



# **Police Practices: Obstructions to Poor People's Access to Justice**

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## Executive Summary

The main theme of this paper is to show how the poor and disadvantaged groups are not able to access justice due to bad policing in the developing countries of Asia Pacific region. The major issues are discussed in a general manner, with illustrations drawn largely from India. The subject is discussed in three parts.

**Part I** shows how the police system in these countries has been governed by considerations of defending the establishment rather than providing sensitive and friendly policing to the people. The police forces have been structured, groomed and controlled to be loyal and subservient to the rulers and not to the people. The police thus are seen not as servants of law but of the regime in power and the transition from a colonial to a democratic system of policing has not occurred in these countries.

**Part II** discusses some police practices that cause injustice or obstruct the poor and disadvantaged groups to access justice in these countries.

The process of criminal justice starts with the registration of information by the police about the commission of a criminal case. One common practice followed by the police in these countries is not to register the complaint when it is received. Non-registration of complaints, particularly of poor people, is quite common. The reasons for the widespread prevalence of the practice, the initiatives taken to deal with the problem and the measures that need to be taken have been discussed.

The existence of corruption is another major obstacle for poor and disadvantaged people of Asia Pacific region face to access justice. Police corruption affects all in the society, but the poor people suffer more from its effects. Police work offers opportunities to make money on the sly and the victims of police misconduct are invariably the poor and disadvantaged groups as they are not in a position to pay. Various initiatives have been taken in different countries to tackle the problem, but the politicized culture of patronage and impunity that prevails in the South Asian countries ensures that the corrupt officers do not come to grief in many cases.

The third major obstruction is caused by a large number of illegal arrests and detentions made by the police almost every day. Illegality in arrest takes many forms, the most common and widespread of which is to detain the arrested man in custody without producing him before the magistrate. It is during this period of illegal detention that the persons concerned are subjected to torture and degrading treatment. Most persons arrested and detained wrongfully happen to be poor people. Making the process of arrest and detention transparent and providing for some civic oversight of the process have been suggested as measures to deal with the problem.

Use of torture or brutal practices by the police is another area of major concern. The victims of such practices in most cases are poor, weak and marginalised people. It becomes very difficult to deal with the problem because the culture of political patronage that exists in most of these countries creates a climate in which impunity

flourishes and the existing accountability mechanisms are not strong enough to deter the wrong ones in the police. Zero tolerance to torture is the principle that the government and the police department have to adopt, if they want to stamp out torture from the repertoire of police practices.

The allegations against the police of being biased and partisan in dealing with minorities are often heard in the countries of Asia Pacific region. Some of the worst examples of lack of police action in providing protection to the people of the minority groups during such riots or deliberately obstructing the victims of violence to access justice can be cited from the recent history of communal violence that have occurred in the countries of this region. Many initiatives have been taken to deal with the problem, but a lasting solution would require institutional reforms that help in insulating the police force against illegitimate influences and pressures and holding accountable those who violate the rights, particularly the right to access justice, on grounds of colour, creed or riches.

Police practices in dealing with violence against women leave a lot to be desired. Most crimes against women, like those of rape and domestic violence, do not get reported to the police. What is reported is not necessarily registered by them. This happens particularly when women are poor and lack awareness or means to pressurise the police to register and investigate cases. The orientation and attitudes of police personnel come in the way of providing justice to victims.

**Part III** makes recommendations for the UNDP programme. The paper suggests the establishment of a civic oversight mechanism, an independent police performance evaluation board, an independent custody visiting system and human rights commissions and improvement of police training, promotion of public education and strengthening community policing as the major entry points for the programme.

There are two directions in which the idea of police reforms must be pursued simultaneously. One is to establish statutory institutional arrangements aimed at enhancing police accountability and the other direction is to think in terms of doing all that can be done to strengthen and improve policing under the existing set up.

The paper describes some good practices, like the functioning of civic oversight mechanisms in countries like South Africa, provisions of law in the USA relating to pattern and practice of police misconduct, establishment of independent custody visiting system of the United Kingdom, working of Mohalla Committees of India and developing change agents to improve police training in India.

The paper suggests enlisting support from a wide cross section of constituencies to build up pressures to break resistance to police reforms. Some of the important constituencies that need to be assiduously cultivated for this purpose are the police, politicians, human rights commissions, non-government organizations and the media.

## Introduction

Of the various challenges to governance being faced in the poor countries of Asia-Pacific region, two are major - ensuring sustained development of the economy at a brisk pace and providing a sense of security to the public by controlling crime and violence in society, without violating the human rights of citizens. The two, in fact, are closely linked. It has now been fully realised that poverty is not merely the result of bad economics; it is also due to bad governance.

The citizens feel the impact of bad governance in many ways. Feeling insecure and not being able to access justice is one way and it hurts a lot. To feel safe from crime is as important to a person as access to food, shelter, education and health.<sup>1</sup> This feeling of safety becomes crucially important for the poor because crime impacts them very severely, more so than it does the rich. One, they are easy prey, as their self-protection capabilities are very limited. Two, even the loss of a day's earnings makes survival all the more difficult. Three, they lack the knowledge and means to acquire protection and access justice.

A participatory survey conducted in 47 countries in 1999 brought out very vividly the voices of the poor people, showing their fears, insecurities and vulnerabilities.<sup>2</sup> These voices showed that poverty was not all about being hungry and shelter less, but also being voiceless and powerless. It is the lack of voice and power that makes it very difficult for the poor and disadvantaged people to access justice and easy for the state and its agencies like the police and the elite class to deny them the access.

What do the people in poor countries think about the state and its agencies? The poor people's interactions with state representatives are marred by rudeness, humiliation, harassment, stonewalling and corruption.<sup>3</sup>

The most prominent of the state agencies having this image are the police. The global as well as the national surveys of public opinion show the police in very unsavoury light. A global survey showed that at best, they are inactive; at worst they "*actively harass, oppress and brutalise*".<sup>4</sup> Police indifference, brutality and corruption were found to be major factors obstructing poor people's access to protection and justice in most countries. The national surveys have produced

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<sup>1</sup> The UN Commission on Crime Prevention and Criminal Justice has often stressed on this point

<sup>2</sup> The World Bank: *Can anyone hear us? Voices from 47 countries*, December, 1999

<sup>3</sup> *Ibid*

<sup>4</sup> *Ibid*

similar results. For example, numerous surveys of public opinion have been done in India. One survey found that the police were “*partial towards the rich, the influential, politicians and henchmen of politicians. Policemen were said to be rude and even brutal in their behaviour. ... Most respondents believed policemen to be corrupt*”<sup>5</sup> The National Police Commission (NPC) concluded that while there were several reasons for poor image, “*police partiality, corruption, brutality and failure to register cognizable offences are the most important factors which contribute to this sad state of affairs.*”<sup>6</sup> A more recent study confirmed the NPC’s findings and brought out clearly that the three most prominent features of the ugly face of the policeman in India are his partiality, brutality and corruption.<sup>7</sup> These features are clearly and particularly noticeable when he is dealing with poor and disadvantaged people.

In the light of these perceptions, this paper discusses some major issues concerning the poor people’s inaccessibility to justice due to bad policing in typically developing countries of Asia-pacific region. The region is highly heterogeneous and contains the legacies of some of the oldest civilizations of the world. Currently, this region is home to a number of the most heavily populated and poorest countries of the world, all aspirants in the frantic race to become rich. Despite the heterogeneity, the profile of a typically developing country can be sketched. The profile shows a country with increasing population, mostly rural based but drawn towards overcrowded cities and divided into a vast mass of poor people living in poverty with a small percentage of highly rich enjoying the five star luxuries. The country was ruled by colonial powers for long and even though now independent, its present politics is either militarised or criminalized and the government is either a brutal dictatorship or a weak democracy. It has had a history of violent ethnic conflicts and is still facing problems of insurgency, terrorism or ethnic tensions. The Constitution stresses on achieving equality and justice for all citizens, but the system of values is highly feudal and is obstructing the democratic institutions to take root and grow. Its administrators are mostly self- serving, if not inefficient and corrupt. The criminal justice system is on the verge of collapse, with justice being delayed and denied. At the entry point of the justice system stands a huge force of police personnel who believe more in serving the rich and influential than in allowing the people to access justice according to the constitutional mandate.

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<sup>5</sup> National Police Commission: *Fifth Report*, A Government of India publication, November, 1980, p 48

<sup>6</sup> National Police Commission: *Fifth Report*, A Government of India publication, November, 1980, p 48

<sup>7</sup> Joshi, G.P: *Police Public Interface*, A CHRI publication, 2000, p 89. This survey was done by the Commonwealth Human Rights Initiative (July to December 1999) in nine selected police stations in three states of India, Viz Assam, Rajasthan and Tamilnadu for the Bureau of Police Research and Development, Ministry of Home Affairs, Government of India as a part of an overall UNDP project on “Improving the Organisation and Management of the Law Enforcement in India,”

The paper discusses the subject in a general manner, but the illustrations are drawn mainly from the Indian experience. The subject is discussed in three parts. Part I describes the main features of the police system as it has evolved in such countries over a period of time and argues that the transition from being a regime force to a democratic police service has not occurred in these countries. Part II examines some specific police practices that cause either injustice to the poor and disadvantaged people in these countries or obstruct their access to justice and also discusses initiatives taken or recommendations made to deal with the obstacles. Part III makes recommendations for UNDP programme development in terms of (a) entry points, (b) prioritisation, (c) good practices and (d) constituency building.

## **Part I**

### **The Police System**

A large number of countries in Asia Pacific region were ruled by the colonial powers for long in history (India, Pakistan etc) or have emerged out of dictatorships and long cruel conflicts ( Laos, Cambodia etc) The type of police system established in these countries was governed more by considerations of maintaining the colonial or dictatorial rule rather than providing sensitive and people friendly policing. In all cases, whether it was support for a military dictator, or protection of colonial power, the force was designed to be totally loyal and subservient to the rulers of the moment. There was no concept of being accountable to the law or to the population. The idea of the police being a part of the community and accountable to it and of a policeman being a citizen in uniform, sensitive to the requirements of others and a means of accessing justice to the vast majority, never grew in the soil of such countries.

The main job of the police was to maintain order and this could best be done by a body of men who would deter the citizens by their very presence. The police were therefore raised on a militaristic and authoritarian pattern. The policeman must have an intimidating presence, that should deter not only the criminals but also ordinary citizens. In his presence, nobody should raise questions or demand answers.

The structuring of the police force was also designed to reflect and embody the system of feudal values prevalent in society. The senior posts in the police were reserved for the ruling sections and the junior posts were kept for natives. In India, the police legislation uses the words "*inferior officers*" for those occupying the lower posts in the police<sup>8</sup>. There was tremendous emphasis on maintenance

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<sup>8</sup> The Police act of 1861, *Section 7*

of discipline bordering on regimentation. The main job of the constabulary and other lower ranks was to carry out orders blindly and ensure maintenance of status quo. Thereby, the police set-up, reflecting the inequalities and iniquities of a feudal value system, made the task of maintaining and defending the establishment easy.

However, this does not explain why these countries are still persisting with this colonial legacy. For example, though India became independent more than 56 years ago, even now, the police in the country are still mostly governed by the Police Act of 1861, despite the fact that all police commissions and expert bodies set up from time to time to examine police problems, including the National Police Commission, have recommended the replacement of this old and archaic law with a new piece of legislation. As an eminent police researcher has rightly said: *“The basic character of the South Asian police with its twin legacies of servility to the ruler and oppression for the mass of people”* survived well, with *“neither the political class, nor the bureaucracy and least of all the police itself, showing any anxiety to alter its established culture, ethos, role and functional styles.”*<sup>9</sup>

The reason for persisting with the same police system is easy to understand. What suited the colonial rulers matched the interests of the new ruling classes too, which emerged in these countries after Independence. It was realised that as long as the executive continued to exercise total unquestioning control over the police, it would be easy to misuse the police to further the interests of the ruling classes.

