command creates confusion

(e) Magistrate's decision while externing criminals, allowing processions, etc may be at variance with police recommendations, leading to law and order problems

(f) Police are specially trained for law and order; administrators should concentrate on developmental issues

(g) Their role should be limited to conflict resolution and negotiations

(h) Regulatory powers under the Cr.PC should be vested in police officers while judicial or quasi judicial powers and functions should remain with Executive Magistrates.

Role of executive magistrates is appropriate

(i) Proactive role of magistrates is desirable

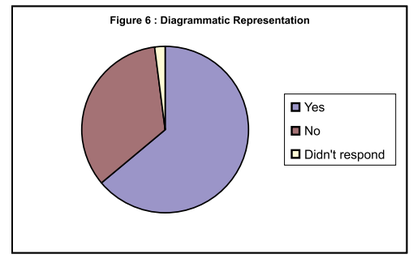
(j) Magistrates have a restraining influence on the police

(k) Magistrates have a major role in relief work during disasters

10. Could the local authorities be legally entrusted with responsibilities relating to conflict resolution?

Table 6 : Can Local Bodies be entrusted with such responsibilities?

Yes	64%
No	34%
Didn't Respond	2%



Viewpoints in favour of empowering panchayats

(a) According to Article 243(A) of the Constitution, the Gram Sabha exercise such powers and functions at the village level which may be entrusted by the State Legislature by law – hence a provision already exists to empower them

(b) Formalisation of the system is required

(c) Minor disputes could be referred to the panchayats, with the power to impose fine only

(d) The men in the panchayat need to be trained

(e) However, nyaya panchayats should be constituted separately from the gram panchayat to keep the executive separate from the judiciary

(f) Panchayats should have some control over the police

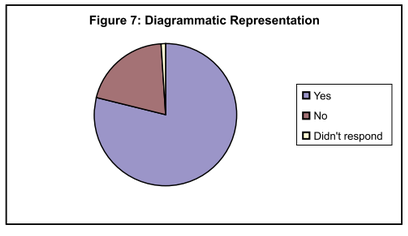
(g) Panchayats should be placed under the supervision of a regulatory body.

Annexure-II(2) Contd.

11. What are the Public Order issues / situations in which the help of NGOs social organisations/groups and social workers should be enlisted by the concerned agencies?

Table 7 : Should NGOs, Social Organisations and Workers be involved?

Yes	79%
No	20%
Didn't Respond	1%



Issues and areas where they can be involved:

a) Crime against weaker sections especially women, child abuse, rehabilitation of juvenile delinquents and street beggars
b) Addictions like alcoholism
c) Family – marital and property disputes
d) Inter/intra village disputes
e) Mitigating communal tensions
f) Opinion and awareness building
g) Identifying issues before they snowball into major conflicts
h) Grievance Redressal
i) Interface between administration and public
j) Role in left wing extremism, insurgency and caste conflicts
k) Enforcement of social legislations

However, other view point advised caution in over use of these agencies for some of them may have their own hidden agendas also.

12. What should be the structured mechanism to involve the above-mentioned organisations/groups/individuals in the periods preceding, during and following a Public Order situation?

Structured mechanism to involve NGOs, social workers, etc:

a) Make the SDM, SDPO and member of an NGO collectively responsible
b) Regular coordination meetings both at the sub division and district levels
c) Create a legal framework
d) Training of these organisations, wherever required
e) Black list of NGOs, if found to indulge in damaging acts
f) Tribunal can oversee their performance
g) One suggestion was to limit their role in advisory capacity with proper scrutiny of membership of this advisory board

13. What are your views and suggestions with regard to the role of print and visual media in conflict resolution and alleviating tensions?

Role of the media

a) Freedom of expression and Free Press are cardinal principles of a democracy
b) Media plays a positive role in creating awareness in the public and being a watch dog of the government

Caution

a) However, a code of conduct needs to be evolved in order to avoid over-sensationalisation and misreporting
b) Media should be trained and sensitized, wherever required
c) Media should also educate the public about their duties and responsibilities and highlight the disastrous consequences of indifference of the enlightened citizens.

Annexure-II(2) Contd.

14. What are your views and suggestions with regard to the role of political parties (ruling party or opposition party) in Public Order Management?

