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## THE LIBERAL DEMOCRATIC STATE AND POLICE IN INDIA

*Sukanya Bharadwaj*

### Abstract

*The Indian Police in its contemporary form is a product of the Indian Police Act of 1861 and this is based on a ruler supportive type of policing which treats people as subjects and not citizens who possess rights. As such the Indian police has traditionally been opposed to any kind of citizen participation or community consultation in their mode of functioning. The 1861 Police Act has managed to formalize the concept of a ruler-supportive force by clothing the act in a formal and legal framework, laying the governance structure for Indian police post-independence.*

*The biggest lacunae in the policing practice in India lacking the fundamentals of democratic order is because of the Police Act V of 1861 which is still applicable and the organizational structural, culture, ethos and even most of the rules and regulations continue unchanged. The analysis of the police in India during the colonial period and post-colonial period till now will shows the adverse impact of inheriting a colonial-repressive character of a system of administration that seems to haunt the police services till date.*

**Key words:** *Police Act of 1861, Democratic Policing, Liberal Democratic State, Police in India, Post-colonial policing.*

## **Introduction**

The problem with the Indian police is that it continues to be a prisoner of mid-nineteenth century enactments, colonial concepts, antiquated legal systems and mind-sets. It remains totally subservient to the state, which, in our version of democracy, actually implies virtual subordination to the ruling party. The Indian police Act of 1861 and the Indian Evidence Act of 1872, both still in force in their original form in independent India continue their colonial legacy to post-colonial times by colonial construct and use of police as just a coercive arm of the state and is not very different in terms of their implication of power relations and the misuse of violence on the people.

Despite independence and the establishment of a democratic government the Indians still choose to continue with British made machinery without fundamental changes. The police and the justice system remains fundamentally the same as designed in 1861. In this context this research paper seeks to highlight the continuities of the practice of policing since the colonial period. The paper addresses the questions such as how do the police practices of the State affects the nature of the democratic processes? The contradictory and paradoxical nature of the police in democratic societies, especially in India is that it has evolved since the colonial period into a liberal democratic state. The paper explains the Police Act of 1861 and why it came into being. The research paper seeks to explore the changes in the policing practice since the colonial times in India and the impact of these policing practices in the democratic nature of society in the modern times.

The paper places the police Act of 1861 in the context of the concept of democratic policing. The paper describes the police in India during the colonial period and the post-colonial period. Given that the police play a crucial in sustaining a democratic character of state and society, the paper discusses the evolution of the two distinct types of policing practices and the continuation of adopting a particular style of policing practice from colonial to post-colonial period. The paper also discusses the compulsions –political and administrative that led to continuing the Police Act of 1861 in practice. The paper also highlights the impediments in implementing democratic policing in India.

### **Police in India during the Colonial period**

The role and functioning of the police in the Indian subcontinent remained rigidly static and ruler-supportive since the colonial period. “The British colonial power inherited an oppressive, venal and feudalistic but ruler supportive police from their imperial predecessors and tried laboriously to preserve its traditional anti-citizen character”. (Dhillon, 2005, p. 32)

The British were faced with this formidable challenge of administering this vast country with its diverse population. The British Indian government finally reorganized the sub continental police to provide for a uniform system through British India under a new legislation- the Indian Police Act 1861. The British efforts to streamline the police administration led to the Police Act V of 1861. This Act still regulates the Indian police of the twenty-first century. The character of the Police Act of 1861 was guided by the economic, political and administrative compulsions during the colonial period. The Indian police system designed in 1860s stood in sharp contrast to the British Bobby (the police system in Britain) which was celebrated as the greatest symbol of democratic policing throughout the world.

The motivation and primary justification for the colonial police in India was the need for trade and keeping India as the immediate profitable colony for British imperial interests. The reason for having a ruler-appointed type of police system in India introduced by the British, the “emphasis was on order maintenance on keeping trade routes safe so that exploitation of the resources could continue unhindered” (Verma, 2014, p. 4). Arnold (1986) argues that colonial police system needed to establish a relationship of control, coercion and surveillance over a subject population and has developed necessary structural and organizational features useful to a regime of surplus extraction. A bureaucratic ideology was developed to justify the imperial civilizing mission (Subramanian, 2008, p. 59).

