

SECTION-

IN THE SUPREME COURT OF INDIA  
WRIT PETITION (CIVIL) NO. 316 OF 1998

IN THE MATTER OF:  
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MR. PRAKASH SINGH AND OTHERS

PETITIONERS

VERSUS

UNION OF INDIA AND OTHERS

RESPONDENTS

PAPER BOOK

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Police Reforms

ADVOCATE FOR THE PETITIONERS ; SHRI PRASHANT BHUSHAN  
412, LAWYERS CHAMBER, DELHI HIGH COURT, NEW DELHI

IN THE SUPREME COURT OF INDIA  
WRIT PETITION (CIVIL) NO. 310 OF 1988

IN THE MATTER OF:

MR. PRAKASH SINGH AND OTHERS

PETITIONERS

VERSUS

UNION OF INDIA AND OTHERS

RESPONDENTS

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*Eighth Report*

*Second Report*



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LIST OF DATES AND SUMMARY OF EVENTS

1861 The Police Act was promulgated by the British Government in India in accordance with which the Indian Police force was created and placed under the administrative control and superintendence of the British Government.

1861-1947 The British Government in India used the police as an instrument for controlling and suborning the Indian people. The police even in its investigative role operated and worked under the direct supervision and control of the British Government.

1947 Even after independence the Police structure and the onwads statutes defining the role functions and powers of the police remained unchanged. The British Government was replaced by the Indian Government. For a couple of decades things were not too bad when various state governments and the Central Government of India were working essentially in the interest of the Indian people. From the mid sixties however the decline started in the quality and integrity of the political executive and bureaucracy in the Country. The police gradually began to be used and abused by them for their own partisan and individual aims.

Though the Courts had laid down that in its



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investigative role a police official need not and should not take instructions from any one and was accountable only to the law, the administrative control exercised by the bureaucracy and the political executive over the police, especially the power of transfer, promotion, suspension and grant of extension etc. made most police officials subservient to their political and administrative masters. The result was that the political and administrative masters of the police could and did effectively direct the police in the manner of making investigations and in any case this led to malafide harassment of innocent persons and studied inaction when the cases involved persons connected to those in power.

1959-  
1967

The Kerala Police Reorganization Committee, the West Bengal Police Commission, the Punjab Police Commission, Delhi Police Commission and the Tamilnadu Police Commission pointed out problems associated with political interference of the party in power in the functioning of the police.

1977-78

The Shah Commission gave its report pointing out how during the emergency the police was employed by the politicians to subvert the rule of law. The Shah Commission further recommended the Government to seriously consider the "feasibility and desirability of insulating the police from the politics of the country

and employing it scrupulously on duties for which alone it is by law intended".

1979

The Bureau of Police Research and Development in a research paper entitled Political and Administrative Manipulation of the Police warned that, "excessive control of the political executive and its principal adviser over the police has been inherent danger of making the police a tool for subverting the process of law, promoting the growth of authoritarianism and shaking the very foundations of democracy."

1979-  
1981

The National Police Commission constituted by the Government pursuant to the Shah Commission report to enquire into the functioning of the police system in India, gave a series of eight reports. The Police Commission went into great depth to analyse various reasons for the decline in the functioning of the police and gave its views on abuse of police by the political and administrative masters. The Police Commission in its 8th report made a strong, detailed and cogent recommendation for insulating the investigating wing of the police from the administrative control of the executive. The Police Commission recommended that in order to free the police from the undesirable interference from the present administrative and political masters, the investigative



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wings of the police should be separated and freed from the control of the executive and placed essentially under the administrative supervision of a State Security Commission in the states and a National Security Commission in the centre for Central Police Force.

1981 to  
date

While the recommendations of the National Police Commission and various other commissions for freeing the investigative wing of the police from the administrative control of the executive and for insulating the police from the undesirable influence of the political executive were not implemented by successive governments its reports continued to gather dust. The degree and level of interference of the bureaucracy and the political executive with the police organisations continued to increase. The result is thus that various police organisations in the States and as well as at the Centre had been reduced to being the instruments of the political parties and bureaucrats in power, rather than instruments of the people with accountability only to the law. This has led to a large number of cases where the police organisations have failed to properly investigate and bring to book notorious and known offenders of law who have connections in high places and have gone further even in participating in heinous criminal acts at the behest and in collaboration with their political



masters. A few instances are - Riots of 1984, demolition of disputed structure at Ayodhya in 1992, assault on the Allahabad High Court at the instance of party in the power in the State in September, 1994, the excesses on Uttarakhand agitators in Muzaffarnagar in October, 1994 again at the instance of the State Government, the glaring cases of inaction of the Central Investigative Agency in the cases against hawala recipients, Chandraswami, etc.

