

A Review on “The Model Police Bill 2015”- Proposed to the Parliament of India

Abstract

The article looks at the evolution of the model police bill-2015 that is being proposed to the parliament for translating it into an Act. Further the author specifically looked at the Model Police Bill 2015 and critically reviewed on the possibilities that could be incorporated. The article widened the concept of the definitions that could be possibly incorporated. It also looked at the principle of policing with a specific focus on ensuring greater representation of the local communities, especially the marginalized and vulnerable sections of the society. This article also critically looked at the State Police Board and suggested the legitimization of the police board by having Members of Legislative Assembly. It also proposes for district police boards at each district. The other aspect towards better service delivery of police is to have functional relationship of local police stations with local self-government is essential. This article also had explored the need to have greater coordination of police academy/training institutes, through a matrix model with Universities and Research Institutions, to keep in tract with the latest development of technology and the society. It also proposes to have independent investigation team for the Police Accountability Commission to look at complaints/ police misconducts against police officers. The review concluded with the observation, that the model police bill 2015 is a step in the right direction, but if the suggestion in this review could be considered, then the new Model Police Act (that is in the process of formulation by the Indian Parliament, based on the Model Police Bill 2015) would be better embedded socially as well as administratively in terms of democratic policing and the attributes of SMART policing as envisioned by the Indian Prime Minister.

Keywords: Draft model police bill 2015; Police accountability; Principles of policing; Crime investigation department; Police accountability commission; District authority and independent investigation team

Conceptual Paper

Volume 3 Issue 2 - 2016

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Received: October 31, 2016 | **Published:** December 20, 2016

Abbreviations: DMPB-2015: Draft Model Police Bill-2015; NGO: Non-Governmental Organization; MLA: Member of Legislative Assembly; DPB: District Police Board; BPRD: Bureau of Police Research and Development; SMART Police: Strict & Sensitive, Modern & Mobile, Alert & Accountable, Reliable & Responsive, Techno-savvy & Trained

Introduction

The first Police Commission was appointed by the British Government under the chairmanship/presidency of M. H. Court in 1860 in British India. The M. H Court commission had recommended for the enactment of Police Act, 1861¹. The very purpose was to ‘extend the British Rule in a better systematic and organised way’. Since Independence also, these colonial baggage’s had even continued, but obviously not by foreigners, but the Indian ruling class. These were very well reflected in the first Independent National Police Commission (1975), popularly known as the Shah Commission. The Shah Commission concluded

¹After the ‘sepoy mutiny’ of 1857, the country was taken directly by the British crown in 1858 and the Indian Penal Code and Criminal Procedure Code was enacted in 1860 and 1861 respectively. Then they felt the need for a police code for the implementation of criminal law in the country.

that the then Union Government had misused the police and felt the need to modernise and update the police. Thus a felt need for police accountability becomes more important and crucial. Later, in 1996, to a Public Interest Litigation on the concern “to address the poor quality and performance of police in India”, the Supreme Court of India had given directives in 2006. Based on these, a model Police Act, 2006 with the following salient features such as

- a. Functional Autonomy
- b. Encouraging Professionalism
- c. Accountability Paramount and
- d. Improved service conditions were circulated across to all the states vide Ministry of Home Affairs’ D.O. letter dated 31st October, 2006, as ‘Police’ and ‘Public Order’ are ‘state subjects’ under entry 1 & 2 of list II of the seventh schedule of the constitution of India.

As per Ministry of Home Affairs², around fifteen states had formulated their state police act and two states, namely Gujarat

²As per the Loksabha unstarred question no. 1451 on ‘Uniform Police System’ dated 03rd May, 2016, Ministry of Human Resource and Development, Government of India.

and Karnataka had amended their existing police Act in accordance with the Model Police Act, 2006. However, the basic objective of the Model Police Act, 2006 was to have functional autonomy for the police and accountability for conduct and performance. But these were not been considered while the respective state governments drafted their Police Act or in most cases, the basic idea on functional autonomy and police accountability were diluted further. Having this backdrop, the Ministry of Home Affairs (as mentioned in the above Lok Sabha unstarred question.1451) [1], further stated that "the model police act was studied again in line with the changing realities and for making police more responsive, efficient and citizen friendly", a draft model police bill, 2015 (DMPB-2015) was prepared. This draft model police bill, 2015 (DPMB-2015) was also placed in public domain for comments.

