

GOVERNMENT OF INDIA

Government of India Compliance with Supreme Court Directives on Police Reform

The Government of India has, according to our information, filed ten affidavits of which four are from the Union Territories; two in relation to setting up a National Security Commission; two concerning a National Investigation Agency; and two related to compliance with the Supreme Court's directives.

In 2005, the Government of India set up a drafting committee headed by Soli Sorabjee to draft new police legislation. The Soli Sorabjee committee submitted its draft (*Model Police Act, 2006*) in 2006 to the Government and has ever since been waiting to be introduced to the Legislative Assembly.

Regarding the six Supreme Court directives, the Government of India is reluctant to implement them in letter and spirit. It is true that the Union Territories are unique in its geography and demography however this cannot be used as an excuse for not properly complying with the Apex Court's order.

Regarding the National Security Commission, the Government of India has shown little compliance with this directive and has instead filed two applications for clarifications and modifications.

Regarding the National Investigation Agency, the Government of India filed two affidavits seeking extension of time in 2007 for the implementation of such an Agency. A couple of weeks ago the Government introduced a National Investigation Agency Bill in the Lok Sabha and it was passed on 16 December 2008. However, due to time constraints this will not be analysed in this paper.

Although the Government of India has addressed all the directives in the affidavits the letter and spirit of the most important directives are diluted and the Government of India cannot be seen as compliant with the Supreme Court's order.

1. State Security Commission

Directive 1

Constitute a binding 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. In the composition of this Commission, governments have the option to choose from any of the models recommended by the National Human Rights Commission, the Ribeiro Committee or the Sorabjee Committee.

The Government of India suggests that instead of setting up a State Security Commission (SCC) in each Union Territory (UT) it shall create a Central Committee for the Union Territory Police (CCUTP). The reasoning behind this is that there are only two UTs with a Legislature and that it would be difficult for the other UTs to comply with the composition of the SSC.¹

Composition

¹ Para 16 (iv), page 15, Application for directions on behalf of the Union of India, date 12 February 2007



GOVERNMENT OF INDIA

Despite creating the CCUTP the Government of India does not comply with any of the suggested models set out by the Apex Court. The Government of India has excluded the leader of opposition and its independent members and instead included the Joint Secretary thus making the CCUTP a purely governmental body violating the independent checks and balances as proposed by the Supreme Court.² In a diverse democracy as India it is crucial that the policies and directions of the police and their evaluation is decided by government and non-government representatives of society since the performance of the police affects everyone in the society, especially in cases where the CCUTP is going to represent the diverse and multifaceted geography and demography of the UTs.

Function

The affidavit has not provided any details what so ever on the functions of the CCUTP. In addition, the affidavit is silent on whether such an Authority has been actually created or merely suggested. There are no Government Orders or Resolutions supporting the fact that the CCUTP has been constituted.

Conclusion

The composition of the suggested CCUTP clearly violates the Apex Court directive since the functions of the CCUTP have not been defined or even referred to. The Government of India has further not satisfactory indicated whether this authority is up and running or not. In light of this, the Government of India cannot and must not be seen as compliant.

2. Selection and tenure of the DGP

Directive 2

Ensure that the Director General of Police is appointed through a merit based, transparent process with the involvement of the UPSC and enjoys a minimum tenure of two years.

Selection

The Government of India asserts that if the UPSC shall empanel candidates to the DGP post, the UPSC charter together with the UPSC (Exemption from Consultations) Regulations must be amended. The Government further asserts that involving the UPSC would lead to a cumbersome selection process.³ This is an obvious attempt to make excuses for not complying with the directive. It is merely a matter for the UPSC to agree to undertake the empanelment of the DGP. No formal legislative amendment process is required since the UPSC can change its own Regulations. The idea behind UPSC nominating candidates to the DGP post is to ensure the impartiality of the selection procedure

² Para 16 (vi), page 15, Application for directions on behalf of the Union of India, date 12 February 2007

³ Para 16 (xi), page 17 Affidavit on Behalf of the Union of India in compliance of order dated 22.9.2006, date 3 January 2007



and to ensure that the DGP enjoys operational autonomy from the Government. Removing the UPSC role in the selection procedure dilutes this intention which is of grave concern.

Tenure

The Government asserts that to ensure two year fixed tenure irrespective of superannuation would need changing the All Indian Service Rules.⁴ This is a blatant excuse for non implementation since the All India Service Rules do not have any bearing on the Government's discretion to fix tenure for any position. No amendment has been made in the All India Service Rules to guarantee the tenure of police posts such as the Director of the Central Bureau of Investigation and the Director of the Intelligence Bureau. These have been ensured through Government resolutions.

