

## **Record of Discussions**

### **TEN YEARS OF THE SUPREME COURT VERDICT ON POLICE REFORMS**

**A Conference Jointly Organized by the Indian Police Foundation (IPF) and  
Commonwealth Human Rights Initiative (CHRI).**

**Mavalankar Auditorium, Constitution Club, New Delhi**

**September 23, 2016**

The Indian Police Foundation in partnership with the Commonwealth Human Rights Initiative (CHRI) organized a Conference on September 23, 2016, to mark ten years of Supreme Court verdict on police reforms. The conference was in the shape of conversations with political leaders, legal luminaries, media persons and citizen stakeholders. Mr Justice R.C. Lahoti, former Chief Justice of India chaired the session. Union Minister of State for Home Affairs Mr. Kiren Rijju, Former Law Minister and Chairman of the Administrative Reforms Commission Dr. Veerappa Moily, Eminent Constitutional Jurist Mr. Fali Nariman, Chairman of the IPF Mr. Prakash Singh and Director of CHRI Ms Maja Daruwala spoke at the event. National Editor, the Indian Express Strategic and International Affairs National Editor, Mr Praveen Swami moderated the event.

The event commenced with the introductory remarks of Mr. N Ramachandran, President, Indian Police Foundation.

#### **The Context**

India has been making impressive strides on the economic front and is set to become a major economic superpower. Today, India is the fastest growing economy in the world. Recently, the country has been ranked as the world's most attractive destination for investment. By 2030, India is likely to be the most populous country in the world, overtaking China. While it is important to tap the

huge potential of our human resources, it is also necessary that we strengthen our Criminal Justice System and build robust policing institutions, so that our democracy can survive the vicissitudes and turbulence seen developing the world over.

The subject of reforming and modernizing the Indian Police and the Criminal Justice System has not received the attention it deserves. The police, which is one of the fundamental pillars of the Criminal Justice System, continues to remain saddled with several flaws and infirmities that we inherited from the colonial rulers. The police still continues to be seen as a “rulers’ police” and there is rampant interference in the functioning of the police. It was in this context that the *Prakash Singh vs Union of India* judgement was passed in 2006 by the Supreme Court, giving directives to the Union and the State governments to implement certain steps that were expected to kick start police reform. It was expected that the judgement would help stimulate sweeping changes in policing in the country, paving way to making the police more efficient, people-friendly and free from illegitimate external interventions.

However, even after the elapse of 10 years, there has been a general reluctance on the part of State Governments to the implementation of the Supreme Court directives. It was in this context that this conference was held.

### **What the Speakers Said**

Given below is the substance of the discussions and what the speakers said:

#### **1. Shri. N. Ramachandran, President, Indian Police Foundation**

Explaining the context in his opening remarks, Mr N.Ramachandran observed that the Indian Police continues to remain frozen in its colonial frame, even after seventy years of independence and it is high time that all stake holders worked collectively to bring about a total transformation in the system. It was in this context that the Indian Police Foundation (IPF) was setup as a multidisciplinary think tank and research institute that brings together police and security professionals, bureaucrats, academia, media, and civil society leaders, to work

together, to work for internal reforms in the police. The Indian Police Foundation and Institute provides a platform for police professionals and the citizen stakeholders to come together and generate the ideas for reform and modernization.

As a symbolic gesture of bringing the community and police closer, IPF launched its new campaign called **#MySelfieWithaCop** at the event. All were requested to take selfies with a police woman/man in uniform, be it the beat cop, civil police or central paramilitary forces and post them in their social media pages with the above hashtag.

## **2. Shri. Prakash Singh, Chairman, Indian Police Foundation(FormerDG BSF, DGP Assam / UP)**

Mr. Singh began by thanking the audience for turning up in large numbers. He pointed out that it actually took twenty years, ten for the Public Interest Litigation (PIL) and another ten for the monitoring process. Twenty years, he stated, was a small time in the history of a nation, but twenty years for a matter to pend before Supreme Court was something we needed to worry about. The PIL taking ten years was understandable, according to him, because cases do take a long time. But why should it have taken ten years for the implementation of the judgement was the big question.

The judgement was to be implemented, according to the original order, by the end of 2006. Subsequently, when some of the States expressed difficulties, the time limit was extended to 31<sup>st</sup> March, 2007. But the matter continues to drag on. And some of the states have enacted legislations that militate against the letter and spirit of the Court's directions and now they say that the matter is outside the purview of the Supreme Court judgement. The laws which some of the States enacted, in effect legitimised the status quo. He cited the case of Bihar where the new law has been so regressive that people say it takes you back to the times of not the British days but the East India Company days.

Seventeen States have passed laws supposedly in compliance with the directives of the Supreme Court but in effect, violating the letter and spirit of the Court's order. The remaining States passed Executive Orders that dilute, modify or amend, in some form or the other subverting the Supreme Court directions.

