A Heavy Hand
The Use of Force by India's Police

There are many circumstances in which the use of force by the police is considered a legitimate action. Indeed, even in a democratic society, police are distinguished by their legal authority to use force to coerce citizens (Klockars, 1985). Given the high potential for the police to abuse force, checks and balances are needed to minimize the use of force and make officers accountable when they resort to it.

India has approximately 2.4 million men and women in official policing (IISS, 2011; NCRB, 2011). Their work is regulated by the Indian Constitution, by statute and case law, and by the internal rules and procedures that regulate the use of force and govern the circumstances in which official violence is permissible. But there is growing consensus within India that police reform should be elevated on the national agenda.

The key findings of this *Issue Brief* are:

- Police are not sufficiently trained to deal with violence and challenges to their authority. Their salaries are low, with few perks, which helps foster a culture of corruption.
- Reported incidents of police firing on civilians rose from 791 in 2004 to 1,421 in 2010. The number of civilians killed in these incidents fell, but reported injuries grew.

- Indian law grants extraordinary discretionary powers of arrest to police officers.
- Although there is no independent data available on police violence and abuses, frequent use of force is demonstrated by the occurrence of *encounter killings*[1]—a severe symptom of police malfeasance.
- The most important reforms for controlling the misuse of force by the police have come from the 1993 National Human Rights Commission.
- Incidents of excessive use of force by police are unlikely to be addressed until major reforms in the criminal justice system are put in place.

Any democratic society experiences, to varying degrees, tension between the need for safeguards *by* the police and safeguards *from* the police. Order and liberty are both essential. An authoritarian state can have virtually complete order without liberty, but it is impossible to have liberty without a minimum degree of order enforcement. Democratic societies seek to avoid the extremes of both anarchy and repression (Manning, 2010). The police in India are faced with a similar challenge.

The need for coercive policing to maintain order has been a constant theme of Indian rule (Rai, 1999). Skewed economic development

Police officers salute during a wreath laying ceremony for a police officer killed by unidentified gunmen in Srinagar, April 2012.   © AFP Photo/Tauseef Mustafa

generates feelings of neglect, exclusion, and injustice, which commonly bring people onto the streets to protest. Demonstrations against government policies, rallies against development projects, and frequent sectarian, caste, and communal riots regularly lead to confrontations with the police (Shah, 2002, p. 18; Verma, 2007). A prominent scholar once called this a 'crisis of governability' (Kohli, 1990). Over 20 years later, little has changed. Maintaining order, to support the stability of the state, remains more important for Indian policing than service to society. As a previous study concludes, 'the ideal of a civilian police force has not materialized' (yet) in the country (Das and Verma, 1998, p. 365).

The legal basis of law enforcement

For hundreds of years the colonial rulers of India were apprehensive about the large population that never accepted their hegemony. The threat of mob protest has been a distinctive feature of Indian governance ever since. For the British, the risk of losing power in 1857 directly affected subsequent policing, and the Police Act of 1861 established a colonial model of policing to maintain the British Raj.

In the Indian Penal Code (IPC) of 1860 the British enacted provisions to facilitate police action against unruly crowds. The legal authority to disperse what was defined as an unlawful assembly comes from Section 129 of the Code of Criminal Procedure (CrPC) of 1898 (Ratanlal and Dhirajlal, 2006). Section 268 of the IPC defines public nuisance as any act 'which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right'. In addition, Section 143 of the CrPC empowers an executive magistrate to prohibit the repetition or continuation of public nuisance, and

Section 144 permits the issuing of directions to members of the public to abstain from certain acts which may cause 'a disturbance of public tranquility, or a riot, or an affray' (Ratanlal and Dhirajlal, 2006). These legal provisions thus provide a wide array of powers to the police, including the right to use force to disperse any unlawful assembly and maintain order.

Indian law grants extraordinary discretionary powers of arrest to police officers. General powers of arrest are, for example, provided to the police in the CrPC (Ratanlal and Dhirajlal, 2006). Section 41 states that a police officer may arrest a person without obtaining a warrant if there is reasonable suspicion exists of their being concerned in a 'cognizable offense'. Section 54 CrPC states that:

any police officer may arrest … without a warrant … such person who has been concerned in any cognizable (indictable) offense or … against whom … reasonable suspicion exists of his being so concerned … [or] in whose possession anything is found which may reasonably be suspected to be stolen property.

The law thus leaves the determination of grounds for arrest entirely at the discretion of the police officer involved. What constitutes 'reasonable suspicion' is not spelled out and is said 'to depend upon circumstances of the particular case' (AIR, 1950). Furthermore, Clause 4 of the CrPC extends this discretion and has stipulated that no formal complaint is necessary for an officer to make an arrest under this clause (Verma, 1997). Nor is it necessary that an offence be committed before an arrest can be made. Police even have the authority to make preventive arrests in order avert suspected future offences. Section 151 of the CrPC states that:

a police officer knowing of a design to commit any cognizable offense may arrest … the person so designing, if it appears to the police officer that the commissioning of the offense cannot be otherwise prevented.

