

Prakash Singh and Others vs. Union of India and Others

22 September 2006

11 January 2007

Compliance with the Supreme Court Directives on Police Reform



Commonwealth Human Rights Initiative (CHRI)

B-117 (First Floor), Sarvodaya Enclave

New Delhi - 110017 INDIA

Tel: +91-11- 26528152, 26850523

Fax: +91-11 - 26864688

E-mail: chriall@nda.vsnl.net.in

Website: www.humanrightsinitiative.org

TABLE OF CONTENTS

Background	3
Part I: Functional autonomy	5
1. State Security Commission	6
2. Director General of Police	9
3. Minimum tenure for other police officers	10
4. Police Establishment Board	11
5. National Security Commission	12
Part II: Accountability	13
6. Police Complaints Authority	14
7. Separation of investigation and law and order police	16
State responses	17
Annexure 1: Chart of Police Ranks	19

BACKGROUND

The purpose of this briefing note is to present the Supreme Courts' seven directives on police reform in detail, the rationale behind them, and the way they can best be complied with by state governments. CHRI was both an intervener in the Prakash Singh case and closely associated with the Sorabjee Committee that drafted a Model Police Act, which can assist state governments in taking effective steps toward compliance.

After decades of public pressure, lack of political will and continued poor policing, a police reform process is finally underway in India. On 22 September 2006, the Supreme Court delivered a historic judgment in *Prakash Singh and Others vs. Union of India and Others* instructing central and state governments to comply with a set of seven directives laying down practical mechanisms to kick-start reform.

The archaic Police Act of 1861 continues to govern policing in India, despite far reaching changes in governance and India's transition from a colonised nation to a sovereign republic. As policing is a state subject under the Constitution, states must enact their own Police Acts but most states have chosen to adopt the 1861 Act. Some states have enacted their own Acts but even these closely resemble the 1861 Act. This Act and the kind of policing culture that has been allowed to flourish in independent India, have led to countless abuses by police officers. The need for police reform has been acknowledged by successive governments. Since 1979, a number of commissions and committees have been set up by the central government to suggest ways to reform the police. Yet, the recommendations of these bodies have not been implemented and their reports have largely been ignored.

Ten years ago, two former Director Generals of Police requested the Supreme Court to direct central and state governments to adopt a set of measures to address the most glaring gaps and bad practice in the functioning of the police. The petitioners based their recommendations on the findings of the various police reform commissions and committees. Given the “gravity of the problem” and “total uncertainty as to when police reforms would be introduced”, the Supreme Court considered that it could not “further wait for governments to take suitable steps for police reforms” and had to issue “appropriate directions for immediate compliance”. These directions are binding upon central and state governments until they frame “appropriate legislations”.

In October 2005, as the Supreme Court was considering the matter, the central government set up a “Police Act Drafting Committee” (PADC) – commonly known as the Soli Sorabjee Committee – tasked to draft a new model Police Act. The PADC was mandated to take into account the changing role and responsibilities of the police and the challenges before it and draft a model act that could guide states while adopting their own legislation. The constitution of the PADC was prompted by the Prime Minister's concern expressed at the Conference of District Superintendents of Police in early 2005 that: “We need to ensure that police forces at all levels, and even more so at the grassroots, change from a feudal force to a democratic service”.

Very shortly after the Supreme Court delivered its judgment, the PADC submitted its Model Police Act, 2006 to the Home Minister¹. The Model Police Act complements the Supreme Court judgment in that it provides the detailed nuts and bolts through which the directions of the Supreme Court can be most effectively implemented. The final version of the Model Police Act has been shared with state governments but is not yet available for the general public in its final form. It will therefore not be referred to in this paper. A previous draft that closely resembles the final version is however posted on the Ministry of Home Affairs' website² (the “Draft Model Police Act”).

¹ The report was submitted on 30 October 2006.

² First eight chapters of the report are posted at: http://www.mha.gov.in/padc/draft_outline_pact.pdf

This paper will closely examine all of the seven directives and will refer to specific provisions of the Draft Model Police Act which are most relevant for implementation.

The Supreme Court required all governments, at centre and state levels, to comply with the seven directives by 31st December 2006 and to file affidavits of compliance by the 3rd of January 2007. A hearing before the Supreme Court was held on 11 January 2007. State responses varied tremendously ranging from complying with a number of directives through executive orders to strongly objecting to the directives. A significant number of states requested the Court to grant them more time to comply with the directives.

