

MAPPING POLICE ACCOUNTABILITY SPECTRUM: ISSUES FOR BUILDING QUALITY OVERSIGHTS WITH A MULTICULTURAL FRAMEWORK

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The twenty-first century has thrown up major challenges to policing. These have added new dimensions to the principles and scope of police accountability. With the globalisation of rights and crime, the threat posed by terrorism, technological revolution and the emergence of diaspora, the nature and scope of policing has been transformed. With the introduction of new principles of governance in the new era, it would be appropriate to delineate the nature and scope of policing and the corresponding principles of accountability. This will largely depend on what this new era symbolises? What are the main characteristic features of the new global order?

The new global order with its emphasis on globalisation of capital and restricted mobility of labour without ensuring distributive justice has brought into focus issues relating to national and human security. Further, the state having abdicated to the market its responsibility to meet the survival needs of the people, its role has been reduced to performing regulatory functions. The regulatory state has to depend excessively on the police to look effective and efficient.

It is pertinent to note that the 'new' path of development i.e. the integration of countries into the global market has accentuated intra-state conflicts. The developing countries have become more vulnerable to these dangerous trends. The 'new' path of development in its interaction with socio-economic conditions and ethnic reality has given an impetus to the "sons of the soil" movements throughout the world and has led to the explosion of ethnic identities. 'The worldwide magnitude of ethnic rebellion, for example, increased nearly fourfold between the period 1950-1955 and the years 1985-89'.¹

The emerging phenomena of localisation of conflicts can further be captured from the data, which show that most of the conflicts that erupted in the world in the decade of 1990s were intra-state.

Table 1

Interstate and Intrastate Armed Conflict, 1989-99

Type of conflicts	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	All years
Intrastate	43	44	49	52	42	42	34	33	30	32	92
Intrastate with foreign intervention	1	2	1	2	4	0	0	1	3	2	9
Interstate	3	3	1	1	0	0	1	2	1	2	7
All armed conflicts	47	49	51	55	46	42	35	36	34	36	108

Source : Peter Wallensteen and Margreta Sollenberg (1998) 'States in Armed Conflicts 1998', Report No. 54, Deptt. of Peace and Conflict Research.

¹ Gur, Ted Robert and Harff, Barbara (1994) 'Ethnic Conflict in World Politics', Boulder Westview Press, p.11.

The situation has nurtured those factors which made both latent (life reducing mechanisms like unemployment, illiteracy, corruption) and manifest (ethnic, gender atrocities) violence more pervasive. Most of these conflicts erupted in Asia and Africa. Of the 36 armed conflicts that erupted in 1998, 29 were in Asia (15) and Africa (14).²

Globalisation has created conditions for co-operation, but it has accentuated conflicts based on ethnic identities throughout the world. For instance, South-Asian immigrants in some parts of the world are treated with contempt and ridicule, leading to tensions and riots. It is posing a challenge to the police to be innovative in resolving these conflicts.

Not only this, a large section of the diaspora has specific security needs both at their place of origin and the place of settlement. For instance, at the place of origin their property and assets are usurped and encroached. This results tedious litigation. There are about 3000 such cases which are pending in the civil courts of Punjab alone. Thus the situation is leading to excessive reliance on the police to maintain order and peace. The police has to acquire skills relating to prevention and management of conflicts and post-conflict rehabilitation with corresponding accountability.

The police has to function in convergence with the cultural needs of the people without disturbing their cultural sensibilities. For instance, disputes emerging from **arranged marriages** require not merely a legal response, but also a more culturally informed intervention. It is here that collaboration, for instance, between the British/American/Canadian and Indian police is needed. There are many more emerging problem which can only be resolved through closer intervention. In the absence of institutional mechanisms of multilateral policing, the accountability principles cease to be functional.

Further, the technological revolution has made the traditional way of policing ineffective. The criminals are increasingly becoming technology savvy. For instance, cyber crimes are becoming pervasive and law enforcement functionaries are severely handicapped to check these. Child pornography, cyber stalking/e-mail threats, hacking/information war, economic espionage, software piracy are going on without much opposition from the police. The hackers are not hampered by borders and geographical limitations. The police has to respond to these new arenas and put in place corresponding parameters of accountability.

These developments require a fresh look at the criminal justice system globally to build its capacity to deliver justice, ensure security and protect the rights of citizens. The emerging reality has to be contextualised in the nature of the state, be it post-colonial, post-capitalist or post-totalitarian with a focus on norms and values that shape police functioning and expectations.

POST COLONIAL REALITY

The beginning of the twentieth century was a period of consolidation of nationalism into nation states. The last two decades or so of this century witnessed the assertion of sub-nationality identities. The outcome of this was a shift from a self-determined nation state towards an aggressive state controlled

² Wallensteen, Peter and Sollenberg, Margreta (1998) 'States in Armed Conflicts' 1998, Report No. 54 Deptt. of Peace and Conflict Research.

nation. This led to an excessive reliance of the state on security forces to enforce 'order'. The inevitable outcome was the violation of the rights of citizens which the police force is 'supposed' to protect. The findings of citizens surveys reinforced the view that the police gets a licence to violate the rights of citizens under the garb of protecting the monolithic notion of nationalism which is being superimposed on a multi-cultural social reality.³

COLLECTIVE VERSUS INDIVIDUAL RIGHTS

The western notion of inalienable rights was antithetical to the interests of colonial powers, which were slow to promote the notion among the colonised. On the contrary, the focus of British colonialism was on sharpening the distinctions by institutionalising practices on the basis of group identities. The police was viewed as the protector of the dominant 'community' and mono-cultural concept of nation and a violator of individual rights.