At the completion of ten years of the Supreme Court verdict, it would be legitimate to ask a few questions- Have the police become more people friendly? Do they uphold the rule of law in all situations? The answer according to him was an emphatic "No". What is disappointing is that there has been a continuing deterioration in the quality of policing in the country. There are many examples of this deterioration across the country, one of them being what recently happened in Haryana.It was, according to him, a case of complete collapse of the administration and the police machinery, when rampaging crowds destroyed

public and private property at will and assaulted people who they thought were not well-disposed towards the rioters. His worry was that a similar collapse could happen in other States as well, because there were disturbing similarities.

Mr. Singh recounted that when he presented before the Supreme Court that the States were not following the directives, the Court set up the Justice Thomas Committee to check the compliance of the States in 2008. In 2010, the Committee came out with a report expressing their “dismay over the total indifference” of the States to comply with the Supreme Court directions. In 2012, another committee headed by Justice J.S. Verma was set up in the wake of the Nirbhaya Case. Though the context and the mandate of the committee was different, it devoted a full chapter, about twenty pages, on Police Reforms and very clearly said that if crimes against women, or crimes generally, were to be brought under control, then the directions given by the Supreme Court in the *Union of India vs Prakash Singh* had to be implemented. The report maintained that there were systemic problems in policing and the solution was in implementing the Supreme Court’s directives. All these, according to Mr. Singh, had no impact on the State Governments. In the State of Uttar Pradesh, DGPs were transferred in one, two, three or six months. Mr. Singh said that when he reported this to the Supreme Court, the latter was not inclined to issue contempt notice even on such blatant defiance of its own directives.

He said there were some questions that were agitating his mind. Firstly, if the SC issues a set of directions, it has some sort of sanctity about it as they are the directions coming from the highest court of the land. Can any individual, organisation or state defy those directions and get away with it? He pointed out that police reform is imperative to safeguard the health of our democracy and the constitutional governance. According to him, the failure on the part of the States in implementing the directions of the Supreme Court judgement amounts to contempt of the highest court of the country.

Secondly, the laws enacted by some States were blatantly in violation of the directions of the SC. Now, should these states be allowed to get away with laws which violate the letter and spirit of the court’s directions, just because they have

the power to legislate? Can you enact a law in defiance of the directions of the Supreme Court?

Mr. Singh stressed that we are at a very critical juncture. Police reforms are being pursued in the interest of improving governance, of better law and order, of upholding human rights of citizens and of having rule of law in the country, not for the glory of the police. He said that he strongly felt that if we do not consistently move towards police reforms, there is a danger that the democratic structure of our country may collapse one day.

Another disturbing development is of “the nexus” that the Vohra Committee talked about in 1993, which has been becoming very powerful day by day, Mr. Singh asserted. The latest proof of this, according to him, is the manner in which the notorious don Shahabuddin was released on bail recently. He maintained that if we do not wake up to the importance, relevance and the urgency of the police reforms, we could be heading for very bad times. We are very proud of the economic progress that the country is making, but this economic structure, he stated, needed solid foundation of good law and order; if we do not have good law and order, we cannot have economic progress. Nobody will invest their money in an area where the returns are not assured and the security of the management is not ensured. It is not just good policing that is at stake at this point but also the health of our democracy and the sound and sustained economic progress of the country.

### **3. Shri. Praveen Swami, National Editor, Strategic and International Affairs, The Indian Express**

Mr. Swami wondered if our citizens really wanted police reforms and also why, the parliament with such a high number of members with criminal backgrounds, would want a police force that vigorously prosecutes crime. He wondered if any of us would want an incorruptible police when you can pay a small amount of fine for jumping traffic lights. It is all very nice to say that you don't want policemen to torture until your car gets stolen, your home is burgled, you want your servants beaten up or you want your property back? According to him, we as a society have become profoundly used to not playing by the rules and benefitting from an unequal system.

As the moderator of the panel, he laid down three broad questions to the panelists.

1. Ten years after the Supreme Court's verdict on police reforms, why has so little been done?
2. Why do, despite an increasingly loud national conversation on the importance of national and internal security, all political parties remain unwilling to put any effort into police modernization? Since 26/11, no credible schemes have been put in place for modernization of police and the intelligence machinery.
3. Why do we as a people, despite our loud outrage, care so little about the subject of police and policing?

After the Nirbhaya case, an enormous outrage was seen and heard, but we do not see a determined set of actions or plan to build robust policing institutions. The reality is that even the national capital does not have an efficient forensic facility to help in the investigation and prosecution of crimes like rape, fraud, cybercrimes etc. There has been very little addition of new and modern infrastructure to support policing. There has been no enhancement in police capacity nor do we hold our leaders to account, said Mr. Swami.

