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GRADUATE SCHOOL OF DEVELOPMENT STUDIES

POLICE ACCOUNTABILITY TO PUBLIC IN INDIA: A STEP TOWARDS GOOD GOVERNANCE

A Research Paper presented by

Sanjay Joshi
(India)

In Partial Fulfilment of the Requirements
for Obtaining the Degree of

MASTER OF ARTS IN DEVELOPMENT STUDIES
Specialization: Public Policy and Administration

Members of the Examining Committee

Dr. D. Gasper
Dr. J. de Wit

The Hague, December 2000



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This document represents part of the author's study programme while at the Institute of Social Studies; the views stated therein are those of the author and not necessarily those of the Institute.

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Dedications

To Dadda & Boju, my parents; Savita, my wife; and our daughter Rudrakshi.
Creation is the essence of life.

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The Hague

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Abbreviations and Acronyms

BPR&D – Bureau for Police Research and Development

CCIC - Citizens' Complaints and Inquiry Committee

CCR - Citizens' Complaint Review

CHRI - Commonwealth Human Rights Initiative

CrPC - Criminal Procedure Code (1973)

CoI - Constitution of India

CU - Complaints Unit

DG - Director General (Police)

DRAU - Data Research and Analysis Unit

GoI - Government of India

HK - Hong Kong

HRA - The Protection of Human Rights Act (1993)

HRW - Human Rights Watch

IAS - Indian Administrative Service

ICAC - Independent Commission Against Corruption

ICPNI – Independent Commission on Policing in Northern Ireland

IPC - Indian Penal Code (1860)

IPS - Indian Police System

NCRB - National Crime Record Bureau

NCU - Neighborhood Complaints Unit

NHRC - National Human Rights Commission (Indian)

NPC - National Police Commission

PPCU - Public Police Co-operation Unit

PTI - Press Trust of India

SHO - Station House Officer

SP - Superintendent of Police

UNI - United News of India

UNIPTF - United Nations

USA - United States of America

"It should be borne in mind that there is nothing more difficult to handle, more doubtful of success, and more dangerous to carry through than initiating changes...The innovator makes enemies of all those who prospered under the old order, and only lukewarm support is forthcoming from those who would prosper under the new. Their support is lukewarm partly from fear of their adversaries, who have the existing laws on their side, and partly because men are generally incredulous, never really trusting new things unless they have tested them by experience..."

(Machiavelli c.1514, ch. 6. as quoted in Freckelton: 1991: 99).

Chapter 1: Introduction

1.1 General Overview

The problem of police accountability is a global and very old phenomenon (Marshall: 1965; Uildriks and Mastrigt: 1991; Oliver: 1997; Goldsmith: 1991). Even the Romans had noticed the complexity of guarding the guardians – "*Quis Custodiet Ipsos Custodes*" (Lakshminarayanan: 1997). Police is an important organ of the State and a crucial mechanism in ensuring and strengthening good governance. The primary difficulty is the need and existence of the Police agency *per se* in a State. It is equipped with crucial powers to make or mar a society and the utility of an accountable police is aptly articulated by Goldstein: "[Society] looks to its police to prevent people from preying on one another; to provide a sense of security; to facilitate movement; to resolve conflicts; and to protect the very processes and rights'- such as free election, freedom of speech, and freedom of assembly – on which continuation of a free society depends" (Goldstein: 1997: 1).

In India, the post independence police and policing under the framework of the 1861 Police Act is a colonial legacy of the British rulers. Interestingly, after independence, given India's wish to guide itself towards the promised goal of a socialist welfare State for its fast increasing population, new laws have been enacted and adopted in other fields. However, a key agency expected to implement those laws rigidly still continues to be governed by an anti-democratic, colonial law. Reforming the Indian Police covers many issues and concerns that go beyond strengthening and improving the administrative and structural aspects of the organization; to include changing the culture and ethos of policing.

The present effort is founded on the fact that policing is a function carried out in the name of society as a whole. Therefore, it is essentially a civic responsibility to monitor closely how police performs and to ensure that this responsibility is discharged with respect to all within the ambit of the rule of law. The questions posed before us are (i) how to improve police accountability in India and (ii) can effectiveness of the police in dealing with complaints against them be increased by introducing police accountability

to the public? I view accountability of police to public as a principle worth pursuing in its own right as well as for its effects on police performance.

This research paper is divided into five chapters. Chapter 1 starts with an overview of the various segments of this paper. It also states the research question, hypothesis and the methodology used in this research paper. A brief reference has been made to the pre independence policing in India together with some of the major post independence initiatives for police reforms.

Chapter 2 provides the theoretical framework for this paper. The concept of good governance and some of its elements are discussed. I argue for their relevance to police functions in a democratic society. It has been noted (Chapter 1) that earlier police reform attempts in India have failed. One of the causes of such failure that I identify is that they all proposed police accountability mechanisms that failed to include active participation of the people and where they included it was inadequate and not supported by legislation. In my view, the element of peoples' participation under the rubrics of good governance if well harnessed under a body of laws can augment legitimacy and increase peoples' awareness, which is essential for police accountability in a democracy. In a democracy the sovereign power rests with the people therefore accountability of police must flow down to the people. Police accountability as the lynchpin of this paper is addressed with the help of a police accountability diagram proposed by Stone and Ward (2000). This diagram (3x2 matrix, see Table: 1) mentions three layers of accountability for (a) public safety and (b) police behavior.

I hypothesize that in a democratic set up, the police can deliver its function effectively when adequate checks and balances are institutionalized for monitoring police performance. Therefore, introducing such civilians' complaint review forum that is backed by peoples' participation will result in increased level of police efficiency. As the paper essentially advocates peoples' direct participation in dealing with complaints of police misconduct it avoids any detailed analysis of the other five areas in the Stone and Ward diagram. This paper, however, proposes recommendation for only one layer- 'social control' and focuses on police accountability for misconduct through Civilian Complaint Review (CCR) mechanism. It is my conscious attempt to focus on CCR which is only one of the various 'social control' mechanisms, others include external

auditors, media, human rights monitors, police research institutions, etc. I concentrate on CCR because of: (i) the total absence of any civilian complaint review mechanism specifically dealing with police misconduct in India, and (ii) it allows community members to participate in police accountability mechanisms in order to achieve good governance.

Chapter 3 discusses some of the major available structures of police accountability for police misconduct in India. Both 'internal' and 'state' accountability mechanisms are dealt and we see the weaknesses ingrained in those mechanisms. Under 'internal control' mechanisms this paper looks into how the complaints against the police are handled by the Police Department and what are its limitations. Under the 'State Control' mechanisms this paper deals with how police have become a tool in the hands of politicians and the problems associated with accountability of the police to the politicians especially as defined under the 1861 Police Act (the Act). The inadequacy of the Act for articulating the democratic aspiration of independent India and its people may be noticed in this section. Similarly, the lack of peoples' participation in supervising and scrutinizing police misconduct will be identified as an important element that has widened the hiatus between police and public[1].

This chapter also deals with the relevant provisions of the Police Act of 1861 that grant the 'superintendence and control' over police to the government through the District Magistrate[2]. An important 'State Control' mechanism available that includes complaints against police misconduct is the National Human Rights Commission[3] (NHRC). However, even after seven years of NHRC, there has been a growing criticism of widespread abuse of human rights by the police in the country. The reports on illegal detention, torture, custodial rape and encounter deaths occasioned by police disturb the nation's conscience and expose the country's human rights record to widespread criticism (Srivastava: 1998).

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[1] Prof. Bayley mentions that the way in which Indian Police accountability has been operationalized is through the elected officials, 'the chain of responsibility reaches from uniformed officers to permanent non-police civil servants to an elected minister to a legislative and ultimately to the people' (1969:410).

[2] Such 'superintendence and control' was aptly reported by the National Police Commission (1979-1981) as being a major source of 'interference with and misuse of police by illegal or improper orders or pressure from, political, executive or other extraneous sources' (GoI: 1980: 20).

[3] International pressures and national concern for respect for human rights and dignity has seen the establishment of the NHRC in India (Nath: 1998).

Chapter 4 recommends a method of instituting police accountability to public through civilian oversight mechanism. Two country examples have been cited: one, the Independent Commission Against Corruption of Hong Kong. The other is the Civilian Complaint Review mechanism in USA for handling complaints of police misconduct. These provide lessons that can be adopted with desired changes suiting Indian conditions. Such accountability mechanisms allow members of the community to participate in handling complaints against erring police officers and provide an oversight function and aiding in ensuring democratic police accountability to the public.

Chapter 5 summarizes the research findings and looks at complementary issues and elements that are important to tackle police accountability to public in India. Today, the Indian police organization has grown into a mammoth force and fifty-three years of independence have proved that if policing has to succeed in India then it has to be citizen friendly and must be accountable to the public. This is not to recommend that police accountability to the public is a panacea to all the ills of present day policing but a proposal that multiple structures of police accountability – internal, state and social - are all necessary for effective policing (Stone and Ward: 2000). Institutionalizing adequate public accountability mechanisms in India is beyond the scope of this paper; however a pilot project is proposed for a District level public accountability mechanism[4]. Moreover, the need to enhance the existing police accountability mechanisms through legal and institutional reforms is paramount and also discussed in this chapter.

1.2 Background of Police and Policing in India

1.2.1 Pre Independence Police and Policing

The word "Police" has its origin in the Latin word "Politia" which literally means an executive civil force of a state to which is entrusted the duty of maintenance of public order and enforcing of regulations for prevention and detection of crime (Chaturvedi: 1988). As defined by the Oxford Dictionary (1989) 'Police' mean "members of an official organization whose job is to keep public order, prevent and solve crime". In a way police can be differentiated from other agents of the government who enforce law, employ force or even wear uniform by (i) having an exclusive domestic mandate and (ii)

[4] I suggest that various versions of the pilot may be tried and tested in rural and urban areas.

being the initial point of contact between citizen and enforcement machinery (Bayley: 1969). Generally, 'police' designates an organized body of civil officers engaged in the preservation of peace and order, the prevention and detection of crime and enforcement of laws. (Mathur: 1987).

The first attempt to organise the policing system in India was made by the British[5]. In 1860, a Police Commission was established with an aim of reorganising all the police forces in different provinces and to bring down costs and enhance police efficiency in India. The Commission's recommendations were accepted by the government (Nigam: 1963). Based on the 1860 Commission's recommendations a Bill on the lines of the Irish Constabulary model was passed by the Indian legislative Council that came to be known as the Police Act 1861- and is still largely the governing Act in India today, although many states and cities have supplementary enactments.

1.2.2 Post-Independence Police And Policing

India attained independence from the British on the 15th August 1947 under the Indian Independence Act, 1947. With independence radical changes occurred in the political governance of India but that "brought none of any consequence to the structures of police administration[6]"(Bayley: 1969: 51).

As per Item 2, Schedule VII of the Constitution of India "Police" and "Public Order" are subjects that fall under the purview of the State government. The Central government generally provides advisory role and assistance to Sate governments on such matters. While a few States in India now have Police Acts of their own, the police organization is relatively uniform throughout the country. The various State governments retain the authority to decide matters relating to the strength, equipment of their police forces, revenue expenditure, administrative and disciplinary powers.

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[5] For details see, Curry: 1977; Nigam 1963.

[6] Prof. Bayley argues three distinguishing features that have been maintained in independent India. First, the Indian police are organized, maintained and directed by several States of India. Second, the Indian Police are horizontally stratified into cadres. The officer cadre - the Indian Police Service, is recruited organized, trained and disciplined according to national legislation. Moreover, for the purpose of internal

Past Initiatives for Police Reforms

There was considerable concern for police reforms in India after independence and between 1958 to 1971 a number of police commissions[7] were set up. But no fundamental police reforms took shape (Subramanian: 1995; Arnold: 1986). The issue of independence of police from illegitimate political interference too, has been well identified but has largely remained pending.

National Police Commission[8] (1977-1981)

The Government of India appointed the National Police Commission (NPC) when the coalition Janata Party gained political power after the revocation of the Emergency and defeating the Congress in the 1977 general elections. It was empowered to undertake a review of the entire system and working of the police organization. The NPC remained in existence till 1982 and submitted eight comprehensive reports to the Government of India containing recommendations covering almost all aspects of police organization and its work. It also dealt with the problem of political interference in policing and its disastrous consequences on rule of law and police accountability.

While the recommendations[9] made by NPC were salutary, they have largely remained unimplemented by the Government of India. One of the major reasons has been the lack of political will to bring about meaningful police reforms in India. For, example when the Congress Party regained political power in January 1980 the head of NPC Secretariat was relieved of his duties[10]. A year or so later the Home Minister issued the statement that the report was undemocratic (Joshi: 1999).

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organization they are subject to Central Government authority. Thirdly, each State Police is divided vertically in two, i.e. the armed and unarmed branch.

[7] The Kerala Police Reorganising Committee (1959), The West Bengal Police Commission (1960-61), The Punjab Police Commission (1961-62), The Maharashtra Police commission (1964), The Delhi Police Commission (1968); The Tamil Nadu Police Commission (1971), The Uttar Pradesh Police Commission (1971), The Shah Commission of Enquiry (1978) and The National Police Commission (1977-82) all highlighted and found overwhelming evidence of misuse of police system by politicians that has not only demoralized the police force but also affected their work considerably.

[8] The Government of India Resolution No. VI-24021/36/77-GPA.I, 15 November 1977. The Chairperson of NPC was Dharam Vira and other members included N. K. Reddy, K. F. Rustamji, N. S. Saksena, M. S . Gore. The Member Secretary of the NPC was C. V. Narsimhan.

[9] Some of the major recommendations of NPC are mentioned in Appendix I.

[10] Moreover, when the NPC Chairman Dharam Vira presented the Second Report to the then Home Minister Zail Singh, the Home Minister said "Dharamji, what sort of report have you produced? I can't even ask the sub-inspector what to do"(as quoted in Joshi: 1999: 4).

The NPC *wished* that '*the accountability of the police to the people be made more direct and visible'* but fell short and mainly recommended for sensitizing police to the idea of *accountability to the people* through improvement in police training techniques and regular inspection and meeting with the public, especially by senior police officers (GoI: 1981: 3). I believe that, had there been recommendations inviting peoples' direct support through the 'State Security Commission' or the 'District Inquiry Authority' it might have helped in generating popular public support for police reform from the public, more so at a time when people had not forgotten the blatant misuse of police institution during Emergency in India[11]. Nonetheless, future Police Commissions picked up this issue of direct accountability[12].

Riberio Committee on Police Reforms[13] (1998)

The concern for police reforms once again assumed national attention when a Civil Writ petition[14] was filed at the Supreme Court of India by two retired Indian Police Service officers urging issue of orders to the Government of India to implement the recommendations made by the NPC about two decades ago, particularly the recommendations which would insulate the police from wrong and illegitimate control by politicians[15]. In pursuance of the directives issued by the Supreme Court of India in this 'public interest litigation', the Government of India set up a Committee[16] to examine the subject. The recommendations[17] made by the Committee have not been well received by either the police or non-police members of the society and have been bitterly contested on two grounds. One, that the Committee diluted crucial recommendations of the NPC by substituting the envisaged "State Security Commission" from 'statutory to 'non-statutory'

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[11] For details see, The Shah Commission Inquiry Report (1978), Ministry of Home Affairs, Government of India. New Delhi.

[12] Like the Riberio Committee recommended direct participation through the *Police Performance and Accountability Commission* and the *District Police Complaints Authority*.

[13] The Ministry of Home Affairs, Government of India, formed the Committee vide Office Memorandum No. 11018/1/98-PMA, May 25, 1998.

[14] No. 310 of 1996 at the Supreme Court of India.

[15] A number of glaring examples may be cited from the 1980s and 1990s that illustrate the erosion of rule of law or major violations of citizens rights that resulted from the wrong type of political control over the police viz.; the anti-Sikh riots of 1984; the demolition of Babri Masjid on December 6, 1992; assault on the Allahabad High Court on September 13, 1994; police excesses committed on Uttarakhand agitators at Mujjafar Nagar, Uttar Pradesh on October 1, 1994 and inaction in registering or pursuing cases of corruption, scams and frauds involving politicians.

