Squander an opportunity or commit to police reform?

Background information on the Supreme Court judgment

Prakash Singh and Others. vs. Union of India and Others (22/09/06)

The judgment

After decades of government committees, public pressure and poor policing, it can be said that a police reform process is finally underway in India. The impetus came from the Supreme Court, which delivered a historic judgment on 22 September 2006 in *Prakash Singh and Others vs. Union of India and Others.* The Court has taken the decisive step of instructing central and state governments to comply with a set of seven directives laying down practical mechanisms to kick-start reform.

The need for police reform

The archaic Police Act of 1861 continues to govern most police forces in India, despite far reaching changes in governance and India's transition from a colonised nation to a sovereign republic. This law was enacted in the aftermath of what the British called the Mutiny of 1857. At the time, the police were envisaged as a force meant to crush dissent and any movement for self determination. In the context of colonial rule and the absence of democracy, the police were not created to be an effective and humane public service working toward the safety and security of all the people of India. In practice, the Police Act of 1861 and the kind of policing culture that governments have 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 the reports have sat and gathered dust. The latest government initiative was to set up a "Police Act Drafting Committee" – commonly known as the Soli Sorabjee Committee – in October 2005. The PADC is expected to submit its final report to the government on 31 October 2006.

The intervention of the Supreme Court

Ten years ago, a former Director General of Police, Prakash Singh, initiated a public interest litigation. He 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.

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 arriving at its seven directives, the Supreme Court perused the reports of the various commissions and committees previously set up by the government. The judgment reflects some of their recommendations.

Key principles: functional autonomy and accountability

The directives seek to achieve two main objectives: functional autonomy for the police and accountability for conduct and performance.

Functional autonomy

Policing is a public service. The bottom-line of good policing is that the police do their job in an impartial and efficient manner, for the benefit of all and not an elite few. To do this, they

require some measure of autonomy. While working within the framework of national laws and accountability systems, the police must retain control over their day-to-day *operational* policies and decisions. "Functional autonomy" or "operational independence" has become a basic characteristic of policing in many Commonwealth countries. Functional autonomy requires a balancing act. Too much autonomy can lead to blatant abuse of power and violent police actions. Too little can mean a police that is pliant to the political/partisan interests of a few rather than serving the larger public interest. 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.

In order to address these endemic problems and ensure functional autonomy to the police, governments are directed by the Supreme Court to:

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, and (iii) evaluate the performance of the state police;
2. Ensure that the Director General of Police is appointed through a merit based and 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 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; and
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.

The Supreme Court directives, if properly implemented, will guard against undue political interference, without diminishing necessary checks and balances. Bringing service related matters within the direct control of the police and providing security of tenure to police leaders and cutting edge officers will help the department set its house in order and ensure politicians can no longer unduly interfere.

If truly given the necessary independence, State Security Commissions can act as strong buffers between politicians and the police. There are several "best-practice" examples of this kind of body in the Commonwealth. Variously 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 the 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.

Accountability

Armed with the power to use force against ordinary people, the police must be accountable for all of their actions at the individual and the organisational level. Considering the culture of "brotherhood" within the police, the most successful police reform initiatives across the Commonwealth have created *independent* police accountability mechanisms. In a nutshell, these mechanisms have powers to investigate public complaints against police officers - usually they are given the responsibility to investigate only the most serious complaints of misconduct. Importantly, these mechanisms provide channels for civilian oversight of the police and give accountability powers to the very people that the police serve. The judgment provides for similar civilian oversight. The Court has directed governments to 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.

The other side of accountability is accountability for performance. Consistent and holistic evaluation of the police as an organisation is key to shaping effective policing. In this respect, State Security Commissions are also given the responsibility to evaluate the performance of the state police and prepare a report for the state legislature. To meet public needs, performance could be evaluated in light of indicators such as operational efficiency, public satisfaction, victim satisfaction and proper utilisation of resources. The Supreme Court directives also seek to enhance police performance by directing separation of investigation and law and order functions to "*ensure speedier investigation, better expertise and improved rapport with the people*".

How will governments comply with the judgment?

Governments must comply with the seven directives by 31 December 2006 so that the agencies provided for in the judgment become "*operational on the onset of the new year*". Since policing is a state subject, each state government needs to comply with the directives. Governments have two options: draft a bill and push for its enactment or resort to executive orders. Some of the Court's directions, such as ensuring security of tenure and creating a Police Establishment Board, can be complied with immediately through executive instructions. Others, like the creation of State Security Commissions and Police Complaints Authorities require much more thorough consideration and need to be enshrined in law. Governments may not be able to comply fully with the judgment in the short deadline but can take decisive first steps towards reform.

The judgment has only provided a general framework into which governments will have to build processes and mechanisms to ensure the effectiveness of the newly created institutions. Key elements include: process and criteria for the selection of members, functions, powers and relationship to internal police mechanisms. The draft Police Act prepared by the Police Act Drafting Committee provides a relevant and useful template as it fleshes out mechanisms that could be used for implementing most of the Supreme Court's directives.

Complying with the Court's directions through executive orders should not serve as an excuse to further delay the adoption of a new Police Act by central and state governments. The Supreme Court highlights that its directions are only meant to fill the gap until governments frame appropriate laws. It is hoped that the judgment will have persuasive value in encouraging legislatures to adopt progressive legislation reflecting the essence of the decision.

The inherent dangers

Although the judgment must be welcomed as a landmark decision, its real impact will only be measured in the coming months according to the extent of compliance by central and state governments. Implementing police reform has clearly not been high on any government's agenda so far. A few risks and dangers should be kept in mind.

First, governments may not set up the institutions provided for in the judgment due to lack of political will. Experience shows that governments fail to put in place empowered institutions created to hold them accountable. For example, the state of Arunachal Pradesh only recently

established its Information Commission, more than a year after the enactment of the Right to Information Act. In other states, governments fail to provide adequate resources and even basic infrastructure to Information Commissions, preventing them from realising their mandate. Such apathy is even more likely for the creation of the institutions provided for by Supreme Court directives. In particular, the establishment of Public Complaints Authorities in *every district* will only be possible if states are truly committed to police reform and demonstrate strong political will.

Second, there is a danger of governments' compliance with the letter but not the spirit of the judgment. Most notably, there is a risk of capture of the newly created institutions by vested interests. Key to any institution is the selection process of its members. It is therefore essential that mechanisms are put in place to ensure that the best possible candidates are chosen by a transparent and fair process to ensure their independence.

Third, governments might only partially comply with the judgment favouring either the functional autonomy aspect of the decision or its accountability aspect. This, again, would represent a serious danger as the two principles must be thought of as two sides of the same coin; police autonomy must be tempered by robust accountability, and accountability can only be robust if the police are not able to pass the buck for misconduct or poor performance.

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