#### 4. Justice Ramesh Chandra Lahoti, 35<sup>th</sup> Chief Justice of India

Mr. Lahoti began with an Urdu couplet:

*“Humumarbharna de sakenge ab koi jawab, who  
eknazarmeinitnesawaalaapkargaye.”*

He wondered if people have gathered at Mavalankar Hall determined to seek some solution or simply return with a sense of frustration. The reason for this thought was that generally functions were organized to celebrate the anniversary of success of an event. We have in fact, gathered to celebrate a success, which has been turned into a failure! The Supreme Court of India, ten years ago, delivered a verdict on police reforms, nearly a century after the First Police Commission in 1902-1903 called Frazer Commission, which was appointed by the British. The British had enacted the 1861 Police Act, which had failed within a period of 50 years. The police, established under this legislation needed reform and the Frazer Commission was appointed for that purpose. More than 100 years had passed and we still did not know what happened to the recommendations made by Frazer commission. Now, there have been commissions and reports galore that were not meant to be studied or examined and much less to be implemented. They seem to be meant to eat dust. We would need another commission to go through the earlier reports of the commissions to examine if they can be implemented or with the lapse of time if they have become outdated.

He shared two personal anecdotes. In 2002-03, he participated in a seminar on Constitutional Globalism at Yale Law School. During lunch, he had a conversation with a British judge about a very important criminal from London whose extradition to India was rejected by the court there. When Mr. Lahoti enquired of the reason for this rejection, the British judge told him that they were most averse to third degree being given to any human being, let be a criminal. To this, he told the judge that Indian government had guaranteed that no violence would be done to the man. The judge then told him that Indian Police was so defamed that the



assurance by the Government was not convincing enough. Mr. Lahoti got defensive and told the judge that the police system was given to them by the British, upon which the judge asked him who prevented the Indians from modifying it. If we were happy with the system, we would have to bear its consequences. The Colonial police was meant to rule us and now despite having our own government if we still want to be ruled, it is our fault.

Mr. Lahoti recounted a second anecdote - an incident when he went for a walk with his wife to a park near his home. The Security Guard of the park one day asked him for a favour – for his daughter, a graduate, who had been selected for a post in the Department of Excise. She had been called for an interview and was asked to arrange for 3 Lakh Rupees to get an appointment. The guard told him that he was able to arrange only Rupees 1.75 lakh and was short of the remaining 1.25 lakh and requested Justice Lahoti to put in a word to someone so that they agree to accept 1.75 lakh, to give the job to the girl.

A third anecdote was about an everyday sight that he sees. He lives at Sector 14, Noida which also is the border of New Delhi and Uttar Pradesh. He sees Police personnel standing at the borders almost every day. Ordinarily people would assume that they are standing at the borders to enforce law but, as an eyewitness, he knew that they had nothing to do with law enforcement and the only thing they do is '*Vasooliabhiyan*'.

The defect is of the system and not of the personnel who are manning the system. For the citizen, the only guarantee of personal safety and property is the police, no matter how much people criticize, they remain the ultimate savior. Therefore each one of us has a vital vested interest in seeing a competent and professional police which can serve the society. The only question that needs to be answered is if we want people's police or politician's police. The Indian Constitution contemplates people's police but the reality is that today's police is for the politicians and the powerful members of society. The police, far from being worried about the interests of the common man, has only one thing to do, which is to serve the requirements, needs, the interests of the ruling party. The affiliations of the police shifts when the ruling party changes. They aren't bothered about

which party is in power, they only see who is in power and carry out their commands. At the same time, today the normal citizens are mortally afraid of police. He assumes that he will be put to harassment if he approaches police, while the criminals are very comfortable with the police.

Sympathizing with the average policeman's lot, Justice Lahoti said that the duties that our policemen are required to perform defy description. They deliver round the clock. We cannot find fault with the police personnel for the power they exert as the power is bestowed on them by the law. But people expect the police to work beyond their limits and many a times, for months and years together, they don't get to meet their family. For whom do they serve? We have to strike a balance and understand what the requirements of the police are. How police can be efficient, serve better, how they can come out of the sense of frustration that prevails in the minds of the police personnel? We must take care of the police personnel.

We must find out what needs to be done to the police as an organization to come up to the expectations of the citizens of a democracy. If police are citizen-friendly, the rate of crimes will automatically come down. Ordinary citizens are afraid and apprehensive of the police not helping them when the need comes.

The power of Supreme Court as defined by Article 141 of the Constitution is so vast that it would be possible to compare a directive of the Supreme Court with an Act passed in the parliament. But surprisingly, in this case, where the Supreme Court has spelt out clear directives, they have gone unimplemented which means the law of the land remains unimplemented.

Mr. Justice Lahoti suggested a 'three way approach' to the problem:

1. Supreme Court directives must be implemented. Nobody should defy the directive of the Supreme Court.
2. All efforts should be made to reform and modernize the Indian police. This is the responsibility of the governments as well as the police themselves.
3. The Police, especially its leadership, must do some introspection. They must feel that they are the police of an independent country and a constitutional

democracy. The police must rise to the occasion and strive to serve our citizens who look up to the police with highest expectations.

## 5. Ms.Maja Daruwala, Director, CHRI

Ms. Daruwala said that she was happy to see a large audience for a subject which has been very little talked about and debated upon, while it is most central to the survival of our democracy. She said that she and her organisation, Commonwealth Human Rights Initiative (CHRI), have been advocating police reforms and accountable policing for a long time.