In addition, the courts have acknowledged that:

[i]t is not open to the Honourable Court exercising jurisdiction … to go into the question whether in fact the police officer was justified in concluding that the necessity contemplated by this section really existed. The discretion is vested solely in the police officer and that discretion cannot be questioned (Gupta, 1949).

The judgment whether a person is likely to commit an offence is thus left entirely up to the police officer concerned (Verma, 1997, pp. 68–69).

Nevertheless, Indian Courts have been strict on the use of force by the police. Indeed, some authors argue that the Courts make unrealistic demands upon the police:

Should they [the police] happen to use less force, they would be accused of dereliction of duty; should they use lethal force, they could be accused of murder (Asthana and Nirmal, 2010).

How legal powers should be used to disperse an unruly crowd was prescribed in *Karam Singh* v. *Hardayal Singh* (*CLJ* 1979, 1211). The court held that three prerequisites must be satisfied before a magistrate can order the use of force to disperse a crowd:

- First, there should be an unlawful assembly with the object of committing violence or an assembly of five or more persons likely to cause a disturbance of the public peace.

- Second, an executive magistrate should order the assembly to disperse.
- Third, in spite of such orders, the people do not move away.

In democratic India, the use of force against political agitators almost invariably becomes controversial. Frequently, magistrates have refused to give orders to use force (Buch, 2007). Such situations affect police action since large crowds can quickly overwhelm police officers. For example, two policemen were killed as a result of mob violence by a Gujjar community who were protesting over government reservation policy in Rajasthan (*Sify News*, 2008).[2]

However, some police agencies, for example the Central Industrial Security Force, are empowered to arrest without warrant people who are seen as likely to commit offences against public sector property. Under the well-known Armed Forces (Special Powers) Act of 1958, the armed forces, including central paramilitary forces, can be given blanket authority to arrest without warrant and to fire to kill with impunity (Verma and Subramaniam, 2009; NCHR, 2012, p. 10). This Act remains in force in "disturbed areas" such as Jammu & Kashmir and the North-Eastern States, 'conferring an impunity that often leads to the violation of human rights' (NHRC, 2011, p.2).

There is no evidence that fear of police violence has diminished. Distrust of the police remains a serious public issue. As shown here, the courts and even the central government have repeatedly questioned police powers. For example, in an unusual case, the Andhra Pradesh High Court found that in the case of a death caused in the course of police action, a murder case must be registered against the police personnel involved. This has had the effect of denying officers the right to self-defence (Ratanlal and Dhirajlal, 2006).

Police administration

The Ministry of Home Affairs (MHA) is the nodal agency for law enforcement and domestic security in the country. However, the constitution has placed Public Order and Police within the State List of the Seventh Schedule (GoI, 2010b)—giving the states (provinces) responsibilty for policing—while the central government is responsible for dealing with external aggression and internal disturbances. Both state and central governments maintain a variety of security agencies. Since issues of internal order and peacekeeping are not geographically isolated, the central government—through the MHA—has assumed a significant role in formulating policies at national and even at state level. Constitutional

Indian police hold back demonstrators during a protest in New Delhi on 21 May 2012.

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provisions in List I of the Seventh Schedule of the Constitution allow the central government to develop a variety of police forces for law and order maintenance and internal security (GoI, 2010b).

Over the years, specialized police forces have been added to cover investigation, intelligence, and the problems of specific groups. All 28 states have their own armed police battalions, organized as paramilitary forces.[3] The tendency is towards militarization of the police as seen in Bihar, for example, where these units are called Bihar Military Police. Even within the Civil Police, armed units—the so-called reserve police battalions—exist in every district (Verma and Subramaniam, 2009).

Situational factors in use of force by police

In parts of the country, Indian police have to confront riots and disorder on a large scale. Religious, ethnic, regional, language, caste, and class divisions are frequently exploited to foment violence; political parties do not hesitate to call for strikes, closures, and mass demonstrations (*Rediff News*, 2010). In Kashmir, for example, separatists groups have provoked violence and police have initiated or responded with live fire against agitated mobs (Swami, 2010), and, as a result, the region, along with the Northeast and Jammu, has become a symbol of excessive state power (OHCHR, 2012). Unruly crowds and violent demonstrations are so common that people have begun to see them as an appendage of Indian democracy (*Telegraph*, 2010). All these situations frequently result in the police using force. This in turn exacerbates public anger against the police (Kumar and Verma, 2008).