Discussion

Having introduced to the development of draft model police bill, 2015, (DPMB-2015); this article is specifically intended to review the draft model police bill, 2015 (DPMB-2015) [2]. The DPMB-2015 had eleven chapters and two schedules. The drafting committee of DPMB-2015 consist of seven members, of which five were police officers (of Indian Police Service Cadre (IPS), either serving/retired), one academician and one representative from a Non- Governmental Organisation (NGO). The introduction or similar to what one can say, a preamble to the DPMB-2015, very clearly spell out that policing as a 'service' as compared to the earlier understanding of police as 'force'. It also states that the "police service needs to be professionally organised, people-friendly, service oriented and free from extraneous influences", and further it states "to re-define the role of the police, its duties and responsibilities for the police to be sensitive, modern, accountable, responsive and trained well". These are progressive thoughts in the right direction when one considers reforming the present Indian Police with at its present nature and structure having the colonial baggages [3]. Chapter 1 on Definitions- The following maybe considered to the list of definitions, to be incorporated

- a) Rural Police Station
- b) Crime Investigation Department
- c) Special Police Officers
- d) Beat Officers
- e) Police Establish Committees
- f) Community Liaison Group
- g) Welfare Board
- h) Grievance Redressal

It may be considered to relook point (e) to have "Police Accountability Commission" itself, instead of the definition of "commission". Even though, the word "commission" is defined as Police Accountability Commission", by having "Police Accountability Commission" as definition itself would give more importance to the concept of accountability and that too "Police Accountability Commission". These are very much essential, as

the 'police' is a state subject, and when the Model Police Bill-2015 transforms into a Model Act, at least the Ministry/Supreme Court (if need be) can direct to the respective states, that the definitions that had been elaborated/defined in the Model Police Act, is to be considered to be incorporated and to be reflected into their respective state police Act, which to a great extent helps in not diluting the letter and spirit of the Model Police Act [Chapter II; Section 3 Principles of Policing, section 3(b) states that the "police services should be responsive to the local community" further section 3(d) states "that maintenance of law and order and promotion of public peace are the responsibility of every member of the community". This calls for effective representation of the local community, especially the marginalised, vulnerable sections of the society into police organisation. The recruitment, especially into the civil police shall be organised in from each "police district", wherein there should be consideration of at least 50% of the seats from Unreserved Category (i.e. anyone from any social group/ caste/class can get into these unreserved categories), whereas the rest 50% should be reserved for those marginalised, vulnerable section of the society, including women. Overall the recruitment (to the Junior Civil Police Officers and Sub-Inspectors for civil police) maybe be conducted by the respective state public service commission, but the point of entry is to be from each "police districts". To substantiate the argument of having recruitment at the level of 'police districts' and the inclusion of 50% from the marginalised and vulnerable section of the society, the DPMB-2015, itself in its chapter 3 section 7(b) clearly states that "the composition of the police service and its local deployment shall, as far as possible, reflect the diversity of the communities it serve". This would help in enhancing greater representation of local communities into the police organisation and that too special attention could be given to the most marginalised and vulnerable section of the society, including women. The overall Government of India and the respective state reservation policy also have to be implemented.

Section 4. Duties of Police, Considering the duties enshrined in the DPMB-2015, it is very much essential that the following measures to be considered for incorporation into the DPMB-2015, (i) To have a District Police Board for every district (to be incorporated into the DPMB-2015) with all MLAs of that particular districts as its District Police Board Members and independent members at the level of District, along with four experts from the following areas:

- i. Criminology
- ii. Forensic Sciences
- iii. Criminal Justice Social Work and
- iv. Statistician

These four experts from these areas are essential, apart from the independent members. The number of independent members for a particular district should be one member less to the number of MLAs of that particular district. However there should be a minimum of at least three independent members to each district police board. The independent members shall be from the field of academics, law, public administration, media/non-governmental organisations [4]. The District Police Board (DPB) would be