Government of India argues that if two years tenure would be given to the DGP then two years tenure must be given to the Administrator/Chief Secretary to ensure equality before the law and this is, according to the Government, not feasible.⁵ This argument is without merit and shows a clear resistance to the Supreme Court's directive. Equality is of course admirable and to ensure equality in this case the Government of India would have to ensure two years tenure for both IPS and IAS officers. The reason behind two years tenure regardless of superannuation is to ensure that the DGP has functional autonomy from the Executive and to instil good management practice of continuity in leadership and strengthen the police chain of command. The importance for good management practice and continuity of leadership is equally important to the IPS as well as the IAS.

Further the affidavit is completely silent on the reasons for premature removal of the DGP, leaving a lot to be desired.

Tenure for the Chiefs of Central Police Organisations

The Government of India has not agreed to ensure two years tenure for Police Chiefs of the Central Police Organisations as suggested in directive 7 by the Apex Court. The Government merely states that it is "*considering institutionalising the tenure*" and that the tenure is "*generally*" two years.⁶ As stated above, two years tenure is imperative for sustainable management practice and good leadership.

Conclusion

The arguments put forward by the Government have no merit. It is obvious that the Government of India breaches the letter and spirit of the directive by opposing it.

⁴ Para 16 (x), Affidavit on Behalf of the Union of India in compliance of order dated 22.9.2006, date 3 January 2007

⁵ Para 16 (x), Affidavit on Behalf of the Union of India in compliance of order dated 22.9.2006, date 3 January 2007

⁶ Para 7 (ii), Affidavit on Behalf of the Union of India in compliance of order dated 22.9.2006, date 3 January 2007



3. Tenure for police officers on operational duties

Directive 3

Ensure that other police officers on operational duties (Superintendents of Police in-charge of a district, Station House Officers in-charge of a police station, IGP (zone) and DIG (range)) also have a minimum tenure of two years.

Tenure

The Government of India asserts that there is “normally” two years tenure for police officers on operational duty. This is prescribed for in existing guidelines.⁷ First, it is concerning that the language has been altered in the affidavit to state “normally”. This use of language can only be explained as unwillingness to let go of the avenues for political interference. Further, it is superfluous to include such a word since the Apex Court has clearly set three objective criteria for the removal of police officers on operational duty prior to the minimum tenure of two years. The Government’s approach creates a loophole, the very thing the Court seeks to close off. Second, the Government has not attached a copy of the existing guidelines complicating the assessment of whether the Government is fulfilling the directive or not.

Moreover, the Government of India asserts that if police officers got two years tenure IAS officers would be discriminated against under the All Indian Service Rules.⁸ As stated above, the reason for two years tenure is to ensure that the police officers has functional autonomy from the Executive and to instil good management practice of continuity in leadership and strengthen the police chain of command. The importance for good management practice and continuity of leadership is equally important to the IPS as well as the IAS.

Union Territories’ compliance

Chandigarh has issued a letter⁹ to ensure compliance with the directive,¹⁰ and Lakshadweep has issued an order to ensure that the SHO has a minimum tenure of two years.¹¹ Further, Andaman & Nicobar Islands and Puducherry assert that they are taking action to ensure two years tenure without giving any additional details,¹² However, Daman & Diu and Dadra & Nagar Haveli state that they are not the competent authority to take such a decision.¹³

Conclusions

⁷ Para 16 (xii), page 18, Affidavit on Behalf of the Union of India in compliance of order dated 22.9.2006, date 3 January 2007

⁸ Para 16 (xiv), page 19, Affidavit on Behalf of the Union of India in compliance of order dated 22.9.2006, date 3 January 2007

⁹ Letter No. 9138 –HIII (2)-2006/20947 dated 10 November 2006, Chandigarh Administration, Home Department

¹⁰ Para 3, page 3, Affidavit Shri Krishna Mohan, IAS, Home Secretary, Union Territory, Chandigarh on behalf of the Respondent, Union Territory Chandigarh, date 2 January 2007

¹¹ Para 5 (c), page 4, Affidavit on behalf of Union Territory Lakshadweep, date 2 January 2007

¹² Para 3 (viii), page 3, Affidavit on behalf of UT of Andaman & Nicobar Islands, date 30 March 2007 and Para iii, page 2, Affidavit on behalf of the Government of the Territory of Puducherry

¹³ Para 5, page 3, Affidavit on Behalf of UTs of Daman & Diu and Dadra & Nagar Haveli, date 3 January 2007



The tenure for police officers on operational duty is vaguely drafted and the argument that two years tenure to police officers would be discriminatory to IAS officers is without merit. The reluctance displayed by the Government of India to comply with this directive is apparent and the Government can only be seen as unwilling to comply with the directive.