The above examples show that the complete subordination of the police agencies, including the investigative agencies, to the political executive has led to a situation in which the fundamental and human rights of the people and indeed the democratic foundations of our society are themselves threatened by the continuance of the situation. The inaction of the executive and legislature in not remedying the situation is leading to a continued violation of the fundamental and human rights of the people at the instance of such a politicised police or a police force which can be manipulated and misused by the political executive.

It is in these circumstances that the petitioners 1 and 2, as retired Director Generals of various police organisations and having held highest positions in the various police organisations in the country and

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Petitioner No.3 as an organisation of citizens devoted to promote various causes of public interest, have approached this Hon'ble Court for remedying the situation. The petitioners pray that this Court may give appropriate directions to the Central and State Governments to ensure that the investigative wing of the police organisations are separated and freed from administrative control of the political executive, to make the police accountable to the law and people alone and not to the political executives.

17.4.96 Hence this petition.



IN THE SUPREME COURT OF INDIA  
WRIT PETITION (CIVIL) NO. 1996

IN THE MATTER OF:

1. MR. PRAKASH SINGH  
3-C, SUPER DELUXE FLATS  
SECTOR 15-A  
NOIDA 201 301, U.P.
2. MR. N. K. SINGH  
C-1/38 PANDARA PARK  
NEW DELHI ?
3. COMMON CAUSE THROUGH ITS  
DIRECTOR MR. H.D. SHOURIE  
A-31, WEST END  
NEW DELHI

... PETITIONERS

VERSUS

1. UNION OF INDIA THROUGH THE  
HOME SECRETARY, MINISTRY OF HOME AFFAIRS  
CENTRAL SECRETARIAT  
NEW DELHI
2. Chief Secretary to the  
State Government of Andhra Pradesh  
State Government Secretariat  
Hyderabad 500 041
3. Chief Secretary to the  
State Government of Arunachal Pradesh  
State Government Secretariat  
Itanagar 791 111
4. Chief Secretary to the  
State Government of Assam  
State Government Secretariat  
Zoo Narangi Road, Dispur, Guwahati
5. Chief Secretary to the  
Government of Bihar  
State Government Secretariat  
8 Circular Road  
Bihar
6. Chief Secretary to the  
State Government of Goa  
State Government Secretariat  
Goa 403 004
7. Chief Secretary to the  
Government of Gujarat  
State Government Secretariat  
Sector 9, Gandhinagar  
Gujarat 382 009
8. Chief Secretary to the  
State Government of Haryana  
State Government Secretariat  
Sector 7, Chandigarh



9. Chief Secretary to the  
Government of Himachal Pradesh  
State Government Secretariat  
Shimla
10. Chief Secretary to the  
State Government of Jammu and Kashmir  
State Government Secretariat  
Sonwar, Srinagar
11. Chief Secretary to the  
Government of Karnataka  
State Government Secretariat  
Frazer Town  
Bangalore 560 005
12. Chief Secretary to the  
State Government of Kerala  
State Government Secretariat  
Jawahar Nagar  
Trivandrum
13. Chief Secretary to the  
Government of Madhya Pradesh  
State Government Secretariat  
Swami Dayanand Marg  
Bhopal
14. Chief Secretary to the  
State Government of Maharashtra  
State Government Secretariat  
Gen. J. Bhosale Marg  
Bombay 400 021
15. Chief Secretary to the  
Government of Manipur  
State Government Secretariat  
Imphal 795 001
16. Chief Secretary to the  
State Government of Meghalaya  
State Government Secretariat  
Shillong 793 001
17. Chief Secretary to the  
State Government of Mizoram  
State Government Secretariat  
Aizawal
18. Chief Secretary to the  
State Government of Nagaland  
State Government Secretariat  
Kohima
19. Chief Secretary to the  
State Government of Orissa  
State Government Secretariat  
Bhubaneswar
20. Chief Secretary to the  
State Government of Punjab  
State Government Secretariat  
Chandigarh



21. Chief Secretary to the  
State Government of Rajasthan  
State Government Secretariat  
Jaipur
  22. Chief Secretary to the  
State Government of Sikkim  
State Government Secretariat  
Gangtok
  23. Chief Secretary to the  
State Government of Tamil Nadu  
State Government Secretariat  
Madras
  24. Chief Secretary to the  
State Government of Tripura  
State Government Secretariat  
Agartala
  25. Chief Secretary to the  
State Government of Uttar Pradesh  
State Government Secretariat  
Lucknow
  26. Chief Secretary to the  
State Government of West Bengal  
State Government Secretariat  
Calcutta 700 019
- (RESPONDENT NOS. 2 TO 26 CAN BE  
SERVED THROUGH THE RESPONDENT NO.1)

