THE BRITISH POLITICO-LEGAL STRUCTURE
AND POLICE ACCOUNTABILITY:
A CRITICAL APPRAISAL

Basharat Hussain*, Amir Zada Asad**,
Muhammad Ibrar***, Abdul Manan****

Abstract

The police organization is one of the key agencies of social control in any society. Police are considered as the gatekeepers of the criminal justice system. They serve on behalf of the state with the primary responsibility of keeping peace, control and taking criminals away from the community. In order to carry out their duty, the police have been granted certain powers such as arresting and detaining suspected individuals. However, it is also important to maintain proper control over police forces to avoid any abuse of powers by them. This requires a legal framework which ensures the proper accountability of the police force.

One of the main features of the police governance is the extent to which the police force can be made accountable for the duties it performs. National police systems in the world are, theoretically at least, accountable to their national parliament. In England and Wales for instance, the accountability of the police force is as complex as its structure (Mawby and Wright, 2003). This became a major political issue during 1980s about not only the accountability of police force but also as to who should control the police force. In recent years, this debate has been greatly concerned with the performance and effectiveness of the police force. However, efforts have been made to take the politics off from the police and to make politics-free policies for police governance; however, however concerns regarding

* Asst Prof. Department of Social Work, University of Peshawar
** Prof. Department of Social Work, University of Peshawar
*** Lecturer in Social Work, Institute of Social Work, Sociology & Gender Studies, University of Peshawar.
**** Principal, Law College, University of Peshawar
police governance, performance and accountability remain profoundly political. This article starts with providing the basic framework of the police force in England and Wales. It also discusses some of the important legislations concerning police force during the last 40 years.

Key Words: Police Force, Accountability, Crime Control, Tripartite System, Police Reforms

The Framework of Police Governance

Before going to discuss the police accountability in England and Wales, it is important to understand the structure of the police force which operates. Unlike national police forces in many parts of the world, the structure of the police force in the UK is completely different (Mawby and Wright, 2003). The England and Wales comprises of 43 territorial divisions of police force on geographical basis. The police force in Scotland comprises of eight regional police forces whereas in Northern Ireland, the Police Service of Northern Ireland is in operation since 2001 replacing the Royal Ulster Constabulary. Along with the above mentioned police forces, there are some other special police forces which operate throughout the UK, such as Ministry of Defense Police, British Transport Police, and the United Kingdom Atomic Energy Authority Constabulary. On the other hand, the Jersey, Guernsey and the Isle of Man have their own police forces whose jurisdictions are limited to their respective islands. Therefore, the police force in UK constitutes many forces which operates in their respective jurisdictions (Mawby and Wright, 2003).

The Tripartite System of Police Accountability

The mechanism in place for the accountability of 43 police forces in England and Wales has been characterized as ‘the tripartite structure of police accountability’ (Mawby and Wright, 2003:241). This mechanism for police accountability was recommended by the Royal Commission on the Police in 1962 and was established under the Police Act 1964. Under the tripartite system, the responsibility for police accountability has been distributed among the Home Office, the local police authority and the Chief Constable of the force. The tripartite system has been endorsed by the legislations since the enactment of the Police Act 1964 such as the Police and Magistrates Courts Act 1994, the Police Act 1996.
and the Police Reform Act 2002. Despite its legal reorganization, the tripartite system has always remained controversial (Reiner, 1993).

It is important to keep in mind that the tripartite system of police governance was already in place in Scotland prior to its introduction in England and Wales under the Police Act 1964 (Walker, 2000). However, later reforms that were conducted in England and Wales were followed in Scotland in their main legislation on police i.e. the Police (Scotland) Act 1967 (Oliver, 1997).

Under the tripartite system, the police accountability has been delegated to the Parliament through Home Secretary to the Parliament. At the same time, police accountability by the local population has been ensured through the local police authorities. The composition of local police authorities includes local counsellors, business representatives and magistrates. The Chief Constables are practically responsible to respond to the Home Office and Her Majesty’s Chief Inspector of Constabulary for their policies and circulars. Arguably, under the current arrangements, the autonomy of the chief constables is limited (Mawby and Wright, 2003).