The principal face of law enforcement in India is the Civil Police. This is made up mainly of state police forces serving in police stations, and includes the District Armed Police. In 2010 the number of Civil Police stood at 1,223,319 personnel. The Civil Police have grown in recent years, but numbers still remain below authorized strength due to recruitment difficulties, with only 75 per cent of their sanctioned strength of 1,618,198 personnel. The same is true of the country's other major policing category, the Armed Police. These numbered 356,992 in 2010, an increase of 4.2 per cent over 2009, but almost 20 per cent below their sanctioned strength of 426,879 (NCRB, 2011, p. 167).

The quality—in terms of both educational background and intellectual skills—of police recruits is also a problem. The highest levels of police leadership are the preserve of the 4,720 Indian Police Service (IPS) officers (MHA 2010, p. 131). Chosen by competitive examination, these officers are a widely respected elite. The same is seldom said of the 1.2 million ordinary police constables, who have a reputation for being poorly educated, and poorly paid.

The density of policing varies dramatically across the country. According to the National Crime Records Bureau, police per population averages 133 police for every 100,000 people (NCRB, 2011, p. 171). But this national average conceals enormous regional variations. Policing density is highest in regions affected by separatism, especially Kashmir and the Northeast; the highest levels are 1,065 police per 100,000 residents in Mizoram, and 871 per 100,000 in Manipur. Even states with serious Naxalite problems have much lower levels of policing—a revealing commentary on official priorities. The lowest rate is found in Bihar, with just 64 police per 100,000 people in 2010 (NCRB, 2011, p. 168).

In addition to the Civil Police and Armed Police, under the authority of India's 28 states and 7 union territories, there are seven national police forces, the Central Police Forces (CPFs), which fall under the Ministry of Home Affairs. The ministries of Defence and of Railways also maintain independent law enforcement agencies. In all, India has approximately 2.4 million men and women in official policing (see Table 1).

A complete accounting should also consider the Civil Defence Reserve Organization and the Home Guard Reserve Organization, the first falling under the Ministry of Defence and the second under the Ministry of Home Affairs. These are citizen groups—each with roughly 500,000 volunteers—which support the military and police in times of national emergency (IISS 2011, p. 242; Badri-Maharaj, 2001).

(Box by Aaron Karp)

Table 1 **Major police agencies of India, 2010**   Sources: IISS 2011, pp. 241-2; NCRB, 2011, pp. 167-8

Agency	Ministry	Personnel
Civil Police	State and municipal	1,223,319
Armed Police	State and municipal	356,992
Assam Rifles	Ministry of Home Affairs	63,883
Border Security Force	Ministry of Home Affairs	208,422
Central Industrial Security Force	Ministry of Home Affairs	94,347
Central Reserve Police Force	Ministry of Home Affairs	229,699
Indo-Tibetan Border Police	Ministry of Home Affairs	36,324
National Security Guards	Ministry of Home Affairs	7,357
Sashastra Seema Bal (or Special Service Bureau)	Ministry of Home Affairs	31,554
Defence Security Corps	Ministry of Defence	31,000
Railway Protection Forces	Railways Ministry	70,000
Rashtriya Rifles	Ministry of Defence	65,000
Total police personnel		**2,417,897**

Culture of impunity

While the police face violent confrontations and challenges to their authority daily, their salary and perks are low, fostering a culture of corruption (Verma, 1999). Special treatment, such as free meals and services, are brazenly extorted without fear of disciplinary action.[4] Further, cash-strapped state governments fail to provide adequate resources. Police lack adequate stations, vehicles, communication equipment, and even basic

protective gear. Rural areas especially lack proper roads, so communication is poor, and they tend to be thinly policed as a result. This inaccessibility allows militants to operate largely free from police surveillance (Mitra, 2007). The isolation, institutional poverty, and lack of communication encourage 'short cut' solutions.

A major contributing factor to use of force by the police appears to be an organizational culture that tolerates and promotes its misuse. The Indian police forces were designed to avoid local accountability. The British colonial model advocated rule of India 'with a firm hand and ruthlessly, if necessary' (Gupta, 1979, p. 3). The Police Commission of 1860, entrusted with the design of a new police system for British India, convened while memories of the 1857 revolt were still sharp. The Commission was told to bear in mind that the 'functions of a police are either protective and repressive or detective' and that 'the line which separates the protective and repressive functions of a civil force from functions purely military, may not always, in India be very clear' (Hunter, 1907, p. 380). The existence of a 'people's police' in India would have undermined the British Raj.

