

Reforming the Colonial Legacy: A Critical Analysis of the Indian Police Act (IPA) of 1861¹

*Aliyar M E, **Dr S S Gopakumar, #Dr N Krishna Kumar

*Research Scholar, **Research Supervisor, #Research Co-Supervisor,

Department of Law

Himalayan University,

Itanagar, Arunachal Pradesh

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ABSTRACT

One of the main pillars of India's police system is the Indian Police Act (IPA) of 1861, which continues to influence law enforcement procedures and represents the colonial past. After the first struggle of independence, British colonists imposed the IPA, a hierarchical and authoritarian system that prioritized control over the people over their accountability. The IPA's dominance endures despite reform attempts made after independence, posing problems such as political meddling, a lack of transparency, and inefficiency. This essay offers a critical analysis of India's post-independence reform movements and the IPA of 1861. It looks at the IPA's historical background, how it affected contemporary policing, and how difficult it is to bring about significant change. The report emphasizes the challenges facing change and the requirement for extensive reorganization, drawing on committee recommendations and Supreme Court orders. The IPA's structure needs to be reviewed in order to bring it into compliance with the values of accountability, transparency, and professionalism if real police reform is to occur in India. This entails setting up impartial oversight agencies, removing politics from police transfers and appointments, and dividing the roles of law enforcement and investigation. The pursuit of police reform is still necessary to protect the rule of law and maintain public confidence in law enforcement, despite obstacles.

Keywords: Indian Police Act (IPA) of 1861, law enforcement, accountability, policing system, colonial heritage, reform measures, and orders from the Supreme Court

INTRODUCTION

India's policing system is still shaped by the Indian Police Act (IPA) of 1861, which is a monument to the nation's colonial past. The IPA was put into place by the British colonists after the first struggle of independence with the intention of maintaining British rule and exerting control over the citizenry. This law created an authoritarian police hierarchy that was not directly answerable to the public or any independent organizations. The legacy of the IPA is still profoundly embedded in India's policing system, despite attempts at reform since independence, which continues to exacerbate issues with political meddling, a lack of transparency, and inefficiency.

The IPA of 1861 and later attempts at police reform in independent India are critically examined in this essay. It examines the IPA's historical background, the composition and duties of the Indian police force, and the ongoing difficulties that contemporary policing faces. The study also examines a number of reform efforts, such as Supreme Court orders and committee recommendations, exposing the challenges in bringing about significant changes in India's police force.

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The primary law that now governs the Indian police force is the Indian Police Act (IPA) of 1861. It establishes the composition and duties of the nation's police forces. As a direct result of the first battle of independence, the British colonizers drafted the IPA to maintain the police system's authoritarian relationship with the population and to guarantee its subordination to the administration. Additionally, it established district-level dual control as G.P. Joshi defined it.

"A dual control system was implemented at the district level by the same statute. It placed district superintendents of police in charge of the police forces, although district magistrates retained "general control and direction" over them.²

As a result, the police are subject to both executive and superior authority, as stated in Section 4 of the IPA. This was made with the intention of preserving British dominance over the Indian districts. It goes without saying that neither the public nor independent organizations held the police responsible. Because the colonial elite mistrusted those in lesser positions, the police system was created with a rigid military and hierarchical structure. Police constables only carried out orders; a small group of high-ranking police officers made all the decisions. The political system was changed after independence, but the police system is remained much the same.³

The Indian Evidence Act (IEA) of 1872, the Indian Penal Code (IPC) of 1862 (amended in 1993), and the Code of Criminal Procedure (CrPC) of 1861 (updated in 1898 and 1973) are the laws that currently govern police administration. They come together to construct India's antiquated police system as it exists now. State-level attempts to reform the police force have been made, but they have all been predicated on the IPA of 1861, which preserves the colonial legacy and ideology in these laws.