After listening to the oral arguments of more than ten counsels, the three member bench passed a strict order, casting away the objections raised by the states. The Supreme Court stated that there could be no review of its 22nd September judgment and that it needs to be complied with as it is. Regarding the timing for compliance:

1. The Supreme Court ordered that all three self-executing directives must be complied with immediately through executive orders: *“Insofar as these three directions are concerned, they are self-executory and no question of grant of further time, therefore arises. Whatever steps have to be taken should be taken forthwith and, in any case, not later than four weeks from today.”*
2. The Supreme Court granted an extension of three months to comply with the four other directives, which require more thorough considerations to be implemented. These directives must be complied with no later than 31st March 2007. States must file affidavits of compliance by 10 April 2007.

The directives can be broadly divided into two categories: those seeking to achieve functional autonomy for the police (Part I) and those seeking to enhance police accountability (Part II).

PART I: FUNCTIONAL AUTONOMY

Policing is an essential public service and it is the duty of every state to provide its people with the best police service possible. Good policing is what the public wants but does not have. Good policing is policing that protects everyone's person, property and rights. Good policing is designed to work in an impartial and efficient manner for the benefit of all, and not meant to be in service of just the elite few. In order to function even-handedly and in service of all, the police must be able to do their work free from extraneous pressures while at the same time being accountable in various forums for individual actions, overall performance and any misdeed. This requires that the police be given clear direction and role, and then be allowed to perform without fear or favour. Since it is the State's duty to ensure the safety and security of all its peoples, good policing also requires that the political executive's role be carefully defined so that it can direct the outcomes of policing without interfering unduly in its institutional and operational functioning.

In India today, illegitimate political interference in policing is routine. Some trends include manipulating police recruitment, promotion and transfer practices to suit political purposes, bringing political elements into crime control and investigation, or using the strong hand of the police to endanger communal harmony in the worst cases. The result is intense public dissatisfaction and a demonstrable deterioration in safety and security. This needs to change. Yet, there is a danger that too much autonomy can lead to blatant abuse of power, while too little can create a police that is pliant to the political/partisan interests of a powerful few.

Across the world, best practices have created mechanisms by which greatest police effectiveness is ensured through maintaining a delicate balance between functional or operational autonomy and oversight of the police by the political executive. Best practices are designed to ensure that operational autonomy is coupled with strengthened accountability while overall oversight is retained by the political executive. This results in effective, efficient and responsive policing that works within constitutional norms.

A majority of the Supreme Court's directives seek to address these endemic problems of over and under control and strike the balance that will provide the people of India with reformed policing. The details of the related directives are explained below.

1. State Security Commission

Supreme Court directive:

“The State Governments are directed to constitute a State Security Commission in every State to ensure that the State Government does not exercise unwarranted influence or pressure on the State police and for laying down the broad policy guidelines so that the State police always acts according to the laws of the land and the Constitution of the country. This watchdog body shall be headed by the Chief Minister or Home Minister as Chairman and have the DGP of the State as its ex-officio Secretary. The other members of the Commission shall be chosen in such a manner that it is able to function independent of Government control. For this purpose, the State may choose any of the models recommended by the National Human Rights Commission, the Ribeiro Committee or the Sorabjee Committee [...] The recommendations of this Commission shall be binding on the State Government. The functions of the State Security Commission would include laying down the broad policies and giving directions for the performance of the preventive tasks and service oriented functions of the police, evaluation of the performance of the State police and preparing a report thereon for being placed before the State legislature.”

To shield the police from the undue interference of politicians and ensure appropriate policy directions, the Supreme Court requires the establishment of a State Security Commission. The following features have been provided by the Court:

Composition

- Chair: **Chief Minister or Home Minister**
- Secretary: **Director General of Police**
- Other members: They need to be chosen in a way that ensures the Commission functions *independently* from government control. In terms of the selection process and criteria used to select the “other members”, the Court gives the option to choose from the models proposed by the National Police Commission (1979-1981), the Ribeiro Committee (1998-1999) or the Sorabjee Committee, i.e. the Police Act Drafting Committee³.

The Sorabjee Committee model is the most suitable as it provides for the greatest number of *non-political* members. Their membership provides a direct entry point for the voice of the public in policing and allows the State Security Commission to have a diverse and balanced composition. In addition to the Chair and the Secretary, the Draft Model Police Act provides for the following composition⁴:

- (a) **Leader of the Opposition** in the state assembly
- (b) **Chief Secretary**
- (c) **Five non-political persons** of proven reputation for integrity and competence from the fields of academia, law, public administration, media or non-government organisations to be appointed on the recommendation of a *Selection Panel* composed of⁵:
 - (i) A retired judge of a High Court to be nominated by the Chief Justice of the High Court as its Chairman;
 - (ii) The Chairperson of the State Human Rights Commission; in the absence of a state Commission, a person nominated by the Chairperson of the National Human Rights Commission; and
 - (iii) The Chairperson of the State Public Service Commission.

