

**ANNUAL REPORT OF THE STATE POLICE
ACCOUNTABILITY COMMISSION, ASSAM, FOR THE
YEAR 2009**

“The great advantage of Police compliance with the law is that it helps to create an atmosphere conducive to a community respect for officers of the law that in turn serves to promote their enforcement of the law. Once they set an example of lawful conduct they are in a position to set up lines of communication with the community and to gain support”.¹

The aforementioned extrajudicial remark made by Justice Roger evinces the keynote of one of the essential arm of Government. As the civil force, the Police are to maintain law and order, prevent and detect crime, enforce the law, preserve public peace and tranquility. Success of democracy can be measured up comprehensively in the yardstick of accountability. Every member of the civil force and for that matter every other public authority are accountable for their decisions and actions to the public and owes obligation to submit themselves to whatever scrutiny is appropriate for the offence.

Considering the gravity of the situation and taking into consideration the direction of the Supreme Court in Prakash Singh & Ors v the Union of India², the State Legislature enacted the Assam Police Act, 2007 with the aim of providing an impartial and efficient Police service safeguarding the interest of people making Police force professionally organized, service oriented and accountable to law. The 2007 Act consists of ten Chapters. Chapter VIII of this Act provides for Police Accountability as an additional

¹ TRAYNOR Roger J, 'Lawbreakers, Courts and Law- Abiders' (1966) 41(4) Journal of the State Bar of California 478

² [2006] 8 SCC 1

device to the already available existing mechanisms and functions, duties and responsibilities of the departmental authorities. Accountability of the Police is sought to be enhanced through the additional mechanism detailed in Chapter VIII. In terms of Section 70 and 71 of the Assam State Police Act, the Governor of Assam was pleased to constitute the State Police Accountability Commission vide notification No. HMA 833/ 2007/51 dated 17.12.2007 with the following personage:

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| 1. Justice Dhiresh Narayan Chowdhury | - | Chairperson |
| Former Judge, Gauhati High Court Guwahati | | |
| 2. Shri Deepak Narayan Dutt | - | Member |
| Former Director General of Police, Guwahati, Assam | | |
| 3. Mrs. Jahanara Saikia | - | Member |
| Former Professor, Handique Girls' College | | |
| 4. Shri Dharendra Nath Saikia, IAS | - | Member |
| Former Commissioner & Secretary to the Govt of Assam. | | |

Consequently when the Commission was functioning Professor Mrs Jahanara Saikia (since deceased) submitted her resignation on health ground. Few days later Mrs. Saikia breathed her last. With the exit of Mrs Saikia, the Commission was deprived of an embodiment of commitment and civility. Shri Deepak Narayan Dutt, another Member of this Commission demitted the office on being designated as the Chief Information Commissioner. On the appointment of Mr. Dutt the Commission missed a reliable and efficient administrator, but on the positive side this loss to the Commission added to the strength of the people. The vacancy created by Mr. Dutt on his resignation has however not been filled up till date. Srimati. Minati Choudhury, Member of the Child

Welfare Committee, Guwahati came in place of late (Mrs.) Jahanara Saikia. Mrs. Choudhury assumed her office on 16-12-2009.

During the second year of its tenure, the Commission, despite many odds made its sincere endeavour to discharge its duties as mandated by the Assam Police Act, 2007. During the first year (2008) the Commission was solely dependent on the District Police Administration in the matter of enquiry/ investigation of cases registered by it. In June, 2009 the Commission constituted a three member Investigating Team of its own under the stewardship of Shri Rohini Kumar Bania,IPS, former Deputy Inspector General of Police as the Chief Investigator.

Though the size of the team is not adequate to take up desired number of cases for investigation, they have, in the meantime, made significant progress and have solved some of the important cases. However, the Commission is still dependent on the District Police Administration for enquiry/ investigation in majority of the cases which delays the proceedings.

At the beginning of the year 2009, there were 38 pending cases of the previous year (2008),out of which 19 cases have been disposed of during 2009. The number of new cases registered during the year is 26. Out of these, two cases have been referred by the Government, one case has been referred by the Hon'ble Gauhati High Court, two cases have been taken up suo-moto and 21 cases have been reported by individuals/organizations. Out of 26 new cases 8 cases have been disposed of. Thus the total number of cases disposed during the year stands at 27.

Tabular Statement of cases registered, disposed and under examination as on December 31, 2009

Year	No. of Cases registered/ spilled over	Disposed	Under examination by the Commission
2009	26	8	18
2008	38 (spilled over)	19	19
Total	64	27	37

Type of the cases registered during the year includes :-

- 1. Death in Police custody**
- 2. Death in Police firing**
- 3. Unauthorized detention in Police lock up.**
- 4. Misuse of Police machinery for recovery of private debt.**
- 5. Police involvement in land grabbing case.**
- 6. Police involvement in civil dispute.**
- 7. Non - Registration of FIR.**
- 8. Police inaction after registration of FIR.**
- 9. Miscellaneous matters**

Some of the cases of serious misconduct which were reported to the Commission as envisaged in Section 78 of the Assam Police Act. 2007 are enumerated below. These cases are only illustrative and not exhaustive.

ILLUSTRATIVE CASES

Case No. 63/2008, Complainant - Sri Abhijit Dutta

One Shri Abhijit Dutta of Pathsala, District- Barpeta filed a complaint before the Commission on 12-11-2008 stating, that on 6-11-2008 while he was coming out from the office of the SE, PWD Nalbari, after collecting a cheque on behalf of his brother-in-law Shri B.B. Dutta, a group of people led by one Sachindra Sharma intercepted him and led him to a local hotel in a bid to make him part with the cheque on the ground that the payee of the cheque Shri B.B.Dutta owes some money to the said Sachindra Sharma. Later in the day, Town Sub-Inspector, Tapan Kalita arrived at the scene and brought Shri Abhijit to the Nalbari P.S and detained him in the Police lock-up at the instance of the O/C of the P.S. Shri Kamal Singh from the evening of 6-11-2008 till afternoon of 7-11-2008 without registering any case. On 7-11-2008 when Dr. Utpal Dutta, father of Shri Abhijit Dutta came to the P.S, the O/C, Kamal Singh and S.I Tapan kalita coerced him to sign an agreement with Shri Sachindra Sharma assuring payment of Rs.5 lakhs to the latter within a stipulated period to facilitate his son's release from the custody. Thus the complainant prayed for appropriate action against Inspector, Kamal Singh and S.I. Tapan Kalita for illegal detention and harassment and sought protection from Police harassment in future.

The Commission called for a report from the S.P. Nalbari. The Commission also heard in person the S.P. Nalbari Shri Jitmal Doley, A.P.S & the O/C, Nalbari P.S Shri Kamal Singh. Considering the facts and the situation, the Commission thought it proper to cause a probe through its own Investigating Agency and entrusted the Chief Investigator to investigate the case.

On perusal of the materials on record submitted by the Investigating Officer and other connected records, it emerged that Inspector, Kamal Singh and S.I, Tapan Kalita had wrongfully confined the complainant Shri Abhijit Dutta on 6.11.2008 and 7.11.2008 and extracted an agreement for payment of Rs. 5.00 lakhs in two installments within the stipulated date at the behest of one Shri Sachindra Sharma. Investigation report further disclosed that the Police Officers were involved in manipulation of the records by omitting entries in the General Diary in order to commit the above mentioned illegal acts.

Detaining a person and confining one in the Police Station lock up is a reprehensible act of grossly undermining the individual liberty, guaranteed by the Constitution. Further, the act of extracting an agreement by police on the pain of purported criminal action by detaining in the Police Station lock up without registering a case manifest itself the malafide action of the above mentioned Police Officers.

The Commission is fully satisfied with the investigation made by the Investigating Agency. All things considered, the Commission considered it appropriate for recommending criminal prosecution against Inspector, Kamal Singh and S.I, Tapan Kalita, by treating the complaint as an FIR U/S 342/384/474 IPC read

with section 99 of the Assam Police Act, 2007 apart from initiating Departmental Proceedings against the Officers.

The Director General of Police, Assam, has also agreed to this and has reportedly initiated action as per recommendation of the Commission.

Case No. 59/2008 Complainant - Smti. Rupalim Dutta

One Smti Rupalim Dutta of Geetanagar, Guwahati, filed a complaint before the Commission alleging serious misconduct against Inspector Bina Kakati, O/C, All Women Police Station, Panbazar, Guwahati. As narrated in the complaint, Shri R.P Dutta, brother of the complainant married one Smti Anjali Sharma in the year 1999. After a few days of the marriage the relation between the husband and the wife reached a point of distrust and conflict. Smti Anjali Sharma allegedly misbehaved with her husband and in-laws on trifling issues. She had an earlier marriage which did not last because of her rude behaviour but this fact was concealed by her parents at the time of her marriage with Shri R.P.Dutta.

On 15-10-2008 after creating an unpleasant situation at home, Anjali Sharma left her in-laws house along with a muslim boy and lodged an F.I.R in Mangoldoi P.S. against her husband and father-in-law alleging that they had demanded dowry of Rs. 30.000/- and having been refused to pay the same they had assaulted her. There after she left for her parent's house at Guwahati. Her complaint was sent to Dalgaon P.S. by the O/C, Mangaldoi P.S, for necessary action. Smti. Anjali Sharma was asked number of times by Dalgaon P.S. to go there for recording

her statement but she did not respond. Instead, she filed another FIR at All Women Police Station, Panbazar, Guwahati on the same allegation.

On 29-10-2008 Smti. Anjali Sharma accompanied by Inspector Bina Kakati, O/C, All Women Police Station, Panbazar, Guwahati arrived at Dalgaon for recording her statement. From there they visited Anjali's-in-laws house where the officer allegedly misbehaved with the members of the family, refused to record the statement made by the complainant's parents, Anjali's son, domestic help or the neighbours rather she threatened them with detention. At some point of time she landed in an altercation with the O/C, Dalgaon P.S. who spoke in favour of the Dutta family. It was most surprising when the officer arrested Smti. Dipika Roy Choudhury, a neighbouring lady for giving statement against Smti. Anjali Sharma although she was not an accused in the matter and brought her to All Women Police Station, Panbazar, Guwahati and sent her to Jail.

Perusing the complaint, the Commission called for a report from the officer concerned and then from the Sr. Superintendent of Police, City, Guwahati. The Commission also heard the O/C, All Women Police Station, Panbazar, Guwahati, Inspector Bina Kakati in person. All in all the Commission considered it appropriate to probe into the matter and accordingly entrusted its own investigating agency.

On consideration of the materials on record, including the investigation report, the Commission found that Inspector Bina Kakati, O/C, All Women Police Station, Panbazar, Guwahati, embarked on flagrant violation of fundamental rights of a citizen,

blatantly taken the law into her hand in callous disregard of law throwing to the winds the standard or norm what might legitimately and reasonably expected from a police officer functioning in a society governed by the constitution, a constitution that guarantees to its citizen against arbitrary /autocratic act. The officer concerned unlawfully engaged herself without any reasonable cause in detaining a lady brazenly disregarding the statutory protection provided by the Cr.P.C as well as the Constitution of India and subjected her to gross misbehaviour.

All things considered, the Commission issued direction to the concerned authorities for launching a criminal prosecution U/Ss 342/471/474 IPC read with Sec. 98(A) / 99 and 99 (3), (4) and (5) of the Assam Police Act.2007, against Inspector, Bina Kakati, O/C, All Women Police Station, Panbazar, Guwahati.