The colonial administrative machinery was constructed by the British rulers in a very planned and meticulous manner. The legal backbone of the system was the Police Act of 1861. The organisational structure and hierarchy of the police force has been stipulated by the Police Act of 1861. This meant that the police will

be organized at level of the states or provinces. According to the framework of the colonial administration the primary function of police was that of order maintenance, crime control and surveillance, and that there was no necessity for the involvement of the community in policing in any way. Any event or incident considered a prelude to political resistance or any form of political resistance itself was considered to be a serious crime and offence against the state prioritized in the IPC.

Verma argues,

...the arrangement on the basis of provinces also had the advantage of an economy of scale, pooling of resources, and ability for the police force to move from one part of the state to another, to meet any emergent situation challenging the authority of the government. This multiplied the capacity of police especially in an age when there were no means of long distance communication for the ordinary people. But above all it offered the administration a geographical unit which provided a high degree of efficiency for surveillance and control and an ideal framework for a panopticon society. It assisted the rulers in the important function of monitoring the colonized people and reacting swiftly in the event of dissent and opposition (Verma, 2014, p. 5).

The police system designed by the British served their imperial interests and helped them to maintain their Raj for almost ninety years. Inspite of economic exploitation, stagnation and widespread famine and brutal subjugation of the people, the efforts of the Indians to challenge the colonial rule could not challenge the British hegemony over India. It was not until Mahatma Gandhi devised a unique form of resistance to the British structure that the British began to feel threatened by the Indian resistance. Gandhi introduced the principles of Ahimsa, Satyagraha and Swadeshi to develop an unusual form of resistance to challenge the colonial power in India. This was also done through his writing such as the Hind Swaraj where he reinforced the indigenous culture and spiritual values of the Indian civilization. He inculcated pride in the indigenous knowledge and culture through the use of simple 'charkha' used to weave cloth that became a formidable

instrument of resistance. Gandhi's methods did make the British political system in India impotent through his non-cooperation, non-violence and renunciation. Nevertheless, the British did create a system that allowed them to govern India combining consent and immense power of coercion and control, which enabled them to rule till 1947.

#### **Continuation of the Police Organization from Colonial to Post-Colonial Period- 1947**

The question that needs more reflection and deliberation in this context is that what were the administrative or other compulsions during that period that made an independent Indian government continue with the old repressive system of colonial administration. It has been rightly pointed out by Arvind Verma that "in view of the close collaboration of the administrative organizations and governmental machinery with the British, and the obvious repressive character of the police department in particular, the decision of the new political order to continue with the services of the old structure was most unfortunate". (Verma, 2014, p. 7)

The character of the post-colonial India was similar if not the same as the police in India during the colonial period. Post-colonial Indian police was reorganized in the aftermath of the 1857 revolt, in the Irish Constabulary model. This model comprised of a centralized paramilitary organization, headed by an Inspector General, who was directly subordinate to the Chief- Secretary. The Irish police structure was adopted as it was considered ideal for a restless and violent country in the hands of the colonial power. The most crucial feature of this centralized organization was the availability of an armed force under civilian direction (Subramanian, 2008). Therefore the twin principles of police organization pioneered by Charles Napier in the 1840s in the Sind Province were: the Constabulary must be separated from the military; and while assisting the Collectors in maintaining law and order, the Constabulary must be under its own officers. The details of the police organization were: the Constabulary must be separated from the military; and while assisting the Collectors in maintaining law and order, the Constabulary must be under its own officers. The details of police organization post independence was described between 1858 and 1920s through the route of route of two police

commissions (1860s and 1902), a series of enactment such as the various provisional police acts in addition to the Central Code of Civil Procedure 1859, the Indian Penal Code (IPC) 1860, the Criminal Procedure Code (CrPC), 1861, and the Police Act of 1861- all of which are still in force (Subramanian, 2008, p. 58-61).

The organizational principle which emerged and which remains in force was that the majority of the Constabulary is unarmed with an armed section maintained in reserve in each district. The trend towards centralization of intelligence was strengthened during the closing years of the colonial rule. The key role of the Central government in policing, the centralization of intelligence and the role of Central police organizations (CPOs) in law and order management have all persisted since the colonial times (Subramanian, 2008, p.61).

The State's reliance on the police was raised to a level of unprecedented importance under the colonial rule. Police coercion has become an important part of the state's police by the mid 1930s. The distinctive characteristic of the post-colonial Indian police is the belief in the value of periodic exhibition of force; the interplay of police and military responsibilities, the equation of force with authority and opposition with crime; the absence of public accountability, the reliance on supervisory and classificatory systems of manipulation and control. The increasing number of CPOs (Central Police Organizations) and the expansion of the political intelligence network were the only changes post 1947 (Arnold, 1986).

