

UNION GOVERNMENT COMPLIANCE WITH SUPREME COURT DIRECTIVES ON POLICE REFORM

UNION TERRITORIES SECURITY COMMISSION

The Commonwealth Human Rights Initiative (CHRI) welcomes the recent move of the Ministry of Home Affairs (MHA) to implement the Supreme Court's directive on police reform in the Prakash Singh case of 2006, namely the setting up of a Union Territories Security Commission.¹

Through an Office Memorandum, the MHA has announced the establishment of a single Union Territories Security Commission with jurisdiction over all² the Union Territories.³

In the Court's view a Security Commission was to be a "watchdog body" to ensure that the political executive *"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 act according to the laws of the land and the Constitution"*.

The Supreme Courts directions are in line with recommendations made by every police reforms committee, from the National Police Commission, the Ribeiro Committee, Padhmanabhiah Committee and the Soli Sorabjee Committee mandated to draft a Model Police Act in 2005.

A Security Commission whether established at the Centre or by the States is intended to deal with the long acknowledged and acute problem of illegitimate political interference in policing. Typically a Security Commission is charged with setting overall policing policy while the chief of police manages the daily operations of the service and implements the Commission's policies or policy directions and goals. It is meant to ensure that there will always be consistent non-partisan oversight of the police force by the political executive through this mechanism created by government while ensuring that the police can do their job in a professional and accountable manner with operational responsibility resting with the chief.

In the case of the new mechanism set up for the Union Territories and under the control of the Centre, if these purposes are to be achieved several concerns with the present composition, mandate and modes of setting up must be addressed or there is every danger that the body will be still born.

The Centre's present plans indicate its means to set up just the one Union Territories Security Commission with jurisdiction over *all* the Union Territories, rather than individual Commissions in each Union Territory. In our view this one size fits all approach is not appropriate as the policing needs of each Union Territory differ widely depending on the population size, the size of the police service, the population mix, its urban or rural characteristics, its crime profile and the conditions and culture of the police service in each territory.

Secondly, based on several weaknesses in its composition, CHRI questions the ability of the Commission to be perceived as robustly autonomous in its functioning and advice.

Thirdly, CHRI believes that it is necessary to embed mechanisms into the Commission which will require it to place periodic reports of its own functioning and recommendations before the legislature and the public.

Background to the Security Commission: The Court Directive

¹ Office Memorandum, No. 14040/45/2009 – UTP, Ministry of Home Affairs, New Delhi, 3 March 2010

² The seven Union Territories are: Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli, Daman and Diu, Lakshadweep, National Capital Territory of Delhi, and Puducherry.

³ CHRI appreciates that the Office Memorandum detailing the composition and mandate of the Union Territories Security Commission has been put up on the Ministry of Home Affairs website however we suggest that it is moved to a more prominent and easily identifiable location on the Ministry's website. The OM can be viewed at: <http://www.mha.gov.in/pdfs/OM-UT110310.pdf>



The Supreme Court's directives in the *Prakash Singh* case provide States and the Centre with a broad framework for the functions of the Security Commission. Within this there is leeway to improvise to fit the particular situations of size, population, police strength, geography and culture. As regards police services under the command of the Centre the Court did not make a distinction between Union Territories, nor specifically mention whether the Centre should set up one Commission for all the Union Territories or a Commission for every Union Territory. However the Court did set down imperatives. These are intended to assure that the deficiencies and delinquencies of police functioning of the day are eliminated while oversight and functioning are strengthened. These imperatives are to be followed in all their detail.

The Court Required that:

- the Commission "shall" be headed by the Chief Minister or Home Minister as the Chair, and have the Director General of Police of the state as the 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"**. To decide who the other members should be and how to select them, the Court gave governments the choice between models recommended by the National Human Rights Commission, the Ribeiro Committee, or the Soli Sorabjee Committee.
- the recommendations of the Security Commission "shall be binding on the state government".

