

Seven Steps To Police Reform* **Commonwealth Human Rights Initiative**

1. Introduction

That systemic police reform is an imperative is undisputed. The Supreme Court ordered that reform take place in a judgment delivered in the *Prakash Singh* case on **22 September 2006**. On **11 January 2007**, the Court considered the objections and concerns of the states and the union to its judgment and, while taking account of their objections and concerns said very firmly that the process of police reform must commence immediately. What the Supreme Court says is law. Not complying with its directions amounts to disobedience and can mean being charged with contempt of court. On **9 April 2007**, the Court set yet another date (30 April 2007) to look at applications for extension/modification. On **23 August 2007**, the Court dismissed all review petitions by the state and the central government, as it did not find any merit in them. This means that the Centre, States and Union Territories will have to implement the Court's order. On **14 December 2007**, the Court heard a contempt petition against 6 states and in response ordered all states and territories to report on compliance by March 2008.

On **13 March 2008**, the Court considered the issue of a monitoring committee to oversee compliance. The petitioner suggested a three-member committee and the Court adjourned to April 2008 to hear further submissions on this issue. On **28 April 2008** the Court received names of persons for the Monitoring Committee and adjourned saying it would consider the matter further before issuing an order. On **16 May 2008** the Court issued an order to set up a three-person Monitoring Committee chaired by former Supreme Court Judge K.T. Thomas. The Monitoring Committee is to have a term of two years which may be extended and must present its first report to the Court in six months. The other 2 members of the Committee are Mr. Kamal Kumar, IPS (retd), and Mr. Dharmendra Sharma (MHA). The Monitoring Committee is mandated to examine the affidavits filed by the States and Union Territories, taking into account reported difficulties in implementation and unnecessary objections. Further the Committee will examine the new police Acts passed after the judgment in 2006, to examine if the Acts are in compliance with the letter and spirit of the Apex Court's directions. To date, the Committee has held 2 in camera sessions (28 July, August) and two other session (24 September, 25 November), which both Prakash Singh and CHRI attended. The first four states to be analysed by the Committee are: Uttar Pradesh, Madhya Pradesh, Andhra Pradesh and Orissa.

2. Chronology: Prakash Singh & Others. Versus Union of India & Others

2 retired DGPs, Prakash Singh & N.K. Singh file a public interest litigation in the Supreme Court	1996
Ministry of Home Affairs (MHA) constitutes Police Act Drafting Committee (PADC) chaired by Soli Sorabjee	September 2005
Supreme Court delivers judgment on the Prakash Singh petition, gives states till 3 Jan 2007 to comply	22 September 2006
PADC submits Model Police Act 2006 to MHA	31 October 2006
Supreme Court hearing monitoring compliance with its directives of September 2006	11 January 2007
Compliance deadline imposed by Supreme Court for directives 2,3,5	Immediate as of 11 January through executive orders
Extension for implementation of remaining directives 1,4,6,7	31st March 2007
Deadline to file affidavits of compliance	10 April 2007
Supreme Court dismissal of review petitions filed by 6 states.	23 August 2007
Supreme Court hearing on contempt petition filed by Prakash Singh	14 December 2007
Supreme Court hearing and deadline for states to file compliance report	13 March 2008
Supreme Court considering establishing a Monitoring Committee	28 April 2008
Supreme Court passes an order to set up a Monitoring Committee	16 May 2008

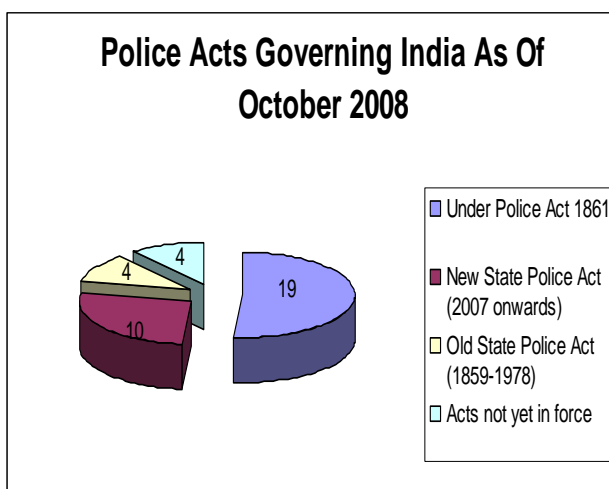
3. What are the Supreme Court directives?