The resulting organizational culture and norms emphasized the unquestioned authority of British rule and encouraged venality within the ranks. The antecedents of contemporary policing culture can be found in the lifestyles of the Raj's rulers, in which *sahibs* and *memsahibs* lived in sprawling bungalows with retinues of servants (Verma, 1999, p. 271). The British built few hospitals and schools but police buildings were numerous and imposing (Metcalf, 1994, pp. 177–9). The pageantry and grandeur of the senior officers was a visible form of authority. The morning parade and salute, the armed guards and escorts were symbols that placed officers on a pedestal. In addition, paternalistic

Policemen attend a ceremony for their outgoing chief Kuldeep Khoda at Zewan police academy near Srinagar on 31 May 2012. A local court earlier this week dismissed a petition filed by the relatives of three civilians who had accused Khoda of being involved in alleged extra-judicial killings. © Tauseef Mustafa /AFP Photo

governance allowed selected officers to make many decisions for the people (Griffiths, 1971). With administrators above the rule of law, there was no avenue for complaint against the brutalization and corruption of the institution. This organizational ethos, the indifferent styles of administration, and the deliberate alienation from the citizens have all contributed to misuse of force by the police.

This remoteness, and the emphasis on serving the state rather than the people, continued after independence in 1947. Even today almost all police personnel continue to live in isolation from civilian communities. Police buildings remain imposing structures, designed not for efficient service to the people but to keep them at a distance (Verma and Subramaniam, 2009).

Police leadership is provided by the Indian Police Service (IPS), the civil service responsible for managing the functions, behaviour and use of force by the hundreds of thousands of personnel under their command. Within the IPS, too, a culture of impunity has developed (National Project on Preventing Torture in India, 2008). In

theory, the judiciary controls police action, but this is itself even more remote and cumbersome. Consequently, police personnel are generally not well supervised, and are often wary of being called to account by their superiors.

Inadequate training

The training of police personnel is generally in a dismal state. There are no consistent standards and most training institutions lack both basic amenities and sufficient instructors. Some states, for example Bihar, have yet to establish a training academy and most police academies are neglected. The instructions in the use of force, legal procedures, and interaction with the citizens are rudimentary and unsatisfactory. The present training of police personnel tends to be militaristic, stressing how to use force rather than the responsibilities of police to civil society (Mukerjee, 2003).

Training in the Central Police Forces (CPFs) is of a higher standard, largely because the CPFs have better resources and function more like the army, where training receives greater

attention. The Central Industrial Security Force established a National Industrial Security Academy to provide training in security at major facilities, in industrial law and in human right issues. Intelligence processes, handling sophisticated weaponry, and electronics training also are provided. Special programmes to impart security awareness and skills in handling security at airports, parliament and other sensitive facilities have been developed.

Similarly, the Indo-Tibetan Border Police Academy organizes courses on conventional warfare, intelligence, field engineering, VIP security, commando operations, and counter-insurgency operations. The Border Security Force Academy at Gwalior has developed expertise in the field of border security and its management, as well as in the conducting of counter-insurgency operations and human resource development. It has also developed courses on resettlement and rehabilitation since the force frequently has to operate in areas affected by insurgency and disturbed situations (BSFA, 2012).

Training syllabi can instil greater professionalism, but syllabi alone cannot counter the basic attitudes in which excessive force is encouraged (Austin, 1999, p. 600). A major consequence of training is, rather, to foster a culture in which police consider themselves agents of the state more than servants of the public. There is a paradox in this system in which training to serve the people supports service of the state, sometimes against the people. The police are institutionally powerful, the strong arm of the state; citizens regard the khaki with dread. The absence of accountability plus extraordinary discretionary power encourages misuse of authority.

From the inception of Indian policing, its power could not be fully controlled by law makers and magistrates. Much of the impact of the police lay in petty tyranny, corruption, and brutality (Kumar and Verma, 2008). The Indian police, at both central and state levels, emerged as armed hands of the government, distinguished primarily by their ability to use force against civil strife and violations of laws.

Use of deadly force by police

Indian police are often accused of using unnecessary force. Anecdotal evidence suggests that this impression is not without justification. Official data about police use of force is supplied by the National Crime Records Bureau (NCRB), the nodal agency for the collection and publication of statistics pertaining to police personnel, crime, arrests and police–citizen interactions. However, the NCRB relies on the different state governments to provide the data—and many states delay submission or report in an extremely careless manner. There is little scrutiny for veracity and there are frequent glaring discrepancies. The doubts surrounding NCRB data have been elaborated on in a previous IAVA *Issue Brief* (Kohli, Karp and Marwah, 2011, p. 3). Nevertheless, the NCRB remains the only available source of systematic national data on the use of police force.

The numbers do suggest that Indian police appear to resort frequently to the use of deadly force. In fact, '35% of complaints to the National Human Rights Commission annually are against the police' (NHRC, 2011). Table 2 shows deadly incidents have increased dramatically from 2004 to 2010, as did the number injured, although the number killed is down.

