

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 5

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Police Reforms in India: Why, What & When?

SHUBHANSH PATEL¹

ABSTRACT

The issue of police reforms in India is a long-standing concern, marked by incidents of police brutality, delayed action, custodial deaths, and political interference within the police force. The present legislation governing the police in most Indian states dates back to the colonial-era Police Act of 1861, designed to serve British interests. In spite of several committees and commissions established post-independence, meaningful reforms have been difficult due to the governments' reluctance to renounce control over the police. This paper critically examines the Police Act of 1861, the Model Police Act of 2006, the necessity for police reforms, the landmark Prakash Singh & Ors v Union of India & Ors case, and the challenges in implementing its directives. It underscores the urgency of reforming the police system in India, highlighting how archaic laws, political interference, and a lack of accountability have hindered effective law enforcement. The paper also discusses the Model Police Act and the need for its comprehensive adoption. With a focus on the Supreme Court's directives for reform, the paper focus on the status quo and emphasizes the importance for a more transparent, accountable, and people-centric police force. In conclusion, the paper calls for decisive action, including potential intervention by the Supreme Court, to expedite police reforms in India, considering the fundamental role of the police in ensuring a just and law-abiding society.

Keywords: Police Reforms, Prakash Singh v Union of India, Police Act 1861, Model Police Act.

I. INTRODUCTION

The issue of Police reforms in India is long recognized. Whenever there are incidents of police brutality, custodial deaths, denial to register an F.I.R., delay in police action, and many more, this all points towards a lack of reforms within the police force. Police and Law & order fall under the exclusive jurisdiction of states.² Police in most of the Indian States are governed by the Police Act, of 1861³ which is colonial-era legislation enacted after the Mutiny of 1857, to unite and sustain British rule in India. This Act confers power to a state to constitute its police

¹ Author is a student at O.P. Jindal Global University, Sonapat, Haryana, India.

² INDIA CONST. schedule 7, List II, Entry 2

³ ACT NO. 5 OF 1861 [22nd Mar 1861]

force and lays down the rules for the administration and powers of police, also some states like Maharashtra, Gujarat, Kerala, and Karnataka have their legislation enacted after independence, but they are also in line with the Police Act, 1861. These legislations are so made that they provide the political executive of state the exclusive control over the police, without establishing any safeguards to avert the exploitation of police for adherent purposes and without subsuming potent mechanisms to guarantee police liability. The case of the arrest of a journalist in Maharashtra⁴, police brutality in Jamia Millia Islamia University campus,⁵ the Vikas Dubey encounter⁶, Cyberabad fake encounter of the four accused of rape & murder case⁷, delay in registration of F.I.R. against an Uttar Pradesh MLA in the Unnao rape case⁸ of 2017, all shows the misuse of the police force by the politicians who are in power. The above-mentioned cases are just a few examples, but incidents like these are reported daily. Apart from this, there are various shortcomings in the police organizations and the working conditions of the police.

Police reforms for the first time were realized by the British Government in 1902-03 and they appointed Andrew Frazer Commission. Post-independence, the Govt. of India constituted the National Police Commission 1977 which produced eight reports between 1979 and 1981⁹. The Supreme Court also in the Prakash Singh & Ors v Union of India & Ors, Case¹⁰, released guidelines for police reforms, and even formed a committee to look after its implementation. Also, the Govt. of India constituted the Soli Sorabjee Committee in 2005 to draft a new Model Police Act that could replace the Police Act of 1861. Of these, the Prakash Singh case plays an important role in the reforms of police forces in the country. It can be seen that various committees and commissions were established by various governments, but they could not produce any outcome and the main reason behind this is the lack of government's will to implement reforms as this would lessen the interference of politicians in the police organization.