... RESPONDENTS

WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA PRAYING FOR ISSUANCE OF A WRIT OF MANDAMUS OR ANY OTHER WRIT, ORDER OR DIRECTION TO THE UNION OF INDIA AS WELL AS THE STATE GOVERNMENTS OF THE COUNTRY TO INITIATE POSITIVE STEPS TO REFORM AND OVERHAUL THE POLICE ORGANISATIONS AT THE CENTRAL AND THE STATE LEVELS SO THAT THEY BECOME ACCOUNTABLE PRIMARILY TO THE LAW OF THE LAND AND TO THE PEOPLE AS THE EXISTING ARRANGEMENTS WITH ACCOUNTABILITY TO THE EXECUTIVE IS RESULTING IN SEVERE ONSLAUGHTS ON THE FUNDAMENTAL RIGHTS OF THE CITIZENS AND THREATENING EVEN THE DEMOCRATIC STRUCTURE OF THE COUNTRY

To  
The Hon'ble Chief Justice  
and his companion Judges of Supreme Court of India

THE PETITIONERS ABOVE NAMED MOST RESPECTFULLY SHOWETH:

1. That the petitioners are filing this Public Interest Petition as they are greatly concerned over the alienation of people from the police due to the increasing incidents of aggression on their fundamental and even human rights by the latter, and the steadily mounting criticism of this wing of the Government by different sections of people, including the media

and the judiciary, and being convinced that the executive authorities, at the political and bureaucratic levels, are not taking - and are not likely to take - any initiative to restructure the police department and introduce such reforms as would make it truly an instrument of service to the law and to the people. The petitioners are, therefore, approaching the Supreme Court in the larger interests of the Indian people to direct the executive authorities of the Central and State Governments to introduce such reforms as are essential to make the police, in letter and in spirit, accountable to the law of the land and the people of the country.

2. The first petitioner is a retired officer of the Indian Police Service, who served the country in various police organisations for 35 years in Assam, Nagaland, Punjab, Kashmir and Uttar Pradesh, and held the top positions of Director General of Police Assam, Director General of Police Uttar Pradesh and Director General of the Border Security Force, and was awarded the "Padma Shri" in 1991 for his outstanding contribution to National Security.

3. The second petitioner is also a retired officer of the IPS, who retired after 34 years of service in various police organisations of India and had worked on the posts of Joint Director CBI, Additional Director General BSF, and Director General of the Bureau of Police Research and Development.

4. The third petitioner is a Public Interest Organisation which has taken up various causes of the people like problems of consumers, malfunctioning of blood banks, free and compulsory education for the children, poll expenses incurred in the election of a candidate by the party, etc.

5. The petitioners are of the view that the violations of

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fundamental and human rights of the citizens by the police are generally in the nature of

- a) Non-enforcement or discriminatory application of laws so that those having clout are not held accountable even for blatant violations of laws and, in any case, not brought to justice, and
- b) Direct violations of the rights of citizens in the form of unauthorised detentions, torture, harassment, fabrication of evidence, malicious prosecutions, etc.

6. The aforesaid violations may, to an extent, be due to the general malaise afflicting the society and the all-round decline in standards which we are witnessing in the different spheres of life, but it is the petitioners' contention that much of these violations of the citizens' rights are on account of the police continuing to be under the overall control of the executive, which has been using, misusing and abusing the law enforcement agency to further its own selfish, partisan and political objectives.

//  
 P. J. W. M.  
 also  
 contd.

7. A few glaring examples would suffice to illustrate the point:

- i) Anti-Sikh riots of 1984
- ii) Demolition of the disputed structure at Ayodhya on December, 6, 1992.
- iii) Assault on the Allahabad High Court on September 13, 1994.
- iv) Excesses committed on the Uttarakhand agitators on October 1, 1994.
- v) The inaction in pursuing the various criminal cases against Shri Chandraswami.
- vi) The inaction in pursuing the St. Kitts' forgery and the

- vii) The initial inaction in pursuing the Hawala case.

8. The thrust of the petition is that the present distortions and aberrations in the functioning of the police have their roots in the colonial past, the structure and organisation of the Police which have remained basically unchanged during the last nearly 135 years, and the complete subordination of the Police to the executive - an arrangement which was designed originally to protect the interests of the British Raj but which unfortunately continues to this day.

9. The petition would be broadly divided into four parts:

- i) The historical background which would bring out why the police functioning has caused so much disenchantment and even dissatisfaction among the different sections of society;
- ii) the recommendations of various Commissions at the State and Central levels on the subject which were never implemented because they did not suit an executive obsessed with furthering its political and partisan interests;
- iii) misuse and abuse of the police which have reduced it to the status of a mere tool in the hands of unscrupulous masters and, in the process, caused serious violations of the rights of the people; and
- iv) the need to re-define the scope and functions of police, frame a new Act for the purpose, underlining its accountability to the law of the land, and implement the core recommendations of the National Police Commission.