Failure to Recognise Unique Situation of Each Union Territory

Functions of the Union Territories Security Commission

The Memo setting up the Commission lists its functions as:

- 1) to frame broad policy guidelines for promoting efficient, effective, responsive and accountable policing, in accordance with the law;
- 2) to identify performance indicators to evaluate the functioning of the Police Service. These indicators shall, inter alia, include: operational efficiency, public satisfaction, victim satisfaction vis-à-vis police investigation and response, accountability, optimum utilisation of resources, and observance of human rights standards; and
- 3) to review and evaluate organisational performance of the Police Service in the state as a whole as well as district-wise against (i) the Annual Plan, (ii) performance indicators as indicated and laid down, and (iii) resources available with and constraints of the police.⁴

Taking into account the functions assigned to the Union Territories Commission by the Ministry, CHRI argues that a single centralised body cannot hope to achieve them. Framing policy guidelines and identifying performance indicators for the police require strong knowledge of **local** policing issues and problems and input from local experts and residents. It is obvious that the policing issues and problems of a mega-city like Delhi will be radically different from the policing issues in island communities like Daman and Diu or Lakshadweep. For instance, the geography of the terrain being policed, population figures, the ratio of police to population, diversity of local populations, local crime trends, local public perceptions of the police, police patterns and trends in malpractice, and local police accountability may be factors to take into account when drawing up policing plans or framing policy and performance indicators for the police. It goes without saying and these will differ immensely among the Union Territories. The needs and priorities for Delhi will be far removed from those for the rest of the Union Territories. If the issues, considerations, and problems are different, then the

⁴ The functions of the Commission have also been lifted directly from the Draft Model Police Bill.



policing plans, policy guidelines and indicators for the performance of the police within each Union Territory should also be different.

Individual Commissions would be composed of people more knowledgeable about local issues, be more accessible and accountable to local legislatures, and be better able to create targeted policies which could eventually lead to smaller police forces being improved in the long term. Creating a single centralised body, which sits in Delhi and is controlled from Delhi, is just setting up the Union Territories Security Commission to be irrelevant, inaccurate and primed to fail its mandate. Considering all these factors, CHRI strongly suggests that the Ministry consider creating individual Security Commissions for each Union Territory. An alternative measure to ensure certain attention to the smaller territories the notification needs to make clear more representation on the UTSC for locals from those territories, a process by which each plan will be made, implemented, reviewed and reported back to the local population which has to bear the consequences imposed by the single distant UTSC structure.

However, In our view at the a minimum the UT with its approximately 12million people and the largest metropolitan police in the world comprising a police force of almost 60000 personnel merits a Security Commission of its own.

No Independence: Problems in Composition

Present Composition:

According to the MHA Memo, the Union Territories Security Commission is to be made up of:

- Union Home Secretary (Chair)
- Chief Secretary (Delhi)
- Chief Secretary (Andaman & Nicobar Islands)
- Chief Secretary (Puducherry)
- Commissioner of Police, Delhi
- Representatives of other UTs (according to the requirements of the agenda of the meeting) – though the Memo leaves only one member slot free
- 5 Independent members to be nominated by the Central Government
- Joint Secretary (UT), MHA (Convenor)

While largely an improvisation, it is clear that the Ministry borrowed extensively from the Draft Model Police Bill provisions on the Security Commission, which provided for five non-political or "independent" members in its Security Commission (the highest number of independent members when seen against the other two models).

The premier value of a Security Commission lies in its ability to be an impartial body that will look to ensuring that policing functions are performed in non-partisan ways away from the pulls and pressures of the government of the day. The Commission must be designed not only so that it is unable to be captured by any single party or by the regime of the day but also in ways that are designed to balance powerful interests. Membership that includes varied expertise, professional skills, life experiences and citizen's interests can enrich its functioning and assure its legitimacy and its acceptance by the force itself.

In the models for Security Commissions identified by the Court, all the Security Commissions comprise the Home Minister, the Leader of the Opposition, at least one member from the judiciary in addition to the members from the executive, police and the independent members.