Gradually, over a period of time, the standards of public life in these countries declined, with politics becoming increasingly contentious and criminalised, leading to a perceptible decline in the quality of control exercised over the police and increasing misuse of the police organisation by people in positions of power for partisan interests. Policing slowly but surely became increasingly politicised. The position is best summed up in the words of the Parliamentary Standing Committee on Home Affairs in India: *“Today we have a police, which is politicised and politically polarised. For it has become a pawn in the hands of its masters. In return, the policemen get political patronage, which has become essential for their survival.”*<sup>10</sup>

The nexus between powerful politicians, bureaucrats and the police is now overt and there are myriad examples of this across the Asia-Pacific region. From

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<sup>9</sup> Dhillon, K.S, *Defenders of the Establishment- Ruler Supportive Police Forces of South Asia*, Indian Institute of Advanced Study, Shimla, 1998

<sup>10</sup> The Department- Related Parliamentary Standing Committee on Home Affairs (April 2002): *Eighty-Eight Report on The Demand for Grants (2002-2003) of Ministry of Home Affairs*, p 31

Indonesia to India, Philippines to Pakistan as much as in Sri Lanka or Bangladesh, police are seen as servants not of the law but of the regime in power, protecting those who will in turn grant them patronage and impunity. This is only less frightening than the concomitant and near open nexus with criminals, who now, well protected by the police, are increasingly entering politics and so perpetuating bad governance. It is in this scenario that the need for police reform has to be considered. Police reforms are needed to uphold the constitution, the rule of law and the institutions of state as much as it is needed to make sure that laws are obeyed, individual citizens are assured their personal security and are able to pursue their lives free from fear.

It is against this backdrop that one should analyse the obstacles that poor people face in accessing justice because of the way the police are and the way they function and behave.

## **Part II**

### **Police Practices: Perpetuating Injustice and Obstructing Access to Justice**

Police practices that cause injustice to the poor and obstruct their access to justice are many and their incidence differs from country to country. However, a few major ones and which are somewhat common to many countries in the Asia Pacific region are discussed here under the following broad heads:

#### *Non- registration of Complaints*

Non-registration of their complaints is the most common, serious, frequent and widespread grievance of poor and disadvantaged people in many countries in the Asia Pacific region.

The process of criminal justice starts with the registration of information by the police about the commission of a crime. Non-registration of a case ends the process of justice then and there. It violates the canons of justice in two major ways. One, it shuts the doors on the victims of crime to get justice. Two, it allows the criminals to escape justice. It also adds to the climate of fear and insecurity. When the criminals find that the crimes are not registered, they get further emboldened to commit more crimes. When a large number of persons, after committing crimes, are allowed to get away and justice is not meted out to victims, it results in eroding the faith and confidence of the public in the effectiveness of the police system.

Non-registration of complaints, particularly of poor people, is quite common in most South Asian countries. In India, registration of complaints is mandatory

under law, but even then a large number of complaints are not registered. The Uttar Pradesh Police Commission of 1960-61 reported the following malpractices of the police in recording complaints (FIR)<sup>11</sup>:

- i. *“Non-recording of First Information Report i.e. concealment,*
- ii. *distorting facts with a view to lessening the gravity of the offence i.e. minimisation,*
- iii. *introduction of new facts and distortion of facts in order to create evidence against the accused or for implicating innocent persons, and*
- iv. *demand of money or consideration for recording or prompt recording of report.”*

10 years later, again in the same state, it was unanimously admitted before the Uttar Pradesh Police Commission of 1970-71 by all Station Officers and Circle Inspectors interviewed by them that concealment and minimisation of crime was commonly done by them and the Commission found *“no reason whatsoever to doubt the truth of their admission.”*<sup>12</sup> In a study on the *“Image of the Police in India,”* over 50% of the respondents mentioned ‘non registration of complaints’ as a common malpractice in police stations<sup>13</sup>. One of the most eminent police officers from India, who was also a member of the National Police Commission, had the following to observe: *“Now we come to the extremely widespread evil of non registration of cognisable offences..... The poor and weaker sections of the society who live in villages are ... the main victims of this evil.”*<sup>14</sup>

The police have developed numerous ways to avoid registration of complaints. It is easy for them to practise these while dealing with poor people, who are not aware of their rights or lack the ability to prevent violations. One common practice is to intimidate and threaten the complainant to dissuade him from registering his complaint. He is accused of fabricating the case or told that the case is full of lies and will not hold out in the court of law. One subterfuge employed is to make a pretence of registering his complaint without actually doing so. This is done by making an entry in the General Diary of the police station and giving the complainant a copy of that entry. The complainant goes under the false impression that the police have registered his complaint while in reality, they have not done so. Sometimes the complaint is not registered on the ground that the offence has occurred in the jurisdiction of some other police station.

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<sup>11</sup> Cited by the *Uttar Pradesh Police Commission, 1970-71*, Superintendent, Printing and Stationery, UP, India, 1972, in its Report, p 10

<sup>12</sup> *Report of the Uttar Pradesh Police Commission, 1970-71*, Superintendent, Printing and Stationery, UP, India, 1972, p 13

<sup>13</sup> The National Police Commission, Government of India, *Fourth Report*, June 1980, p1

<sup>14</sup> Saxena, N.S, *India: Towards Dawn in Law and Order, 1985-1994*, Rohilkhand Publications, Bareilly, UP, India, 1994, p 164

If registration of complaints becomes unavoidable, the gravity of crime is sometimes minimised. For example, an offence of robbery is reduced to an offence of theft or burglary or an attempt to murder becomes a case of grievous hurt.

Proper and prompt recording of FIR and in time is of great evidentiary value under the Indian system of jurisprudence. The police know it and sometimes add or delete the names of suspects or witnesses or deliberately introduce wrong details in the FIR to mislead the investigation in favour of the rich or influential people.

One major reason for the existence of this evil is that police performance is evaluated on the basis of crime statistics. The department as well as the government are very keen to report that crime is under control. One way to do so is to convey the government's intentions to the police. This is generally done very discretely, but sometimes even brazenly. One example of such brazen attempt was seen recently in the state of Uttar Pradesh in India, where instructions to bring down the crime figures were given to the police. *"The Chief Minister, to drive home the message, suspended quite a few officers of the rank of SP and DIG. What followed was suppression and minimisation of crime on a scale never before witnessed in the history of independent India."*<sup>15</sup> Later, the UP government inserted advertisements in the newspapers, extolling the Chief Minister for her achievements, including that of bringing down crime in the state by 69% in less than a year of her rule.

Incidence of crime and conviction figures are used to evaluate the performance of the police station staff. This gives rise to questionable methods employed by them to bring down the crime figures and to secure convictions by using means-fair or foul.

Corruption is another important reason for this practice. The accused bribes the station officer, who ensures that the case is either not registered or the facts are twisted to save the guilty. If the complainant or the accused happens to be poor, he suffers because of his inability to bribe the police station staff.

Heavy crime load and inadequacy of staff also encourage non- registration of complaints. Crime keeps on increasing but the strength of the police station does not increase correspondingly. Consequently, the existing investigating staff come under heavy pressure and one way of avoiding additional investigation work is not to register complaints.

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<sup>15</sup> Prakash Singh, *"Best Bakery or Mockery"*, The Pioneer, dated July 12, 2003

The police departments in different states have occasionally launched drives to ensure free and full registration of complaints. Whenever such crimes are launched, crime registers a big jump. Increase in crime figures results in an outcry in the press and the legislature, causing considerable discomfiture to the government. The police then revert to the old evil of concealing crime by not registering it. Controlling crime by artificially manipulating crime figures only results in denying justice to many, particularly to the poor and the ethnic minorities.

### **Recommendations/ Initiatives**

An important initiative to deal with the problem was taken in India when the Government introduced the new Code of Criminal Procedure in 1973 to replace the old Code formulated during the British days in 1898. The new Code introduced two new provisions in law. One made it mandatory to provide a copy of the FIR to the complainant free of cost. The other laid down that any person aggrieved by a refusal on the part of the officer in charge of the police station to record his complaint could send its substance in writing to the District Superintendent of Police, who would then take necessary action to ensure investigation of the case.

The initiative did not succeed in curbing the malady. The malpractice still exists as has been shown above. None of the two new provisions in law was of a penal character. The Law Commission of India examined the subject and recommended the insertion of a specific penal provision in the Indian Penal Code to prescribe that the officer in charge of the police station refusing or without reasonable cause failing to record the FIR would be punished with imprisonment for a term of one year or with fine or with both<sup>16</sup>. The Government did not accept the recommendation.

Recommendations made to deal with the problem include (i) increasing the strength of investigating officers in the police stations, (ii) basing evaluation of police performance on criteria other than crime statistics, (iii) improving the quality of supervision exercised over the work of the police station staff and (iv) making non registration of a citizen's complaint a specific penal offence either in the penal code or in the Police Act.

These recommendations can work, but only if there is no pressure from the political executive on the police to show 'good results' on the crime front.

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<sup>16</sup> Law Commission of India, *Eighty Fourth Report*, April 1980, p 20

### Corrupt Practices

The existence of corruption in the police is another major obstacle for poor and disadvantaged people of countries in the Asia Pacific region to access justice. Police corruption affects all in the society, but the poor people suffer more from its effects.

The allegations of corruption against the police are made in almost all countries of the Asia Pacific region, rich or poor. For example, in Australia, police corruption has been a cause of concern in many states. The Fitzgerald Royal Commission unearthed existence of massive corruption in the police force of Queensland in the eighties; the Wood Royal Commission did the same in New South Wales in the nineties; and last year, the Kennedy Commission was inquiring to disclose the levels of corruption in the police force of Western Australia.

A recent survey revealed that 84% of respondents in Bangladesh who interacted with the police during the past year reported corruption and 75% reported that they paid bribes to lower judiciary<sup>17</sup>. A field study of corruption faced by the common man in India ( March-April, 2002) revealed that the police was by far the most corrupt of the ten sectors of public domain (like Education, Health, Railways etc) covered in the study<sup>18</sup>.

Corrupt officers in the police everywhere are of two types. One category consists of “meat eaters.” They are those who misuse their powers aggressively for personal gain and collect huge pay offs, generally from persons who indulge in organized criminal activities like gambling, prostitution, manufacture and sale of illicit liquor and narcotics. The other category is of grass eaters and includes those who accept payments and favours that the ‘happenstances’ of police work throw their way. The victims of both are poor people.

