

## **Independent Police Complaints Commission**

Prof. Laurence Lustgarten  
Commissioner  
Independent Police Complaints Commission, UK

Prof. Laurence Lustgarten, one of the Commissioners of the recently established Independent Police Complaints Commission (IPCC), participated in a roundtable discussion organised by CSA on 23 January 2004, and shared his thoughts on the IPCC. A Professor at the School of Law, University of Southampton, United Kingdom, his areas of interest are policing, public law and criminal justice and has to his credit a number of publications on national security policy and institutions, comparative constitutional structures and racial discrimination.

Mr. C.V. Narasimhan, former Director of the Central Bureau of Investigation, presided over the roundtable. Justice S. Thangaraj, President of the State Human Rights Commission, a special invitee, highlighted the role of the State Human Rights Commission. Senior officers of the Indian Police Service from all the Southern States, including the Director Generals of Police of Tamil Nadu and Kerala, two Additional Director Generals of Police from Andhra Pradesh, the Commissioner of Police, Chennai, the Inspector General of Police, Pondicherry and former IPS officers attended the discussion in strength. Two members of the Police Performance and Accountability Commission of Kerala took keen interest and participated. Intellectuals from the city, with interest in the subject, also participated in the roundtable and contributed to a stimulating discussion.

### **Welcome Address by Mr. M.K. Narayanan**

Mr. M.K. Narayanan, Vice President of CSA, welcomed all and introduced Mr. C.V. Narasimhan, Prof. Laurence Lustgarten and Justice S. Thangaraj. Describing IPCC as an innovative institution, he said that the past and present members of the Indian police fraternity have a deep and abiding interest in it. He then invited Mr. C.V. Narasimhan to preside over the roundtable.

### **Presidential Address by Mr. C.V. Narasimhan**

Mr. C.V. Narasimhan, in his presidential address, identified and outlined various areas of interest to India in the subject. He said that one of the immediate requirements of the present police reforms was putting in place a credible mechanism for handling public complaints against itself. A study undertaken by the National Police Commission (NPC) found that, in departmental enquiries of the thousands of complaints only 7 percent were substantiated; in magisterial enquiries 16 percent were substantiated; in judicial enquiries as many as 65 percent of the complaints were substantiated. It was obvious that the public did not have much faith in departmental enquiries and only a little more faith in magisterial enquiries. He then made an analogy with the audit system wherein there were two audits – internal and external. Neither could be dispensed with. The Comptroller

General would not be able to look into minute details, but was there to deal with very serious cases. This system should be copied with regard to the police complaints too. The NPC dealt with that extensively and in its first report recommended: -

- A restructured mechanism within the police to deal with complaints satisfactorily with due regard to justice and appearance of fair play. For example, the complaints against any person should be enquired into within the system by an officer at least two levels above the person and not the immediate superior officer.
- In case of complaints of serious nature like rape in custody, death in custody or death due to police firing and such other serious instances, it recommended a mandatory judicial enquiry. To initiate such enquiries the judicial set up should be in a position to undertake such tasks.

Broadly, the pattern recommended by the NPC was the strengthening of the internal system of enquiry and supplementing that with an additional system that would involve the judiciary automatically, and not at the discretion of the government of the day. However, Mr. Narasimhan also said that the head of the department was responsible for any misconduct by personnel in his department. He could not shirk his responsibility on any pretext and has to uphold the fundamental principle that the responsibility for keeping any department clean, efficient and free from all evil influences rested squarely on the head of the department. All the other external agencies were only supplementary, to deal with extraordinary situations.

### **Address by Prof. Laurence Lustgarten**

To start with, Prof. Laurence Lustgarten expressed his hope that there would be greater interaction between like-minded people in India and UK on the subject. Explaining the need for IPCC, he briefly gave a historical account of the police-public conflict in England and Wales. The history of conflict revolved around one major factor, viz., ethnicity. There had been a range of incidents of police misconduct, in which a disproportionately large number of victims were ethnic minorities, leading to political developments that stimulated the formulation of a complaints system. Beginning with the first two Commissioners of Police, the model of policing in England and Wales was a curious mixture of civil and military. Public oversight was not allowed and matters were largely dealt with through a kind of court martial. Their initial characteristic of seeing things internally, excluding the public, and not taking complaints seriously remained an important aspect of the system until recently. There was increasing criticism in the sixties and early seventies. In the seventies, a small change was made, but it was not until the Police and Criminal Evidence Act in 1984 that a serious attempt to establish some kind of an outside involvement in the system was made.

### **Police Complaints Authority**

The 1981 riots, most famously in Brixton, led to serious introspection. Lord Scarman who conducted an enquiry on the riots, said pointedly in his report that the public had no

confidence in the police dealing with complaints entirely as an internal matter. One of the things that emerged from the report was the establishment of Police Complaints Authority (PCA). The PCA failed to achieve public confidence in the system due to several reasons. Firstly, those initially appointed to the PCA had very little understanding of the problem and had little contact with the communities where the difficulties arose. Secondly, the PCA was entirely London based and that alienated people in the rest of England and Wales. Thirdly, there was very limited expertise, partly because at that stage there was no one who had done much research on the subject. The situation changed overtime, partly by the enormous amount of academic research, and partly by the work of the PCA itself. However, the process of estrangement had gone too far. Fourthly, more importantly, the PCA did not have any power to investigate. Its sole function was to supervise those cases in which the police were carrying out investigation. It had no investigative staff. The scope of what and whom it could handle was also limited. It could not deal with the extended police staff such as community police officers - people who were members of the public but working supposedly under the supervision of the police with some police powers.