[16] The Committee was headed by J.F. Riberio, IPS (Retd.) with Arun Bhagat, IPS (Retd.), Ms. Nirmala Buch, IAS (Retd.) and Ms. Prabha Sankarnarayanan, Advocate as its members.

body on the grounds that the NPC's recommendations would not be acceptable to the political executives[18]. Two, the Committee exceeded its terms of reference and instead of *reviewing* the NPC recommendations it *revised* them (Joshi: 1999, emphasis added.).

While it opened doors for non-political citizens to participate as members, it made the proposed body non-statutory and heavily loaded with police, political representatives and civil servants. The irony being that some of the members in the board would be people generally accused of misusing the police force.

1.3 Statement of Problem

At per the 1997 figures the total police strength in India is more than 1.2 million[19]. In 1997, total expenditure incurred by the State Governments on their police forces touched 10 billion Indian Rupees[20]. Between 1951-1996 there has been 2.58 times increase in population while IPC crime figures have increased by 2.63 times i.e. only slightly higher than the overall population rate[21]. The rate of conviction is going down. In 1961 the conviction rate was 64.8% and by 1996 the rate had come down to 37.8%[22]. Moreover, the fall in the conviction rate has been continuous and the falling trend has already crossed double figures. Between 1981 and 1996 the rate fell by 14.7%.

Reports of the NHRC reveal that more than fifty percent of complaints received by it are against the police personnel (NHRC: 1995-96; NHRC: 1996-97). In the course of the calendar year 1994, the total number of reported deaths in police custody were 65 (NHRC: 1994-95). However, in 1995-96 they rose to 136 (NHRC: 1995-96). In 1996-97 the total number of deaths rose to 188 in police custody[23] (NHRC: 1996-97).

Moreover, complaints against police excesses have also shown an increase from a total of 39 cases of Disappearance, 112 cases of Illegal detention, 64 cases of False

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[17] See Appendix I for some of its pertinent recommendations.
[18] In the view of the Committee, the 'possibility of a statutory State Security Commission as envisaged by the NPC seems a far-fetched dream' (First Report of the Riberio Committee on Police Reforms, p. 9. [Unpublished].
[19] Crime in India-1997, National Crimes Records Bureau (NCRB) New Delhi, Ministry of Home Affairs, Government of India.
[20] Ibid. p. 354.
[21] Ibid. p. 11.
[22] Crime in India -1996, NCRB, Ministry of Home Affairs, Government of India.
[23] This upswing in the number of cases reported to the NHRC is believed to be the "result of its repeated instructions that information regarding such tragic occurrences must not be suppressed"(NHRC: 1996-97: 15, see Appendix II, Table 4 for statistics on reported custodial death cases).

Implication and 1115 cases of Other Police Excesses during 1995-96 rose to 175 cases of Disappearance, 282 cases of Illegal detention, 237 cases of False Implication and 1643 cases of Other Police Excesses during 1996-97 (NHRC: 1995-96; NHRC: 1996-97). Statistics do reflect that complaints against police personnel are rising and all this should not be allowed to perpetuate in the name of increasing awareness and sensitivity in reporting such cases of human rights violations. Instead remedial actions must be taken to punish the guilty and improve police efficiency and responsiveness.

There have been reported instances of a nexus between the police, criminal, bureaucrat and politician. The existence of symbiotic relationship between a police officer and a politician helps build alliance that is "as much an arrangement for mutual exploitation as it is for mutual support. They nourish themselves on each other" (Rajagopal: 1988: 53). Such instances tell about the deterioration in the police effectiveness, accountability[24] and the continuous erosion of police independence through undue interference in the exercise of statutory duties of police[25]. The worst victim of such police functioning is the common man. In the words of an experienced police officer: "It needs to be reiterated that when the police at different levels are used by the people in authority to break or even to bend the law to subserve doubtful ends, those concerned will have set the police on the high road to many more serious violations of the

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[24] Some of the major defects identified, articulated and shared by the Union Home Minister of India with the Chief Ministers of all State Governments and Union Territories, were "total disruption, if not destruction, of the command structure of Police in the States,...indifferent registration of cases at police stations, mounting public grievances against police malfunctioning...popular distrust against the administration in general and the police in particular...[and] ...Added to this malady is the prevailing system of inadequate public accountability of police performance...and virtual absence of an effective public grievances redressal mechanism" state a poor state of affairs in India. (Ministry of Home Affairs, Letter No. 11018/5/96, 3rd April, 1997, pp. 1 and 1-2 of the letter and the enclosure to the letter, respectively. [Unpublished].

[25] The National Police Commission quoted David H. Bayley's comment on system of police accountability, that – "In India today a dual system of criminal justice has grown up – the one of law, the other of politics. With respect at least to the police, decisions made by the police officials about the application of law are frequently subject to partisan review or direction by elected representatives. This autonomy of police officials in specific and routine application of law has been severely curtailed. This is not only true of law and order situations. People accused of crimes has grown into the habit of appealing to political figures for remission from the sanctions of law. Police Officers throughout India have grown accustomed to calculating the likely political effect of any enforcement action they contemplate. Fearing for their careers and especially their postings, they have become anxious and cynical ...But everywhere officers expect to be held personally accountable by politicians even more than by superior officers for enforcement actions taken in the course of duty" (GoI: 1981: 5). Bayley had further observed, "Altogether, then, the rule of law in modern India, the frame upon which justice hangs, has been undermined by the rule of politics.

law and in more important areas. Once this happens, there is no stopping the police from helping themselves in diverse devious ways. In short, those in positions of responsibility are contributing to enlarging the areas of disrespect and disregard for law by the very instruments for enforcing them" (Rajagopal: 1988: 57).

There are other problems like misuse of certain discretionary powers, favoritism and improper recording and investigation of crime, suppression of crime, reducing the gravity of crime when charging, and extortion by police in discharging their duties[26]. Media reports reveal that Delhi Police had received at least 34, 947 complaints against police officials during one year period (November 1998 to October 1999) out of which 33,384 cases of complaints were investigated and only 150 police personnel were eventually punished[27]. Moreover, considering the strength of the Delhi Police, which is 57,497, it works out to about three complaints per five police personnel. However, This instant example reflects the problem and brings into sharp focus the central problem that police are unable to police themselves. This reflects that the existing system of criminal justice is weak. The reasons for rising crime figures and low conviction rates may be many but one of the major reasons is that the present police accountability mechanisms for investigation and prevention of crimes in India are weak and ineffective.

All these instances go a long way to build an argument that *only* 'internal' and 'state' mechanisms are not sufficient. The long-standing mechanisms of accountability are to the Police Department- that is debilitatingly internal and hierarchical; to the elected representative- that is indirect and inadequate; and to the law – by an archaic and colonial Police Act of 1861. While media have been reporting cases and at times some cases of police misconduct have generated some debate on the need of police accountability and police reforms, it is only restricted to more sensational and gory incidents of misconduct[28]. Another watchdog agency like the NHRC has made some positive impact

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Supervision in the name of democracy has eroded the foundation upon which impartiality depends in a criminal justice system"(ibid.).

[26] See, *Media Scan on Weak Police Investigations* (CHRI: 1999). [Unpublished].

[27] The current Union Home Minister of India, in reply to a question at the *Rajaya Sabha* (Upper House) Times of India. 2nd December, 1999. This reflects that either a large number of complaints against the police are frivolous and wrong or how little attention the issue of arresting police misconduct attracts in New Delhi.

[28] Some cases like the 23 January 1996 rape and murder of Priyadarshani Mattoo involving the son of a senior IPS officer and the Jessica Lal Murder case involving the son of a former Union Minister. For details see "Shielding the Guilty" reporting campaign by The Indian Express, 1999-2000.

to deal with complaints of police misconduct but is not sufficient[29]. These mechanisms, are not only weak but also deficient and far from the reach of a large number of people. Moreover, there is total absence of real public accountability.

1.4 Research Objective and Research Question

The main objective of this paper is to see whether Police accountability to the public for police misconduct can improve the effectiveness of the police or not. If yes, what type of police accountability to the public will increase police functioning?

With specific reference to the objective and research question, Chapter 2 first, explores and then adopts a working definition of police accountability for this paper. One specific mechanism of police accountability is also identified that invites peoples' participation in dealing with complaints against police misconduct. Chapter 3 focuses on the present state of police accountability in India and highlights the issue, juxtaposing the law and practice of police accountability. The lack of police accountability to public is noticeable. The discussion largely deals with police accountability but certain procedural and behavioral limitations of the police department, legal impediments, external pressures and other problems are explained to show the problem of police misconduct. Chapter 4 details the *type* of police accountability mechanism and chapter 5 looks at other important essentials helpful and desired to realize complete police accountability in India.

1.5 Methodology and Source of Data

The methodology I have adopted is analysis of secondary literature and materials. The analysis is based on different reports and working papers prepared by various agencies and commissions, both governmental and non-governmental. The paper reviews international journals and books. The research is therefore based on published and unpublished reports, articles and books that are easily accessible at national and international level. I have also used information collected from various Indian newspapers and the Internet.

In the Indian context, researching on police accountability for misconduct is challenging and procuring relevant and latest data is demanding. Besides time and

[29] For limitations of NHRC see Chapter 3.

patience, personal relations with working or retired police officers are very helpful. I have to some extent relied on information and data provided from my police officer friends.

1.6 Scope and limitations

Generally, the Criminal Justice System rests on four pillars namely, the police, the prosecution, the courts and the correctional institution. Each plays a pivotal role in containing crime, ensuring safety and security of the public, providing even handed justice and protecting the rights of the accused as well as finally punishing the guilty. Each of these is closely linked and thus ineffectiveness of any single unit in the chain of administration of justice may considerably effect the entire system.

The scope of this paper will be limited to only one of the pillars of the Criminal Justice System i.e. – the Police and focuses on the accountability of police. It looks at police accountability to the police department, provisions of the 1861 Police Act, some provisions of the 1973 CrPC and one important 'state control' mechanism – the NHRC. In the end a proposal is made for the formation of a new three-tier statutory body outside the scope of the present Police Act.

At macro level, effective policing is largely dependent on: the level of peoples' participation, the criminal justice system, administrative functioning, judicial independence, legislative structure, and the political, social, economic and cultural set up of the country.

At micro level, effective police functioning means controlling and investigating crime and maintaining law and order. Such effective police functioning is largely dependent on: firstly, effective discharge of duty; secondly, the quality of the external oversight mechanism-government and/or civilian.

In a democratic set-up it is not impossible to have direct and visible accountability vested in the real right holders- the people. It is in this context that police accountability needs to be understood. This research paper assumes that other factors also responsible for the efficient police functioning can be made to exist.

Chapter 2: Theoretical Framework

"Normally, a country can well be judged by the quality of its police force."
- Pt. Jawahar Lal Nehru: India's first Prime Minister

The concept of good governance and its three major elements have been used, as elements that need fuller recognition in a parliamentary democracy like India. This chapter discusses concepts of good governance, police accountability and some mechanisms of police accountability with reference to India. This also helps in conceptualizing issues and highlighting the importance of community participation in police accountability mechanisms.

2.1 Good Governance

Police is an agency of the state that controls the behavior and action of the public. In order to have good governance it is important that the police perform their functions in a manner that does not amount to abuse of powers. Good governance is an indicator that reflects the power of political and administrative mechanism to cater to the changing aspirations of the society. It implies management efficiency of the government to establish its credibility and legitimacy among the people. For efficient administration and a culture of good governance accountability is a necessary element (Singh: 1999). Administrative functions of a state agency are a combination of legislative, adjudicatory and discretionary powers and they need to be balanced by the Rule of Law that ensures rational, just and non-arbitrary application.

Conceptually, good governance includes the adoption of new values in governance. Citizen friendly, citizen caring and responsive mechanisms of accountability have been mooted as essential ingredients that promote good governance (Minocha: 1997). Singh (1999) argues that the institutions of governance must be alive to citizen's complaints because 'a well organized complaints system for redressal of citizen's grievances is a must not only to provide continuous feed back on the state of affairs prevailing in the government but also to ensure correctional opportunity for review, correction and reform' (1999: 127).

In practice the concept of good governance derives its relevance in the backdrop of ill governance and mis-governance (Mukhopadhyay: 1999). In India, the present democratic mechanism has been found to be lacking and deficient in containing police misconduct. It is important to discuss the meaning of good-governance and its element vis-à-vis police in India. Therefore, good governance becomes an attractive concept and a possible elixir for such social ills.

2.1.1 Exploring the Concept of Good Governance

The Oxford Dictionary (1989) has defined the word 'governance" as (i) act or manner of governing and (ii) the office or function of governing. "Good" being an adjective attaches value assumptions to the word 'governance'. However, "govern" has been defined as 'rule or control (a state, subject, etc.) with authority; conduct the policy and affairs of (an organization)'. This means that governance refers to a process or function of exercising authority to regulate affairs of people within a territory. In fact, it refers to the scheme in which power is exercised to harness the economic and social resources of a state in favor of development (Moore: 1993). The term 'governance' has wider meaning and expression than the term 'government'. While 'government' refers to an institution that exercises sovereign power in favor of its political community, 'governance' means the process as well as the result of making authoritative decisions for the benefit of the society (Mukhopadhyay: 1999).

Good governance is associated with efficient and effective discharge of governmental functions (Asmeron *et al*: 1995) and also connotes the 'array of ways in which interplay between the state, the market, and society is ordered'[30]. Good governance cannot depend on direct state action alone, it must incorporate and recognize peoples' self-help initiatives to safeguard their living conditions in a more sustainable way where peoples' participation receives more strategic relevance in policy making for public action. As Dreze and Sen clarify that "Public action must not be confused with state action only. Public action includes not merely what is done *for* the public by the state, but also what is done *by* the public for itself" (Dreze and Sen: 1991, as quoted in Ekins and Max-Neef: 1992: 356).

[30] 'Insight', 23 September 1997, as quoted in Gasper: 1999.

Good governance becomes a changing paradigm: from efficient management of power by the state to an enabling state. This brings into sharp focus that an enabling state shifts from direct provision of entitlement to facilitating in augmenting the capabilities of people towards self-help and empowerment so that dignified and healthy conditions of life may be promoted for all members of the society[31].

The capability of a government to successfully design, formulate and implement its public policies to improve the quality of life enjoyed by the people is reflected through good governance. Good governance also refers to the capacity of political and administrative machinery to infuse new and changing values of governance with a view to enhancing efficiency, legitimacy and credibility of the government. Some argue that good governance would imply 'a friendly, caring and responsive system of government' (Minocha: 1999: 20).

The World Bank has indicated various elements of good governance, which highlights its importance for developing and developed countries. Some of the specific elements include: "An established legal framework based on the *rule of law* and *independence of judiciary* to protect human rights, secure social justice *and guard against exploitation and abuse of power;* Cooperation between the government and civil society organization" (Blunt :1995; 5-7, emphasis added).

Similarly, in the Conference of the Chief Secretaries of States/ Union Territories of India on Effective and Responsive Administration in November 1996, followed by a Conference of Chief Ministers in May 1997, it was reiterated that governance has to extend beyond conventional bureaucracies and to involve actively citizens and consumer groups at all level to empower and inform the public and the disadvantaged groups, so as to ensure service delivery and programme execution through autonomous elected local bodies. (GoI: 1996).

The content of good governance is not static but dynamic. In a globalized world, where international events and conditions play a crucial role in changing the political social and economic milieu of a country, good governance cannot be a finished product

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[31] Dreze and Sen have aptly justified the distinction between '*protection*' and '*promotion*' of social security: while protection signifies '*preventing a decline in living standard in general and the basic conditions of living in particular*' promotion is purposive and goal oriented as it aims at '*enhancing the*

for successful administration. Therefore, a continuous search, rethinking and remodeling of institutions of governance is desired to succeed and achieve good governance. To actualize such a desire, rational will and moral power of the people must be promoted in a manner that human rights and tolerance towards minorities and less privileged class are included as the social goals (Sharma *et al.*: 1999).

With reference to police functions good governance is being used here as a concept that implies the need for efficient police services which should be accountable to public and invite active community participation including that of the many minority groups and Scheduled Castes and Scheduled Tribes of India[32].

In my view, police have two major roles vis-à-vis good governance. One, to uphold the dignity and protect the legal rights of individuals as defined under the laws. Two, to safeguard the fabric of the society and the integrity of the nation. These two major roles must ultimately be reflected in the general level of satisfaction, acceptance and trust reciprocated by the individual in particular and the society in general. Therefore, good governance is crucially dependent on how police perform their functions like crime control and maintaining law and order. Moreover, maintenance and sustainability of order in the society primarily lays down the ground for development of a country.