³ The Draft Model Police Act refers to the State Security Commission as the “State Police Board”.

⁴ Chapter 3: Superintendence and Administration of Police, Section 3.5, pages 34-35.

⁵ Chapter 3: Superintendence and Administration of Police, Section 3.6, pages 35.

Functions

The functions of the State Security Commission are to:

- **Ensure that the state government does not exercise unwarranted influence** or pressure on the police.
- **Lay down broad policy guidelines.** The Draft Model Police Act provides that these policy guidelines are aimed at “*promoting efficient, effective, responsive and accountable policing, in accordance with the law*”⁶.
- **Give directions**⁷ for the performance of the preventive tasks and service oriented functions⁸ of the police.
- **Evaluate the performance of the state police** and prepare a report on police performance to be placed before the state legislature.

The Draft Model Police Act provides a very useful template with regard to the performance evaluation function of the State Security Commission. It states that the Commission should first identify objective indicators against which police performance will be evaluated and that these indicators shall include: “*operational efficiency, public satisfaction, victim satisfaction vis-à-vis police investigation and response, accountability, optimum utilisation of resources, and human rights record*”⁹. The Draft Model Police Act also states that the State Security Commission will review and evaluate organisational performance of the police service in the state as a whole, as well as district-wise against (i) the Annual Policing Plan¹⁰, (ii) performance indicators as identified and laid down by the State Police Board, and (iii) resources available with and constraints of the police.

Moreover, the Draft Police Act sets out that the state government may establish an *Inspectorate of Performance Evaluation* to assist the State Security Commission in its task of performance evaluation¹¹. This Inspectorate would be headed by a retired police officer of the rank of Director General of Police, who would be assisted by the following categories of staff: serving or retired police officers, social scientists, police academics and crime statisticians.

At present, there is no well-established system of performance evaluation. Within the police hierarchy, the commonly used parameters for assessing performance are crime and “preventive measures” statistics. Judging police performance mainly on the basis of increase or decrease in crime statistics, is wholly inadequate. It has given rise to the practice of ‘burking’ or refusing to record and investigate crime, failing to give a true picture of police response and performance. The new system aims at providing consistent and holistic evaluation of the police as an organisation, which is key to shaping effective policing. The use of such systems to drive improvements is being promoted in many Commonwealth police organisations, although as a relatively recent phenomenon. This looks at the police in terms of the *results* they deliver. It is increasingly becoming a key factor in police reform programmes: sometimes simply as an internal management tool, and sometimes, by publishing performance data, as a means of shaming underperformers into improvement. For

⁶ See Chapter 3: Superintendence and Administration of Police, Section 3.11, page 37.

⁷ Without specifying the scope and nature of the “directions”, there is a risk that Security Commissions could unnecessarily tread on police operational decision-making.

⁸ This terminology is borrowed from the Second Report of the National Police Commission which had divided police tasks into three categories: (i) investigative; (ii) preventive; and (iii) service oriented. Preventive tasks include preventive arrests, arrangement of beats and patrols, deployment of police force as a preventive measure when breach of peace is threatened, etc. Service-oriented functions include rendering service of a general nature and providing relief to people in distress.

⁹ See Chapter 11: Police Accountability, Section 11.25, page 100.

¹⁰ The Draft Model Police Act provides that the state government, in consultation with the State Police Board, must prepare a three year *Strategic Policing Plan* identifying the objectives of policing to be achieved during the period, and setting out an action plan for their implementation. The government is also expected to prepare an *Annual Policing Plan*, prioritising the goals of the Strategic Plan for the year in question.

¹¹ See Chapter 11: Police Accountability, Section 11.25, pages 100-101.

India, the heavy investment in information technology and other sophisticated technologies required to replicate these systems could be difficult.

Nevertheless, the principles on which they are based – transparency, a relentless focus on key results, and a willingness to reward and punish for good and poor performance respectively – can be transplanted to less resourced areas and are critical to police accountability.

