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CANADA

## **Police Reform Initiatives in India**

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### **Background**

Dr. Doel Mukerjee works in the Police, Prisons and Human Rights Programme at the CHRI. The program is presently in India and East Africa. In 2005 CHRI will publish a report on “Police Accountability in the Commonwealth Countries” and present it to the Commonwealth Heads of Government Meeting, composed of 54 national leaders. The program aims to bring about reforms by exposing police abuse, pointing out the difficulties and challenges that law enforcement agencies confront and enlisting public support for the same. Dr. Mukerjee's expertise in creating a culture of human rights within the criminal justice system comes from her wide academic and activist background fighting for violence against women issues and for police reforms.

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organization, mandated to ensure the practical realization of human rights in the countries of the Commonwealth. The Initiative was created as a result of a realization that while the member countries shared a common set of values and legal principles, there was relatively little focus within the body on human rights standards and issues. Its activities seek to promote awareness of and adherence to international and domestic human rights instruments, as well as draw attention to progress and setbacks in human rights in Commonwealth countries. It does so by targeting policy makers, the general public and strategic constituencies such as grassroots activists and the media to further its aims through a combination of advocacy, education, research and networking.

While attending a training course at the Canadian Human Rights Foundation in Montreal, she presented at South Asia Partnership Canada at the invitation of the Daughters of Democracy program. There were participants in the audience from Corrections Canada, the Department of Foreign Affairs and International Trade and civil society organizations.

## Proceedings

Police as law enforcers are mandated to ensure that the rule of law is implemented in letter and in spirit equally for all citizens. However, in many Commonwealth countries the police are perceived as failing to live up to their duty. In India, for example, the police often face accusations of not only being derelict in their duty to uphold the law, but of directly violating the human rights of citizens and suspects, through discrimination or harassment or excessive use of force. Thus, any serious commitments on the part of the Commonwealth and its member States to ensure the realization of human rights and good governance must also include addressing the issue of police accountability and reform.

Foremost among these was the communal riots in February 2002 in Gujarat, India where police complicity and connivance with the government was apparent. Non-governmental organizations, such as the Red Cross, were prevented from doing their work, aid contracts with foreign governments were cancelled and, as a result, relief goods perished in warehouses. The situation was not only the persecution of the minority community in a secular state, rather, the genesis of the problem was a fundamental lack of good governance.

Ahmedabad Police Commissioner Prashant Chandra Pande had admitted that "where the whole society has opted for a certain colour in a particular issue, it's very difficult to expect the policemen to be totally isolated and unaffected." The Chief of the Police force of the State capital was defending the largely sectarian response of his police force, which has been charged with the task of putting down revenge killings by Hindus in the state of Gujarat<sup>1</sup>. This reasoning offered by an official of the rank of police commissioner indicates the extent to which sectarian prejudices have seeped into the police system. The bias shown by the police was ignored and, at times, even endorsed by a chauvinistic state government that took its time deploying the police, army and paramilitary forces and which refused to entertain charges of inaction<sup>2</sup>. There is strong evidence to show that the police force not only failed to handle the disturbances efficiently but showed partiality in dealing with the rioters. They were not merely indifferent but complicit in several incidents of violence targeted against the minority community in the state. Besides the loss of lives and property of the riot victims, the state has suffered an economic loss of over Rs. 3000 crores between March to September 2002. Incidents such as these have blackened all the initiatives that the Government have taken through time.

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<sup>1</sup> The killings began after a Muslim mob torched a train carrying Hindu activists returning from Ayodhya, the northern Indian town where the Vishwa Hindu Parishad (VHP), a Hindu right-wing group, has laid claim to a piece of land on which a mosque previously stood. The VHP and its affiliated groups destroyed the mosque in 1992 in an attempt to construct a Hindu temple on the site.

<sup>2</sup> Asian Human Rights Commission - <http://www.ahrchk.net/hrsolid/mainfile.php/2002vol12no03/2217/>

## **Federal-International Responses**

The United Nations Development Program and other organizations have put together initiatives to improve police organization in India. The main goal of these efforts has been to change police attitudes. In this program, over 200 police personnel from different parts of the country received training for two years. They were then sent to the United Kingdom and to Singapore to study how the police system functions in those countries. It was expected, upon their return, that the participants would share their experiences with peers, in the hope that there would be a ripple effect upon police stations all over India, eventually improving how officers behaved within their communities.