The idea of public service as a notion, of being answerable to the people was enshrined in the Constitution. However, tragically to a large extent this idea remained largely notional and the colonial beliefs in the suppressive capacity of the police did not lessen with independence.

The transfer of power in August 1947 resulted in changes that were significant both internally in terms of the take-over by Indian officers of the last British preserves, and externally the redirection of police activity in certain fields. However, the changes did not alter the intrinsic character of the police. The basic structure of the police remained unaltered; the gap between the rank and file and the departmental elite has not been reduced since 1947. The pay and conditions of

the constables remain as wretched as it was in the colonial past. The police unionization is discouraged and authority of the Indian Police Service relative to Indian Administrative Service (as heir to the old ICS) has continued to grow. The police reputation over the years has also been tainted with growing brutality, corruption and politicization.

The continuance and intensification of colonial policies in respect to the Indian police even after independence was adopted from the nature and functions of the colonial police. This has been pointed by a study by David H. Bayley:

...Independence brought revolutionary changes in the political structure of government, it brought none of any consequence to the structure of police administration. The three structural characteristics distinguishing the contemporary police system- control by state governments, horizontal stratification, and functional specialization between armed and unarmed police- had been developed before independence. Independence required of the police only that they accommodate themselves to a new political context; it affected the manner in which they were held accountable and not the way they were organized to accomplish police purpose... What is particularly striking about contemporary police structure is its permanence. Its fundamental principles of organization have remained fixed for over a century. This suggests two questions; is the system still capable of coping effectively with the basic tasks of police responsibility, and is the system as compatible with a democratic political state as it was with a colonial one (Bayley, 1969, p. 51).

This has been Bayley's lucid analysis of the problems relating to Indian police. Nevertheless, there are certain structural features that militate against the citizen centric premise of policing especially in the Indian context. The 'colonial-repressive' character emerged when the decolonized society decided to retain the colonial system of inherited police organization (Subramanian, 2008, p. 59).

The political reasons for the origin of the Indian police are of great importance. During the colonial period, crime and politics were inseparable and

defiance to state authority was considered to a serious crime and a prelude to rebellion. In fact, political resistance would also be considered a crime or likely occasion for crime. It is in this context that the development of the Police Act of 1861 came into being.

### **Indian Police Act, 1861**

The events of 1857 that originated the grossly mal-administered Bengal presidency made the British powers anxious to take radical steps to re-organize and modernize the entire administrative set-up in the country. The military commission and police commission were soon set up for the purpose. The new legislation in the form of new enactment was to re-organize and unify the various existing arrangements into one uniform system throughout British India.

This Act provided the creation of provincial police forces as separate government departments under inspectors general at the provincial level and district superintendents at the district level. There was a uniform unilateral arrangement when the inspector-general was to function under the superintendence of the provincial government; the district superintendent was required to work under the authority of the district magistrate.

The Police Act of 1861 as laid out in the Preamble was 'to reorganize the police and to make it more efficient instrument for the prevention and detection of crime'. The hidden agenda is what becomes the *raison d'être*, for the police to protect and defend the ruler against all threats to their power and authority. The 1861 Police Act goes to great lengths to remove any doubt as to where the real allegiance of law-enforcement agencies lies not to the community but to the state.

The Act, in fact, scrupulously avoids any reference to the people and does so only in situations when their liability is to be questioned or held under suspicion by the police. Dhillon (2005) argues that the new police was in fact meant to be a steadfast ally and a dependable too to strengthen the pre-existing oppressive structure with bonds of slavery.

If we make an analysis of any independent and democratic nations which design the functional configuration of their bureaucracies to fit into popular agendas and the demands of their people. The needs and aspirations of the people that they

can claim as citizens would be fundamentally different in nature from those of colonial regimes. A democracy would never tolerate an oppressive, unresponsive and unaccountable police while the colonial regimes would go to any length to keep the police servile and subservient to their interests and hostile to the community. Tragically despite a country wide debate on the consequent need for reform in accordance with the recommendations of the National Police Commission (1977-81), no worthwhile change has occurred in the structure, organization and legal status of the Indian police. The continuation of the British rule as the only substantive back up for the police which remains virtually unaltered in the Indian Police Act of 1861.