Prior to 1962, the police force in England was set up such as the chief constables in urban districts were accountable to Watch Committees and Chief Constable in rural districts was accountable to a Magistrates Committee (Jones, 2003:608). This system paved the way for a large amount of police corruption, which reached a peak in the 1950s. In order to respond to the situation, the 1960s Royal Commission on the Constitutional Position of the Police was established to solve couple of contentious cases of the 1950s, which ‘cast doubt on the adequacy of the means of bringing the police to account’ (Critchley, 1978:268 as cited in McLaughlin, 1994:5).

Since the late eighteenth and early nineteenth centuries, concerns about the direction and control of powers vested in the police have surfaced regularly at time of political tension. The 1964 Act placed each force under the ‘direction and control’ of its chief constable. The act also provided the Home Secretary with an array of powers and established in statute the increasing dominance of central government within the framework of police governance (Jones, 2003: 608).

As mentioned above, the police authority that has been formed by the Home Secretary was taken from the most influential and largest police force – the Metropolitan Police. The Home Secretary enjoys numerous powers. For example, the Home Secretary could ask chief constables to resign in the interests of competence; could closely observe a particular policing matter in an area and initiate local investigation inquiry to
assess the issue. Furthermore, the appointment of police authority was also entrusted to the Home Secretary (Jones, 2003).

In response to the public demand concerning the central government's attention to the accountability of the police force, a commission known as the Royal Commission was put into police force during early 1960s. According to Baldwin and Kinsey (1982: 106), ‘the Royal Commission on the Police reported in 1962 that the chief constable should be accountable to no one for enforcement policies’ Soon after the Royal Commission of 1962 was reported, the development of the Police Act, 1964 was put into place. The Police Act of 1964 introduced new Police Authorities which were composed of local councils and their duties included: approval of budgets, appointment of chief constable, appointment of deputy constables, appointment of assistant constables, approval of size of local police force, deal with complaints against senior officers, approval of police building and equipment and can call the Chief Constable to retire (Baldwin and Kinsey, 1982: 107).

Police Legislations Since 1990s

1990s were crucial times of reform in the system of police governance, with the central piece of legislation during this time had been the Police and Magistrates’ Court Act of 1994 (later consolidated under the Police Act 1996). The police authorities were given independent status set apart from the local government structure. Their duty under the above mentioned Act was to provide ‘efficient and effective’ policing services. Moreover, the size of most of the authorities was restricted to 17 members, consisting of nine counsellors, three magistrates and five ‘independent’ members. These independent members were to be appointed according to complex process but with significant local involvement. In addition, the chief constable drafts the local policing plan and sets the annual budget and may now be subject to fixed-term contract. The Act also provided the Home Office with a number of new powers. Greater power was given to the Home Secretary as well to join police forces. Finally, under the new system, the Home Office started to provide police forces with the annual cash budgets, thus, relinquishing direct control over staff appointments and spending of capital (Jones, 2003). Hence, greater monopoly on overall spending was increased but direct check on the details of spending was minimized (Newburn and Jones, 1996).

One of the purposes of Police and Magistrates’ Court Act (PMCA) 1994 was to empower and strengthen the local police authorities by granting
them additional powers such as greater involvement in designing and developing local policing plans. However, contrary to the PMCA 1994, the Police Reform Act 2002 gave more powers to the centre. One such move was the introduction of National Policing Plan by the Home Secretary. The implications of the act on the pluralisation of policing are significant. The Act enabled the chief constables to appoint the supporting staff to assist the police authority including Community Support Officers, Detention Officers, and Investigating Officers. The main responsibility of these supporting staff was to help and support the police authority in controlling minor crime and anti-social behaviour (Jones, 2003). It is also worth mentioning that the idea of ‘extended police family’ was publicly welcomed when district and street wardens were introduced (Jones, 2003).

**Impediments in Police Accountability**

The implementation of the Police Act, 1964 is the beginning of the end for local police forces in England. Police forces are unjustly becoming more accountable to the Central Government rather than being accountable to the taxpayers and the law. The continuation of such a trend will lead to a down spiraling of police accountability to the law and the public.