It is not satisfactory that internal peace and harmony be secured by aggressive policing, show of excessive zeal in containing crime, and misconduct in performing of other police functions. In fact, the methods adopted to fulfil police duties equally determine the level of good governance. As Lord Scarman has argued: "The success of policing operations depends in the last resort not upon questions of techniques or professional expertise, but upon the degree of confidence felt by society in its police"(Rawe and Moore: 1997: 21).

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normal living condition and dealing with regular and often persistent deprivation' (Dreze and Sen: 19991 as quoted in Ekins and Max-Neef :1992: 353).

[32] A number of legal provisions are enumerated in the Constitution of India for Scheduled Castes and Scheduled Tribes, for example: Article(s) 14, 15, 17, 23, 28, 46. Moreover, The Scheduled Caste and The Scheduled Tribes (Prevention of Atrocities) Act 1989 provides detail list of offences against such people that goes a long way in ensuring justice and strengthening good governance.

It shows that, police accountability to public and community participation in policing are important components of efficient policing. Such police efficiency will essentially be reflected in good governance.

2.1.2 Some Essential Components of Good Governance

A number of components[33] may be derived from the concept of good governance detailed above. However, only some have been identified as vital for our discussion as they are intricately linked to the issue of police accountability- the key issue of this paper.

Rule of law and Independence of Judiciary

One of the essential pre conditions for good governance is the rule of law. It is an important principle by which democratic societies can ensure the safety and security of person and property.

In simple terms the concept of rule of law means that –no one should be above the law; everyone is equal before the law; the law itself should be clear, fair and comply with internationally accepted norms of human rights; law enforcement officials should apply the law impartially and an independent judiciary should enforce the law without fear or favor (Rustamji: 1998).

Rule of law is a constitutional imperative too[34]. In a democracy the primacy of law and accountability of the executive wing run parallel and are essentially the foundation stones on which a democratic structure rests. It is axiomatic that rule of law itself requires that laws themselves be fair and just. Normally, they must be in conformity with and give expression to the norms and standards accepted by the international community. It should also be explicitly clear that law is supreme and answerability should ultimately boil down to the law and even the law enforcer should be bound to uphold that in preference to any other authority.

The World Development Report (1997) has identified three essential conditions of a country's judicial institution that augments good governance and faith among the

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[33] Others may be Transparency, Devolution, Decentralization, etc.

[34] Article 14 of the Constitution of India, guarantees the fundamental right to all citizens: "*The State shall not deny any person equality before law or equal protection of law within the territory of India*" (Mathew: 1996).

citizens. First, an independent judiciary- that must be free from political interference and must be accountable to law. Second, the power to enforce its decision - i.e. the agencies of the government must provide the required resources to complement successful implementation. Thirdly, the organizational efficiency to hear cases and pronounce rulings. Moreover, unnecessary delays and adjournments must be avoided. Large backlog of cases sometimes leads to decrease in public confidence in the rule of law.

The Judiciary has the function to spell out the legal provision brought to its notice, punish the guilty and deter deviance from established principles of law. Thus judiciary is an important wing of the State that helps instill confidence among the citizens in the system of governance. Its judgements demonstrate the ability of the judiciary to uphold the majesty of law.

Peoples' Participation

Generally, peoples' participation is natural in a democracy as citizens hold positions in the government of a country. However, with reference to good governance a distinction must be made between those people who work for the government as civil servants or hold positions in other government agencies, and the general public (Mishra *et al.*: 1999).

The role played by the members of general public in influencing the activities of the government or providing service to satisfy community needs is an essential ingredient to the concept of good governance. The role may be advisory as in case of the various advisory committees, it may involve decision making as is the case in some governing bodies of local authorities, and it may also involve actual implementation, as is found when villagers take collective decision to implement as self-help village project. Again, the participation by the general public may be direct –as in village/community projects, and indirect where people elect representative to local body. Such involvement of the people in the governing process can be mandated through legislation formally or through executive rules and regulations (Ibid.). However, the former creates greater appeal and confidence among the general public (Joshi and Bajpai: 1996).

Public participation in policing and especially through public oversight mechanism has gained considerable significance in modern policing but the idea may be

as old as the history of policing[35]. This participatory role of the public in varying degrees and levels has become an increasingly popular idea in modern policing in many countries over the world for example, the United States, Japan, UK, Australia, Canada and South Africa to name a few. (Ames: 1981; Garofalo: 1989; Hiller: 1991 and Goldsmith: 1991). The central idea to encourage peoples' involvement is essentially two fold as it includes: "the police participation in the community and responding to the needs of that community and the community participating in its own policing and supporting the police"(ICPNI: 1991).

Therefore, people's participation entails any action of a citizen in the general administration. This participation in the real sense is however, limited to the extent of an individual's competence and conscience. Nonetheless, it provides opportunity to an ordinary citizen to voice ones opinion and take social responsibility. It also provides "ordinary citizen to show his willingness to carry out constructive public work and to demonstrate his good citizenship by other means than periodically exercising his right to vote" (Soysal 1996:46)

I understand that good governance strongly implies the closeness with people, active participation of the people and the trust reposed by the people in the government and its agencies. This would require government to be fully transparent and accountable to the people, creating space for peoples' participation in not only taking decisions but in implementing them too (Sarolia: 1985).

2.1.3 Conclusion

In my view, the elements of good governance which I have discussed viz.; rule of law including independent judiciary; and peoples' participation are very important. They provide: the basic rules and standards for all, mechanisms to check the deviation and discrepancy of actions and behavior, and allow people the choice to actively partake in monitoring and ensuring accountability through oversight mechanisms, respectively. These elements also link us to the issue of police accountability: to law; the politician; the police department; and the public in a democracy.

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[35] Before acquiring a character of organized force, policing in most countries of the world was a *co-operative community effort* (Devlin: 1966; Olmos: 1974 Chaturvedi: 1988).

2.2 Police Accountability

Accountability per se is a complex issue. Maheshwari (1983) suggests that a precise definition of accountability is difficult but agrees that accountability possesses attributes that make it detectable in a system immediately. However, the Oxford English Dictionary (1989) defines 'accountable' as "required or expected to give an explanation for one's actions, etc; responsible (to, for)". This definition is crucial for this paper as it includes the expression 'responsible'.

Police Accountability is especially complex (Stone and Ward: 2000). It is exceptionally important because one, police personnel have a crucial job to perform for example the obligation to enforce laws without breaching the legal rights of any person. Two, their non-accountability has severe repercussions on an individual and the society at large. Individuals may become victims of police misconduct, by false imprisonment, non-registration of cases, inadequate investigations of cases, torture, etc. The society is affected adversely when police inefficiently perform the functions of investigation, prevention of crime and other welfare activities that they are obliged to (GoI: 1980).

2.2.1 Exploring the Concept of Police Accountability

In general terms, accountability refers to responsibility and implies responsibility for one's own acts in the realm of administration (Mathur: 1987). Such accountability has been referred to as the 'kingpin' of democratic administration. As a basis for instituting reward and punishment it has a goal to assist in ensuring performance through democratic means of supervision and guidance (Chaturvedi: 1983). It is an *obligation to* reveal, explain, justify and *to bear the consequences* of one's action. Accountability and responsibility will therefore be used interchangeably here. However, they can be distinguished too. Accountability generally connotes a structural mechanism of supervision, control and hierarchy that indicates a legalistic view (Maheshwari: 1983). Responsibility on the other hand, connotes some elasticity or discretion that is applied during the exercise of one's powers and is generally balanced by internal informal controls like, code of conduct, social values possessed by the executor or some normative checks –one's own moral behavior. This makes responsibility akin to a normative and ethical standard that must subsume public interest (Mukhopadhyay: 1983).

In a democracy, the notion of accountability acquires importance for the fundamental reason that actions by State-officials are performed on behalf of the people. Given this background police accountability assumes larger dimensions. Police accountability would therefore, mean that *the discharge of functions is open to scrutiny in a way that they can be justified and defended even under the most minute and critical review*. In fact, it is more than mere responsibility to discharge the duties involved in a job, it also includes that such execution of duties *should be to the satisfaction of the party for whose benefit the duties are being discharged.* This suggests the existence of at least two parties- one, that has the duty to perform the assigned task in a definite manner and the other that has the right to ask and receive due performance of the task (Mukhopadhyay: 1983). Moreover, in a democratic set up the party who renders such answerability is necessary unitary but the party that has the right to accountability may be multiple i.e. both within and outside the organization (GoI: 1981).

John Lambert (1986) states that police accountability issue can be viewed from two perspectives-one, in *narrow-sense* and the other, *wider-sense*. The meaning of police accountability in the *narrow-sense* implies essentially, an *ex post facto* process that involves the scrutiny of police actions after they occur (Lambert: 1986; Maheshwari: 1983). For e.g., the police hierarchy and the Home Ministries usually argue, based on the utility of *ex post facto* police accountability, that their police are fully accountable for their actions through internal disciplinary procedures; monitoring, supervision and control provided by the political executives; and through the courts of law[36].

In the *wider-sense*, police accountability refers to introducing mechanisms by which "prior control over policing policies and actions can be achieved, either by extending the power of central authorities to determine police actions or, (more usually), by extending the ability of local communities to determine policing policies for their areas" (Lambert: 1986: 19, author's parenthesis.). This notion of a wider police accountability requires that the police actions should be in conformity with a framework of policies and rules that is "devised to control directly what they do and how they do it" (Ibid.). For our purposes the wider embrace of police accountability is relevant and the

[36] Interestingly, this remedy to review the actions of the police officer through courts 'in a loose sense, may be seen as controlling future police actions to the extent that the police are prepared to adhere to the limits thus imposed by the courts' (Lambert: 1986: 19).

policing policies need to be determined in consultation with the community. This helps in identifying and imposing limits on unlawful police actions together with imposing limits on what policies the police should employ to function efficiently within the law.

Marshall (1978) has referred to two modes of Police Accountability one, the '*subordinate or obedient*' and the other '*explanatory and cooperative'. 'Subordinate or obedient*' accountability means that police provide service to the community and the community should have the recourse to receive the service it needs and to ensure that its money is spent appropriately. It also conveys that just like every other citizen police too are subordinate to the law. Therefore, supremacy of the rule of law must not only be ensured by a just and fair arrangement but seen to be done. The other- *'explanatory and co-operative*' accountability refers to communication between police and the community. It also calls for building partnerships so that a high level of trust is maintained between the two and this goes a long way in ensuring effective policing (Marshall: 1978). While former is crucial because police is an agency of the State, it must not stop there. This is only one part of police accountability in a democracy. Therefore, in order to have complete accountability the latter mode that spells out 'social control' mechanisms need to be established and ensured. It is essential that the police have powers but they must be balanced by *various kinds* of accountability mechanisms so as to remain citizen friendly[37].

The United Nations International Police Task Force, 1996 set out seven principles of policing in a democracy from which policing standards and behavior can be inferred. It stated that 'Police must serve the public and are accountable to the public they serve. Police must act in such a way so that the public knows, understands, and accepts the police measures, which are being undertaken to provide for public safety. (*Principle 4*, United Nations International Police Task Force, 1996:2).

For the purpose of this paper I use the expression police accountability in the *broad sense* as it includes social regulatory powers and aids in strengthening one's moral behavior. I also agree that it has the potential for prior control of police actions if community members participate in determining local policing policies. Thus, police

[37] It has been observed that, "the fact that the British Police are answerable to the law, that we act on behalf of the community and not under the mantle of government, makes us the least powerful, the most accountable and therefore the most acceptable police in the world" (Mark: 1997: 56).

accountability includes the responsibility of police to perform its functions (like law enforcement, maintenance of order, etc.) to public satisfaction and within the legal framework.

2.2.2 Mechanisms of Police Accountability

The mechanisms of police accountability differ from one country to another. From tripartite structures of police accountability in the United Kingdom[38]; to many local variations handling police accountability largely to suit and fit in the federal structure in the United States of America; to the Bureau for the Commissioner for Control and Public Complaints together with the State Controller authorized to act as an Ombudsman for complaints against police in Israel (Brewer *et al*: 1988).

Stone and Ward[39] (2000) have suggested three levels of reforms for strengthening accountability of police in a democracy: (i) Internal or departmental control, (ii) State or governmental control and, (iii) Social control or control by civil society.

Table 1: Police Accountability mechanism diagram

Accountability For / Accountability to	Public Safety (reducing crime violence, disorder and fear)	Police Behavior (reducing corruption, brutality, and other misconduct)
Internal Control	Training, line commanders, crime statistics reporting, reward structure	Training, line supervisors, rules, ethics codes, integrity units, administrative discipline, peer pressure
State Control	Operational direction by elected and appointed political officials, budget authorities, prosecutors	Ombudservices, legislative committees, criminal liability, civil liability, exclusionary rules of evidence
Social Control	Neighborhood safety councils, community based organizations, media policing research and policy institutes	**Civilian Complaint Review**, external auditors, media, human rights monitors, policing research and policy institutes

Source: Stone and Ward (2000:17; emphasis added)

[38] As per the 1964 Police Act (UK), such structure consists of the Home Secretary, Local Police Authorities and the Chief Constable.

The Stone and Ward diagram reflects that at every level of police control there needs to be (i) accountability for public safety and (ii) accountability for police behavior. They argue that strengthening these democratic mechanisms of police accountability promotes police efficiency. Police accountability to internal control may be enhanced by making purposeful reforms in the structure, culture, composition of force, management systems, training programs, policing strategies and disciplinary system. At the state or governmental level police accountability for both public safety and police behavior may be augmented by improving the efficacy of various agencies of the State like, the legislature, judicial and executive bodies. This can be instrumental in reducing the unwarranted clout and extraneous interference of the political elite in police functioning. In a democracy, the importance of 'Social Control' mechanisms is very fundamental to ensure police accountability. This enhances police responsiveness to various mechanisms and provides opportunity to develop good police-public relations. Creating spaces for civilian monitoring bodies, human rights organizations and neighborhood-watch, etc., help in promoting an atmosphere of good policing and understanding police accountability in its right perspective (Stone and Ward: 2000).

Stone and Ward conclude that "Citizens in democracies control their police at three fundamental levels: through the department, through the state, and through institutions of civil society. Control at every level must be strong and the mechanism that hold police accountable for public safety must be co-ordinated with those that hold police accountable for corruption and abuse" (2000: 43).

It should be appreciated that the Stone and Ward diagram also reflects the possibility of having multiple channels of accountability in a democracy. As no single accountability mechanism may adequately deal with the various forms of police misconduct therefore multiple mechanisms are desired for increased level of police accountability.

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[39] Stone and Ward conducted informal focus groups and individual interviews with police officials from across the United States of American and in Argentina, Brazil, Chile, India, Hungary, Mexico, Poland, Russia, South Africa and Uganda.

2.3 Conclusion

The above discussion on 'good governance' together with some of its chosen elements like Rule of Law including Independent Judiciary and People's Participation have helped us to observe the centrality of police accountability in a democracy. Moreover, the Stone and Ward diagram (Table 1) indicates the existence of multiple accountability mechanisms in a democracy. In the Indian context, there is absence of a people's forum to deal with complaints against police misconduct i.e. in the realm of 'social control'. This gap and corresponding need will be appreciated in chapter three and attempts will be made to make a proposal based on it in chapter four.

Chapter 3: Police Accountability for Misconduct in India

"...[T]here is a yearning in the nation for an upright police force, whose probity and fairness are beyond reproach, that can be relied upon to protect the rights of the citizen of India".

- NHRC: 1995-1996: para. 3.25

The basic purpose of this chapter is to discuss some current police accountability mechanisms viz. the police department, the politicians, the NHRC. I also discuss some of the legal provisions including the relevant provisions of the 1861 Police Act. The various mechanisms and legal provisions discussed either deal directly with police misconduct or deal with police accountability generally but concentrate on problems that are fundamental to police accountability and thereby includes lack of police accountability for misconduct. The marked absence of one important 'social control' mechanism based on people's participation is also highlighted.

3.1 Police Accountability to the Police Department

The Police institution in India is based on a hierarchical system. In each State the Director General of Police is the Chief Police Officer accountable for internal economy, equipment, training, discipline and performance of the police in that State. However, at the District level it is the Superintendent of Police who receives accountability from junior officers and reports to officers above him/her for police performance in the District.