Case No. 18/2009 . Complainant - Shri Deba Kanta Gogoi

One Shri Deba Kanta Gogoi of Vill :- Madhakali, District - Dibrugarh filed a complaint before the Commission on 10-7-2009 against alleged misconduct of Shri Amulya Gogoi, 2nd officer of Dibrugarh Sadar P.S. and Shri Mahendra Gogoi, Dy. Superintendent of Police, Dibrugarh. According to the complainant one Shri Surendra Singh Bhamra of Amolapatty, Dibrugarh was demanding a sum of Rs.9.60 Lakhs from the complainant. The complainant, however, stated on oath that he did not owe any money to Shri Bhamra. It was his married daughter Mrs. Jharna Gogoi Das who had borrowed some money from Shri Bhamra for

business purpose of which Rs. 1.75 lakhs has already been repaid by Bank transfer.

On 2-6-2009 at about 4.00 P.M the said S.S Bhamra accompanied by S.I. Amulya Gogoi visited the residence of the complainant and demanded from them the said amount of money immediately. Thereafter the said S.I. Amulya Gogoi & Shri Bhamra took the complainant and his son to Dibrugarh P.S, abused them and pressed for the money within an hour in the P.S, else they would be sent to Police lock up, Jail etc. The complainant stated to be a person prone to high blood pressure. The mounting coercion caused to him added up to his tension which impelled him to be shifted to Assam Medical College, Dibrugarh. However, Shri S.S.Bhamra and one Mrs. Mamata Singh Dutta managed to get the complainant released from the hospital and brought him back to the P.S. where he was detained for the whole night of 2-6-2009. The next day his wife and daughter-in-law came to the P.S. and paid a sum of Rs. 2.20 Lakhs to Shri Bhamra and Smti. M.S. Dutta in presence of Police officers but no money receipt was given despite asked for. On the contrary, they were forced to sign on some blank court papers (stamp paper) and some blank sheets and also took sale letter of his Maruti 800 Car with a signature on blank paper. Thereafter the complainant was released from the Police Station on condition of clearing the entire amount as demanded without fail.

The complainant also narrated that apart from Rs. 1.75 lakhs paid by his daughter he himself paid an amount of Rs. 4.85 lakhs to Shri S.S.Bhamra. The Police personnel allegedly demanded Rs. 50,000/- from him out of which Rs. 20,000/- was paid to S.I. Amulya Gogoi on 3-6-2009 at about 10.00 A.M. and kept the

vehicle at the Police Station. After few days the vehicle was returned to the complainant obtaining his signature on blank paper as per direction and dictation of the Police Officers.

It was also alleged that the Dy. Superintendent of Police, Shri Mahendra Gogoi also went to the house of Shri Debakanta Gogoi demanding payment of the balance amount of Rs. 4.80 lakhs in an hour's time and directed his son and family to arrange the amount and report to the P.S. at Dibrugarh. Likewise, the complaint was made alleging blackmailing, extortion and unlawful detention against Dy.S.P. Mahendra Gogoi and second officer S.I. Amulya Gogoi.

The Commission registered a case on the basis of the complaint and called for a detailed report from the S.P. Dibrugarh along with copies of relevant records. The Commission also heard the Dy. S.P. Mahendra Gogoi and the O/C, Dibrugarh Sadar P.S. in person and recorded their statements.

On consideration of the report of the S.P. and the statements made by the officers before the Commission it gave the impression that the police machinery was misused towards the recovery of alleged debt. The materials on record unerringly pointed out that the complainant Shri Debakanta Gogoi and his son were wrongfully confined in the Police Station for the whole night of 2-6-2009 and released on 3-6-2009. The S.P. also indicated in his report that the complainant and his son were brought to the Police Station on 2-6-2009 without registering any case against them since a request came from Shri S.S. Bhamra not to register any case against the complainant.

The S.Ps report also clearly indicated that the complainant and his son were brought from their home by S.I. Amulya Gogoi, to the Police Station even without registering a case. Likewise, Dy. S.P. Shri Mahendra Gogoi went to the house of Shri Debakanta Gogoi on 01-7-2009 accompanied by Shri S.S. Bhamra. The Dy. S.P. Shri Mahendra Gogoi asserted before the Commission that on 1-7-2009 along with Shri Bhamra he was accompanied by one S.I, two Constables and one Woman Constable to the house of the complainant without registering any case. Instrumentality of the state was utilized for recovery of private debt in blatant violation of law. Shri Mahendra Gogoi, Deputy S.P, also stated before the Commission that Smti. Sashiprava Gogoi, wife of the complainant gave a written undertaking to the effect that her husband and her son would appear at Dibrugarh P.S. on 2.7.2009 at 10.00 AM to negotiate with Shri Bhamra. All these things clearly revealed that the Police Officers namely Shri Mahendra Gogoi, Deputy S.P, Shri D.Sharma, O/C and S.I. Shri Amulya Gogoi were all engaged in black mailing, extortion, causing illegal detention for recovery of alleged debt. "Damaging a person of his liberty is a serious matter. Arrest and detention in a police lock up can cause incalculable harm to the reputation and self esteem of a person" (Recalling the decision of the Supreme Court in Joginder Kumar Vs State of U.P. and Orissa. Reported in (1994) 4 SCC 260). The Police Act is enacted to provide for impartial and efficient police service safeguarding the interests of the people. Instead of obeying the duties prescribed by law, persons in uniform seemingly turned into debt recovery agency for an individual in a matter of civil nature in blatant violation of law. The members of the crime prevention and

crime detection agency made themselves involved in criminal acts, seriously damaging the image of the police force.

In the circumstances, the Commission issued direction to the Director General of Police, Assam, to launch criminal prosecution against the two officers Shri Mahendra Gogoi, Deputy S.P. and Shri Amulya Gogoi, SI, U/Ss 342,347,348 read with 34 of the IPC and Section 99(1), 99(3) and 99(5) of the Assam Police Act, 2007, by treating the complaint lodged before the Commission on the 10th of July,2009, as the FIR. Likewise, departmental proceedings were directed to be initiated against the Officer in Charge of the Police Station for dereliction of duty, laxity in supervision etc.

In agreement with the decision of the Commission, the Director General of Police, Assam, has reportedly directed the CID Organization to register a criminal case against the alleged officers and is also going to initiate departmental proceedings as per directions of the Commission.

Case No.- 18/2008 Complainant - Mir Hadi Hussain

On 30/4/2008 the Commission received a complaint from one Mir Hadi Hussain of Kahilipara, Guwahati, alleging inaction of the Bhagaduttapur O.P.and Dispur P.S.on the F.I.R. lodged by him on 6/3/2008.

As narrated in the complaint Mir Zahab Akhter Hussain, son of the complainant was brutally assaulted by one Raju Ali in the evening of 5/3/2008 without any provocation causing serious injury which impelled the victim to be hospitalized in the G.M.C.H .The matter was reported to the Bhagaduttapur O.P over phone and

to that the officer asked the complainant to take the victim to the hospital .In the G.M.C.H. the victim had undergone C.T. scan, x-ray etc. Soon he started blood vomiting & fell unconscious and had to be given support of oxygen. Meanwhile the complainant repeatedly requested the police over phone to nab the culprits but of no avail.

On 6-3-2008 the complainant filed a written FIR at Bhagaduttapur O.P. and accordingly a case vide Dispur P.S. Case No.276/2008 U/S 341/325/307 IPC was registered.

After a week, the victim was released from the hospital. Back home he complained that his purse containing Rs. 1060/-one mobile phone and a gold chain had been taken away by the accused. So on 16.3.2008 the complainant went to the Bhagaduttapur O.P. to lodge an F.I.R. to this effect but the police of the said O.P declined to register the F.I.R. It was also stated that till filing of the complaint before the S.P.A.C. the police did not take any step to arrest the accused, nor there was any headway in the investigation.

On perusal of the complaint and the enquiry report furnished by the Sr.S.P, (City), the Commission also heard the I/C, of the Bhagaduttapur O.P. and I.O. in the present case Shri Dimbeswar Thakuria in person.

The officer in his deposition before the Commission admitted that he did not visit the G.M.C.H. to ascertain the position of the victim, instead, after a lapse of one month he collected the injury report from the Casualty Unit while the victim underwent treatment in the Surgical Unit wherein the 'injury' was described as 'simple'. Accordingly he submitted the charge sheet U/S

341/323 IPC,. But when the Commission raised question about the discrepancy in the two Medical Certificates, one submitted by the complainant and the other produced by the I/O, the latter obtained another Medical Certificate from the surgical unit of the G.M.C.H. which clearly states that the victim suffered “Severe head injury” and was “unconscious” on the day of admission. On receipt of the second report the I/O submitted a supplementary C/S on 15/9/2008. U/S 341/323/325 IPC.

The Commission specifically took exception to the fact the supplementary C/S submitted by the I/O on 15/9/2008 was kept pending with Dispur P.S. for 3 months and only when the investigator of the Commission contacted the Dispur P.S. personally the matter came to light and the Supplementary C/S forwarded to the Court on 22-12-2008. To explain the reason for the delay, the Dy.S.P. Dispur Division informed that the Supplementary C/S was forwarded to the Court on 25-11-2008 but returned by the P.I. of the Court for want of a separate prayer needs to be attached with the Supplementary C/S. Since then the matter was lying pending with the literate constable till such time the Investigator of the Commission visited the P.S.

Considering all aspects the Commission advised the Sr. S.P, City to take appropriate action for fixing responsibility against the O/C, Dispur P.S. and others involved in the matter and also to ensure that there is no recurrence of such cases.

Case No. 65/2008. Complainant- Mustt. Somarta Banu.

The complainant, Mustt. Somarta Banu and her brother-in-law Matibur Rahman had some dispute over landed property. Said Matibur Rahman allegedly taking support from the O/C, Rupahihat P.S. Mr. J Rahman, caused damage to the house, trees and plants etc. of the complainant. On 29-5-2008 said Matibur Rahman physically assaulted the complainant and her daughter-in-law. The complainant, though intended, could not lodge any F.I.R. as the O/C, was not present in the P.S.

The following day (30-5-08)she again approached the O/C in order to lodge the F.I.R. but latter refused to accept the F.I.R. stating that the land in question is disputed one. Again on 01-6-2008 Matibur Rahman alongwith few others attacked the complainant's house, assaulted her and her daughter-in-law and also demolished a house in her compound, destroyed furniture & stolen cash & Jewellery. Mustt S. Banu lodged an FIR to this effect in the Rupahihat P.S. But the O/C instead of registering the FIR called for a public discussion in the matter. The discussion took place on 3-6-08 but Matibur Rahman refused to accept the decisions and thus the complainant again requested the O/C to register the FIR and arrest the culprits. But the O/C did not do so. On 9-7-08 the complainant filed another petition through the Addl. S.P. Nagaon, which was duly endorsed to the O/C for taking necessary action but of no avail.

On 29-10-2008 the complainant made a prayer before the Addl. District Magistrate, Nagaon for promulgation of prohibitory

order U/S 144 Cr. P.C. on the land in question to prevent Matibur Rahman from causing further damage to her property .The petition was endorsed to the O/C, Rupahihat same day for enquiry and report. But it was only on 14/11/2008 ASI. K. Deori visited the P.O. talked to Matibur and sent his report to the court on 17/11/2008. Taking advantage of the delay Matibur Rahman resorted to cut down all the trees stood on the plot of land during 15th and 16th Nov' 2008. Owing to the circumstances, the complainant lodged another FIR on 16/11/08 but there was no action from the P.S.

The Commission registered a case and referred the matter to the S.P. Nagaon for enquiry and report. The Commission also heard the O/C, Rupahihat P.S. Jiaur Rahman in person and recorded his statement.

On perusal of the complaint and on scrutiny of the enquiry report received from the S.P., Nagaon and the written statement submitted by the O/C before the Commission it was evident that the officer instead of acting as per provisions of the law, tried to settle the land dispute between the parties mentioned in the complaint through compromise which is a clear instance of Police interference in civil dispute. He had also shown lack of sincerity in submitting the proceeding U/S 144 Cr.P.C as directed by the Addl. Deputy Commissioner, Nagaon.