The collectivities and groups whose interests converge with the nation-building project view the police as a protector. Research has revealed a consensus among members of the community irrespective of their religion or caste about the police being the violator of individual rights and was termed corrupt, brutal and abusive.⁴ They were in favour of effective policing in dealing with issues relating to national security and inter-community relations, even if it is violative of human rights. And at the same time they felt individually threatened and intimidated by the existing nature of policing.

ENFORCEMENT ORIENTED POLICING: MAINTENANCE OF ORDER

The state functioned as an enforcement agency and in the process got alienated from the people. The police, as the main instrument of enforcement, earned a bad image. The police enforced 'order' in seclusion from community support, lending credence to the belief that it was the police versus the people. This is reflected in the 1861 Police Act and the people's expectations from the police. A citizens' survey conducted in 1999 revealed that a majority of the members of the community expected the police to enforce the law effectively. This perception converged with the current disposition of a majority of the police personnel (70%) who regarded the authoritarian mode to be the best style of public dealing. Consequently, the existing nature even of police-community interaction was guided by an underlying preference for avoiding contact with the police.⁵

The project of nation-building took the initiative away from the community. The state functioned as an enforcement agency and in the process got alienated from the people. The police as the main instrument of enforcement earned a bad image. Consequently, the existing nature of police-community interaction was guided by an underlying preference for avoiding contact with the police. In India, the National Police Commission set up in 1977 has drawn attention to this aspect and stated that the police service can have no future unless it earns the respect and confidence of its men and the public. In its fifth report (November, 1980) the Commission expressed anguish that the 1902

³ Pramod Kumar (2001) 'Community Police Interface: Need Assessment Survey', Chandigarh: Institute for Development and Communication

⁴ Ibid

⁵ Ibid

Fraser Commission's observation that 'people' now may not dread the police, but they certainly dread getting involved with it in any capacity continue to be valid.

This was mainly the result of the brutal and rude functioning of the police. In various public surveys conducted since the mid-sixties by David Bayley in 1969, Indian Institute of Public Opinion in 1978, National Police Commission Report 1980 reinforced the view that the constabulary has been rude, threatening, intimidating and brutal in its interaction with the people.⁶

POLICE CONTROLS: SITUATIONAL ANALYSIS

A National Police Commission was constituted in 1977. After 28 years, the recommendations of this commission are yet to be implemented. The National Police Commission emphasised that the police should be accountable to the people, the law and their organisational hierarchy. It should function as an impartial force and protect efficiently the citizens' rights.

And the National Human Rights Commission in an affidavit to the Supreme Court asserted that the police in a democratic society should be low in authority and high in accountability: Disturbed at the 'disquieting increase in the number of complaints received against the police for violation of human rights' it felt that 'policing the police is an urgent issue to be addressed seriously.'

The task of policing the police is being undertaken as an exclusive agenda by each organ of the state. When politics unleashes policing of the police, it produces varieties like Bihari Ojhas', Telgi Sharmas. When the judiciary takes up this task it judges the heroes of 'bullet for bullet', 'the mesihias of peace' as the villains of human rights. When human rights activists start policing the police, they target the baton and veil the guns without uniforms. A system which allows policing as a remedy ceases to render justice and protect the rule of law.

In the changed context, the onus of building a just, lawful and secure society alternates between the judiciary, media, civil society and international covenants. But these continue to remain ad hoc measures that target the police for a more "just enforcement". The efficacy of the police needs to be understood in the context of **accountability for what and to whom**.

PRINCIPALS OF ACCOUNTABILITY IN A DEMOCRACY

To maintain order within law

There is a tendency in the police to restore peace and order even at the expense of violating the law. This is an important issue to ponder: how not to indulge in violative activities like torture, extra-judicial executions, fake encounters? It is in this context that there is need for acquiring knowledge and skills used globally for conflict settlement and management without being violative of the rights of the citizens.

⁶ Bayley, David H. (1969) 'The Police and Political Development in India', Princeton: Princeton University Press. 'The Image of Police in India', New Delhi: Indian Institute of Public Opinion, 1978
Government of India (1980) 'Fifth Report of the National Police Commission', p. 47

To exercise power to protect the democratic rights of humans

The police has been empowered to protect the democratic rights of the citizens. However, it was precisely because of the violation of this principle in 1977 the Indian Government felt the need for setting up the National Police Commission in response to the role played by the police during the Emergency.

To function without violating the sanctity of multicultural ethos

The assumption of state control mechanism is to safeguard the rights that are liable to be violated (both individual and collective) in a multi-cultural context. This principal has been integral to the Indian constitution but its implementation has been tardy.

The cultural groups that are not organically integrated with the nation-building project resent the partisan response of the police. A number of surveys have pointed out that there has been partisan and biased response of the police, particularly to the minorities in conflict situations.⁷ The partisan response of the police must, therefore, be understood in the quest of post-colonial states to emerge as a nation by melting diverse interests into a monolithic entity which leads to the subversion of the rights of the minorities and collectivities. A number of steps have been taken to protect the rights of the minorities. The police has been increasingly giving representation to members of minority groups and sensitization and training of the police force on the rights of minorities is also undertaken.