She informed that she was not going to recount what was wrong with the police- lack of accountability, broken structures, too much interference not only from the politicians but from all sorts of other people including the local mafia. We know what the solutions are as they were proposed in the various committees mentioned. In addition to this, we also know why there has been resistance and where it has been coming from. Thus, according to her, there was no point in repeating these points again and again. The question now was to see what else could be done by all of us to improve policing. She pointed out that while there is a huge power play that prevents reforms, there are also people who have come forward again and again to see how things can be changed.

So the first question is- where do we begin the next ten years' dialogue and struggle? What is the vision of policing? It has to be debated in the public and not just left to the politicians and policemen to decide what kind of policing the people of India should have. Do we have a vision? Who has set this vision of policing? What kind of police do we really want in a democracy? Do we really believe that the police has to be only a coercive instrumentality of the state? Is it helping the economy? Is the police an instrumentality of development of the economy? Is it helping to embed democracy? Is it providing safety and security to all of us?

As an answer to these **pressing** questions, she presented to the audience her vision of the police in India. We do not need a police that is hierarchal, militaristic, a force that is isolated and away from people and is seen to be the preacher and an instrument of the powerful. That, according to her, is suitable for

the colonial state or authoritarian state; it is not suitable for a self-respecting free people. She asked, "Are we that? That is where the conversation should begin."

Ms. Daruwala pointed out that the duties of the police laying being of service to the citizens - in being fair, unbiased, efficient, well resourced,; not merely law enforcing but law abiding and law upholding, which means that every act that they do must reinforce the rule of law. Their central work is detection and prevention of crime, it is not judging the criminal. Judging is the purview of law courts and the police must realise the limits of what they are supposed to do. They must be nothing more than a citizen in uniform with a duty to create an atmosphere of peace, safety and security for all in which, each of us, including the police can be assured of realising their human rights. This is the atmosphere of democracy and progress that we are looking for.

So, the question is - What are the options that we have, while seeking police reforms? Where are the allies, where do we find them and how to capitalise them? Can the public demand be a counterweight to the power elite in our country? Can we create a tension in the cosy relationship of powerful people? How do we change the status quo? These are the important questions to be asked, she said.

Isn't today the right time for better policing? Will we also destroy the idea of justice and hence, the idea of India? Can we wait for another 50 years for reforms? She accepted that she doesn't know the answers but she stressed that she was not frustrated and would continue to work for reforms with many others. A democratic, free nation needs democratic policing. Police reforms are too important to neglect and too urgent to delay, the question before the audience is if and when they can make it happen.

**6. Dr. Veerappa Moily, Member of the 16th Lok Sabha, Former Union Law Minister, Former Chairman of the Administrative Reforms Commission.**

Dr. Veerappa Moily recalled that as the Chairman of the Second Administrative Reforms Commission, he happened to produce 15 reports, of which 4 reports pertained to police reforms: one on public order, the second on conflict resolution, the third about combating terrorism, and the last one on ethics in governance. He said that Mr. Prakash Singh was closely involved in drafting those reports and that he hopes that they will be implemented soon. Thus, he said he has an abiding interest in police reforms as they are very much in consonance with the recommendations contained in these reports.

In many countries, reforms driven by the judiciary are common. Prior to the 1990s, Singapore was practically anarchy. Due to the interest taken by the then Chief Justice of Singapore, the system began to change in a couple of years. The judiciary is well-placed and has ample powers to work for judicial reforms which in turn, includes reform of the Criminal Justice System. Thus, the judiciary should take a step forward, not just by making suggestions or directions and by not leaving it in the hands of administrators. He said that it is worth recalling how election reforms were achieved in India. Despite having a few flaws, our elections are conducted very well in absolute conformity with the rule of law. He requested the audience to appreciate the perfect system of Indian democracy, which is committed to nurture an atmosphere of non-violence. This can be achieved by giving up weapons or pellets or any other modern weapons, so that we can maintain non-violent atmosphere with trust and tolerance.

Dr Moily recalled an experiment that he had conducted when he was the law minister. He had talked to a few Chief Justices of High Courts and had told them that he had a target to discharge 8 lakh under trials within 6 months. That was very successful experiment. Every Chief Justice cooperated. This means they can do it, if they can develop the will.

Dr. Moily suggested a holistic response system involving reforming the police, the criminal justice system, protecting the human rights and upholding the rights of minorities. According to him, the government and the judiciary should stand together to fulfil the agenda of the conference; the will-power of the government should be manifested and supported by the judiciary.

He concluded by narrating some of his experiences as Chief Minister and Law Minister that the police was still capable of carrying out their duties efficiently and effectively. He narrated an incident during Babri Masjid demolition, when he had called the DGP and conveyed his instruction that by 12 noon he wanted the situation in the state to be brought under control. To the credit of the police, Dr. Moily said, they did achieve that. He suggested that we need to empower the police in every way. If we don't build confidence in them and have faith in the system, nothing was going to happen. If the institutions fail, democracy will fail; which is why the institutions including the police system should be strengthened. Ultimately, it is these reforms that will make our democracy successful and save it from becoming a mobocracy.