⁴ Charul Shah, Arnab Goswami's arrest in suicide case appears illegal, observes court, H.T., (Nov 05, 2020, 18:24 IST), <https://www.hindustantimes.com/india-news/arnab-goswami-s-arrest-in-suicide-case-appears-illegal-observes-court/story-KxvvBo73PRMhuaViF2ttQM.html>

⁵ Sidharth Ravi, *Video of police brutality in Jamia Millia Islamia library goes viral*, The Hindu, (Feb 16, 2020, 11:08 IST), <https://www.thehindu.com/news/cities/Delhi/video-of-police-brutality-in-jamia-millia-islamia-library-goes-viral/article30834535.ece>

⁶ PTI, *Vikas Dubey encounter: SC pulls up UP for failing to uphold law of the land*, D.C., (Jul 20, 2020, 1:42 pm IST), <https://www.deccanchronicle.com/nation/crime/200720/vikas-dubey-encounter-sc-pulls-up-up-for-failing-to-uphold-law-of-the.html>

⁷ JANYALA SREENIVAS & G ANANTHAKRISHNAN, *SC PANEL SAYS BOOK 10 COPS FOR KILLING 4 ACCUSED IN HYDERABAD RAPE & MURDER*, THE INDIAN EXPRESS (MAY 21, 2022, 01:09 IST) [HTTPS://INDIANEXPRESS.COM/ARTICLE/CITIES/HYDERABAD/HYDERABAD-ENCOUNTER-2019-GANGRAPE-ACCUSED-SC-COMMISSION-7927755/](https://indianexpress.com/article/cities/hyderabad/hyderabad-encounter-2019-gangrape-accused-sc-commission-7927755/)

⁸ PTI, *Unnao gang rape case: HC slams UP govt over delay in Kuldeep Singh Sengar's arrest; FIR registered finally*, FP, (Apr 12, 2018, 20:50:35 IST), <https://www.firstpost.com/india/unnao-gangrape-case-hc-slams-up-govt-over-delay-in-kuldeep-singh-sengars-arrest-fir-registered-finally-4429239.html>

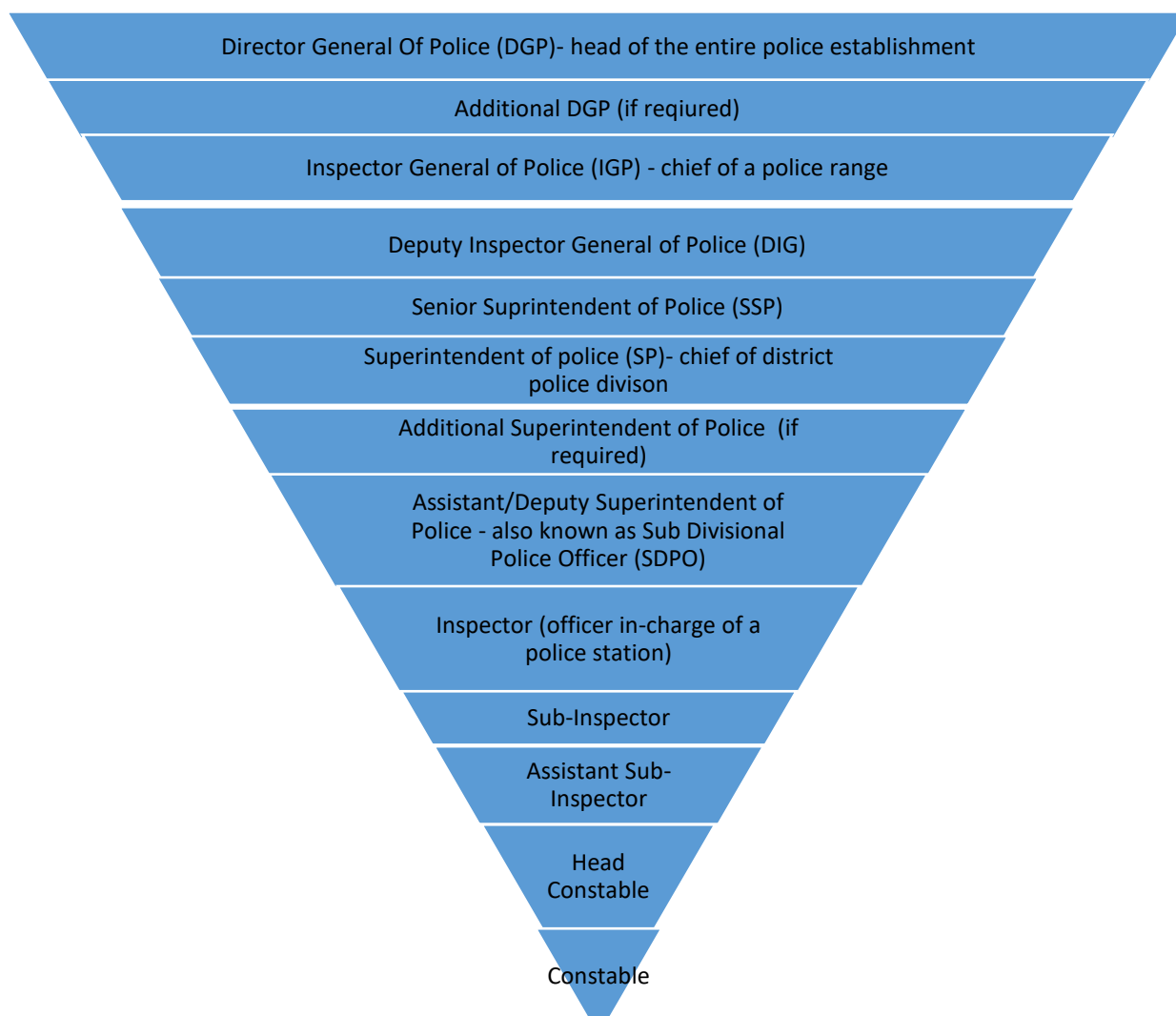
⁹The National Police Commission (NPC), [humanrightsinitiative.org, https://humanrightsinitiative.org/old/publications/police/npc_recommendations.pdf](https://humanrightsinitiative.org/old/publications/police/npc_recommendations.pdf)