Accountability for What?

Both state and civil society controls are exercised in relation to the following functions which the police is to perform for maintaining the rule of law and dispensation of justice.

- Crime detection and prevention
- Investigation of crime
- Protection of rights of citizens
- Maintenance of public order
- National and human security

To perform these functions, the police as per the law is accountable to the command structure within the police, to the home department, to the judicial system and through the legislature to the people at large. The police department is directly under the Ministry of Home Affairs, thereby the Home Ministers at both the Central Government and the state governments are answerable to the legislature for the conduct of the police. Over the years, this institutional control has become routine and direct political control has become the bane of policing. It is in view of these developments that various committees and commissions have suggested that the selection of the police chief should be depoliticised and the investigation wing of the police should be insulated from external political

⁷ Around eighty per cent of the respondents who happened to be Muslims referred to the partisan nature of police. These were reported in a National Survey on Communal Riots and its Impact on National Integrated conducted in 8 states from 1981-88 by CRRID, Chandigarh. Engineer, Asghar Ali, (ed) (1984) '*Communal Riots in Post-Independent India*', New Delhi: Sangam, 1984.

pressures. This is too defused and thereby grants a large space to the police to function in an autonomous fashion. State controls are exercised through the legislature, the judiciary and the executive which include internal controls. There are broad boundary conditions within which these organs are to exercise their control with the checks-and-balances approach.

The internal control of the police functions within the enforcement framework. And its main function is investigation of crime which is to be monitored by trial magistrates. The key to the criminal justice system is the applicability of the principles of accountability to the investigative, prosecution and trial systems. The command structure of the police has built-in performance and control mechanisms. Inspection by an officer, crime review meetings at the state, district and police station levels based on indicators like charge-sheeting, conviction, clearance rates, crime data including incidence of crime, number of unsolved cases, causes of spurt in crime, etc. Inspection of the recovery of contraband articles like drugs, illicit liquor, explosives, the number of arrests etc. A review of the process of investigation including the status and time taken for investigation is also undertaken. A check of the efficacy of the crime control method is also conducted. However, there are some institutional measures activated for the redress of complaints relating to acts of omission and commission by the police, for instance, in Kerala, the Petition Enquiry System provides for separate register where complaints against the police can be recorded and strict disciplinary action is taken in all instances of police conduct.

But the separation of the investigation and prosecution functions has resulted in no accountability for the end result.⁸ With the separation of functions of investigation and prosecution the conviction rate has declined in India.

Table 2
Disposal of IPC Crime Cases by Courts
Decadal picture

S. No.	Year	Total No. of cases for Trial (including Pending Cases)	No. of Cases		Percentage of	
			Tried*	Convicted	Trial Completed (Col.4 / Col.3)	Conviction (Col.5 / Col.4)
1	1961	8,00,784	2,42,592	1,57,318	30.3	64.8
2	1971	9,43,394	3,01,869	1,87,072	32.0	62.0
3	1981	21,11,791	5,05,412	2,65,531	23.9	52.5
4	1991	39,64,610	6,67,340	3,19,157	16.8	47.8
5	2001	62,21,034	9,31,892	3,80,504	15.0	40.8

* Excluding Withdrawn / compounded cases

Source: Crime in India, 2001.

⁸ Demarcation of prosecution branch from police has conceptually enhanced the scope for a fair trial, but lack of logistic support has undermined trial quality and justice dispensed – Courts have to take a proactive role since this lacuna is glaring e.g. *Paras Yadav and others versus State of Bihar in (1999) 2 SSC, lapse on part of investigating officer but court upheld conviction of murder. The court held that on occasions, negligence or omission on the part of the police may give rise to reasonable doubt which would go in favour of the accused.*

However, the scope of fair trial conceptually has been enhanced, but lack of logistic support has undermined the quality of trial and justice dispensed.⁹

There is systemic coordination but in actual practice there is no administrative co-operation as regular monitoring and coordination among the police and the district attorney is lacking. To overcome these constraints, the Malimath Committee¹⁰ recommended that in view of multifarious tasks of the police, investigation gets relegated. So a separate wing for investigation with the involvement of experts (auditing, banking, revenue etc.) and upgraded technology may enhance the accountability of the criminal justice system.

The checks and balances which are built in the system have introduced practices which have established the principles of accountability. For example, in the Best Bakery case in India, the Supreme Court ordered reinvestigation and retrial of the case pertaining to riots in the state of Gujarat.