THE POLICE'S CURRENT COMPOSITION AND DUTIES

Section 3 of the IPA and Article 246 of the Indian Constitution both state that the police force is a State matter and is not governed at the Central level. It is the duty of every State government to provide policies, standards, and rules for its individual police forces. The State police manuals contain these regulations. Administrative police forces are part of a State. The Director General of Police (DGP), who leads the State police force and is in charge of overseeing police administration and providing advice to the government on matters pertaining to law enforcement, is at the top of the hierarchy. The State is organized into a number of Zones, Ranges, and Districts, with the DGP holding the highest authority over the State police force.

Subdivisions, circles, and police stations are further divisions within the districts. Every police station is in charge of a specific region, which they staff with officers and divide up into beats. Depending on the geography and population as well as organizational and administrative convenience, the police force's composition can differ slightly between states. However, the general structure is rigidly hierarchical, with a small number of senior police officers holding the majority of the decision-making authority.⁴

POSTINGS, ADVANCEMENTS, AND CHANGES

The Indian police force currently uses a promotion structure that allows for widespread political meddling. Promotions are subjective, and the executive is frequently personally involved. On the other hand, postings and transfers are applicable to all levels of the police hierarchy and are within the authority of the higher ranks. There is room for arbitrary decisions and judgments even in this situation. As a result, a lot of police officers experience intense political pressure, which may have an impact on their day-to-day work.⁵

PRIOR ATTEMPTS AT POLICE REFORM

Following independence, there was a pressing need for police reforms, leading several governments to establish their own police commissions. Kerala established the first state police commission in 1959. The premise and structure of the State police Acts are the same, as most States drafted their state acts using the Police Act of 1861 as a model.²⁵ This sub-chapter will not analyze previous attempts at police reform, but will instead provide a quick overview of the reform commissions that were established following independence. The "Report of the Review Committee on the

²Kirk Paul L, *Crime Investigation*, Johan Willey, New York, 1974, p.34.

³Malleswari, V B. *Police Reforms: Global Perspectives*, (2007), The ICFAI University Press, Hyderabad, p.45.

⁴Hodge Robert W, *The Public Police and the Administration*, National Opinion Research Center, Chicago, 1965, p.124

⁵Kaul Das, *Reflection on Police Society and Allied Subject*(1988.), Atlantic, New Delhi, p.89.

Recommendations of National Police Commission & Other Commissions/Committees on Police Reform" (March 2005) is the only source of information used in the reforms. The Gore Committee on Police Training was established in 1971–1973, with the goal of reviewing the state police's training program at the constabulary and IPS levels. Of the 186 suggestions the committee made, 45 have to do with reforming the police. Most of the recommendations pertaining to police training have been put into practice, while the structural changes to the police system have been disregarded.⁶

The National Police Commission (NPC) was the first body to thoroughly examine the Indian police force, serving from 1977 to 1981. In a four-year period, NPC wrote eight reports. Together, the eight investigations included 291 suggestions pertaining to improvements in the police department. The majority of the suggestions remain unfulfilled.⁷ Ribeiro Committee on Police Reforms 1998 The Public Interest Litigation (PIL) on police reforms led to the Supreme Court's order for the establishment of the Ribeiro Committee in 1998. The committee made five main recommendations, none of which have been carried out, regarding state security, the choice of DGP, and complaints against the police.⁸

Padmanabhaiah Committee on Police Reforms 2000: The Home Ministry of Affairs named former Union Home Secretary Shri K. Padmanabhaiah as the commission's chairman in 2000. The panel examined a number of areas, including hiring practices for police personnel, training, roles and responsibilities, behavior of police officers, police investigations, and prosecution. Of the 99 concrete suggestions put out by the committee, 54 must be carried out by the Union government and 69 by the State governments.

Group of Ministers on National Security: 2000–2001: During this time, the group focused on four issues:

- a) The system of intelligence
- b) protection within
- c) border security and
- d) the defense management system.

Out of the 62 suggestions, 42 were implemented by State governments and 54 required action by the Central government.⁹

Malimath Committee on Criminal Justice System Reforms, 2001–2003: The Malimath Committee reviewed the fundamentals of the criminal justice system, as well as crime, punishment, the judiciary, investigation, and prosecution. Human rights organizations have strongly criticized the report for suggesting that the burden of proof be changed. The committee produced 158 observations and suggestions. Out of the 55 significant suggestions, 26 must be adopted by state governments and 42 by the federal government.¹⁰

THE MODEL POLICE ACT OF 2006 IS SUBMITTED BY THE POLICE ACT DRAFTING COMMITTEE.