The seven directives provide practical mechanisms to kick-start reform. They include recommendations from many of the commissions and committees on police reform that have sat in India over the last 25 years. In passing these directives, the Court laid on the record the deep rooted problems of over politicization of the police, lack of accountability and oversight mechanisms and systemic weaknesses that result in poor quality investigations. The seven directives are aimed at addressing these specific problems.

In a nutshell, governments are directed 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, 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;
- (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; and
- (7) Separate the investigation and law and order functions of the police.

The Court ordered the implementation of the above directives till such time as new legislation is enacted by State and Union Territory Government.



Since the Supreme Court judgment, 10 states have passed new police Acts: Assam, Bihar, Chhattisgarh, Himachal Pradesh, Haryana, Kerala, Punjab, Rajasthan, Tripura & Uttarakhand.

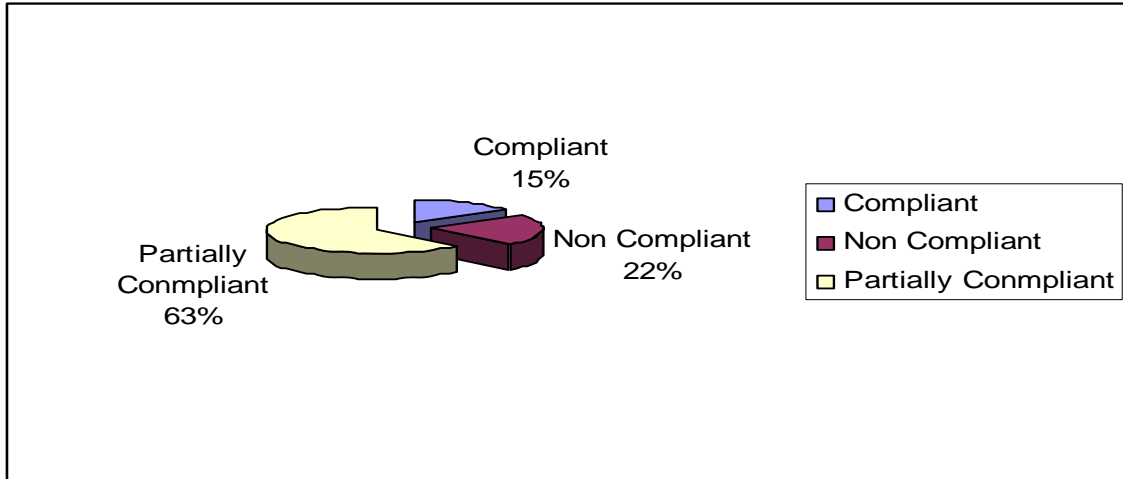
In Tamil Nadu, Goa and Gujarat, the Bills are yet to be enacted as laws.

Tamil Nadu, Karnataka, Delhi and Bombay are governed by old police Acts dating from 1859 to 1978.

The remaining 13 states and 6 union territories are still governed by the Police Act of 1861.

4. What have states and union territories done?

On 11 January 2007, the states submitted affidavits to the Supreme Court setting out the steps that they had taken to comply with the judgment. On 9 April 2007, the states and the union filed fresh affidavits to update the court on compliance. A graphic representation of the compliance status of all states and territories based on the information in their latest affidavits filed by 11 March 2008 is set out below.



Compliance scorecard

Definition of categories

Compliant	Have reported taking steps to implement all directives
Partially compliant	Have taken steps to comply with one or more directives, may have registered objections to some directives
Non compliant	Have registered strong objections to some or all directives and do not indicate any steps for implementing or; Have stated that new police legislation is in the process of being drafted therefore no steps have been taken to implement directives or; Have sought extensions with no details on concrete steps towards compliance or; Are Union Territories reliant on central government for compliance.