Generally, the disciplinary procedure in the Indian Police emanate from the Police Act of 1861 (the Act). Section 7 of the Act states: "Subject to the provisions of Article 311 of the Constitution[40] and to such rules as the State Government from time to time make under this Act, the Inspector General, Assistant Inspector General and District Superintendent of Police may at any time dismiss, suspend or reduce any police officer of the subordinate ranks whom they shall think remiss or negligent in the discharge of his duty or unfit for the same or may award any one or more of the following punishments to any police officers of the subordinate ranks who shall discharge his duty in a careless

manner or who by any act of his own shall render himself unfit for the discharge thereof...".

Therefore, by virtue of Section 7, the Superintendent of Police usually deals with any complaint against the police personnel in the district. It is the discretion of the Superintendent of Police to be convinced of the genuineness of the complaint. In case the Superintendent is satisfied, an explanation may be called from the accused officer and depending on the outcome of the explanations provided during preliminary inquiry the Superintendent of Police has the power to inflict 'minor' or 'major' punishment. Generally, in case of serious charges or for inflicting 'major' punishment officers not below the rank of Inspectors are appointed who review the matter periodically and hold departmental inquiries (GoI: 1981; Verma: 1998).

In a hierarchical system like the police the sense of duty and discipline is very important. The chain of command has to function effectively all the time but it has a direct bearing on the departmental inquiries against police misconduct. There are many limitations that affect the efficacy of the Departmental Inquiry. A number of behavioral and procedural weaknesses under departmental inquires have been noticed in India (GoI: 1981; Verma: 1998).

3.1.1 Behavioral limitations

(i) One of the most important features of an uniformed force like police is that fellow feeling gets generated in a short span of time. Generally, this gets manifested in Departmental Inquiry. As Inquiry is usually conducted by officers of the same force and normally by their own superiors, fellow feeling prohibits senior officers to implicate their subordinates and expose police misconduct.

(ii) As Inquiry rules demand that officers of the rank of Inspector or Deputy Superintendent of Police conduct the proceedings, this creates fear of unpopularity among the rank and file. Therefore, officers avoid such situations that involve judging their subordinates conduct.

[40] Article 311 inter alia provides that a member of a civil service of the Union or a state cannot be dismissed, removed or reduced in rank by an authority subordinate to that by which he/she was appointed.

(iii) Inquiry officers, generally, prefer to soft pedal the disciplinary proceedings to avoid inflicting harm on police officers who otherwise are seen to be doing a difficult job dutifully. Sometimes Inquiry officers themselves try to suppress incidents of misconduct by individual policemen because of the apprehension that spilling the beans will demoralize the force, besides bringing the organization a bad name.

(iv) Police officers generally plead that only police officers are in a position to fairly assess the strain and frustration subjected to them while on duty.

(v) Public witnesses under the Inquiry proceedings are normally treated casually. Very few Inquiry Officers take keen interest to support the claim of the complainant.

(vi) As the nature of police duty is usually treated as demanding, alleged acts of torture, use of force during interrogation, arrest and mob control are generally seen to be justified by the Inquiry Officer.

3.1.2 Procedural limitations:

The findings of an expert group of senior police officers on Departmental Inquiry proceedings in Madhya Pradesh, Karnataka and Maharashtra stated some of the procedural limitations that Inquiry officers encounter (Verma: 1998).

(i) Often delaying tactics are resorted to by the delinquent officer on flimsy grounds like falling sick, going on extended leave, etc. Moreover, in cases where proceedings seem to be going against the delinquent officer attempts are made to lodge complaints against the officer conducting the Inquiry.

(ii) Sometimes disciplinary officers themselves contribute in the delay of proceedings. Often the framing of charges is not proper or the charges are made without proper evidence. The findings of the expert group also noted that the final orders were passed without proper consideration and there was lack of management to keep track of pending cases.

(iii) Inquiry officers also lack the due level of knowledge on conducting inquiries and were generally preoccupied with other duties. The expert group also noted that

inquiry officers failed to maintain control over cross-examinations and evidence documentation.

(iv) Generally, delinquent police officers also file writ petitions at the Courts to secure interim stay orders. This delays the matter for a considerable time because the Police Department normally fails to release these orders in time.

Statistics reveal that a number of complaints are reported each year against the police personnel from most of the States / Union Territories of India[41]. Barring few States, the complaints against the police show an increasing trend in most of the States[42]. For instance, the Delhi Police in 1995 received 43,042 complaints and that increased to 80,025 in 1997 showing an increase of 86 percent[43].

In 1997, inquires were instituted in 13,143 cases. Out of which 460 were Judicial; 326 Magisterial and 12,357 cased were inquired by the Police Department. This shows that only in around 10 percent complaints, suitable inquires were instituted. Moreover a large number of complaints are declared false or unsubstantiated and only few were found suitable for departmental action or for trial. During 1997, out of 1,23,523 cases only 2324 cases were reported for departmental action while 1501 cases of complaints were forwarded for trial[44].

3.1.3 Conclusion

Therefore, all these limitations complicate the matters for a harassed complainant. Delay in securing justice diminishes the level of trust in the system. For an ordinary complainant, even if, Departmental Inquiries were conducted expeditiously still it would be far from independent and objective as the matter is being dealt internally by the Police Department[45]. It is not sufficient that Police be accountable to only one internal structure

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[41] See Appendix II.

[42] For details see, Crime in India-1997, supra n. 19

[43] In 1997, the total annual complaints were 1,23,523. New Delhi alone had around 80,000 complaints. This means that 'the rest of India' complaints in the same period, were less than 50,000. The gross discrepancy implies that no one pays much attention to these figures. In my view, it conforms to the popular perception that complaints against the police are not registered in general because generally *no police station in India registers all the reported crime* (Marwah: 1998). Not recording complaints helps in creating a false crime free impression. See also Appendix II.

[44] See Table 1, Appendix II.

[45] See Table 2, Appendix II.

i.e. the Department, but should be accountable through multiple structures including independent public forums.

3.2 Police Accountability to the Executive authorities and other legal arrangements

The 1861 Police Act was enacted by the British rulers with the Indian Revolt of 1857 in the background. Thus the present Police Act is now almost hundred and forty years old and created under colonial settings.

The Preamble of the 1861 Police Act (the Act) explains the objective for creating the Act i.e. "to re-organise the police and to make it a more efficient instrument for the prevention and detection of crime"(Sarkar: 1957: 360). The central objective was clear, as the Indian Police was required to serve as 'a more efficient instrument', a tool that could be loyal to its masters (Singh: 1998; BPR&D: 1979). The 1861 Police Act relied heavily on the recommendations of the 1860 Indian Police Commission that stated "we have arranged for this force being in all respects subordinate to the Civil *Executive* Government and we have paid due consideration to the Despatch from the Majesty's Government of the 6th July on the Constitution of the Police" (GoI: 1980:11, emphasis added). The Act was enacted soon after and made the police at District level function under the control and direction of the chief executive of the district – the District Magistrate.

The Section 1 of the Act defines the District Magistrate as "the chief officer charged with the executive administration of a district and exercising the powers of a Magistrate, by whatever designation the chief officer charged with such executive administration is styled: the word 'Magistrate' shall include all persons within the general police-district, exercising all or any of the powers of a Magistrate".

The Magistrate has been empowered under the Section 29 of the Act to prosecute police officers for offences related to their discharge of duties. The Section 29 states: "Every police officer who shall be guilty of any violation of duty or willful breach or neglect of any rule, or regulation or lawful order made by a competent authority or who shall ... offer any unwarrantable personal violence to any person in his custody shall be liable on conviction before a Magistrate, to penalty...". Therefore, the maintenance of

discipline is greatly regulated by the Magistrate as well. Given that good discipline is intricately linked to the provisions of reward and disincentive it is difficult to see that Magistrate would be in a position to judge the overall functioning of the police in a district. Moreover, the office of Magistrate being very close to the political executives it is probable that unwarranted and politically motivated transfers and suspensions, against unyielding police officers may be used as an instrument in the hands of the State Government[46].

Sections 23, 25, 26 30 and 31 of the Act describe police role, duties and powers that mandates a police officers to: -

(i) prevent the commission of offences and public nuisances;

(ii) detect and bring offenders to justice;

(iii) apprehend all persons whom the police are legally authorized to apprehend;

(iv) collect and communicate intelligence affecting the public peace;

(v) obey and execute all orders and warrants lawfully issued to them by any competent authority;

(vi) take charge of unclaimed property and furnish an inventory thereof to the Magistrate of the District, and be guided by his orders regarding their disposal;

(vii) keep order on the public roads, thoroughfares, ghats, landing places and at all other places of public resort; and

(viii) prevent obstructions on the occasions of assemblies and processions on the public roads.

Section 23 of the Act makes it incumbent on every police officer to perform duties promptly and 'to obey and execute all orders and warrants lawfully issued to him by any competent authority…'. This call for obedience of all orders legally issued to a police officer by any person authorized to do so (Bawa:1985). It is axiomatic, in any Rule of Law-based polity, that orders ought to be backed by good intentions and the legality of laws be maintained. In practice, it is very problematic to check the legality of every order issued to a police officer when the Act itself binds a police officer to unquestioning obedience. Moreover, the executor of such '*orders*' has no immediate legal remedy available as the orders by their very nature emanate from a competent

[46] Various Police Commissions have recorded instances on political interference. See, supra.7.

authority. Thus, a dilemma arises when the Act elaborates that 'all' orders 'issued lawfully' and by a 'competent authority' must be obeyed. This provision of law is very comprehensive and more so when it is not within the competence of a police officer to challenge the order under the Act. Again, such 'competent authority' may be judicial or executive. The executive authority may include the District Magistrate and the line of officers having magisterial powers.

The emphasis, as may be observed, is on the procedural legality i.e. orders, 'issued legally' must be obeyed. Critics have pointed out a major limitation of the Act as it tolerates the possibility of 'legal atrocities' presuming that all orders issued (Section 23, above) from any 'competent authority' are legal and, includes orders that are not legal technically but issued legally[47] (Bawa: 1985: 31).

Section 3 of the Act deals with superintendence of the police. It states that "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 or Court shall be empowered by the State Government to supersede or control any police functionary."

Section 4 of the Act States that "The administration of the police throughout a general police-district shall be vested in an officer to be styled the Inspector-General of Police, and in such Deputy Inspectors-General and Assistant Inspectors-General as to the State Government shall deem fit. 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."

Some legal provisions including the 1973 Criminal Procedure Code

While the 1861 Police Act has provided a number of powers to the police that affect the freedom and liberty of individuals, it is the Courts in India that have been vested with the authority to take cognizance of any misuse of power and may scrutinize a

[47] However, the Indian High Courts and Higher Executive Authorities have been given the powers to scrutinize the legality of orders. There are also ample provisions of appeal, review and revision under the law.

large majority of preventive and investigative functions of the police[48]. Any adverse observation by the courts on police conduct may attract mandatory inquiry. Moreover, any individual who feels aggrieved that any police official has acted contrary to the law can make an application to the courts of law for redressal.

However, the 1973 Criminal Procedure Code (CrPC) provides protection to police officers from false and frivolous complaints from the members of the community. As per section 132 CrPC the police officers are protected against prosecution for acts which relate to dispersal of unlawful assembly by use of force etc. and other acts done under section 129, 130, and 131 of CrPC. Moreover, as per Section 132(1) of 1973 CrPC no prosecution can be made against a police officer except with the sanction of the State Government. Similarly, section 132(2) states that police official acting under good faith in relation with dispersal of unlawful assembly would be deemed to have committed no offence[49].

Additional immunity is granted under section 197 of CrPC to all public servants not removable from their office except by or with the sanction of the Government. This restricts the Courts of law to take cognizance of any offence against a public servant, if the alleged action has been committed during discharge of duties, except in cases where previous sanction of the State Government has been secured.

Moreover, section 197(3) of CrPC empowers the State Government to make any class or category of members of the police force charged with the 'maintenance of order' duties to be protected from prosecution except with the previous sanction of the State Government.

Conclusion

Therefore, police accountability under the 1861 Police Act is governed by section 3 and 4 of the Act. The superintendence of the police in a State is vested in the State Government and the State-police administration in the Director General of Police

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[48] Ordinarily, case against any police personnel for criminal or civil liability may lie with the Courts of Law. Moreover, a writ for *habeas corpus* can be filed with the High Court and the Supreme Court of India under Article 226 and Article 32 under the Constitution of India, respectively.

[49] Presently, there are moves to amend the 1973 CrPC. A Code of Criminal Procedure (Amendment) Bill 1994 is under consideration of the Parliamentary Standing Committee on Home Affairs (*Rajya Sabha* [Upper House of Union Parliament of India], *Unstarred Question No. 400* dated 26.07.2000).

(upgraded from Inspector General of Police). At the District level the Superintendence of Police is the chief police officer who is subject to the 'the general control and direction of the District Magistrate'[50]. It has been pointed out that the Indian police still remain in continuum of a colonial policing philosophy as it suits the government in power and the police equally to disregard public interest. "To the police, it obviates taking more sensitive decisions and it enables the governments to be cozy in the exercise of the paternalistic rule which requires enforcing of decisions rather than implementing...For this purpose, the legacy of the District Magistrate is highly convenient because he is insulated from considerations of discipline, morale, and long tern interest of police and is only responsive to the needs of government in power" (Singh: 1985: 44). Moreover, the Act is silent as to what level and degree of superintendence or directional control shall be exercised by the State Government or the District magistrate[51].

In India, we note that accountability of police to law- the Police Act of 1861 happens to be to an Act that is unfamiliar with democratic expectations[52]. In a democracy multiple mechanisms for accountability are desirous and therefore, 'internal control' mechanisms of police accountability must be backed by other 'state' and 'social controls'.

Moreover, the provisions under the CrPC have not been found to be citizen friendly as obtaining permission for prosecution from the competent authority is time consuming. Undue delay is generally caused to the complainant that provides an opportunity to the accused police officer to induce witnesses and even intimidate the complainant (GoI: 1981).

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[50] The issue of superintendence and control of police was also examined by the National Police Commission (See, GoI: 1980).

[51] It may be noted that for the government generally, maintenance of law and order receives higher priority as disturbances of peace normally affect a large population in a very short time. The media too picks up such instances quickly that may immediately bring a bad name to the government in power. Thus important functions like, enforcement of law, investigation of crime, etc. only comes later.

3.3 Police Accountability to Politicians

In a democracy, while police cannot be conceived of as an agency independent of Governmental control, it is equally significant that police institution must be insulated from illegal and unnecessary interference if they are to function lawfully.

As observed earlier, the concept of representative democracy under the Constitution of India mandates that the public service be accountable to the elected representative of the people i.e. generally the Minister in charge for Home Affairs/Department. A line has to drawn between mediation by the politician in aiding the due course of law and illegal interference and pressure that has the danger to subvert the rule of law.

In the initial decades, immediately after independence, India had leaders that conducted the affairs of the government with great vision and wise statesmanship. Political leaders like Jawaharlal Nehru, Sardar Patel, Abul Kalam Azad, Rajagopalachari, Govind Ballabh Pant, Rafi Ahmed Kidwai, B. C. Roy and Sri Krishna Sinha, created an atmosphere and sense of direction for honest and efficient administration keeping public interest constantly in high esteem. However, as years passed by a large variety of people joined politics with increasing contact between politicians and the executives and a decreasing trend of quality police performance was witnessed. The NPC noted *repeated references of partisan performance of police owing to frequent interference and pressures from political executive or other extraneous sources in a number of states*[53] (GoI: 1980: 20).

Moreover, political interference has been well documented as being a major factor contributing to *poor police image, widening the cleavage between police and public*; and a disturbing source of *police corruption and increased division of police into different cliques and groups*[54].

It is common that political leaders, particularly the Ministers of the ruling party, often interfere in the police administration of the State. Police officers often carry out the request of the Ministers as their postings, transfers, promotions, annual confidential

[52] No remarkable institutional or relational change has occurred after India's independence except with the difference that foreign control and supervision of police has been substituted by domestic political rulers (Dhillon: 1998; Singh: 1998).
[53] See also 1971 Report of the Committee on Police Training and supra n. 7

reports are generally controlled[55] and influenced by political leaders (Marwah: 1999). Transfers are also used by some corrupt politicians as a means of making quick money. There are certain postings, which are considered lucrative as they offer opportunities to make easy money, while others are regarded as 'dry'[56].