If truly given the necessary independence, State Security Commissions can act as strong “buffer bodies” between politicians and the police. There are several “best-practice” examples of this kind of body in the Commonwealth. Various named and with differing mandates and composition, these bodies have all been created with a view to insulating the police from unwarranted influence, through policy guidance, public input, and objective evaluation of police organisation. For instance, Nigeria’s Police Service Commission is one of the most potentially powerful new Commissions in the world. Established in 2001, much of its value derives from its wide and representative membership, which includes women, human rights advocates, representatives of business, the media, as well as a retired Justice of the Superior Court. In Northern Ireland, during the 30-year internal conflict, the police was a puppet of the Ministry of Home Affairs and blatantly partisan. Developed in response to this long history of conflict, Northern Ireland’s Policing Board is responsible for delivering an efficient and impartial police service. Like the envisaged Security Commissions, the Board has a significant “policy-making” role and cannot interfere in police operational matters. Illustratively, for the Board, policy guidance to the police involves setting objectives and targets for police performance and monitoring progress against these, monitoring trends and patterns in crimes committed in Northern Ireland, facilitating public-police cooperation to prevent crime, and providing policing advice. These broad policy areas direct policing to focus on the public’s concerns and safety needs.

In India, this type of pro-active, participatory policy-making is sorely absent, rendering policing purely reactive. The Security Commissions, if well staffed and equipped, can fill this gap.

2. Director General of Police (DGP)

Supreme Court directive:

“The Director General of Police of the State shall be selected by the State Government from amongst the three senior-most officers of the Department who have been empanelled for promotion to that rank by the Union Public Service Commission on the basis of their length of service, very good record and range of experience for heading the police force. And, once he has been selected for the job, he should have a minimum tenure of at least two years irrespective of his date of superannuation. The DGP may, however, be relieved of his responsibilities by the State Government acting in consultation with the State Security Commission consequent upon any action taken against him under the All India Services (Discipline and Appeal) Rules or following his conviction in a court of law in a criminal offence or in a case of corruption, or if he is otherwise incapacitated from discharging his duties.”

To ensure that there is no arbitrariness in the appointment of the highest ranking police officer, the Supreme Court has laid down the procedure for selecting the Director General of Police (DGP).

Selection

The state government should select the DGP from amongst the three senior-most officers empanelled by the Union Public Service Commission (UPSC) for the post. The UPSC should make its choice on the basis of the candidate's: (i) **length of service**, (ii) **very good record**, and (iii) **range of experience**. In complying with this directive, it is important that state governments give more detailed selection criteria. The Draft Model Police Act provides details¹², for example it describes the components of a “very good record”:

- Assessment of the performance appraisal reports of the previous 15 years of service by assigning weight to different grading, namely “outstanding”, “very good”, “good” and “satisfactory”;
- [Absence of] indictment in any criminal or disciplinary proceedings or on the counts of corruption or moral turpitude; or charges having been framed by a court of law in such cases;
- Due weight to award of medals for gallantry, distinguished and meritorious service.

Minimum Tenure

Once objectively chosen, the DGP is assumed to enjoy the trust of the political executive, the police service and the public. It would be anomalous to retain the ability of the executive to remove the head of police at will. The Supreme Court provides for a minimum tenure of **two years** for the DGP. In practice, this does not mean that erring DGPs cannot be removed, it only makes removal consequent on **laid-down grounds in law**:

- An action taken against her/him under the Discipline and Appeal section of the All India Services Rules;
- A conviction in a court of law for a criminal offence or a case of corruption; or
- Being otherwise incapacitated from discharging duties.

¹² See Chapter 2: Constitution and Organisation of Police Service, Section 2.4, page 13.

3. Minimum tenure for other police officers

Supreme Court directive:

“Police Officers on operational duties in the field like the Inspector General of Police in-charge Zone, Deputy Inspector General of Police in-charge Range, Superintendent of Police in-charge district and Station House Officer in-charge of a Police Station shall also have a prescribed minimum tenure of two years unless it is found necessary to remove them prematurely following disciplinary proceedings against them or their conviction in a criminal offence or in a case of corruption or if the incumbent is otherwise incapacitated from discharging his responsibilities. This would be subject to promotion and retirement of the officer.”

Security of tenure is similarly important for other police officers on operational duties in the field. In order to help them withstand undue political interference, have time to properly understand the needs of their jurisdictions and do justice to their jobs, the Supreme Court provides for a minimum tenure of **two years** for the following categories of officers:

- Inspector General of Police (in charge of a Zone)
- Deputy Inspector General of Police (in charge of a Range)
- Superintendent of Police (in charge of a District)
- Station House Officer (in charge of a Police Station)

Besides cases of promotion or retirement, premature removal of the above-mentioned officers will be possible only consequent upon:

- Disciplinary proceedings;
- Conviction for a criminal offence or a case of corruption; or
- Being otherwise incapacitated from discharging duties.