Compliant	Partially Compliant	Partially compliant	Non compliant
Sikkim*	Himachal Pradesh*	Orissa*	West Bengal*
Nagaland	Daman & Diu	Chandigarh	Tamil Nadu*
Meghalaya	Rajasthan*	Jharkhand*	Andhra Pradesh*
Arunachal Pradesh*	Punjab*	Gujarat*	Delhi
Goa*	Lakshadweep	Kerala*	Uttar Pradesh*
	Haryana*	Dadra & Nagar Haveli	Jammu & Kashmir*
	Andaman & Nicobar	Manipur*	Madhya Pradesh*
	Bihar*	Mizoram	Karnataka*
	Chhattisgarh*	Puducherry	
	Assam*	Tripura*	
	Maharashtra	Uttarakhand*	

**States with asterisks indicate those that are drafting or have drafted new police legislation.*

5. What have the states said?

Many states have made statements that they support the spirit of reform behind the Court's directives. However the states have made the following arguments against immediate implementation of the directives, particularly in their current form.

5.1. Political interference in police administration is minimal

The need for a State Security Commission is questioned, as there is no unwarranted influence over the police. (Gujarat, Nagaland)

5.2. Undermines the power of the elected government

Setting up a State Security Commission with binding powers is likely to undermine the power of a constitutionally established state over the state police, lead to the creation of a parallel body which is not accountable to the people of the state and would infringe the rights of the state. (Andhra Pradesh, Gujarat, Karnataka, Uttar Pradesh)

5.3. Fixed tenure will demoralise officers and limit the government's flexibility

A fixed two-year tenure for the DGP, irrespective of their superannuation date, will block opportunities for other eligible senior officers, who will be demoralised. Further, the directives take away the right of the government to transfer police officers to meet administrative exigencies. Similar arguments have been levelled against a fixed tenure for the IG, DIG, SP and SHO. (Andhra Pradesh, Uttar Pradesh, Gujarat, Nagaland)

5.4. Involvement of the UPSC is neither practical nor necessary

Under existing law, there is no provision for empanelling three officers by the Union Public Service Commission to provide three names of candidates for DGP to the state government to appoint. The involvement of the UPSC in this is neither practical nor necessary. (Gujarat, Karnataka)

5.5. Fixed tenure is not important for good performance

Short tenure does not impact on efficient functioning. (Andhra Pradesh)

5.6. Police Establishment Board will duplicate existing systems

A Police Establishment Board would run contrary to the democratic functions of the government and result in the creation of a separate power centre, comprising bureaucrats who are not answerable to the people, while also duplicating existing systems. (Gujarat, Uttar Pradesh)

5.7. Complaints Authorities will duplicate existing efforts and be a financial burden

National and State Human Rights Commissions, the Minorities Commission, the Scheduled Castes & Scheduled Tribes Commission, the Central Vigilance Commission, State Vigilance Commissions and Lok Ayuktas are already in place to deal with complaints about the police. Creating new District and State Complaints Authorities would duplicate the work of existing fora and would be a financial burden. (Gujarat, Uttar Pradesh, Andhra Pradesh, Karnataka, Tamil Nadu)

5.8. No demonstrated need for Complaints Authorities

Uttar Pradesh argued against the need for State and District Complaints Authorities based on a statistical argument comparing the current number of complaints against the police and the number found to be incorrect or unsubstantiated. Nagaland maintained that the commission of excesses by the police is a very rare occurrence.

5.9. Complaints Authorities will demoralise police

The establishment of District and State Complaints Authorities may lead to the police being demoralised, failing to implement various laws and becoming ineffective out of a fear of being prosecuted by yet another agency. (Andhra Pradesh)

Andhra Pradesh, Gujarat, Punjab, Jammu & Kashmir, Karnataka, Maharashtra, Tamil Nadu and Uttar Pradesh filed review petitions in the Court. Their objections to the directives were so strong they asked the Court to review the directives in total! The Court dismissed their petitions as having no merit on 23 August 2007.