Unfortunately, the misuse of power has become a gnawing problem that now appear to have been taking place all over the country. The Union Home Minister of India had in his letter[57] to the Chief Minister of States/Union Territories shared the concern that 'many of the deficiencies in the functioning of the police...have arisen largely due to an overdose of unhealthy and petty political interference...'(Letter No. 11018/5/96, 3rd April, 1997: 1).

In India, a large number of politicians seek the assistance of the local police officers to promote their personal interest. Inevitably, some of the demands made by politicians are, not legal or at least against propriety (Misra: 1970). The politicians who wield power often request the use of police against their political opponents, provide patronage to their political supporters and connive in all sorts of criminal activities for money (Mathur: 1987). This reflects that police accountability to politicians becomes an instrument of abuse in the hands of the politicians.

Conclusion

It is crucial to have an independent police force that remains insulated to political pressures especially for its law enforcement functions. A politicized police force is a threat to the democratic fabric of the nation. The need is to ensure legally the

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[54] For details see, Second Report of the NPC (GoI: 1980) and supra n. 7.

[55] NPC too has cited figures and cases in its Second Report, including that of a Sub-Inspector who was subjected to 96 transfers in 28 years of service. Moreover, Bihar has seen eleven heads of Police force during 1977 to 1981. The Uttar Pradesh Police which had 18 different persons as head of the Police since Independence till 1986 saw some 3000 IAS, IPS and Provincial Civil Service officers being transferred. An all time record by transferring as many as 250 of 310 IPS officers in a short span of 100 days was set in Uttar Pradesh. (For details, See. Rajagopal: 1988:56; Singh:1996; GoI: 1980). Recently, it was reported that 'though Uttar Pradesh has only 961 IAS and IPS officers, there have been 7000 transfers in the last 11 years'(Indian Express, September 9, 2000, p.1).

[56] Madhav Godbole, the former Union Home Minister has pointed out "The transfer *mela* gets converted into a wholesale market where posts often go to the highest bidder".(for details see, Godbole:1997, also Wade: 1985).

[57] Letter No. 11018/5/96, 3rd April 1997, Ministry of Home Affairs, Government of India. New Delhi.

impartiality, efficacy along with accountability of police to the politicians in such a way that peoples' confidence is strengthened in the various organs of a democratic state.

3.5 Police Accountability through National Human Rights Commission (NHRC) of India

Today, the protection of Human Rights of citizens has become one of the guiding principles of the criminal justice system in a country. A wide array of protective remedies for individuals have been enshrined in the Constitution of India[58] and reaffirmed under "The Protection of Human Rights Act 1993" (HRA). Besides stating many promotional and protective functions, the HRA is an important piece of legislation that protects the individual from police abuses.

Establishment and Composition of the NHRC

The NHRC was established under the HRA in 1993 with the main objective to ensure better protection of human rights that are defined as those "relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India'[59] (Section 2[d]). According to Section 3 of HRA, NHRC consists of five members including a chairperson who shall be the Chief Justice of the Supreme Court of India. The functions and powers of the Commission are quite broad and are not limited to investigation of individual complaints of police abuse[60].

However, the mounting evidence of human rights violation by the police makes it difficult to overlook the gulf between the law and reality of police misconduct. The evidence is that those who are meant to uphold the law, quite often violate it, and seek to justify their actions on the ground that violations of human rights are not avoidable to maintain law and order (Vadackumchery: 1996).

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[58] See supra n.32.

[59] Ordinarily, the NHRC does not entertain the following complaints that are: (1) in regard to events which happened more than one year before the making of the complaints; (ii) dealing with matters *sub-judice*; (iii) vague, anonymous or pseudonymous; (iv) frivolous in nature; and (v) pertain to service matters. NHRC and its statistics is being used to show and identify the weaknesses of a major forum that basically deals with human rights violation perpetrated by the State and its agencies in India.

Limitations of NHRC

One of the major criticisms accorded to the NHRC is that it is only a recommendatory body that has no power to enforce its decisions. The State Governments can either reject or accept the findings of the NHRC. Moreover, for a large and heavily populated country like India, having a single Human Rights Commission in New Delhi is far from the direct reach of the common man[61]. A large majority of the staff of NHRC largely consists of government employees. Furthermore, the investigations department of the NHRC comprises of staff members that are either on deputation from various police agencies of the country or are government servants. Therefore, the possibility of delaying tactics and bias to protect their parent departments and government interest cannot be ruled out[62] (CHRI: 1998).

3.6 Conclusion

The identified limitations support the lackadaisical and unwilling attitude of police hierarchy in dealing with complaints internally. The Police Act is also largely inadequate to guide and control the Indian police that is obliged to perform its role essentially to serve a democratic country. The present mechanism of 'superintendence and control' under the District Magistrate is a dual system of accountability that creates institutional problems making the task of police difficult and amenable to political and extraneous interference. Moreover, the Act is completely silent on the accountability of police to the public. This provides a weak base for furthering good police-public relations based on mutual trust and support that is fundamental to efficient policing in a democracy. Furthermore, the various protective provisions under the 1973 Criminal Procedure Code acts as an irritant for a complainant seeking redressal for police misconduct. However, some relief is provided by the NHRC as it is an important 'government control' institution that handles complaints against police human rights

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[60] For details see section 12 of HRA 1993.

[61] However, five States in India have already established State Human Rights Commissions. As per the 1996-97 report of NHRC, Uttar Pradesh has notified the constitution of a Commission, but appointment to the posts of Chairperson and other Members had not yet been made. The Government of Jammu and Kashmir has passed legislation to establish State Human Rights Commission. The Government of Kerala and Punjab has also informed about their intention to establish State Human Rights Commission. However, a number of State level Commissions have administrative and institutional limitations too.

abuse. Given the fact that NHRC is still far from the reach of common public and formation and functioning of most of the State Human Rights Commissions have yet to take firm root, it appears that the NHRC has a long way to go in establishing its real image as a protector from police misconduct (Srivastava: 1998). Moreover, the lack of a credible 'social control' mechanism that may appreciate peoples' participation to strengthen democratic police accountability still remains as a large vacuum in the Indian scene of democratic accountability.

It is significant to note the need for a change in the system of present police accountability – especially through introducing public accountability of police.

[62] CHRI's *Submission* to the NHRC in response to a general request for suggesting amendments to the HRA 1993 [Unpublished].

Chapter 4: Proposal for Direct Police Accountability to the Public

"The police is very fast losing its credibility and dependability. The gap between public expectation and the police performance is widening every day…the system which still functions in colonial mould needs to be revamped, so as to make it more re-assuring, public friendly and effective…".

- *Excerpt of the Special Secretary's (Ministry of Home Affairs) letter written to the Committee on Police Reforms. (GoI : 2000)*

In this chapter I discuss two countries' experiments[63] i.e. Hong Kong and USA, and try to draw suitable lessons that may be applied in my proposed pilot for introducing police accountability to public in India. The Independent Commission Against Corruption (ICAC) and the Civilian Complaint Review (CCR) mechanisms both appreciate direct involvement of community members. The ICAC was empowered to receive complaints directly from the community and a number of policy measures were adopted for *strengthening information agents;* using *information provided by third parties including the public* and provided training and education to change attitude and behavior of *police and public* that helped in creating a climate where *information agents* were encouraged to report *improper activities* (Klitgaard: 1988).

The CCR mechanism also relies and invites direct involvement of community members in receiving, assessing, investigating and monitoring public complaints against police misconduct. It is true that success of CCR agencies in the USA has been mixed however, it may be appreciated that the mere existence of such a mechanism provided unique opportunity to citizens to complain against police misconduct, participate in the disciplinary proceedings and recommend policy change that goes a long way to ensure due police accountability to the public.

It is for these general reasons that this chapter largely draws from the CCR mechanism and recognizes the ICAC's strategies for generating public awareness, providing education and regular feed back as elements crucial in the Indian context to

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[63] It should be noted that Britain too has *multiple structures of police accountability* consisting of Home Secretary, Local Police Authorities and the Chief Constable. While it could be yet another mechanism to observe, I have opted not to discuss the British model because I understand that the present level of public-police relations in India need to be first improved before allowing *politicians and other elected officials* (like Home Secretary, Local Police Authorities and the Chief Constable) to share control over the police functioning.

address complaints against police misconduct and introduce police accountability to public in India.

4.1 Independent Commission Against Corruption (ICAC) mechanism in Hong Kong (HK)

Till the early 70s, police officers or their syndicates patronized drug trafficking, gambling and prostitution in HK. The setting up of the 'powerful' ICAC in HK has been a great success in cleaning up corruption in the HK Police. Klitgaard (1988) mainly attributes the success of arresting police corruption in HK to an independent body - The Independent Commission Against Corruption[64]. The ICAC relied on a multi-pronged strategy including particularly the utility of state-society co-operation (Gasper: 2000).

However, a lot had been invested to secure structural changes in the administration, and attitudinal and behavioral changes of the society as a whole. Moreover, legal reforms were initiated to provide a legal foundation for 'sweeping powers' to ICAC that largely helped in containing police corruption.

4.1.1 Some unique features of HK

Before assessing some of the essential features of ICAC and drawing lessons that may or may not be applicable to Police corruption in India (not to mention corruption, in general), I would like to first appreciate some of the unique features of Hong Kong that made HK an exceptional case. This helps in constructing my argument that these strategies are largely difficult, if not impossible, to apply on India. Nonetheless, some inspiration for our proposed model may be drawn from these strategies.

It must be mentioned that:

- ✓ HK, in the 1970, was a British Colony and not a democratic country.
- ✓ HK had a unique geo-political situation in Asia and had already achieved the status of an Asian Tiger and was considered as one of the High Performing Asian Economies.

[64] According to Klitgaard, corruption in HK was deep rooted and organized. To explain the success of ICAC, he relies explicitly on a blend of incentive analysis and principal-agent-client analysis and explicitly on other features like outstanding leadership, patriotic staff, etc. (Klitgaard: 1988; Gasper: 2000).

✓ HK was a small British colony therefore, easily manageable administratively. It also had the flexibility to pass ordinances and secure effective change without political exigencies.

4.1.2 Some specific attempts to tackle police corruption

Some of the noteworthy attempts to deal with police corruption in HK include[65]:

- **Identifying corruption and administrative commitment**:

Corruption was deep rooted in the society in general and police in particular. It had reached to proportions where it was claimed to be *'systematic, even routinized.'* Corruption in HK had an infamous background, it had *'long-standing traditions of "commissions"* ' and was considered as *'a socially legitimate means of promoting business'*. Therefore, it required strong administrative commitment to create legal space for both, defining and investigating corruption cases. The HK administration succeeded in both. It was able to define corruption, including, as "*unexplained enrichment*" and demonstrated (as explained below) its commitment to tackle it.

In India the village population is generally illiterate and a majority of them lack legal literacy[66]. A common man does not understand police misconduct particularly in such areas, as an abuse of authority. Instead, it is generally perceived as a police personnel's legal authority to enforce laws with excessive use of one's powers. Therefore, there is a need to create awareness among the community especially the rural[67].

- **Change in Criminal Laws:**

Administrative commitment was buttressed by passing (enactment) of Prevention of Bribery Ordinance that shifted the 'burden of proof' - "In any proceeding against a person for an offence under this Ordinance the burden of providing a defense of lawful authority…shall lie upon the accused." Moreover, penal punishments were increased and even anti-corruption laws were made tougher. Structural changes were effected by first,

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[65] HK provides an example of a multi-pronged strategy. The other attempts include continued and ample monetary and human resource (even from United Kingdom), committed leadership, close coordination among various governmental agencies, reforming the recruitment structure, etc.

[66] However, some states like Kerala, Maharashtra etc. and a number of Indian cities and towns have a comparatively better literacy rate.

upgrading the Anti-Corruption Department to the status of an Office and later, abolished to give way to the Independent Commission Against Corruption. The setting up of a new and independent agency with 'bite' was a big step to garner support and instill confidence among the public.

In the present circumstances it is very difficult to presume that drastic changes can be made to change the present regime of Criminal Laws in India. However, amending the provisions the CrPC is already under review[68]. Similarly, the need to change the 1861 Police Act is also growing and the report of a very recent Police Reforms Committee has reaffirmed and recommended for the replacement of the Act[69].

- **Functional distribution of work in ICAC**:

The ICAC recognized the importance of community's role in containing deep-rooted problem. A three pronged[70] holistic approach was adopted that included:

(a) ***Operations Department***: This department was divided into strategic branches: one, that dealt generally with corruption *in all areas at all levels* and other that investigated other personalities that lived *beyond their means*. The Operations Department was supported by public complaints system that were either received through complaint centers or through hotlines. This department could receive information from multiple sources including the media and public. It had the powers to investigate, arrest and help in prosecution of cases.

(b) ***Community Relations Department***: This department was set up at local level to gather information on corruption. Young Chinese staff was specifically recruited, as they were believed to possess valuable social traits like patriotic and committed. The department provided a great impetus to the overall success of ICAC as its staff members created awareness among the society through a variety of measures including radio, television, drama, personal visits and provided regular feed back. This department greatly helped in influencing public

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[67] Nevertheless, the political commitment can become favorable provided the perception of the electorate about need for police accountability to public is increased.
[68] See supra n. 49.
[69] See, Padmanabhaiya Committee Report, August 2000 [Unpublished].
[70] The three major departments include - the Operations Department, the Community Relations Department and the Corruption Prevention Department.

perceptions about corruption and invited their support in gathering information on police corruption.

In India, the setting up of a similar body with functional distribution is very relevant, as community members possessing relevant skills could become active partners through such an agency. Other members of the community could be either trained or educated for possible membership in the accountability mechanism or help in awareness building[71].

4.1.3 Drawing probable lessons

It is very difficult to ensure that all the essential elements that lead to the overall success of ICAC could be made available to tackle police accountability and particularly police accountability for misconduct in India. Nonetheless, some useful and important lessons may be drawn that can serve as guidelines for reform. These guidelines can be modified to suit Indian conditions and milieu. I view the following as some of the important lessons that can be drawn from the HK experience:

- Setting up of an independent and statutory agency to investigate and monitor police misconduct in India;
- Inviting community's participation for successful functioning of such an agency;
- Providing legal education to the community and strengthening public-police relations.

Moreover, the demands for political commitment and for police leadership to realize and accept the need for strengthening the current level of police accountability is significant, daunting and difficult though, not impossible[72].

4.2 Civilian Complaint Review (CCR) mechanism in USA[73]

The CCR is by far the most popular and publicly acclaimed mechanism and this has been used and found suitable to a number of democratic countries[74] (Freckelton:

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[71] The increase in legal literacy of community members will be good for other developmental activities too.

[72] In my view, if the politicians sense that the people desire for strengthening the police accountability structure than they generally adept to the moods of its electorate. Similarly, if the Police leadership views strengthening police accountability as improving their public image, making them free from illegitimate external pressures and allowing them lawful discharge of their duties then the chances of success for any policy for police reforms increases as internal resistance for change decreases.

1991; Goode:1991; Lewis: 1991; Topping:1991; Terrill:1991). While terminology used to connote the Civilian Complaint Review mechanism differ from country to country, their general emergence as a 'social control' mechanism has been common and has been in the context of "a perceived long-standing failure by police to respond adequately to citizens' complaints" (Bayley: 1991). Under the CCR the complaints against the police are handled outside the physical and organizational confines of the police force with a staff comprised of non-police personnel. These element may be some of the essentials but the actual composition determines its functional utility as it is not only the supervision of complaints but conducting various aspects of complaints-handling processes that promotes satisfactory public redressal (Petterson: 1991).

For the simple reason that internal accountability mechanisms have been found to be inadequate and governmental external mechanisms of police accountability unable to contain police misconduct and brutality, Citizen Review Agencies have been established in the US (HRW: 1998: Terrill: 1991). The 1998 Human Rights Watch Report on Police Brutality and Accountability in the United States mentions that "it is rare, indeed, for a police department, on its own initiative and without public pressure, to take steps to improve police conduct and enhance accountability for officers who commit human rights violations" (1998: 55). Prof. Samuel Walker (1995), an expert on Citizen's Review Mechanisms, defines it as 'a procedure for handling citizen complaints about police officer misconduct that, at some point in the process, involves people who are not sworn officers' (as quoted in HRW: 1998:53).