BACKGROUND

10. The Police Act of 1861, which is the very foundation stone of police, was designed essentially to subserve the colonial interests of the British Raj. It was enacted in the context of the Revolt of 1857 and was, therefore, so structured as to put down any opposition, violent or democratic, to the imperial power. The police was de jure as well as de facto totally subservient to the executive.
11. The police accountability is still governed by sections 3 and 4 of the Act of 1861. The 'superintendence' of the State Police vests in the State Government and its 'administration' in the Director General of Police. In a district, it vests in the Superintendent of Police subject to "the general control and direction" of the District Magistrate. The degree of superintendence or directional control intended to be exercised by the State Government or the District Magistrate is not specified. Section 3 of the Act, however, provides that "except as authorised under the provisions of the Act, no person, officer or Court shall be empowered by the State Government to supersede or control any police functionary". In actual practice, however, in spite of this restrictive clause, the State Governments have framed rules and issued executive instructions from time to time under Section 46 (2) of the Act which have been contrary to the spirit of sections 3 and 4 of the Police Act. A copy of the Police Act, 1861 is annexed hereto as ANNEXURE A.
12. The Frazer Commission had, as far back as 1902-03, commented that certain rules and regulations framed by the provincial governments were contrary to the spirit of the Police Act and that there had been "a degree of interference which the law did not contemplate and which has been prejudicial to the

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interest of the (police) department". Unfortunately, there has been no study of the manner in which the 'superintendence' of the government over the police has been exercised all these years.

13. Article 227 of the Constitution authorises High Courts to exercise 'superintendence' over all courts subject to its appellate jurisdiction; but it does not give jurisdiction to High Courts to question any judgement of a subordinate court except to the extent it is subject to revision or appeal. There may be valid reasons for differences in the nature of the superintendence exercised by a High Court over the subordinate courts and by the state government over the police, but it could not be stretched from superintendence to interference in the day-to-day functioning of the police. The provisions of the Police Act have been abused to strengthen executive control over the police to an extent where the departmental leadership has been emasculated and its control over the operational units seriously undermined. Sardar Patel is on record as having said that "unless we are prepared to give our confidence to the head of the police force and trust in his judgement, it is impossible for us to maintain a police administration of high order."

14. It is interesting to know that the Royal Commission on Police in U.K. (1962) commented as follows on the relationship between the police authority and the Chief Constable:

"The authority's role cannot, under the arrangements which we propose, extend beyond the giving of advice and it will not be entitled to give orders or instructions to a chief constable on matters connected with policing... The role of the police authority will be to advise the chief constable on general matters connected with the policing of the area; but the



decisions will be the responsibility of the chief constable."

15. In India, however, the executive has a stranglehold hold over the police. The Bureau of Police Research and Development, in a research paper 'Political and Administrative Manipulation of the Police' published in 1979, warned that "excessive control of the political executive and its principal advisers over the police has the inherent danger of making the police a tool for subverting the process of law, promoting the growth of authoritarianism, and shaking the very foundations of democracy." Is it not already happening?

16. The National Police Commission, which had been constituted to comprehensively review the working of the police system in India, submitted detailed reports in 1979-81. In their eighth and concluding report, they mentioned that the police have a three-fold accountability only. It is to

the people  
the law, and  
the organisation.

It would be noticed that there is no mention of accountability to the political executive or the bureaucracy, which between them are exercising almost total control over the police today. Copy of the relevant chapter of the National Police Commission report is annexed hereto as ANNEXURE B. It shows the terrible aberration in our system.

17. At the dawn of independence, it was expected that a new role, a new philosophy would be defined for the police, that its accountability to the law of the land and the people of the country would be underscored in unmistakable terms. But that was not to be and, in the words of the National Police Commission,

"the relationship that existed between the police and the foreign power before independence was allowed to continue with the only change that the foreign power was substituted by the political party in power." For some years, however, there was no problem, thanks to the quality of political as well as administrative leadership. The politicians were men of great stature, endowed with vision and committed to pursuing the national interests. The administrators were also thorough professionals, keen on playing their new role in an independent India. The politicians drew from the professional experience and expertise of the civil servants who, in turn, benefited from the politicians' commitment to democracy and secularism. There was mutual respect for each other, a give and take in the pursuit of common objective of taking the nation forward on the road to progress and modernity.

18. As the years rolled by, however, there was unfortunately a qualitative change in the style of politics. The fire of idealism, which had inspired the first generation of post-Independent politicians and civil servants, started getting dim and dimmer. Power became an end in itself and gradually a symbiotic relationship developed between the politicians on the one hand and the civil servants on the other. Vested interests grew on both sides and, as commented by the National Police Commission, "what started as a normal interaction between the politicians and the services for the avowed objective of better administration with better awareness of public feelings and expectations, gradually turned into different forms of intercession, intervention and interference with mala fide objectives unconnected with public interest."