### **Independent Police Complaints Commission**

The Stephen Lawrence Inquiry was the stepping-stone for the development of the police complaints system to another level. Sir William Macpherson, a former High Court Judge, conducted the inquiry into the killing of black teenager, Stephen Lawrence, by four racists in 1998. The Macpherson report, which made some eighty recommendations, said that there must be more independence in the investigation of police misconduct. It was on the back of that report that the Police Reform Act of 2002 was introduced. The Act among many things established the IPCC.

One of the major changes brought about in the IPCC, compared to the PCA, was a rather wider range of definition of who could be a complainant, which covers apart from the victims themselves, witnesses, family members, doctors treating injured complainants, etc. Under the PCA, only the victims of police misconduct could complain. Exception was made only for death victims, wherein others could make the complaint.

A parallel development of interest, in which the Metropolitan Police took the initiative, was in dealing with corruption. Paul Condon, the erstwhile Commissioner, found that the problem of corruption in the police forces was high, essentially due to drug prohibition. The drug mafia used the tactic of 'reverse penetration' to get prior information about impending raids. To deal with such menace, he devised what was essentially sting operations against his own men, whom he had reasons to suspect were not entirely trustworthy. So, on one hand, there was the development of a more professional and more active internal unit concerned with ethical policing and on the other hand, the development of the IPCC.

The Commission comprised of seventeen full time commissioners, selected through a rigorous and lengthy selection process. They were a diverse group and were appointed for a tenure of five years.

## **Powers**

The IPCC is an odd mixture of what could be called the executive and semi-judicial body. Their functions include: -

*General oversight of the complaints system* – One of their important functions would be to ensure that each police force has a functioning complaints system that is responsive to the people.

*Investigative functions* – They could investigate certain specific complaints and in fact the statute requires that certain types of issues, in particular deaths with police involvement, be referred to them automatically whether there was complaint or not.

*Judicial function* – They would hear appeals in individual cases against certain matters.

*Guardianship function* – There would be two such functions. One would be to oversee how the police were handling the complaints, and the other would be to go out within the community and talk with groups representing varied interests such as religion, ethnicity, trade, media, etc. They would be making them more aware of the system, trying to make the system more accessible to them and in a sense stimulate use of the system.

*Outreach function* – They would also have a very important role in dealing with families of the victims of incidents where the police were involved. They have to liaise with the family of the victim and keep the family informed of the process of investigation.

In addition, though not clearly defined, Prof. Lustgarten believed that they would have a role in the general commentary and evaluation of police performance based on their audit of the cases. One of the positive results of the operation would be a rise in the number of complaints, not necessarily reflecting worsening police behaviour but greater awareness of and confidence in the system.

## **Complaints**

Prof. Lustgarten said that the Statute has been more specific with regard to the complaints. There were four types of complaints involving different levels of participation and involvement by the Commission.

*Local Resolution* – The most common type of complaint was regarding low-level matters of incivility. They need correction, but do not merit any kind of major investment of time. They were to be resolved through a process known as local resolution, i.e., the superior officer would informally resolve it with a joint sitting of the complainant and the concerned police official.

*Supervised Investigation* – It was essentially, what the PCA had been doing. The police conducted the entire investigation, but under the supervision of the PCA. Instead, now a

Commissioner of the IPCC would now supervise them, but there is a lot of scope for variation in the intensity of the supervision. There has been a territorial division of responsibility for the Commissioners. In such investigations, the police themselves would do all the legwork.

*Managed Investigation* – It meant that the workers of the IPCC would work with the police. It was a kind of a mixed theme and ultimately the responsibility lies with the IPCC.

*Independent Investigation* – In some cases, involving death, incidents of violence and those with wide coverage, the IPCC would almost exclusively conduct the investigations. However, in reality, the local police would make the initial contact, as they would reach the spot before the IPCC members. Nevertheless, the IPCC members would try to move in as quickly as possible, and develop relations with those who are in the police so that they may come in. It was not that they would be treading each other's toes and there would be suspicion and hostility. Rather, they would be there to ensure following of proper procedures, before moving in and taking over the investigation.

### **Investigating Staff**

Prof. Lustgarten said that they were hoping to do about 30 independent complaints when their investigators begin operating by 01 July 2004. They were also expecting to do about 80 managed and 600 supervised investigations. The numbers were way down from the initial projections made by the Ministers when the Statute was going to the Parliament, the reason being lack of resources.

In finding the investigating staff, the most important aspect was to find those with skills in investigating, especially those that were largely to do with forensic work. Though people with such skills could be found in a few departments such as the customs and excise, the bulk of them were to be found only in the police service. As a result, the senior people in the investigating teams were made up of former police officers, many of whom had professional standards and experience and had seen the value in having an outside body coming in. Those in the lower ranks of the investigating teams were not always police officers. By law, the Commissioners could not be former police officers, but the investigative staff could be.

What had been kind of a theme throughout the talk was that good police have nothing to fear from an outside body as the IPCC and could gain many things, the most important being public confidence. If an independent body would carry out investigations and find that there had been no misconduct, then the public would believe that. Further, there exists a possibility that what they produce would be better policing, in the sense of not only better and more respect of human rights but simply better human rights. If one could carry out the job of enforcing the law in a way that would not necessarily create conflict with significant sections of the community, then one would end up having a better and more efficient police force.

**Address by Justice S. Thangaraj**

Justice S. Thangaraj, Chairman of the State Human Rights Commission (SHRC), Tamil Nadu briefly covered the role of the human rights commission and explained that they would look into complaints against the police if it involved violation of human rights.

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