Dhillon has affirmed that-

...The dominant character of the organization, created under the Act, is of a socially-alienated, semi-military outfit, composed almost exclusively of a semi-literate, boorish, corrupt, ill-paid, ill-reputed and highly-paid elite command structure, itself subordinate to a civilian district magistrate at the district level and to a non-professional secretary at the state level (Dhillon, 2005, p. 45).

The 1861 has been an amalgam of both pre-colonial and colonial aspects of law enforcement, and also an embodiment of a manipulative use of law and state-power. It has been a combination of historical features and contemporary demands of post-colonialism that created a police which was intended to survive not only the constitutional changes of 1947 and 1950 but also all the subsequent formal and informal changes occurring in Indian society and polity for the next half a century. Post-colonial governance was no different from the colonial one in character but only in design. Although the compulsions of the post-colonial time were democratic the concepts followed a strict colonial lineage.

### **Politics and Internal Security issues Post-Independence**

The distinction between colonial and post-colonial police organization needs to be understood in its political context. The Congress party has been one of the main victims of police coercion and surveillance since 1885 and this was replaced

by the Communists later in Independent India (Arnold, 1988). The Congress had fashioned its agitational strategy and identity partly in response to police brutality and its public unaccountability during the nationalist struggle in the colonial period. Both the Congress party and the Indian police had developed an increasingly all India outlook and organizational form as the nationalist movement advanced. The most important point was the mutual interest in the protection of property and the prevention of violent and revolutionary changes which has been used to explain the relatively untroubled transition from colonial police to post-colonial police in India (Subramanian, 2008, p.63).

The Congress gained ascendancy over the police department by Constitutional rather than revolutionary means. But the Congress failed to develop an alternative structure of its own which could have been formulated as the base for a new police structure in independent India. Finally the political and administrative compulsions towards the end of the British Raj saw the escalation of industrial insurrection. The integration of the Indian states needed an army to defend the frontiers especially secure the integration of Kashmir and Hyderabad which accentuated the need to rely on the police administrative compulsions in the subsequent period preventing any attempts at reform (Subramanian, 2008, p. 63).

It was argued by the then Home Minister of the new Indian government, Vallabhbhai Patel who played an important role in continuing with the British bureaucracy that the system would serve the interest of the new government as effectively as it did for the British government. Moreover, the administrative compulsions of the period prevented the Congress to make any attempts at reforming the police structure.

Verma argues:

...Considering the bitter and protracted struggle against the British rule in which the police system was used ruthlessly, it seems naturally disturbing to see free India still choosing to continue this British made machinery without fundamental changes. The political class soon found the police to be useful instrument of power and not surprisingly, there has hardly occurred any significant change in police methods and attitudes in the organization inherited from the British (Arvind ,2014, p. 8).

Arnold (1986) argues that the Congress party and the Indian police developed an increasingly all India outlook and organizational form as the nationalist movement advanced. In the administrative and political arenas they both became agencies of external intervention in their localities. Both also had shared mutual interest in prevention of violent and revolutionary change. The most significant development was that the Congress had gained control over the police departments by constitutional means and not revolutionary means under which they adopted and endorsed the police system in India.

Verma (2014) alludes that the government of India after independence, has been facing the challenge of developing the country and uplifting the millions of impoverished people from penury. The task of building a new modern India within the democratic framework was a challenging task. The rising expectations and internal strife emanating from regional, ethnic and religious differences have resulted in a crisis of governance. The problems of continuing corruption, nepotism, bureaucratic red-tapeism and volatile politics of the country have deeply affected the ability of the police to function properly. These challenges have also led to the Indian government to direct the police towards a coercive nature of force rather than consent or service of the people. The role of police in modern India has become more of order maintenance rather than one of crime control and service functions. The police have been confined to maintaining law and order as their primary function rather than ensuring justice by prevention and detection of crime and service provision. The problem begins with any changes in the police strengthening it to be a strong arm of the government. The history of police in modern India is concentrated on combating serious disorder problems, terrorism and internal security issues.

The problems such as the alleged threat by the communist parties to overthrow the democratic government post-independence through a violent revolution was countered by the enactment of preventive detention law. The violent upsurge insurrections by the Maoist parties beginning from Naxalbari in 1967 and subsequently the various factions of Naxalites such as the People's War Group (PWG) in Andhra Pradesh, the Maoist Communist Centre (MCC) in Jharkhand

and Chhattisgarh are posing considerable challenge to the police. These factions are well armed and have attacked the police. The ethnic assertions and insurrection by Nagas and the Assamese group called ULFA also posed a serious threat to internal sovereignty. Coupled by these threats was the introduction of terrorism in Punjab by Khalistan groups, and in Jammu and Kashmir by Islamic insurgents supported by Pakistan which was one of the most serious challenges for the Indian police. These problems made the police in India adopt more coercive methods to garner state legitimacy.