4.2.1 Some important functions of the CCR mechanism

In practice, CCR Agencies are known by different names in the United States of America. However, a typical CCR Agency provides an independent forum where victims or witness of police abuse can lodge complaints or testify at hearings to provide an account of what happened. The Review bodies receive complaints against police, investigate the complaint and recommend discipline to police commanders or actually

[73] The experiments conducted in various US cities in establishing Citizens' Complaints Review Mechanisms provide well-researched and useful explanation to draw inspiration on the functional utility of a 'social control' mechanism.

impose sanctions where desired (Stone and Ward: 2000). As noted by a researcher from a policy perspective the CCR mechanisms in USA may be categorized into three tiers- 'First-tier', 'Second-Tier' and 'Third-Tier', where: "(a) the civilian oversight agency receives, investigates, adjudicates, and recommends discipline to the police executive [Model - I]; (b) these agencies carry out the same functions as the first tier, except for the investigative phase which is conducted by police departments [Model - II]; (c) agencies in this category have identical authorities as in one of the first two tiers, but the city's chief administrator acts as an arbitrator/mediator of disciplinary disputes between the oversight agency and the police executive [Model - III] (Petterson: 1991: 275, comments in parentheses added).

Certain CCR Agencies in USA involve appointment of an auditor[75] who does not investigate individual complaints but reviews the method and procedure of investigating charges of excessive force and other allegations and recommends policy changes. In cities like Portland, San Francisco and Minneapolis- review agencies have achieved some success and have been able to push specific police reforms and seen them implemented too. This has to a great extent established trust in the review agency and improved the image of police department. (HRW: 1998).

4.2.2 Certain limitations of CCR mechanism

The major dilemma with the Citizen Review Mechanism has been the composition of the Review Agencies. Necessarily a choice has to be made between two important but opposing values. Is it more crucial for the Review Agency to be truly effective at identifying, investigating, and punishing police misconduct? Or, is it more important for the Review Agency to be fully independent of the police organization? Both the arguments are important but both cannot be incorporated in a Review Board[76]. The choice between the two has vital implications on the composition of the Agency

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[74] This is not to suggest that the CCR mechanism is an elixir. In fact, experience suggest that it has had mixed results. Nevertheless, its existence is well accepted as a popular mechanism is well recognized.

[75] Auditor's function involve commenting upon the fairness and thoroughness of the internal complaints procedure with an idea to improve the police complaints system, not to affect individual complaints like in Minneapolis, Minnesota (Petterson: 1991).

[76] If the *agency* tries to be "fully effective" in dealing with police misconduct then the agency needs to be aware of police functioning for which induction of police officers is crucial. Inclusion of police personnel in an agency makes it technically, *not* independent.

(Stone and Ward: 2000). Due to the fact that investigation is a skilled job and an investigator needs to be aware of how police officers operate on duty, it is helpful having police or retired police officials as investigators for a Review Board. Usually this provides easy access to police records and better co-operation from the police department. At the same time it also lowers public confidence as public may often perceive such investigators as biased in favor of their present or former colleagues.

Moreover, creation of completely independent CCR Agencies in most US cities has been strongly opposed by police officers, police unions and even the police department[77]. Sometimes, weak financial and political support to Citizen Review Boards has also contributed in frustrating its success[78].

Stone and Ward (2000) have also pointed out that a large number of Civilian Review Boards lack the authority to discipline officers; they can only point our possible problems and recommend actions to the Department. However, as a new strategy, in some cases, the Review Agencies are also offering mediation and apology as an alternative to instituting formal disciplinary proceeding against the erring police officers.

4.2.3 Drawing probable lessons

In USA there are various law enforcement agencies performing a great variety of governmental functions under Federal, State and local level. The State Constitutions provide for law enforcement functions to be carried out at cities, towns or villages. Therefore, there are a number of police forces in USA[79] (Brewer *etal*: 1988). The USA is also one of the highly decentralized and locally self-governed countries of the world and this has also led to a plethora of law enforcement agencies. With at least 40,000 law enforcement agencies out of which almost 20,000 functioning as 'police agencies' for law enforcement and maintenance of law and order (Terrill: 1991). Given this multiplicity and well defined 'fragmented structure', replication of the various CCR mechanisms is difficult in the Indian context. Nevertheless, some inspiration can be

[77] For example, New York City and Philadelphia witnessed strong police opposition during the creation of its Citizen Review Board (HRW: 1998).
[78] The abolishing of the CCR of Washington D.C. in 1995 and inadequate mandate and manpower provided to the CCR of Atlanta are important instances (HRW: 1998).
[79] For example, in 1996, there were 74,493 Federal officers and at least 665,535 full-time State and local law enforcement officers (Richman: 2000).

drawn from the benefits, challenges encountered and limitations identified in the CCR mechanisms[80] of USA. The probable lessons include:

- Providing an independent statutory mechanism to tackle public complaints of police misconduct;
- Existence of many versions of police accountability mechanism taking into account the peculiarity and local need of an area;
- Providing community members an opportunity to take active part in receiving, investigating, adjudicating and recommending discipline to the police executive;
- Engendering co-operative working conditions between police and public to tackle local area policing problem;

Conclusion

The HK and the USA examples both provide us some lessons that may be adopted to strengthen police accountability in India. These experiments also confirm the utility of multi-pronged approach to tackle a problem. Moreover, both rely on the crucial support provided by the community. Therefore, police accountability mechanisms in India must be supported by multiple mechanisms including CCR that invites direct public participation. However, only a single kind of CCR cannot be used as the ideal model but several versions may be tried depending on the need and peculiarity of an area.

4.3 Police Accountability to Public: a proposal for a pilot case

We have already noticed that the present system of police accountability has some major inherent weaknesses. One, it is largely insulated from the direct contributions of the community it is designed to serve. Two, there is bound to be lack of public trust as complaints against the police are generally handled internally by the police department. Three, the image of police is low and police-public cooperation is deteriorating. All these problems make the task of police more difficult and undemocratic. A proposal is made here to tackle these problems with following rationale.

[80] USA is like a cauldron where various experiments on CCR mechanism have been made. At least 38 out the 50 largest cities in the USA have some kind of Citizen Review Agency (HRW: 1998).

4.3.1 The Rationale of the Proposal

This proposal is based on the elements of good governance that I have argued encourage peoples' participation directly in the business of governance. While the complexities of modern society demand that much of the public decisions be delegated in favor of public servants, it does not however, dilute the communities' fundamental responsibility to hold its public servants accountable for their errors of commission and omission in a more participatory manner. Therefore, peoples' involvement and accessibility needs to be defined and provided in modern scheme of policing as well. This will create new vistas for the people to understand and appreciate the changing social environment and appreciate the work of their so-called 'public servants'. Such an opportunity will make the people more committed to democratic principles and democratic policing.

Moreover, the police organization too will be benefited with direct support of the people. As such support will provide community's direct check, it will to a large extent insulate the police from illegitimate interference from the power-wielding politicians. Policing essentially involves public interface and if the interface is cordial based on public trust, investigation and prevention of crime becomes more easy and quick. Moreover, criminal tendencies both, within the community and in the police organization can be duly punished in a more transparent manner. Naturally, it will also put to rest many unfounded criticisms of police (Bayley: 1991).

However, any mechanism of police accountability to public must be clearly spelt out in the statute and the accountability mechanism must emanate from the law. This is important to uphold the supremacy of law and strengthen good governance. Impartiality has to be the bedrock of the statute so that the weak and strong are judged by their actions and not by their position.

Therefore, any proposal that would try to ensure police accountability to the public will have to have, at least, the following three elements[81]:

(a) It should be better than the existing system of accountability, especially the internal accountability mechanism;

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[81] My discussion with some journalist friends: Ashok Upadhyay (UNI), Rajeev Pande (UNI), Kavita Pant (PTI), Jai Awasthi (PTI) and Navin Pant (senior accredited journalist) in New Delhi, August 2000.

(b) It should be able to increase the level of public confidence in the police and strengthen the image of police in the eyes of people.

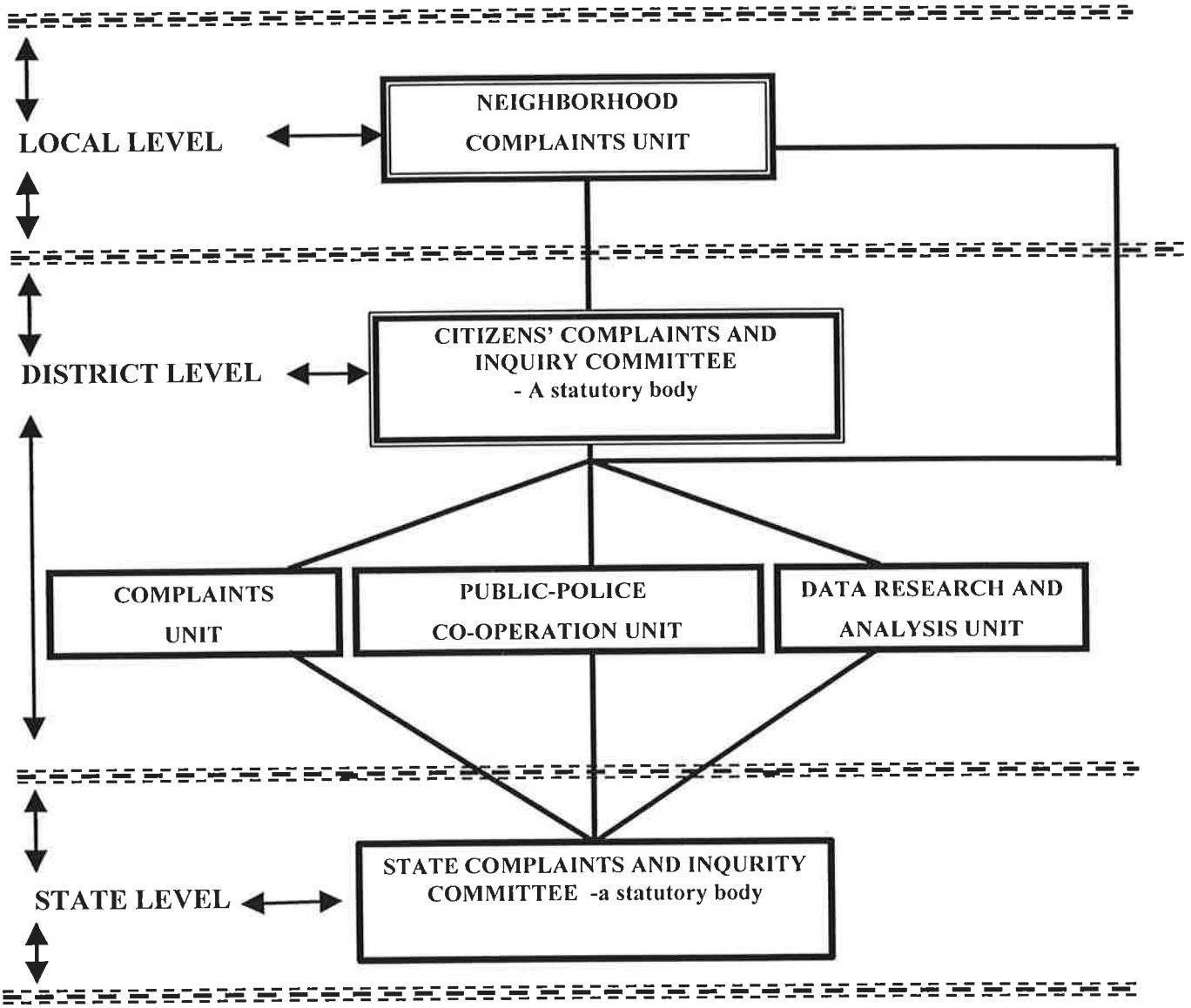
(c) It should also be able to enhance police morale and allow police personnel to perform their duty lawfully without any extraneous pressures.

It is not the intent here to distrust the Indian police but to ensure and demonstrate to the people that police, though a law-enforcing agency, is equally a responsible institution in democratic functioning.

Any proposal for significant police accountability reform must start at the lowest level of public administration (Bayley: 1971). I agree, as initiating reforms at the local level will directly affect the common public including more than 70 percent of the total population of India that largely lives in the villages. For our purposes, in case of urban areas the NCU can be constituted at a *police station level* whereas in case of rural areas the same can be constituted at the *village level.* The support and assistance to any complainant for lodging a complaint against police misconduct shall start at the respective local level through NCU and then to District level[82] and culminating at the State Level.

[82] For details of the complaints mechanism see, Appendix III.

Figure: 1 Proposed Three-Tier Structure of Police Accountability to the Public



4.3.2 Some salient features of the proposal

It should be reaffirmed that India being a multi-cultural, economically and socially diverse society may need to test various versions of police accountability mechanisms. Again town, cities, and other metropolitan cities like Delhi, Mumbai, Chennai etc. will need a different kind of mechanism that allows participation of people residing under the jurisdiction of a Police Station (instead of the Village community, as mentioned in Figure 1). The pilot proposal has the following features:

- ❖ It will be a three tier police accountability mechanism starting at the local/village level – Neighborhood Complaints Unit (NCU); a District level-Citizens' Complaint and Inquiry Committee (CCIC) together with its 3 Units; and a State level – State Complaints and Inquiry Committee (SCIC) [for details see Figure 1 below].
- ❖ The function of investigating complaints will be performed with co-operation from a mix of serving or retired police officers and other community members;
- ❖ The majority membership of any body will be comprised generally of local citizens and the chairperson will be a non-political and non-police person;
- ❖ NCU, CCIC and SCIC will have one member each from the local *Panchayat* so that the local body's presence is recognized and reflected in the mechanism too.
- ❖ Composition of the such bodies especially through introducing compulsory nomination of members by the National/State Human Rights Commission, National Commission for Women, National Commission for Minorities, National Commission for Scheduled Cast / Scheduled Tribes will have multiple benefits: ensure representation of such community members, dilute the hold of local elite and local politics, creates opportunities where local elite and minority members work-together, and generally appear community friendly too;
- ❖ Training for reconciliatory techniques, though time consuming but significant for bodies performing such functions in the long run;
- ❖ Awareness building about police roles and duties, citizens' rights and duties, and other essential legal literacy efforts should be provided particularly at village and district level.

The participation of the people through the proposed NCU and the CCIC will nurture better policing culture in a multi-cultural, multi-lingual parliamentary democracy like India. Table 2 below lists out the general functions, the composition, the objectives, the number of members, the meetings and reporting details and the terms of appointment of the *local* and *district level bodies* of the proposed pilot. It also provides general strengths and weakness of the mechanisms[83].

[83] Though local needs would define the actual settings of such bodies through the Citizen's Policing Charter of the District that will be a crucial guiding document. This paper does not deal with the details of such Charter.

The CCIC will be a district umbrella body that will tackle larger police accountability issues besides complaints against the police and consist of three separate wings one of which will exclusively receive public complaints against the police. The State Inquiry Committee of the State will govern the local and District bodies. Figure 2, provides an idea of different levels of the police accountability mechanisms together with some processes and outcomes of an imaginary complaint.