The NCRB breaks down these incidents by the type of police operation in which they happened, as shown in Table 3.

The number of citizens being killed in the name of order maintenance and anti-crime operations is high, though

Table 2 **Police firings and civilian casualties, 2004–2010, as reported to NCRB**

Year	Total incidents	Number killed	Number injured
2004	791	420	257
2005	777	355	373
2006	1,363	472	432
2007	865	250	616
2008	1,529	317	758
2009	1,280	184	490
2010	1,421	239	713

Source: NCRB, 2011, p. 155

Table 3 **Police firings by type of incidents, 2004–2010, as reported to NCRB**

Year	Operation	Civilians killed	Police killed
2004	Riots	26	1
	Crime operations	239	12
	Extremist operations	85	51
	Other*	70	17
2005	Riots	44	4
	Crime operations	78	1
	Extremist operations	166	36
	Other	67	4
2006	Riots	41	7
	Crime operations	112	8
	Extremist operations	246	48
	Other	63	1
2007	Riots	52	5
	Crime operations	90	12
	Extremist operations	54	42
	Other	54	0
2008	Riots	77	3
	Crime operations	85	5
	Extremist operations	79	126
	Other	76	31
2009	Riots	20	2
	Crime operations	57	6
	Extremist operations	44	97
	Other	63	26
2010	Riots	97	2
	Crime operations	37	1
	Extremist operations	48	147
	Other	57	16

Source: NCRB, 2011, p. 155

*For NCRB's 'other' category there is no definition for the types of incident it encompasses, yet it is relevant as it includes a significant number of the reported police and civilian deaths.

such operations can also result in the deaths of police personnel. The continuing occurrence of such deaths is a matter of concern and calls into question the professionalism of the force in dealing with civilian unrest and criminal behaviour. The large number of police casualties in anti-extremist operations presents another picture—the strong challenge being posed to the Indian state by terrorists and armed militants.

There is no data available regarding the application of non-lethal force by the police, but it is revealing to note that there were 66,018 registered incidents of rioting during 2008, in which three police personnel lost their lives and 2,129 were injured (NCRB, 2009, pp. 58, 158). Smaller incidents are recorded in a police station diary for internal management purposes and are unavailable to outsiders. A sense of the problem comes from a study of a small district, in South India. The study revealed that, although more than 2,000 order maintenance events occurred in this district from March 2003 to December 2004, police intervened in almost 750 instances, and deadly force was used in less than one per cent of these (Kumar, 2009).

Failure to record the use of force is highly problematic in cases of unlawful coercion. Police have a reputation for threatening illegal force to extort money from vendors, drivers and even from those seeking police assistance. These go undocumented, except sometimes as false cases to harass people who refuse to accede to illegal demands. The media regularly report on this common phenomenon: 'There's an unmistakable swagger in modern day cops as they increasingly turn into a *brutal* and brutalizing *force*' (*ToI*, 2010). Few would challenge the conclusion that torture is still widely practised in India by the police, as well as by paramilitary units and other law enforcement agencies.

Police perceive the practice as standard operating procedure for criminal investigations, many of which end with a confession obtained through torture or intimidation (Mohan, 2008).

Human Rights Watch (HRW) has reportedly found evidence of the widespread use of torture and illegal force by the Indian police, concluding that 'the most visible arm of the Indian state is as lawless and ineffective as those that exist in impoverished, post-colonial states around the world' (HRW, 2009, p.5). Police are widely believed to rely on illegally elicited confessions from suspects as their primary investigative tactic, rather than gathering forensic evidence and witness accounts. Officers function in an environment that condones such practices, and sometimes compels them to resort to violence and to ignore the people's rights—especially those of traditionally marginalized groups.

Although Table 4 relates only to reports made by the police themselves, and should be assumed to be incomplete, it raises uncomfortable questions. The small number of officers charged suggests that state investigations are not thorough—or that officials are possibly not concerned about these incidents. In the cases of custodial death and death due to excessive use of force 'criminal investigation and prosecution against the perpetrators is rarely initiated' (OHCHR, 2012). The umbers of suicides and deaths while attempting 'escape from police custody' are equally troublesome. While even official data substantiates claims of police brutality, other sources

suggest the actual total is much higher. In contrast to the 38 custodial deaths reported by the police in 2006, the Nation Human Rights Commission received complaints of 119 deaths in police custody, 89 deaths in faked encounters, and 15 disappearances during the period from 1 April 2006 to 31 March 2007 (NHRC, 2006–7, p. 296).