In view of the circumstance, the Commission decided to caution the O/C, Rupahihat P.S. S.I. Jiaur Rahman for his lapses and also to bring the matter to the notice of the Director General of Police, Assam.

SPAC (Suo-Moto) Case No.6/2008.

The Commission had taken up a Suo-Muto Case on a news report captioned “Salary Scam probe loses momentum” published in the local daily “The Assam Tribune” dated February 19th,2008 and the Director General of Police, Assam was accordingly requested to intimate the status of investigation of the multi crore salary scam in the 10th A.P.Battalion, Kahilipara, as carried out by the Criminal Investigation Department, Assam, in view of the news report to the effect that the investigation of the case was hampered due to the fact that the assigned officer with the investigation did not take over the case. Having received a report from the Assam Police Hqr. submitted by the then Addl. Director General of Police, (CID), Assam, it has been observed that the CID, Assam registered case No. 38/2007 U/S 409/468/420/120 (B) IPC in respect of Salary Scam at 10th A.P. Battalion and taken over the Titabor P.S. Case No.79/2006 U/S 409/468/420/120 (B) IPC for scam at 3rd A.P.Battalion, Titabor and both the cases were pending investigation for examination of witnesses, seizure and scrutiny of related documents and arrest of accused officials. The Commission has noted with grave concern that Police officials accused of Criminal Cases absconded soon after investigation of the cases with evidences forth coming against them. Shri Krishna Das, APS, the then Commandant 3rd A.P Battalion, absconded for a considerable time in connection with Titabor P.S. Case No. 279/2006 like one S.I. Omar Faruque of North Lakhimpur P.S.

absconded avoiding arrest till date in a separate case of North Lakhimpur P.S.

Further scrutiny of the report reveals that the investigation of case of alleged misappropriation of salary at 10th A.P. Battalion to the tune of Rs. 18,89,57,355 (Rupees Eighteen Crores Eighty nine lakh Fifty seven thousand and three hundred fifty five) approximately was pending for reasons such as seizure of documents, and arrest of accused officials and the Commission called for the reason as to why there had been delay in seizure of the related documents/ files from Assam Police Hqr./ Accountant General Office/ 10th A.P. Battalion located at Guwahati itself and why not the suspects/ accused officials / witnesses examined and warrant of arrest issued in case of the accused persons.

The Commission having perused the replies from the Assam Police Hqr. and the CID Hqr. expressed regrets that the reply in question failed to address the real issues cropped up before the Commission with regard to unwarranted dilatoriness of the investigation into both the cases of salary scams where very senior Police officers were alleged to have been involved in the matter of alleged defalcation of the Govt. funds and requested the DGP, CID, Assam for discussion/ appraisal of progress of the investigation into the cases. But the matter did not receive due response from the DGP, Assam as requested and therefore observed as follows :

In the considered opinion of the Commission, the state CID which was charged with the investigation has failed to address itself with due seriousness to the gravity of the matter which has serious connotation of corruption in the Police Department and a

total lack of accountability to law on the part of the senior officers concerned. The obvious reluctance of the Department to part with information specifically relating to the conduct of these cases and that, too, to a statutory body like the State Police Accountability Commission is unfortunate. Needless to state that the State Police Accountability Commission mandated under the Assam Police Act, 2007, is to ensure speedy completion of such enquiries and investigations involving the Police Department and as per relevant provisions of the Cr.P.C. as well as the Assam Police Manual (Part - V) it is mandated that every investigation shall be completed with utmost expeditiousness. Under the Circumstance, the Commission decided to discuss the matter with DGP (CID) in order to elicit his views on the specific queries relating to the conduct of the investigation of the above mentioned cases. The DGP (CID), Assam, was accordingly requested to make it convenient to attend the Commission's meeting on 22-10-2008, but for one reason or the other the DGP (CID) failed to comply the direction. The Commission has taken adverse notice of this deliberate dilatoriness of the investigation into both the cases under review places on record its dissatisfaction with both conduct and progress of the investigations. However, taking note of the gravity of the problem and the urgent need for preservation and strengthening of the rule of law, the Commission was not inclined to wait any further and thought it proper to leave the matter at the door of the Govt. to enable it to look into it with the seriousness it deserves.

We conclude with the following note and observation made by the Supreme Court. "The Commitment, devotion and accountability of the Police has to be only the rule of law. The

supervision and control has to be such that it ensures that the Police serves the people without any regard, whatever, to the states and position of any person while in investigating a crime..... its approach has to be service – oriented, its role has to be defined so that in appropriate cases, where on account of facts of omission and commission of Police, the rule of law becomes a casualty, the guilty Police officers are brought to book and appropriate action taken without any delay ”(Prakash Sing vs Union of India 8 SCC 1)”).

The Commission trusts that every effort would be made by the State Govt. to ensure, in the public interest, expeditious investigation of the above mentioned cases and condign punishment meted out to those found guilty. The Commission also hopes that by such positive action the State Govt. would send out a strong message to Govt. functionaries, that corruption, especially in high places would not under any circumstances, be countenanced.”

The State Govt. with reference to above order passed by the Commission intimated that the cases under reference have been taken over by the CBI for investigations vide their letter No. HMA 553/2001/100 dtd. 6/4/2009. Nevertheless, mud sticks. The tardy handling of the case by the CID department had damaged the credibility of the institution.

OBSERVATIONS :

Identifiable patterns of misconduct by Police :

The Commission in its Annual Report 2008 enumerated some of the identifiable patterns of Police misconduct and made some recommendations with the expectation that the authorities

shall wake up and take some remedial measures. But on scrutiny and evaluation of the cases registered during the year 2009 it is found that there has not been much change in the mindset of the Police personnel particularly in the Thana level officers. Common people are still facing problems in getting their complaints entertained and cases registered. Delay in taking up investigation on complaints registered are still continuing. Cases are not registered under proper sections of the law paving way for the culprits to go scot-free. There are instances where the members of the crime prevention and crime detection agency are acting as debt recovery agency purely in civil matter or engaging themselves in settling disputes through compromise in blatant violation of law.

In one recent case, the In Charge of Rani Police Out Post unlawfully detained a person in the Police lock up for over 24 hrs. to facilitate capturing his land and destruction of properties by another person. Instead of being accountable to the law and protect rights of the people, the officer himself indulged in violation of law and paved the way for criminal trespass, mischief and arson and then manipulated the official records to cover up his misdeeds.

The supervisory authorities are found to have been performing their duties in a perfunctory manner particularly in matter of investigation. They are seemingly endorsing whatever the junior officers are producing before them without examination.

In the Police Stations / Out Posts, lack of supervision and guidance has developed sluggishness in the mind and behaviour of the lower rank officials be that in the matter of maintaining of records properly, responding to the call of duty. Reluctance and

dilatoriness in taking up investigations into complaints received from the members of the public is a common phenomenon.

The Commission in its Order dated 5-9-2008, in case No. 8/2008, categorically mentioned that “the enquiry conducted by the DIG (ER) is by itself incomplete and there is a grain of truth in the allegations of a Coal Mafia operating in the area as has been attested by the aforesaid witness. In any case, the allegations are of a serious nature and require a detailed probe.”

The Commission further advised the Director General of Police, Assam to register a criminal case on the basis of the newspaper report and also to transfer the O/C, Simaluguri P.S. Shri Punaram Gogoi who is the one complained against as being involved in the illegal coal trade.

Now, as per action taken report received from the Police Headquarters, a case was registered against Shri Punaram Gogoi, the then O/C, Simaluguri P.S, which has since been ended in F.R. The officer has also reportedly been promoted to the post of C.I. and posted at Nazira. The whole exercise of the Commission was sought to be whittled down in a queer fashion. There is however no mention as to whether the Commission’s direction to cause a detailed probe in the matter was conducted before submission of the F.R. So, the Commission has decided to examine the matter further.

Interaction with the people

Immediately after formation of the Commission, it was considered appropriate to incorporate the free and frank view

points from a cross section of public. These public faces comprised of former bureaucrats, academicians, scholars, professionals, lawyers, judges, and by and large they appreciated this move for creating the Police Accountability Commission. General perspective on police is not too high. We received recommendations orally and in writing. The noted thinker and renowned scholar Prof. Hiren Gohain submitted a memorandum in writing on public grievances and suggested remedial measures- copy of which is placed herewith to indicate the perspective of the general public (**annexed at Page 40-45**).

Absconding Police officers charged of offence :

The Commission has observed with grave concern at the absconding of Police personnel involved in criminal cases. This has a reflection of inaction of the investigating agency allowing Police personnel absconding in order to get relief from the cases and subverting the investigation with destruction of evidences.

Of late it has been observed, that personal security officers of Police department have committed serious misconduct killing innocent people at the slightest plea. The incident is on the increasing trend. Hence misuse of the PSO needs to be addressed seriously by the authority by augmenting the present state of P.S.O. administration.

Due to shortage of investigating officers the Commission mostly depends on the District Police for inquiry/investigation of cases registered by it. But, indolent attitude of most of the

concerned authorities in responding to the notices served by the Commission has become a matter of concern.

Recommendations on measures to enhance police accountability:

In accordance with the recommendations of the Commission in its Annual Report, 2008, both the State Government and the Director General of Police, Assam, have taken some steps to change the image of the Police Force. The Commission expresses its satisfaction over the positive steps taken by the authorities. At the same time the Commission feels that mere issuing circulars and instructions without monitoring are not going to achieve any result. Therefore, the authorities should ensure that the instructions are strictly adhered to by the Supervisory and Field officers.

In our earlier report, we recommended that the State Chief of police to formulate accountability parameters of various ranks including supervisory responsibility of senior ranks. The Commission is however not yet apprised in this regard. A thorough enforcement of accountability at all level in the police hierarchy is called for.

More than two years have so far rolled by after the enactment of the Assam Police Act, 2007, which provides for impartial and efficient police service safeguarding the interest of the people with due regard to the rule of law an accountability to law. The Commission is yet to find any perceptible change in the image of the police from being the instrument of coercion to a people friendly force. Success of democracy can only be measured on the index of police accountability. Every member of a civil

force is accountable for the decision and actions to the public and owes an obligation to submit themselves to whatever scrutiny is appropriate for their office. Absolute integrity is the basic requirement of prestige of police force. From this end it is essential for the police to be scrupulously transparent and develop self restraint, truth and honesty in thought and deeds both in official and private life.

In this regard, the people expect excellent leadership. The leader should satisfy himself that the Forces under him are rightly recruited, fully trained and act professionally. He should enliven that the members of the Force do not bring ignominy to the Institution

Police Demeanour in the realm of personal liberty

“Damaging a person of his liberty is a serious matter. Arrest and detention in a police lock-up can cause incalculable harm to the reputation and self esteem of a person.....”⁴. Personal liberty, individual dignity held a sacred place in our Constitution. Right to life or personal liberty, has been held to include the right to live with honour and dignity by our Constitution. The Commission has observed that police arrested and detained illegally one Deba Kanta Gogoi and his son at Dibrugarh P.S., Shrimati Dipika Roy Choudhury at All Women P.S., Guwahati, Smti. Gita Kalita, Shri Promod Kalita and Shri Bijoy

4. (1994) 4 Sec.260 Joginder Kumar V State of UP

Rajbanshi, parents of three minor girls rescued from Gurgaon while trafficking at Noonmati P.S during examination of complaints received by the Commission. The copies of the Orders are annexed at Annexures III, IV and V.

In absence of veritable change in the out look of police, the formation of Oversight Committees comprising of police officials, Citizen's Liaison Group and Nagarik Committees etc. to closely monitor the functioning of the police in their respective jurisdiction as has been tried out in other states with great success and this can be used to good effect in Assam to ensure police accountability to the community they are expected to serve. This need is also emphasized in this report.