19. It was around mid-sixties that the political leadership...



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consideration of their affinity and loyalty to the ruling party and its political philosophy. Their intrinsic merit and administrative qualifications were given secondary importance. The disastrous consequences of this were seen during the Emergency (1975-77) when, as observed by the Shah Commission in its interim report which is annexed hereto as ANNEXURE C,

".....the Police was used and allowed themselves to be used for purposes some of which were, to say the least, questionable. Some police officers behaved as though they are not accountable at all to any public authority. The decision to arrest and release certain persons were entirely on political considerations which were intended to be favourable to the ruling party. Employing the police to the advantage of any political party is a sure source of subverting the rule of law. The Government must seriously consider the feasibility and the desirability of insulating the police from the politics of the country and employing it scrupulously on duties for which alone it is by law intended."

20. In its third and final report (1978), the Shah Commission warned that,

".....If a recurrence of this type of subversion is to be prevented the system must be overhauled with a view to strengthen it in a manner that the functionaries working the system do so in an atmosphere free from the fear of the consequences of their lawful actions and in a spirit calculated to promote the integrity and welfare of the Nation and the rule of law."

The overhaul suggested was, unfortunately, never taken up.

POLICE COMMISSIONS' RECOMMENDATIONS

21. Several State Police Commissions have, at different period of time, suggested structural reforms in the department and emphasised the need to insulate it from extraneous pressures, but unfortunately the core recommendations were never implemented by the executive. The Kerala Police Reorganisation Committee (1959) said that "the greatest obstacle to efficient police administration flows from the domination of party politics under the state administration ... the result of partisan interference is often reflected in lawless enforcement of laws, inferior service and in general decline of police prestige followed by irresponsible criticism and consequent widening of the cleavage between the police and the public." The West Bengal Police Commission (1960-61) found that there were frequent allegations that investigation of offences were sought to be interfered with by influential persons highly placed in society or office. The Punjab Police Commission (1961-62) deplored that "members of political parties, particularly of the ruling party, whether in the legislature or outside, interfere considerably in the working of the police for unlawful ends." The Delhi Police Commission (1968) observed that political interference was a rich source of corruption. The Tamilnadu Police Commission (1971) stated that the problem of political interference had grown over the years in spite of the most explicit public declarations made by successive Chief Ministers.

22. The Government of India appointed a National Police Commission in 1977 as it felt that "far reaching changes have taken place in the country" since Independence and "there has been no comprehensive review at the national level of the police system after independence despite radical changes in the political, social and economic situation in the country." It was



felt that "a fresh examination is necessary of the role and performance of the Police both as a law enforcement agency and as an institution to protect rights of the citizens enshrined in the Constitution." The NPC submitted eight detailed reports between 1979-81 which contain comprehensive recommendations covering the entire gamut of police working. Here, in this petition, we would like to invite the attention of the Court to Chapter XV of the second report dealing with 'Interference with and Misuse of Police by illegal or improper orders or pressure from Political, Executive or other Extraneous Sources - Remedial Measures.' Copy of the relevant chapter of National Police Commission is annexed hereto as ANNEXURE D. The salient recommendations under this chapter related to:

- i) setting up of a State Security Commission in every state.
- ii) making the investigative functions of the police completely independent of any extraneous influences, and
- iii) a procedure for the appointment of Police Chief and giving him a minimum statutory tenure.

23. The NPC was of the view that there is "immediate need to devise a new mechanism of control and supervision which would help the State Government to discharge this superintending responsibility in an open manner under the framework of law, with due regard to healthy norms and conventions that may develop in due course." For this purpose, it recommended the constitution of a statutory Commission in each state to be called the State Security Commission. Its functions were to include laying down broad policy guidelines, evaluation of the performance of the State police, functioning as a forum of appeal for disposing of

representations from officers, and generally review the functioning of police in the State. The Commission was to be presided over by the State Minister in-charge of police as ex-officio Chairman and include six other members out of which two were to be from the State legislature, one from the ruling party and one from the opposition, and the remaining members were to be drawn from among retired judges of the High Court, retired government servants who had functioned in senior posts, social scientists or academicians of public standing and eminence. The Police Chief was to function as ex-officio Secretary of the Commission.

24. Regarding police tasks, the NPC said that these could be broadly divided into three categories:

- i) Investigative,
- ii) Preventive, and
- iii) Service-oriented

The investigative tasks include all actions taken by the police in the course of investigating a case under Chapter XII of the Code of Criminal Procedure. Preventive tasks cover action like arrests under section 151 Cr.P.C., initiation of security proceedings, collection of intelligence, etc. Service-oriented functions include rendering service during fairs and festivals, providing relief in distress situations arising from national calamities etc. The Commission was emphatic that as far as investigative tasks are concerned, these should be "beyond any kind of intervention by the executive or non-executive." In regard to preventive and service-oriented functions, the NPC was of the view that the police should be subjected to overall guidance from the Government which should lay down "broad policies for adoption in different situations from time to time."



25. The NPC also recommended a procedure for the appointment of Chief of Police so that only the very best officers got elevated to that august office. The Commission suggested a statutory tenure for the Police Chief so that he did not become a victim to the whims and caprices of the executive.