¹⁰ (2006) 8 SCC 1

This paper will analyze the Police Act of 1861 and the Model Police Act of 2006, why we need police reforms, the Prakash Singh & Ors v Union of India & Ors, Case, and the implementation of the guidelines given in this case. The intention behind writing this paper is that the police play a vital role in law enforcement, and prevent crime, violence & public disorder, but because of various factors, the police have failed to achieve their objectives also, poor policing somewhere results in the violation of fundamental rights which is very harmful to the progress of a healthy society.

II. THE POLICE ACT OF 1861

The Police Act was enacted by the British Government in the year 1861 as a result of the Sepoy Mutiny of 1857 when the British realized that they were losing their control over the general public and established the Indian Imperial Police by this Act. After independence, India as a sovereign and republic nation decided to adopt the same Act, and the police are still governed by this Act after 74 years of independence. The following flow-chart describes the structure of ranks in the police force per the provisions of the act:



*There may be some additional ranks in some states

*In states which follow the Commissionerate system, DGP is known as Commissioner of Police and other ranks till DSP as follows. Others ranks till inspector are same.

** The commissioners enjoy the powers that of an executive magistrate.

The Act talks about the powers of the police, procedures to be followed by them, functioning of the police establishment, working conditions, etc. The most denouncing provision of the act is that it empowers the political executive to exercise control over the police force. Section 3¹¹ of this Act provides exclusive control of the police functionary in the hands of the political executive and section 7¹² of the Act states that the government has exclusive power in terms of posting, transfer, suspension, promotion, and dismissal of police officers. There is no procedure in the Act for the appointment and promotion to higher posts, it is based on the complete discretion of the government. These provisions provide the government with such power that allow them to make pressure on police officers and influence them to work for their interests. Also, many other provisions in this act such that they advance autocratic rule in a democratic society. It is ironic that in so-called democratic India, the police force is still governed by the legislation enacted by the British Government with the sole aim to exploit and suppress people. The Act has become outdated in today's context and needs to be replaced by a new act.

III. WHY DO WE NEED POLICE REFORMS IN INDIA?

In an ideal democracy, police should be people-friendly and must be accountable to the public, but that is not the case with India. In India, we have the ruler's police rather than the people's police. To counter threats, internal security is very much a prerogative of the police, and effective policing is required. But the police system needs to be reliable, responsive, and technologically sound for that. If we look at the data on police organizations of 2019 released by the Bureau of Police Research and Development (BPRD)¹³, it shows various shortcomings of the police organizations. According to the data, the Police- Population Ratio (PPR) (per lakh population) in India is 198.65, the area per police person (APP) (in sq. km) is 1.27, and transport per 100 police personnel (TPP) is 7.89. The data on custodial death shows that 497 people died in police custody between 2016 and 2019. Two out of five police personnel reported always facing pressure in the course of the investigation of cases concerning influential people. About 38% of the civil police reported that they always face political pressure in cases