Seven Steps To Police Reform 10/12/2008, Commonwealth Human Rights Initiative (CHRI), www.humanrightsinitiative.org
*Working Document, Continuously being revised pursuant to most up to date information received

Moving the directives from paper to reality

The urgent resolve for police reform ordered by the Supreme Court must galvanize action. Any central or state government decisions including the appointment and removal of DGPs, the removal of IGs, DIGs, SPs and SHOs, transfers and promotions of other police and serious complaints against police, must, from here on, be viewed in the context of the directives.

Already, many instances have emerged of state governments violating their own notifications of compliance. In both Arunachal Pradesh and Manipur, DGPs have been removed from their post, ahead of the two-year tenure assured to them by executive order, without any explanation for the grounds of removal, as required under the law.

The Special Secretary, issued an order dated 28 December 2006 declaring the selection procedure and minimum tenure for the DGP¹. In terms of granting minimum tenure to the DGP, the order states:

2. The Governor of Manipur is further pleased to order that the DGP will have a minimum tenure of two years except in those conditions where the officer is to retire within less than two years. The Director General of Police may be relieved of his responsibilities by the State Government in consultation with the State Security Commission consequent upon any action taken against him under the All India Service (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".

In a unilateral move, the Manipur government removed the DGP, AK Parashar. The government has not stipulated the reasons for his removal and has not given a lawful basis for his removal (action taken under the All India Service (Discipline and Appeal) Rules, conviction in a court of law in a criminal offence or case of corruption or incapacity). The manner in which his removal has taken place absolutely defies the state government's own order!

States that are leading the way in police reform

Some states have shown a commendable commitment to widespread police reform.

The Meghalaya state government set up a four-member Police Reform Committee in 2005, well before the Supreme Court's directives in the Prakash Singh case. This committee had fairly broad terms of reference and travelled all over the state to examine problems that needed addressing. They consulted members of the public as well as the police in finalising their recommendations. The state government accepted the majority of the committee's recommendations. Meghalaya has issued notifications to comply with all the directives.

Arunachal Pradesh has already consulted Superintendents of Police on their policing challenges and drafted a Strategic Policing Plan for the state with detailed performance targets, milestones and timelines for achievement.

Himachal Pradesh has released a Five Year Strategic Policing Plan (2007-2011). It is heartening to note that the DGP in the forward to the Plan states that it has been formulated after extensive consultation with a cross-section of people, members of the community, leaders, opinion makers and police officers.

In some states, Police Complaints Authorities have already been set up to inquire into allegations of serious misconduct against police personnel. In Tripura, the official notification of the constitution of the Police Accountability Commission, its functions, the procedure for making complaints and its physical location was published in the Dainik Samvad on 4 May 2008, informing the public that the Commission would be functional from 2 June 2008.

6. New police legislation

It is widely accepted that it is untenable to continue to police the citizens of India under the Police Act of 1861, which was drafted by the colonial authorities close on the heels of the first War of Indian Independence in 1857.

The National Police Commission in its 8th and concluding report of 1981, submitted a new Police Act for India. The Ministry of Home Affairs constituted the Police Act Drafting Committee (PADC) in 2005 to draft a Model Police Bill for India. The PADC submitted its draft to the Ministry on 31 October 2006. This draft bill was also circulated among all state governments. The Union Home Minister had stated that the union government would enact the new law for police in Union Territories in the 2007 budget session of Parliament or the next. This however never occurred and almost two years after the Supreme Court judgment as well as the Model Police Act 2006 being submitted to the union government, Union Territories still have no new Police Act. It was hoped that state governments would enact their own police legislation whilst drawing on the best elements from the PADC's Model Police Act, the National Police Commission's Model Police Act and the Supreme Court directives on Police Reform.

The following 23 states (out of a total of 28) have either recently passed new police legislation or have commenced work to draft new police legislation. **A point to note is the complete lack of transparency, community consultation or civil society input in this process by most states. In many states members of the public are completely unaware that their state government is in the process of reforming the police laws.** Communities are the main beneficiaries of good policing and the main victims of bad policing – community and civil society participation in the process is essential if the police are going to be efficient, effective and accountable.