The central government established the "Police Act Drafting Committee" (PADC), sometimes referred to as the Soli Sorabjee Committee, in October 2005 with the goal of creating a new model Police Act. The PADC was tasked with considering the evolving role and responsibilities of law enforcement as well as the obstacles it faces in order to create a model act that would serve as a guide for states as they enacted their own laws. The Prime Minister's statement at the Conference of District Superintendents of Police in early 2005, "We need to ensure that police forces at all levels, and even more so at the grassroots, change from a feudal force to a democratic service," served as the impetus for the creation of the PADC.¹¹

Since the enactment of the Police Act in 1861, there have been few and far between reforms to the Indian police system. The Government established several committees to investigate these reforms, and one significant turning point in this regard was the 2006 ruling in *Prakash Singh v. Union of India*. The National Police Commission examined

⁶Yer V.R. Krishna, *Police in a Welfare State* (1958). Asia Book Center, New Delhi, p.97.

⁷Balkrishna E.R., *Police in Changing Society* (1998), Andhra Pradesh Govt. Administration, Hyderabad, p.247

⁸Malaviya.P.D. *Why do not Police Change -Police on Cross Road Seminar Papers-*(1987), S.A.V. Police Academy Hyderabad, p.45.

⁹Choudhary T.K., *Crime in Maharashtra (2002)*, Criminal Investigation Bureau, Pune, p.124.

¹⁰Misra S.C. "State Police Organization in India, *Op.Cit.* pp. 97-98

¹¹Malleswari, V B. *Police Reforms: Global Perspectives*, (2007), The ICFAI University Press, Hyderabad, pp.106&108

the issue of political meddling in police work and its disastrous effects on the rule of law in this country in its Second Report (August 1979).

The Commission's main suggestions for addressing the issue were as follows: - Each State should establish a State Security Commission to:

- (i) establish general policy guidelines ¹²
- (ii) assess the State police's effectiveness
- (iii) serve as a venue for appeal to consider officers' complaints about being the target of unlawful orders and about being promoted.
- (iv) Examine how the police department operates in general.

The current system, which depends on the Chief Minister/Home Minister's discretion for the selection of the head of the State Police Force and his tenure, encourages a very unhealthy race among senior officers in the police to lobby for the top post, which disrupts the organization and command structure of the force and lowers standards of leadership and discipline. The Chief of the State Police Force should be chosen from a panel of three IPS officers of that State cadre. The panel itself should be prepared by a committee headed by the Chairman of the UPSC. The Police Chief thus selected should have a fixed tenure.

The Police Act of 1861 ought to be replaced with a new Police Act that would expand the police's role and alter the system of oversight and control over them in order to transform them into an impartial agency that serves the public and advances the rule of law in the nation.

Report No. 154, Law Commission:¹³

- (i) lessening governmental authority over police investigations because the courts would shield the latter,
- (ii) improved investigation as a result of judicial scrutiny, which will result in successful prosecutions,
- (iii) a decrease in the likelihood of wrongful and unnecessary prosecutions,
- (iv) prompt investigation resulting in prompt case resolution; the political system was revolutionized with the arrival of independence, but the police system remained largely unchanged, despite widespread recognition of the need for reform. ¹⁴

In the 1960s, numerous State Governments took the lead in forming commissions to investigate police issues and recommend solutions. In the 1970s, the Government of India took the lead, establishing the National Police Commission in 1977 and the Committee on Police Training in 1971.¹⁵

The Supreme Court considered in 2006 that it could not further wait for the Governments to take suitable steps for police reforms and had to appropriate directions for immediate compliance. In 1996, retired police officer Mr. Prakash Singh filed a petition under Article 32, urging the issue of directions to the Government of India to frame a new Police Act on the lines of the model Act drafted by the Commission in order to ensure that the police are made accountable essentially and primarily to law of the land and the people. ¹⁶

The Supreme Court eliminated four necessary reform elements after consulting the opinions of multiple committees on police reforms:

- (a) the state-level State Security Commission;
- (b) an open process for choosing the Police Chief and whether or not it makes sense to give him a set term of office;
- (c) keeping law and order and investigative work apart;
- (d) A new Police Act that ought to represent the people's desire for democracy.