It is a mistake to think that the meat eating activities of corrupt police officers do not harm the poor. To give only one example, in India, tragedies resulting in large number of deaths due to consumption of illicit liquor keep on occurring with regular frequency and the victims in all cases are poor people. It is mainly from the poor, unemployed and disadvantaged groups that the organised crime gangs draw their recruits. However, the majority of corrupt police personnel belong to the second category and it is their activities that cause considerable harassment to the poor. The World Bank survey of voices from 47 countries mentions that the police collect bribes from traders and kiosk owners and “such

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<sup>17</sup> The Daily Star, Dhaka, 18 September, 2002: *Police Top Corrupt, Lower Courts next- TIB report reveals*

<sup>18</sup> Transparency International India: *Corruption in India- An Empirical Study*, December 17, 2002

*bribes are mentioned in PPAs through out the world.” In India, these bribes are known as “hafta”, a weekly collection made by the police for permitting petty vendors to carry on their activities. The police sometimes become as ruthless in collecting their *hafta* as a gang of organised criminals are in collecting their protection money. In one such incident, a fruit vendor in Delhi, who belonged to the minority community, was beaten to death by two policemen in 1996 mainly because he had failed to pay the *hafta*. The incident kicked up a lot of dust and action was taken by the department to prosecute the guilty police officers. The National Human Rights Commission asked the government to pay a compensation of Rs 2.5 lakhs to the next of kin and to take measures to curb the menace so that “this vulnerable section of society can live in peace.”<sup>19</sup>*

In India, police corruption has caused concern from early times. A century ago, the Police Commission of 1902-03 found strong evidence of widespread corruption in the police and it described very vividly the numerous forms in which the police practiced corruption in their daily work and how badly it affected the common and poor people: “It manifests itself in every stage of the work of the police station. The police officer may levy a fee or receive a present for every duty he performs. The complainant has often to pay a fee for having his complaint recorded. He has to give the investigating officer a present to secure his prompt and earnest attention to the case....When the officer goes down to the spot to make his investigation, he is a burden not only to the complainant, but to his witnesses, and often to the whole village. People are harassed sometimes by being compelled to hang about the police officer for days, sometimes by having to accompany him from place to place, sometimes by attendance at the police station, sometimes by having him and his satellites quartered on them for days, sometimes by threats of evil consequences to themselves or their friends (especially to the women of the family) if they do not fall in with his view of the case, .....sometimes by unnecessarily severe and degrading measures of restraint. From all this deliverance is often to be bought only by payment of fees or presents in cash.”<sup>20</sup>

After independence, the evil has not only continued to exist, as reported by different Police Commissions appointed from time to time by the state governments<sup>21</sup>, but flourished because of enormous increase in opportunities.

The incidence of police corruption and its impact on poor people may vary from country to country, but in addition to *hafta*, a few typical situations of police

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<sup>19</sup> National Human Rights Commission: *Annual Report, 1999-2000*, pp 93-94

<sup>20</sup> Government Central Printing Office, Simla, *Report of the Indian Police Commission, 1902-03*, p 25

<sup>21</sup> The Kerala Police Reorganisation Committee (1960), the West Bengal Police Commission (1960-61), the Bihar Police Commission (1961), the Punjab Police Commission (1965-66), the Maharashtra Police Commission (1964), The Madhya Pradesh Police Commission (1965-66, the Delhi Police Commission (1967-68), the Assam Police Commission (1969-71), the Uttar Pradesh Police Commission (1970-1971), the Tamilnadu Police Commission (1971) and the Rajasthan Police Reorganisation Committee (1972)

work in most countries of Asian region, particularly the South Asia, that provide scope to the police to indulge in corrupt practices are as follows:

1. Registration of complaints.
2. Use of discretion to arrest or not to arrest the suspect.
3. Release of the arrested person on bail or denial of bail
4. Providing unauthorized facilities to persons in custody.
5. Threatening the poor and weaker sections with arrest, search and prosecution on flimsy charges
6. Unauthorised interference in civil matters between two parties by favouring the one with power and riches and threatening the other from poorer or weaker sections with involvement in criminal cases.
7. Fabricating false evidence to implicate innocent persons or to leave out the guilty persons.
8. Obtaining free entertainment, goods and services from cinema houses, shops, hotels, street vendors etc on threat of prosecution.
9. Collusion with hoarders, blackmarketeers and smugglers and tipping them off with advance information about any intended raids or searches. Sometimes this collusion is a part of an agreement allowing the police to seize some goods so that the public get assured that action is being taken against anti social elements.
10. Overlooking violations of traffic rules and regulations.
11. Collecting money at the stage of recruitment to the police.

It is obvious that in all such instances, it is the poor people who lose out because they cannot pay. That is why people from poorer sections of society comprise the largest segment of incarcerated population in such countries, both as 'undertrials' as well as convicts.

### **Recommendations/Initiatives**

Various steps have been taken in different countries to deal with the problem of police corruption. These range from upgrading the recruitment standards, strengthening the internal affairs department of the police, setting up new anti corruption cells in different departments, organising training in police integrity and ethics, tightening up anti corruption legislation and weeding out corrupt officers to establishing ombudsman and vigilance commissions.

All such steps are commendable, but they fail to address the core elements of police corruption fully. One such core factor is the sub-culture of the police that promotes corruption. It fosters corruption in many ways, but essentially by promoting a tendency on the part of police personnel "*to close ranks in silence and to cover up knowledge of an officer's wrong doing with a collective blanket of self*

*preservation.*"<sup>22</sup> In the absence of whistle blowing, the corrupt activities of police personnel go underground. Even if such activities are unearthed, the politicized culture of patronage and impunity that prevails in the South Asian countries ensures that the corrupt officers do not come to grief. This is particularly true in respect of police officers of senior ranks, as they are punished very rarely.

In India, the figures compiled by the Central Vigilance Commission (CVC) in 2001 showed that 4,347 cases of officers found guilty of corruption belonging to different departments of the Government of India, including some from the police, had been pending for long. 3,150 of these were cases in which the Commission had recommended major penalty proceedings, but the government had taken no action against them.<sup>23</sup>

Another example of impunity and lack of strong political will to deal with the problem of corruption can be given from the Indian experience. The premier police agency of the central government set up mainly to deal with corruption in government departments is the Central Bureau of Investigation (CBI). In December 1997, the Supreme Court of India, in a very significant judgement, ordered that the Central Vigilance Commission should be given statutory cover and the authority to exercise superintendence over the CBI should be transferred to the CVC from the central government. It took the government more than five and a half years to enact the required legislation. When numerous attempts made from time to time by the government to thwart the implementation of the judgement failed, the Central Vigilance Act was passed this year, but without giving effect to the judgement in full. The apex court had declared the Single Directive<sup>24</sup> null and void as being bad in law. However, the Central Vigilance Act, 2003 has brought it back and given it legal sanctity, which it earlier did not have.

In India, the CVC recently launched a campaign against corruption in the country. A very important initiative that formed a part of this campaign was to display on the CVC's web-site the names of officers, including the Indian Police Service officers, against whom penalty was recommended by the CVC after inquiries found them guilty of corruption charges. This was done by the CVC with a four-fold objective in view.

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<sup>22</sup> Hubert Williams: *Core factors of Police Corruption Across the World*, Forum on Crime And Society, Vol. 2, No 1, December 2002, p 86

<sup>23</sup>The Indian Express, New Delhi dated 9.6.2001

<sup>24</sup> Through this Directive, the Government had debarred the CBI from undertaking any inquiry against any officer of the rank of Joint Secretary or above in the Central Government, including those in the public sector undertakings, Reserve Bank of India, SEBI and nationalised banks, without the prior sanction of the concerned Ministry/Department.

1. Transparency being the key to accountability, the public should be informed about senior public servants involved in corruption cases
2. To build public confidence that action will be taken even against top officers.
3. To encourage deterrence
4. To activate the government to take action in cases of proven corruption against the guilty officers.

The display of names of corrupt officers on the website created a furore. While the public at large welcomed the initiative,<sup>25</sup> the officers felt that they had become victims of witch hunting and were being condemned even before the government had decided about the departmental penalty to be given or about the criminal prosecution to start.

The CVC's efforts are laudable, but in a politicized culture of impunity prevailing in government institutions, including the Police, it would take much more than such initiatives to curb the menace.

The National Police Commission had hit the nail on its head when they concluded that the nexus between money power and political power existing in India inevitably generated unhealthy contacts down the line between different levels of administration on one side and political party functionaries on the other. *Mala fide* exercise of power at different levels in the police is induced by such links. The problem of police corruption cannot, therefore, be satisfactorily tackled unless these links are broken.<sup>26</sup>

### Illegal Arrests/Detentions

The police arrest a large number of people in their day-to-day work. For instance, in India, they arrested slightly more than 6.6 million persons (66,22,775 to be exact) under different sections of law during the year 2000<sup>27</sup>. Law empowers the police to arrest people and to use force for doing so if it becomes necessary.

There is enough data to show that the police do not use this power judiciously. For example, in India, the National Police Commission estimated that a large number of arrests made by the police were not only unnecessary from the point of view of controlling crime, but needlessly imposed avoidable burden on the

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<sup>25</sup> 93 % of the respondents in a poll conducted by the Hindustan Times (a national newspaper) supported the move

<sup>26</sup> National Police Commission, Government of India: *Third Report*, January 1980, p 27

<sup>27</sup> National Crime Records Bureau, Ministry of Home Affairs, Government of India: *Crime in India, 2000* pp307& 309

state exchequer in the form of expenditure on harbouring and maintaining the arrested persons in jails. The arrests were for very minor offences and 43.2 % of expenditure in the concerned jails was incurred on prisoners who "*need not have been arrested at all.*"<sup>28</sup> A recent study conducted on the basis of empirical data collected from different states in India confirmed these findings. It showed that the number of preventive arrests and arrests for petty offences were substantially large; the percentage of undertrial prisoners was unusually high and most of them were there because they were not able to post bail or furnish sureties.<sup>29</sup>

Law in all countries has safeguards to protect the rights of citizens. Almost all over the world, it requires the police to do at least two things. One, the police must inform the citizens about the grounds of arrest and two, they must produce the arrested person within a given period before the judicial officer. The police succeed quite often in circumventing the legal provisions. There is substantial evidence to prove that the police abuse the power to arrest, despite the safeguards.

Illegality in arrest takes many forms, the most common and widespread of which is to detain the arrested man in custody without producing him before the magistrate. This is done by not showing the arrest in police records. It is during this period of illegal detention that the persons concerned are subjected to torture and degrading treatment. The annual reports of the human rights commissions in India are full of validated complaints, where the police picked up persons from their residence or other places, brought them to the police stations, kept them there illegally and subjected them to brutal treatment for extorting confessions or for recovering stolen property or for collecting money. A large number of such cases are of poor people and many of them end up in hospitals, some even in mortuaries

In one such case documented by the National Human Rights Commission, a young man was picked up by the police for questioning in a theft case reported by his employer, taken to the police station and beaten mercilessly. According to the police, they had summoned him for questioning on June 13, 1995, released him and again called him on June 14, 1995. The investigation later revealed that the man was detained illegally in custody from June 8 to June 13. He consumed some poisonous substance on June 14, was rushed by the police to the hospital where he was declared brought dead. The Commission was distressed to see the "*blatant manner in which the records had been tempered by the very people who were*

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<sup>28</sup> National Police Commission, Government of India: *Third Report*, January, 1980, p31

<sup>29</sup> Law Commission of India: *Consultation Paper on Law Relating to Arrest*, November, 2000, pp 38 & 39

*duty bound to maintain law and order and to uphold the rule of law.*"<sup>30</sup> In another case investigated by the NHRC, a clerk of a bank was detained by the police in illegal custody for 13 days in a case of theft reported by that bank and tortured as a result of which he sustained fracture of his neck and femur bone of the leg.<sup>31</sup>

Another illegal practice followed by the police is to detain the relatives of the person they are looking for, if they cannot find him. When the police do not succeed in finding the person they are looking for, they sometimes pick up his relatives and detain them in custody and ill-treat them till the absconding person surrenders. In a typical case of this type, the police arrested the father and brother of a suspect in a murder case and detained them illegally in their custody for a day. When the National Human Rights Commission asked for a report from the authorities, the Senior Superintendent of Police of the district denied the allegation and said that they had been summoned to the police station for a brief interrogation. The NHRC's inquiry showed this to be false and established that the two had been illegally detained to force the surrender of the suspect<sup>32</sup>.

The police get over the requirements of law by manipulating their records. They do so by employing various methods, like leaving some space blank in the concerned registers and later on filling it up with fabricated entries; getting signatures or thumb impressions on blank sheets of paper; making false entries in records to show the investigating officer out of the police station when in fact he was using the third degree methods at that time against the illegally detained person etc.

