

The Tamil Nadu Police Bill, 2008
(Introduced in the State Assembly on 14th May, 2008)

An assessment, in the light of the Supreme Court's directions in its judgement dated 22.9.2006 in WP (Civil) 310 of 1996, and the Model Police Act referred to in the judgement.

The Supreme Court (SC), in its land mark judgement of 22nd Sep, 2006 on Police reform has given the following specific directions to the Central government and all the State governments for action towards legislating for Police reform

- (i) Establishment of State Security Commission**
- (ii) A transparent process for appointment of D.G. of Police and fixing a minimum tenure of two years for his office.**
- (iii) Similar minimum tenure of two years for all field officers upto the police station in-charge level**
- (iv) Separating the Investigating wing from the Public Order Maintenance wing**
- (v) Setting up a Police Establishment Board to deal with and decide postings, transfers, promotions and like matters concerning police personnel down the line**
- (vi) Setting up a Police Complaints Authority exclusively to deal with complaints of misconduct against the police**

2. SC has cited the **Model Police Act (MPA)** drafted by the Soli Sorabjee Committee as the guide for drafting a new Police Act by the States.

3. **SC has also underlined the urgency of Police reform and quoted the National Human Rights Commission to highlight the need "to preserve the integrity of the investigating process and to insulate it from extraneous influences". The Court has further made the very significant observation that that "the quality of the Criminal Justice System in the country, to a large extent, depends upon the working of the police force". These observations constitute the fundamental thrust of the historic judgement.**

4. The statement of objects and reasons attached to The Tamil Nadu Police Bill, 2008, hereinafter referred to as the Bill, specifically mentions the directions of the SC and also the MPA, but has, in fact, omitted to adopt several crucial provisions in the MPA relating to the directions of SC. These omissions might ultimately defeat the very purpose of reform underlined by SC. The relevant provisions are analysed below.

5. The Police Board envisaged in Clause 27 does not accord fully with the State Security Commission envisaged by the SC. Though the Leader of Opposition is included in the Board, the Board's functions are not wide enough to protect the police system from extraneous interference. It can only frame policy guide lines and evolve some performance indicators. It has no powers to review the police performance and present a critical report, as visualised in Sec 48 (e) of MPA. This is a crucial omission.

6. The Board has no role at all in the appointment of DGP. This is in deviation of Sec 48 (b) of MPA which empowers the Board to prepare the panel of officers for appointment as DGP. This means that political considerations will continue to predominate the process of appointment of DGP as at present, without any scope for correction by the Board where the Leader of Opposition and other non-political members would also be present to ensure an objective handling of the matter. This is again a crucial deviation.

7. However, it is a welcome feature that the Board will have the Chairpersons of the State Human Rights Commission, the State Women's Commission and the State Minorities Commission as its Members. This will protect the interests of women and children in their interaction with the police; but it will be effective in practice only if the Board has the power to review specific cases and give corrective directions. Further, the Board should meet at least once in three months to make timely and meaningful reviews. Unless the Bill provides for such transaction of business by the Board, the Board will remain an ornamental body presenting routine annual reports without any tangible effect on the system.

8. Appointment of DGP from a panel of three senior-most officers is stipulated in Clause 7; but the panel itself is drawn up by the State government only. MPA stipulates the preparation of the panel by the State Police Board, which includes the Leader of Opposition. This healthy provision is significantly omitted in the Bill. This omission detracts from the objectivity of the selection procedure.

9. Though Clause 7(2) of the Bill mentions a two-year tenure for the DGP, the phraseology may, in practice, negate the tenure idea, because it says: "...a minimum period of two years, or till the date of his super-annuation whichever is earlier". The word 'earlier' should be replaced by 'later', to give meaning to the tenure concept. This is made clear in Sec 6 (3) of MPA, but has not been adopted in the Bill.

10. The Police Establishment Committee, envisaged in Sec 53(1) to (4) of MPA is provided for in Clause 31 of the Bill, but the other provisions, namely Sec 53 (5) to (8) of MPA are significantly omitted. These provisions are meant to eliminate extraneous interference with police postings and transfers down the line. Their omission in the Bill is significant since that would facilitate the continuance of political interference in these matters !

11 Sections 159 to 168 of MPA provide for another important body called Police Accountability Commission, chaired by a retired High Court Judge with four other 'non-political' members, to discharge the following functions:

- (i) to inquire into public complaints of 'serious misconduct' against police personnel,
- (ii) to inquire into any other case, referred to it by the DG of Police, which merits an independent inquiry,
- (iii) monitor the status of disciplinary action initiated by the department against officers of and above the rank of Deputy Superintendent of Police, and
- (iv) check the departmental disposal of any complaint against the police, if the complainant represents to the Commission his grievance against the departmental disposal.

Since it is a judicially oriented body independent of the government, it can also effectively serve the purpose of judicial inquiries presently resorted to in 'encounter deaths' and similar incidents.

12. Section 173 provides for a similar body with three members at the district level, called District Accountability Authority, chaired by a retired District Judge, to monitor the status of departmental inquiries into complaints of mis-conduct against officers below the rank of Deputy Superintendent of Police.