The evolution of the two distinct police types describes the functioning of the police in India to understand the colonial repressive, ruler supportive character of the Indian police and the emergence of this type of policing practice.

### **Evolution of Police into Two Distinct Types**

Dhillon (2005) elucidates the two distinct streams of evolution of early police systems. The distinction was in some societies, the responsibility for safeguarding the tribal norms and customs were assigned by a chief to a group of men who were accountable to them. While in the other case such tasks of safeguarding tribal norms were assumed by the community as a whole and entrusted to a few capable men who were replaced by the others in the community as well. Norm enforcement was the collective tribal or community function and a few members would perform such duties usually in exchange for remuneration. The two distinct types of police evolved from these models while one was a ruler appointed or gendarmerie and state-supportive police systems while the other type would evolve into a citizen friendly and popular agency of several Western democracies.

While some societies who were freedom loving, choose to be policed by an agency accountable to the community and largely free of state control. The authoritarian and feudalistic societies were more inclined with a ruler-supportive variety that would keep the people under strict state control (Reith, 1952).

The two types of police system were later known as Anglo-Saxon police system and the ruler appointed gendarmerie, generally associated with despotic

and totalitarian state systems. The Anglo-Saxon policing style is a force exercised indirectly by the people from below upwards and the other kind of ruler appointed gendarmerie signifies force exercised by authority from above downwards.

The two streams of police systems have periodically borrowed components from one another in their earlier stages of evolution during the period of the city-states. Both have yet managed to retain their respective conceptual and organizational characters.

The gendarmerie police system was vastly strengthened and later became over-centralized, almost tyrannical with the rise of fascism, communism and other forms of totalitarianism. Many post-colonial regimes are traditionally dependent on the police and the paramilitary forces choose the ruler appointed police system for their survival in power.

A number of authors have explored the history and role of the Indian Police (Verma, 2005; Arnold, 1986, Baxi, 1982, Bayley, 1969; Griffiths, 1971, Gupta, 1974, 1979). Bayley's study was one of the earliest after Independence. He took a sympathetic stance towards the problems of the inherited colonial structure in facing the law and order challenges of a post-colonial, democratic society. His comparative typology of police forces (Bayley, 1982) consisting of 'authoritarian' 'oriental' and 'Anglo-Saxon' structures was faulted for underplaying the impact of the State on policing and on the various styles of policing in maintaining public order. The responses of States to disorder were broadly seen as three: criminalization, accommodation and suppression. It was stated that frequently States deployed all three styles in varying combinations in different situations so that it is impossible to characterize the relationship between policing and the State in a one-dimensional way. The way, that both liberal and authoritarian States use the strategy of suppression is that policing in all countries is politically partisan to an extent, and that portraying the police in liberal States as neutral arbiters in public order situations could be misleading.

### **State and the Police in India**

In India we have various kinds of assumptions about what the state is and what kind of power it should and does exercise. Those assumptions are products

of India's political and social history. They intersect with institutions that 'act out' state power in practice, from law courts to laboratories, land registries to railways, schools or police stations, from surveys to boundary markings. Each of these was initiated and governed by a different set of processes.

The modern Indian state was the product of a freedom struggle. It adopted a written, liberal democratic Constitution but retained the colonial administrative, police and judicial structures without recasting them to meet the changed situation. The process was characterized as a 'passive revolution' (Chatterjee, 1999; Kaviraj, 1998). According to Baxi (1982), the 'colonial-repressive' character of the Indian police is quite distinct from the 'ruler supportive' character of police organizations everywhere.

The biggest lacunae in the policing practice in India lacking the fundamentals of democratic order is because of the Police Act V of 1861 which is still applicable and the organizational structural, culture, ethos and even most of the rules and regulations continue unchanged. The analysis of the police in India during the colonial period and post colonial period till now will shows the adverse impact of inheriting a colonial-repressive character of a system of administration that seems to haunt the police services till date.