4. Separation of investigation and Law & Order

Directive 4

Separate the investigation and law and order functions of the police.

Level of separation

Andaman & Nicobar Islands, Daman & Diu and Dadra & Nagar Haveli and Lakshadweep all assert that Separation between Law and Order and Investigation is not necessary due to the small size of the UTs.¹⁴ The Supreme Court stated that separation between the two wings should *start* in cities with 10 Lakh and then gradually extend to smaller towns. Therefore, the UTs statement is without merit.

Chandigarh has approached the Government of India asking for additional police officers post to be able to comply with the directive and the Government has stated that the IGP of Chandigarh has been directed to take effective steps for separation.¹⁵ This is a welcome step. However, no information has been furnished of how this separation would take place, nor has information been given in regards to the forensic support and legal advice, nor any mention of infrastructure and funds in comparison with sections 122-137 of the Model Police Act, 2006.

Puducherry asserts that separation has already been implemented at the major police stations but is silent on whether this separation will also take place on smaller police stations as directed by the Apex Court. Nor has Puducherry furnished any information on forensic support, legal advice to the police and infrastructure and funds in comparison with the above mentioned sections in the Model Police Act, 2006.

Conclusion

Despite the efforts taken by Chandigarh and Puducherry to separate Law & Order from Investigation the overall conclusion of the compliance with this directive can only be seen as non compliance. The majority of the UTs have not implemented the directive and the two UTs that have complied are only partially compliant. Therefore, the Government of India is seen as non compliant to this directive.

¹⁴ Para D, page 6, Affidavit on behalf of UT of Andaman & Nicobar Islands, date 3 January 2007, Para 6, page 3, Affidavit on Behalf of UTs of Daman & Diu and Dadra & Nagar Haveli, date 3 January 2007 and Para 5 (d), page 5, Affidavit on behalf of Union Territory Lakshadweep, date 2 January 2007

¹⁵ Para 4, page 3, Affidavit Shri Krishna Mohan, IAS, Home Secretary, Union Territory, Chandigarh on behalf of the Respondent, Union Territory Chandigarh, date 2 January 2007 and Para 12, page 8, Affidavit on behalf of the Union of India, date 10 March 2007



5. Police Establishment Board

Directive 5

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. This Board will comprise the Director General of Police and four other senior officers of the police department, and will be empowered to dispose of complaints from SPs and above regarding discipline and other matters.

Function

The Government of India asserts that the Police Establishment Board (PEB) cannot have the function of an appellate authority since this would dilute the functional control of the police chief.¹⁶ The sole point with the PEB is to ensure that postings, transfers and appointments are made purely by a departmental body to shield the police officers from unwarranted political or extraneous interference. By removing the appellate authority function from the PEB the Government is clearly showing their unwillingness to let go of unwarranted methods and its urge to rule, rather than govern, the police.

Union Territories' compliance

All the UTs have created PEBs and even though the composition of the PEB is not literally complied with it has been complied with in spirit since the UTs do not have DGP posts in their territories. However, as seen above, the function of the PEB has not been complied with.

Conclusion

The removal of the PEBs function as an appellate authority can only be seen as the Government of India's reluctance to comply with the letter and spirit of the directive. Therefore, the Government of India can only be seen as partially compliant to the directive.

6. Police Complaints Authorities

Directive 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, rape in police custody, extortion, land grabbing and serious abuse. The Complaints Authorities are binding on criminal and disciplinary matters.

The state level authority is to be chaired by a retired judge of the High Court or Supreme Court to be chosen by the state government out of a panel of names proposed by the Chief Justice. It must also have three to five other members (depending on the volume of complaints) selected by the state government out of a panel of names prepared by the State Human Rights Commission, the Lok Ayukta and the State Public Service Commission. Members of the authority may include

¹⁶ Para 16 (xvi), page 19, Affidavit on Behalf of the Union of India in compliance of order dated 22.9.2006, date 3 January 2007



members of civil society, retired civil servants or police officers or officers from any other department.

The district level authority is to be chaired by a retired district judge to be chosen by the state government out of a panel of names proposed by the Chief Justice of the High Court or a High Court Judge nominated by him or her. It must also have three to five members selected according to the same process as the members of the state level Police Complaints Authority.