## **7. Shri. Kiren Rijiju, Union Minister of State for Home Affairs**

Shri Kiren Rijiju began by appreciating the work being done by the Indian Police Foundation. He recalled the first presentation made by the team led by Mr. N Ramachandran, regarding the establishment of Police Foundation and he found the proposal to set up the Foundation very interesting and promising. He recalled that as an activist, and subsequently as a member of the opposition party, he had pointed out the misuse of the Police by the party in power. Now, in his capacity as Minister of Home Affairs in the Union Home Ministry, he always tries to keep in mind how to do justice to the questions that he had himself raised as an activist and as a member of the opposition.

Shri Rijiju stressed the need for reform not only in the police, but in society as a whole. We need reforms in the Criminal Justice System, judicial reform, administrative reform and most importantly, the mindset of people needs to change. If people do not change the way they think, there is no point in reforming a sector or an institution. At the same time, Police reforms are an absolute necessity. And as a Minister of the Government of India, he is committed to realizing positive reforms in the police.

While the central government has a huge role to play, meaningful police reform can take place only when the States play their part. It is a matter of deep satisfaction that the Prime Minister himself is deeply committed to reforming and modernizing the police. At the annual conference of the Director Generals of State Police and the heads of the Central Paramilitary Forces held at Guwahati last year, the PM has unveiled his vision for a SMART Indian Police. The PM also spent three full days with the DGs at the recent conference conducted at Kutch. The meals were arranged in such a way that the Prime Minister, Home Minister and the MoS Home sat with DGs of six states on rotation basis at each meal. This arrangement gave the Prime Minister, Home Minister and the MoS an opportunity to meet and interact with all the DGs. When the Prime Minister called for a review meeting, the deliberations of the conference were discussed in detail. Shri. Rijiju pointed out a lot of areas that needs to be covered and at the same



time, bringing the realization that there remained a lot more to be done. While India has progressed a lot, we still have Police system of the colonial era. This needs to change and we should transform the police truly into a 'police service'.

By drawing attention to the trend on the part of some of the IPS (Indian Police Service) officers reappearing for the Civil Service examination to make it to the IAS (Indian Administrative Service), Shri. Rijiju observed that this trend is indicative of the way in which the services are being perceived. The Police Service should be seen as equally important and respectable as any other service.

He also spoke of the timely and efficient equipping of the forces. He had recently reviewed the requirements of Central Reserve Police Force (CRPF), the largest paramilitary force. As winter approaches, it is important that the forces deployed in Kashmir and other places are given the requisite equipment, blankets and jackets.

Shri.Rijiju informed that the 'smart policing' concept, as envisioned by the Prime Minister in Guwahati, is being taken forward. He suggested that the first step to be done to bring in smart policing is by supporting the police. According to him, no police force in the world is as hard working as Indian police. Our police personnel don't even have time to spend with their children, nor can they spend time with their families during festive seasons. They are perennially on duty, to ensure that people get to enjoy their festivals.

He acknowledged that there are black sheep in every organization and there is the problem of '*Haftavasooli*' by certain unscrupulous officers. Mr.Rijiju feels that he may be one of the very unpopular ministers amongst his colleagues in the parliament because he never accedes to their requests to interfere in postings and transfers of police and paramilitary personnel. It is not the job of a Minister to interfere in the postings and transfers. There is need for a robust and fair system which is free of interference.

He observed that nowadays any small matter can snowball into a big controversy. If a policeman makes a mistake, the Chief Minister is asked to resign. If every

single action of the police is directed to the government or the Chief Minister, then definitely the political establishment will interfere in policing decisions, as they are answerable to the people. The answer lies in reforming the system, making the police transparent, accountable and responsible for their conduct and actions.

Again, the media needs to portray things responsibly as people believe what is shown to them.

He said that Indian Police Foundation has been doing a very good job. This Foundation provides an excellent platform for generation of ideas, and bringing the police and citizen stakeholders together, to work for reforming and improving the system. He was glad that some prominent retired police officers were playing an important part in this organization. If politicians don't retire, why police officers should retire, he asked. When he is no longer a minister, he would himself like to be a part of the Police Foundation, he said.

Shri. Rijiju concluded his speech by observing that the conference will ignite the minds and generate some good ideas that tell us how to go forward. Of course, the government needs to do much more. The accountability within the police reforms must be absolute. The officers and members of the police force must understand that reform must begin from within the system. We have to listen to the voices of the people. We must adapt with the changing situations. At the end of the day, people should feel safe when they see a policeman. He stated that the government is committed to reforming, modernizing and revamping the police.

#### **8. Shri. Fali Nariman, Distinguished Indian Constitutional Jurist and Senior Advocate, Supreme Court of India**

Mr. Nariman began by recounting the words of a famous French litterateur, who once said, "Everything has been said already, but as no one listens we have to keep going back and start all over again". This is exactly the fate of police

reforms, we have been speaking about it for years, very little happens, then there is a little regress, then a little step forward and the cycle goes on in this manner.