Improving police behaviour is one of the biggest challenges, as mistrust of the police is deeply imbedded in many levels of Indian society. Most of the time, said Dr. Mukerjee, citizens do not want to reach out to the police, even in times of crisis. The CHRI conducted a survey of police personnel attitudes and the perception of the Indian public in Tamil Nadu, Rajasthan and Assam to assess the impact of the UNDP training. Staff was amazed to see that the doors were literally slammed in their faces in Assam. People did not want to talk about the police at all, and upon some probing, the CHRI found that, among the many reasons for this fear, were claims that there were incidents of people who had walked by a police station had been abducted by the police for ransom. Presently, the CHRI has started a campaign under the slogan, "Police reforms too urgent to neglect, too important to delay" for its India-based programs.

Dr. Mukerjee did point out that, in spite of such incidents, the situation of police behaviour in India is not so dire. She credits the government with several spirited initiatives to reform the police system at certain points of time.

During the emergency of 1971, Prime Minister Gandhi took forceful measures to consolidate her power, curtailing freedom of speech and expression and arresting numerous voices of dissent. When the Janata Party defeated her in ensuing elections, they instituted the Shah Commission, which looked at the malpractices of the previous government, including the behaviour of the police forces during the State of Emergency. The new government set up the National Police Commission (NPC) in 1977, headed by Shri Dharamvira to comprehensively review the working of the police system in India and to suggest new reforms to make it accountable to citizens. The NPC produced a series of eight comprehensive reports on this subject and made several recommendations regarding police welfare, training and public relations. However, when Indira Gandhi returned to power in 1981, she disbanded the National Police Commission and allegedly disposed of all the reports.

The major recommendations from the disbanded National Police Commission that the Commonwealth Human Rights Initiative is advocating with the present government are:

- that a Chief of Police of a State is to be assured of a fixed tenure of office so as to encourage functional independence. It has been commonplace in India for transfers and postings of officers to be used as a kind of reward and punishment, as a result of which, many chiefs of police have had allegiances to political parties;

- that there be no external interference in police work;
- that a Security Commission should be established in each State;
- that the Police Chief be selected by an independent expert committee; and
- that the Police Act of 1861 be replaced by new legislation.

Indian reformists are quick to point out that Pakistan has instituted a new police ordinance, asking if the Indian government wants to be seen as being left behind?

The CHRI started raising awareness of the National Police Commission Report in 1996 on the basis that the Report had been done at the taxpayers' expense and therefore the government had to be accountable. The CHRI found two allies at that time in Mr. N.K. Singh and Mr. Prakash Singh, both retired Directors General of Police, who made a petition to the Supreme Court stating that there was a need for a new Police Act, that the State Security Commission<sup>3</sup> should find its place, that police investigations should be independent of enforcement and that the best officers should be in the top positions in the forces. They also spoke to the media about issues of police brutality and pointed out how law enforcement had lost respect with the citizens.

In 1997, with the change of government, the Home Minister Mr. Inderjit Gupta, who was well-informed about the National Police recommendations, wrote a letter to all 23 Chief Ministers that there is too much political influence in the police system, no reference to accountability in the functioning of the police, no redress system for the public and no public relations provisions. He received no response from any of the State leaders. Dr. Mukerjee said there were vested interests in not having the NPC recommendations implemented, as the politicians needed the support of the police at election time and to consolidate their powers. To date, none of the major recommendations made by the NPC have been implemented.

### **State Police Reform**

However, over the last few years, some State governments and police departments have started to draft new legislations for the police, but these fall short in areas like accountability, transparency, superintendence and control over the police and people's participation. The prominent amongst these are the Madhya Pradesh Police Bill, the Andhra Pradesh Bill, Rajasthan, Himachal Pradesh, Assam, Punjab and last week the Minister of State for Home Affairs mentioned that a committee has been set up by the

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<sup>3</sup> The Functions of State Security Commission, as recommended by the National Police Commission are:

- to function as a forum of appeal for personnel regarding their being subjected to illegal orders or with respect to promotions; and generally to review the functioning of the police force. It was suggested by the NPC that the State Security Commission should not be more than seven members and would include the Chief Minister of the State as well as two members of the State legislature and two prominent citizens nominated by the Chief Minister and the Leader of the opposition party at the Legislature. The Commonwealth Human Rights Initiative has been wary of this particular criteria, as it does not want a situation whereby one political party has a say in the postings and transfers of police officers.
- to lay down broad policy guidelines; to evaluate the performance of the state police;
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federal Government to draft a Police Act. However, no one is aware of the details which again leads to legislations with out public participation in the process.