SYSTEMIC ACCOUNTABILITY VERSUS COMPETITIVE CONTROLS

Best Practices: Involving judicial control and accountability to police investigation and prosecution

Violation and Context :	Best Bakery Case in riots in Gujarat
Control mechanism exercised :	Supreme Court, the highest judicial body of India in response to a special leave petition (SLP) filed by the National Human Rights Commission (NHRC) squashed the trial court judgment and ordered retrial of the case and issued notices to the Central and Gujarat Governments on August 8, 2003. The Supreme Court monitored the proceedings in the High (State) Court.
Nature of accountability fixed :	<p>The Supreme Court appointed prosecutor in consultation with the witness and the victims</p> <p>The Director General of Police, Gujarat, admitted in court that the Vadodara Police Commissioner had told him that the witnesses in the case had been coerced and won over by the accused and as a result, they turned "hostile" during trial. The DGP's admission implicitly revealed that the State Police had failed in its duty to protect the witnesses in a crucial case. This is in contrast to the claim of the state government in its affidavit in the case in response to the notice it received from the Supreme Court.</p>
Stakeholders involved :	<ol style="list-style-type: none"> 1. The Supreme Court of India (highest judicial body) which pulled up both the judiciary and the police in the state of Gujarat. 2. The National Human Rights Commission of India 3. The media that raised questions about the objectivity of the prosecutors entrusted with the handling of the riot cases
Outcome :	<ol style="list-style-type: none"> 1. Precedent of a judicial controls levying accountability on state police. 2. State government made more accountable for ensuring fair control

⁹ Demarcation of authority in 1973-74 police divested of prosecution functions which has taken over by Director Prosecution and Litigation.

¹⁰ Malimath, V.S. (2003) 'Committee on Reforms of Criminal Justice System', Govt. of India, Ministry of Home Affairs.

The judicial review has led to the protection of the rights of humans, and fixing the responsibility of the police.

However existing mechanisms of state control in normal situations are not geared making the police accountable for crime prevention, lack of community participation and policing of the marginalised groups.

There are number of surveys which pointed out that the concept of community participation has been restricted to being either informers or facilitators.

PARTICIPATORY POLICING: TREATING COMMUNITY AS INSTRUMENTS

Bad Practices : Restricted community accountability to maintenance of law and order

- Violation and Context :** During the imposition of alcohol prohibition in the state of Haryana (India) community intervention was restricted to being police informers and violators. Prohibition was itself imposed after an electoral promise and was supported by the people's movement against alcoholism.
- Control mechanism exercised :** Provision of the investigative policing functioning through the administrative department of Excise and Taxation (Liquor). The department shifted its focus on detection of liquor consumption and check on the sale and production of liquor. The prohibition policy was restricted to identifying consumers, producers and distributors of liquor rather than locating and delinking with the causes that are creating the demand for liquor.
- Nature of accountability fixed :** Forty-seven per cent of the total instructions in the department pertained to efforts to tackle and detect consumption of liquor. Increase in registration of cases, for instance, 361 cases of murder and 1979 of hurt occurred between 1.7.95 and 31.12.95, whereas in 1996, for the same period 260 cases of murder and 1682 of hurt were registered, showing a decrease of 50 per cent. The registration of crime was reduced and registration of case of violation of prohibition increased manifold. This increased the court work but so did the quantum of smuggling of liquor.
- Stakeholders involved :** The reservoir of community support for anti-alcoholism was reduced. Increase in policing activity reduced social reformers to merely informers.
- Outcome :** Exclusive state enforced policing on a social concern led to the bolstering of the alcohol mafia and undermined grassroot organisations and community activism.

The police enlisted the community's assistance mostly for investigation. In fact, the concept of community participation was restricted to making the community willing witnesses and better informers (this was mentioned as the ideal assistance).

The police complained that the community was not cooperative and in fact created hindrances in their functioning. The community perceived the police to be a source of nuisance and even exploitation. A large percentage of the community found the police to be inefficient in handling their complaints.¹¹

Police accountability is not ensured by using community as an instrument or target. For example, policing for community i.e. single window delivery of services or policing through community i.e. using them as informers and volunteers for traffic management may enhance efficiency, but without transparency. It is only if policing is implemented alongwith the community that the delivery of safety and justice will become non-discriminatory, fair and just.

The internal accountability mechanisms are not equipped for the needs of the marginalised groups. On the contrary, it has become an instrument of the dominant social groups. The vulnerable groups like women, lower castes, mobile population become victims of police functioning.

Social invisibility attached to crime against women and lower castes provides an easy way for the police to protect the interests of the dominant groups. Crimes like rape are not reported because the victims fear social stigma and caste rapes are not seen as a violation of rights in a caste hierarchical society. Most of the times even molestation is not considered as a crime to invite the attention of the police. For instance, in 1994, 30 cases of molestation were reported in Punjab against 11,198 unreported cases (IDC 1994).¹² Similarly, 83 cases of rape were reported as against 5678 unreported cases in the same year. Interestingly, eve-teasing has emerged as a 'new crime' in the police dictionary, with only three cases registered in 1994, whereas unregistered cases revealed in the IDC survey were 27,530.

Table 3

Ratio of reported to unreported atrocities in Punjab (India)

Reported	Unreported
Rape – 1	68
Molestation – 1	374
Eve-teasing – 1	9177
Dowry Death – 1	27
Dowry harassment – 1	299

Source : IDC, 1995

¹¹ Pramod Kumar op.cit. (2001)

¹² Pramod Kumar, Dagar, Rainuka (1995) 'Atrocities Against Women in Punjab', Chandigarh: Institute for Development and Communication, p. 60.

A survey of the citizens' perception of the role of the police in gender-related cases revealed that they considered it to be biased, prejudiced and indifferent (IDC 1999).