A large number of victims of illegal arrests are generally poor people. In India, a recent report on law relating to arrest clearly mentions: *"very often it is the poor people who suffer most at the hands of the police. Their poverty itself makes them suspects."*<sup>33</sup>

This becomes possible because the law of arrest gives very wide discretionary powers to the police, which are open to abuse. For instance, in India, it empowers a police officer to arrest, without warrant, any person *"who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned"* or who has in his possession *"any implement of house breaking"* or who may *"reasonably be suspected of having committed an offence"* by

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<sup>30</sup> National Human Rights Commission, India: *Annual Report, 1999-2000* ( Case No. 1460/95-96/ NHRC ), pp 91-92

<sup>31</sup> National Human Rights Commission, India: *Annual Report, 1999-2000* (Case No. 9302/95-96/ NHRC ), p 108

<sup>32</sup> National Human Rights Commission: *Annual Report, 1999-2000* ( Case No 15016/24/98-99/ NHRC.), pp 111-112

<sup>33</sup> Law Commission of India: *Consultation Paper on Law Relating to Arrest*, November, 2000, p 9

receiving property that may “*reasonably be suspected to be stolen*”<sup>34</sup> Then there are sections of law that allow the police to carry out preventive arrests. A police officer has the power to arrest without warrant, any person who, “*it appears to such officer,*” is designing to commit an offence.<sup>35</sup> There are also provisions in law that empower the authorities to require some persons to execute a bond to keep peace or to be of good behaviour<sup>36</sup>. The police arrest a large number of persons under these preventive sections of law, whenever they carry out a crime control or order maintenance drive. In fact, there are occasions when large-scale arrests are made by the police under such provisions just to boost up their record of action taken to prevent crime. Most persons arrested happen to be poor people. It has been rightly pointed out: “*The vast discretion given by the CrPC to arrest a person even in the case of a bailable offence...and ..further power to make preventive arrests clothe the police with extraordinary power which can easily be misused. Neither there is (sic) any in-house mechanism in the police department to check such misuse or abuse nor does the complaint of such misuse or abuse to higher police officers bear fruit except in some exceptional cases*”.<sup>37</sup>

### **Recommendations/ Initiatives**

A few recommendations to deal with the problem emerge out of the above analysis. Since a large number of arrests are not necessary for preventing crime or for maintaining order, a list of offences where arrests are avoidable can be prepared and law amended to proscribe the police to arrest people in such offences. In India, this initiative has already been taken by its Law Commission, which has recommended that the police should not be allowed to arrest people involved in certain categories of offences.

Some element of discretion in exercising their powers to arrest will have to remain with the police to enable them to deal with wrong doers effectively. What is required is to circumscribe the powers by prescribing safeguards. This was done by the Supreme Court of India through one of its landmark judgements in a very famous case.<sup>38</sup> Knowing that torture is practised on a person when he is incommunicado, the judgement attempted to make the entire process of arresting a person and detaining him in custody and interrogating him transparent. The judgement made it mandatory for the police officers to:

- bear accurate, visible and clear identification and nametags with their designations at the time of arresting a citizen;

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<sup>34</sup>The Code of Criminal Procedure, 1973, *Section 41*

<sup>35</sup> *Ibid*, *Section 151*

<sup>36</sup> *Ibid*, *Sections 107 to 110*

<sup>37</sup> Law Commission of India: *Consultation Paper on Law Relating to Arrest*, November, 2000, p 8

<sup>38</sup> D.K.Basu vs. State of West Bengal (AIR 1997 SC 610)

- prepare a memo of arrest mentioning the date and time of arrest and attested by an independent witness and countersigned by the arrested person;
- inform the arrested person of his right to have a friend or relative informed about his arrest and the place of custody and to inform the friend or relative if he lives outside the district or town;
- make an entry in the diary at the place of arrest and detention;
- get the arrested person, if he so requests, examined at the time of arrest and record his injuries in an Inspection Memo and to give a copy of the Memo to the arrested person;
- subject him to medical examination every 48 hours during his detention in custody; and
- send information of the person's arrest and detention to the police control room in district and state headquarters.

This judgement delivered in 1997 did not succeed in stopping the misuse of powers of arrest, as the safeguards were not followed. The state governments did not establish any mechanisms to monitor the implementation of the judgement; nor did they incorporate the safeguards in relevant laws or police manuals.

One way to deal with the problem is to provide for some civic oversight of policing. The Independent Custody Visiting Scheme of the United Kingdom, formerly known as the Lay Visitors Scheme, is worth emulating in some of the Asia Pacific countries where the abuse of police powers of arrest is frequent and common. Some details of this system are given in Part III.

### Use of Torture or Brutal Practices

Torture is outlawed everywhere, though it continues to be practiced in almost all parts of the world. It is definitely prevalent throughout the Asia Pacific region—*“from India and Pakistan to the Philippines and Japan. Human Rights violators include democratic as well as repressive governments, the rich and the less developed.”*<sup>39</sup> The media and the various human rights groups report almost everyday the shocking incidents of brutality and use of unnecessary and excessive force by the police against hapless persons in their custody.

Beating people mercilessly in custody during interrogation is the most common manifestation of police brutality. In some cases, particularly during interrogation of suspected terrorists or hardened criminals, highly brutal methods, like giving

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<sup>39</sup> Amnesty International Library: AI Index ASA 01/002/2000

electric shocks or suspending the person from the ceiling and then beating at sensitive points etc are used.

The victims of police brutality in most cases are poor, weak and marginalised people. *“In many Asia Pacific countries there is a clear link between discrimination and torture- those at most risk are the poor and marginalised groups in society.”*<sup>40</sup> Those who are rich and powerful hardly ever face the wrath and fury of a brutal policeman.

Police brutality in Asia Pacific countries takes many forms, the most common of which are custodial torture, rapes and deaths and killings in fake encounters. Another form in which this occurs is the use of unnecessary and excessive force, including firearms, to disperse riotous crowds.

Use of torture by the police sometimes gets tacit public support in areas or situations where the crime or law and order situation creates a feeling of insecurity and the public feel that enough is not being done to control crime or maintain order. One of the worst consequences of the fear of crime is the occasional tendency on the part of the citizens to take law in their own hands and deliver instant lynch justice to those who are caught while committing crime or even to suspects of crime. The police often turn a blind eye towards such incidents. The victims of such cases in India are often petty offenders and vagrants. Cases of public vigilantism are reported from other Asia Pacific countries too. To give only one example, *“the police in Cambodia are known to be complicit in mob justice. During 1999, there were at least 19 cases in which criminal suspects were killed by angry bystanders often with police standing by and watching.”*<sup>41</sup> The police often take advantage of public fear of crime and criminals to use brutal and illegal methods.

There are various reasons for the use of brutal methods by the police in many Asia Pacific countries. Crime is increasing; criminal justice system is cracking under heavy workload; expectations from the police are high but their status and resources are poor and they are always working under high pressures; the forensic science facilities available to them are inadequate; law is loaded against them; public cooperation is invariably missing; judiciary distrusts them; and their working and living conditions leave a lot to be desired. Above all these, however, is the fact that the culture of political patronage that exists in most of these countries creates a climate in which impunity flourishes and the existing accountability mechanisms are not strong enough to deter the wrong ones in the

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<sup>40</sup> Ibid

<sup>41</sup> Ibid

police. The impunity against violation of citizens' rights becomes the biggest obstacle on the path of poor people to access justice.

There are various ways by which the police enjoy impunity. One is by covering up or destroying evidence of crime committed by them. In cases of torture, sometimes medical officers prove helpful to the police in falsifying or suppressing evidence. The other is by denying access to remedies to victims by threatening them with assaults or prosecution on false charges. A third method is by pursuing investigations into charges against police personnel without diligence and impartiality. Another method adopted when the guilty police personnel are prosecuted in courts is to go slow on implementing judicial directions. There have been many cases in India where either the summons or warrants have not been served on the guilty policemen.

In some cases, police brutality gets state encouragement and protection with complete assurance of impunity granted in advance. This happens when controlling crime or maintaining order and in some cases not to do so becomes important from the political point of view and the message is accordingly conveyed to the police personnel. Nothing explains the above better than what happened in Gujarat in India in the summer of 2002.

Sometimes, law comes to the rescue of the delinquent police personnel. For instance, in India, the Code of Criminal Procedure has a provision, under which a public servant cannot be prosecuted without the sanction of the appropriate authorities for acts done "*while acting or purporting to act in the discharge of his official duties.*"<sup>42</sup> This provision of law has occasionally been abused to provide protection to police officers even in serious cases of misconduct.

### **Recommendations/ Initiatives**

Various recommendations have been made in different Asia Pacific countries to deal with the problem of police brutality. For instance, in India one set of recommendations have stressed the need to sensitise the police personnel to human rights issues and standards, reorient their attitudes, improve their training skills, make forensic science facilities available to them during investigation stage, change the provisions in law that distrust them and improve their manpower and other resources. These recommendations are mostly based on the presumption that police personnel use violence under pressure to solve crimes. This is only partly true, as there is enough evidence to prove that police use torture for other purposes too, like for extortion or while practicing discrimination.

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<sup>42</sup> The Code of Criminal Procedure, 1973, *Section 197*

Another set of recommendations include putting restrictions on police power to arrest and making the process of arrest and detention transparent; making medical examination of person in custody mandatory; raising a presumption against the police officer in case of any injury caused to a person in custody or resulting in his death; making a judicial inquiry mandatory in cases of custodial rapes or deaths; awarding compensation on no fault basis in case of death or injury caused to a person in custody; abolishing the provision in law that requires prior permission to be obtained before prosecuting a police officer in courts of law etc. These recommendations were made by the Law Commission of India in its report, but are yet to be accepted by the government.

The third set of recommendations emerge from the steps taken by the National Human Rights Commission in India to deal with custodial crimes. One important step taken by the Commission immediately after it was formed was to ask the law and order agencies in the districts to report incidents of custodial death and rape within 24 hours of occurrence. A scrutiny of the reports showed that post mortem examination in some cases of custodial deaths had not been done properly; there were signs of reports having been doctored to suit vested interests. The Commission, therefore, recommended that post mortem examination in custodial deaths should be video filmed and cassettes sent to the Commission. The Commission also prepared the Model Autopsy Forms and sent them to the states for adoption.

Torture cannot be stamped out from the repertoire of police practices unless the police department and the government are determined to do so. They have to condemn every incident whenever it occurs and for whatever purpose it happens. Accepting it in the name of maintaining police morale will do greater damage in the long run to the image of the organisation than making it public the moment it happens, condemning it in the strongest possible terms and taking action against those responsible for it. Zero tolerance to torture is the principle that the government and the police department have to adopt. It must be realised that even a solitary instance of excessive and unjustified use of force or abuse of power by law enforcement agency weakens the foundations of the democratic set up. Nobody should be allowed to enjoy impunity.

The problem of police brutality persists because there are no effective police accountability mechanisms in existence. In most countries, under the existing system, the police themselves inquire into public complaints against police personnel. The system lacks credibility. A survey done in India revealed that about half the total number of public respondents in the survey were not in favour of even lodging complaints against police personnel in cases of

misbehaviour<sup>43</sup>. They would not do it for two reasons- lack of faith and fear of police. There is an impression in the public that the department initially tries to cover up; investigation, if done, is not thorough and impartial; and occasionally it invites police wrath. These perceptions can be changed only if there is separate independent machinery, which has the capability to inquire into public complaints against police personnel fairly and successfully and ensure effective deterrent action against those found guilty. The accountability mechanisms must act and provide redress speedily, easily and cheaply and must have public credibility. In many Asia Pacific countries, such accountability mechanisms do not exist.