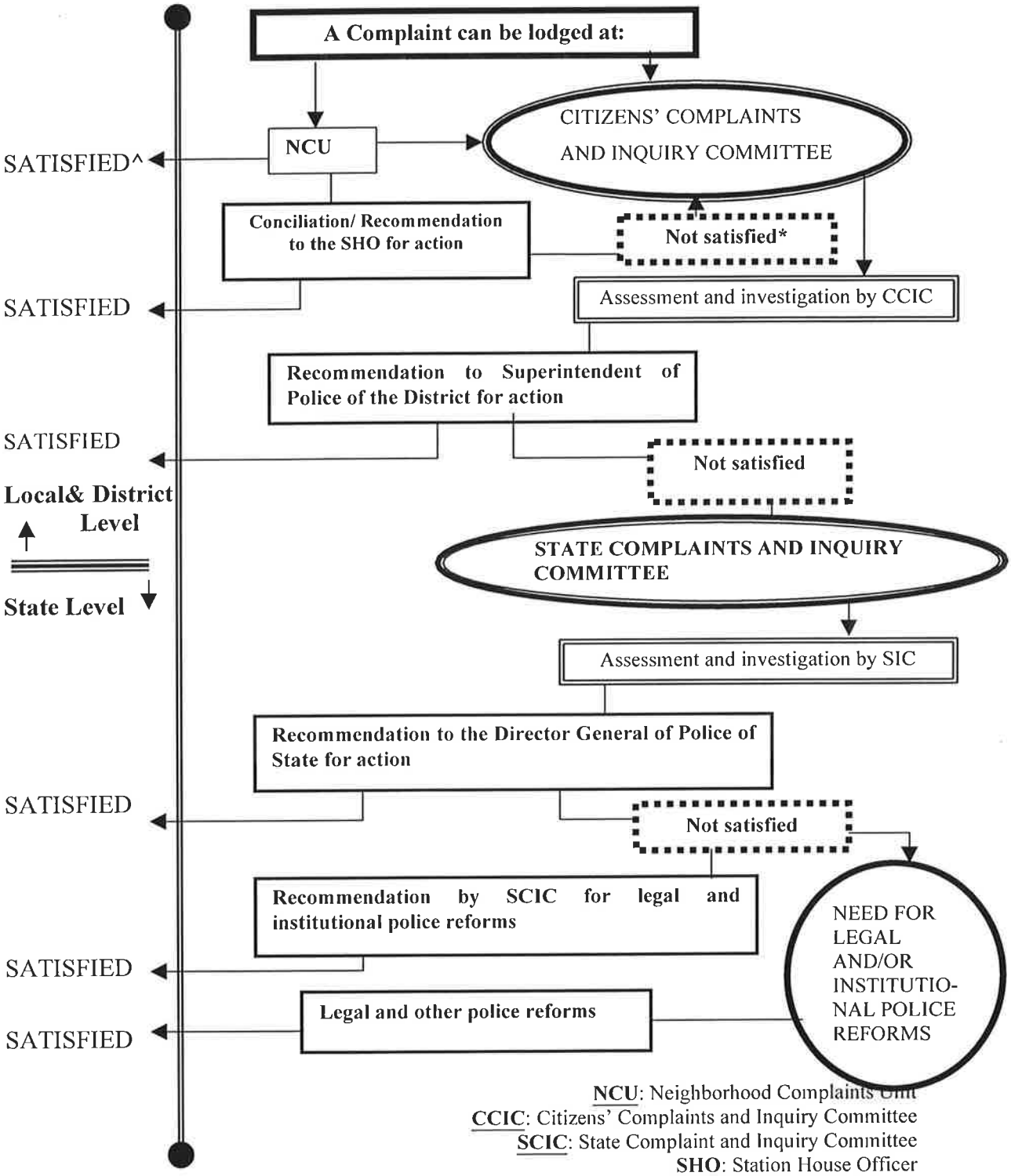
Table 2:Local And District Level Bodies Under The Proposed Three-Tier Structure Of Police Accountability Mechanism: A Summary					
Particulars	**Neighborhood Complaints Unit (NCU)**	**Citizens' Complaints and Inquiry Committee (CCIC)**	**Complaints Unit (CU)**	**Public-Police Co-operation Unit (PPCU)**	**Data Research and Analysis Unit (DRAU)**
1	2	3	4	5	6
Level	**Local level statutory and independent body**	**District level statutory and independent body**	**District level**	**District level**	**District level**
Functions	• To assist the settlement of complaints through conciliation; • To decide the amount of fine or appropriate community service on the guilty police personnel; • Make recommendations to the SHO; • To assist the complainant, if he/she wants to lodge a complaint to CU. • To provide assistance to CCIC and its units; • To function as per the Citizens' Policing Charter.	• To co-ordinate between its units; • To assist in preparation of Citizens Policing Charter for each District; • To conduct and supervise investigations over complaints of police misconduct; • To conduct visits; • To assist in matters relating to police-public interface; • To make recommendations to the District Superintendent of Police for adequate disciplinary action. • To recommend District level police reforms; • To submit annual consolidated reports. • Keep the complainants informed.	• To receive, assess and process the complaints received directly or through the NCU; • To collate complaints and maintain regular records; • To liaison with public and police; • To provide copies of any document on demand and payment of nominal fees, without delay.	• To identify areas of police-public interface; • To conduct legal literacy workshops and programs; • To disseminate information; • To provide training and resource material to NCU on conciliation and other conflict resolution techniques; • To liaison with schools, colleges, universities and other academic institutions; • To liaison with the Police and other governmental institutions.	• to receive, collect and collate information from CCIC and its various units; • to conduct research and analysis; • to provide technical assistance to CCIC; • To liaison with state, national and international academic institutions, both governmental and non-governmental.

Particulars	NCU	CCIC	CU	PPCU	DRAU
Composition	• Members representing a cross section of local community; • Representation as desired by Citizens' Policing Charter and local needs. • Chairperson to be non-political and non-police personnel nominated by the CCIC in consultation with the local community; • A nominee of the local *panchayat* and a teacher (preference shall be given to a female teacher) nominated by the District Education Board can be its compulsory Member Secretary. • Other members to be nominated by the CCIC from the community	• Members representing a cross section of society of the District; • Chairperson to non-political and non-police person nominated by the State High Court; • Nominees of the State High Court, State Human Rights Commission, National Minorities Commission, National Commission on Women; National Schedule Caste and Schedule Tribe Commission; and the district *panchayat*; • District Prosecutor to be its compulsory member; • A maximum of total four members shall be a mix of serving and retired police personnel; • The District Superintendent of Police shall be an *ex-officio* member; • Other members shall be nominated by the State Inquiry Committee from the District community. •	• Members representing a cross section of society of the District; • Chairperson to non-political and non-police person nominated by CCIC; • One member each nominated by the Bar Council of India, National Minorities Commission, National Commission on Women; National Schedule Caste and Schedule Tribe Commission, but residing in the District.	• Members representing a cross section of society of the District; • Chairperson to be non-political and non-police person nominated by the CCIC; • A maximum of total five members shall be a mix of serving and retired police personnel and nominated by the Police Training Institutions of the concerned State; • Nominees of the State Human Rights Commission, National Minorities Commission, National Commission on Women; National Schedule Caste and Schedule Tribe Commission; • Other Members shall be drawn from fields like journalism, legal profession, academicians and activists from NGOs.	DRAU will be governed by the CCIC and the head of the unit shall be a non-police and non-political academician nominated by the Governor of the State.

Particulars	NCU	CCIC	CU	PPCU	DRAU
Objectives	• To assist community members to identify their legal rights and duties.	• To act as an independent public oversight mechanism.	• To receive complaints and provide assistance to community members.	• To educate community members through legal literacy programs.	• To conduct research on police public relations and related issues • To prepare educational and other resource material.
Number of Members	• As per the Citizens' Policing Charter, for instance, there could be twenty non-political and non-police members with equal male female representation. However, no immediate relative of any political party or serving police personnel's family can be a member; • Re-nomination allowed but limited only to one more term.	• Twenty members • Re-nomination allowed but limited only to one more term.	• Five members • Re-nomination allowed but limited only to one more term.	• Fifteen members. • Re-nomination allowed but limited only to one more term.	• Governed by CCIC. • Staff selected through a District level competition examination.
Meetings and Reporting	• Monthly meetings; • Reports to CCIC.	• Quarterly meetings; • Reports to the concerned State Enquiry Committee.	• Monthly meetings; • Reports to CCIC	• Quarterly meetings; • Reports to CCIC	• Quarterly meetings; • Reports to CCIC.
Term of appointment	• Three years for its members.	• Three years for members. • The Staff to be permanent employees of the State.	• Three years for its members.	• Three years for its members	• Five years for the head. • The staff to be permanent employees of the State.

Particulars	NCU	CCIC	CU	PPCU	DRAU
Strengths	• Locally available mechanism of the people for settling police complaints; • Helps people to understand and solve their problems on their own; • People can contribute in identifying and contributing in local policing problems.	• People feel satisfied by participate in policing matters; • The become aware of their legal rights and duties; • Confidence level is increased as the forum is largely representative.	• The mechanism is simple and quick; • People have access about the progress of their complaints; • In case reconciliation fails the people have another forum to appeal.	• Providing legal literacy to the people makes them informed citizens; • Better police-public relations can be engendered.	• Empirical research may conducted for identifying policing problems • Contribute in ascertaining crime trends, perceptions about public and police and other related problems; • Provide material base for social reformers, politicians to lobby policy reforms.
Weaknesses	• Local politics may infiltrate and sometime frustrate the reconciliation efforts. • Problem identification and conflict resolution is a technical task and demands deft handling which may sometimes be lacking at grassroots level.	• It is difficult to establish such a body as it demands huge resources • Vested interest and people wielding power will oppose as they may feel threatened; • Police Department will also view it as another monitoring body to which it would be obliged to report and feel more burdened.	• The Police will generally oppose such a monitoring body that tries to judge their actions •	• Demands commitment from the members who may otherwise be busy with their main vocation and calling.	• It calls for huge resources from the State Government; • State Government views Police Science and Administration as a politically sensitive matter.
Remarks	This body may need relatively the lowest resources	Establishing such a body may demand very large budget outlay	This body may need comparatively fewer resources.	This body may need large resources in terms of money and manpower	This body may also need large resources for its proper functioning

Figure 2: THE FATE OF A COMPLAINT IN THE PROPOSED MECHANISM



NCU: Neighborhood Complaints Unit
CCIC: Citizens' Complaints and Inquiry Committee
SCIC: State Complaint and Inquiry Committee
SHO: Station House Officer

^ Satisfied means and includes that the complainant is satisfied to lodge a complaint and also satisfied to see that his/her complaint has reached higher redressal level.

*Not Satisfied includes that the complaint of the complainant has not been dealt satisfactory at the respective level(s).

Chapter 5: Review and Conclusions

"Police on their part should also clearly understand that the ultimate accountability is to the people and to the people alone. Their accountability to law and to their organization are only complementary to the ultimate objective of accountability to the people."
-National Police Commission 8th Report. P. 11

This chapter synthesizes and reviews the arguments made in previous chapters. It also attempts to revisit the main research question and provides a conclusion together with a list of elements that also strengthen police accountability. I also provide a brief discussion on the feasibility and testing of the pilot proposal for the purpose of learning its strengths and weaknesses and further applicability in other Indian States.

5.1 Overall Review

In Chapter two we noticed that the concept of 'good governance' leads us to argue for and include public participation in policing especially in ensuring accountability for police misconduct in India. Moreover, the Stone and Ward model suggests that for efficient policing we need three kinds of accountability mechanisms both for public safety and police behaviour. In the Indian context, this model highlighted the absence of a 'social control' mechanism that invites peoples' participation in policing. While the functioning and success of any 'social control' mechanism would eventually depend on the competence and extent of public participation, it is equally important that the police department also view it as a tool that will benefit them in lawful policing. In modern democratic policing, it is crucial that at least an opportunity is provided to citizens to have independent citizen' oversight bodies that specifically deals with police misconduct and accountability. Such participation of people in disciplinary proceedings against police together with powers to recommend policy changes for better policing will strengthen good governance.

In chapter three we observed that police accountability to the police department is beset with many behavioral and procedural limitations. An archaic Police Act governs the police functioning under an atmosphere that is not free from political pressures and illegal interference. The issue of police accountability to the politicians is equally

problematic as the police is often used as a tool to subvert the rule of law and settle political scores. This also relegates the police to a 'beating horse' and exonerates the politician, who accuses the police of not being able to perform adequately to the expectations of a democratic polity.

However, the enactment of the Protection of Human Rights Act 1993 has opened a window of relief for making complaints against the police to the National Human Rights Commission. It too has a number of limitations. In a span of less than a decade of its functioning it is has been besieged with complaints from all over the country. There has been a 'phenomenal increase' in the total number of complaints received by it. An increase of more than one hundred percent was recorded, with 10195 cases in 1995-96 to 20,514 cases in 1996-97 (NHRC: 1997). The limited numbers of NHRC Commissioners are not able to tackle adequately all the complaints. Moreover, NHRC looks at only certain aspects of policing and probes in a little greater detail on cases of custodial crimes. It has a number of other administrative and institutional problems that do not allow it to function and perform adequately its mandate (CHRI: 1998).

These problems make the redressal of complaints for a harassed complainant difficult and unsatisfactory.

Chapter four provides us with a possibility and a proposal has been made for including direct police accountability to the public. Here, police accountability to public through the NCU and the CCIC and its other units is proposed as a crucial mechanism that will invite peoples' participation at local level to provide police accountability to the public.

5.2 Conclusion

It is my finding that police accountability is a complex issue and we cannot rely on one single mechanism of control or supervision. The need is to have a holistic approach towards the issue of strengthening police accountability and to have different versions of accountability mechanisms that take into account the need and demands of local participation and contribution.

Moreover, we have seen in the HK case the utility of a multi-pronged strategy that contributed in the overall success of the ICAC. Similarly, in USA, there are many

versions of the CCR mechanisms. Therefore, no single mechanism can be *the* ideal mechanism that could be cloned in various states of India. Nonetheless, the total absence of a statutory, independent and locally accessible mechanism of police accountability is clear and needs to be introduced in the Indian context. Thus, mere provision of the proposed mechanism will open up new possibilities of strengthening police accountability and only with the passage of time its real utility can be assessed.

With reference to the pilot proposal, the NCU and the CCIC shall be a crucial mechanism but shall not be the exclusive one. This research has also enabled us to consider some of the other elements that are also required for strengthening police accountability to public and include:

- Peoples' awareness about their legal rights and duties very crucial;
- Public-police co-operation forum must emanate from the law and must define, confine and limit political interference and other extraneous pressures in conducting investigations and inquires;
- Enabling environment must be provided by legal and other institutional reforms that recognizes public participation in the area of policing
- Conducting research into areas of police-public interface problems. Unlike India, in some countries like USA, Canada and etc. social scientist conduct detail and regular research into police problems. Moreover, Police Science or Administration as a separate subject at the graduate or even post-graduate level is noticeably absent in India (CHRI: 2000)
- Police leadership and politicians must recognize the need to improve and change the present system and culture of policing.
- Training of Police must improve so that attitude and respect for Human Rights of all is strengthened. Moreover, a conducive culture of sensitiveness, friendliness and responsiveness needs to be developed in the Indian Police[84]. (CHRI: 2000)
- Adequate resources, managerial and administrative support must be provided to bring about meaningful and early reforms.

[84] A survey conducted by CHRI on Human Rights Awareness and Attitudes of officers of the ranks of Assistant Sub-Inspector to Inspector of Police revealed that (i) general awareness of police officers about basic Human Rights instruments, international as well as national is poor; (ii) specific work related

- There is also a need to weed out undesirable elements from amongst the police institution through impartial and proper inquiries.
- The status of the police personnel also needs to be improved by providing them better pay scales and better service conditions. (Padmanabhaiya Committee : 2000)
- Recruitment especially, of the constabulary must be improved and instead of the existing system where teams of police officers recruit the constabulary it must be done through an external agencies like setting up a body – Police Recruitment Board that may be an independent body.
- There is also a need for better quality of communication between the senior and junior police personnel[85](CHRI: 2000).

5.3 Feasibility of the pilot proposal

At present the issue of police reforms and police accountability in India is alive again[86]. The recently concluded Police Reforms Committee[87] has *inter alia* recommended for: setting up of a non-statutory *District Police Complaints Authority* specifically *to monitor investigations into complaints of serious violations of law and human rights by police*; replacing the Police Act of 1861 to establish *a clear break with the old philosophy and old style of workin*g, and *reordering of priorities* by the state governments as the central government annual assistance for modernization has been increased from Rs. 500 million to Rs. 10 billion for each state police forces[88].

I view political non-interference, non-opposition from police leadership, resource mobilization, education and legal awareness of the people as crucial for the success of the

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awareness of Human Rights issues is goo, but there are some gap here too; (iii) Attitudes towards Human Rights are wrong and are at the root of the problem (CHRI: 2000).

[85] During our discussion with lower ranks the dissatisfaction among them about the way the senior officer and department in general treats them was more than about the way society treated them. There were three basic problems: "Firstly, their posting, transfers, rewards, punishment etc. are determined not on merit but on extraneous considerations. Secondly, while seniors keep on getting their promotions in time, they do not bother abut the career of the lower ranks. Thirdly, *behavior of senior officers towards lower ranks is not merely harsh; it is sometimes rude and abusive*" (emphasis added). I was a member of the research team of *Police-Public Interface Project.*

[86] Moreover, a number of NGOs have identified the need for police reforms, national and regional press has been relaying the ideas for police reforms, and the NHRC has made regular requests for institutional and legal reforms of the Indian Police. The Law Commission of India recommendations for police reform is long overdue and unimplemented.