He said that after listening to the Minister it must be clear that we should see police as our friends and not as adversaries. Everything in society needs reform, be it legal reforms, judicial reforms or police reforms.

Mr. Nariman drew attention of the audience to the three lists in the Constitution – the Union List which comes under the purview of the central government, the State List, and the Concurrent List, which includes the area both the Central and State governments have power over. Mr. Nariman suggested that the Government should do what Indira Gandhi did in the case of administration of the Forests and Environment. Years ago, when forest were being denuded by the states and several complaints regarding this reached Mrs. Gandhi, she wrote letters to the states which yielded no action. So, she introduced a constitutional amendment bill to bring Forests under the Concurrent List, ending the exclusive rights of the States on forests and the environment, and that is how, according to Mr. Nariman, at least 10% of our forests could be saved. He suggested to the Minister that he should impress upon the PM that it is necessary not to leave it to the Supreme Court to do it, because it cannot. According to him, the Supreme Court can make some good pronouncements which in turn, can inspire some good editorials, but nothing happens. The Union Government has to take charge and it is important because whenever the States are very tardy about any aspect of policing, it would have the right to step in and make the changes. He was convinced that these deliberations about police reforms will go on for a long time, until police is placed in the Concurrent List.

He also criticized the continuous interference of the courts with regard to the police and policing. The police, according to him, have no friends; the citizens blame them, the politicians blame them and then, the courts also blame them. He insisted that we all try to become their friends who might change the animosity between the police and the citizens.

He ended with a little passage from a judgment, which according to him was very beautifully put: “the functions of the judiciary and the police are complementary,

not overlapping. The combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own functions, always, of course, subject to the right of the courts to intervene in an appropriate case when moved under Section 482 to give directions in the nature of habeas corpus.” This was said by a brilliant judge from Madras, Mr. Madhavan Nair, who was a member of the Privy Council. He said that we have had a number of judgments in the last few years wherein the functions of the judiciary and the police were not complementary but always overlapping. It is essential to see that the role of the police gets restored to what the Privy Council called in 1945, “the right of the police to investigate”. The right of the police to investigate must be restored, so that they can be held accountable, not for the benefit of the police but for the benefit of the society at large. That is when they can really be the friends of the society. Mr Nariman cited the example of many western countries where the police have the final say in the investigation. It is sad that our police have lost the art of investigation and this situation, he thinks, is the fault of the Courts and the society at large. It is high time that the Courts as well as the society at large, stop interfering.

Trust the police to do their work, do not interfere, and make them accountable.

### **Adoption of the resolution**

At the end of the Conference, the Conference unanimously resolved:

- i. That it is a matter of serious concern that even after ten years after the Supreme Court's judgment on police reforms delivered on Sept. 22, 2006, progress in the implementation of the judicial directions had been tardy and that the States had either passed laws which were against the letter and spirit of the Court's directions or issued executive orders which diluted or modified the directions;
- ii. That the Apex Court must ensure **effective compliance** of its directions on the subject in larger public interest and to improve governance in the country failing which a wrong message would go that states could defy the directions of the highest Court of the land and get away with it;
- iii. That the Government of India should convene a Conference of the Chief Ministers of States, along with Chief Secretaries and Directors General of Police of the States, not only to discuss the issue of implementation in letter and spirit of the Court's directions but also to adopt an INDIA-CENTRIC Policy on Police Reform, and adopt measures to transform the existing police into an instrument of service to the people, upholding the Rule of Law;
- iv. That a delegation comprising representatives of the Indian Police Foundation, Commonwealth Human Rights Initiative and other distinguished citizens should call on the Hon'ble Prime Minister as well as the Hon'ble Home Minister to impress upon them the imperative need, relevance and urgency for Police Reforms.

## **Panel Discussion and Q&A**

*The moderator, Mr. Praveen Swami asked the minister if, at exceptional events like the DGPs' conference in Gujarat, he could give us an idea of what his own vision of policing was. What models would most closely approximate what he would like to see elsewhere in this country?*

Mr. Rijiju said that there has to be a close-knit relationship and coordination in the understanding between the police and the local population. This is because police is civilian in nature, unlike the Para-military forces. When we talk of police reforms, there have to be internal reforms within the police. For example, some people from North-Eastern States have complained that when they go to a Police Station to register their complaints, the police do not register their cases and do not talk properly to them. We see that the police is not responsive in dealing with the people. He asserted that he believes in grassroots-level reforms.

*Mr. Swami asked the minister which state had been the most responsive in bringing about changes, after the Gujarat conference.*

Mr. Rijiju responded that while some States have been taking proactive steps, many others have not been performing up to the expectations. Government is therefore planning to call one more meeting before the next DGs' conference to see the progress made by various States. So, there is no number one state in terms of progress. But there are some positive, perceptible improvements in the case of some states.