13. The aforesaid Commission at the State level together with the aforesaid Authorities at the district level constitute a neat and effective arrangement to guard against police excesses at all levels. While the overall responsibility to deal with complaints against the police personnel will continue to remain within the department, the aforesaid Commission and the Authorities will step in when complaints are made about 'serious misconduct' of the police, defined in Section 167 of MPA, as under:

- (i) death in police custody;
- (ii) grievous hurt, as defined in the Indian Penal Code, caused by the police
- (iii) rape or attempt to commit rape.

This important statutory arrangement to check police excesses by a mechanism that will be open and credible in public view as provided for in MPA, is completely omitted in the Bill. This is a vital omission that renders the Bill totally deficient in complying with item (vi) of the SC's directives, listed in para 1 above.

14. The phraseology of Clause 41 of the Bill does not provide for functional division of work like Law & order, Traffic, Crime, etc., among officers of and above the rank of Asst. Commissioner of Police. This will cause practical difficulties in policing the Metropolitan areas. This clause has to be suitably modified.

15. Clause 14 of the Bill rationalises the role of the District Magistrate (Collector) by defining him as the co-ordinator of all governmental work in the district, with his police linkage limited to this purpose. This is in full accord with the MPA and also the recommendation of the National Police Commission. It is a much awaited welcome change from the existing provision in the Police Act, 1861 which puts the police 'under the general control and direction' of the District Magistrate, causing much discomfiture at the commanding levels.

16. Clause 47 of the Bill provides for externment of violent and militant characters from the limits of a Police Commissionerate for two years. This is a welcome provision to infuse confidence among the public. Likewise, subclause (8) of the aforesaid clause which protects the police from having to disclose the source of information against the militant characters is also a welcome measure to get public cooperation and support for police action.

17. Clause 55 of the Bill provides for a sentence of fine only for several offences listed therein, which includes causing damage to essential services or sabotaging any public alarm system. A term of imprisonment upto three years must be provided for in this clause.

18. Clause 66 of the Bill stipulates that every 'rule made or notification or order issued under this Act' shall be placed before the State Assembly and be subject to such modifications as the Assembly may decide. This provision is workable so far as rules and notifications are concerned but an 'order' under the Act will be issued by several functionaries down the line in the course of day-to-day policing. It will be impracticable to subject all such 'orders' to Assembly's approval. The word 'order' in this clause may be deleted.

19. Apart from meeting the requirements listed by the SC, the MPA also introduces some new arrangements in the police system for improving the quality of performance and police-public relationship. Some of them are:

- (i) Appointment of Legal Advisors within the system at the State level and the district level (Clause 7)
- (ii) Provision for appointment of Special Police Officers from the public, on extra-ordinary occasions. In fact, this provision could be used to empower some selected Home Guards to handle police work in some situations with a measure of confidence, commitment and responsibility (Clause 22)
- (iii) An effective Grievance Redressal mechanism for the police personnel should be put in place. National Police Commission has also emphasised it in its First Report.(Clause 187)
- (iv) A small compact body be constituted as an 'Inspectorate of Performance Evaluation' to assist the State Police Board in its work. (Clause 181).
- (v) The importance of the proposed Police Accountability Commission and the District Accountability Authority and their vital relevance to any process of cleansing the police system are brought home by the MPA in Clause 179 which states that any attempt made to influence or interfere with the working of the Commission or Authority shall be deemed a criminal offence punishable with imprisonment upto one year.

None of the above concepts finds a place in any form in the Bill, indicating total inattention of the State authorities to the important aspects of police system which these concepts seek to reform in public interest.

20. A critical assessment of the Tamil Nadu Police Bill, 2008 in its totality shows that its compliance with the Supreme Court's specific directions is only partial, and more semantic than substantial. It does not assign to the State Police Board the reviewing role envisaged for it in the Model Police Act. It makes no provision at all for a credible mechanism to inquire into complaints of serious misconduct of the police. An internal grievance redressal mechanism for the police personnel themselves is not envisaged at all, though these important aspects of reform are duly covered by suitable provisions in the Model Police Act. The State government will be well advised to withdraw the Bill in its present form, get it carefully vetted by an expert professional group, and then legislate a revised Bill which would fully meet all the requirements laid down by the Supreme Court , on the lines spelt out in the Model Police Act.

21. In the meanwhile, if and when the matter comes up for review by the Supreme Court, it should be brought to its pointed notice that the Bill does not squarely and fully meet the requirements of the Supreme Court directions, as explained in the foregoing paragraphs. The omissions and deviations noticed in the State Police Bill when read along with the Model Police Act commended by the Supreme Court are very significant and

appear tendentious. If the Bill gets passed in its present form it may later, in actual working, defeat the fundamental purpose of police reform, namely to insulate police performance from extraneous influence and to preserve the integrity of the investigating process. This reality should be duly and fully presented before the Supreme Court.

Chennai
9th June, 2008

C.V.Narasimhan I P S (Retd)