The following measures, in addition, are recommended:

(a) General Diary :-

Rule 53 of the Assam Police Manual (Part-V) indicates that the Section 44 of the repealed Indian Police Act (Act V of 1861) provides for the General or Station Diary (Form No.135 of Schedule XL (A) Part I.) to be maintained by all P.S./ OP / beat house and “ the Officer-in-Charge is responsible that it should be punctually and correctly written”. The equivalent provision is not made in the Assam Police Act. 2007. A like provision should be incorporated in the Act, to ensure accountability and transparency of Police work at the P.S/O.P. level.

As the General Diary is an important instrument of transparency and accountability, it should be written as prescribed by the manual and any deviation thereof should attract penal action under the Assam Police Act 2007 and the present practice of using wood pencil in writing the G.D. in some of the P.Ss./O.Ps. need to be replaced by use of ball point pen.

The name(s) and particulars of the arrested persons during 24 hours proceeding to the opening of the Dairy at 8 A.M. every day need to be entered in the General Diary in order to maintain transparency in a most beleaguered area of police action often complained of.

(b) Supervision of cases, progress reports etc. :

The Commission has viewed with concern, the delay in investigation of cases. The Special report cases are unduly kept pending without reviewing progress of investigation. Progress reports are seen more of a routine nature than discussing the investigation whether it is on the right track and the evidences are collected for a logical conclusion of the case. Suggestion by supervising officers without discussing the merit and demerit of the evidences are observed in a couple of cases where penal sections for lowering punishment are suggested. Such action is fraught with grave allegations against police of attentuating offences.

Hence the Progress Report as prescribed in Assam Police Manual, Rule 8, 9 of Part-V should be submitted without delay after supervision of such cases by the senior officers including the Circle Inspector of Police. The power and function of Circle

Inspector of Police as an important organ of Police Investigation should therefore be redefined in view of the present state of affairs in the investigation and crime prevention mechanism to strengthen people's confidence on Police.

(c) Interface of investigating agency of Police with the Commission; training on test cases for better understanding of accountability:-

The Commission has come across complaints of perfunctory investigation of cases. The Assam Police Manual (Part-V) has dealt with a wide range of rules/procedures relating to the investigation of cases, which the investigating officers are to follow in order to obviate allegation of mechanical investigation and to prevent crimes. A common practice, as observed, is that Police resorts to enquiry without either registering a case or refusing to register a case in the nature of preliminary enquiry. Criminal procedure codes 154, 157 are explicit in the matter. Assam Police Manual rule 110 (Pt. V.) prescribes a laid down procedure for drawing FIR. The deviation from the codes and rules degenerates in to slipshod actions by the Police.

The Commission feels that a special inter-organizational training course of the O/Cs of Police stations and the Circle Inspectors with the Commission in the light of the SPAC test cases (as conducted by the Commission) can be organized at the Commission H.Q. on phased manner.

Necessary infrastructural facilities for holding the interactive training courses need to be provided to the Commission.

(d) Recruitment and training :-

The Commission expressed its opinion in the earlier report as to the need for imparting, improving and increasing the required knowledge and skills and to develop attitudes and values of individual policeman in the desired direction. The recruitment of the personnel should also receive equal importance with training. Better persons recruited and trained up would enhance better accountability.

(e) Traffic Police at Guwahati :-

The Commission in its last report stressed on the need of a coordinated effort to bring out a solution to the growing traffic problem but no significant change in this field could be sighted.

On the contrary, number of road accidents and loss of innocent lives have become alarmingly high. In this regard the Commission convened a meeting of officers of the State Police Administration, Transport, G.M.C, GMDA & PWD besides, former DGP, Assam, Shri N.N. Changkakati, former Additional Chief Engineer, PWD, Mr. Wahed Zaman, Dr. Akhilesh Mourya of IIT, Guwahati, and others participated in the meeting. The aim of the discussion was to assess the magnitude of the problem with reference to the Police accountability in addressing the discontent of the road users. There is no denying the fact that the Police alone can not solve this problem. Yet, what is expected from the Police is to enforce the traffic rules and to deal with the violators firmly. But

the present state of affair does not show any sign of sincerity in the Police (traffic) force to enforce the rule of law. In order to meet the shortage of manpower Government has reportedly created 100 additional posts particularly for traffic management of the city of Guwahati. But the more important factor is motivation and supervision of the force without which it is difficult to yield any result. It is rather high time for the authorities to look into this aspect very seriously. (Copy of the minutes of the meeting held on 14/9/09 is enclosed as **annexure. I**).

General guidelines to prevent Police misconduct:-

Commission also suggests the following general guidelines as measures to prevent Police misconduct :-

1. A Compendium of selected Police circulars quoting rules and manuals on common Errors/ Aberrations having bearing on clause 78 of the Assam Police Act. 2007,
2. Role of Supervisory Police officers needs be redefined from accountability point of view by unambiguously assigning them with the charter of duties and responsibilities so that they act to prevent the misconduct of the field level Police engaged in investigation and preventive actions. One Addl. S.P. and the Circle Inspectors in a district should be specifically entrusted for monitoring and supervising works of the field level officers relating to issues primarily on para 1 above and brought out quarterly publications of crime records of the respective districts.

3. A state level crime and investigative audit to be published annually compiling the district level publications highlighting the best practices.

4. All publications, law books as required under the provisions of the APM to be supplied to the P.S. / O.P. Circle and Districts in the police departments.

5. Objective assessment of performance of officers in the investigation and supervision to place them in P.S/Circle level postings. Similar practice should also apply in the posting of Additional Superintendent of Police (Investigation) in districts.

6. All cases having bearing on the clause/ Section 78 of the Assam Police Act,2007 should be treated as special report cases receiving due attention at the district level crime conferences besides cases registered at the instance of the State Police Accountability Commission.

Monitoring of Departmental proceedings.

Section 78 (3) of the Assam Police Act, 2007, empowered the Commission to monitor the status of departmental enquiries or departmental action on the complaints of “Misconduct” against gazetted officers of and above the rank of Deputy /Asstt. S.P. through a quarterly report obtained from Director General of Police of the State.

Accordingly, a list of officers against whom departmental proceedings are pending was obtained from the DGP, Assam in May, 2008. But the present status of the cases and the officers entrusted with the enquiries has not yet been furnished either by the

Government or the DGP in spite of reminders. The Commission, therefore, urges both the Government and the DGP to ensure that such information are furnished to the Commission at the end of every quarter of a year without waiting for a formal demand from the Commission in adherence to the statutory provisions of the Act. For the purpose, a nodal officer at the Assam Police Head Quarter may also be designated so as to interact with the Commission periodically in this regard.

ACTION TAKEN REPORT:-

The Commission has received intimation of action taken report on the recommendation of the first annual report. The action taken report is placed as **annexure-II**.

The Commission has observed with dismay that recommended action against S.I. Punaram Gogoi of Simaluguri P.S. appears to have not received due attention from the department. The criminal proceeding taken up against S.I. Punaram Gogoi returned in final report even without apprising the Commission. The said officer subsequently was promoted and posted in the same station as circle Inspector.

The action taken report indicates issuance of two circulars, circular No. 3/08 circular No. 1/2010 on matters to prevent misconduct by Police without specifying the likely actions as may be taken against the erring Police officials in the event of failure to follow the instruction / guidelines thereof. Police circular should be both instructing and punitive in cases of indiscretion. Disciplinary

action in the event of departure from the legal procedures may lose its impetus and fail at the end.

The recommendations contained in the first annual report to strengthen the Commission with greater regulating and supervisory power in the matter of registration and submission of final form of cases as a preventive measure against the Police misconduct as envisaged in section 78 of the Assam Police Act, 2007, calls for an urgent action by the Government and suitable amendments to the Act needs to be incorporated .

The Government may also examine investing of powers to the Commission for taking up issues of disproportionate assets of Police officers being a major factor for Police misconduct. The State Government may in this regard take suitable measures for amending the Act.

To enhance the Police accountability, immediate steps should be taken to make permanent display boards in the Police Stations clearly stating in bold letters the rights of people and the obligation of the police under the law particularly about the Assam Police Act, 2007, and rights and duties of the Commission. This will enhance Police accountability.

Arrangements should also be made for setting up complaint booths at various points of district and sub-divisional headquarters where members of the public can raise their voices against the dereliction of duties. The complaints received are to be periodically reviewed and steps should be taken to send those to the Commission also. To make the Assam Police Act, 2007 meaningful and efficacious, substantial increase of the Police Station, infrastructure has become imperative. To add to this

investigation budget for the inclusive growth of police efficiency, professionalism and accountability with modern technological aid for investigation with requisite resources is necessary. Immediate steps should be taken to fill up the sanctioned posts those that are lying vacant so that the police is able to face the emerging challenges. For making the police more professional with emphasis on the man power planning in recruitment and promotion in commensurate with the tasks and responsibility emerging in the complex criminal scenario in Information Technology boom, police personnel at the grass root level should receive adequate attention from the Government and the department.

The report has in addition highlighted the importance of the yardstick of accountability. The success of democracy comprehensibly depends on responsibility. Every public servant is to act as per certain standards and norms. All this is possible if those who are within the public domain give utmost priority to public interest¹ and not to any individual personal interests. In a polity that is governed by law, the person exercising power must act with integrity². In accordance with the recommendations and as was identified in the introductory paragraph, every member of the civil force are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office³. Success of democracy and the rule of law can be perceived as the index of police accountability. Holders of public office should thus be ‘as open as possible about all the decisions and actions they take’⁴.

“These principles of public life are of general application in every democracy and one is expected to bear them in mind while

scrutinizing the conduct of every holder of a public office. It is trite that the holders of public office are entrusted with certain powers to be exercised in public interest alone and therefore the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated”,⁵. If these measures are implemented ‘an atmosphere conducive to the community respect for officers of the law’ and proper’ enforcement of accountability can be brought about.

We have cited some of the deviants solely on the expectation, that it will promote and strengthen the police accountability and professionalism. Accountability should embrace in all spheres. If police become alienated from the public in a wider scale, it is likely that fundamental nature of police will change essentially from a pro-active force to re-active force. Crimes are more likely to be reported to the police, where it has effective public relationship conversely less where relationships are ineffective. Effectiveness and efficiency are tested when public feel that they are properly policed. Free people expect much from the police. In such society, Police stands at the balance - on the one hand security, human rights and on the other, exercising the lawful power to protect the people and their institutions.

The entire civil force is essentially a creature of law. He or she is accountable to law. Law is the master of every Policeman,

right from the level of the Director General of Police to the Constable. We bring down the curtain here by echoing the dictum of Lord Denning, MR in R v Commissioner of Police of the Metropolis ex parte Blackburn (No.3)³:

'I have no hesitation in holding that like every constable in the land, he (the Commissioner) should be and is independent of the executive. I hold it to be the duty of the Commissioner, as it is every Chief Constable to enforce the law of the land. No minister of the Crown can tell him he must not keep observation in this place or that he must or must not present this man or that. Nor can any Police Authority tell him so. The responsibility lies on him. He is answerable to the law and the law alone.'

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

¹ Extracted from the general recommendations made by the Committee Headed by Lord Nolan on 'Standards in public life' (Volume I Lord Nolan's report 1995) as quoted in Vineet Narain & ors vs Union of India (1996) 2 SCC 199.