State	Date work commenced
Madhya Pradesh	Drafting underway
Andhra Pradesh	Drafting underway
Arunachal Pradesh	Drafting underway
Jharkhand	Drafting underway
West Bengal	Constituted a drafting committee in March 2007
Jammu & Kashmir	Drafting Committee set up
Sikkim	In final stages of drafting
Karnataka	Drafting underway
Manipur	Police Reforms Bill drafting underway
State	Bills
Tamil Nadu	Tamil Nadu Police Bill 2008 tabled in Legislature on 14 May 2008
Gujarat	Bombay Police (Gujarat Amendment) Bill 2007 passed by Legislative Assembly 20 July 2007, referred to State Law Commission
Goa	Goa Police Bill tabled in the Legislative Assembly 27 August 2008
Orissa	Orissa Police Bill submitted by working group to drafting committee
State	New legislation passed recently
Bihar	Bihar Police Bill passed 28 March 2007, Governor's assent 30.3.07
Tripura	Tripura Police Bill passed 29 March 2007, Governor's assent 7.4.07
Chhattisgarh	Chhattisgarh Police Bill passed 20 July 2007, Governor's assent 27.9.07
Assam	Assam Police Bill passed 8 August 2007, Governor's assent 30.8.07
Haryana	Haryana Police Bill passed 21 March 2007, Governor's assent 28.5.08
Himachal Pradesh	Himachal Pradesh Police Bill passed 28 August 2007, Governor's assent 21.9.07
Kerala	Kerala Police (Amendment) Act passed 19 September 2007
Rajasthan	Rajasthan Police Bill passed 21 September 2007, Governor's assent 30.10.07
Punjab	Punjab Police Bill passed December 2007, Governor's assent 24.1.08
Uttarakhand	Uttarakhand Police Bill passed 2 January 2008, Governor's assent 2.1.08

It is positive that state governments are choosing to draft new police legislation. It is also a cause for enormous concern that the community is not involved and is not aware of the process. State governments must publicise their initiatives to redraft police legislation widely, using a range of methods. Publishing this information will educate the public and strengthen democracy.

State governments can take the following types of action:

- Allowing and requesting civil society and community input in police act drafting committees;
- Advertising the membership of any existing committee;
- Inviting public submissions on the type of police service and police law the community would like to have;
- Inviting police at all levels to make submissions about the type of police service and police law they would like to be part of;
- Holding focus groups with police at all levels, particularly at the DySP rank and below on their views;
- Holding public forums and meetings to generate a community voice on policing and to take into account this voice;
- Compiling the outcomes of public forums and distributing them through print and electronic media as the 'voice of the people'; and
- Ensuring the draft legislation that goes before State Assemblies and Parliament is in the public domain and has been made available for comment under proactive disclosure provisions in Section 4(1)(c) of the Right to Information Act, 2005.

Kerala State Government's Call for Citizens Comments: A Welcome First in the Country

Kerala is one of the few states of India that had its own state Police Act prior to the Supreme Court judgment – Kerala Police Act of 1960. The Kerala Government initially passed an Ordinance in February 2007 soon after the Supreme Court's judgement was handed down. Then in September 2007 it passed the Kerala Police (Amendment) Act 2007, which was to complement the Kerala Police Act, 1960. The Amendment Act only addressed some of the Supreme Court's directives. Meanwhile, the state was also considering overhauling its 48 year old Kerala Police Act of 1960.

In June 2008, the Draft Kerala Police Act 2008 was posted on the website of Kerala Police. The Director General of Police encourages citizens to write with comments and suggestions directly to him or to any member of the Kerala Police Act Drafting Committee. This is the first time a State Government has proactively sought public consultation in regards to police legislation. Only by active participation in this public consultation process can the members of civil society help to ensure that the new Kerala legislation meets the requirement of the Supreme Court and helps strengthen a democratic police service.

Read the Kerala Police Draft Act <http://www.keralapolice.org/index8.html>

ⁱ Special Secretary, Government of Manipur, Department of Personnel (S. Sunderlal Singh) (No. 18/39/2006-POL/DP) dated 28 December 2006