Measures to strengthen role of political parties in public order management:

a) Evolve a national consensus and code of conduct by the National Integration Council

b) Recommendations of the NPC in this regard and the guidelines issued by the MHA in 1997 are pertinent

c) Elected representatives, irrespective of party affiliations, may be co-opted into district level committees to monitor public order issues

d) Use the mass base of the political parties to generate opinion and arrive at consensus

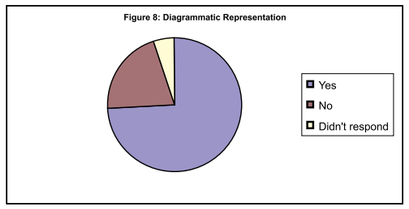
e) Political parties should keep themselves away from the executive function of the police i.e. give police the functional autonomy

f) Take measures to ensure that criminals don't enter political stream

15. We need to adopt the concept of categorising crimes like Terrorism, Organised Crime and other serious crimes as 'Federal Crimes' and have a Federal Law to deal with them. What is your view in this regard?

Table 8 : Should there be federal crimes and federal law?

Yes	74%
No	21%
Did not Respond	5%



a) In case of Inter-State issues like left wing extremism, terrorism, fake currency, conspiracy against the government, etc, Central legislations are required, however without disturbing the federal polity

b) A Federal agency should be created to deal with federal crimes, which can operate across State boundaries

c) Exact mechanism, however, needs to be worked out. One such mechanism could be enacting a Public Order Act. Wherever a public order situation occurs, the handling of the crisis could still be dealt by the State concerned where the incident happens, but if the tentacles spread to other States also, some provisions should be made in this Act allowing for Central intervention – however, the full consent and cooperation of the State Government should be obtained

16. Should the Union Government play a more visible role in the handling of public order issues / situations having serious implications for national security and economic development?

a) The existing arrangements are sufficient. Public Order Management cannot be centralized due to the vastness of the country

b) The authority and responsibility of the State should not be diluted

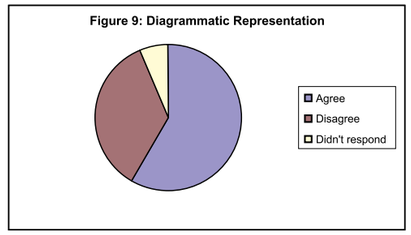
c) However, when problems transcends State boundaries, Central Government, without political considerations, should act as a facilitator and extend full support to the States concerned

d) An institutionalized system should be in place for better coordination, exchange of information, resources and better monitoring

17. Should the 'Public Order' and the 'Police' (being the main instrument of maintenance of Public Order) be brought under Concurrent List, without diluting the federal nature of our polity?

Table 9 : Should Public Order and Police to be brought under Concurrent List?

Agree	58%
Disagree	36%
Didn't Respond	6%



Annexure-II(2) Contd.

Reasons in favour

a) There is a need for uniformity of response and therefore uniformity of legal and policy framework

b) Serious communal, naxal and terrorist problems should be tackled keeping a long term perspective in view

c) Neglect of law and order and related issues of governance leads to grave internal security situations

d) In matters affecting public order, interests of State and Centre should be in congruence

e) This arrangement will go a long way in protecting the rights of the citizens and curbing the parochial and fissiparous tendencies at the lower level

Reasons against

a) Police have a specific role within a State and each State has its own problems

b) It is difficult, if not impossible, to have remote management of public order in such a vast country as ours

c) It is better to specify certain areas in internal security to be put in the Concurrent List rather than the whole subject as such

18. What other measures need to be taken, to ensure that the Central Government is able to fulfill its due role in management of Public Order issues/situations having dimensions of national interest?

Measures to ensure that Central Government is able to fulfill its role in management of public order:

(a) <u>Central Government should take the role of a facilitator</u>

i. Provide logistical support in the form of manpower, equipment, training, budget for modernization of police force and development activities

ii. Welfare measures and more financial assistance to North Eastern States

iii. Declare areas as 'distributed' and provide additional Para-military forces

iv. Education awareness programmes

v. Ensure better implementation of poverty alleviation programmes

(b) <u>Central Government should take the role of a coordinator</u>

vi. Better coordination between Central and State agencies

vii. Sharing of knowledge, skills and intelligence

(c) <u>Criminal Justice System</u>

viii. Central Government should devise a new criminal justice system to provide speedy justice

ix. Creation of National Judicial Service

(d) Creation of a Federal Organisation for dealing with law and order situations

(e) Make police a plan subject

(f) States be made answerable to the Centre for maintenance of law and order by denial or cut in Central assistance for poor performance

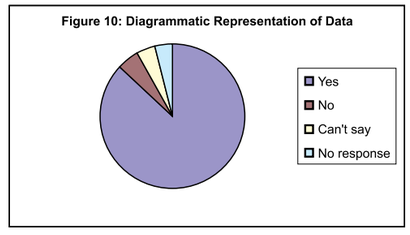
(g) Central Government to enact stringent laws to deal with public order problems

19. The police being the principal law enforcement agency of the country, are in the forefront of management of Public Order situations. The functioning of the police is primarily governed by the Police Act of 1861, which is now being perceived as archaic and not reflective of our constitutional/democratic aspirations. Would you think that this law needs to be replaced?