In addition to the above-mentioned grounds given by the Supreme Court, the Draft Model Police Act suggests that in exceptional cases, officers may also be removed before the expiry of tenure on the grounds of inefficiency and ineffectiveness¹³. When an officer is removed under these exceptional cases, the Draft Model Police Act sets out two types of safeguards: (i) the authority which orders the transfer must inform the next higher authority and the Director General of Police of the grounds for the premature transfer in writing and (ii) the aggrieved officer may approach the Police Establishment Board (see section 4 below) to submit a representation against his/her premature removal. The Board shall consider the merits of the case and make appropriate recommendations to the government.

¹³ See Chapter 2: Constitution and Organisation of Police Service, Section 2.11, page 19.

4. Police Establishment Board

Supreme Court directive:

"There shall be a Police Establishment Board in each State which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police. The Establishment Board shall be a departmental body comprising the Director General of Police and four other senior officers of the Department. The State Government may interfere with decision of the Board in exceptional cases only after recording its reasons for doing so. The Board shall also be authorized to make appropriate recommendations to the State Government regarding the posting and transfers of officers of and above the rank of Superintendent of Police, and the Government is expected to give due weight to these recommendations and shall normally accept it. It shall also function as a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above regarding their promotion, transfer, disciplinary proceedings or their being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State."

To counter the prevailing practice of subjective appointments, transfers and promotions, the Supreme Court provides for the creation of a Police Establishment Board. In effect, the Board brings these crucial service related matters largely under police control. Notably, a trend in international best practice is that government has a role in appointing and managing senior police leadership, but service related matters of other ranks remain internal matters¹⁴. Experience in India shows that this statutory demarcation is absolutely required in order to decrease corruption and undue patronage, given the prevailing illegitimate political interference in decisions regarding police appointments, transfers and promotions.

Composition

To ensure that decisions related to career advancement are not made by just one officer, the Police Establishment Board will be composed of the Director General of Police and four other senior officers of the police department. The Draft Model Police Act clarifies the fact that the four other officers should be the *"four other senior-most officers working within the police organisation"*¹⁵.

Functions

The Police Establishment Board will have the following functions:

- **Decide all transfers, postings, promotions** and other service related matters for police officers *of and below the rank of Deputy Superintendent of Police*.
Exception: in exceptional cases, the state government will be allowed to interfere with the decision of the Board after recording its reasons for doing so.
- **Make recommendations** to the state government on postings and transfers of officers *above the rank of Deputy Superintendent of Police*.
Impact: the state government is expected to give due weight to these recommendations and normally accept them.
- **Be a forum of appeal** for disposing of representations from officers of the rank of Superintendent of Police and above regarding: (i) their promotion or transfer; (ii) disciplinary proceedings against them; or (iii) their being subject to illegal or irregular orders.
- Generally, **reviewing the functioning** of the police in the state.

¹⁴ Bruce, D. and Nield, R. (2005) *The Police That We Want: A Handbook for oversight of police in South Africa*, Centre for the Study of Violence and Reconciliation, Open Society Foundation for South Africa and the Open Society Justice Initiative, page 24.

¹⁵ See Chapter 3: Superintendence and Administration of Police, Section 3.16 (1), page 39.

5. National Security Commission

Supreme Court directive:

“The Central Government shall also set up a National Security Commission at the Union level to prepare a panel for being placed before the appropriate Appointing Authority, for selection and placement of Chiefs of the Central Police Organisations (CPO), who should also be given a minimum tenure of two years. The Commission would also review from time to time measures to upgrade the effectiveness of these forces, improve the service conditions of its personnel, ensure that there is proper coordination between them and that the forces are generally utilized for the purposes they were raised and make recommendations in that behalf. The National Security Commission could be headed by the Union Home Minister and comprise heads of the CPOs and a couple of security experts as members with the Union Home Secretary as its Secretary.”

The Supreme Court directs the central government to establish a National Security Commission.

Composition

- Chair: Union Home Minister
- Secretary: Union Home Secretary
- Members: Heads of the Central Police Organisations (CPOs) and security experts

The CPOs can be divided in two groups: the armed police organisations, known as the Central Para-Military Forces (CPMF)¹⁶, and the other central police organisations¹⁷. The Supreme Court does not specify whether it refers to the CPMF, to the other central police organisations or to both. However, when describing the National Security Commission's functions, the Court does refer to the CPOs as “forces” which seems to indicate that only the CPMF are covered.

Functions

The National Security Commission will have the following functions:

- Prepare a panel for the selection and placement of Chiefs of the CPOs, who should be given a minimum tenure of two years;
- Review measures to upgrade the effectiveness of the CPOs;
- Improve the service conditions of CPO personnel;
- Ensure that there is proper coordination between the different forces; and
- Ensure that the forces are utilised for the purposes they were created.

The Commission will also have the power to make recommendations with regards to the above.