¹¹ The Police Act, 1861, § 3

¹² The Police Act, 1861, § 7

¹³ Data On Police Organisations, bprd.nic.in, <https://bprd.nic.in/WriteReadData/userfiles/file/202001301028101694907BPRDData2019-19forweb-2.pdf>

involving influential persons. Roughly one-third also reported always facing pressure from their seniors in the police force, 1/5th of the police always face pressure from the media, while about 14% reported that they always face pressure from human rights organizations/NGOs, judiciary, and the common public in cases where influential people are involved. When the police personnel fails to comply with such pressure, the most common result is posting or transferring to a different area—with more than 3/5th of the police reporting the same. About 12% reported the most common consequence to be suspension or dismissal from service, while 5% also reported a threat to their personal safety or physical assault and 5% reported that the most common consequence is harsh public denunciation. The costs of complying with pressure are alike across different ranks, shows the data from the Status of Policing in India Report 2019.¹⁴

All of these points are the reason behind poor policing in India. Due to pressure from politicians, police officers work according to their instructions just because of the fear of losing their job and other consequences which in turn leads to unnecessary delay in the registration of FIR, investigation, improper handling of evidence, police brutality against innocent people, and fake encounters. The poor infrastructure and lack of men force are other factors which lead to the inefficient working of the department. If there are enough police personnel as per the population density, then it would be easy to deal with cases in a reasonable time and work overload will lessen. Sufficient transportation and good communication systems would provide good connectivity and proper crime reporting. Autonomy of the police department in terms of the investigation, transparency in the process of promotion, suspension, posting, transfer, and dismissal of police officers, a separate mechanism for complaints against police and other good mechanisms will reduce pressure on the police force and enhance efficient functioning. Implementation of all such channels that would overcome the shortcomings in the police establishment is what ‘police reforms’ means.

IV. PRAKASH SINGH & ORS V UNION OF INDIA & ORS, CASE, AND ITS AFTERMATH: THE SEVEN DIRECTIVES

In 1996, two retired DGPs, Prakash Singh & N K Singh, filed a PIL in the Supreme Court of India asking the Court to direct State Governments to implement the recommendations given by the National Police Commission. The SC in 2006 delivered its verdict and held that reforms must take place. The SC in this judgment delivered seven binding directives for reforms in the police organization. These directives consist of all the recommendations given since the

¹⁴ State of Policing in India Report 2019, tatatrusters.org, (13 Nov 2019), <https://www.tatatrusters.org/upload/pdf/state-of-policing-in-india-report-2019.pdf>

formation of the National Police Commission in 1979 and provide a practical approach to bringing reforms. They make up a plot that whenever actualized comprehensively will address the normal ills that make poor police execution and unaccountable law requirement today. The mechanisms in these directives are such that it ensures the functional responsibility of police while remaining under the supervision of the political executive, and it has conditioned the political control of the police to keep within its reasonable boundaries. The directives make internal management systems fair and transparent, increase policing efficiencies in terms of their core functions, and enhance police accountability. All the provisions of these directives advocate for a system with checks and balances. The seven directives as given by the Supreme Court are:¹⁵

“(1) State Security Commission (SSC): The State Governments are directed to constitute a State Security Commission in every State to ensure that the State Government does not exercise unwarranted influence or pressure on the State police and for laying down the broad policy guidelines so that the State police always acts according to the laws of the land and the Constitution of the country. This watchdog body shall be headed by the Chief Minister or Home Minister as Chairman and have the DGP of the State as its ex-officio Secretary. The other members of the Commission shall be chosen in such a manner that it can function independently of Government control. The recommendations of this Commission shall be binding on the State Government. The functions of the SSC would include laying down the broad policies and giving directions for the performance of the preventive tasks and service-oriented functions of the police, evaluating the performance of the State police, and preparing a report thereon for being placed before the State legislature.