Table 10 : Should the Police Act of 1861 be replaced?

Reasons for replacement

Yes	87%
No	5%
Can't Say	4%
No response	4%



Annexure-II(2) Contd.

a) Old and archaic

b) Does not reflect the democratic aspirations of the people

c) Word 'public service' does not figure in the Police Act

20. If so, what new provisions, if any, would you like incorporated in a new Police Act?

Provisions suggested to be included in the proposed new Police Act

a) Change in the focus of police from being the coercive arm of the government to a service organisation catering to the aspirations of the people

b) The new Police Act should be pro-people and pro-common man

c) Role of police in internal and external security of the country needs to be reflected

d) Enhance powers of the police with reference to the maintenance of public peace and order

e) System of control of the police by executive magistracy should be done away with

f) Role of Centre in federal crimes should be clearly delineated

g) Formulation of State Security Commission to ensure autonomy for the police

h) Make police more accountable, accessible and transparent

i) Clarity of police role in conflict resolution

j) Use of IT should get reflected in the Police Act

k) Cyber crime, terrorism and organised crime should be included

l) The relevant recommendations of the National Police Commission should be referred to

Annexure-II(2) Contd.

21. Could the police be given a facilitator's role in such cases? Do you think it is necessary to change the laws in this regard?

Table 11 : Should police be given a facilitators' role?

Yes	83%
No	11%
Didn't respond	6%

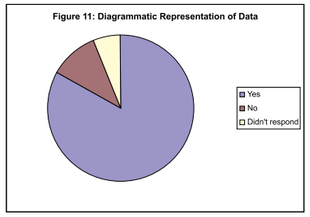
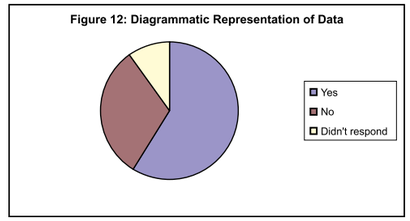


Table 12 : Is there a need to change law for providing a facilitator's role to Police?

Yes	59%
No	31%
Didn't respond	10%



(a) Laws should enable the police to play a proactive role in preventing public order problems rather than having a reactive role

(b) Police should also have a developmental role

(c) Community policing has proved to be an effective tool for police to act as a facilitator – law should provide for institutionalisation of this.

22. How to gear up the civil administration and the police to enable them to take effective preventive action to avail major public disorder situations?

Measures to gear up administration to take effective preventive measures in public disorder issues:

a) Enact a Public Order Maintenance Act which apart from incorporating preventive provisions of the CrPC should also have provisions including suspension of rights, etc

b) Make administration functionally independent of political control

Annexure-II(2) Contd.

c) Stop overburdening police with bandobust duties

d) Better coordination between DM and SP

e) Remove unnecessary legal impediments like stay orders, in dealing with law and order situations, through appropriate legal amendments.

f) Use technical expertise of eminent persons in public order management by organizing seminars and workshops

g) Reviving age old village police system

h) Campaign for building awareness amongst people of legal rights

i) Legalising conflict resolution committees like peace committees etc

j) Update security schemes of the district, periodically and regularly

k) Better intelligence network

l) Periodic review meetings with all departments

m) Strategic training

n) Strengthen panchayats by providing explicit provisions for maintenance of law and order

o) Police Commissionerate systems to be in place as they have proved more effective in preventive actions

p) Holistic approach of involving the police in development work

23. To deal with growing dimensions of public order problems efficiently and effectively, what are such capacity building measures that need to be put in place in order to enhance the functional capabilities of the police and other concerned agencies?

Capacity building measures:

(a) Trained manpower

i. Regular in-service training for upgrading skills

ii. Training in use of technology

iii. Leadership training

iv. Physical fitness

Annexure-II(2) Contd.

v. Gender sensitisation

vi. Reorientation programmes in police to handle mob fury are very essential

vii. Build capacity to adopt more democratic methods to handle law and order

viii. Sensitisation of the police to the socio-economic culture

ix. Training that use of force should be the last resort

x. Training of senior officers in problem solving and knowledge management

(b) Separate wing to handle white collar crimes

(c) Specialisation in police force and separation of law and order and investigation wings

(d) Massive computerisation

(e) Sharing of intelligence and information by centralized data sharing

(f) Introduction of technology in police work

(g) Better communication infrastructure

(h) Better mobility

(i) Better equipment like weapons, protective gear, water canon, etc

(j) Better welfare of police personnel

(k) Introduction of tailor made community policing schemes

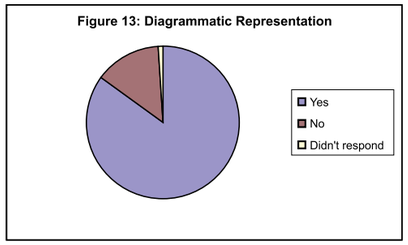
(l) Enhanced participation of public and social organisations

Annexure-II(2) Contd.