working under the direct supervision of the State Police Board and the functions would be same as the state police board, but at the level of the particular district. Similarly, the State Police Board should consist of at least 1/10th of its elected Member of Legislative Assembly, (MLAs) with all the other composition similar to as that stated in chapter V section 35 on state police board and its composition. This incorporation of 1/10th of MLAs is essentially to build in legitimacy into the strategic plans and Annual Plans as well as the functioning of state police board. The realisation of the duties of the police is possible, only if the organisational structure with regard to the police board is there both at the state and also at the district levels. Chapter 3; Section 10. Coordination with the District Administration, Considering the functions of police for better coordination with various issues/agencies, it is essential that the police needs to have a functional relationship with the local self-government³. Section 18 & 19 of the DPMB-2015 also explains the need to have a functional relationship between the police and local self-government. Chapter 3 Section 27 Crime Investigation Department, for these to be very effective, it first of all needs to be implemented both at the state level and also at each district level. Moreover, there needs to be a matric model⁴. Chapter 5, Section 35-39; State Police Board and related concerns. Along the line of State Police Board, it is essential that there needs to have district police board at each districts, as mentioned above. The concept of District Police Board is missing in the DPMB-2015, therefore these maybe incorporated. Chapter 5 Section 44; Qualification of Police Officers- 44(1) (b) instead of minimum two years, it may be considered as two years plus one year of concurrent field work at local police stations for Junior Civil Police Officers by attaching them with the district police board. This one year of internship would help them to understand better policing in the field too from a holistic point of view. Also Section 44 (4), the minimum qualification for direct recruitment to the Armed Police unit also has to be similar to that of Junior Civil Police Officer, i.e. 10 +2 or equivalent examination. This is essential, as in some states, there is already integration of civil police and armed police and in future if need be, for such integration, the similar minimum qualification to both civil and armed police, will not block such policy decisions.

Chapter 7 Section 64; For training and support facilities, the Police Training Institutions/Academy should have greater interface with Universities/Institutions of Excellences of that particular state and work towards collaborative research and teaching. The present model of Police Academy/Training Institutions working in isolation/ with few institutions has to be done away with. Policing is essentially an area that needs to be embedded with latest research and technology and only through greater interface with academics and research institutions, effective policing is possible in the modern day. Chapter 9; Police Accountability; Section 77: Police Accountability Commission and Authorities. Essentially the Police Accountability Commission is to

³A study on Local Self Governance and Policing, funded by Bureau of Police Research and Development and submitted in 2016 may be considered for reference.

⁴See chapter 2-Indian Police Training Institutions, Universities and other stake holders: Towards a matrix model for better policing by Sony Kunjappan, in the book edited by Scott W Phillips and Dilip K Das (2017) titled Change and Reform in Law Enforcement: Old and New Efforts from across the globe.

look into any type of police misconduct against any police officer. Thus the composition of the Police Accountability Commission, should not have any police officer, either serving/retired, from within the state or outside. Thus the section 77 3(b) of DPMB-2015 should stand void. Instead, the section 77 (3) (d) should have five members instead of two members from amongst the expert knowledge. Further, it is stated in DPMB-2015 section 77 (3) (d) "Provided further that not more than one member of the three appointed under sub-clause (c) and (d) shall be a retired Police Officer". The concept of having a retired police officer, in the Police Accountability Commission is to be done away with, as it would dilute the process of investigation/action against any police mis-conduct, as even after retirement from the police, there would be link within the police. So for greater neutrality, it may be considered by not having any retired/serving police officers in the Police Accountability Commission. Also the Section 78 Ineligibility for membership (d) states that "is otherwise employed as a public servant". This Section (d) may be removed, as because, if one is a public servant, other than service in police or related services, she/he can add value to the Police Accountability Commission, especially in terms of understanding the rules and procedures of government etc. Section 77 (4) (b) District Authority, again talks about having a member who have been a police officer. This needs to be removed as stated above; as there is no way a serving/retired police officer could be involved in looking at police mis-conduct against another police officer. This is essentially to bring in greater transparency and accountability into the conduct of policing. Also at the District Authorities, a section (d) needs to be added, i.e. at least three experts from amongst persons having expert knowledge of, and a minimum of 6 years' experience in the field of criminology, psychology, law human rights or gender issues needs to be incorporated. Along with these, the Police Accountability Commission, should have independent investigation team (that are not part of police services) to look at complaints against police with adequate staff.

Conclusion

Overall, the DPMB-2015 drafting committee had tried to incorporate the essence for making police more responsive, efficient and citizen friendly, but if the government could consider the above comments, before it is translated into an Act, then the new Model Police Act, that is yet to come out, would be better embedded socially as well as administratively in terms of democratic policing and the attributes of 'SMART' policing as envisioned by our Prime Minister.

Acknowledgement

I sincerely acknowledge my supervisor Prof. Amita Singh for her constant support and guidance. Prof Amita Singh is my PhD supervisor and my PhD area is broadly on Police Accountability. Also I would like to acknowledge, the Bureau of Police Research and Development (BPRD), Ministry of Home Affairs, Government of India, for funding the project "Local Self Governance and Policing" which I had submitted and accepted by BPRD in 2015. Doing this project, had helped me to develop the concepts and understand of functioning of police, especially at the rural/local level and the need for effective functional relationship between the police and local self-government in India.

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