### *Biased Practices in dealing with Minorities*

The allegations against the police of being biased and partisan in dealing with minorities are often heard in almost all countries, which have heterogeneous population and diverse cultures. A number of studies done in the USA and Europe have shown that it is the people from the minority communities who find themselves more at the wrong end of the police stick than the people from the majority communities in these countries<sup>44</sup>. The existence of racist bias in the police in these countries has often been seen in the 'stop and frisk' practices, in the aggressive manner they interact with the minority people and in the readiness to use force and quite often deadly force against those of different colour or creed.

The same, in fact worse, is true of police forces in Asia Pacific region. The allegations that the police in some countries of this region behave in a highly partisan manner against members of minority community are fairly common. The reports of international and national human rights commissions and groups are full of instances of human rights violations of people belonging to minority communities committed by the police forces in this region. According to the Asia Pacific NGO Forum: " In the Asia pacific region numerous minorities and marginalised communities have been subject to various forms of racism and institutionalised discrimination..."<sup>45</sup> All this becomes possible because the police fail to perform their duty to enforce law fairly and impartially.

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<sup>43</sup> Joshi, G.P: *Police Public Interface*, A CHRI publication, 2000, p 22.

<sup>44</sup> The New York Attorney General Eliot Spitzer's study of the "Stop and Frisk" practices of the New York Police done in 1999 found that black New Yorkers were twice as likely to be stopped and frisked as whites. In the United Kingdom, the MacPherson Committee, which inquired into the murder of Stephen Lawrence, revealed the existence of institutionalised racist bias in the police forces of the country. In Ireland, the Patton Commission recommended, amongst other things, even some symbolic changes, like a new name, new badges and symbols and a new ethos for the police, which would help in building up a "police service capable of attracting and sustaining support from the community as a whole."

<sup>45</sup> Declaration of the Asia Pacific NGO Forum, Teheran, Iran - February 17-18, 2001, Para 39

Ethnic conflicts or communal violence between religious communities are reported often from countries in the Asia Pacific region. Some of the worst examples of lack of police action in providing protection to the people of the minority groups during such riots or deliberately obstructing the victims of violence to access justice can be cited from the recent history of communal violence that occurred in some places in India. There are numerous inquiry commissions' reports that have indicted the police for their partisan behaviour and shown how the minority community people were not able to access justice. But no record of police handling of communal violence can be as dismal, depressing, murky and abysmal as that of Gujarat Police during the communal violence that occurred in some places in Gujarat between February-April, 2002

The Gujarat violence was triggered by an incident that occurred on February 27, 2002, in which the compartment of a train carrying Hindu *Ramsevaks* (Servants of Lord Rama, a Hindu deity) was burnt by miscreants allegedly belonging to Muslim community at a place called Godhra, near Ahmedabad, the capital of the state. 58 passengers, many of them women and children, were burnt alive. What followed were a series of shocking incidents in different places in Gujarat in which a large number of Muslims were killed and their property looted and destroyed. The incidents caused shock and shame because there was enough evidence to show that the mob violence directed against minority community was government abetted. "There was none to question the malevolent managers of communal massacre. The criminal outrage, there was none in uniform to resist, not even to record information of felonies."<sup>46</sup> A detailed inquiry into incidents concluded: "The organised, violent incidents by large mobs .....reveal a similar feature viz., the abdication of responsibility by the police and the administration. The government failed to control the violence and safeguard the lives and liberties of a large number of people, particularly those belonging to minority Muslim community... Most of the victims were butchered and then burnt. The women were disrobed and raped in public, and then slaughtered and burnt."<sup>47</sup>

What did the police do? The police were complicit, not only by being inactive when there were desperate calls from the victims for help but by actively promoting or directing attacks or in some cases joining the marauders in their orgies of murder and loot. "In many cases, the police led the charge, killing

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<sup>46</sup>Concerned Citizens Tribunal: *Crime Against Humanity – An Inquiry into Carnage in Gujarat*, 2002, Justice Krishna Iyer's Forward dated October 24, 2002

<sup>47</sup> Concerned Citizens Tribunal: *Crime Against Humanity – An Inquiry into Carnage in Gujarat*, 2002, p 249

Muslims who tried to block the mob's advance."<sup>48</sup> While during the riots, the police failed to protect, after the incidents, the police showed their ingenuity in obstructing the victims from accessing justice. There are many authentic reports of the human rights and citizens' groups, which have documented the tactics employed by the police to do so, some of which are mentioned below.

1. The police did not register the complaints of victims in a large number of cases. Non-registration of complaints led to denial not only of criminal justice but also of payment of compensation by the government to the victims or their dependents.<sup>49</sup>
2. Even when complaints (FIRs) were registered, they were deliberately recorded wrongly. Names of guilty persons disclosed by the complainants were not recorded in many cases. Instead of recording specific names of accused, blame was put at the doors of a nameless "unruly mob".
3. In some cases, the complainants were pressurised not to name the accused if they wanted their complaints to be registered.
4. Instead of recording complaints of individual victims in specific cases, several incidents were clubbed together to record an omnibus FIR, "which would deny proper investigation and stall the delivery of criminal justice."<sup>50</sup>
5. Statements of witnesses were not recorded correctly. What the police recorded was not what the witnesses had said.
6. A large number of witnesses were later threatened or bribed to become hostile on the witness stand. This, for example, led to acquittal in one of the worst cases, known as the Best Bakery case. All the 21 persons accused of hacking to death or burning alive 14 persons in Best Bakery in Vadodara were let off because 41 of the 71 witnesses in the case turned hostile. Barely a week after the judgement, the main witness, daughter of the bakery owner, publicly declared that she lied in court as she had been threatened and was too terrified to speak the truth. An editorial in a national newspaper called it a mockery of law: "This, indeed, is the story all over Gujarat, and there can be little hope that the guilty can be brought to book under normal procedures. The Judgement in the Best Bakery case was the 37<sup>th</sup> instance of Gujarat's fast track courts acquitting all the accused for want of reliable witnesses."<sup>51</sup> The police not only failed to

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<sup>48</sup> Human Rights Watch: *Compounding Injustice: The Government's Failure to Redress Massacres in Gujarat*, July, 2003,p5

<sup>49</sup> The government was forced to take welfare measures to rehabilitate the affected families because of a public outcry from all over the country.

<sup>50</sup> Concerned Citizens Tribunal: *Crime Against Humanity – An Inquiry into Carnage in Gujarat*, 2002, p 251

<sup>51</sup> The Hindustan Times dated 18.7.2003

- provide protection but also promoted the climate of fear and insecurity to dissuade the witnesses from deposing truly in courts of law. The NHRC later petitioned the Supreme Court to transfer the case outside Gujarat for reinvestigation and retrial.
7. The police did not arrest some local politicians who were named by the victims as a part of the unruly and unlawful mob. Research done by an international organisation suggested that “few if any of those most responsible for violence against Muslims are in custody: most of those who remain in jail belong to marginalized Dalit, Muslim or tribal communities.”<sup>52</sup>
  8. Where arresting some local leaders became unavoidable, they were immediately released on bail, even if they were charged with non-bailable offences.
  9. Investigations were done shoddily and charges were diluted before being filed in courts
  10. The police did not help the victims of minority community to return to their houses after the riots were over. In fact, some of them were forced to withdraw cases filed by them in exchange for being allowed to return to their homes.
  11. The police registered false cases against some who filed their complaints and did not withdraw.
  12. The police firstly did not register cases of sexual violence against women. Where cases of rape were registered, very little was done to investigate and prosecute them successfully. In most cases, rape evidence was destroyed when the victims were burnt after they were raped. In cases where the victims remained alive, investigation was deliberately spoilt and important evidence destroyed. In one case, a rape victim was sent for medical examination a month and a half after the incident occurred.
  13. In spite of clear and well-documented evidence of policemen participating in violence, no policeman was prosecuted.
  14. Some of the prosecutors selected to present evidence in courts of law owed allegiance to the groups and persons who were responsible for organising the violence.

Thus the police not only failed to prevent and control violence, but did all they could to make it extremely difficult for the poor and disadvantaged victims to access justice. Why did they perform and behave the way they did? One explanation is that the forces of communalism sweeping the whole state at that time had also affected them; but a more persuasive explanation is that the police in India, as in some other Asia Pacific countries, are a part of the regime in power

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<sup>52</sup> Human Rights Watch: *Compounding Injustice: The Government's Failure to Redress Massacres in Gujarat*, July, 2003, p 6

and work according to the directions or indications received from the government. There is enough evidence to show that the BJP<sup>53</sup> leaders were leading the mob and some even sitting in the police control rooms and sending instructions to the mob as well as the police from there.<sup>54</sup> Police officers were selectively posted in communally sensitive areas and those who tried to act according to the requirements of law were summarily transferred.<sup>55</sup>

Over a period of time, there has been continuous erosion of the authority of the police as an agency of law in this country. The philosophy of police neutrality is embedded in the concept of rule of law, which itself has been subverted by the powerful politician- criminal nexus. This has been done mainly by controlling and manipulating the police to function as an adjunct of the party and people in power and not as an agency of law.

### **Recommendations/ Initiatives**

The Constitution and laws provide to all citizens access to justice to right wrongs. The access proves illusory if the enforcement mechanisms do not function impartially. The police being the most visible arm of the state, loss of confidence on the part of the members of any community, resulting from its partisan behaviour, leads to erosion of faith in the credentials of the state. The problem of police partiality therefore deserves to be tackled in right earnest.

The measures often suggested include increasing the representation of minority communities in the police forces; improving recruitment processes, procedures and standards to ensure that persons with wrong attitudes are not allowed to enter into the police; periodic screening to weed out the wrong types from the force; improving the training standards to make the police culturally aware and sensitive to the problems of policing a pluralistic society with fairness and impartiality; ensuring registration and successful investigation and prosecution of all crimes of communal violence; taking deterrent action against all officers who are negligent or complicit etc.

A lasting solution of problem, however, would require more than what is suggested above. It would require establishment of statutory institutional arrangements that help in (i) ensuring insulation of the police force against illegitimate influences and pressures from politicians and other outsiders; (ii) denying impunity to anyone found negligent in doing his duty or guilty of committing crimes; and (iii) always holding accountable those who violate the

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<sup>53</sup> The political party in power in the state. Known for its Hindutva- promoting the cause of Hindus

<sup>54</sup> Human Rights Watch: *"We Have No Orders to Save You" State Participation and Complicity in Communal Violence in Gujarat*, April 2002, P24.

<sup>55</sup> Ibid, p 49

rights, particularly the right to access justice, on grounds of colour, creed or riches.

*Police attitudes in dealing with violence against women*

It has often been said that the “level of any society is judged by the level of its women.”<sup>56</sup> Assessed on the basis of this test, most societies in the world wouldn’t figure high in the list, as “gender based violence, whether it occurs on the streets or in homes, affects women of every nation, belief, class, race and ethnic group.”<sup>57</sup> Women in developing countries of Asia Pacific region are no exception. The majority of them are illiterate, poor and unhealthy. When they become victims of violence, which is quite often, access to justice is difficult.

Violence against women in these countries takes many forms. Trafficking in women is a major problem in most countries of South as well as East Asia. If poor women from Nepal are lured to leave their homes in search of jobs and ultimately land themselves in brothels of Mumbai, Thai girls every year leave for the shores of Japan in search of employment but instead get trapped in prostitution or pornography rackets. These rackets become a source of illegal earnings for the police and they develop vested interests in allowing the illegal trafficking activities to continue. They occasionally conduct raids and arrest women and their clients but the big fish i.e. the organisers, touts and agents of these rackets often get away unscathed.