### **Judicial Initiatives**

In spite of these political setbacks, though, the prospects for police reform on the judicial front have been quite promising. The Supreme Court has been very proactive with regard to bringing about police reforms.

The Supreme Court has passed several positive judgements in this regard:

**-Havala case:** concerning money laundering to foreign accounts: the Central Bureau of Investigation (CBI) (a national police body equivalent to the RCMP) had levelled the charge that politicians were involved in such money laundering and that investigations into these activities were being influenced. The Court CBI should have complete superintendent control over its functions; this case was extremely important in being the first judgement where superintendence and control over police has been indicated.

**-D.K. Basu judgement:** a seminal judgement of ten points that addressed the rights of citizens when they come into contact with the police. The guidelines for arrest and detention should be accessible to all citizens, ie. be posted and visible in every police station. However, this really doesn't happen unless and until there is direct advocacy with officers and chiefs.

After the 1996 civil writ petition, the Supreme Court asked the Government to look into whether the ten-year-old recommendations of the National Police Commission could be implemented or not. So the Government constituted yet another Commission. This committee was headed by a retired police chief, Mr. J.F. Ribeiro. After a one-year delay during which there were problems over who would chair the committee, it traveled the country seeking citizens' input and concluded that any recommendations made by the State Security Commission should be non-binding. It was clear that these and other findings of the Committee would clearly result in a dilution of the NPC recommendations. The recommendations made by the Committee were criticized and soon the government instituted another committee in 2000, called the Padmanabhaiah committee. While agreeing with the suggestion of its predecessor that the State Security Commission recommendations should be non-statutory, the new committee stated that community policing should be adopted as a philosophy within the Indian police organization.

### **National Human Rights Commission response**

The National Human Rights Commission was established by an Act of Parliament in 1993, and although it is fully financed by the Government, it has taken many independent steps (for example, taking the position at the World Conference on Racism that caste was a form of discrimination; and the Gujarat riots where the Commission said that there was Government and police inaction). The NHRC's directives are followed by both police and government as it is a statutory body. For example, in 1996, the Commission said that it will be mandatory to report custodial deaths/rapes within 24 hours to the Commission and to the Police headquarters and a First Information Report (FIR)<sup>4</sup> must be registered in the police station.

In another example, the Commission also ruled that a fixed procedure must now be followed with regard to reporting extra judicial killings within 24 hours.

### **Seminar Questions & Answers**

In response to a question from the audience, Dr. Mukerjee explained that, in the case of a custodial death, the family of the victim must be given compensation by the State on the directive of the Commission. This compensation money may be recovered by the accused officer. However, the NHRC works on a case-by-case basis and increasingly, the State Government is being made to pay for the compensation, but the rate of recovery of the money from the accused by the State remains low. Presently, the NHRC receives over 74,322 complaints against police personnel in a year.

The NHRC has also set guidelines where its members and the members of the State Human Rights Commissions can make surprise visits to police lock-ups, to ensure that suspects spend not more than 24 hours in detention without seeing a magistrate. When the CHRI visited Assam as part of the UNDP project evaluation of community policing relations, Dr. Mukerjee saw detainees who had been locked up for more than five days. Police were reported to have been threatening the visitors to the police station to be arrested under the anti-terrorism laws if they were found speaking to the detainees.

The NHRC also stated that guidelines on arrest had to be made available to all police stations. They tried to improve police public relations by setting up human rights cells; however, some of the cells don't function, due to lack of support from the State government. The awareness of the Supreme Court guidelines is also not common amongst the officers as these are not widely disseminated or they do not percolate to the police station level.

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<sup>4</sup> FIR: also called the First Information Report. It is prepared in accordance with the section 154 of Cr. PC and Police Manual form no. 26 rule 143. According to the recent notification of NCRB there are 12 descriptions to be entered into it. Details of FIR number, date, district subdivision, police station, the sections and act under which the case has been recorded are minutely written. Occurrence of offence with date and time period and the information received at police station and the timing when the FIR was lodged with the reference in the police station diary entry are reflected. Whether the information is written or oral is mentioned.