In the landmark decision *Prakash Singh v. Union of India*, the Supreme Court of India ruled on September 22, 2006, that all governments, both federal and state, must follow seven directives that provide concrete steps for initiating police reform. The court ordered all governments to comply with the directives by December 31, 2006, rejecting

¹²Balkrishna E.R., *Police in Changing Society*, (1998), Andhra Pradesh Govt. Administration, Hyderabad, p.87

¹³Ghosh S.K., *Police and Public Relation*, (1970), Eastern Law House First Ed., Bhuvaneshwar, p.94.

¹⁴Barker E.R., *Police Promotion Handbook of General Police Duties*, (1969), Butterworth & Co, London, p.63.

¹⁵Choudhary T.K., *Crime in Maharashtra* (2002), Criminal Investigation Bureau, Pune, p.107.

¹⁶*Ibid*

arguments that demanded compliance with the directives be followed word for word. It also extended the deadline for complying with four of the directives by three months, but mandated immediate compliance with the remaining directives.¹⁷

The Supreme Court's ruling is the first concrete step toward police reform in a long time, but it is also only the first step; strong political will is now needed to introduce long-lasting reforms rather than cosmetic changes. Several States have taken the initiative to set up special committees to draft a new Police Bill and committed to introducing it in the legislature in the coming months. It is hoped that these new pieces of legislation will be openly debated and ultimately reflect the essence of the ruling.

The Supreme Court's rulings in *Prakash Singh v. Union of India* can be broadly classified into two categories:

1. those aiming to grant the police functional authority (Part I);
2. those who want to improve police accountability (Part II).

State Security Commission Directive No. 1.

The State Governments are instructed to establish a State Security Commission in order to: establish general policy guidelines; assess the effectiveness of the State police; and make sure the State Government does not exert undue influence or pressure on the police.¹⁸

Director General of Police Directive No. 2.

The State Government is responsible for making sure the Director General of Police is appointed in a transparent, merit-based manner and has a two-year minimum tenure.

Directive 3. Other police officers' minimum tenure

The State Government shall guarantee that all other law enforcement personnel assigned to operational responsibilities, such as Superintendents of Police overseeing a district and Station House Officers managing a police station, possess a minimum tenure of two years.

Police Establishment Board Directive No. 4

A Police Establishment Board, to be established by the State Government, will make recommendations regarding postings and transfers of officers above the rank of Deputy Superintendent of Police and decide on all matters pertaining to the posting, transfers, promotions, and other matters pertaining to the service of police officers below that rank.

Directive No. 5: National Security Commission

In order to form a panel for the selection and placement of Chiefs of the Central Police Organizations (CPO)¹⁹, who should also be granted a minimum tenure of two years, the State Government is required to establish a National Security Commission at the Union level.

Directive 6. Authority for Police Complaints

In order to investigate public complaints against police officers in cases of significant misbehavior, such as custodial death, grievous harm, or rape in police custody, the State Government is required to establish independent Police Complaints Authorities at the State and district levels.

Directive 7: Law enforcement and investigating agencies should be kept apart

Investigation and peace and order police The State Government shall keep the two apart from one another. The State Government shall keep the two distinct from one another. States' Adherence to Directives²⁰

Compliance with *Prakash Singh* case Reforms by States in India; An evaluative and analytical study on 11-1-2007, the States submitted affidavits to the Supreme Court setting out the steps that they had taken to comply with the judgment. States and the Union filed fresh affidavits to update the Court on compliance. Only around 15% have been compliant (have reported taking steps to implement all directives like Sikkim, Nagaland, Meghalaya, Arunachal

¹⁷Malleswari, V B. *Police Reforms: Global Perspectives*, (2007), The ICFAI University Press, Hyderabad, p.43.