In areas marked by armed conflicts or ethnic riots, women are particularly at risk as they are targets of sexual violence. Whether it was a conflict for independence in East Timor or communal violence in Gujarat, rape was used as a weapon to terrorise and subjugate. Even in peace times, rapes take place often enough to cause concern. Victims in most cases are poor women

To cut it short, the Asia Pacific region witnesses different types of crimes against women, with illicit trafficking in women and sexual exploitation of children in Thailand and Cambodia, infantile foeticide and dowry deaths in India, honour killings in Pakistan and throwing of acid on women in Bangladesh. Through all this, the incidence of rapes and domestic violence against women is high in all societies of this region.

Violence against women in many countries of Asia gets its support from the social and cultural norms and traditions that flourish in feudal patriarchal

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<sup>56</sup> Mrs. Indira Gandhi, former Prime Minister of India, while addressing the Upper House of the Indian Parliament on May 13, 1975

<sup>57</sup> United Nations Development Fund for the Women: *With an End in Sight*, 2000, p11

societies. In rural areas of India, the poor and dalit<sup>58</sup> women are oppressed and victimised by landlords, rich and upper castes people and the local goons. They generally find it difficult to get justice from the police, who discriminate against them either because of their own caste prejudices or because of corrupt motives. "In all instances of caste tensions dalit women are victimised. Many of the women who have stood against the local landlords or supported inter-caste marriage are punished by being paraded naked."<sup>59</sup> More or less similar types of reports about the oppression of women in urban slums of Bangladesh, even though for different reasons, have been recorded, "... the poor in urban slums are often trapped between two evils, a corrupt and preying police on the one hand, and slumlords and gangs on the other.... In the slums of Chittagong and in Dhaka, men reported that musclemen regularly harass teenage girls and even kidnap and rape them."<sup>60</sup>

Most cases of rape and domestic violence do not get reported to the police. What is reported is not necessarily registered by them. This happens particularly when women are poor and lack awareness or means to pressurise the police to register and investigate cases. The Amnesty International in its study on the problems that women face in accessing justice in two states of India i.e. UP and Rajasthan has documented cases where the police officers at the local level have refused to file complaints brought by women, particularly those belonging to lower castes and disadvantaged groups.<sup>61</sup> Even when the complaints were registered, the gravity of offences was minimised. Rape in some cases became an attempt to commit rape or an assault or use of criminal force to a woman with intent to outrage her modesty. Women are reluctant to go and file complaints with the police, particularly in cases where the alleged culprits are from high castes or rich landowning section of the village community. They lack faith in the police to do justice. Their reluctance to file complaints, particularly in cases of rape, also results from the fear of being socially ostracised.

Even if the complaints are registered, investigations by the police often leave a lot to be desired. Medical examination of the rape victims is not done in time

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<sup>58</sup> Dalit literally means oppressed and is used frequently in India to denote the people belonging to lower castes.

<sup>59</sup> Amnesty International: India *The battle against fear and discrimination- The impact of violence against women in Uttar Pradesh and Rajasthan*, AI INDEX: ASA 20/016/2001 8 May 2001

<sup>60</sup> World Bank, *Can anyone hear us? Voices from 47 countries*, December, 1999

<sup>61</sup> Amnesty International: India *The battle against fear and discrimination- The impact of violence against women in Uttar Pradesh and Rajasthan*, AI INDEX: ASA 20/016/2001 8 May 2001

and consequently considerable evidence is lost. That is why conviction rate in such cases is very poor<sup>62</sup>.

The incidence of domestic violence in the region is quite high. The reaction of the police in many cases is to treat it generally as a family affair. They counsel women not to file complaints on the ground that their family lives will be disrupted.

### **Recommendations/ Initiatives**

Numerous initiatives have been taken by the central as well as state governments in India to deal with the problem of violence against women. The Government of India took the first major initiative when they introduced very significant amendments in law. The Criminal Law (Amendment) Act of 1983 not only enhanced the minimum sentence prescribed for the offence of rape and introduced a separate penal provision of custodial rape; it also amended the Indian Evidence Act prescribing that absence of consent will be presumed in certain prosecutions for rape in favour of victims. Another amendment was done the same year. The Criminal Law ( 2<sup>nd</sup> Amendment) Act, 1983 introduced an entirely new offence of "*cruelty by husband or relatives of husband*". This offence under Section 498 A Indian Penal Code considers any willful conduct by the husband or his relatives, which drives a woman to commit suicide or causes grave injury or danger to her life, limb or mental or physical health and results in her frequent harassment to force her or her relatives to meet unlawful demands as "*cruelty*" and punishes such conduct.

The Law Commission of India recently suggested amendments in law relating to rape and sexual violence. These include changing the definition of rape to take in its scope cases of sexual assault and aggression against women; enhancing the punishment prescribed for the offence; making police officers accountable by prescribing penalties for not recording complaints, delaying investigations etc. The National Commission on Women has also suggested similar amendments in criminal law. These recommendations are yet to be implemented by the government.

Another major initiative taken by the state governments in India has been to set up exclusive women police stations or crime against women cells as parts of their police forces. All women police stations have been set up in states mainly in response to two felt needs. One is that women feel somewhat hesitant to express their problems before male police officers freely and openly. The other is the

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<sup>62</sup> The conviction rate in cases of rape, according to the Crime In India, 2000, was 29.8% as against 41.8% in respect of total cognizable crime

realisation that male police officers show a lack of sensitivity to the problems experienced by women. The functions of the all women police stations are mainly to receive, register and investigate crimes against women reported to them and to provide counseling in domestic disputes. In states like Tamilnadu, they provide guards and escorts for female prisoners. If any woman has to be detained for the night under unavoidable circumstances, the instructions require her to be kept only in the all women police stations. Women Help Lines have also been set up either as parts of all women police stations or as separate units to provide help to women in distress. A separate toll free telephone number is assigned to such units to receive complaints round the clock. Women police members and volunteers from the public visit the victim and provide counseling and arrange for legal and medical help. In addition, Crime against Women cells have been set up mainly to provide specialised police services to victims of crime against women.

A similar type of initiative in responding to problems of violence against women and children was taken in Philippines with the establishment of Women and Children Concerns Desks (WCCDs) in police stations. These Desks are assigned to policewomen and if no women police personnel are available to a trained male police officer. About 1632 WCCDs have been established nationwide. These Desks, besides providing services and protection to the victims of abuse and violence, have helped in improving police community relations. The officers of these Desks, as per the claims of the Philippines National Police, are required to be part investigator, part social worker, part psychologist, part philanthropist, part counsel, and part therapist

In India, the success of some of the initiatives has been affected by the resource constraint. Women police stations and crime against women cells exist mostly in urban areas. They are generally found to be deficient in manpower, transport and equipment. They are not fully trained and definitely lack counseling skill.

The orientation and attitudes of police personnel, male or female, come in the way of providing justice to victims. The response of police personnel in dealing with complaints of violence against women is to mediate solutions within the matrimonial framework. They do not want the marital relations to break down completely and therefore counsel the victims to exercise restraint and patience and suggest reconciliation. This does not work out in most cases. Women going back to the households where they were victimized invariably suffer further violence.

Changes in law as well as institutional arrangements made by the police to deal with problems of violence against women have definitely helped in bringing the problem of crime against women out in the open and highlighted the need to

deal with it earnestly and effectively. These have also led to increased awareness as well as confidence amongst women in accessing justice.

### **Part III**

#### **Recommendations for the UNDP Programme.**

The Constitution as well as laws of most countries in Asia Pacific region require the state and its institutions to treat citizens equally and respect the rights of all without making distinctions on the basis of language, sex, colour, creed or riches. The rules, regulations and codes of conduct framed for the police in most of these countries also suggest the same. Why is it then that the poor and disadvantaged people in these countries have to face obstacles in accessing justice?

The answer lies in various factors, two of which are highly important. One, the quality of control exercised over the police forces is poor and is governed by partisan interests and, two, there aren't enough effective mechanisms to hold the police accountable for what they do or do not do. As mentioned earlier, the police forces in most of these countries function to defend the establishment and to serve the regimes in power. The mindset they have developed is feudal even though the environment in which they are functioning in most of these countries is democratic. The transition from being the regime police force to a democratic police service has yet to take place in these countries. Till this transition occurs fully and policing becomes democratic, which essentially means treating all citizens equally and providing equal protection of laws to all, the poor and disadvantaged groups will continue to face obstacles in accessing justice.

Any programme for police reforms must aim at bringing about this transition. This transition would require at least the following to be done:

1. Make the police function as a professional and service-oriented organisation to protect and promote the rule of law.
2. Recognise the government's responsibility to set up an efficient and effective system of policing.
3. Establish institutional and other arrangements to insulate the police from undesirable and illegitimate outside control, pressures and influences.
4. Outline objectives and performance standards and set up independent mechanisms to monitor and inspect police performance.
5. Set up independent, credible and effective complaint handling mechanisms and procedures.

6. Set up transparent mechanisms to ensure that the best in the service is selected to lead it and strengthen his authority by reducing his vulnerability to external pressures.
7. Introduce civic oversight of some police practices, like those relating to arrests/detentions and treatment of citizens in custody.
8. Make the police force composite reflecting the general mix of the population in the community
9. Train the police to become culturally aware so that they can deal with the problems of policing a pluralistic society with fairness and impartiality.
10. Establish institutional arrangements to consult the community and involve them in police work.

### Entry Points

Which of the above should become the entry points of the programme? The above list states three sets of requirements. One is to establish new institutional structures of control, monitoring and accountability; the other is to change and upgrade the recruitment and training standards; and the third is to introduce community policing.

The police reforms programme, to be meaningful to the poor and marginalised sections of society, must be addressed to meet the first set of requirements. It may, however, be difficult for an international organization, like the UNDP, to start a police reforms programme in this region aimed at setting up institutional arrangements that would help in insulating the police from illegitimate control of the political executive. Strategic considerations demand that the establishment of institutions like the State Security Commission recommended by the NPC in India, may be kept out of the purview of the programme for the time being as such ideas are likely to be met with strong resistance by the governments in most of these countries.

We recommend the following to be the entry points for the UNDP programme:

1. Create a Civic Oversight Mechanism

A major entry point in terms of police reforms, particularly suitable to the developing democracies of the Asia-Pacific region, can be established through the creation of a civic oversight mechanism. In fact, there already exist numerous examples from countries around the world of civilian oversight bodies, vested with the responsibility to deal with citizens complaints of alleged police misconduct. These include the Civilian Complaint Review Boards of the USA, Independent Complaints Directorate

(ICD) of South Africa, the Independent Police Complaints Commission of the UK, the Peoples' Law Enforcement Board of the Philippines etc.

Undoubtedly, there are major differences in the organization and functions of these bodies due to the varied socio-political environments in which they are situated, but one common element that characterises these bodies all over the world is the civilian participation in the process of handling citizens' complaints against police personnel. The work of these bodies proves useful not only to the citizens but also to the police department. Besides ensuring that individual cases of alleged police misconduct are properly investigated and that appropriate disciplinary and/or criminal charges are enforced, these mechanisms help in becoming an important source of information about police misconduct and in alerting the police managers to the steps they should take to curb police abuse.

In the context of the Asia Pacific countries, where high levels of political interference in policing have decisively been established, the absolute independence of any civic oversight mechanism must be the top priority. They must have full investigative powers, with authority to independently investigate incidents and issue findings on complaints. Moreover, there should be openness and transparency with regard to matters such as membership, method of appointment, work procedures, decision-making. At the same time, the members must be representative of as broad a section of the community as possible, and they all must guarantee quick and honest action. Most importantly, the most vigilant check against police misconduct and the best insurance that this type of oversight mechanism will be effective is to establish these bodies with a statutory base.