² Ibid

³ Ibid

⁴ Ibid

⁵ Ibid

³ [1973] 1 All ER 324

Post Script

In our first report we had mentioned about the lukewarm riposte in responding to our notes. Some of our requirement/grievances for providing Nodal Officers were addressed recently by an order of the Government bearing No. HMA.391/2009/55 dated 04.03.2010, Shri A. Chakrabarty, Joint Secretary to the Government of Assam, Home Department was appointed as Nodal Officer. Likewise recommendation was also there for providing office accommodation at the Housefed Complex against payment of rent. The administrative bottleneck cited in the above report is yet to be ironed out. Government is yet to take positive steps raising the public awareness on the duties and functions of the police, rights of the public vis-à-vis the State Police Accountability Commission to ensure police accountability and professionalism in the force. Creating public awareness is of utmost importance. The vacancy created with the appointment of Mr. D.N. Dutt, IPS (Retd) former Director General of Police as Chairman of the State Information Commission is yet to be filled up which has affected the functioning of the Commission.

Under the scheme of the Act the decisions of the Commission are binding. The Commission is also empowered to decide on its own jurisdictions. On certain matters we are sought to be outmaneuvered by the Department in a curious manner. In our

report we have already communicated about case No. 59 of 2008 in a complaint made by Smt. Rupalim Dutta. After considering all aspects of the matter including accountability of the police, the Commission issued direction for launching criminal prosecution against the personnel concerned. Instead of complying with the order as per law, the Director General of Police communicated to us the view on the matter of a Dy.S.P., who in his considered opinion thought it proper not to go for criminal action ignoring the Commission's directive. We would prefer not to make any comment here but will take appropriate measures as per law. Likewise, the Commission on perusal of a complaint of serious misconduct against an Inspector of Police who was at the relevant time posted at the State Fire Service Organisation (Copies of the relevant communications is in the report). The materials on record revealed involvement of the officer in misappropriation of salary of the newly recruited Firemen, extortion, blackmailing, cheating and criminal misconduct within the meaning of Prevention of Corruption Act, 1988. Initially, the Director cooperated with the investigation but at a later stage when our investigating agency asked for the original documents, the Director of Fire Service became stiff and was unwilling to cooperate. It raised the issue of jurisdiction. Instead, it obtained a clarification from the Home Department to the effect that Director of Fire Service Organisation does not fall within the purview of the Assam Police Act. No reasons of whatsoever manner could be assigned as to why an officer who is/was holding a substantive post in the Police Department cannot/could not be dealt with under the Assam Police Act, since such officers are out and out a Police Officer and

directly under the control of the Police Department. This is brazen way of maneuvering crime by corroding the system, relegating accountability to a back seat The Commission will deal with, in this matter at an appropriate stage. The copies of the relevant correspondences are placed in this report.

To

The Chairman,
State Police Accountability Commission,
Guwahati-1

Sub: Individual Memorandum on Public Grievances Against the
Police and Remedial Measures.

Sir,

On behalf of the general public, and as some one interested in democracy and the rule of law, I have the honour to submit the following for your due consideration.

In any civilized democratic country the State represents an ideal above contending groups and conflicting interests. That ideal is expected to be manifest in the rule of law. The police force is supposed to be an instrument of this rule of law.

Unfortunately, the functioning of government often compromise and undermine the rule of law in the interest of the special interests of the ruling parties and their supporters. Power serves public interest only sporadically.

In democracy political and social order rests on laws made by the people themselves through their representatives. The people have a right to demand that authorities uphold public good in the laws enacted by them and act according to such laws in letter and spirit.

At the base level the police station represents the state and public good to the general public. Hence expectations from the police are enormous and when the public sees the police as working against public good, law and justice, frustration and resentment also become explosive. Not many policemen in service seem to be aware of this enormous public expectation.

To be sure the burden of duty imposed on them and the limited resources with which they are supposed to accomplish their tasks do not allow them to discharge their functions to their own satisfaction. Some three or four years back the O.C. of the Chandmari Police told me that since 1968 (I don't remember the exact date) there has been no increase in the strength of the police force there, but the population in the area under its jurisdiction has risen manifold. Such problems need to be addressed at the base-level before accountability may be enforced. But it is important to ensure that the officer-in-charge of police stations is someone capable of being aware of public expectation and of handling public complaints and grievances with tact, patience and consideration. Likewise higher authorities also ought to demonstrate a much greater degree of recognition of their importance and better appreciation of their services.

The following are the complaints and grievances of the general public most often aired against the officers of the stations:

1. They refuse to accept FIR's, register offences, and maintain proper case diary;
2. They are reluctant or dilatory in carrying out enquiry into complaints received and offences brought to their notice unless induced by bribes or commands of superior officers or political leaders;
3. They do not record facts of a case objectively but often proceed to twist and distort them. Often the real culprits are left scot-free and innocent people are put under arrest;
4. They are seldom to be found in the police-stations, but are often away on duty providing security to VIP's. The skeleton-staff left behind in stations and under lower-ranking officers cannot attend promptly to their normal functions;
5. They fail to turn up at the appropriate moment and in adequate strength to prevent disturbances to law and order, violence and vandalism of lawless elements and serious losses of life and property. The Beltola incident which took place within negotiable distance from two police stations springs to mind as a case in point;

6. Traffic police fail to enforce traffic rules and book offenders against such rules. Their negligence in such matters is widely believed to cause many fatal road-accidents. They are supposed to be more interested in collecting so-called "police-tax".

Many of these VIP duties are actually of little use to the public and it may be bluntly said that the use of police force to guard VIP's in useless public meetings and functions is actually an abuses. To reduce the staff of a station in order to enable Ministers and MLA's to visit weddings and birthday parties at the critical time of the evening is a crime against the state. The superior officers ought to be able to question the validity and legitimacy of such deployment of the police in every instance.

Neither the media nor the general public seems fully aware that as public servants the police are accountable. There should be permanent display boards in the police stations clearly stating in bold letters the rights of the public and the obligations of the police under law. Secondly there may be complaint-booths at various points of district and sub-divisional headquarter where members of the public may fill-in-complaint-forms with details of specific derelictions of duty. Complaint-booths also may have display- boards with proper guidelines for lodging complaints in order to prevent frivolous or mischievous charges against police on duty. The complaints may be reviewed periodically.

Whatever the theory the police in practice are ultimately accountable to the political leadership of the government. Political elements holding power think nothing of bending the rules to suit their purposes and they find ready instruments in the police who depend on them for their career. It is a popular perception that often the worst offenders against law are let off the hook at the intervention of an MLA or Minister of the ruling party.

While Ministers are in charge of the government and are dependent on the goodwill of MLA's they should not have the scope to exercise arbitrary and illegitimate power on the police force. If there is a mechanism to ensure that merit is the first criterion for promotion at the higher level and the discretionary powers of Ministers are restricted through their proper definition

that might enable superior officers to protect dutiful and responsible officers at the lower levels.

On the other hand the Home Minister ought to be duty-bound to review periodically the functioning of the police-force so that he can intervene with his power to remove bottlenecks and obstacles and prevent concentration of power and abuse of power among high level officers. All these will be possible only if as far as possible, the powers and responsibilities of different levels of the police hierarchy are spelt out definitively.

Political power in the very nature of things seeks to reinforce itself and expand its scope. This is often done by suppressing criticisms and democratic opposition. Given the long period of colonial autocracy and the taking-over of the legacy by the Indian state after independence, certain anti-democratic practices appear to have been uncritically and thoughtlessly incorporated into normal functioning of the government in India after independence. These practices tend to weaken democracy and endanger the liberty and dignity of the individual citizens.

First among them is the battery of black laws like NSA, the Armed Forces (Special Powers) Act and the Disturbed Areas Act. Abuses of such laws have caused much public outcry and even admission by thoughtful members of Government that these curtail individual liberty, restrict the operation of normal law, criminalize legitimate behaviour like criticism of Government policies.

The most worrisome for the future of democracy, are laws of preventive detention. For example the National Security Act, 1980 in Clause II(4) seems to provide against resort to a legal practitioner by the accused in arguing his case before the advisory board, whereas fundamental right of the constitution guaranteed in Clause 22 provides that –*“no person who is arrested... shall be detained in custody without being informed...of the grounds for such arrest...nor shall he be denied the right to consult, and to be defended by a legal practitioner of his choice”*.

Clause No. 16 ensures that civil and police officials “acting in good faith” under this Act will not be subject to any legal process challenging their decision even if that might cause grievous harm to an innocent person.

Clause 3(3) extends the power to District Magistrate and Commissioner of Police subject to approval of the State Government.

Clause 3(2) allows detention of a suspected person who might endanger security of the State, maintenance of essential services and supplies, and maintenance of public order.

Now "public order" is a very broad term and conceivably might cover political mobilization for public agitations against an arbitrary act of the government. This is convenient to the government in power and inimical to the spirit of democracy. And when an official carries out such an anti-democratic decision, he is protected from any proceeding for allegedly acting in good faith.

The immunity to legal scrutiny is likely to foster a sense of being above the law unless such draconian laws are further qualified by adequate safeguard. It may be difficult to establish a regime of accountability and prevent misuse of the police for political vendetta and arbitrary exercise of power without such stringent safeguards.

The harassment of political opponents of the government is an old scandal. It is often seen that when such a political worker opposed to the government is released on bail or freed from wrongful detention, the police slap upon him fresh charges and arrest him again the moment he steps out into freedom. It can hardly be expected that the police who are instruments of such lawlessness will develop any real respect for the rule of law. Likewise the gathering of intelligence ought to be made more professional more governed by the interest of the State, than by passing political convenience of a party in power. It is notorious that the despotic mentality of the colonial power that once throttled democracy and liberty before independence survives in many of the practices like vilifying critics of the government, fabricating evidence and concocting fantastic allegations. Murder and rape are some of the charges routinely laid at the doors of political opponents of the government. And the Police are expected to uphold the rule of law by pretending that such charges are genuine.

A regime of accountability requires as its pre-condition the tightening up and reform of laws that allow scope for biased, arbitrary and unregulated

exercise of power by political authorities and the police as their willing or unwilling instruments. In the meantime certain short-term measures as mentioned earlier may be put in place to allay public apprehension and cynicism.

While Commissions on different problems and issues make well thought observations and recommendations government are notoriously lax and insincere in implementing them.

Hence I pray that your recommendations be given full publicity in the media in order to raise public awareness and instill some caution among the government circles. There should be no bar to this as the report is a public document.

Yours faithfully,

Sd/-

(Hiren Gohain)

ANNEXURE-1

**Acute Traffic Problem in Guwahati city ::
Minutes of the Discussion Convened by the State Police
Accountability Commission
Sept. 14,2009.**

List of participants at annex. (A)

Traffic jam, congestion is no longer an issue which can be slighted/ignored at Guwahati City any more. This is what the Commission is concerned about.

Certain City roads have been dangerously impacted. Bumper to bumper vehicular congestion on the ascending of an over bridge impairing even the gradual movement is an instance to be cited. Traffic jam at school points, commercial areas, flyover crossings, road crossings for pedestrians almost at the full length of the busy City roads are some of the common scenes confronting the road users. No doubt number of vehicles have increased, trading establishments along the roads have also equally spiralled. But the order on the road and safety to the people is a primary concern of Police. The Commission is occupied with a sense of responsibility in matters of preventive actions as may be stream lined by the City Police. The Commission on prolonged witness to the traffic problems in Guwahati City held a discussional meeting on Sept.14,2009 in the Circuit House Guahati.