- (i) There was dissatisfaction in the community with the police response to women since they found the police to be abusive and prejudiced.
- (ii) The police distanced itself from cases related to marital and family disputes, unwilling to intervene in what was termed as private affairs. This was resented by members of activist organisation.
- (iii) There was also a perception that the police demanded sexual favours from women victims and therefore, women avoided reporting to the police or seeking assistance from it.
- (iv) The police on the other hand complained that women lodged fake complaints and were unduly favoured by the law.
- (v) The extent of prejudice against women was found to be significant. The lack of gender sensitisation was apparent.

Most of the surveys of citizens' perception of their interaction with the lower castes reported that the police was partisan and violated the rights of the vulnerable sections. Members of the Scheduled Castes complained that they were physically assaulted, sexually harassed and socially disgraced by the police.

It is mainly due to their lower caste status, poor economic condition and their inability to bribe, that they are targeted by the police. Most of the violative behaviour of the police remains invisible due to the prevalence and acceptance of the caste system.

The police is perceived to protect the 'community' from the mobile population which is excluded from the definition of the community. Their seeming inability to control the migration or to regulate the migrants is seen as a failure of the police. If the local communities have ethnic bondage with the immigrant population, the state's efforts to preserve its territorial integrity get compromised, especially in a hyper-national identity context. In the process the security forces acquire the licence to violate the citizens' rights in the name of protecting national integrity. In the case of migration within the country, any such attempt on the part of the provinces provides impetus to the sons-of-the-soil movement. And the police, as a provincial force, is seen by a majority of the migrants as a partisan force trying to protect some particular ethnic or religious groups. On the contrary, the local population considered the police to be inefficient in handling migrant issues.

These inadequacies not only distort the functioning of police, but also reinforce the lack of faith of the marginalised groups in the police. To earn the faith of the minorities and marginalised groups an experiment has been implemented in Bhiwandi town of Maharashtra. This experiment is based on the prescription of India's first Prime Minister Jawaharlal Nehru. To quote:

The most effective method to check these degrading conflicts is the organisation of average citizens for the protection of their *mohallas* and not

the peace committees usually formed during communal riots of the very elements that have caused the trouble.¹³

Subsequently, a study report on communal riots in Bhiwandi submitted to the Home Department of Maharashtra strongly recommended the constitution of mohalla groups for prevention of communal riots.¹⁴ The experiment was structured by the then police commissioner of Bhiwandi.

POLICING THE MARGINS IN MULTI-CULTURAL SOCIETIES

Best Practices : Social control network with the police to prevent eruption of religious violence.

Violation and Context :	Formation of local area committees during and in the aftermath of riots in Bhiwandi (Maharashtra) and Mumbai (Maharashtra)
Control mechanism exercised :	Involvement of the NGOs, community leaders at the initiation of the government administration. To respond to local incidents that could flare up in a major clash in the backdrop of communal riots
Nature of accountability fixed :	The onus of restoring trust and confidence between the clashing communities was with community leaders and NGOs holding credibility within the community. The police responded to these committees in incidents of trouble and responded to the complaints about the conduct of the police during riots. These were further formalised to each police beat to have mohalla committees headed by the beat officer and citizen's co-ordination to hold frequent meetings.
Stakeholders involved :	Prominent community leaders, NGOs, police functionaries and government administration.
Outcome :	In Bhiwandi (a riot prone area) formation of these committees maintained the peace while in other areas riots were erupted.

These innovative initiatives experiments have checked the partisan involvement of police in religious riots and also initiated accountability at the grassroot level, but without institutionalised.

To sum up, the perspective underlying state control revolves around developing parameters of accountability within enforcement-oriented policing. This is geared to apprehending more and more criminals and achieving a high rate of conviction. This does not make policing more justice oriented or society crime free.

¹³ 'Communal Riots and its Impact on National Integration: Bhiwandi 1984-85' submitted to Maharashtra Government

¹⁴ 'Selected works of Jawaharlal Nehru', Hyderabad: Orient Longman, Vo. 15, P. 315

NON-STATE OVERSIGHT ORGANISATIONS

Policing is not the exclusive domain of the state. No doubt, as an instrument it has remained in the realm of benefactor service and has been largely functioning as an artery of the state. Its main function has been the delivery of services to the community and the attempts of the criminal justice system to function in an holistic manner have remained inadequate. The non-state civilian oversight both on the supply side of justice i.e. National Human Rights Commission, National Minority Commission, National Women's Commission etc. and on the demand side of justice civil society oversights, NGOs and the media have emerged to build bridges with state institutions.

State controls have more or less been directed by the established social rules. These controls are at the most punitive. These non-state oversights have focused on correctional and transformatory agenda in relation to the marginalised groups, victims, common citizens etc. These have also sought explanations of violations in terms of reasons, behavioural misconducts through building a reservoir of local resources.