26. The petitioners understand that, in the wake of Shah Commission's report, the Government of India had appointed a [REDACTED] Government of India to review the working of the Central Police organisations. It is believed to have made recommendations regarding the [REDACTED] of Director, Intelligence Bureau and Director, CBI and also [REDACTED]. The Committee's reports were never made public nor were they implemented. We would suggest that the Court may consider ordering the Union Government to release its copies.

27. Tragically, these recommendations were never seriously considered and were buried for reasons unconnected with their merit or worth. The political leadership is just not prepared to give functional autonomy to the police because it has found this wing of the administration a convenient tool to further its political objectives. As for the bureaucracy, control over the police is an intoxicant they have become addicted to and are not willing to give up. And so, the Act of 1861 continues to be on the statute book even after nearly 135 years. It is indeed a millstone around the police neck.

#### MISUSE/ABUSE OF POLICE

28. The executive misuse and abuse of police has manifested generally in the following forms:

- frequent postings and transfers

- recruitment procedure vitiated through political recommendations
- promotions influenced
- investigations tampered with
- unlawful directions to police
- intelligence apparatus utilised for political purposes

29. The two weapons politicians have used with the utmost frequency to establish their stranglehold over the police have been transfers and suspensions. Twenty years back, the National Police Commission was distressed to find that the average tenure of a Superintendent of Police was one year and seven months only. Today it has come down to four to six months in quite a few states. The politicians have played havoc with the administration, shuffling the officers in season and out of season. In U.P., during the period 1993-95, it is estimated that as many as 3000 IAS/PCS/IPS Officers were transferred in the State, an exercise which cost nearly Rs.25 crores to the exchequer. A large number of officers were also suspended for political reasons. Officers of integrity and following the letter of the law were also unsure of their positions and were apprehensive of the Damocles' sword of suspension dropping over them. Transfer has become an industry. Suspension is a matter of whim.

30. The result of all this is to be seen in the declining standards of the police and its growing alienation from the people. Professionalism is at a discount. Officers spend a lot of time hobnobbing with politicians in an effort to be on their right side. The chain of command has been weakened. The control mechanisms have become dysfunctional. People in general have little confidence in the police. There is criticism from all the quarters including the media and the judiciary. What is



particularly disturbing is that a large segment of police officers are getting politicised. They are identified with one political grouping or the other. This is another reason which leads to widespread displacement of officers whenever there is a change of regime. It is indeed a vicious chain. Yet another - and this is the most devastating by product - development is the growing nexus between the politicians, criminals and the bureaucrats/police which, as mentioned in Vohra Report, is "virtually running a parallel government, pushing the state apparatus into irrelevance." The existing criminal justice system, as a result, is proving inadequate to control the activities of this unholy alliance.

31. It would be no exaggeration to say that we would have been saved the trauma of several riots and massacres, scandals and scams which have rocked the country if the police had not become a pliable instrument in the hands of the executive, as it has unfortunately become. The glaring cases are briefly discussed below:

- i) Riots of 1984: It is a crying shame that more than a decade after the killing of about 3,000 Sikhs in the capital in the aftermath of Smt. Indira Gandhi's assassination, the key perpetrators of the pogrom have yet to be brought to book. There have been a surfeit of commissions of enquiry: the Ranganath Mishra Commission, Kusumlata Mittal - Dalip Kapoor Panel, Potti-Rosha Committee, Jain-Aggarwal Committee, etc., but there has been no more than cosmetic action against the guilty. The fact that it has taken so long for the wheels of justice to turn so little is proof that something is fundamentally wrong with our criminal justice system. And it is this wrong that the

petitioners want to be rectified. The police, unless it is freed from executive control, would continue to dance to their tune and protect persons like Bhagat, Tytler and Sajjan Kumar.

- ii) Demolition at Ayodhya: The destruction of the disputed structure at Ayodhya is another case in point. The State Government had, in an affidavit to the Supreme Court, promised that only symbolic kar seva would be allowed, that no Court orders would be violated, no construction activity permitted, and the structure secured. And yet all these assurances were thrown to the winds. The authorities had mobilised 35 companies of PAC, 4 companies of CRPF, 2300 constables, 38 sub inspectors and 15 inspectors to deal with any contingency. IG zone, DIG range and SSP Faizabad were camping in the area. 15 tear gas squads were kept in readiness. The Centre had separately stationed paramilitary personnel of the ITBP, CISF, CRPF (including the Rapid Action Force), RPF and the NSG in the contonment at Faizabad. But there was no effort to enforce the law of the land. The police and the paramilitary forces remained mute spectators to the vandalism of the kar sevaks because the political masters, both at the State capital and at the Centre, were playing their own games. The history of India would perhaps not have taken the adverse turn it did on December 6, 1992 if the law enforcement agencies had been accountable to law.
- iii) Assault on Allahabad High Court: The 'UP Bandh' organised by the Samajwadi Party - Bahujan Samaj Party combine on September 13, 1994 in support of