Although, the Police Act 1964 deals with the issue of police accountability, it is still a major issue in policing and criminology studies today. Accountability can be defined as ‘the liability to account for decisions after it has been taken’ (Baldwin and Kinsey 1982: 106). This is often confused with the idea of control. According to Baldwin and Kinsey (1982:106), control ‘… exists where influence is exerted in making a decision’. As it has been said that modern day Chief Constables are accountable to Police Authorities even though in the Royal Commission on the Police reported in 1962 stated that the Chief Constables should not be accountable to enforcement policies or any other authority under this structure (Baldwin and Kinsey 1982: 106).

The commitment of the government in making the public services including police service as business like entities in their management was no doubt to expand the local police authorities. The traditional role and responsibility of the police authority as mainly elected adjunct to the district council was considerable weakened under the Police and Magistrates’ Act 1994 as a result of the then government’s proposed plan to improve the competence of the police forces (Loveday, 2000). In what proved to be a bogus claim, the same government radically reduced
the membership of local police authorities, from around 30 members to 16, while requiring the new authorities, along with the Home secretary, to jointly select ‘independents’ nominations to make these bodies more ‘representative of the community’. It is difficult to note that while the Conservative Home Secretary, Michael Howard, was to claim to seek wider social representation; ultimately those independents that were to be selected were drawn overwhelmingly from professional and/or business backgrounds. The main reason behind the claim that Chief Constables are accountable to Police Authorities is due to the fact that Police Authorities are responsible for their annual police force budgets (Loveday, 2000:215).

Due to the fact that the Police Authorities have control over the budget, it is necessary that the Chief Constables work with the authorities in order to assure that their budgets are able to maintain the entire force. In this way, it seems as though the Police Authority has more control over the Chief Constables than the Chief Constables being accountable to them. The police authority is also responsible for ‘drawing up the Local Policing Plan each year. Within the latter, the police authority is able to identify local policing objectives and targets for the police force on an annual basis. The same policing plan will also accommodate those national key objectives identified for the forthcoming year by the Home Secretary’ (Loveday, 2000:215). This is clearly evident that the police authority has a great deal of control over local police forces. They are able to set the budget of the force and advise the chief constable what the force should be prioritizing. It seems absurd to impose these goals on all local police forces, considering the fact that certain types of crimes are distinctive of different communities. The local police should create local police objectives with the input of the community. In the early 1980s, the Scarman Report into the disturbance in Brixton argued that the local populations’ confidence on the police had been lost mainly in many inner city regions which are populated by ethnic minority communities (Scarman, 1981).

The Police and Criminal Evidence Act 1984 under paragraph 106 established the Police Community Consultative Groups. The aim for the establishment of consultative groups at local communities’ level was to promote communication, understanding and consultation of the local communities with the police commanders. However, it is evident from different researches that these consultative groups were poorly attended and were ineffective due to its non-representativeness in nature. Lack of appropriate powers did not make them a platform for the police for explaining their policies and activities (Morgan, 1992). Although both
Police and Criminal Evidence Act of 1984 and the Police Act of 1996 have established police / community consultation groups via the police authority, they have not proved to be effective (Loveday, 2000:216). The community members that tend to take part in communicating with the police are not representative of the whole communities, but only a portion of it; and therefore they do not offer an accurate account of the communities needs (Loveday, 2000:217). It can be concluded that it is still; therefore, the responsibility of setting local policing goals is still in the hands of the Police Authorities and the Home Secretary.

It is arguable that the Police Authorities are accountable to the Home Secretary. ‘The police authority does appoint, and may dismiss ‘in the interest of efficiency’ the Chief Constable (as well as Deputy and Assistant Chief Constables); however these powers are subject to the Home Secretary’s approval’ (Reiner 1993:17). The police authority were empowered to make appointments at the senior command post including the appointment of the chief constables, however, all such appointments were subject to the final approval by the Home Secretary. Not only this, the other powers of the police authority were also subject to the chief constable and Home Office cooperation (Reiner, 1995)