Initiating the discussion, the Chairman of the State Police Accountability Commission, Justice (Retd.) Shri D.N.Choudhury called upon the participants to Offer their valued suggestions as well as a joint move in order to maintain a smooth flow of traffic in the City roads without hazards to road users. Taking part in the discussions Shri Waheed Zaman, (Retd.) Senior Engineer of P.W.D (Mechanical), Assam who evinced considerable interest in the traffic problem in the City referred to his personal contact with DGP, Maharastra in harnessing knowledge of traffic arrangement at Mumbai City. Road engineering, education to school children particularly and enforcement of M.V. rules by enforcing agencies are the keys for solution to the problem on short and long terms measures. Road safety is a primary concern in Guwahati City for the Police and Public. Police is a Public safety instrument ensuring security of the people from the man made hazards at the first instance and then from the natural calamities in aid to the management groups. Expectation on Police is therefore very high of public safety and orderliness on roads. Equally issuing driving licences, permits to vehicle owners for commercial and public transport are important quardrants to the complex geometry of City traffic. Transport Deptt. Should take extreme care and ensure accordingly. Gone are the days when vehicular traffic with not too a high number were not concerned in road safety. Now thousands of vehicles are on the increase on the roads. The transport Deptt. with increase in revenues should also increase the safety mechanism . 80% accidents are due to human failure and take place between 1 to 4 P.M. in the afternoon and 1 A.M. to 6 A.M. in the night and it is due to fatigueness. Mobile Phone has emerged as

another danger to the safety. Road Engineering should also perform its role. Hoardings/traffic signs for safety should be made use of.

In Guwahati City, Shri Zaman suggested that spot fining, taking down Registration number of vehicle violating rules and issuing notice for fine, reference to Courts, parking slots with capacity, Name and phone No. of shot lessee etc. Zebra crossings for pedestrian should be planned and operational at the cross roads, besides over bridges under ground crossings at selected places.

Shri N.N. ChangKakati, IPS (Retd.) former DGP, Assam suggested, among other things, participation of educational institutions in the City in imparting training on traffic rules/regulations-particularly those enthusiast in the scouts & guides. Organised and institutional facility for imparting driving training to the youths is need of the day.

Speed limit should be notified for areas with strict enforcement taking help of modern equipments. Overtaking from the left should be penalised. Strength of traffic Police should be increased immediately. Issuing of driving license should be regulated by a committee consisting of the S.P., Joint Director Health Services (Civil Surgeon of the yester year) and D.T.O/M.V.I and should be issued after careful examination.

All narrow roads should be widened with removing of encroachment if any, and also the blind corners. No new schools, hospitals of public importance should be allowed without sufficient parking areas.

Parking areas should not be to the disadvantage of the elderly people particularly for procurement of medicines.

Home guards may be utilised in the parking areas with name and phone number of the owner of the vehicles displayed.

Guwahati Municipality Corporation's representative Shri S. Theik taking part in the discussion informed that the current roadside parking arrangement is temporary till permanent arrangement is made. New bye-laws are being framed with a view to making parking arrangement in the new constructions in the business areas. He also added that steps need to be taken to stop parking of Public vehicles on the road and GMC should be consulted before issuing 'Licence to the Tracker operators.

IGP(Law and order) Shri Bhaskar Jyoti Mahanta said that there are 79 parking area notified but the police is not aware of the status of the parking areas in the rest of the areas in the City. He suggested that vacant and unused areas on the road side may be taken on lease for using as parking area.

Modernisation of traffic police, educating people on parking, City Bus route to be regulated by permit instruments are some of the suggestions made by Shri Mahanta DIGP (Modernisation, planning, Coordination) Shri P.K. Das speaking on the occasion gave an account of the modernisation of traffic police of Guwahati City so far with help of fund from the Govt. of India received under the annual police modernisation plan. A traffics control room in the 2nd floor of the Police Control Room building at Ulubari, near the Assam Police Hqr has already been built. GIS/GPS aided Control room facilities are under installation. CCTV and mobile cameras are also in the planning for the City points.

The D.T.O.(Entr) Kamrup Shri P.Nunisa informed that the Bus stops in the City are not duly notified and there is no equitable distribution of City Buses on different routes which gives the Bus operator an opportunity to choose the route of their own advantage. Regarding issue of Driving Licence he stated that the learners are imparted training under the DTO (R&L) for one hour a day for 3 months for Transport and 21 days for Non-Transport vehicles.

Dr. Akhilesh Maurya of IIT (Civil Eng), Gauhati taking part in the discussion said that the City traffic at Guwahati City needs to be oriented on speed limit at crowded points, left side over taking to be penalized, slow moving vehicle should be on the left, video Camera to be installed in aide of the traffic police. [IIT can help the police in handling the electronic gadgets]. The problem of jam at fly over junction may be taken up with the IIT for finding out ways and means through road engineering techniques and a coordinated effort need to be taken by the GMC, GMDA and Traffic Police.

Ms. Goswami of Maharshi Bidya Mandir suggested that City Bus stops should be shifted from in front of the Schools, Trekker, Rickshaw should be stopped plying in the crowded City roads. Police should be made a countersigning authority of permits issued to Trekker/slow morning transport. Schools should not come under the Trade Licence.

The discussions ended with presentation of Traffic problems and records of City Police by the Superintendent of Police Traffic Shri Pradip Pujari, APS.

ANNEXURE(A)

1. Shri B.J.Mahanta, IPS,
Inspector General of Police, (L & O), Assam.
2. Shri P.K.Das, IPS,
Deputy Inspector General of Police, (MPC), Assam.
3. Shri Pradip Pujari, APS,
Superintendent of Police,Traffic, Guwahati,City.
4. Shri Pradip Nunisha,
D.T.O. Enforcement, R.T.A,Betkuchi, Guwahati.
5. Shri S. Theik,
Addl. Commissioner, G.M.C., Guwahati.
6. Shri Dipankar Kakati,
A.E, G.M.C, Guwahati.
7. Shri P.N.Patowary,
Executive Engineer P.W.D.
8. Shri N.N.Changkakati, IPS, (Retd.),
Beltola, Guwahati.
9. Shri Wahid Zaman,
Chief Engineer,(Retd.), P.W.D, Assam.
10. Dr. Akhilesh Mourya,
A.P, IIT, Guwahati.
11. Smti Manika Goswami,
Maharshi Vidya Mondir, Silpukhuri.
12. Shri K.Phukan,
Co-ordinator, Don Bosco.

ANNEXURE –II

Copy of letter No.HMA.391/2009/55 dated 4.3.2010 from the Joint Secretary to the Govt. of Assam, Home (A) Department addressed to the Secretary, SPAC, Assam.

Sub :- Action Taken Report on the recommendations made by the SPAC in its Annual Report,2008.

With reference to the letter cited above, I am directed to furnish herewith the action taken by the Govt. on the Annual Report, 2008.

- i) Regarding the suggestion of the Commission for setting up of the District Accountability Authorities, the matter will be examined and action taken in due course.
- ii) As regards the observation made by the Commission about non-registration of FIRs, involvement of police in land related matters and low level of deployment of traffic policemen in Guwahati city, it may be stated that action has been taken by the department whenever instances of involvement of police officers in Civil disputes have been reported. It may also be mentioned here that 100 (one hundred) posts of traffic police have already been created in the Guwahati. Traffic Police and Traffic Management in Guwahati City is being monitored by the Principal Secretary, Home & Political Department.
- iii) Regarding the recommendations on measures to enhance Police Accountability, 10 Nos. of Training Courses were conducted in Assam Administrative Staff College during 2009 to change the mindset of the police personnel from the rank of O.Cs to S.Ps through behavioural training etc.
- iv) In the matter raised in the post script of the Report it may be stated that action has been taken for permanent office

accommodation of the State Police Accountability Commission and appointment of Lady Member. Regarding the appointment of Nodal Officer, the Joint Secretary, Home, is looking after the matters relating to SPAC.

Further staff of the SPAC has already been sanctioned along with investigating officers. Funds are also been provided to the Commission and remuneration of the Chairman and Member are being increased and a O.M. is being issued in this regard.

In addition to the above information, the action taken report on the Annual Reports of the Commission, 2008 furnished by the A.P. Headquarters vide their letter No. G/VI/05/08/Pt.i-3/113 dated 20.2.2010 are also sent herewith as desired by the Commission.

ANNEXURE-II (A)**Copy of letter No.G/VI/05/08/Pt.I-B/113, dated 20.2.2010 from the I.G.P(A), Assam, addressed to the Joint Secretary, Home (A) Department, Assam, Dispur**

Sub : Action taken report on the Annual Report of the S.P.A.C. for the year, 2008.

Reference to the above, as directed, I am furnishing below action taken report on Annual Report of Assam Police Accountability Commission for the year 2008.

Specific cases mentioned in the report and action taken.

No. 03/2008 : Commission closed the proceeding.

No. 35/2008 : The Commission was pleased to deal with the concerned district directly.

No. 05/2008 : In this connection action was taken and also a circular vide No. 3/2008 was issued on 8.9.08 to all concerned (copy enclosed).

No.13/2008 : The Commission was pleased to deal with concerned district directly. DGP, Assam also issued direction to CID, Assam for enforcement of Juvenile Justice Act.

No.39/2008 : SSP, City took action directly and the Commission was pleased to note.

No. 17/2008 : Sanction for payment against acquired land was obtained and completion of payment is in process (copy of Govt. sanction).

No. 8/2008 : As advised by the Commission, Simaluguri P.S. case No. 127/08 u/s471/472/383/34 IPC was registered against S.I.Punaram Gogoi and investigated into. The case ended in F.R. which was accepted by the learned CJM on 7.8.09.

In other observations of general nature like display of legal provision and rights of arrested persons etc. action in all police station have already been taken action. Circulars/ directions etc. also had been issued. The nature of the observations of the Commission are of utmost importance

touching on all aspects of policing and therefore requires day to day attention.
Therefore action continues.

The actions taken as shown above referred to points actionable
by this department only.

ANNEXURE-II (B)

Copy of Memo.No.G/VI/05/08/63, dated 8.9.08, Circular No. 3 Of 2008 issued by the Director General of Police, Assam to all All S.P/SRP, Pandu/S.P, SOU/BIEO/ACB/BORDER, Assam.

Sub : Mis-interpretation of sections 160 and 161 Cr. PC and misuse of powers of police there under.

It has come to the notice of the undersigned that instances have been reported that Police Officers making an investigation under chapter XII of Cr. P.C. are not clear about the provisions of Sec. 160 & 161 Cr. P.C. which results in the misuse of their statutory powers and annoyance and harassment to the innocent citizens.

As per provisions of Section 160 Cr. P.C. the investigating officer during investigation of a cognizable offence or of a non-cognizable offence under the order of a Magistrate may by order in writing, require the attendance before himself or any person being within the limits of his own or any adjoining station, who from the information given or otherwise appears to be acquainted with the facts and circumstances of the case. It is imperative that there must be a registered case in the hand of such investigating office to enable him so summon a witness. Otherwise such action of the Police officer will amount to be malafide and in such cases the aggrieved person can always seek remedy under Article 226 of the Constitution.

Again, Sec. 161 Cr. P.C. empowers such an investigating officer or an officer acting on the requisition of such officer to examine orally any person supposed to be acquainted with the facts and circumstances of the case. This Sec. never authorises the investigating officer to summon a witness as interpreted by some I.Os.

Though both the sections are very important for the investigating agencies, most of the officers are not clear about the spirit & provisions of these sections. For example, in case No. 5/2008 filed by one Satyendra Nath Das, Advocate before the SPAC (State Police Accountability

Commission) against one SI of Police of Noonmati P.S. namely S.A.Ahmed, complaint was lodged that the SI unauthorisedly summoned the complainant to the Police Station without any case reference. The S.I. appeared before the SPAC personally. The Commission had specially taken exception to the fact that the SI summoned the complainant to Noonmati PS ostensibly under the powers given to him U/S 161 Cr.P.C. which in fact, is an incorrect interpretation of Sec. 161 Cr.P.C. which refers specially to examination of witnesses by the Police and not to examine the complainant himself during investigation. Hence the Commission suitably admonished SI Md. S.A.Ahmed for his above serious lapses.