¹⁶ CPMFs include the Assam Rifles, the Border Security Force, the Central Industrial Security Force, the Central Reserve Police Force, the Indo-Tibetan Border Police and the National Security Guards.

¹⁷ Other central police organisations include the Bureau of Police Research and Development (BPR&D), the Central Bureau of Investigation (CBI), the Directorate of Coordination of Police Wireless (DCPW), the Intelligence Bureau (IB), the National Crime Records Bureau (NCRB), the National Institute of Criminology and Forensic Science (NICFS), and the National Police Academy (NPA).

PART II: ACCOUNTABILITY

Functional autonomy must be coupled with responsibility to ensure high standards of policing. Armed with the power to use force against ordinary people, the police must be accountable for all of their actions in the course of duty, from minor infractions to serious rights violations.

Unfortunately, at present, there is little demonstrable accountability for wrongdoing. Rather, there is a general perception that neither the internal disciplinary mechanisms, nor the existing external oversight agencies, nor the criminal justice system are able to properly and consistently address police misconduct. Far too many officers are getting away without having to fully account for wrongful acts of omission and commission.

Internal disciplinary mechanisms do not hold public trust and confidence for a variety of reasons. In addition to a lack of transparency, the camaraderie in the ranks makes it difficult to indict a fellow officer. Tolerance for routine bad behaviour is also high. In addition, the desire to protect the police image also allows strict accountability to slide. Finally, the feeling that disciplinary action will lower the morale of the force and blunt its edge in dealing with special situations, like militancy or organised crime, also plays a part in fostering impunity.

The **criminal justice system** has also proved to be inadequately equipped to address police misconduct. Firstly, every act of police misconduct may not necessarily fall within the ingredients of a criminal offence to be tried by the courts. Secondly, registering a criminal case against a police officer involves a long and cumbersome process. It requires complainants to overcome the fear of going to a police station to register a case against a police officer, and the likelihood of facing refusal by the officer in charge to register a First Information Report (FIR) against a colleague. Finally, Sections 132 and 197 of the Code of Criminal Procedure, 1973 require prior sanction from the government before police officers can be prosecuted for offences committed in the course of their official duty. In practice, because such sanction is sparingly granted, Sections 132 and 197 amount to *de facto* immunity.

Special commissions, including **human rights commissions** have been set up to fill this “accountability gap”. To date, these commissions have not been effective, and have failed to develop a human rights culture across the country. A number of inherent weaknesses explain this lack of effectiveness: human rights commissions can only make recommendations to the government and do not have any binding power; the procedure for appointing commissioners is inadequate as it is entirely in the hands of politicians; the independence of the commissions is often compromised by their dependency on the government for staff; and commissions are often left with insufficient funds.

Many Commonwealth countries have sought to balance internal accountability mechanisms with some system of external, non-police (civilian) oversight. With one system complementing and reinforcing the other, this approach creates a web of accountability in which it becomes increasingly difficult for police misconduct to take place without consequences. Some of the most successful police reform initiatives across the Commonwealth have created **independent accountability mechanisms to address serious cases of police misconduct**, including South Africa, Northern Ireland, and certain Australian states. Generally known as external or civilian oversight agencies, they provide a channel for public complaints against police officers to be investigated independently of the police. While they vary in size and mandate across different countries, the factors that determine the success of independent oversight bodies are the same: independence, adequate powers, sufficient resources, and the authority to follow up on their recommendations.

6. Police Complaints Authority

Supreme Court directive:

“There shall be a Police Complaints Authority at the district level to look into complaints against police officers of and up to the rank of Deputy Superintendent of Police. Similarly, there should be another Police Complaints Authority at the State level to look into complaints against officers of the rank of Superintendent of Police and above. The district level Authority may be headed by a retired District Judge while the State level Authority may be headed by a retired Judge of the High Court/Supreme Court. The head of the State level Complaints Authority shall be chosen by the State Government out of a panel of names proposed by the Chief Justice; the head of the district level Complaints Authority may also be chosen out of a panel of names proposed by the Chief Justice or a Judge of the High Court nominated by him. These Authorities may be assisted by three to five members depending upon the volume of complaints in different States/districts, and they shall be selected by the State Government from a panel prepared by the State Human Rights Commission/Lok Ayukta/State Public Service Commission. The panel may include members from amongst retired civil servants, police officers or officers from any other department, or from the civil society. They would work whole time for the Authority and would have to be suitably remunerated for the services rendered by them.