FUNCTIONS OF POLICE CONTROL STRUCTURES	
• Autonomous institutions	Functions
<ul style="list-style-type: none"> • State and internal control mechanisms 	<ul style="list-style-type: none"> ◆ Ensure Discipline ◆ Maintain hierarchy ◆ Take punitive action
<ul style="list-style-type: none"> - National Human Rights Commission - National Commission for Women 	<ul style="list-style-type: none"> ◆ Advise Action ◆ Networking with civil society organisations ◆ Bridge between Public, Judiciary, Executive and Police ◆ Networking with civil society organisations
• Civil society organizations	Functions
<ul style="list-style-type: none"> - NGOs - Incident related mobilization - Media 	<ul style="list-style-type: none"> ◆ Focus Violation ◆ Mobilise and sensitise the community ◆ Seek institutional remedies

SCOPE OF THE NON-STATE OVERSIGHTS

National Human Rights Commission¹⁵

- To protect the given human rights and promote rights that ought to be ensured;
- Intervene in with the approval of the court in allegations of violation of human rights pending before a court;
- Visit prisons with information to the state government;
- Review factors, including acts of terrorism leading to violation of human rights;
- Study international treaties and other instruments on human rights and make recommendations for their effective implementation;
- To promote research on human rights, spread human rights, literacy and encourage non-governmental organisations and institutions working in the filed of human rights

The National Human Rights Commission (NHRC) has specifically focused on accountability of the police in relation to custodial violence, rape and deaths, illegal detention and torture.

The number of complaints against the police of custodial deaths and rape has been increasing. However, the complaints pending with commission are also multiplying.

Table 4

**Number of Complaints Against Police with National Human Rights Commission
and Present Status of Complaints**

	Number of complaints			Pending status		
	Complaints	Custodial deaths/rapes	Total	Awaiting Preliminary Consideration	Reports awaited from the state authorities	Total pendency
2000-2001	70516	1039	71555	14612	15904	30516
2001-2002	67776	1307	69083	11589	44873	56462
2002-2003	67354	1342	68779	9763	33247	43010

Source: *National Human Rights Commission Annual Report 2000-2001*

National Human Rights Commission Annual Report 2001-2002

National Human Rights Commission Annual Report 2002-2003

The National Human Rights Commission has effectively intervened to safeguard the rights of minorities liable to be violated during communal riots. It recommended in 2002 that there should be representatives of the minorities in the state police and there is need for regulating religious processions and the investigation process in a communal riot has to be insulated from extraneous influences. It held the view that investigations of the Gujarat riots should be purged of prejudiced policies and stressed the need for proceeding against officers who had failed to act appropriately.

¹⁵ Established under the Prosecution of Human Rights Act, 1993

National Commission for Women¹⁶

Similarly, the mandate of the National Commission for Women is to look into complaints and take suo moto notice of matters relating to;

- Safeguarding women's rights granted under the Constitution and other laws and recommending amendments and taking up cases of violations with the appropriate authorities;
- Inspecting or causing to be inspected a jail, remand home, women's institutions or other places of custody where women are kept as prisoners or otherwise and if necessary taking up cases for remedial action with the authorities concerned;
- The Commission shall, while investigating any matter referred to it under clause (a) or sub-clause (i) of clause (f) of sub-section (1), have all the powers of a civil court trying a suit and, in particular in respect of the following matters:
 - (i) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
 - (ii) requiring the discovery and production of any document;
 - (iii) receiving evidence on affidavits;
 - (iv) requisitioning any public record or copy thereof from any court or office;
 - (v) issuing commissions for the examining of witnesses and documents; and
 - (vi) any other matter which may be prescribed.

The women's commission has also taken up cases dealing with custodial rape and facilitated the process of accountability of the police.

CIVIL SOCIETY ORGANISATIONS AND MEDIA

The civil society organisations and media have articulated violations by the police and case of delayed justice. The media has often provided the much needed transparency to violation of human rights by the police.

These oversights have played a positive role in the following manner:

- (a) Registering claims for justice;
- (b) Facilitating documentation of evidence;
- (c) Mobilising public support; and
- (d) Increasing transparency

BOUNDARY CONDITIONS OF EXISTING OVERSIGHT CONTROLS

- (c) Reflect societal consensus
- (d) Actor based accountability

¹⁶ The National Commission of Women Act was promulgated in 1990 (Act No. 20 of 1990 of Govt. of India)

(e) Context based violations

(f) Brutal acts are termed violative

❑ **Reflect societal consensus: Promote invisibilities**

If structural inequalities that reflect unequal power and consequently unequal life chances are taken as given, then it gives the licence to hierarchies based on caste, minority or gender to flourish.

If the National Integration Council, as in 1985 or the National Human Rights Commission in 2002 recommend 'representation of the minorities in the state police' or 'regulate religious processions' or 'insulate the investigating processes (in communal riot hit Gujarat) from extraneous influences, then these oversights too are victims of communal thinking that assumes a homogeneous and exclusive 'majority' and 'minority'.

These recommendations blur the structural inequalities, differentiations and discrimination and legitimised the police inaction leading to their non-accountability.

❑ **Actor based accountability**

Most of the violations are attributed merely to individual actors rather than to institutional arrangements, legal statutes and political and cultural factors. For example the National Human Rights Commission has suggest action against police official functioning at the behest of prejudiced politics. To quote;

'Investigations of the Gujarat riots to be purged of prejudiced, politics influenced police officials, CBI inquires to be initiated and proceedings against officers who have failed to act appropriately (NHRC Recommendations, 2002)'.

These recommendations pertains to individual acts of omission or commission, while it has traced the cause of these violations to 'prejudiced politics'. Human rights should be analysed in relation to conditions which have contributed to violations, rather than merely in relation to individual acts of omission or commission.

In other words, issues should be seen in relation to factors, rather than only actor based. The argument that the factors are political and cultural and not legal and therefore not liable for punishment is not correct.

