

TAMIL NADU'S NEW INITIATIVES ON POLICE REFORMS -
A COMMONER'S PERSPECTIVE: EXERCISES IN SUBTERFUGE

By V.P.SARATHI - July 22, 2008

The seven directives of the Supreme Court on bringing new reforms in the functioning of the police in India were issued on 22.09.2006 in Writ petition No. 310 of 1996 filed by Prakash Singh & ors versus U.O.I & ors. The court set 31.12.2006 as the time limit for compliance of directives, which are as follows:

1. Constitute a State Security Commission to:
 - (i) ensure that the State Government does not exercise unwarranted influence or pressure on the police
 - (ii) lay down broad policy guidelines
 - (iii) evaluate the performance of the State police
2. Ensure that the Director General of Police is appointed through a merit-based, transparent process and enjoys a minimum tenure of two years.
3. Ensure that other police officers on operational duties (including Superintendents of Police in charge of a district and Station House Officers in charge of a police station) also have a minimum tenure of two years.
4. Set up a Police Establishment Board which will decide on all transfers, postings, promotions and other service related matters of police officers of and below the rank of Deputy Superintendent of Police and make recommendations on postings and transfers of officers above the rank of Deputy Superintendent of Police.
5. Set up a National Security Commission at the Union level to prepare a panel for selection and placement of Chiefs of the Central Police Organisations (CPO) who should also be given a minimum tenure of two years.
6. Set up independent Police Complaints Authorities at the state and district levels to look into public complaints against police officers in cases of serious misconduct, including custodial death, grievous hurt or rape in police custody.
7. Separate the investigation and law & order functions of the police.

When the matter came up for hearing on 11.01.2007, the court had extended the time upto 11.02.2007 for compliance of directive Nos.2,3 & 5 which relate to the selection and minimum tenure of police officers, and for redress of their grievances through Police Establishment Board.

As regards other directives, time for compliance was extended upto 30.04.2007. The matter stands adjourned.

Direction No.6 (setting up a Police Complaints Authority) is the only relevant part in the judgment which has a bearing on the day-to-day interaction of a commoner with the police. We should read the implications of this direction along with the Model Police Act proposed by PADC (Soli Sorabjee Committee), though none of the directions of Supreme Court refer to this Act, since it had been referred to in the obiter dicta.

Since 'Police' is a State subject under the Constitution of India, **State Govts. are framing their own Police Acts.** (Look for these details in CHRI papers).

It should be noted that the **Cr.P.C. as amended in 2005, has been enforced only partially by some States** and the Cr.P.C. amendment in 2006 is not yet a law. (For instance, the Govt. of Tamil Nadu vide its notification in its Gazette ,extraordinary,Part IV,Section 1,Iss No.227,pages 165-167, dated September 2, 2006, has omitted certain sections of the Central Act 25 of 2005). The Protection of Human Rights Act,1993, provides for the prosecution of **erring public servants including police officers** in 'human rights courts' at the district level under the Cr.P.C. for **any violation of human rights.** The phrase 'human rights' is also defined under the Act. The Act also provides for legal assistance to the victim through the provision of a special public prosecutor by the govt for taking legal action against the erring police officer.

The Model Police Act uses the terms 'MISCONDUCT', 'SERIOUS MISCONDUCT' and 'DERELICTION OF DUTY', defining them as follows:

Section 167 (1) Explanation: "Serious misconduct" for the purpose of this chapter shall mean any act or omission of a police officer that leads to or amounts to:

- (a) death in police custody;
- (b) grievous hurt, as defined in Section 320 of the Indian Penal Code, 1860;

(c) rape or attempt to commit rape; or

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(d) arrest or detention without due process of law.

Section 167 (3) Explanation: “Misconduct” in this context shall mean any willful breach or neglect by a police officer of any law, rule, regulation applicable to the police that adversely affects the rights of any member of the public, excluding “serious misconduct” as defined in sub-Section (1).

Section 199. Dereliction of duty by a police officer

(1) Whoever, being a police officer:

(a) wilfully breaches or neglects to follow any legal provision, procedure, rules, regulations applicable to members of the Police Service; or

(b) without lawful reason, fails to register a First Information Report as required by Section 154 of the Code of Criminal Procedure, 1973; or

(c) is found in a state of intoxication, while on duty; or

(d) malingers or feigns illness or injury or voluntarily causes hurt to himself with a view to evading duty; or

(e) acts in any other manner unbecoming of a police officer; shall, on conviction, be punished with imprisonment for a term which may extend to three months or with a fine or both.

(2) Whoever, being a police officer:

(a) is guilty of cowardice; or

(b) abdicates duties, or withdraws from duties, or remains absent without authorisation from duty for more than 21 days; or

(c) uses criminal force against another police officer, or indulges in gross insubordination; or

(d) engages himself or participates in any demonstration, procession or strike, or resorts to, or in any way abets any form of strike, or coerces or uses physical force to compel any authority to concede anything; or

(e) is guilty of sexual harassment in the course of duty, whether towards other

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police officers or any member of the public;

shall, on conviction, be punished with imprisonment for a term which may extend to one year or with a fine or both.

However, under the caption 'Offences by the Police', Section 199(1) (a), (b) & (e) and Section 200 mention the following acts by the police as 'offences':

Section 199: See definition of 'Dereliction of Duty' above.