The Commission has no people's representative from the concerned Ministry or Opposition. It also does not have a member from the judiciary. This exclusion immediately removes its bi/non-partisan character. With five bureaucrats on it, the bias is tilted entirely towards officialdom which is naturally closely associated with and bound to serve the government of the day.



As indicated above the main objective for creating the Commission is for it to make sure that police impartiality is assured by ensuring that the regime of the day remains at arms length from its operational functioning while ensuring that the service remains accountable to government for delivering according to policies laid down. The inclusion of major political players creates a check and balance that prevents temporary dominations. By consistent participation in informed policy making all political parties – whether in power or not - eventually begin to own policing policy and become vested in year on year improvement and performance. By packing the Security Commission with bureaucrats directly serving under the regime of the day it will be difficult to infuse a perception of neutrality or non-partisanship which is at the very essence of the Court's purpose in insisting on the creation of this body. It also privileges just one point of view without providing instrumentalities for healthy counterbalance. In addition there will be little guarantee that consistent long term policies so essential for better policing will not be subjected to radical changes each time political fortunes change and those presently excluded come to power with their own set of bureaucrats following.

Independent members provide further checks and balances against narrowly perceived policy making dominated by police-government thinking. All wisdom does not reside within these narrow precincts. Representation from within the wider public assures policy making will benefit from informed diverse professional expertise and varied perspectives. But diversity is not sufficient. To be valuable on a policy making body 'independent' members require a credible process of selection. While a high number of independent members – five in this case – is to be welcomed the Centre has laid down no objective selection criteria, nor constituted an arms length selection panel to choose them, nor any transparent process by which they will come on board. This defeats any semblance of members serving on the Commission being perceived as independent. Considering that the Ministry has used the Model Police Draft Bill as a template for the Commission it is discouraging that it has chosen to remove the safeguards of independence that the Model Police Bill lays down.⁵

The Ribeiro Committee's model⁶ as well as the NHRC model⁷ both lay down selection process for independent members. In addition to criteria on skills and suitability to be an independent member, a Commission such as this which represents all the Union Territories should ensure that there is space for a sufficiency of non-political member from each Union Territory. This has not been mentioned or alluded to in the MHA Memo.

The Memo simply states that the five "independent members" will be nominated by the Central Government with tenure of two years. Besides the absence of selection criteria and process, the Centre can remove them at will for "reasons to be given in writing" No grounds for removal are stated that could provide a minimum, objective benchmark for removing a member. Thus, the Central Government has retained all powers to select, appoint and remove all 'independent' members. The Supreme Court's requirement that "**the other members of the Commission shall be chosen in such a manner that it is able to function independent of Government control**" becomes questionable.

Finally, the makeup of the Commission will lead to domination and control by Delhi. There are already three heavily influential members from Delhi on the Commission – the Union Home Secretary, the Delhi Police

⁵ See Model Police Draft Bill, Chapter V: Superintendence & Administration of Police, Section 42, page 31. In the Model Bill, the criteria states that "five non-political persons of proven reputation for integrity and competence from fields of academia, law, public administration, media or non-government organisations" are to be appointed to the Security Commission. Moreover, they are to be appointed on the recommendation of a Selection Panel made up of i.) Retired Chief Justice of a High Court to be nominated by the Chief Justice of the High Court; ii.) Chair of the State Human Rights Commission, in the absence of a State Commission, a person nominated by the Chair of the National Human Rights Commission; and iii.) Chair of the State Public Service Commission.

⁶ The independent members are to be chosen by a committee set up by the Chair of the National Human Rights Commission - Ribeiro Committee on Police Reforms, 1st Report, October 1998

⁷ According to the National Human Rights Commission, the independent members are to be appointed by the Chief Minister, with the approval of the State Legislature. The independent members are to be chosen from among retired judges of the High Court, retired senior Government servants, and social scientists or academicians "of public standing and eminence". To note, this is the model of the State Security Commission proposed by the National Police Commission (2nd Report, August 1979).