It has also been argued that Police Authorities do not achieve what they were set up to do because they do not use their powers to their full potential (Baldwin and Kinsey 1982:109). ‘a survey in 1976 revealed that seven Police Authorities never asked for reports from their chief constable and twenty-four did so infrequently’ (Baldwin and Kinsey 1982:109) which shows the failures of Police Authorities. They were given certain powers to achieve goals of improving police accountability and are not using those powers in the correct manner. In the cases of the 1976 survey, it is a huge problem that the Police Authorities do not request frequent reports from the Chief Constables. If it is up to the Police Authorities to create an annual budgets they would need something to base that the budget on, without a reports from the Chief Constable of some kind, the authorities would fail to make an appropriate budgets for the police force. However, other evidence shows that even with reports from the chief constable it is very difficult for authorities to accurately judge the performance of police force. ‘Nor was the police authority able to make a real judgment of police efficiency through league tables or other performance indicators as it had no source of information or analysis that was independent of the police’ (Loveday, 2000:216). It appears from this that the police authorities are not able to properly work with the chief constables, as they do not have
enough information. Therefore, police authorities have a vast amount of power for fundamentally no purpose.

Although the majority of police are concerned more with local policing, national policing is an issue (Loveday, 2000:225). However, with an expansion for the need for national policing there is an expansion of the Home Secretary. Loveday (2000:225) stated that ‘as such, these developments may only have further enhanced the responsibilities of the Home Secretary which have been substantially expanded under successive legislation’. With the expansion of the national police, the legislation gives more power to the Home Secretary. As stated above, the Home Secretary already holds a vast amount of power over the local policing institutions. Any additional powers to the office of the Home Secretary would be dangerous to the justice of the policing system on a local and national level.

Accountability is a tricky subject. There is no right answer on how to deal with the problem of accountability. ‘It seems there are two problems with proposal on accountability. First, the extent to which it is in practice possible to exert increased democratic control over policing policies without running over into strictly operational matters. Second, the question whether those arguing for more democratic control make any such distinction between operational and ‘wider policy’ matters’ (Baldwin and Kinsey 1982:110-111).

According to the above source, there are two major factors in accountability, policy and operation. Scholars who argue for democratic control ask for public participation in policing by voting in all members of the police authority. While this would be an improvement to the police authority, it would also be in the interest of the public to find away for all members to have an input on police goals and objectives.

One recommendation would be an annual census mailed out to all homes in a police district. This could help reach the public that is not able to participate in community / police liaison groups already in place. This would create a greater sense of police accountability to the public. It would also be a great second source for the police authorities to use, alongside Chief Constables reports, in order to make proper annual budgets and annual policing goals.

Secondly, the judicial system should take a more active role in policing via judicial review of the Home Secretary and Police Authorities. This would create a more circular means of police accountability, making sure that no one section of the parties involved with policing gains more control over the other.
Thirdly, a possible separate office within the Home Secretary’s office that deals with only national policing issues would help limit the influence of the Home Secretary. This would give separation of powers to the Home Secretary’s office and possibly prevent corruption that may occur from holding too much power.

Finally, there should be a sort of community committee that keeps their eye on the local police authorities. If police authorities are not using their position to accurately hold the chief constable accountable to them, then the Home Secretary should know about it. If there was some sort of secretarial community office that was able to demand reports from the police authorities then that would, possibly, help improve the strength of the police authorities in holding the local police accountable (Reiner and Sarah, 1993).

Conclusions

The Police Act 1964 was the beginning of the continuous changing face of the police force in Britain. Although Britain’s police forces have been rooted in the tradition of local policing, that is rapidly changing to a more centralized police force. The Home Secretary holds a large amount of power in concern with police accountability; yet, the Home Secretary is not accountable to anyone (except in extreme cases, in which they are accountable to the judicial system).

The Police Authority, which is set up to manage police force, is not a success in many areas. They fail to make appropriate policing recommendations for local police force, do not properly include community input in recommendations, and they do not request frequent reports from Chief Constables in order to manage the force more effectively. If the Police Authority is the body that the Chief Constables are accountable to, then there is need to include the taxpaying community members more in the policing matters.

As a startup, it would be more effective to include community members and judiciaries more in police accountability issues. They need to make the police authorities accountable to the community, ensuring that the chief constables are being held accountable to someone. Without a complete change in the system of policing and police accountability, there will be no way to solve any problems with the system. Therefore, the demand for change in the police accountability system is paramount.
References