The Authority may also need the services of regular staff to conduct field inquiries. For this purpose, they may utilize the services of retired investigators from the CID, Intelligence, Vigilance or any other organization. The State level Complaints Authority would take cognizance of only allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt or rape in police custody. The district level Complaints Authority would, apart from above cases, may also inquire into allegations of extortion, land/house grabbing or any incident involving serious abuse of authority. The recommendations of the Complaints Authority, both at the district and State levels, for any action, departmental or criminal, against a delinquent police officer shall be binding on the concerned authority.”

The Supreme Court sets out an independent accountability mechanism in the form of a Police Complaints Authority to be established both at the state and the district levels. Their mandate is to look into public complaints against police officers in cases of **serious** misconduct.

a) State level

Composition

- Chair: **Retired judge of the High Court or the Supreme Court** to be chosen by the state government out of a panel of names proposed by the Chief Justice.
- Other members: **Three to five members** (depending on the volume of complaints in the state) selected by the state government out of a panel of names prepared by the State Human Rights Commission, the Lok Ayukta, the State Public Service Commission. Members of the authority may include: retired civil servants, police officers or officers from any other department, and members from civil society.

Function

The role of the Police Complaints Authority at the state level will be to inquire into cases of misconduct by police officers **of and above the rank of Superintendent of Police** in cases of **serious misconduct**, which includes incidents involving (i) death, (ii) grievous hurt, or (iii) rape in police custody.

b) District level

Composition

- Chair: **Retired District Judge** to be chosen by the state government out of a panel of names proposed by the Chief Justice of the High Court or a High Court Judge nominated by him or her.
- Other members: **Three to five members** selected according to the same process as members of the state level Police Complaints Authority (see above).

Function

The role of the Police Complaints Authority at the district level will be to inquire into cases of misconduct by police officers **of and up to the rank of Deputy Superintendent of Police** in cases of **serious misconduct**, which includes incidents involving:

- (i) Death;
- (ii) Grievous hurt;
- (iii) Rape in police custody;
- (iv) Extortion;
- (v) Land/house grabbing; and
- (vi) Any incident involving serious abuse of authority.

The Supreme Court has provided for a number of features common to state and district level Police Complaints Authorities:

- Membership in the authority must be a **full time** occupation
- The members of the authority should be provided **suitable remuneration**
- The members of the authority can use the assistance of **regular staff** to conduct field inquiries. Such staff can be composed of retired investigators from the Criminal Investigation Department, Intelligence, Vigilance or any other organisation.
- The recommendations of the authority for any action, both disciplinary and criminal, shall be **binding**. In practice, this implies that the inquiry conducted by the Complaints Authority replaces the internal disciplinary inquiry. Once the inquiry is completed, the Complaints Authority can recommend a suitable disciplinary punishment to the appointing authority, which will be bound by it. The Complaints Authority can also recommend the registration of a FIR against the erring police officer.

It is essential to prevent police complaints authorities from being vulnerable to capture and expedience. The following factors are key to increase the likelihood of their becoming effective specialised monitors of police actions:

- Independence of members;
- Capacity building of members and staff, in particular with regards to investigative skills and techniques;
- Adequate funding and infrastructure;
- Cooperation between complaints authorities and the police department; and
- Proper coordination between human rights commissions and police complaints authorities and sharing of expertise and experiences.

7. Separation of investigation and law and order police

Supreme Court directive:

“The investigating police shall be separated from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people. It must, however, be ensured that there is full coordination between the two wings. The separation, to start with, may be effected in towns/urban areas which have a population of ten lakhs or more, and gradually extended to smaller towns/urban areas also.”

The Supreme Court judgment seeks to enhance police performance by **directing separation of investigation and law and order functions of the police in towns and urban areas** to “ensure speedier investigation, better expertise and improved rapport with the people”. The Court has ordered a gradual implementation of this separation, starting with towns and urban areas with a population of one million or more.

Both investigation and law and order are vital and specific police functions, which must be streamlined separately to run concurrently. At present, it often happens that investigations are stalled if there is a pressing law and order situation, or investigations divert officers' attention from law and order concerns. The judgment does not specify how the separation should take place in practice but only specifies that there must be full coordination between the two wings of the police.