Commissioner, and the Joint Secretary (Union Territories) of the MHA. Only the Chief Secretaries of Andaman & Nicobar and Puducherry have a permanent spot as members. Four Union Territories - Chandigarh, Dadra and Nagar Haveli, Daman and Diu and Lakshadweep - all have just one position on the Commission, and that too on an ad-hoc basis, "depending on the requirements of the agenda of the meeting". Independent of the size of the Union Territory, it is difficult to imagine how the Security Commission be truly representative of all the Union Territories if not all of them even have a permanent position on it.

In all probability the agendas of the meetings will be fixed in Delhi, so in effect, Delhi will decide when representatives from these four Union Territories are "required" or not. Added to that, the only police representative is the Delhi Police Commissioner, who will obviously be the leading voice in the Commission on crime issues and trends, as well as possible police responses that should then be translated into policy guidelines. Here again, an overwhelmingly Delhi-centric perspective is likely to dominate, as there is no representation of police from the other Union Territories. With the pressing and overwhelming crime and policing problems in Delhi, it will simply be inevitable that little attention may be paid to local policing outside the Capital and that policies emerging from this Commission will be more suited to Delhi than informed by representation.

It is a simple equation. This body is not representative of all the Union Territories. If the Ministry insists that it wants to retain a single, centralised Commission with jurisdiction over all the Union Territories, and it also seeks to make that Commission representative of all the Union Territories, then it will have to expand the membership to more than double of this model, taking into account both government and independent members from seven Union Territories. This will produce an unwieldy, unmanageable body, adding another paper tiger to our list of regulatory bodies.

Functions: Falls short of the Supreme Court's Requirement

The Commission's role is mandated by the government and in setting overall policy for policing and performing its oversight functions the commission remains an instrumentality of government. To be effective it must statutorily report back to the government and the legislature and be bound by its terms of reference. Its recommendations must be binding. There is no mention of this in the memo. There is also no mention of any report back mechanism which would indicate to the people the extent to which policies made had been implemented. In the absence of any mechanism for report back, debate and consequences for not remaining within policy for the police or being neglectful of its own mandate the Commission will inevitably lose its effectiveness as a means of steadily improving policing. Presently reviews of policing are limited to law and order considerations. Even when done regularly and at length reviews are closed door exercises. Clearly public deep dissatisfaction with present policing calls for a new way by which policing policy is clear to the public, reviews are transparent and accountability for malpractice as much as for non-performance can be fixed.

The Supreme Court in its directive clearly laid down that one of the functions of Commission would be to prepare an annual report of the working of the Commission which would be placed before the Legislature. The Court directive also intended the recommendations of the Commission to be binding on the Government. The Commission is silent on the nature of powers that will vest with the Commission. It does not mandate the Commission with the responsibility to prepare an annual report which would be placed before the Legislature. Related to this, the Ministry will have to clarify what "legislature" means when considering Security Commissions for the Union Territories. Most specifically, the government needs to clarify that policing plans and annual compliance reports will go to not only the Parliament but also be presented to and discussed and debated by local legislatures. The absence of both these imperatives will create a weak body when the intention was to create a strong speaking body that would benefit both policing and the public and command the confidence of both.

Conclusion



CHRI's opinion is that the present Union Territories Security Commission is a weak model that will defeat the purposes for which the Court required it be set up. We would urge the Ministry hold wide consultations with a wide range of actors in each of the Union Territories and their populations before fixing on any model, and seriously consider the merit of establishing individual Security Commissions for each Union Territory. As a bare minimum, CHRI suggests that any Security Commission include a member of the judiciary, and efforts are made to specifically ensure Security Commissions in Union Territories are not dominated by bureaucrats but are open and inclusive of other expertise and interests. Also, to be true to the Court's directive, priority must be given to designing objective criteria and a credible procedure for selecting the independent members of any Security Commission, since they are the basis of the legitimacy of such a body.