[87] The Padmanabhaiya Committee has submitted its report to the Government of India in August 2000. The report has not been published yet but some excerpts have appeared in the Indian national dailies.

pilot proposal. The workability of the proposal needs to be tested on these especially. In my view, the 3-tier mechanism challenges the existing local power structure but the statutory provision of certain compulsory members to be nominated from diverse interest groups like, minorities and backward classes, etc. will aid in balancing it. Similarly, opposition from police organization would be reduced considerably if working or retired police officers are included in the proposed bodies. The need for human and material resources to initiate and sustain any reform activity is crucial but can be overcome.

A possible strategy could be to introduce the pilot through the current GoI and UNDP project for *improving the organization and management of the law enforcement*[89]. This experimental project[90] is being conducted in nine selected police stations of six districts in three Indian states "*to assist the government in capacity building for an effective and efficient law enforcement system through new management initiatives and processes sensitized to be communally responsive and community friendly particularly in the context of economic liberalization*" (Government of India and UNDP: 1995).

I recommend the pilot to be tested in the nine *model police stations*[91]. Alternatively, the pilot could also be tested in one or more of the Union Territories that are governed by the Central Government. This will also demonstrate the intention and commitment of the Union Home Ministry and the Central Government for instituting police reforms[92]. It could also be stated generally, that some other Indian states like Kerala, Maharashtra, etc. also stand in good stead for testing of the pilot proposal because of better literacy rate and relatively higher participation of the people in local self government. However, states like Bihar and Uttar Pradesh are not being recommended to try the pilot due to the fact that the *command and control structure has totally collapsed*

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[88] The potential for introducing a pilot case can therefore be considered as part of modernization scheme.
[89] Government of India and UNDP document IND/95/007: *Improving Organization and Management of the Law Enforcement System: 1995.*
[90] Under this project three Indian States of Assam, Rajasthan, and Tamil Nadu have been identified. During the last five years, a number of police officers and members of the constabulary (from the earmarked model police stations) have been sent for study trips to Singapore and United Kingdom. In India, these police personnel were given extensive training and exposure about the problems faced by the members of community when they visit the police station to lodge ordinary complaints i.e. the First Information Report. The trained staff is now acting as *change agents,* at their respective job stations.
[91] These 9 select police stations of the 3 States are a mix of rural and urban police stations.
[92] This is important also because the Central Government often accuse of State Governments of not initiating meaningful police reforms.

in Bihar and to a great extent in the State of Uttar Pradesh[93] (Padmanabhaiya Committee Report: 2000).

After careful monitoring and evaluation, the strengths and weaknesses of the pilot may be appreciated and modified versions may be tried in other Indian states.

As observed by Prof. Bayley, "People get the government they deserve. By extension, people must get the police they deserve"(Bayley: 1969).

[93]Ironically, it would be states like Bihar and Uttar Pradesh that need police accountability mechanisms the most. See supra n. 55.

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APPENDICES

Appendix: I Past Recommendations For Police Reforms In India

Some pertinent Recommendations of the NPC

Some of the major recommendations made by the NPC were: (1) Setting up a State Security Commission in each state to: lay down broad policy guidelines; evaluate the performance of the State Police; function as a forum of appeal to dispose off representations from officers regarding their being subjected to illegal orders and regarding their promotion; and generally review the functioning of the police force; (2) Investigative functions of the police should be made completely independent of any extraneous influences; (3) The Chief of the State Police Force should be selected from a panel of three IPS officers of the State cadre and the Police Chief thus selected should have a minimum fixed tenure; (4) The Police Act of 1861 should be replaced by a new Police Act, which not only changes the system of control and superintendence over the police but also enlarges the role of the police to make it function as an agency which promotes the rule of law in the country and renders impartial service to the people; and (5) Establishment of District Inquiry Authority (Judicial body) with Additional Session Judge and Additional Superintendent of Police as the 'assessor' to deal with complaints against the police (GoI:1981 parenthesis added).

Some pertinent Recommendations of the Riberio Committee on Police Reforms[1]:

Some of the major recommendations it made included: (a) Setting up of a Police Performance and Accountability Commission with the Minister in charge of Police as the Chairperson, the Leader of the Opposition, the Chief Secretary of the State, a sitting or retired Judge nominated by the Chief Justice of the State's High Court and three other non-political citizens of proven merit and integrity as members; (b) The Commission will

[1] Based on a reference made by two retired IPS officers, to the Supreme Court asked the Committee to review action taken to implement the recommendations of the NPC, particularly focusing on the need, relevance and their practicability of: (a) Setting up a Security Commission or Police Authority in each State and at the Center on the lines suggested by the NPC, NHRC and the petitioners, and if so its functions and composition; (b) Prescribing a procedure for the appointment of Police Chiefs which would be transparent and ensure that the best officers are selected and giving the senior incumbents a minimum tenure; and (c) Insulating the investigative wing of the police from its law and order functions.

have advisory and recommendatory powers for the present. The State's DGP will be its Secretary and Convenor; (c) The Commission will oversee the performance of the Police and ensure it is accountable to the law of the land; (d) A District Police Complaints Authority will be set up in each Police District as a non-statutory body to examine complaints from the public of police excesses, arbitrary arrests, false implications etc.; (e) Monitoring of all transfers, promotions, rewards and punishments together with other service related issues will handled by a Police Establishment Board in each State; and (f)Chief of the Police in every State will be selected by the Chief Minister of the State from a panel of three names prepared by a Committee headed by the Chairman of the Union Public Service Commission and consisting of the Union Home Secretary, the Director of the Intelligence Bureau, the States' Chief Secretary and the State's incumbent Director General of Police. The tenure of the Director General of Police in the State will be fixed for three years (First Report of the Riberio Committee on Police Reforms [Unpublished]).

Appendix: II Some official statistics on police misconduct

The table 1 below provides information on numbers of complaints/allegations received against police personnel; the number of inquiry instituted such as Departmental, Magisterial and Judicial; the number of complaints/cases found false/unsubstantiated; the number of cases that were registered during the year; and the number of cases either reported for regular departmental action or sent up for trials/charge-sheeted.

Table: 1 Number of Complaints, Inquiries and cases registered against Police Personnel during1995-97

Year	No. of complaints received/ Alleged during the year	No. of Inquiry Instituted			Complaints/ Cases declared false/ Unsubstanti-ated or not found true	No. of cases registered during the year	No. of cases	
		Depart-mental	Magiste rial	Judicial			Reported for regular Department al action	Sent up for Trial/char ge-sheeted
1995*	76954	17290	259	403	24682	7866	1767	4408
1996**	36624	14527	291	319	28347	2214	3603	1281
1997***	1,23,523	12357	326	460	35071	2276	2324	1501

*Data not available from Bihar, Gujarat, Meghalaya and Daman and Diu in 1995
**Data not available from Bihar, Daman & Diu and Delhi in 1995
***Data not available from Daman &Diu in 1997
Source: Crime in India 1997, p. 345
Note: The Table does not show the cases pending in a year. In my view, therefore, in a large number of cases the complaints are either not taken up by the Police Department or they drag on for more than a year and so figures may not add up to the total number of complaints received in a year.

The magnitude of departmental action against its erring police personnel is relatively better than the formal complaint mechanism through the courts. Statistics shown in Table 2 below indicate that during 1997, 18144 police personnel were tried under departmental inquiries. Cases against 2835 police personnel were either withdrawn or otherwise disposed off. Departmental trials were completed against 8914 personnel. At least 22,230 police personnel were charged with minor punishments and 3105 police personnel were awarded major punishments. Moreover, 1063 police personnel were dismissed or removed from service in the country. The Table below provides a comparative detail of departmental action and punishment awarded to police personnel during 1995-1997.

Table: 2 Departmental Action and Punishment awarded to Police Personnel during 1995-1997

Serial No.	Year	Number of Personnel				Major punishment awarded	Minor punishment awarded
		Against whom Disciplinary action initiated	Whose cases withdrawn or otherwise disposed off	In whose cases proceedings were completed	Dismissed/ removed from Service		
1.	1995*	9787	1993	2308	511	1884	9018
2.	1996**	14299	2649	5453	488	2204	21426
3.	1997***	18144	2835	8914	1063	3105	22230

*Data not available from Bihar, Gujarat, Meghalaya and Daman and Diu in 1995
**Data not available from Bihar, Daman & Diu and Delhi in 1995
***Data not available from Daman &Diu in 1997
Source: Crime in India 1997, p. 347
Note: The Table does not show the number of cases pending in a year and therefore the figures may not add up.

It may be noted in the Table 3 below that not all the cases that are sent for trial end up in conviction. A majority of the cases are withdrawn or otherwise disposed of. Moreover, the trial proceedings are time consuming and only a few hundred cases are tried in a year. Even in cases where trial is completed a majority of cases are reported to end in acquittal. For instance, during 1997, as many as 2055 police personnel were sent for trial against whom complaints were investigated and charges framed. In 277 cases trial was completed, while 428 cases were either withdrawn or disposed of otherwise. During the same period 169, police personnel were acquitted and the courts found only 54 police personnel guilty.

Table: 3 Number of Police Personnel under trial convicted and acquitted

Serial No.	Year	No. of Police Personnel sent up for trial	No. of Police Personnel whose Cases withdrawn or otherwise disposed of	No. of Police Personnel in whose cases trial was completed	No. of Police Personnel	
					Convicted	Acquitted
1.	1995*	2081	478	330	31	161
2.	1996**	1772	363	278	79	146
3.	1997***	2055	428	277	54	169

*Data not available from Bihar, Gujarat, Meghalaya and Daman and Diu in 1995
**Data not available from Bihar, Daman & Diu and Delhi in 1995
***Data not available from Daman &Diu in 1997
Source: Crime in India 1997, p. 346
Note: The Table does not show the cases pending in a year. Therefore, in my view, in number of cases trial generally may take more than a year and so the figures may not add up to the total number of police personnel sent up for trial.

The table 4 below provides the number of deaths in police custody as reported to the NHRC by some select Indian states/ union territories.

Table 4: Reported cases of deaths in Police Custody by some State Governments/Union Territories of India

S. No.	Name of the State Govt./Union Territories	From 01.04.95 to 31.03.96	From 01.04.96 to 31.03.97
		Police Custody	Police Custody
1.	Andhra Pradesh	10	27
2.	Bihar	8	14
3.	Gujarat	15	18
4.	Harayana	4	2
5.	Karanataka	3	8
6.	Maharashtra	9	21
7.	Uttar Pradesh	13	32
8.	West Bengal	14	6
9.	Delhi	7	5

Source: 1996-97 Report of the National Human Rights Commission pp. 93-94

Appendix: III **Details of Citizens' Complaints Mechanism and its District level units**

Neighborhood Complaints Committee (NCU)

The NCU should be a statutory local level body consisting of non-political and non-police members empowered to receive, assess, investigate, adjudicate and recommend to the Station House Officer for appropriate disciplinary actions; and deal with the complaints. The utility of having a NCU at the local level is to provide relief over police misconduct through local conciliatory processes as many of the complaints may have lot to do with misunderstanding over the use of police discretion over an issue. It should generally have a large composition with equal male female representation with proper representation of the minorities and Scheduled Caste and Scheduled Tribes. This is suggested because sometimes the decisions of the NCU might demand a vote on the issue initiating disciplinary proceedings against police personnel. In order to check that the voices of women or less represented people especially, the minority and other backward communities do not escape the concern of NWU they must be well represented in the NCU. In order to ensure that some members of the board are educated (parituclarly in the villages), two members shall possess minimum of a Higher Secondary education (i.e. Pre-Degree / XII Standard) qualifications and a senior teacher nominated by the District Education Board shall be its compulsory Member Secretary. The maximum time period required by it to assess, inquire and settle a complaint shall generally not exceed one month. This is suggested based on the assumption that if a number of complaints have a lot to do with misunderstanding or petty instances. However, if the complainant is not satisfied then he/she shall be free to approach the higher body of the complaints' mechanism (See, Table 1).

Citizen's Complaints and Inquiry Committee (CCIC)

The CCIC should be a statutory and the governing body of the district for complaints against the police. It will be empowered to receive, assess, investigate, adjudicate and recommend to the District Superintendent of the Police for appropriate action; and deal with the complaints. It will also be empowered to deal with complaints

directly, if desired. The CCIC will also consist of three district level bodies namely the (i) Complaints Unit (CU); (ii) Public-Police Co-operation Unit; and the (iii) Data Research and Analysis Unit (DRAU). The CCIC should be a separate office and not within the Office of District Superintendent of Police but located at the District headquarter with necessary permanent staff. The Complaints Unit should be a separate unit of the CCIC. This is suggested so that public may approach such a committee without fear or favor.

The CCIC shall consist of a cross section of the community with proper representation of the minorities and women members so as to ensure that it is peoples' forum. Our proposal for peoples' police accountability forum for police misconduct must not alienate the police from public therefore it is proposed that the District Superintendent of Police should be the member secretary of the CCIC. It is important that besides a statutory status of this forum the functioning of the institution must be free from political interference therefore the chairperson shall be a non- police and non-political member of the community nominated by the State High Court and District Prosecutor shall be its compulsory member. The role of public prosecutor shall be to provide legal expertise over the matters brought before the CCIC. As investigation is a professional skill it is recommended that out of twenty members of the CCIC a maximum of total four members shall be a mix of serving and retired police officers. However, over a period of time it might be possible that ordinary citizens too acquire this skill through experience and this number may be expected to reduce further.

While receiving and inquiring citizen's complaints on police misconduct shall be one of its crucial tasks, the mandate of the CCIC shall be to tackle larger policing problems that engender police misconduct and brutality in the district[2]. The CCIC shall also have *suo*

[2] The Charter will also include the general level of police performance desired in the district for instance, the pattern of crimes committed in the district, its proximity to state and national borders, pattern of police misconduct, and the maximum time required to investigate and settle complaints both, minor and major cases of police misconduct, etc. Such a Charter may be revised every five years and reasons for amendments or making no amendments should all be made public. However, any complaint against the CCIC members shall lie with the State level Committee.

motu powers to conduct investigations in cases of police misconduct that are identified, brought to its notice or desired by it.

The CCIC shall appoint 'observers' that will conduct investigations into the alleged complaints against the police officers. In cases where the CCIC investigations confirm that a police officer has been negligent in conduct of his/her duties then CCIC can recommend to the Superintendent of Police to take appropriate action against the erring officer(s) (See, Table: 8). In all such investigations proceedings the complainant(s) shall be regularly kept informed about the progress of the complaint.

(i) **Complaints Unit (CU)**

The Complaints Unit should be a unit that will support people initiative to come forward to report police misconduct and provide them basic assistance required for reporting misconduct. The unit may be situated in the office of the CCIC. The CU will receive and maintain record of all the complaints against the police. It will process the complaints on demographic basis and the nature of crime committed and the people involved. It shall also assess the It shall collate all information received and provide it to CCIC and the Data Research and Analysis Unit on a monthly basis. The maximum time period required by it to assess, inquire and settle a complaint shall be also be notified to the complainant and generally not exceed 3 months.

All decisions of the NWU will be based on consensus, except if, no consensus is arrived on then on the basis of a majority vote. However, the details of the complaint and its outcome shall be recorded and included in the monthly report to the CCIC. The NWU shall also help in training and building local Youth Clubs and provide local schools with their knowledge and experience about policing issues by conducting workshops and meetings.

(ii) Public-Police Cooperation Units (PPCU)

There is basic need for strengthening public and police relations and engender trust and confidence among each other. The PPCU should take on this responsibility to build and

an environment through education of police role and their powers together with promoting legal literacy. This will help people to develop an understanding of the role of police, the problems police face and the constraints under which they function. Police alone is not responsible for to control all the crime in the society and neither can it control all the reasons that give birth to crime in society. The PPCU will also work over awareness building among the citizen and inform them about their legal rights and duties as citizens. These units shall be linked with State Police Training Institutions and other National Police Academies to seek technical support, if needed. Moreover, the work of the PPCU can be linked with schools and colleges of the District. Conducting workshops in the schools and encouraging the higher educational institutions to conduct surveys and data collection on police-public interface problems.

(iv) Data Research and Analysis Unit (DRAU)

The Data Research and Analysis Unit not be directly linked with police misconduct or police accountability proceedings but will serve a larger purpose in collecting, collating and conducting detail research and analysis on various relevant issues. It will build close working relations with other social research and academic institutions within and outside the district.