Mr. Nariman said that Ms. Maja Daruwala's paper in the folder (given to the audience) showed that Sikkim was the state that had followed most of the directives of the Supreme Court in the Prakash Singh case.

*Mr. Swami asked Ms. Daruwala if she agreed with this whole talk that had been going on with 'SMART' policing and technology adaptation. Or was this going to be useless without more community empowerment and more police accountability?*

Ms. Daruwala said that it is always good to have a slogan, to have leadership, to have attention from the highest level for policing. The 'A' in 'SMART' stands for 'accountability' and that is the one that she looks for. Technology in itself is not

neutral, it could be used towards very bad ends as well. The conversation up until now, is very urban centric. When we talk about the police and public being friendly, she looks at what happens in the rural areas where nobody can even reach the Magistrate. The *Daroga* is the king, the power asymmetry is so much that she hoped (to the minister) that when the government has a next meeting, it focuses on that as well and also urged them to have a vision statement about what kind of policing they want. In 2008, there was 'Model Police Bill' under the chairpersonship of Soli Sorabjee. That has been again reviewed by the BPR&D in 2015, under the chairpersonship of Mr. Kamal Kumar, also a Police Officer. The first few paragraphs give a very fine description of what the police should be looking at, what the functions of the police are and what the baseline principles of policing should be. And she would urge the minister to take a look at the first few paragraphs and perhaps make that something of a litmus test for the policing in the future.

*Mr. Swami turned to Mr. Prakash Singh and said that it was almost as if we are not talking about one country, but many countries when we talk about the policing issues. On the one hand, we are talking about police accountability, better FIRs and making police more responsive to the community. And on the other hand, as Mr. Singh's own investigation of violence in Haryana shows, there is mass civil disturbance on an epic scale. In Kashmir, we are talking about street violence of a scale that this country has not witnessed in decades, breakdown of law and order in Karnataka, possible repercussions in Tamil Nadu. Sometimes, it almost seems like we are perched on the edge of anarchy. You often hear calls for a more coercive police, police that is more repressive. Does policing have solutions for these crises? Do police reforms have solutions for these crises? What are they?*

Mr. Singh answered that the kind of internal security issues that we face in the North-East, in J&K or the Maoist problem in Central India, arise from certain basic issues. These basic issues if they are addressed, the police would not have to pay for the sins of somebody else. Police can control situations only upto a point. For example, the Maoist insurgency, he has followed this movement from its inception in 1967. There have been two occasions when everybody thought they had solved the Naxalite problem. One was after the arrest and death of Charu

Mazumdaar, when there was complete fragmentation within the organization. They thought the problem was over but it resurrected because the basic issues had not been addressed. The other instance was when Kondapalli Seetharamaiah was arrested. The movement keeps on rising up again and again because the basic issue has not been addressed. Police can deal with these problems only upto a point but after they have tackled it, the administration must step in; the grievances must be addressed if they are genuine.

*From the audience, Mr. Sunil Kumar raised an issue. He said that the deterioration of the policing is not unique to policing alone; all our public institutions are degenerating. This is essentially because the elite section of the society and the middle classes are depending more on private resources than depending on the government institutions. There is a breakdown of trust on the State as a provider.*

Mr. Nariman stated that police has to often deal with a bunch of matters that have nothing to do with policing. It is important that the causes for societal conflicts are addressed and efforts are made to bring the people in the fringe of society, to the mainstream. Frictions involving language, race, religion and ethnicity have to be controlled. He has great faith that our country will be able to overcome.

*One question that came from the audience was that while the police faces the brunt, the fact remains that the entire Criminal Justice System is breaking down. The conduct of many public prosecutors and many lower-court judges are not proper or adequate. Is it fair that the police is pointed at when the entire Criminal Justice System has been breaking down?*

To this Justice Lahoti responded by saying that he doesn't agree that there is a collapse of the Criminal Justice System per se. The judges are a product of the society, there is a whole degeneration of the society, and the judges cannot be an exception. There is a basic misconception about what the Criminal Justice System is. The judge only listens, records the proof and delivers his/her judgment; the rest of the matter is not in the hands of the judiciary. There has to be an investigation and prosecution. The judge has to give the judgment based on the law and the evidence. It is for the investigation to collect the evidence, the prosecution to present the case in the best manner before the court and then, get



the judgment. The Criminal Justice System is alright but the role of the judiciary in the dispensation of criminal justice is very minimal. So possibly if one feels there is a breakdown of Criminal Justice System, the problem lies somewhere other than the judiciary.

Ms. Daruwala added that when we ask why the police has to bear the brunt of all the failures of the Criminal Justice System, the police would ask the people to not blame them, but they are also asking for an excuse for when they are doing what they should not be doing. One cannot be unlawful and then say, 'why are you only blaming us?' One can't be non-performing and then say, 'why are you blaming us?' At the same time, the answer from the judiciary cannot be that we all come from the same society. She is also part of the society, just a civilian but if she is doing something wrong, she will be held accountable. Sometimes the judges do not look if there has only been 24 hours custody, and whether there has been torture in custody. Fair trial is no longer assured at the level of lower judiciary. These are real failings. These failings might be due to not enough education, adequate training, too few policemen or too few judges. Technology should be brought in to eliminate torture and third degree methods. We as a people, have to make it clear that we will not accept torture.