The UNDP project in 1999 touched 9 police stations around the country. It sought to improve public attitudes towards police personnel. A new round of training has been undertaken by the Delhi police, but the officers who took part in the program to date have not shared or have been open to any police public relations programme. They even refused to speak to a CHRI team.

Another initiative taken by the Government is the review of the criminal justice system. This massive report took two years and made 289 recommendations in May 2003 this year. The CHRI could agree with some, but not all, of these new guidelines: suggestions such as separation of investigations from enforcement wings in the police, national implementation of the NPC recommendations and individual Police Acts for each State are in accord with the CHRI's mandate; however, other recommendations, such as the admissibility of statements made before the police as evidence under new anti-terrorism laws have proved to have led human rights work a back seat.

Another organization that is doing excellent work in the area of police reform is the British Council in India, which is doing training of personnel for leadership qualities. The project works well with smaller groups of senior officers, who are encouraged to take their own initiatives for one year and then report back to the Council on how they have tried to improve their organizational structure and build bridges with the community.

The CHRI started its police reforms work in 1996 to educate people on basic human rights issues, including the National Police Recommendations, and to advocate with the Government for reform of police structures and institutions. Presently, several police organizations and State Governments in the country are drafting Police Acts (Police is a State subject in the Constitution) and CHRI is helping some of the drafting committees to incorporate the ideas of accountability mechanisms, people's participation and transparency in actions of the personnel. So while the work of the CHRI and other organizations has been valuable, the political executive's lack of attention to such major areas of police reform have been demoralizing to the human rights community.

Dr. Mukerjee pointed out that the prison reforms programme is relatively small and has a narrow focus. Prison is an area which is inaccessible and can not be penetrated. It is an area where there is total destitution and the mechanisms of accountability into the system are now defunct. This makes the prison population which is largely the people who are under trials to be at the mercy of the ruthless system. However, through consistent research, CHRI's has found that there is an old prison-visiting system that was part of the British legacy which now lies defunct. After independence, the politicians gave patronage appointments to citizens to be prison visitors, but these individuals lacked training. Now the CHRI and State Human Rights Commissions of Madhya Pradesh and Rajasthan are giving proper training to these visitors as a means of ensuring transparency and accountability in the system.

In the discussion period that followed Dr. Mukerjee's presentation, she was asked to give an overview of the activities of the National Human Rights Commission of India. Over the years, the NHRC has worked well in various areas of bringing accountability to the

people. However, it still remains that police and prison reforms are not core areas of NHRC's work. There is a pressing need at the moment for this institution to advocate for structural changes in these institutions. The institution has taken several bold steps as in the case of the Gujarat Violence especially in the Best Bakery case where the NHRC has made a petition to the Supreme Court for a retrial in the case where 18 people were burnt alive in a bakery supposedly by several people who were politically well connected in Gujarat; thus exposing Government connivance in the violence.<sup>5</sup>

A question was asked about the UNDP Police Training Project that Dr Mukerjee had earlier referred to. The Government's Home Ministry, the Bureau of Police Research and Development and the UNDP got together in 1997. The project brought together experts from other countries and 200 Indian police officers of every rank and file, with the aim of improving police relations with the community. Some very practical measures were taken to enhance the approachability to the police: for example, making police stations look more friendly on the outside by increasing lighting, keeping it cleaner, etc.

CHRI finds that the police organization should be made less hierarchical as at present there are several lateral entry point in the police. The usual route of entry into the force is after the 10th standard; there is also another entry point at the State level, where people who are graduates join the State police services in higher positions and there is also the management levels where the entry is at the level of Indian Police Service officers, which leads to stagnation in promotion avenues. This often leads to cases where a constable remains a constable for the larger part of their service. There is also discontent where senior police officers misused manpower for their personal gains.

There is also a need to educate the people as the citizens are not aware of their rights and duties while interacting with the police. In Rajasthan, for example, the citizens complained that the officers had become too polite after the training leading to discontent amongst the public.