## 2. Set up an Independent Police Performance Evaluation Board

The next entry point for the UNDP police reforms programme for the Asia Pacific region should be found in advocating for the establishment of a Police Performance Evaluation Board independent of the police organisation. The Board should be responsible for carrying out annual inspections of the field as well as specialised units of the Police Force. It should also carry out thematic inspections periodically. The independent inspection reports would help in monitoring the performance of the police force, identifying the areas of weaknesses and shortcomings and ensuring that standards are maintained. It can function like a watchdog. Since the Unit has the specialised knowledge, it will provide to the government a means of getting an independent, objective and professional assessment on the working of the police force and enable it to take measures to improve the efficiency and effectiveness of the police force. It will also provide to the

head of the police force an independent assessment by experts who are not involved in the operations. The Board can draw its members from retired heads of the police force and outsiders with a mix of different skills and backgrounds. Such boards exist in different parts of the world even though they may be having different names or nomenclatures. The Royal Inspectorate of Constabulary is a good example

### 3. Establish an Independent Custody Visiting System

While discussing police practices relating to arrests and detentions in Part II of this paper, we had suggested the need to adopt the independent custody visiting system on the lines on which it exists in the UK. This system authorizes volunteers from the community to attend police stations to check on the treatment of detainees and to observe the conditions in which they are held.

As per the Circular<sup>63</sup> issued by the Home Office, UK, the process involves the recruitment of volunteers by the Police Authorities after which they are organised to visit police stations unannounced at any time of day or night. The volunteers have immediate access to the custody area and their main function is to check the conditions of detention and the treatment of individual detainees. The visitors are independent persons of good character drawn from and representative of local community, who are able to make informed judgements in which the community as well as the police can have confidence.

The visitors have to be at least 18 years of age and the initial appointments are made for a period of three years, but reviewed for continuing suitability at the end of that time. The custody visitors are reimbursed the legitimate expenses incurred by them in carrying out their visits, but they are not given any other form of payment or retainer. The custody visitors are imparted training required to carry out independent custody visits effectively.

At the end of the visit, the visitors are required to prepare a report of their findings on specific matters as well as general issues relating to custody conditions or procedures. The findings are drawn to the attention of those who are in a position to respond.

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<sup>63</sup> HOC 15/2001 dated May 4, 2001

The system claims to strengthen public confidence in practices and procedures followed at police stations, which helps in building partnerships between the police and the communities they serve.

#### 4. Establish/Strengthen Human Rights Commissions

The area of police reforms is vast, and the challenges being faced in most Asia Pacific countries are multifarious and complex. It is necessary to have institutions, like the human rights commissions, which can keep a watch over the police functioning and provide redress to victims of human rights violations. In addition, the human rights commissions should identify the systemic inadequacies and shortcomings in the functioning of the police organisations and advocate for systemic reforms.

In India, the National Human Rights Commission (NHRC), despite its shortcomings, most of which are due to an inadequate law and an unresponsive government, can definitely claim some important achievements to its credit. Besides attending to citizens' complaints alleging violations of their rights and providing relief in genuine cases, It has brought into sharp focus the problem of custodial deaths. The NHRC has also succeeded in persuading the state governments to set up Human Rights Cells in the Police Headquarters to be headed by a senior officer. These Cells are expected to help deal with complaints against the police, develop training curricula, organise workshops and spread human rights awareness within the force. The Commission has also requested the Chief Justices of the High Courts and the state governments to direct the District Judges to constitute a District Complaints Authority in their respective jurisdictions to deal with public complaints against the police. The NHRC has not been able to achieve its full potential because it does suffer from certain structural deficiencies, resource constraints and inadequate powers.

There are many countries in Asia Pacific region, which do not have human rights commissions. The UNDP police reforms programme should advocate for establishment of commissions where they do not exist. The commissions should be able to function as a viable and effective instrument of controlling and reforming the police forces in these countries. So even where the commissions exist, they need to be independent, well equipped with trained staff and resources and have adequate powers to set wrongs right.

#### 5. Change/Improve Police Training

Though training can not be a panacea for all the ills that afflict a police organization, it can definitely provide an entry point for efforts aimed at eliminating some police practices that obstruct poor and disadvantaged people to access justice in Asia Pacific countries.

Police training has to serve twin objectives- impart skills and change attitudes. The type of training that is imparted to police personnel in most developing countries of Asia Pacific region does succeed to some extent in improving knowledge, but its success in changing attitudes is limited and scarce. This is due to many reasons, like inadequate training syllabi, lack of trained and motivated trainers, outdated didactic chalk and talk type of training methodology, poor training infrastructure etc. But in addition to these inadequacies and infirmities, there is another factor responsible for the failure to bring about attitudinal transformation of police trainees and that is the culture of training institutions. This culture, as mentioned by Janie Rauch in respect of police training institutions in South Africa<sup>64</sup>, is preoccupied with drills and parades; promotes hierarchical nature of interaction; encourages a tendency towards repetition and rote learning and 'front loading' in the classrooms; and focuses on knowledge based assessment. It is aimed at developing a militaristic pattern of policing, which tries to control crime and law and order disturbances, without being sensitive to the requirements of the community. The culture prevailing in the training institutions must be changed to be conducive to developing the traits of sensitivity, friendliness and responsiveness in the policemen. The atmosphere should be relaxed, less tiring, less intimidating and less authoritarian and feudal.

The subject of human rights in relation to police functioning must receive greater attention than is being given to it by the police training institutions in most developing countries of Asia Pacific region. Human rights training should not be regarded as a mere add-on to the existing syllabus; it must be treated as the core of the training programme for all ranks. An important aim of the training programme should be to change the perception of policemen that human rights are an obstacle to effective policing.

The training strategies must be designed to help in developing in a policeman the understanding and attitudes required to respond to the requirements of policing the culturally pluralistic societies that exist in most countries of Asia Pacific region. He should be aware not only of cultural diversity but appreciate the fact that all people have equal rights and

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<sup>64</sup> Rauch, J, 1992 - *Drill is the Means, Discipline is the End: Basic training in the SAP*, A paper presented to the 22<sup>nd</sup> Congress of the Association for Sociology in South Africa, Pretoria, June, 1990.

discrimination of any type on the basis of caste, colour, religion, riches, gender etc is prohibited.

There is virtually no training in police integrity and ethics. Police ethics has to be integrated into training programmes not so much as a set of moral codes but as a set of issues concerning the abuse of power by police personnel and their impact on certain sections of society they police.

Training to be effective must be a continuous process. It should not merely be theoretical but programmed and administered to equip the policeman to solve the problems that he is likely to face during actual policing.

A UNDP sponsored project to 'improve the organization and management of law enforcement system' was launched in India in the late nineties to improve law enforcement in the country as well as to institutionalize a stronger police-public interface. A particularly innovative aspect of the project was the identification and training of selected police personnel to act as "change agents" in terms of leadership and communication skills, and to take the lead in improving police-community interaction and responsiveness by setting up community liaison groups. This provides a highly organised and easily replicable programme that will have benefits in any setting.

## 6. Promote Public Education

It is obvious that there is bound to be resistance to the idea of police reforms from people in positions of power, who want to continue to use the existing system to further their own vested partisan interests. This resistance must be broken and the government pressurised to include police reforms in their agenda. This pressure, to be persuasive, has to come from the public. The need to educate the public must therefore be included in the agenda for reforms. The CHRI's experience in India shows that there is considerable ignorance amongst the public, even amongst the educated classes, about major issues concerning police.

Another part of this public education programme should be to seek to empower the ordinary members of society, particularly marginalized or underprivileged groups, in terms of their basic legal rights, as a way for them to challenge injustices. The campaign for legal literacy is nothing new to the Asia Pacific region, though extra efforts can be made to voice the cause of police reforms, and to emphasise the human rights violations involved in police misconduct. Initiatives, in the form of legal literacy and education campaigns, can be taken to spread awareness on rights vis à vis

the police, including rights on arrest, rights in custody, right to bail, as well as warnings against police brutality and torture. For instance, in India, incidents of torture and custodial rape are well documented, and yet women are not even aware that they a woman cannot be taken to a police station for interrogation. Legal literacy and awareness of human rights violations are vital if people are to be empowered.

#### 7. Introduce/ Strengthen Community Policing

Promoting community policing can be another good entry point for the UNDP programme on Police Reforms. There is increasing acceptance of community policing in different countries because of the realisation by the police forces that they on their own cannot handle all the complex challenges of policing effectively without involving community in their work. Community policing results in producing greater police-public interaction and sometimes in more compassionate, effective, and democratic policing. Community policing is already being tried in some Asia Pacific countries, with immensely successful experiments running in Japan, Singapore, and certain states of India. If one goes by the Indian experience, most community policing experiments have been the result of initiatives taken by individual police officers. These have been sporadic in nature and lasted as long as the officers remained in their field positions. Once they were transferred or promoted, others did not show similar dynamism or interest and the initiatives gradually lost their appeal. What is required is to insititutionalise the successful experiments, preferably on a statutory basis and it is this that needs to be advocated in the reforms agenda.

#### Prioritisation

There are two directions in which the idea of police reforms must be pursued simultaneously. One is to establish statutory institutional arrangements, which would ensure that the power of superintendence of the State Governments over their police forces is limited to guarantee that police performance is in strict accordance with law. In other words, the police function to establish rule of law and not the rule of politics. If this can not be taken up as an entry point right now, the other institutional reforms aimed at enhancing police accountability, like setting up civic oversight mechanisms, police performance evaluation boards and independent custody visiting system must figure high in the priority list. Similarly setting up human rights commissions where they do not exist and strengthening the ones where they do need to be included in the priority list of institutional reforms.

The other direction is to think in terms of doing all that can be done to strengthen and improve policing under the existing set up. The need to change or improve police training must be given top priority in this list of reforms, followed by promotion of community policing.

In a democratic set up, public pressure can force the government to introduce reforms. The public must be educated not only about important issues concerning the need for police reforms but also about their rights whenever they come in contact with the police. Awareness of their rights can empower them to fight wrongs and access justice.

### Good Practices

It is not very realistic to talk of good practices unless one has done an evaluation of what are being claimed to be great initiatives or experiments. Since this has not been done by the CHRI in respect of any of the practices, which are included in this section, this list of good practices is based on a study of secondary material:

### Civic Oversight Mechanisms

#### I. Peoples Law Enforcement Boards (PLEBs) of Philippines

In Philippines, the National Police Commission in collaboration with the Philippine National Police (PNP) have set up a nationwide community based oversight mechanism, known as the Peoples Law Enforcement Boards (PLEBs). Every PLEB generally consists of five members, two of whom are nominated by the local bodies and three are chosen by the local peace and order council of the area from amongst the respected members of the community known for their probity and integrity. The composition must have some level of expertise. For instance, at least one member must be from the Bar, if not, then a college graduate, or the principal of the central school of the locality. The law requires that there shall be at least one PLEB for every municipality and/or for each of the legislative districts in a city; further that there shall be at least one PLEB for every five hundred city or municipal police personnel.<sup>65</sup> In terms of implementation and performance, the PLEBs are reported to be slowly creating an impact.<sup>66</sup>

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<sup>65</sup> Republic Act No. 6975, Section 43

<sup>66</sup> Caparas, D.L., *Participation of the Public and Victims for more Fair and Effective Criminal Justice Administration in the Philippines*, United Nations Asia and Far East Institute For the Prevention of Crime and the Treatment of Offenders, 112<sup>th</sup> International Training Course, Participants' Papers, p. 245

Under Republic Act (R.A) No. 6975, the PLEBs are granted the jurisdiction to hear and decide citizens' complaints or cases against erring police personnel. Each case must be decided within sixty days from the time the case is first filed with the PLEB. More generally, the law prescribes that the procedures used in the PLEB must always be conducted in accordance with due process, but without strict regard to technical rules of evidence. Legal officers from the National Police Commission of the Philippines may act as legal consultants to the PLEBs, and provide legal services, assistance and advice to the PLEBs in the resolution of cases against members of the PNP. The law holds that the decisions of the PLEBs shall be "*final and executory*".