Mr. Nariman pointed out that there is a civil law system and common law system. We have adopted the latter, which also is the 'rule of law'. In China, they do not have the 'rule of law', they have 'rule by law'. Perhaps, the ideal is between the two. How do we accommodate it? This is a larger philosophical question that we will not be able to answer today. But his suggestion is that the thinkers in the universities can put their heads together in this regard. Individual liberty consonant with law and order is a very good concept. That is what he had referred to in the quote of Sir Madhavan Nair in the Privy Council. Individual liberty with due observance of law and order is perhaps the mean by which we should go.

*Mr. Sanjay Vashishtha from the audience raised the question as to why, evidence-based policing has not taken roots in India.*

According to Mr. Prakash Singh, to a large extent, it all boils down to eliminating extraneous influence over the police functioning. If we want the institution to perform objectively, the police have to be insulated from extraneous influences. In Haryana for example, even when police knew everything about the identity of culprits of the riots, they were reluctant to register FIR against known rioters because of local and community pressure. There was no clear mandate from the government. The government had left it at the police station level. Despite the rioters being listed, they asked for incontrovertible evidence. So they only accepted photographic/video graphic evidences. If we want investigations to be done objectively and if we want the police to take some action, it is absolutely necessary to raise them above local influences. They have to be insulated from extraneous pressures. Otherwise they will work on the pressures from the caste and communities. This matter was brought in front of the High court of Punjab and Haryana. They cornered the state government on several issues, including the report prepared by us. However, the rioters had tacit support of the politicians and the government.

Mr. Ramachandran stated that in our country, we are still far away from evidence-based policing. Senior police officers often decide the policy based on their own personal perceptions and experiences. We do not usually seek empirical evidence to support decision making or policy formulation. Such a culture gives unlimited operational freedom and unlimited powers to the incumbent, but in the absence of any rules of accountability, such absolute power is often misused. One of the objectives of the Indian Police Foundation has been to provide a platform to police officers for intellectual discourse and academic research, so that we are able to embrace a culture of evidence based policing in the years to come. It is also important to involve professionals from other areas of learning, as police policy formulation needs to be informed by multi-disciplinary research and ideas generation.

A J&K police officer from the audience mentioned that 10,000 new SPOs that have been appointed are being paid a paltry sum of Rs.5, 000 for the first three years and Rs.6, 000 after that. These are the men that are going to risk their lives on a day to day basis while they get paid such a low amount. In this scenario, how can

we not expect them not to resort to corrupt practices? This amounts to exploitation. Similarly, the best Forensics experts are recruited by private industry, offering more money than what the governments can give. So, we end up with less qualified officials producing low value reports.

*Another member from the audience observed that in the cases relating to crimes against women, every time there is a high profile case that gets publicity and media attention, the system gets activated quickly and there are good results. But for thousands of other cases of crimes against women out there, very little is done.*

Mr. Singh agreed that certain cases in Delhi get lot of publicity but there are perhaps hundreds of other cases deep in the interior that we do not hear of. We are very short of manpower as per international standards. As of date, it is approximately 182 per lakh on paper, 139 in actuality, while it should be 222 as per UN standards. There was a statement made in the Lok Sabha, that we are short by 500,000 men in the police. So, we are very thin on ground. Rural policing has grievously suffered; the urban policing is the one always on focus. *Chowkidaari* system that was very effective has completely ended. We have to improve policing not only in the metro cities but also the rural area in India. We have become far too Delhi-centric and we have to move past this and bring reforms across the board.

*Mr. Swami asked the Minister that as an activist, a member of the civil society and as a person a lot of North Eastern youngsters approach, when is a young woman in the city going to feel safe about going to the police station and filing a complaint?*

Mr. Rijiju said that the reform of the mind-set of the people is important. If a woman is unable to walk around her colony because she feels unsafe, it is not the failure of the police alone. It is a collective responsibility of the society to prevent crimes against women.

We should also not be dependent on the expertise or experience of a particular police officer. The Minister emphasized the need to grow beyond the experiences of individual police officers and adopt an evidence based system. We should not be basing the delivery of justice on the good will or good deed of

an individual officer; it is the fundamental right of the citizens of our country to get justice.

Ms. Daruwala agreed that the aggressions against women or anyone else that take place in the private space cannot be handled alone by the police. But in the case of the aggression on the streets, the government and the police have to take the responsibility. Across the country, there are far too few women in the police forces. They perhaps constitute just 6-8%. She stated there was a big case to be made in favour of more women in the force. The mind-set change has to be adopted by the leadership towards gender equity and diversity. There has to be adequate training in relation to gender diversity, to minorities. There must be consequences for not following the norm for more accountability and change.

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