The Commonwealth Human Rights Initiative (CHRI), too, draws attention to a culture of impunity that exists regarding wrongful acts perpetrated by the police. Abuse of power, bias, corruption, illegal methods, and excessive use of force, even when well documented, are left unattended and unpunished. Common forms of abuse include extrajudicial 'encounter' killings (see below), widespread torture as a method of investigation, unjustified arrests, refusal to register First Information Reports, excessive detentions, reluctance to accept complaints or investigate them, and giving false evidence (CHRI, 2011).

Encounter killings

Perhaps the most worrisome phenomenon in the police's use of force is the prevalence of 'encounter killings' (extra-judicial killings), in which police kill a suspect and report it as self-defence.[5] Such executions have long been part of the Indian socio-political landscape. Fake encounters occurred during the years of colonial rule (Saxena, 1997), and returned after independence. In the 1960s, the euphemism *encounter killings* began to be used to

Table 4 **Deaths in police custody, 2006–2010, as reported to NCRB**

Year	All custodial deaths	Suicide	Attempting escape	Officers charged
2006	89	24	7	1
2007	118	31	7	7
2008	81	38	6	3
2009	84	21	8	12
2010	70	18	7	n/a

Source: NCRB, 2011, pp. 151-4

describe extrajudicial killings in 'encounters' with police.

Police encounters in India are officially portrayed as spontaneous, unplanned shoot-outs in which the criminal or perpetrator is almost invariably killed and there are hardly any injuries to the police (Belur, 2007; Belur, 2010). There is considerable acceptance, by citizens, politicians and the media, of this use of deadly force. Encounters are seen as a response to organized crime, terrorism, and lawlessness. 'Encounter specialists' have been acclaimed by the media and courted by the establishment. In some cases 'alleged perpetrators, belonging to the police or the armed forces, have been awarded out of turn promotions, or have in other ways been rewarded' (OHCHR, 2012). Dayanand Nayak, a police sub-inspector from Mumbai, reportedly killed more than 50 gangsters during his career–which is celebrated in several films, including *Aan*, *Ab Tak Chhappan* and *Kagaar* (Gupta, 2003; Johar, 2010). Police Commissioner M. N. Singh reportedly praised the phenomenon for keeping organized crime in check (*Indian Express*, 2001). In some cases senior-level officials are complicit in sanctioning encounters. The Central Bureau of Investigation, India's premier investigative agency, found evidence of the involvement of the Home Minister of Gujarat in the staged killing of a suspect, a case in which several police officers were sent to prison (Ghoge and Das, 2007; *Outlook India*, 2010).

Not surprisingly, regions facing widespread violence from crime, gangs, separatists, extremists, or terrorism appear more affected by encounters than other areas, but a lack of data makes reliable comparison impossible. Diversity of circumstance further complicates understanding. In the 1970s and 1980s, for example, Uttar Pradesh was ravaged by *dacoit* (bandit) gangs operating with impunity. The police, with open encouragement from the

Chief Minister, began a campaign that led to hundreds of encounter deaths, sometimes killing obvious criminals, sometimes the obviously innocent, neither with due process (NPC, 1981). This approach was even more blatant in Punjab, where Sikh separatist violence grew in the 1980s. The Punjab police, under the leadership of K. P. S. Gill, reportedly killed thousands in the name of counter-terrorism (Kumar et al., 2003). The policy succeeded spectacularly in wiping out Sikh terrorism, but with deaths from 1984 to 1996 estimated at 25,000, it left questions about the legitimacy of the state action. Reports of persons missing from their home, killed in encounters, cremated as unidentified, and having escaped from police custody were common during this period (Kumar et al, 2003).

Encounters have not been perceived as a major problem in India. Especially in large cities such as New Delhi and Mumbai, they appear to be a deliberate short cut, bypassing the delay and uncertainty of the criminal justice system (Belur, 2010, p. 71). Research shows near unanimity in the perception among officers that encounters are effective (Belur, 2010, pp. 67–78), and, barring a few cases, encounter killings have not been labelled officially as 'deviant acts'. As already mentioned, respected media organizations advocate its use against criminals and terrorism suspects (Sanghvi, 2010).

Table 5 **Number of complaints against police, 2004–2010, as reported to NCRB**

Year	Complaints received	Officers charged
2004	51,060	1,191
2005	61,560	9,047
2006	62,822	7,936
2007	51,767	941
2008	48,939	1,132
2009	54,873	1,618
2010	58,438	861

Source: NCRB, 2011, p. 161

Statistics reinforce this impression. The NCRB has begun reporting the total number of complaints received against police personnel and the number of officers being criminally charged for these complaints. Table 5, which presents national data over the past few years, shows that only a fraction of complaints result in officers being charged.