Section 200: Arrest, search, seizure and violence

Whoever, being a police officer:

(1) without lawful authority or reasonable cause enters or searches, or causes to be entered or searched, any building, vessel, tent or place; or

(2) unlawfully and without reasonable cause seizes the property of any person; or

(3) unlawfully and without reasonable cause detains, searches, or arrests a person;
or

(4) unlawfully and without reasonable cause delays the forwarding of any person arrested to a Magistrate or to any other authority to whom he is legally bound to forward such person; or

(5) subjects any person in her/his custody or with whom he may come into contact in the course of duty, to torture or to any kind of inhuman or unlawful personal violence or gross misbehaviour; or

(6) holds out any threat or promise not warranted by law; shall, on conviction, be punished with imprisonment for a term which may extend to one year and shall be liable to fine.

The Model Police Act has the following provisions for redressal of grievances against police:

Section 159. Police Accountability Commission

The State Government shall, within three months of the coming into effect of this Act, establish a State-level Police Accountability Commission ("the Commission"), consisting of a Chairperson, Members and such other staff as may be necessary, to inquire into public complaints supported by sworn statement

against the police personnel for serious misconduct and perform such other functions as stipulated in this Chapter.

Section 173. District Accountability Authority

(1) The State Government shall establish in each police district or a group of districts in a police range, a District Accountability Authority to monitor departmental inquiries into cases of complaints of misconduct against police personnel, as defined in Section 167(3).

But under Sn.167, only in four circumstances shall an inquiry be held by it viz.

Section 167. Functions of the Commission

(1) The Commission shall inquire into allegations of “serious misconduct” against police personnel, as detailed below, either *suo moto* or on a complaint received from any of the following:

- (a) a victim or any person on his behalf;
- (b) the National or the State Human Rights Commission;
- (c) the police; or
- (d) any other source.

Explanation: “**Serious misconduct**” for the purpose of this chapter shall mean any act or omission of a police officer that leads to or amounts to:

- (a) death in police custody ;
- (b) grievous hurt, as defined in Section 320 of the Indian Penal Code, 1860;
- (c) rape or attempt to commit rape; or
- (d) arrest or detention without due process of law.

Provided that the Commission shall inquire into a complaint of such arrest or detention, only if it is satisfied *prima facie* about the veracity of the complaint.

Please note the proviso to this section.

As per the Model Police Act, the prosecution of an erring police officer under S.197 of the CrPC is not possible unless prior government sanction is got. S.330 & S.331 of the IPC prescribe a punishment of 10 years for offences by a police officer, but S.199 & S.200 of the model act punishes violence, dereliction of duties, threats, illegal search,

seizure, arrest or detention and sexual harassment etc. with only 1 year's imprisonment or fine or both. Intoxication on duty and feigning illness are punishable with 3 months imprisonment. To punish a police officer not adhering to legal procedures, provisions and rules etc. it must be proved that the negligence was willful.

A Police Accountability Commission (PAC) is to be set up in every State to enquire into allegations of "serious misconduct" against a police officer. However, the PAC shall only inquire into a complaint of illegal arrest or detention if it has prima facie satisfaction of its veracity as per S.167. The PAC is not empowered to take any action against the erring police officer for the offence of 'Misconduct'. S.171(b) allows the PAC to direct initiation of departmental enquiries. This power is not mentioned under S.167 which lists the PAC's functions. S.171(b) does not clarify the matter as it fails to mention the circumstances in which the PAC may exercise this power.

When it has not been given power to inquire into a complaint of refusal of registration of FIR, S.171 states that it **may pass a direction** to have that done. As regards the offence of misconduct, the Commission '**may monitor**' the departmental inquiries if any, instituted. (Pls. Refer to the Writ petition filed by CHRF in the Madras High court challenging the dropping of a departmental action by the govt against around 350 policemen.)

The provisos to S.171 which state that the PAC should consider the opinion of the DGP before finalising its own, significantly reduces the import of its findings as does S.172, which states that **the PAC's order to compensate victims is only recommendatory**. While complaints may be lodged with the PAC under S.177, this is meaningless as the PAC can not take any departmental action. The provision allowing the filing of complaints with the District Accountability Commission is also meaningless as the DAC **only has the power to forward** them to the PAC or the DSP – truly a 'post office job'.

A major grievance of the public against the police is that they entertain matters of a civil nature, often at the behest of a complainant who has bribed them. Police Standing

Orders in some states do prohibit this illegality but neither the Model Police Act nor the amendment to the CrPC contain any provisions in this regard.

Most human rights violations begin with a person is being taken into police custody without being told whether he is taken for enquiry or is being arrested. Though S.160 of the CrPC requires that the police summon any person to the police station for investigation, **in writing**, this is observed more in the breach. The DK Basu guidelines, & the Model Police Act are all silent on this aspect. Regarding medical examinations of arrestees, S.54 of the CrPC provides for the same to take place, in addition to laying down that the arrestee must also be furnished a copy of the said report .

The National Human Rights Commission has also issued certain guidelines pertaining to the procedures of arrest alone, not for any of the later stages of public interaction with the police. In the Jail Manual, District Judges have been authorised to conduct surprise checks in prisons. In Tamil Nadu, the High Court issued circulars to all Judicial Magistrates to make surprise visits to police stations and file reports on the same every month. This has been a major step in ensuring that incidents of torture and custodial violence are brought to notice. Finally, the amendment to the CrPC also lays down that judicial enquiries shall be held by a magistrate even when a person disappears, i.e. he is kept in 'incommunicado detention'.

IN A NUTSHELL, even the existing human rights safeguards and prosecution of erring police officials under various laws were taken away through the Tamil nadu Police Bill,2008. The result will be disastrous since the new law will be an impediment in taking recourse to the above-said existing laws for redressal of any violations of human rights..