¹⁸Barker E.R., *Police Promotion Handbook of General Police Duties*, (1969), Bufferworth & Co, London, p.56.

¹⁹Iyer V.R. Krishna, '*Police in a Welfare State*', (1958), Asia Book Center, New Delhi, pp.23&24

²⁰Kersta L.G., '*Voice Identification*' Co. Haryana, (1962), p.45.

Pradesh) while 63% have been partially compliant (have taken steps to comply with one or more directives, may have registered objections to some directives like Himachal Pradesh, Daman and Diu, Orissa, Jharkhand) while the rest have completely ignored them (have registered strong objections to some or all directives and do not indicate any steps for implementing or have stated that new police legislation is in the process of being drafted therefore no steps have been taken to implement directives or; have sought extensions with no details on concrete steps towards compliance like West Bengal, Tamil Nadu, Uttar Pradesh) .²¹

Issues disputed by States:

Gujarat and Nagaland: - There is little political meddling in police management. The necessity of a State Security Commission is questioned because the police are not subject to unjustified influence.

Creating a State Security Commission with binding authority is likely to weaken the authority of a constitutionally established State over the State police, result in the establishment of a parallel body that is not answerable to the people of the State, and violate the rights of the State. These states are Andhra Pradesh, Gujarat, Karnataka, and Uttar Pradesh.

Similarly, arguments against a fixed tenure for the IG, DIG, SP, and SHO have been made in Andhra Pradesh, Gujarat, Nagaland, and Uttar Pradesh. A fixed two-year tenure for the DGP, regardless of their superannuation date, will block opportunities for other eligible senior officers, who will be demoralized. The directives also take away the government's ability to transfer police officers to meet administrative exigencies. ²²

Gujarat and Karnataka:-The Union Public Service Commission's involvement in this is neither practical nor necessary. The current law does not provide for the Union Public Service Commission to appoint three officers who will then submit three names of candidates for DGP to the State Government.

The Police Establishment Board in Gujarat, Uttar Pradesh, will duplicate current systems and operate against the democratic functions of the government. It will create a separate power center made up of bureaucrats who are not answerable to the people, as well as duplicate current systems.

Creating new District and State Complaints Authorities would duplicate the work of existing fora and be a financial burden; Uttar Pradesh argued against the need for State and District Complaints Authorities based on a statistical argument comparing the current number of complaints against the police and the number found to be incorrect or unsubstantiated. Gujarat, Uttar Pradesh, Andhra Pradesh, Karnataka, and Tamil Nadu: - Complaints Authorities will duplicate existing efforts and be a financial burden. National and State Human Rights Commissions, the Minorities Commission, the Scheduled Castes and Schedules Tribes Commission, the Central Vigilance Commission, the State Vigilance Commissions, and LokAyuktas are already in place to deal with complaints about the police²³.

REFORMATION ATTEMPTS

It was almost like a bolt from the blue, with the people general sincerely hoping that the Communist Party (Marxist) led Ministry with a Home Minister from the CPM would lead by example by expeditiously implementing the Supreme Court's directives. In fact, reports from Kerala indicated that the Home Minister of that State had written to the union home minister to convene a meeting of the Home Ministers of different States to discuss the directives of the Supreme Court and has taken steps to move the Supreme Court for a review.

It may be recalled that Kerala was the first State in India to be reorganized based on language, under a Communist Party led ministry, with Shri E.M.S. Nambuthripad as Chief Minister and Shri V.R. Krishna Iyer (later Justice V.R. Krishna Iyer) as Home Minister. This initiative was the first to be directed towards reforming the police. The Minister himself had made clear that he was very open to the demand for police reforms. ²⁴

The National Police Commission Report was with the State Government when they appointed a Police Reorganisation Commission on 30-7-1982. Eminent jurists and public figures such as N.C. Chatterjee, S. Mohan Kumarmangalam, S. Guru Swami, and P.N. Krishna Pillai were on the Kerala Police Reorganisation Committee, which was established on 15-1-1959²⁵. The Committee's Terms of Reference were quite progressive and forward-looking. The Committee submitted their Report, rather abruptly, on 29-1-1960 with recommendations on some items of the Terms of Reference;

²¹Kapse S.R., 'Modernisation of Police for 21st Century', (1989), Popular, Bombay, p.62.