The fluctuations in the number of police officers charged, which increased nine times between 2004 and 2005 and then decreased just as extraordinarily after 2006, is difficult to explain. It may reflect changes in police reporting practices rather than anything else. Difficulty in analysing these trends is further compounded by large variations amongst the different states. Judging whether the number of complaints is acceptable is important, and calls for further research, as does the seemingly arbitrary variation in the number of officers charged.

Mechanisms to control police use of force

Indian police authorities are not unaware of the criticism directed at them and have tried to respond, largely through more effective crowd control (*The Hindu*, 2010). To minimize the use of force in handling civil conflicts, a variety of situational preventive methods has evolved. Access control over the physical space is of utmost importance in handling unruly crowds (Verma, 1997, p. 74). Officers are expected to apply creative methods to diffuse conflict and to control mobs with minimal use of force. It is difficult, however, to assess how much such situational prevention methods help.

There have been various attempts to rein in police use of force. The most important efforts at reform have come from outside the police and the

Home Ministry. In specific instances commissions of inquiry were set up and police officers found guilty were punished (Mohanty, 2011).

Two initiatives designed for systematic reform deserve special attention: the National Police Commission and National Human Rights Commission.

The National Police Commission (NPC), set up in 1978, made the first systematic attempt to deal with use of force by police personnel. During that period *dacoity* (gang robbery) had become a serious problem in some states and the police were resorting to massive operations and 'encounters' to deal with the gangs (Khan, 1981). The NPC examined the crimes of *dacoity* and found that investigation and prosecution were hindered by witness intimidation and long delays in court proceedings. These, together with difficulties in prosecution, led police to seek alternatives. Encounter killings thus emerged from the perception that criminals were taking advantage of the system to escape conviction.

In a legitimate effort to facilitate prosecution, the NPC proposed ingenious solutions such as severe punishments for bail violations. If accepted, these could have set a precedent for other serious crimes such as terrorism and organized crime. The NPC also proposed greater police accountability through Security Commissions and by shielding the police from direct political interference. These measures were, however, not accepted by the government, apparently because of the reluctance of political leaders to dilute their control over the police apparatus (Verma and Subramaniam, 2009).

The National Human Rights Commission (NHRC) was set up through the enactment of the Human Rights Act of 1993 to address the growing outcry against violations of citizen rights by state agents. The commission was instructed to inquire into violations of human rights, to promote awareness of human rights, and to involve NGOs in this endeavour. The NHRC has pursued a variety of issues related to human rights violations by police personnel. These include preventive detention laws, the protection of human rights in areas of insurgency, the power of police to arrest in criminal cases and, as a preventative measure, the setting up of human rights cells within state and city police units, and taking steps to check custodial deaths, rape and torture by police.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has called for a 'special focus on the areas of the country where specific forms of unlawful killings take place. In some instances some form of transitional justice may be required, to ensure justice to the victims, break the cycle of violence, and to symbolize a new beginning' (OHCHR, 2012).

A police officer shields himself from stones being hurled during a demonstration following the death of protestor Asif Mehraj, killed by Indian police in Srinagar on 4 August 2008.   © Tauseef Mustafa /AFP PHOTO
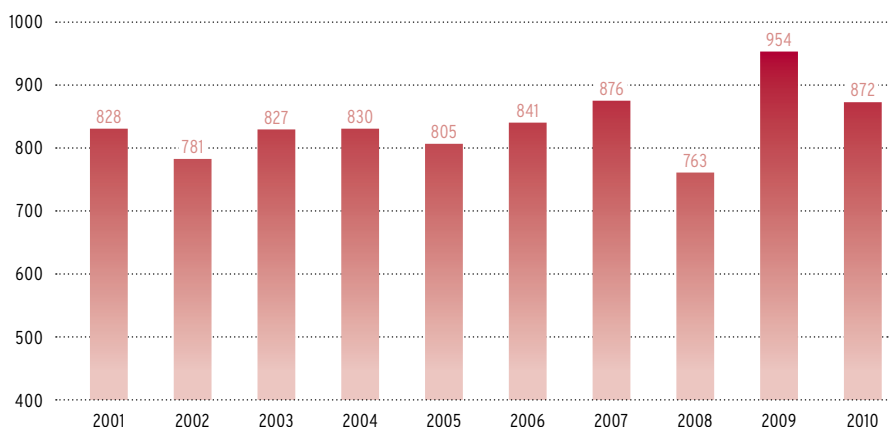
The denial of fundamental freedoms and human rights by the states creates conditions of social and political unrest' (NHRC, 2008, p. 28). The police's use of force is an unfortunate consequence of these conditions, which promote conflict and violence in Indian society. The commission also acknowledges that some of the common and persisting features of human rights violations in the country are torture, the disappearance of suspects, deaths in fake encounters, and deaths in police custody.