CHRI is also advocating as in the NPC for security of tenure. It is found that the tenure of a police officer is dependent on the whims of the politicians especially the Chief Ministers. There is lack of cooperation between the State Governments and the Central government especially when a certain initiative is being taken to reform the police. The CHRI team while evaluating the UNDP experiment found that officers who were trained to deal with the community and also train their peers were transferred to non-field posts, which led to a vacuum again in the relationship between the people and community.

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<sup>5</sup> The Best Bakery case resulted in the trial court acquitting all the accused for lack of evidence, primarily because during the trial most of the prosecution witnesses resiled from the statements containing the allegations against the accused, which they had given to the police. As it became clear subsequently, the witnesses turned "hostile" owing to intimidation and threats from the accused persons. A key witness, Zahira Sheikh, explained to the NHRC how she had, during her appearance before the trial court, to resile from the statement she had made to the police and named the persons who had threatened her and her mother. In its petition, the NHRC brought to the notice of the Supreme Court that even as one witness after the other, including the principal eyewitnesses, turned hostile

Even, community policing or people participation programs are unable to take shape at present due to the lack of institutionalization of the concepts in the Police Act or there is no statutory basis.

The CHRI has been systematically documenting the best practices in other countries and also has studied the Police Acts in different countries and wants to showcase this information to the Government to adopt.

Police officers receive relatively little training in human rights. In the various Police Training Colleges in the country today only about one per cent of the two-year course is devoted to human rights. Today only a few NGOs are involved in police sensitization courses.

Another questioner asked whether there are state human rights commissions in India and whether they liaise with the State police forces; also, whether there is communication between the NHRC and the State Human Rights Commissions. The NHRC and the State Commissions do make recommendations, but these are not always accepted by the Governments involved. As a result, the Commissions make petitions to the High Courts or Supreme Courts. The NHRC, which passes guidelines and recommendations from time to time, depends on the different State Commissions to execute the recommendations over and above the recommendations that are made by the State Commissions to the State Governments.

In response to a question about whether there is gender-sensitivity training for law enforcement at the State or federal level, Dr. Mukerjee replied that this is supposed to be given at the Police Training schools, as well as during the two-year Indian Police Service training course for officers, but very little takes place. With regard to recruitment of women into the force, there is no formal reservation policy for women candidates. CHRI's research has also shown that there is harassment by male colleagues.

Another questioner asked whether, in all the reports such as the Padmanabhiah Committee recommendations or Ribiero Committee Recommendations or the NPC the issue of corruption or links to organized crime was ever discussed? Dr Mukerjee replied that the primary objective of the NPC was to highlight the police criminal and politician nexus as in the Second report and also the recommendations that were made by the Shah Commission in 1978 was an obvious pointer to the malpractices made by the police.

Regarding salaries for personnel, for example, there was a review of government salaries when liberalization of the national economy took place; government salaries increased threefold at that time. So now there is not much difference between low and high-ranking officers in terms of pay.

Discrimination is still prevalent within the police forces. About 50 per cent of those who join the government are through reservation of posts for the scheduled castes 15 per cent; Scheduled tribes 7.5 per cent and 30 per cent for Other Backward Castes (OBCs). In some rural outposts, there is caste segregation in the police messes where different caste groups cook their food in separate kitchen in the police barracks.

Dr Mukerjee addressed the impact of the 2001 terrorist attacks on the United States in India. After those attacks, anti-terrorism laws were passed which curtail the civil liberties of people. In India anti-terrorism legislation (POTA) was passed in 2001 and there have been numerous cases of abuse under its provisions. Children as young as 8 years of age and elderly people as old as 80 have been incarcerated without trial under the POTA, some for as long as two years. When human rights organizations brought these cases to the attention of the NHRC, the Commission passed a directive to the Federal government. When the media caught wind of the abuses, a debate in Parliament soon ensued, and as a result, many detainees were released.

Another participants asked Dr. Mukerjee if there was anything from her course at the Canadian Human Rights Foundation that she would take back to her work in India? She said that the CHRI had been training some police officers and the civil society groups, but what was lacking was participatory methods and how to incorporate international human rights standards in the sensitization courses.

In spite of all the difficulties that the Government throws to the media groups and the NGOs in India, the Government is aware that there is a need to bring in structural changes in the system to make institutions more democratic. The reforms process is slow, yet not at a standstill and with this deep conviction, CHRI and other human rights organizations take their cue and work steadily towards reforms and builds up a constant pressure on the Government.