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reservations witnessed incidents of violence in Allahabad city and rural areas. There was hooliganism within the High Court premises also. The demonstrators mis-behaved even with the Chief Justice, High Court, who was obliged to call the Army to restore order. The role of local police was suspect and as such 14 police personnel, including the IG zone, were placed under suspension. What the petitioners want to emphasise is that the police did not take adequate steps to maintain law and order because the 'Bandh' had been sponsored by the ruling parties of the State. The abdication of responsibility by the uniformed men was a direct corollary to their subordination to the political masters.

iv) Excesses on Uttarakhand Agitators: The excesses committed on the Uttarakhand agitators in Muzaffarnagar district on the night of October 1, 1994 is another sordid instance of police going berserk in an effort to please the political bosses. As the CBI report confirmed, there were clear directions to the police-administration to prevent the rallyists from proceeding to Delhi. The implementation of these orders by politicised officers led to police firing and brutalities on the demonstrators. Seven women were even raped. The roles of former UP Chief Ministers, Mulayam Singh Yadav and Mayawati were indicted by the Allahabad High Court as bringing back memories of the Nuremberg Trial of war crimes. Whether the police would have behaved the way it did had it been free from executive control is indeed a moot question.

v) Glaring instances of inactions by Central Investigative

Agencies: At the Central level, we have the unseemly spectacle of the investigating agencies dragging their feet in the criminal, income tax and FERA violation cases against Chandraswami, soft-peddalling the St. Kitts case, and taking belated action - and that also selectively - in the hawala case only after being goaded by the Apex Court. The judiciary is already seized of these cases and the petitioners therefore consider it unnecessary to give their details. Suffice it to say, as the judges themselves have observed, that "the investigating agencies are fighting shy in investigating the matter against Chandraswami" and it is strange that "CBI which is a prime investigating agency of this country, is applying two sets of rules for different accused in the same case." The petitioners would stress that the investigating agencies at all levels should be made accountable first and foremost to law. Once that is done, the chances of deviations of the kind mentioned above would be very much less.

#### POLICE ROLE AND FUNCTIONS. NEED TO RE-DEFINE

32. The petitioners are of the firm view that the role and functions of the police need to be re-defined. The Police Act of 1861 mentioned "prevention and detection of crime" as the only objectives of the police. It need hardly be emphasised that the police functions today cover a much wider spectrum. They have to maintain law and order, take care of VIP security, combat communal elements, battle against terrorist and insurgent groups, and function as an instrument of social change. The NPC had prepared the draft of a new Police Act for the consideration of the Government. Its preamble succinctly brings out what could be



the philosophy of police in the present context. Copy of the draft Police bill is annexed hereto as ANNEXURE E. The Bill was drafted as far back as 1981 and would, therefore, perhaps need a fresh look and perhaps revision and updating of certain sections, but the essential thing is that another Police Act broadly on the lines suggested by the NPC needs to be re-enacted.

#### ACCOUNTABILITY TO LAW

33. The police accountability to law needs to be emphasised statutorily. Strange though it may seem, neither the Police Act of 1861 nor the Constitution or any Act of Parliament have stressed this obvious point. The police functions as a law enforcement agency under powers vested to it under the Criminal Procedure Code and several other enactments. In actual practice, under the Act of 1861, the police is answerable essentially to the executive - and we have seen the damage this arrangement has caused to the social fabric and the political structure of the country.

34. Prof. David H Bayley described the criminal justice system of India in the following words:

"In India today a dual system of criminal justice has grown up - the one of law, the other of politics. With respect at least to the police, decisions made by the police officials about the application of law are frequently subject to partisan review or direction by elected representatives. The autonomy of police officials in specific and routine applications of law has been severely curtailed. This is not only true of law and order situations. People accused of crimes have grown into the habit of appealing to political figures for remission from the sanction of law. Police

officers throughout India have grown accustomed to calculating the likely political effect of any enforcement action they contemplate. Fearing for their careers and especially their postings, they have become anxious and cynical ... But everywhere officers expect to be held personally accountable by politicians even more than by superior officers for enforcement actions taken in the course of duty ... Altogether, then, the rule of law in modern India, the frame upon which justice hangs, has been undermined by the rule of politics. Supervision in the name of democracy has eroded the foundations upon which impartiality depends in a criminal justice system."

35. It is worth mentioning that in U.K. a police officer is considered an officer of the law and not servant of any other executive or public authority. Lord Denning's remarks on the subject are worth quoting:

"I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or no suspected persons are to be prosecuted and, if need be, bring the prosecution or see that it is brought; but in all these things, he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must or must not keep observation of this place or that; or that he must not prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the



law and to the law alone."