The police in India are not insulated from government control and its coercive power can be manipulated adversely. Verma (2005) also reports an extremely high volume of judicial backlog in India, massive delays and periods of pre-trial detention that can last ten to fifteen years. Poverty and illiteracy in that country have created enormous systemic barriers to judicial relief for injustice.

The greatest challenge to realizing democratic methods in police functioning is its corrupt, partisan and heavy handed character. The police are typically subject to the control or patronage of individual politicians rather than to institutionalized forms of accountability. Verma (2005) explains police officers in India cannot be posted in their "home district" and must be transferred every three years to another post. This policy is a vestige of colonial efforts to keep tight controls over the loyalties of native personnel. This practice also prevents police officers from developing local links and effectively creates a situation where an officer has no

staske in the local community. It has also provided politicians with opportunities to interfere in police operations through threats of transfer to undesirable locations or promises of attractive postings. In India, due to massive social cleavages police power is sometimes usurped by local political bosses and vey direct political control has also enabled politicians in India to use the police for political intelligence gathering and to harass political opponents through arrests, threats and intimidation.

### **Concept of Democratic Policing**

In democratic societies, the role of the police is strange, contradictory and paradoxical. The police are regarded to be the state's monopoly on the use of force, deploying physical violence to enforce laws, maintain public order and advance government policy. The inherent contradiction lies in the dramatic nature of this power while at the core, democracies are not societies based upon coercive imposition or the use of force but on the freely given consent of the governed.

The democratic dilemma of policing is that if a police force is too strong and effective in its functioning, it could easily stifle the robust civil society as well as the personal privacy that is central to a democracy. On the other hand, a police force that is too weak or ineffective would leave the people feeling threatened or vulnerable to crimes and ills of social disorder that it could impede democracy (Fichtelberg, 2013).

The role of the police is riddled with controversy and contradiction in advanced industrialized democratic states. The inherent tension is already present as the coercive capabilities of the police are the state's power to compel through force and its representative, consensual and liberal character, which is present in all democracies.

Goldstein argues that:

....the police, by the very nature of their function, are an anomaly in a free society... The specific form of their authority- to arrest, to search, to detain, and to use force- is awesome in the degree to which it can be disruptive of freedom, invasion of privacy, and sudden and direct in its impact upon the individual. And this awesome authority, of necessity, is delegated to individuals at the lowest level of the bureaucracy, to be exercised, in most instances, without prior review and control (Goldstein, 1977, p.1).

Gearty (2007) argues that the authority of the police to protect the freedom of the citizens contains the very potential for the abuse of such power. The proper role of police in a democracy is complicated by several other aspects of the police organization. Such aspects are prevalent “even in the most developed countries, the police are on the whole hierarchically organized, secretive in their de corps, jealous of external interference, and on many occasions contemptuous of legal and procedural constraints on the gathering of criminal evidence and treatment of suspects and criminals (Skolnick and Bayley, 1988, p. 49-51).

The role of the police in any democracy is bound to be contentious and imperfectly aligned with the broader procedures, practices and objectives of a democratic polity. The evolution of the two types of police shows how not all police are an anti-thesis to democratic form of government. Police historically have also evolved from a different nature of society and police as institution and the manner in which they function is highly contingent upon the nature of the State and society from which they evolve.

### **Politicization of the Police force- The Greatest Impediment to Democratic Policing in India**

In post-independent India the Congress was faced by issues of industrial unrest, communal violence and the possibility of communal violence with also the possibilities of communal insurrection. The Union Home Minister urged the expansion of police armed force to respond to the crisis. The Army led police action in Hyderabad in September 1948 and the Telangana revolt showed the survival of the Congress could not be based on consent alone but police coercion as a necessary limit to determining limits to protest and dissent. The Congress party in office, on many instances post-independence has been as chary as the British had been in allowing police accountability to the public. The Congress ruled states even ten years after independence has used the police to open fire to contain industrial and political unrest on several occasions.

The reputation and perception of the Indian police with the common people of India, have not been people-friendly but instead corrupt, untrustworthy, cruel and ruler-supportive during the colonial rule. However, there was a hope that

things would change for the better after independence. The basic administrative structure post-independence remained unchanged and the ruling class did not make any inclination to change the use of unscrupulous means for holding power and patronage used for self-aggrandizement. The criminalization of the political processes and the declining influence of the Congress party as a pan-Indian umbrella organization, hastened the fragmentation of the polity and enfeeblement of parliamentary institutions. Most importantly the police has not been insulated from government control therefore “secret surveillance, infiltration, interceptions, inspired leaks and other questionable tactics are all freely employed by political parties to perpetuate their hold on power” (Dhillon, 2005, p. 73).