(2) Selection and Minimum Tenure of DGP: The Director-General of Police of the State shall be selected by the State Government from amongst the three senior-most officers of the Department who have been empanelled for promotion to that rank by the Union Public Service Commission based on their length of service, very good record and range of experience for heading the police force. And, once he has been selected for the job, he should have a minimum tenure of at least two years irrespective of his date of superannuation. The DGP may, however, be relieved of his responsibilities by the State Government acting in consultation with the SSC consequent upon any action taken against him under the All India Services (Discipline and Appeal) Rules or following his conviction in a court of law in a criminal offence or a case of

¹⁵ S. Singh, D. Bhardwaj, *Police reforms: India*, Volume 4, INTERNATIONAL JOURNAL OF LAW 283, 284, 2018, last seen on 29/12/2022

corruption, or if he is otherwise incapacitated from discharging his duties.

(3) Minimum Tenure of I.G. of Police & other officers: Police Officers on operational duties in the field like the Inspector General of Police in-charge Zone, Deputy Inspector General of Police in-charge Range, Superintendent of Police in-charge district and Station House Officer-in-charge of a Police Station shall also have a prescribed minimum tenure of two years unless it is found necessary to remove them prematurely following disciplinary proceedings against them or their conviction in a criminal offence or a case of corruption or if the incumbent is otherwise incapacitated from discharging his responsibilities. This would be subject to the promotion and retirement of the officer.

(4) Separation of Investigation: The investigating police shall be separated from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people. It must, however, be ensured that there is full coordination between the two wings. The separation, to start with, may be effected in towns/urban areas which have a population of ten lakhs or more and gradually extended to smaller towns/urban areas also.

(5) Police Establishment Board: There shall be a Police Establishment Board in each State which shall decide all transfers, postings, promotions and other service-related matters of officers of and below the rank of Deputy Superintendent of Police. The Establishment Board shall be a departmental body comprising the DGP and four other senior officers of the Department. The State Government may interfere with the decision of the Board in exceptional cases only after recording its reasons for doing so. The Board shall also be authorized to make appropriate recommendations to the State Government regarding the posting and transfers of officers of and above the rank of Superintendent of Police, and the Government is expected to give due weight to these recommendations and shall normally accept them. It shall also function as a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above regarding their promotion/transfer/disciplinary proceedings or they are being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State.

(6) Police Complaints Authority (PCA): There shall be a Police Complaints Authority at the district level to look into complaints against police officers and up to the rank of Deputy Superintendent of Police. Similarly, there should be another PCA at the State level to look into complaints against officers of the rank of Superintendent of Police and above. The district-level Authority may be headed by a retired District Judge while the State-level Authority may be headed by a retired Judge of the High Court/Supreme Court. The head of the State level

Complaints Authority shall be chosen by the State Government out of a panel of names proposed by the Chief Justice; the head of the district-level Complaints Authority may also be chosen out of a panel of names proposed by the Chief Justice or a Judge of the High Court nominated by him. The State-level Complaints Authority would take cognizance of only allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt or rape in police custody. The district-level Complaints Authority would, apart from the above cases, may also inquire into allegations of extortion, land/house grabbing or any incident involving serious abuse of authority. The recommendations of the Complaints Authority, both at the district and state levels, for any action, departmental or criminal, against a delinquent police officer shall be binding on the concerned authority.

(7) National Security Commission (NSC): The Central Government shall also set up a National Police Commission at the Union level to prepare a panel for being placed before the appropriate Appointing Authority, for the selection and placement of Chiefs of the Central Police Organisations (CPO), who should also be given a minimum tenure of two years. The Commission would also review from time to time measures to upgrade the effectiveness of these forces, improve the service conditions of its personnel, ensure that there is proper coordination between them and that the forces are generally utilized for the purposes they were raised and make recommendations on that behalf. The NSC could be headed by the Union Home Minister and comprise heads of the CPOs and a couple of security experts as members with the Union Home Secretary as its Secretary.”

The SC directed all the states to implement these broad directives as earliest, but unfortunately, they are not implemented even after 16 years. So far, only 17 states have established PCA and of these 17 states only a few states have made them operational, but they are also not working in accordance with the directives of the SC¹⁶. In May 2008, two years after the judgment, the SC under its supervision constituted a committee headed by former SC judge Justice K.T. Thomas to monitor the implementation of the directives given in the Prakash Singh case which submitted its reports in October 2010.¹⁷ It expressed “dismay over the total indifference to the issue of reforms in the functioning of Police being exhibited by the States”. Hon’ble Justice K.T. Thomas said, “No state govt wants to lose the power of recruitment or transfer over police officers”.¹⁸