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36. The Chief Constable enjoys an extraordinary degree of unfettered discretion. The Royal Commission observed as follows on his role:

"Thus he is accountable to no one and subject to no one's orders, for the way in which, for example, he settles his general policies in regard to law enforcement over the area covered by his force, the disposition of his force, the concentration of his resources on any particular type of crime or area, the manner in which he handles political demonstrations or processions and allocates and instructs his men when preventing breaches of the peace arising from industrial disputes, the methods he employs in dealing with an outbreak of violence or of passive resistance to authority, his policy in enforcing the traffic laws and in dealing with parked vehicles, and so on."

The philosophy behind the Royal Commission's views was that the policeman "ought to be manifestly impartial and uninfluenced by external pressures."

37. The working group of the Administrative Reforms Commission (1967) felt that the British principles regarding the control and accountability of the police could be taken as a guide for making police reforms in India. It remained a pious wish.

NATIONAL HUMAN RIGHTS COMMISSION'S RECOMMENDATIONS:

38. The National Human Rights Commission have also, in their annual report for 1994-95, stated that "in almost all parts of the country there is a clear and increasing need to reform the

police itself, to retrain and to reorganise it and to restore to it the skills and the integrity that the country so desperately needs if the function of preserving law and order is to be improved". The Commission therefore recommended "serious action be taken on the Second Report of the Police Reforms Commission which, in 1979, made a series of proposals that remain highly pertinent today - including those suggesting the insulation of the investigative function of the police from political pressure." A copy of the relevant portion of the Annual Report (1994-95) of the National Human Rights Commission is annexed hereto as ANNEXURE F.

39. The NHRC is also reported to have urged the Union Home Ministry to take urgent action on separating the investigative wing of police from that of law and order wing and insulating it from political, executive and other interference. The NHRC is further understood to have asked the Home Ministry to take action on the setting up of autonomous State Security Commissions and statutory tenure for the Chiefs of State Police, as recommended by the National Police Commission.

40. On account of the studied inaction on the part of the various Governments during the last 15 years in implementing the recommendations of the National Police Commission and various other State Commissions for insulating the police from political interference, the petitioners are left with no alternative but to approach this Hon'ble Court to protect and safeguard the fundamental rights of the citizens of this Country which are being rampantly violated on account of the political and bureaucratic control over the police.

41. The petitioners have not filed any other or similar petition in this or any other Courts in this country.



## PRAYER

In view of the facts and circumstances stated above, it is most respectfully prayed that the Hon'ble Supreme Court may be graciously pleased to:

i) Pass appropriate writ, order or orders directing the Union Government of India to re-define the role and functions of the police and frame a new Police Act on the lines of the model Act drafted by the National Police Commission in order to ensure that the police is accountable essentially and primarily to the law of the land and the people.

ii) Pass an appropriate writ, order or orders directing the Government of India and the State Governments to constitute (a) State Security Commissions in each state to ensure that the police functions strictly in accordance with the laws of the land, (b) National Security Commission/Council at the central level which would take a macro view of the country's security related matters and inter alia lay down the policies to be followed in dealing with various terrorist, insurgent and other anti-national groups threatening to destabilise or even disintegrate the country.

iii) Pass an appropriate writ, order or orders directing the Union and State Governments to ensure that the investigative work at the State level is separated from the law and order functions, as has been recommended by several Police Commissions, and that all investigating agencies in States as well as at the Centre function uninfluenced by any extraneous pressure or consideration.

iv) Pass an appropriate writ, order or orders directing Union and the State Governments to prescribe a procedure for appointing Chiefs of State Police and the Central Police

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Organisations which would inspire confidence and ensure that the finest officers reach the top and also give them a minimum statutory tenure so that there is stability and long term planning in the functioning of the organisations. )

THROUGH

PETITIONERS

NEW DELHI  
DATED

PRASHANT BHUSHAN  
COUNSEL FOR PETITIONERS  
412 LAWYERS CHAMBER  
DELHI HIGH COURT  
NEW DELHI



27-29

IN THE SUPREME COURT OF INDIA

WRIT PETITION (CIVIL) NO. OF 1996

IN THE MATTER OF:

MR. PRAKASH SINGH AND OTHERS

...

PETITIONERS

VERSUS

UNION OF INDIA AND OTHERS

...

RESPONDENTS

A F F I D A V I T

I, Prakash Singh, son of Shri (Late) Suraj Nath Singh, Resident of 3-C Super Deluxe Flats, Sector 15-A, Noida-201301, U.P., do hereby solemnly state and affirm as under:

1. That I am the first petitioner in this case and am authorised to swear this affidavit on behalf of all the petitioners.
2. That I have read and understood the contents of the accompanying petition and state that the contents of the same are true and correct to my knowledge.
3. The annexures annexed to the petition are true copies of their respective originals.

VERIFICATION

DEPONENT

I, the above named deponent do hereby verify that the contents of this affidavit are true and correct, no part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi on this the day of April, 1996.

DEPONENT