❑ **Context based violations**

These oversights have focused on incidents rather than processes. For instance, in Punjab when the political processes failed, the administration introduced legalised version of militancy like TADA. When militancy went out of control, the police was unleashed. And when police went out of control, the judiciary was unleashed. Somebody has also decided to take out heavy insurance against future failure of the judiciary. Then comes the talk of a second republic – to start the process all over again.

It can be argued that in democratic societies the non-performance of the judiciary has produced a greater evil in the police. Since the lesser evil is the norm, the non-performing judiciary of yesteryears becomes the saviour and champion of healthy and moral values today.

The principle is to isolate actors or institutions held them accountable and allow the system to function without question.

❑ **Brutal acts are termed as violative**

These oversights respond to brutal acts of violence. For example, the police considers dowry deaths to be violation and dowry exchange per se is not taken as violation of law even if it is illegal. Not only this even the NHRC has been responding to extreme form of violations. To quote;

The role of the National Human Rights Commission is to serve as a facilitator to improve the quality of governance, as proper respect for human rights depends upon such governance. This duty has been performed by the commission in earlier instances also, notably after the Orissa cyclone and Gujarat earthquake. As then, it was now the responsibility of the commission to ensure that violation of human rights ceased, that further violations were prevented and those who were **victims** were expeditiously **rehabilitated** and their dignity restored.

The response is to the visible violations and the denial of rights itself is a violation that remains outside the preview of oversight functioning. The brutal manifestations are highlighted, whereas, the underlying causes are ignored. Therefore, women's organizations fighting for the rights of women, seek police redressal if dowry deaths / harassment occur, yet themselves promote the accumulation of dowry by young girls who are given skill training.

TOWARDS BUILDING AN ALTERNATIVE

The state controls and non-state civil society oversights have to function within the co-operative framework rather than outcompeting each other. There is a need for evolving collaborative functional arrangements within the institutions of the state meant to exercise controls and also put in place bridges with the non-state civil society organisations. The perspective needs to be interactive with the multi-cultural reality and sufficiently empower these controls to respond to the specificities of social institutions and casteism, racism, religiosity and gender relations for crime prevention and delivery of safety and justice.

The alternate framework have to be multi-layered responding to;

- (a) Changing global needs leading to corresponding developing institutional mechanisms
Globalisation of population: Resources for multilayered and multilateral policing
- (b) Growing pressures at the nation level to shift from enforcement oriented to participatory service delivery policing. There is need to set up proactive community based institutional framework for international justice mechanisms

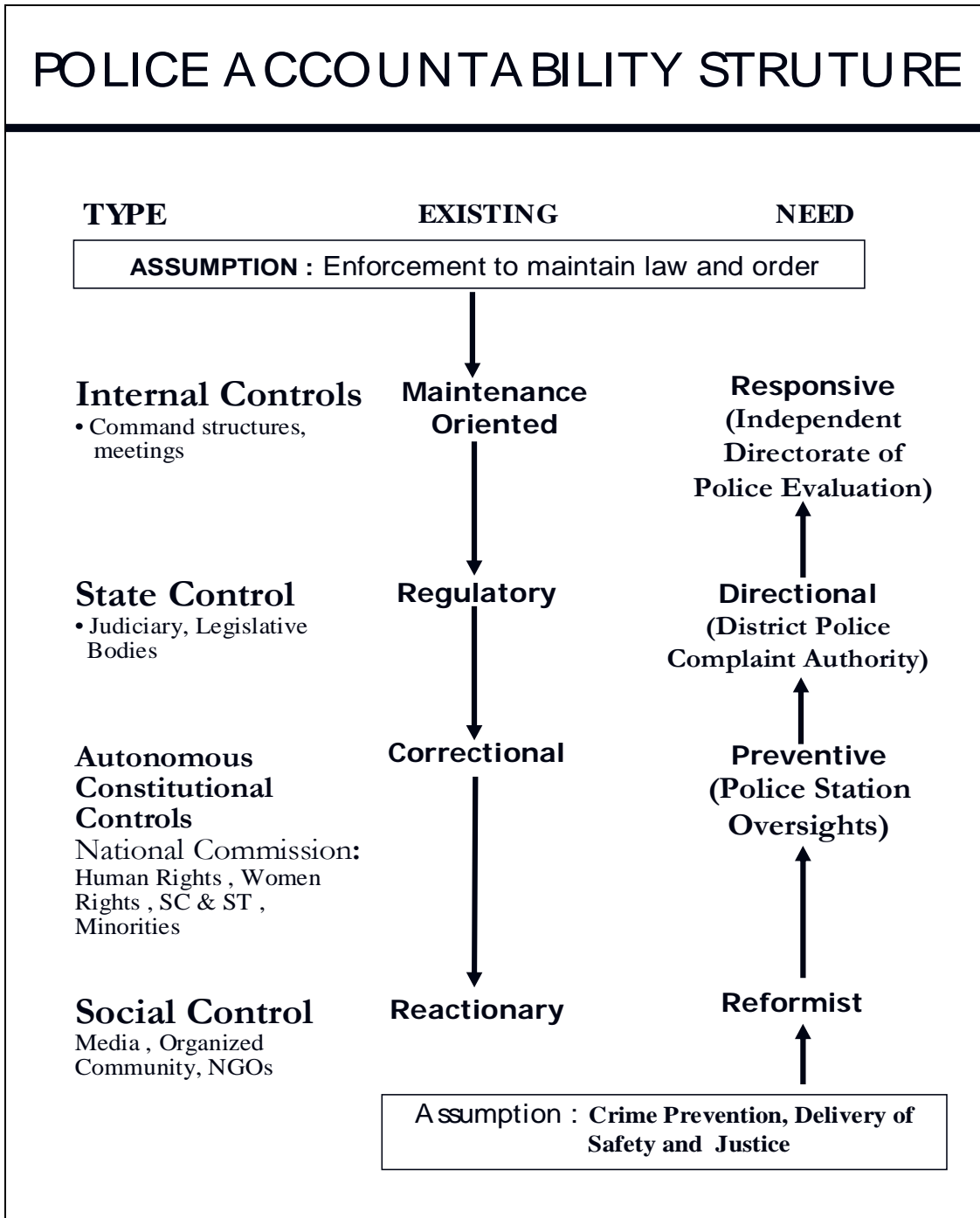
Independent Directorate of Police Evaluation