## II. Independent Complaints Directorate (ICD) of South Africa

The Police Act of South Africa provides for the establishment of an Independent Complaints Directorate at both national and provincial levels to investigate misconduct or offence allegedly committed by a member of the South African Police Force. The Directorate has to function independently from the Service. The head of this Directorate is nominated by the Minister in consultation with the Parliamentary Committees. He is appointed to the post only when the nomination is confirmed by the Parliamentary Committees. The Directorate may suo moto or upon receipt of a complaint investigate any misconduct or offence allegedly committed by any member of the police service, but if the information or complaint is about the death in police custody or as a result of police action, it is mandatory for the Directorate to investigate it. The National or Provincial Commissioners must notify the Directorate of all such cases. The ICD reports to the Minister of Safety and Security and its recommendations are made either to the Minister or, where they concern prosecutions or disciplinary actions, directly to the Attorney General or to the South African Police Service (SAPS) itself. The head of the Directorate is required to submit an annual report to the Minister within three months of the end of the financial year, which has to be tabled in Parliament by the Minister within 14 days.

### *Pattern and Practice of Misconduct (USA)*

One very innovative practice to deal with police misconduct is being followed by the Department of Justice of the Federal Government in the USA. The law makes it unlawful for State or local law enforcement officers to engage in a pattern or practice of conduct that deprives persons of rights protected by the Constitution or laws of the United States (42 U.S.C. § 14141). The types of conduct covered by this law can include, among other things, excessive force, discriminatory harassment, false arrests, coercive sexual conduct, and unlawful stops, searches

or arrests. In order to be covered by this law, the misconduct must constitute a "*pattern or practice*" -- it may not simply be an isolated incident. In such cases, the law authorises the Attorney General to file law suits seeking court orders to reform police departments engaging in a pattern or practice of violating citizens' constitutional rights.

The Special Litigation Section of the Civil Rights Division of the US Department of Justice (DOJ) has already obtained significant relief under this provision of law. For example, in 1997, the Section obtained two consent decrees to remedy systemic misconduct in municipal police departments in Pittsburgh, Pennsylvania and Steubenville, Ohio. The decrees require the police departments to implement widespread reforms, including training, supervising, and disciplining officers and implementing systems to receive, investigate, and respond to civilian complaints of misconduct. The decrees have had a widespread impact and are being used as models by other police departments. More recently, the Department of Justice reached agreement with the city of Columbus, Ohio to resolve its police misconduct lawsuit against the Columbus Division of Police (CDP). Under the agreement, the United States will review CDP training classes, the documentation of alleged misconduct and internal investigations and review CDP procedures through December 2003.

The remedies available under this law do not provide for individual monetary relief for the victims of the misconduct. Rather, they provide for injunctive relief, such as orders to end the misconduct and changes in the agency's policies and procedures that resulted in or allowed the misconduct. There is no private right of action under this law; only the DOJ may file suit for violations of the Police Misconduct Provision.

#### *Independent Custody Visiting System of the UK*

The basic details of this practice have already been given above. We consider this as a very good practice as it helps in introducing transparency in an area of police work, which is often associated with abuse of power. The incidence of custodial violence is quite high in most countries of Asia Pacific region. The visiting system, if implemented properly and sincerely, can work as an effective check against practising custodial violence. By promoting community involvement in police work, it helps in bringing the two closer to each other--something that is very badly needed in the developing countries of Asia Pacific region

#### *Mohalla (Neighbourhood) Committees of India*

A problem faced frequently by the police in many parts of India is that of communal violence, mainly between the Hindu and Muslim communities. The immediate cause of violence in most cases is generally some minor dispute involving the members of the two communities. At times, these minor disputes flare up into major conflagrations because the anti social elements jump into the fray and exploit the situation for their private gain. In some cases, the police have succeeded in nipping the trouble in the bud by associating the respectable members from both the communities in efforts to control the riots. It is these committees of members drawn from different ethnic communities that are known as Mohalla Committees.

This scheme came into prominence for its good work done in a highly communally sensitive town of Bhiwandi in Maharashtra in India, where seventy mohalla committees were set up in 1988, each with an equal membership of Hindus and Muslims and headed by a police officer not below the rank of sub-inspector. At the same time, special efforts were made to ensure that all sectors of society (farmers, vendors, rickshaw drivers, doctors, lawyers, journalists) were represented on the committees.

The committees provided an accessible and common platform for a personal exchange of views and ideas, as well as a neutral meeting place for two polarised communities. Through the frequency of the meetings, prejudices waned and instead friendships developed.

Through the scheme, the police managed to build up a community support network to aid them in their work, using their "eyes and ears" in the community to take swift action. In turn, the community no longer regarded the police force with apprehension and fear. The success of this experiment came to light in 1992-93 when in the aftermath of Babri Masjid demolition many cities in Maharashtra witnessed large-scale communal violence. Bhiwandi, which had seen many communal riots in the past, remained calm and peaceful. The experiment is being followed in many other towns and cities.

#### *Developing Change Agents (Police Training) - India*

While discussing the Entry Points, we have referred to the UNDP's project on 'Improving the Organisation and Management of Law Enforcement System in India'. The main objective of the study was to assist the government in capacity building for an effective and efficient law enforcement system through new management initiatives and processes sensitized to be community responsive and community friendly particularly in the context of economic liberalisation.

The project envisaged initiatives in three police stations each in three states of India, Assam, Rajasthan and Tamilnadu. One of the initiatives included in the project was to develop change agents. Three police personnel from each of the nine police stations were selected to function as change agents. These included the officers in charge of the police stations and two more from amongst the constabulary and investigating officers. These persons were put through a specially designed training course in one of the police training institutions and later taken on study tour to England and Singapore to get first hand experience of community policing practices adopted there. After training, these people went back to their police stations to act as role models for others posted there.

The programme was innovative and designed well. The need to provide essential equipment to the pilot police stations and to improve the living and working conditions of men posted there was recognized. It not only trained the change agents but also established the Community Liaison Groups in the jurisdiction of these police stations to ensure community participation in police work.. The programme did make a significant impact in the beginning. The Government of India in fact had issued instructions that 10% of police stations in all states should follow the pattern established in the model police stations.

### Constituency Building

There is a deep-seated, vested and strong resistance to the idea of police reforms in many developing countries of Asia Pacific region. To break this resistance, strong pressures need to be mounted from all sides to force change. A broad movement for police reforms, based on strong public opinion and support, must be built up and sustained for long until the system is cleansed. This would require participation from as wide a cross section of constituencies as possible. In the Indian context, one can easily identify some important constituencies. These are essentially the (i) police, (ii) politicians, (iii) human rights commissions, (iv) NGOs, and the (v) media

### The Police

The impetus for police reforms has to come from within the police department. There are quite a large number of conscientious and honest policemen in every police force and they feel very frustrated at the quality of policing that is provided to the majority of people in the country. They want the system to improve, but their voices are not heard in the regimes where the dishonest and politicking types flourish. This is presently happening because the bad policeman, under the system of patronage flowing from his nexus with corrupt and criminal politician, is able to abuse his power with impunity, while the good policeman is getting increasingly disregarded and isolated. To survive, the latter

must keep his head down to remain out of harm's way and turn a blind eye to the malfeasance of his superiors as well as inferiors. In any case, it is the public, who suffer the consequences of wrong and venal policing. Police personnel showing courage of conviction and sticking to principles while performing their duties must get full support and protection from all quarters. Once this happens, this constituency will be able to play a very significant role in catalysing reforms from within. The police being a hierarchical and disciplined organisation, sizeable and significant reforms can be brought about even within the existing framework of laws.

In India, another component of this constituency is seen in the presence of many retired police officers who are willing to lend their time and experience in working for any agenda aimed at bringing about police reforms. In fact, it is two retired police officers in this country, who have filed a public interest writ in the Supreme Court asking for directions to be issued to the government to implement some important recommendations of the National Police Commission. The problem is that of harnessing the talent and experience of these people for the cause of police reforms by organising them into groups working in their own areas for this cause.

#### Politicians

Attempts must be made to convince the politicians that police reforms are not only essential but are urgently required. They must be persuaded to believe that implementing police reforms would be in their own interests, as without reforms, the existence of the democratic polity itself would be in jeopardy. In fact, it may even be better to appeal to the strong survival instincts of the politicians showing how it is in their own interests to reform the police.

In India, the police have invariably been used as a stick with which to beat your opponents into submission. The politicians in power tend to forget that the same stick can be used against them too when they are out of power and this has been happening quite often now a days in India. It is for the politicians to realise that they can be very unsafe once they are out of power unless they take action to reform the police. This constituency also needs to be told that a professionally efficient and an honest police force can give far better returns in terms of winning public support for the political party in power that a force, which is misused for selfish purposes. A misused police force gets corrupt and brutalised and in turn abuses its powers. The victims of such abuses are always the common poor people, who constitute the majority of India's vote bank.

#### Human Rights Commissions

Wherever human rights commissions exist, they provide a good constituency through which police reforms can be advocated. Most work done by the commissions is in the form of unearthing human rights violations and providing redress to victims. The importance of this work cannot be gainsaid, but this constituency can become an important catalyst for systemic reforms in the police. In this way, human rights commissions can use their work and resources coupled with their credibility and influence to steer the reform-making agenda towards larger ends. Their charter needs to emphasize this; their independence has to be ensured and their resources need to be augmented to enable them to work towards the end of reforming the police.

### Non-Government Organisations (NGOs)

This constituency in most Asia Pacific countries is somewhat weak and its capability in the area of police reforms work really needs to be built up. NGO's activities in this area are broadly of two types. One is to inquire into violations of human rights committed by police personnel and the other is to advocate for systemic reforms. The former group of activities, by bringing police atrocities out in the open help in creating pressures on the government to take action against the police, but these require systemic documentation of human rights violations in an authentic manner. Documenting human rights violations committed by police personnel poses a major challenge to the NGOs. The task is quite daunting not only because of the intimidating nature of work but also because of lack of expertise in doing it efficiently. Most NGOs are really not well trained in this work.

One problem faced by NGOs advocating for police reforms is the non-availability of information about government's plans and programmes concerning the police. This hampers the NGOs' efforts to make out a strong case for reforms in the police. The government also feels that though the NGOs are ever ready and willing to condemn the police at the drop of a hat, they have no alternative plans to suggest. The NGOs lack expertise and do not succeed in advocating convincingly for alternative plans for restructuring or even for programmes for action within the existing framework. The building up of this constituency should result in improving their knowledge of how their police system is functioning, legal and other problems affecting the delivery of justice, what has been successfully done to address policing problems in other countries, and what resources can be mobilised, both within India and from abroad.

### The Media

The media is one of the most powerful constituencies that can really help in bringing about change. It has enormous reach and power. Technological

advances witnessed during the last few decades have revolutionized the world of communications and opened frontiers, which were hitherto unknown to the media or beyond its reach. Any violation of human rights occurring anywhere in the country can be known to the rest of the country in no time. The media has shown interest in reporting on human rights violations committed by police personnel. The exposure itself helps in ensuring accountability. The media in some cases has shown missionary zeal in investigating and exposing abuses of power. Besides functioning as a watch dog, the media can contribute towards catalysing a public debate on police reform, and play a part in educating the public on the major issues linked to police reform.