24. Do you think some of the duties and functions currently performed by the police can be outsourced, to enable the police to concentrate on their core functions? If so, please specify functions that can be outsourced.

Table 13 : Is there a need to outsource police functions?

Yes	85%
No	14%
Didn't respond	1%



Areas which can be outsourced

- Serving of summons, bailable warrants and traffic challans
- Reception Counters
- Maintenance of premises of police stations and offices
- Security guard duties
- Escort duties (VIPs)
- Driving of Vehicles
- Watch and ward duties
- Security guards to persons other than Ministers and categorised protectees can be outsourced to private agencies on payment by the protectee
- Traffic regulations at less important places
- Escort of under-trial prisoners can be transferred to Jail Department, if necessary, along with sanctioned manpower.
- Static guard duties of Government installations, of regular nature, can be entrusted to a "State Security Force" created for the purpose (it could be Home Guards)

Annexure-II(2) Contd.

- Escort of cash of banks can be entrusted to Home Guards on payment basis
- Procurement and handling of stores
- Data feeding in computers
- Legal training, computer training and latest training including using of fire arms, detection and controlling of mob during riots
- Pay and accounts work
- Catering
- Disaster Management volunteers
- CCTV monitoring and analysis of crime data
- Prohibition Enforcement

Views against outsourcing

a) Instead of outsourcing, increase manpower in the police

b) Use community policing initiatives to involve public in policing functions; outsourcing is not the solution

25. What, in your view, are the other measures needed to improve the working and living conditions, as well as morale and motivation of policemen at the cutting edge levels of constabulary and other field police officers, to enable them to tackle complex Public Order Issues with professional efficiency but with a human face?

Measures to increase morale and motivation of cutting edge level:

(a) Hygiene factors

i. Fixed hours of duty

ii. Better equipped

iii. Better living and working conditions

iv. Better compensation package and social security

v. Post retirement settlement possibilities

vi. Police welfare

vii. Better manpower management systems to avoid ill treatment and harassment of men

Annexure-II(2) Contd.

viii. Dry canteen facilities like army

ix. Liberal sanction of leave

x. Better emoluments

(b) Treat subordinate officer with respect and courtesy

(c) Trust the subordinates

(d) Legal empowerment of constabulary

(e) Providing promotional prospects

(f) Better recognition of police work

(g) Stop victimisation of policeman

(h) Training

(i) Image make over, modernisation, updating technology will instill confidence and pride in men

26. What do you think should be the measures and mechanism for ensuring the accountability of the police to the people and the law?

Measures to make police accountable to law

a) General Diary in police stations to be computerised

b) Recording of case diaries on computers so that they can also not be changed

c) Registration of FIR on a computer with no possibility of changes ; web cam to record the process of registration

d) Recording locations of police vehicles by GPS and logging systems

e) Strengthening Human Rights Organisations

f) Judicial and media activism are good means to ensure accountability

Measures to make police accountable to people

a) Right to Information Act and Citizen Charter should be widely publicized

b) Transparency in administration

Annexure-II(2) Contd.

c) Place in civil police under local self government units to enhance public accountability, as is done in advanced countries

d) District Complaint Boards to be constituted to enquire into complaints against police officers; recommendations made but not accepted by the SP should be referred to the State Police Headquarters and then to the State Security Commission

e) Police-public bipartite committees should review the situations periodically

f) Monitoring system

i. Independent Constitutional body at the Centre and State levels to review performance of police officers

ii. Devise public feedback mechanisms

iii. Public satisfaction to be made the index of monitoring, not crime statistics

g) Community policing initiatives

h) Duty and accountability of each and every personnel in the police station should be clearly defined.

i) Time bound redressal systems

j) Ombudsman

k) Punishing deviant policemen

27. What measures, in your opinion, are needed to promote inter-agency, inter-State and Centre-State cooperation in an institutionalized measure, to ensure synergy in the management of public order issues / situations?

Measures to promote inter-agency, inter-state and Centre-State cooperation in public order management:

a) Inter-State and Inter-Organisation exchange of men at supervisory levels

b) Joint training programmes

c) System analysis is to be done to achieve better coordination

Annexure-II(2) Contd.

d) Achieve better coordination and cooperation between political parties in public order issues

e) Frequent coordination meetings for sharing of information, ideas and strategies

f) Creation of Think Tank of police officers, citizens and other governmental agencies

g) Planning for development should include police also in areas affected by left wing extremism

h) Better communication systems