The problem plaguing institutions in India and especially the police institution is that the distinction between the interests of the state and that of the party in office has virtually disappeared and the instrumentalities of the state are freely employed to safeguard party interests. The misuse of state agencies was prevalent and acceptable as a colonial imperative pre-independence but its prevalence and persistence post-independence in India has violated the very basis of democracy. The Indian police failed to develop into a citizen friendly force since neither the criminal justice system nor the Indian Police Act of 1861 had undergone any changes and the police in India had no scope to develop different characteristics than their colonial predecessors. When party in power uses state resources, the police and intelligence departments to bolster their power it has an unsettling effect on the police as an institution that it could not evolve a new *Modus Vivendi* to cope with radical political change, which followed independence.

The Indian police have grown to be the most reviled government agency in India. The reason behind the failure of the police to incorporate methods of democratic policing and to adjust their functional and attitudinal framework to post-independence requirements is actually a legacy of the colonial system of law enforcement, perpetuated by the Indian Police Act of 1861.

The police in India today are not expected to uphold the rule of law but the rule of the party in power. The police in India as soon as they are absorbed into the system these days, they quickly learn that they are required to uphold the rule of the party in power. The politicization of the police force is when the politicians

blindly expect the senior police officials to blindly toe the line irrespective of any moral and ethical grounds. Politicians of all political parties use the police force to their political advantage and treat the bureaucracy and the police as their private fiefdoms that bow to their demands and wishes. The speculation on the apparent threat to transfer Director General of police following the Gurmeet Singh case at Panchkula Haryana is another recent example of the same phenomena of political influence impacting rule of law. Retrospectively, it would be a great travesty of justice if those who wield power would have shifted the blame from themselves onto the shoulders of the police chief. Politics involves a quest for power and as long as Gurmeet Singh was able to keep peace among its population to deliver votes to the Khattar party, the police must have been instructed by politicians to trust the Dera's leadership.

No state government till date has been willing to relinquish or loosen its grip over the control on the police. The two examples of politicization of the police force where thousand people were killed and massacred could have been prevented and the situation could have been averted if the police leadership was permitted to carry out its constitutional responsibility of upholding the rule of law. The massacre of Sikhs in Delhi in 1984 was politically engineered by the Congress leadership after the assassination of Indira Gandhi. The police officers who succumbed to unlawful wishes of political leaders in whose leadership these mass killings had occurred were later protected from prosecution by the leaders themselves.

Another example of political influence impacting the police work in India is in 2002 Gujarat after the Godhra tragedy where innocent Muslims were butchered in Ahmedabad and some other districts of the state. These two acts were political motivated and engineered by political parties for their own interests with the support of the police force which shows the political stranglehold over the police machinery. Therefore the greatest challenge to democratic methods in police functioning is its corrupt, partisan and heavy handed character.

### **Conclusion**

The Indian Police in its contemporary form is a product of the Indian Police Act of 1861 and this is based on a ruler supportive type of policing which treats people as subjects and not citizens who possess rights. As such the Indian

police have traditionally been opposed to any kind of citizen participation or community consultation in their mode of functioning. The 1861 Police Act has managed to formalize the concept of a ruler-supportive force by clothing the act in a formal and legal framework, laying the governance structure for Indian police post-independence.

The police leadership in India is yet to become more decentralized or an accountable institution for citizens. Unfortunately the Police Act of 1861 has failed to satisfy any criteria for democratic policing in India. It is only by implementation of certain progressive reforms and models of police structure in India that can drastically alter and undermine the basic framework that has governed the Indian Police since the colonial times –The Indian Police Act of 1861. The Indian Police needs to evolve into a modern, accountable, responsive, citizen-friendly force which is not possible with application of the Indian Police Act of 1861.

The major consequence of this structure is the effect of police becomes synonyms as the agent of the state rather than a creature of the law. This disempowerment of the police comes through politicization which has led to unleashing brutal force on the community through disciplined and unquestioning body of subordinate officers. The paradox is reflected in the system where police as an institution is projected to be powerful and the strong arm of the state. Keeping in mind, the colonial continuation of a police organization and act has led to compromising the democratic ethos of a nation in many instances, therefore the police needs to insulate itself from government control as much as possible in India.

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