The path of reform

The misuse of force casts a dark shadow over India's police establishment. In a democracy, police are expected to function with cooperation from citizens and to be accountable to them for their actions. Both cooperation and accountability are missing in India. The police have a reputation for brutality and extortion, and citizen distrust of them is widespread. Little is being done to restrain police excess. Police academies lack courses for training officers in minimizing the use of force. The organizational

Figure 1 **Total violent deaths of Indian police on duty, 2001−2010**   Source: NCRB, 2011, p.567

Year	Value
2001	828
2002	781
2003	827
2004	830
2005	805
2006	841
2007	876
2008	763
2009	954
2010	872

Jammu Kashmir policewomen detain Kashmiri women during a demonstration in Srinagar, September 2006.

© AP Photo/Dar Yasin

culture, too, does not promote restraint on the part of officers. There is acceptance, and even sanction at the highest level of leadership, of encounter killing.

Indian police routinely confront the danger of violence, which results in many deaths on duty (Figure 1). Dangers range from the special risks of domestic violence to mobs, organized crime, insurgency, terrorism and especially accidents while on official duty. In 2010, 857 Indian police died while on duty (NCRB, 2011, p. 157). In comparison, in the United States, with one-quarter the population, 157 police died on duty that year , a comparison that deserves careful comparative analysis (Reuters, 2011).

Since police presence in India is generally thin, situations arise where a small number of police officers are caught amidst large and hostile crowds, and incidents of police officers murdered or injured by mobs are not infrequent.

Police must continue to have recourse to force to maintain order and protect the innocent. But this use of force must be subject to the rule of

law. The nation's political leadership must focus upon proper training and the provision of adequate resources to handle serious situations. Events that lead to the use of force, particularly dangerous force, must be examined and lessons drawn. However, the lack of comprehensive data on such incidents—the inadequacy of state submissions to the NCRB—and the seeming indifference even to reliable crime statistics show that basic management is being ignored. It is important to develop and use outcomes-based metrics to define operational success and to evaluate managerial performance (Wilson, 2006, p.174).

Progress can be made, as illustrated by the efforts of the NHRC. India is fortunate to have an active judiciary that shows great concern for the rights of the citizens. The media, too, is independent and willing to confront the government. There is a strong civic and human rights lobby that pursues police excesses. Yet the outcome remains less than ideal.

The puzzle of Indian democracy is why the rule of law has not been firmly established. Until that

question is resolved, police use of force will remain unregulated. ◼

Notes

1   Encounter killings, or custodial or encounter deaths, describe extrajudicial killings in 'encounters' with the police, which are often considered to be 'fake', effectively cases of 'arbitrary street justice' (Belur, 2010, p.9).

2   The Gujjars are a small community, based largely in Rajasthan, who launched violent agitation to force the government to accept their status as a 'backward caste' so that they might become eligible for reservations in government jobs and educational institutes. The government acquiesced to their demands.

3   Author's observation during his service as an officer in the Indian Police Service, 1978-1991.

4   Author's observation during his service

as an officer in the Indian Police Service, 1978-1991.

5. In March 2012 the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, reported that 'despite constitutional guarantees and a robust human rights jurisprudence, extrajudicial killings is a matter of serious concern in India' (OHCHR, 2012).

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About the India Armed Violence Assessment

The Indian Armed Violence Assessment (IAVA) promotes research and supports India's social science communities dedicated to studying the causes and consequences of armed violence. Developed in coordination with Indian partners, the IAVA explores wide-ranging issues related to the instruments, actors, and enabling institutions that shape security. It intends to catalyze evidence-based debate in India and facilitate Indian contributions to global policy and programming on related issues. The project is supported by the Small Arms Survey.

IAVA *Issue Briefs* review the state of knowledge on key themes associated with armed violence. Commissioned by the Small Arms Survey, *Issue Briefs* summarize major findings and insight into issues related to conflict and crime-related violence, perpetrators and victims, prevention and reduction, and strategies to contain violence. They stress data-based research findings on the scale, forms, and severity of armed conflict, contributing forces, and the impact of policy responses.

All IAVA *Issue Briefs* are available in English and Hindi. They can be downloaded at www.india-ava.org. Print copies are available from the Small Arms Survey.

Credits

Contact details

Sonal Marwah, IAVA Project Coordinator: sonal.marwah@smallarmssurvey.org

Aaron Karp, Senior Consultant, Small Arms Survey: akarp@odu.edu

India Armed Violence Assessment
EP-16/17 Chandragupta Marg, Chanakyapuri, New Delhi12 – 110021, India

Small Arms Survey
47 Avenue Blanc, 1202 Geneva, Switzerland

t +41 22 908 5777 **f** +41 22 732 2738