You are therefore advised to circulate this information to all the Officer-in-Charge of Police Stations under you and to caution them to act properly as per the provisions of the Cr.P.C. for their guidance.

ANNEXURE-II (C)

**Copy of the W.T. MSG. No. G/VI/05/08 Pt. Dtd. 25-11-2008.
from N.K.Sinha, IPS, Deputy Inspector General of Police (A),
Assam, addressed to ALL DISPOLS/ALL DIGPOLS, Assam.**

Ref Memo No. G/VI/05/08/33 dtd. 24th July/2008 issued from Assam Police Headquarters regarding minutes of the meeting of State Police Accountability Commission held on 19-04-2008 for taking necessary action and to furnish action taken report thereon (.) The minutes indicated the following points (.) 1. All District S.P's have been instructed to introduce and maintain a complaint register in S.P. office and all Police Stations and to keep record of complaint received (.) (2.) A gazetted officer to be designated in each District to go through the complaint and to conduct enquiries and findings of such enquiries to be submitted to District S.P (.) (3). Any complaint against any Police officer of and above the rank of Asstt./Dy. S.P. the same to be forwarded to DGP, Assam with comments (.) (4). Remedial measures for making the Police more responsible to the people and steps taken for motivation of Police Station level officers to improve the image of Police (.) (5). Steps taken to sensitize Police about aims and objectives of S.P.A.C. through different training programmes including public awareness campaign through the use of billboards in P.S/Police officers about rights of the people and obligations of Police (.) Para (.) Please submit a action taken report within 28-11-2008 for perusal of DGP, Assam (.)

Copy of Memo.No.G/VI/34/2004/Pt.-III/15, dated 01.01.2010 , Circular No. 1/2010 from the Director General of Police, Assam to All District S.Ps/ IGP,BTAD/I All Range IGPs/DIGPs, Assam.

Sub : Interaction with Higher Judiciary (Points for action)

On 11.12.2009, an interactive session was organized for Investigating Officers and Supervising Officers of various districts, CID and BIEO, which was addressed by the Hon'ble Chief Justice of Gauhati High Court and Director General of Police, Assam. The session focused on the falling standards in the quality of investigation and the consequent fall in conviction rate of the state, which has gone even below the all India rate. It was felt that this was a matter of serious concern and calls for immediate attention by all wings of the criminal justice system, specially the police.

It is of paramount importance to improve the quality and speed of investigation of criminal cases and prevent lapses and defects in the process of investigations, right from the FIR stage.

In particular, focused attention must be paid on the following points/issues by all the I/Os and supervising officers.

1) It must be ensured that, at every stage of investigation, the provisions of the Code of Criminal Procedure, 1973 are strictly complied with. In particular, all Police officers must conduct the entire investigation process, in strict conformity with the provisions of Chapter – XII of the Code (Sections 154 to 176 Cr.P.C.).

2) The first Information of any cognizable offence must be recorded, in strict compliance of section 154 Cr.P.C. before starting the investigation. Generally, the course of simply making a G.D. entry of the reported cognizable offence and recording the FIR at a much later stage should

not be resorted to , as it is not in accordance with the laid down law and, therefore, adversely affects the credibility of investigation in the trial.

3) It has been noticed that, in murder cases and U.D. cases, the inquest examination and post mortem examination, in many cases, are not being done in accordance with the laid down law and relevant provisions of the Assam Police Manual. In many cases, the Police personnel accompanying the dead body, for P.M. examination are not being produced as witnesses. At times they are even unable to identify the dead body at the P.M. examination. This needs to be rectified.

4) The Investigating officers and Supervising Officers must ask relevant and pertinent questions, answers to which, from the Doctors conducting P.M. examination as also from various forensic experts conducting various forensic examination, will help in the process of successful investigation and consequently, successful prosecution, by throwing light on various clues the in case.

5) The panch witnesses at the time of searches, etc. need to be produced and got examined as relevant witnesses for testifying before the trial court.

6) Chance witnesses, if any, to any incident of crime, are also not being examined properly and produced as witness in the case. This needs to be rectified.

7) The provisions of section 27 of the Evidence Act, containing the law relating to admissibility of fact, discovered in consequence of information received from an accused person of any offence, in the custody of a Police officer should be properly and carefully utilized to strengthen the prosecution case.

8) The investigating officers and the supervising officer must ensure proper and adequate interaction and consultation with the prosecutors, at every stage of investigation, as per the needs and requirements of every criminal case.

9) The acquittal report must be studied for assessing the defects and shortcomings in the case, for guidance of Police officers, so that such mistakes are not repeated in future.

10) There is a strong and urgent need to refresh the knowledge of laws and procedure of the investigating officers and supervising officers, from time to time. Particular emphasis needs to be made on Chapter – XII of Cr.P.C., 1973 and Indian Evidence Act.

11) All the Police personnel, dealing with investigation, must upgrade their knowledge of available technology, for improving the quality of detection and investigation.

12) Proper liaisoning with the public and CLG's will go a long way, in helping the process of detection and investigation of crimes.

13) We must ensure effective implementation of laws dealing with women, children, senior citizens, S.C's, S.T's and other weaker sections of the society.

14) The domain of Police officers is the criminal law and not the civil law. Police officers should, therefore, strictly refrain from handling civil matters and civil disputes, unless warranted by law.

Please ensure that all necessary steps are taken on the above instructions, which are neither exclusive nor mutually explosive, for their effective and quick implementation.

An action taken report, and results thereof, may be submitted for perusal of the undersigned by 30-04-2010 positively.

All things considered, the Commission considered it appropriate for launching a criminal prosecution U/Ss 342/471/474 IPC read with Section 98 (A)/99 and 99 (3), (4) and (5) of the Assam Police Act,2007 against Bina Kakati O/C, concerned. Before finalizing its opinion, the Commission thought it proper to obtain the views of the department and additional facts if any. The copy of the enquiry report along with other relevant records therefore be sent forthwith to the DGP to enable the authority to submit its report at its earliest possible preferably within a period of 15 (fifteen) days from the receipt of this order.

CHAIRMAN

MEMBER

ANNEXURE-III (A)

**STATE POLICE ACCOUNTABILITY COMMISSION,
ASSAM :: DISPUR :: GUWAHATI.**

PRESENT

JUSTICE (RETD.) SHRI D.N.CHOWDHURY	-	CHAIRMAN.
SHRI D.N.SAIKIA, IAS (RETD.)	-	MEMBER
SMTI MINATI CHOUDHURY	-	MEMBER

SPAC Case No. **59 /2008.**

Smti Rupalim Dutta, Complainant

O R D E R

Date 22.2.2010

A complaint was received alleging serious misconduct against Police personnel. The commission obtained report from the concerned authority. Not being satisfied with the report the Commission on its own made a detailed probe through its own Agency. After conclusion of the investigation the Commission found that a citizen of Indian Republic Smti Dipika Ray Choudhury (55 Years old) was unnecessarily arrested in an unjustified manner, unlawfully detained and subjected her with gross misbehavior. Denying a person of her liberty is a serious matter. In the instant case the concerned officer blatantly disregarded the constitutional safeguard as well as the protections guaranteed by the Cr.P.C, overlooking direction issued by the Supreme Court of India in Joginder Singh-vs-State of U.P. reported in 1994 4 Sec. 260 and D.K. Basu-vs-State of West Bengal reported in 1997 (I) Sec. 416 as well as the instructions issued from time to time from the State Govts. and the instructions issued from the Police headquarters. The officer of the Police Station allegedly engaged itself in preparing false document. Considering the seriousness of the matter and keeping in mind the Police Accountability and Public confidence the Commission considered it appropriate to recommend the concerned authority for launching criminal prosecution against the concerned Police officer. The Commission thought it proper to obtain views of the department and accordingly forwarded a

copy of the enquiry report and other relevant records to the concerned authority to enable them to present the departments view if any within a time frame.

The Commission awaited for the report while awaiting for it. The Commission found a new development. The Agency of the Police surprisingly got hot under the colour engaged itself by calling the complainant to the CID office through its cell phone No. 9435556951. A complaint to the extent was received from the complainant. This is a pure simple act of interference in the duties and functions of the Commission in discharging its statutory duty's out and out it is an outrageous act.

The Commission waited for the response from the authority for long. It seems that the authority has nothing to present. In view of the development the Commission made the Order passed on 30-12-2009 absolute and accordingly the Director General of Police of the state and the State Government are directed to register a FIR and launch criminal prosecution U/Ss 342/471/474 IPC read with Sec. 98(A)/99 and 99(3),(4) and (5) of the Assam Police Act,2007, against Inspector Bina Kakati, Officer In Charge, All Women Police Station, Panbazar, Guwahati.

CHAIRMAN

MEMBER

ANNEXURE-III (B)**STATE POLICE ACCOUNTABILITY COMMISSION,
ASSAM :: ULUBARI :: GUWAHATI.****PRESENT**

JUSTICE (RETD.) SHRI D.N.CHOWDHURY -	CHAIRMAN
SHRI D.N.SAIKIA, IAS (RETD.) -	MEMBER

SPAC Case No. 59 /2008.

Smti Rupalim Dutta, Complainant.

O R D E RDate 20.5.2010

Perused letter No.G/VI/05/08/Pt-1(D)/91 dated 9th April,2010 with copy of the memo No.CD/CID/E-30/10/75 dated 3rd April,2010 along with enquiry report submitted by Dy.S.P. (CID) dated 29.3.2010.

The Commission regrets that the Assam Police Headquarters has apparently failed to realize that as per mandate of the Assam Police Act, it is imperative on its part to give effect to the decision and direction of the Commission. On the contrary, it has seemingly appropriated to itself the powers of an Appellate authority over the Commission by first of all causing an enquiry into the matter by a junior level officer of the rank of Deputy Superintendent of Police and then compounding its folly by getting his report forwarded by the ADG, CID whose forwarding remarks reveal an astonishing non-application of mind and indeed flies in the face of the Commission's own findings on the matter. His blatant attempt to absolve the charged officer of all wrong doing is deplorable to say the least. The Commission is constituted under a statute of the State Legislature to ensure police accountability under Chapter-VIII of the Act. It is needless to state that the Act has been enacted to provide for impartial

and efficient police service, safeguarding the interest of the public at large and making the police force professionally organized, service oriented and accountable to law.

In the present instance, the Commission had received a complaint from a woman alleging serious misconduct against certain police officials charged with infringing on the liberty of an individual. The Commission caused a thorough probe into the matter through its own agency under the leadership of former DIG of Police and Chief Investigating officer of State Police Accountability Commission, Shri R.K. Bania, IPS (Retd.). The report reveals a sad story where a citizen of the Indian republic was unlawfully taken into custody, kept in unlawful detention and subjected to gross mis-behaviour. The liberty of an individual is the most precious of all human rights. The faith and trust of the people of India on liberty is verily set out in Article 20,21, and 22(i) & (ii) of the Constitution which speaks of the concern for human liberty. In a democratic polity, the rule of law is paramount and failure to maintain rule of law is an indication of the veritable collapse of the society at large.

The Commission's probe established the following events:

(i) The Place of occurrence was at Dalgaon. The names of the accused along with the address were specifically mentioned in the FIR. The notification for arrest of the accused was to be done by the Dalgaon Police :

(ii) The All-Women Police Station, Guwahati did not have the jurisdiction to investigate the offence. The place of occurrence was at Dalgaon and beyond the jurisdiction of the All-Women police station, Guwahati. The case did not call for the O.C. of the All-Women Police Station, Guwahati, Ms Bina Kakati to investigate the case herself. The probe reveals that the O.C. Ms Bina Kakati went beyond her jurisdiction and indulged in irregular behaviour which was prejudicial to the dictates of law.