²²Balkrishna E.R., *Police in changing society*, (1998), Andhra Pradesh Govt. Administration, Hyderabad,

²³Ghosh S.K., *'Police and Public Relation'*, (1970), Eastern Law House First Ed., Bhuvaneshwar

²⁴ *ibid*

²⁵Malleswari, V B. *Police Reforms: Global Perspectives*, (2007), The ICFAI University Press, Hyderabad

most of the recommendations were progressive and forward-looking. The Communist Party (Marxist) led ministries had taken office, at least four times after 1960, but no steps were taken to implement, at least selectively, any of the recommendations.

A different commission, the Police Performance and Accountability Commission, with no less a person than Justice K.T. Thomas, formerly of the Supreme Court, was appointed in 2004 by the then Chief Minister who held the home portfolio; the report of this commission is also gathering dust in the morgue of police reforms efforts. The reports of the National Police Commission and the Commission mentioned above were also not acted upon.²⁶

The present Home Minister had stated on several occasions that he is having the recommendations of the various Commissions, including the Chatterjee Commission of 1960 vintage examined for implementation. He had also generally welcomed the directives issued by the Apex Court. It was therefore absolutely shocking and disturbing to find the very same Minister spearheading a move to abort the police reforms process kick-started by the Apex Court.10 In some States, Police Complaints Authorities have already been set up to inquire into allegations of serious misconduct against police personnel. In Tripura, the official notification of the constitution of the Police Accountability Commission, its functions, the procedure for making complaints and its physical location was published in the DainikSamvad on 4-5-2008, informing the public that the Commission would be functional from 2-6-2008. It is positive that the State Governments are choosing to draft new police legislation. It is also a cause for enormous concern that the community is not involved and is not aware of the process. The State Governments must publicise their initiatives to redraft police legislation widely, using a range of methods. Publishing this information will educate the public and strengthen democracy.²⁷

It was sincerely hoped that the Government would examine and publish the report expeditiously so that the process for implementing various recommendations made therein could begin right away. The core of the police reform is to secure professional independence for the police to function truly and efficiently as an impartial agent of law of the land and, at the same time, to enable the Government to oversee the police performance to ensure its conformance to law. A supervisory mechanism without scope for illegal, irregular, or mala fide interference with police functions has to be devised.

The very tentative steps towards police reforms are therefore opposed by a powerful and formidable array of interests. This is, therefore, the most critical moment for all well-meaning citizens of this country to speak up; to come out and press their case for clean and efficient police; police that are accountable to the law and respect it; and to educate the public through media debates, talks, and talk shows; public education should be the first priority. The fight for police reforms should not be abandoned at this point.²⁸

CONCLUSION

The Indian Police Act (IPA) of 1861, which reflects the long-lasting effects of colonial rule, continues to have a significant impact on India's policing environment. Over time, there have been several attempts at reform, but the framework of the IPA has remained largely intact, with features like political interference, hierarchical structures, and limited accountability. The Supreme Court's directives in *Prakash Singh v. Union of India* have been a major step towards reforming the police, but their implementation has been inconsistent across states.

Going forward, true police reform in India necessitates the depoliticization of police appointments and transfers, the creation of independent supervision mechanisms, and a thorough revamping of the IPA in accordance with the values of accountability, openness, and professionalism.

²⁶Balkrishna E.R., *Police in changing society*, (1998), Andhra Pradesh Govt. Administration, Hyderabad,

²⁷Mehta D.S., *'Hand Book of Public Relation in India'*, (1980), Maharashtra, Police Home Dept. Bombay,

²⁸Kapse S.R., *'Modernisation of Police for 21st Century'*, (1989), Popular, Bombay,