STATE RESPONSES

The Supreme Court required all governments, at centre and state levels, to comply with the seven directives by 31st December 2006 and to file affidavits of compliance by the 3rd of January 2007. Responses to the judgment vary tremendously from one state to another. Based on the affidavits, their positions are as follows¹⁸:

- A number of states have **fully or partially complied** with the Supreme Court directives through **executive orders**:
 - **Sikkim** (full compliance, is also drafting a new Police Bill)
 - **Jharkhand** (compliance with some of the directives, wishes to comply with the other directives with some modifications)
 - **Manipur** (compliance with some modifications, established a police complaints authority only in the West District of Imphal)
 - **Meghalaya** (compliance with the directives, sought guidance from the central government regarding one of the functions of the Establishment Board, is finalising the constitution of a district level police complaints authority)
 - **Mizoram** (compliance with four directives, requests to establish only one Police Complaints Authority for the entire state that would be headed by an IAS or IPS officer)
 - **Tripura** (partial compliance with two directives, is also drafting a new Police Bill to comply with the four other directives)
 - **Uttarakhand** (compliance with two directives, established a state level Police Complaints Authority, requested an extension to set up the State Security Commission)
- A number of states **requested an extension** to file their affidavits as they are in the process of **drafting a new Police Bill**:
 - **Bihar** (sought an extension of four months)
 - **Himachal Pradesh** (is drafting a new police bill based on the Model Police Act)
 - **Rajasthan** (a bill will be brought before the legislature at the end of February or the beginning of March 2007)
 - **West Bengal** (a bill will be brought before the legislature in April 2007)
- A number of states **requested an extension** to file their affidavits **without further details** as to how they will comply with the judgment:
 - **Assam** (sought six months extension)
 - **Chhattisgarh** (sought six months extension, is also drafting a new Police Bill)
 - **Goa** (sought two weeks extension)
 - **Jammu and Kashmir** (did not specify any specific extension period)
 - **Madhya Pradesh** (sought one to three months extension)
 - **Maharashtra** (sought one month extension)
 - **Orissa** (sought six months extension)
- **Andhra Pradesh, Gujarat and Uttar Pradesh** expressed **strong objections** to almost all the directives and requested the Supreme Court to reconsider them. **Karnataka** (which is also drafting a new Police Bill) objected to the creation of a State Security Commission and a Police Complaints Authority. **Nagaland** (which is also drafting a new Police Bill) stated that all the directives need to be re-examined in light of its special context.

¹⁸ A number of states are missing from this list since CHRI has not yet been able to obtain their affidavits.

- The **Central Government** is reviewing the Model Police Act with a view to adopting new legislation applicable to the Union Territories in the current year. It has also set up a National Security Commission with a modified membership (called the Committee on National Security and Central Police Personnel Welfare) but expressed reservations with regard to some of the functions assigned to this body by the Supreme Court. It sought three months extension from the Court to finalise the matter.
- Most **Union Territories** stated in their affidavits that: (i) the Model Police Act is under close examination by the Ministry of Home Affairs and that once a new Police Act is framed for the Union Territories, it will cover most of the Supreme Court's directives, (ii) given the size and specificities of Union Territories, adjustments need to be made to some of the directives, and (iii) they have or will partially comply with the judgment.

A hearing before the Supreme Court was held on 11 January 2007 to monitor compliance. After listening to the oral arguments of more than ten counsels, the three member bench passed a strict order, casting away the objections raised by the states. The Supreme Court stated that there could be no review of its 22nd September judgment and that it needs to be complied with as it is. Regarding the timing for compliance:

- The Supreme Court ordered that all self-executing directives (i.e. appointment and security of tenure of the Director General of Police, security of tenure of other police officers, constitution of a Police Establishment Board) must be complied with immediately through executive orders: *"Insofar as these three directions are concerned, they are self-executory and no question of grant of further time, therefore arises. Whatever steps have to be taken should be taken forthwith and, in any case, not later than four weeks from today."*
- The Supreme Court granted an extension of three months to comply with the four other directives (i.e. constitution of a State Security Commission, constitution of a Public Complaints Authority, separation of investigation and law and order police and constitution of a National Security Commission), which require more thorough considerations to be implemented. These directives must be complied with no later than 31st March 2007. States must file affidavits of compliance by 10 April 2007.

In addition, the Court stated that elections in a state are not a valid ground for non-compliance with the directives in the time-frame mentioned above.

The coming months are crucial for the future of police reform in India. The Supreme Court judgment and the Model Police Act provide state governments with a unique opportunity to commit to reform. What is now required is strong political will to ensure that compliance with the Court's directives brings about long-lasting reform and not only cosmetic changes.



For more information contact:

Commonwealth Human Rights Initiative (CHRI)
B-117 (First Floor), Sarvodaya Enclave
New Delhi – 110017 INDIA
Tel: + 91 -11- 26528152, 26850523
Fax: + 91-11- 26864688
Website: www.humanrightsinitiative.org

CHRI Access to Justice Programme: Ms. Swati Mehta
Email: swati@humanrightsinitiative.org

Additional information on the judgment can be found at:
http://www.humanrightsinitiative.org/programs/aj/police/india/initiatives/writ_petition.htm

**Annexure 1:
Chart of Police Ranks**

