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# *How Can We Rethink Police Accountability in India?*

Priya Vedavalli and Tvesha Sippy

*Abstract: Use of force by the police is a substantial problem in India. To a large extent, the measures so far have focused on police's functional autonomy and independence from political pressures. Yet, this also merits the question of whether fixing the political-police relationship alone will lead to more accountable police. While such top-down reforms have been pending since the time of independence, they have overlooked the simultaneous need for bottom-up approaches focusing on police empowerment. To rethink police accountability in India, we must focus on two core areas—community policing, and better training. These structural measures focus on changing the police-public power equation and mark the shift from a colonial police force to one that is true to the spirit of democratic policing.*



Police killing of George Floyd led to political pressure to "defund the police" which played a significant role in the US presidential elections. Exactly a month after that incident, people staged protests in Sathankulam, a town in Thoothukudi district of Tamil Nadu, over the custodial death of Jayaraj and Fenix. This was followed by the death of Vikas Dubey in an encounter and, most recently, the handling of the Hathras gang rape case. In the last few months of 2019, the conduct of police during the nationwide Citizenship (Amendment) Act-National Register of Citizens protests and the encounter deaths of the four accused in the case involving the rape and murder of a veterinarian in Hyderabad, brought further attention to human rights violations by police.

The use of force by the police is as substantial a problem in India as it is in the United States (US), perhaps more so. The COVID-19 pandemic has exacerbated the problem. Since the Indian government's strategy focused heavily on lockdowns in the initial phases of the pandemic, use of force by the police to enforce them has been widespread. We examine

existing accountability measures and the reasons for their failing to achieve desired outcomes against this backdrop. To rethink police accountability in India, we must focus on two core areas—community policing and better training.

## **Political Pressure and the Failure of Accountability Mechanisms**

Independent India has been on a quest for police accountability reforms since the National Police Commission (NPC) was set up in 1977. To a large extent, the success of these measures depends on, inter alia, the police's functional autonomy and independence from political pressures. For instance, where delinquent officers/criminals enjoy political patronage, it becomes difficult for police chiefs to discipline officers or follow due process in investigating criminals. Yet, this also merits the question of whether fixing the political-police relationship alone will lead to more accountable police. While such top-down reforms have been pending since the time of independence, they have overlooked the simultaneous need for bottom-up approaches focusing on police empowerment. We argue that such structural measures focusing on changing the police-public power equation also needs equal focus. These reforms mark the shift from a colonial police force to one that is true to the spirit of democratic policing.

A review of existing measures and reforms indicate that police accountability in India is broadly achieved through internal and external checks (Joshi 2005). The NPC, Ribeiro Committee and the Padmanabhaiah Committee have all recommended a sound internal accountability system, with interdepartmental enquiries and oversight by supervisors. The internal accountability system includes provisions and rules within the police department itself as outlined under the Indian Police Act, 1861, and various state police acts and manuals. As per the Indian Police Act, 1861, internal accountability powers are vested in officers of the rank of superintendent of police (SP) and above. If they find that their subordinates have been negligent or unfit, they may dismiss, suspend or demote the subordinate after due enquiry. However, these mechanisms fall short of keeping officers accountable due to the process-oriented complexities and time involved (Joshi 2005); they are also regarded as being futile according to a qualitative research study on the police's use of force and encounter deaths. A few respondents indicated that these proceedings almost never find officers guilty of malpractice or misuse of force. At best, the implications from these proceedings could be described as a "slap on the wrist" (Belur 2010). Another criticism against internal accountability mechanisms is the perverse incentive to suppress misconduct due to the reputational damage perceived to be inflicted on the organisation (Joshi 2005).

On the other hand, the external system comprises accountability to state institutions (judiciary and executive), public institutions (civilian bodies, non-governmental organisations, media, etc) and independent bodies (national or international grievance redressal bodies such as human rights commissions). Although they are envisioned as being diametrically opposite to internal systems—and, hence, more independent—in India, their effectiveness is questionable. Consider

the case of the National Human Rights Commission (NHRC), an important institution of external accountability, established under the protection of Human Rights Act, to, inter alia, hold the police accountable for human rights violations. However, it was described as a “toothless tiger” by the current chair of NHRC and former Chief Justice of India, H L Dattu. Despite being functionally independent, its power is capped at making recommendations, which the government is not obligated to follow. Further, if more than one year passes between the incident and the complaint, the NHRC shall not inquire into the issue.

Accountability to state institutions includes magisterial or judicial enquiries with legal recourse under public law, private tortious liability or criminal law. The NPC also recommended judicial enquiries in grave cases, while the Ribeiro and Padmanabhaiah Committees called for a district police authority headed by a district sessions judge and district magistrate, respectively. This is problematic since the district police force is subject to general direction and control of the district magistrate, vide Section 4 of the Indian Police Act, 1861. Hence, these arrangements are a step away from the operational autonomy required to inspire public confidence (Human Rights Initiative 2015a, 2015b). These systems are incomplete to the end that they do not capture the voice of the public or independent stakeholders outside of the system.

The strongest push for independent accountability systems was made in the Second Administrative Reforms (SAR), and as a part of the judgment by the Supreme Court in *Prakash Singh v Union of India* (2006), which culminated in the drafting of the Model Police Act, 2006 (or MPA). On the accountability front, the Supreme Court called for the setting up of a Police Complaints Authority (PCA). The state-level PCA is empowered to look into complaints relating to custodial death, grievous hurt and rape, filed against police officers of the rank of SP and above. In addition, the district-level PCA is also empowered to look at complaints of extortion, land/house grabbing, or abuse of authority, for officers up to the rank of deputy SP. According to the 2020 study by Commonwealth Human Rights Initiative, only one out of the 28 states are fully compliant, while 23 are non-compliant and four states are partially compliant with all the requirements.