¹⁶ V. Venkatesh & S. Mahthaw, *Police reforms still largely only on paper*, Frontline , (Aug 09, 2019, 19:56 IST), <https://frontline.thehindu.com/dispatches/article28960801.ece>, last seen 26/11/2020

¹⁷ Status Note on Police Reforms in India, mha.gov.in, <https://www.mha.gov.in/sites/default/files/PoliceReforms%28E%29181013.pdf>

¹⁸ Krishnadas Rajagopal, *No state govt wants to lose power of recruitment, transfer: Justice Thomas*, The Indian

In July 2020, Sr. Adv. Raju Ramachandran filed a petition in SC for the speedy implementation of the police reforms¹⁹ as the State Governments across the country are not willing to implement the reforms directed by the Hon'ble SC in the Prakash Singh case. There is a huge public demand for the implementation of the Supreme Court directives as they are a complete guide to police reforms and if implemented properly, would create an accountable and public-friendly police system.

V. MODEL POLICE ACT

Since most of the states are still dependent on the Police Act of 1861, there is a dire need for a new Act. In 2005, the Ministry of Home Affairs, Govt. of India constituted a committee under the chairmanship of former Attorney General of India, Soli Sorabjee²⁰ for the drafting of a Model Police Act. The committee in 2006, submitted the draft²¹ of the act which was circulated to the states and the states were directed to enact it.²² But only a few states made certain amendments to their existing legislation and none of the states fully enacted the draft. Later, the Govt. of India in 2015 reviewed the Model Police Act of 2006 and proposed a new draft bill named Model Police Bill, 2015²³. The states are not willing to enact new legislation because the act of 1861 provides wide powers to executive authorities to control and manipulate the police department. The old act provides the executive control over matters related to the transfer, posting, promotion, and suspension of police officers and this helps them to manipulate the system as per their interests, whereas the Model Police Act advocates for greater autonomy of the police and non-interference of politicians. If the police are provided with greater autonomy, it would lead to the efficient working of the police department, the officers would be enabled to perform their duties followings proper rules and sets of standards without favouring anybody as there would remain no fear of transfer or suspension from the politicians.

VI. CONCLUSION

Even after 75 years of independence, India is nowhere on the track of police reforms. The

Express, (August 30, 2010 00:12 IST), <https://indianexpress.com/article/news-archive/web/no-state-govt-wants-to-lose-power-of-recruitment-transfer-justice-thomas/>

¹⁹ A. Saxena, *Prakash Singh Case: Amicus Sr Adv Raju Ramachandran Moves SC Seeking Measures For Speedy Implementation Of Police Reforms*, Live Law, (14 Jul 2020 12:41 PM), <https://www.livelaw.in/top-stories/prakash-singh-case-amicus-sr-adv-raju-ramachandran-moves-sc-seeking-measures-for-speedy-implementation-of-police-reforms-159868?infiniteScroll=1>, last seen on 26/11/2020

²⁰ Police Act Drafting Committee, mha.gov.in, https://www.mha.gov.in/sites/default/files/npolice-act_0.pdf

²¹ The Model Police Act, 2006 (PADC Proposed Bill), mha.gov.in https://www.mha.gov.in/sites/default/files/ModelAct06_30_Oct_0.pdf

²² INDIA CONST. art. 246, cl. 3. According to this, only states can enact laws on subjects specified in List 2 of the seventh schedule of the constitution.

²³ The Model Police Bill, bprd.nic.in, [https://bprd.nic.in/WriteReadData/Orders/Model%20Police%20Bill%202015_21st%20Aug%20\(1\).pdf](https://bprd.nic.in/WriteReadData/Orders/Model%20Police%20Bill%202015_21st%20Aug%20(1).pdf)

Police in India are still governed by the British era norms which are old and anti-people. Since the police is a state subject, therefore the union can neither make laws regarding police nor can force the states to do so. The National Police Commission was set up in 1977 and various committees that were established since independence could not produce any outcome in the end because of the unwillingness of the states. Even the binding directives of the SC couldn't produce any result. There is a lack of uniformity within the system and since the governments are failing to bring reforms, it's time for the SC to take a decisive action for the implementation of the reforms using its exclusive powers under Article 142 of the Indian Constitution as its earliest.