For strengthening internal control, it has been proposed by both the National Police Commission and the Padmanabhnaiah Committee to establish an Independent Directorate of Police Evaluation (IDPE) in each state for preparing inspection reports to ensure high standards of delivery of service. The IDPE may perform the function of inspecting internal police functioning, replacing the existing inspection officer who has become ineffective and non-functional.

It may also evolve new performance measurements. For instance, instead of the conviction rate, it may have the satisfaction rate calculated on the basis of expert opinions and people's perceptions.

District Police Complaint Authority

For strengthening state controls a District Police Complaint Authority is to be set up as per the recommendations of the Padamanabhnaiah Committee. This may be headed by a District Magistrate with the senior Additional Sessions Judge, the Superintendent of Police and an eminent citizen as members to examine complaints from the public of police excesses, arbitrary arrests, detention etc.



Police Station Oversight: For Transparency and Accountability

For building a holistic institutional mechanism at the cutting edge level a Police Station Oversight may be set up. This can function as a non-state control mechanism. The police station oversight should be set up, co-ordinated and regulated by the State Human Rights Commissions.

The main functions of the PSO would be to;

- (i) Ensure registration of complaints;
- (ii) Inspect police stations to check illegal detentions;
- (iii) Watch the treatment of detainees with special reference to women, migrants and minorities (the United Kingdom model of independent custody system constituted under a Home Office circular (HOC/2001 dated May, 4)

The need is to build those institutional accountability structures which are democratic in response, protective in rights and sensitive to multi-cultures. Therefore, the internal control should change from maintenance to responsive, state controls from regulatory to directional, autonomous constitutional controls from correctional to preventive, and social controls from being reactionary to reformist.

- (c) To introduce efficiency and transparency, there is a need to promote linkages for technology, capacity building and intelligence sharing (conflict management and settlement) within country and amongst countries through multi-lateral arrangements. The caution is that technological revolution is no substitute for autonomy of human mind.
- (d) There is also a need to restore functional balance among various institutions integral to the criminal justice system by bringing about corresponding changes in support institutions like the judiciary, the bureaucracy, the political system and civil society organisations. For instance, it may require re-examination of the assumption that human rights standards must conform to what is given and not to what ought to be achieved. This is because what is given may not be adequate as in the case of the Scheduled Castes and women. And what is desirable cannot be achieved. If laws are formulated on what is desirable but cannot be achieved, the blame for their non-implementation goes to the enforcement agencies, particularly the police.

INTERACTIVE FUNCTIONAL DISSONANCE
Norms of professional conduct <ul style="list-style-type: none">• Police behaviour dealing with crime prevention and delivery of safety and justice.• Non-partisan non-discriminatory professional behaviour. This relates to insulation of police work from caste, religion, class influences• Efficient and effective delivery of public service without securing extra-constitutional advantages
Legal Statues: Ground rules <ul style="list-style-type: none">• Police behaviour to be in conformity with the legal provisions. In other words to maintain

<p>order within the law</p> <ul style="list-style-type: none"> • To protect the rights of the individual/groups as granted by the law
<p>Social norms: Boundary conditions</p> <ul style="list-style-type: none"> • To do police work without disturbing the social sensibilities of the people. In other words to provide security and maintain order within the prescribed socially acceptable modes and behaviours.
<p>Challenges</p> <p>To harmonise these three principles is a challenging task. It happens when professional conduct comes into conflict with the legal statutes and prevalent social norms.</p>

The interaction functional relationship between the norms of professional conduct, legal statutes and dominant social values produces tensions for the delivery of justice, safety and services.

SUMMING UP

Policing has to face the challenges posed by globalization of rights and crimes, technological revolution, active generations, plural community and human mobility and diaspora. The role of police has become central in view of four-fold increase in intra-state violence in the nineties.

In the new era, therefore, the aim of policing has to shift from an enforcement perspective targeting community as potential criminals to crime prevention with community participation. However, a lack of understanding of the power structures operating within the society could result in overlooking the needs of women, the scheduled castes and migrants.

There is a need to restore delicate functional balance between judiciary, bureaucracy, political system and civilian oversights like National Human Rights Commission, National Women Commission, National Minority Commission. The need is also to involve the community in the decision making process, insulate the police from political power which vitiates, violates and pollutes the basic spirit of the Constitution and rights of the humans.