(iii) Thirdly, the probe further reveals that the custody of the arrested woman viz. Dipika Roy Choudhury, was shown at Jalukbari Police Out Post. Curiously, though, no record to this effect was ever produced or maintained. Everything was done in the most arbitrary fashion. Even if it is presumed that the lady was arrested at Dalgaon, in that case also, under the constitutional mandate it was imperative for her to be produced before the nearest Magistrate at Mangaldoi itself. The records of the All-Women Police Station, at Guwahati do not indicate that police personnel were indeed deputed to bring Dipika Roy Choudhury from Jalukbari to Panbazar Police Outpost on 30.10.08. The probe has also established interpolation of GD entries relating to the case.

The Commission after completion of the enquiry sent its findings along with its order to the Director General of Police Assam as required U/S 82 of the Assam Police Act with the necessary direction to lodge FIR against the arraigned police officer. The Commission provided an opportunity to the DGP, Assam to present a departmental view and any additional information on of the matter which was not within the knowledge of the Commission. Regrettably, the DGP did not respond to it within the time specified. Curiously, only after passing of the Commission's final order, the communication dated 9.4.2010 was received. The Commission did not discover any fresh evidence in this report to either alter or review its findings assuming the same to be licit evidence, and the decision of the Police Headquarters, countering our decision, is not found to be based on any acceptable evidence. If it is not, then it must be treated as arbitrary, capricious and absolutely unauthorized. Decisions which are extravagant or capricious cannot be legitimate. We again deprecate the attitude of the police headquarters which has shown itself to be trying to evade the process of law and deliberately deviating from the path of rectitude and accountability. It cannot be gainsaid that the Police is to be seen and to see themselves as protectors of liberty, to be service-oriented and, accountable to law.

Before concluding, we cannot but comment on the imperiousness and contemptuous indifference shown by the State Police Hqs. to the function and purpose of a statutory institution like the SPAC. The police headquarters seems to have based its decisions more on arrogance, where there should have been a spirit of inquiry as well as introspection, and a willingness to assist the Commission instead of allowing its judgment to be clouded by extraneous factors.

Any deviation from the path of rectitude amounting to a breach of trust be severely dealt with instead of pushing it under the carpet. Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

With these observations, we advise the Government to implement cause the Commission's directions with the utmost expedition. We trust the State Govt. will implement the mandate of law and take appropriate action in this regard.

CHAIRMAN

MEMBER

ANNEXURE –IV**STATE POLICE ACCOUNTABILITY COMMISSION
ASSAM ::: ULUBARI ::: GUWAHATI.****Present**

Justice (Retd.) Shri D.N.Chowdhury	:-Chairman
Shri D.N.Saikia, IAS (Retd.)	:-Member.

Case No. 18/2009

Shri Debakanta Gogoi	Complainant.
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ORDERDate 18.11.2009

The present complaint relates to the alleged misconduct against two of the Police Personnel of the Dibrugarh District implicating Shri Amulya Gogoi, S.I. and Shri Mahendra Gogoi, Dy Superintendent of Police.

The complainant interalia stated that one Shri Surendra Singh Bhamra of Amolapatty, Dibrugarh Town made a demand on him for a sum of Rs. 9,60,000.00 with the aid of police administration. The complainant stated on oath that they did not owe any money to Shri Bhamra. It was however asserted that Smti. Jharna Gogoi Das, the married daughter of the complainant borrowed some money for business purpose from Shri S.S.Bhamra and returned Rs. 1.75 lakh of money by bank transfer.

It was further alleged that on 2.6.2009, the Second Officer of Dibrugarh Police Station Shri Amulya Gogoi came to the residence of the complainant at Madhakali, Khowang at about 4 PM along with Shri Bhamra and demanded from them the above amount immediately. Thereafter, the S.I. Amulya Gogoi accompanied by Shri Bhamra took Shri Debakanta Gogoi along with his son Shri Rana Gogoi to the Dibrugarh Police Station and abused them and pressed for the amount within one hour in the Police Station, else they would be sent to police lock up, jail etc. The complainant also stated that he was a person who was prone to high blood pressure. The mounting coercion caused to him added up to his tension which impelled on of the complainant for being shifted to Assam Medical College, Dibrugarh for care and treatment. However, at the instance of Shri S.S. Bhamra and another lady Mrs. Mamata Singh Dutta by name, the hospital authority released Shri Gogoi and brought to the Police Station where he and his son were detained for the whole night of 2.6.2009. The next day (3.6.2009) his wife and daughter-in-law came to the Police Station with a sum of Rs. 2.20 lakh and paid in the Police Station to Shri Bhamra and the lady Mrs. Mamata Singh Dutta in presence of the Police Officer. No money receipt was given to the complainant despite asking for. They were forced to sign in blank court paper (stamp paper) and some blank sheets and also took sale letter of his Maruti 800 Car with a signature on blank paper. The complainant was released thereafter on a condition for clearing the entire amount as demanded without fail.

The complainant also narrated that apart from Rs. 1.75 lakh which was paid by his daughter, he paid an amount of Rs.

4.85 lakh to Shri Surendra Singh Bhamra. The Police personnel allegedly demanded Rs. 50,000.00 from him out of which Rs. 20,000.00 was paid to Shri Amulya Gogoi on 3.6.2009 at night at about 10.00 PM and his vehicle was kept in the Police Station. After some days, the vehicle was returned to the complainant after taking his signature on blank paper as per direction and dictation of the Police Officer.

It was also alleged that the Deputy Superintendent of Police Shri Mahendra Gogoi went to the complainant's house and demanded him to pay the balance amount as alleged for Rs. 4.80 lakh within one hour and directed his son and family to collect the amount for payment and to attend the Police Station Dibrugarh. Likewise, the complaint was made alleging black mailing, extortion and un-lawful detention against Dy. S.P. Shri Mahendra Gogoi. Thus the Dy. S.P. Shri Gogoi, Inspector Shri D.Sharma, O.C. of the Dibrugarh Police Station and the Second Officer Shri Amulya Gogoi of the same Police Station purportedly misused the police power for recovering debts of in a dispute of civil nature.

In due course, the Commission called for report from the Superintendent of Police, Dibrugarh and also heard the Dy. S.P. and the O.C. Dibrugarh Sadar Police Station and their statement were recorded.

On consideration of the report of the S.P. along with statements made before the Commission it gave the impression that the police machinery was used towards the recovery of alleged debt. The materials on record unerringly pointed out that the complainant Shri Debakanta Gogoi and his son were wrongfully confined in the Police Station for the whole night of 2.6.2009 and

released on 3.6.2009. The Superintendent of Police also indicated in his report that the complainant and his son were brought to the Police Station on 2.6.2009. The report also pointed out that no case was registered against the complainant since the request came from Shri Surendra Singh Bhamra not to register any case against the complainant.

The S.P's report also clearly indicated that the complainant and his son were brought from their home by Shri Amulya Gogoi, SI, to the Police Station even without registering any case. Likewise, Dy. S.P. Shri Mahendra Gogoi went to the house of Shri Debakanta Gogoi at Knowang on 1.7.2009 accompanied by Shri S.S.Bhamra.

The Dy. S.P. Shri Mahendra Gogoi asserted before the Commission that on 1.7.2009 along with Shri Bhamra were accompanied by one S.I, two Constables and one woman Constable without registering a case. Instrumentality of the state was utilized for recovery of private debt in blatant violation of law. Shri Mahendra Gogoi, Dy. S.P. also stated before the Commission that Smti. Sashi Prova Gogoi, wife of the complainant gave a written undertaking to the effect that her husband and her son would appear at Dibrugarh Police Station on 2.7.2009 at 10.00 AM to negotiate with Shri Bhamra. All these things clearly revealed that the Police Officers namely Shri Mahendra Gogoi, Dy. SP, Shri D.Sharma, O.C and S.I. Shri Amulya Gogoi were all engaged in black mailing, extortion, causing illegal detention for recovery of alleged debt. *“ Damaging a person of his liberty is a serious matter. Arrest and detention in a police lock -up can cause incalculable harm to the reputation and self esteem of a person...”*

from the decision of the Supreme Court in Joginder Kumar –Vs- State of U.P. and Ors. Reported in (1994) and Sec. 260. The Police Act is enacted to provide for impartial and efficient police service safeguarding the interests of the people. Instead of obeying the duties prescribed by law, persons in uniform seemingly turned into a debt recovery agency for an individual in a matter of civil nature in blatant violation of law. The members of the crime prevention and crime detection agency made themselves involved in criminal acts, seriously damaging the image of the force. Time has now come to grasp the nettle firmly with both hands.

In the circumstances, the Commission is of the view for launching criminal prosecution against the two officers Shri Mahendra Gogoi, Dy. SP and Shri Amulya Gogoi, S.I. under Sections 342,347,348 read with 34 of the IPC by treating the complaint lodged before the Commission on the 10th of July,2009, as the FIR. Likewise, the Commission considered it appropriate for initiating departmental proceeding against the O.C. of the Police Station for dereliction of duty, laxity in supervision etc. Before finalizing its opinion, the Commission thought it proper to apprise the matter to the Director General of Police for presenting the views of the Department at his earliest convenience preferably within two weeks time from the date of receipt of the report.

CHAIRMAN

MEMBER

ANNEXURE-IV(A)**STATE POLICE ACCOUNTABILITY COMMISSION
ASSAM ::: ULUBARI ::: GUWAHATI.****PRESENT****JUSTICE (Retd.) D.N.CHOWDHURY - CHAIRMAN.****SHRI D.N.SAIKIA, IAS (Retd.) - MEMBER.****Case No. 18/2009****Shri Debakanta GogoiComplainant.****ORDER**Date 8.12.2009

Perused the views offered by the Director General of Police, Assam, on the Interim Order passed by the Commission on 18.11.2009 in the aforementioned complaint case.

In consonance with the recommendations made by the Commission and the views offered by the Director General of Police, Assam, the Commission is of the view that the Interim Order passed on 18.11.2009 be made final and the proceedings be closed. The Secretary of the Commission shall forward the complaint and other relevant documents (in original) to the D.G.P, Assam, to initiate necessary action against the concerned Police Officers. The Police Administration shall also keep the Commission apprised with further development in the matter.

The proceedings thus stands closed

CHAIRMAN

MEMBER

ANNEXURE –V**STATE POLICE ACCOUNTABILITY COMMISSION
ASSAM ::: ULUBARI ::: GUWAHATI.****PRESENT**

JUSTICE D.N.CHOWDHURY (Retd.) - CHAIRMAN
SHRI D.N.SAIKIA, IAS (Retd.) - MEMBER

SPAC Case No. 06/2010

Alok Prayas (NGO),
Guwahati.

Complainant.

ORDER

Date :- 24.5.2010

Upon perusal of the complaint, hearing of the concerned Police officers, including the Sr. Superintendent of Police, City Guwahati and upon consideration of the available records the Commission considers it appropriate to close the proceeding with the following observations and directions.

1. The O/C, Noonmati P.S. as well the I.O. of the Noonmati P.S. case No. 20/2010 Sri Akbar Ali, S.I. Police are found guilty of exceeding their powers in arresting the parents of the victim girls of Noonmati P.S. case No 336/2009 U/S 366 (A) IPC. The arrest of those persons were done in a most causal fashion without any reasonable justification.
2. The arrest and detention of those persons runs contrary to the direction issued by the Police Hqr. vide Inspector General of Police, CID, memo No. CID XI/1-93/338 dtd. 25-04-1997 instructing the Police not to make arrestes in a routine manner on a mere allegation of the commission of offence or offences. The above direction was issued by the Police Hqr. on the strength of Supreme Court Order in Joginder Singh –Vs- State of U.P.

3. The Director General of Police is directed to initiate departmental actions against the above two officers as per law with due intimations to the Commission.

CHAIRMAN

MEMBER