There is also a twofold gap in the implementation of PCAs. One, with respect to their composition, and two, with respect to the independent panel that selects the PCA. As per the MPA, PCAs should comprise five members with a credible record of integrity and commitment to human rights. To ensure diversity and representation, the members should include just one retired police officer from another state cadre, while the rest include a member with ten years of experience in the judiciary, a member representing civil society and one officer with experience in public administration from another state. At least one of the members is to be a woman. However, two issues arise with regard to PCA membership. First, it is dominated by the bureaucracy and police, and second, the membership is dominated by in-service rather than retired police officers and bureaucrats.

The poor implementation of *D K Basu v State of West Bengal* (1997) which provides for an important accountability framework, follows a similar story. The ruling laid down 11 procedural safeguards against the increasing number of human rights violations while in custody. These included recording clear identifiers of the officer making the arrest; drawing up of a memorandum of arrest with the date and time, signed by a witness; the right of the detainee to inform a family member/relative/friend of their arrest; medical examination every 48 hours by an in-house medical physician and recording the major and minor injuries before detention, among others. All that is needed is implementation of the judgments (Singhvi 2020). One recent and welcome step towards that is the Supreme Court's landmark judgment in *Paramvir Singh Saini v Baljit Singh* in December 2020 is on the installation of CCTV cameras in police stations across the country. The proper working and maintenance of them will be the responsibility of the station house officer. Further, there needs to be posters stating the coverage of the premises by CCTV cameras in English, Hindi and vernacular languages. Along with this, the poster also needs to mention the person's right to complain to the State or National Human Rights Commission and the right to procure the CCTV footage in case of human rights violation (Verma 2020). The implementation and impact of this major judgment is yet to be seen. One is hopeful that it does not fall into the non-compliance category, which was the case with the earlier Supreme Court-led police reform.

## Rethinking Police Accountability

In addition to working towards implementing these reforms successfully, a number of supplemental measures can help curb cases of use of force by the police. In the following section, we look at evidence-based solutions to improve accountability, from a preventive and a bottom-up approach focusing on police empowerment—using training and police–community relations. These measures, though implemented in silos, need a nationwide push similar to the larger accountability reforms.

**Focus on social interaction training:** Examining police use of force involves a systematic analysis of the interactions between the police and the public. One such theory that explains the use of police force is the “authority maintenance theory” (Alpert and Dunham 2004). As evident from the name of the theory, the relationship between the police and the citizens is one where the police officers' goal is to maintain authority in order to control the situation. The citizens, on the other hand, are to be treated with respect and fairness. In the Indian context, for this theory to be applicable, one has to go beyond the stereotype of police as purely “agents of force.” However, the theory states that the dynamic interaction between the police and the citizen can lead to escalation or de-escalation, towards or from force, depending on meeting the goals of the interaction. This theory's contribution is significant in recognising that an interaction can also result in de-escalation, if handled carefully. A further study (Wolfe et al 2020) has shown that training based on improving social interaction skills through “deliberate” practice was well-received based on a randomised trial conducted in two US police agencies.

While such studies have to still be conducted in India, it provides inputs to improve police training. Further, community policing, as explored next, directly focuses on improving police's social interaction skills with the citizens, as demonstrated successfully in Kerala.

While training police on social interactions is one aspect, one of the main reasons why criminal cases do not end up in conviction is the absence of sufficient and impeachable evidence, according to the Human Rights Manual (National Human Rights Commission 2011). Training in scientific investigation and interrogation techniques can have a direct effect in improving the quality of investigations and, hence, may reduce the reliance on “third-degree” methods. Jinee Lokaneeta explores this aspect in her book, *The Truth Machines: Policing, Violence, and Scientific Interrogations in India* (2020). Further, while evidence acquired under torture are inadmissible in court, Section 27 of the Indian Evidence Act allows for the material discovered due to confession, and part of the confession that led to its discovery, to be admissible. Hence, police officers’ resort to force.

**Community policing:** People must be able to look at police as their representatives and state agents who will treat them fairly. This shift in perspective is necessary to redress the unequal power dynamic. Police’s legitimacy and acceptance of authority will then be based on fairness and trust, not purely fear. A key way in which this has been implemented in India is through community policing. Community policing, at the most basic level, involves a healthy partnership between the police and the citizens in ensuring safety. The Janamaithri Suraksha Project, launched by the Government of Kerala in March 2008, is one such initiative. The cornerstone of this programme is developing strong social relations at a household level with a beat police officer. Every officer is assigned about 500 households and their duty is to build a mutually understanding relationship with the public. A study looking at the impact of community policing in Kerala (Kumar 2012) showed that most of the respondents perceived police as helpful and scored them high on courteousness. Further, compared to baseline results, people recorded a greater feeling of safety and an improvement in the perception of police due to community policing. Such initiatives have now been launched in various parts of India, which has proven to be effective in strengthening the relationship between police and the people.

## In Conclusion

In the past, efforts to further increase the accountability of the Indian police have largely remained ineffective and on paper. The scope for reform has never been at a greater inflection point and as we reimagine police accountability, measures must centre around placing trust, respect and fairness at the cornerstone of the police–public relation, along with a focus on police training that orients them on the appropriate use of force.

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