Creation of Police Complaints Authorities

The Government of India asserts that creating a Police Complaints Authorities (PCA) will only add to the numbers of complaints mechanisms without improving the effectiveness of the police.¹⁷ This argument is without merit. To create a truly modern, professional, efficient and service minded police agency there has to be an independent oversight body to ensure that the police are fulfilling their obligations and duties under the law. Currently, the public places little faith and trust in the police and the need for an independent oversight mechanism is pressing. One of the duties of the district PCA is to look into complaints against police officers for serious abuse of authority, which could be widely interpreted to include ineffectiveness of the police.

The Government further asserts that the police department would find itself singled out for public complaints.¹⁸ This is already true today. According to our information, approximately 75 -80% of all complaints to the SHRC and NHRC are related to police abuse. The creation of a PCA would at least ensure that a specialised body on police operations can deal with such complaints.

Andaman & Nicobar Islands

The UT has proposed to set up a State PCA and one District PCA. However, their affidavit is silent on the selection process for the chair of the PCA.¹⁹ It is crucial to ensure that the chair of the PCA is selected in a fair, transparent and independent manner. The Apex Court recommended that the Chair of the State PCA should be empanelled by the Chief Justice and the Chair of the District PCA should be empanelled by the Chief Justice or a Judge of the High Court.

Further the affidavit asserts that there will be “*up to three members*” at the PCA,²⁰ which is violating the directive that clearly states that the PCA shall have three to five members depending on the work load. Unfortunately, the affidavit is also completely silent on the functions of the PCA.

Chandigarh

¹⁷ Para 16 (xviii), page 20, Affidavit on Behalf of the Union of India in compliance of order dated 22.9.2006, date 3 January 2007

¹⁸ Para 16 (xviii), page 20, Affidavit on Behalf of the Union of India in compliance of order dated 22.9.2006, date 3 January 2007

¹⁹ Para F, page 7, Affidavit on behalf of UT of Andaman & Nicobar Islands, date 3 January 2007

²⁰ Para F, page 7, Affidavit on behalf of UT of Andaman & Nicobar Islands, date 3 January 2007



The UT asserts that there is no need for a PCA in the UT and that a Nodal Cell to monitor Human Rights violation already exists.²¹ This is in clear violation of the Apex Court order. Even though a Nodal Cell for Human Rights violation exists, the PCA has unique functions compared to other oversight mechanisms. First, it is a specialised Authority in regards to police abuse and secondly, its findings have binding power on the concerned authority.

Daman & Diu and Dadra & Nagar Haveli

The UT suggests creating a PCA with a district Judge as chair. However, there will only be two members except of the Chair in the PCA and there are no details furnished on how the Chair will be selected.²² Further there is no information about the functions of the PCA.

Lakshadweep

The UT asserts that it will only create a district PCA due to its small geography and has sent a request to the MHA to create a PCA for Dy.SP and above.²³ However, as seen above there is no information furnished of how the Chairperson will be selected, the functions of the PCA or whether it will have binding powers or not.

Puducherry

The UT wants to be exempt from the direction due to the fact that there is already an existing complaints mechanism in the UT.²⁴ This is a clear violation of the Apex Court order. Even though there are other human right mechanisms in the UT, the PCA has unique functions in comparison. First, it is a specialised Authority on police abuse and secondly, its findings have binding power.

Conclusion

Government of India and two of the Union Territories have opposed implementation of the directive stating that it will not lead to a more effective police service and that the Authority is not necessary. All the objections are without any merit. Further, the UTs that have somewhat complied with the directive have not furnished enough information on the functions of the PCA and the selection procedure of its chairpersons. This can only be seen as unwillingness to implement the directive in letter and spirit and therefore the Government of India cannot and must not be seen as compliant with this directive.

²¹ Para 6, page 5f, Affidavit Shri Krishna Mohan, IAS, Home Secretary, Union Territory, Chandigarh on behalf of the Respondent, Union Territory Chandigarh, date 2 January 2007

²² Para 8, page 4, Affidavit on Behalf of UTs of Daman & Diu and Dadra & Nagar Haveli, date 3 January 2007

²³ Para 5 (f), page 5f, Affidavit on behalf of Union Territory Lakshadweep, date 2 January 2007

²⁴ Para 2 (vi), page 3, Affidavit on behalf of the Government of the Territory of Puducherry



7. National Security Commission

Directive 7

The Central Government shall also set up a National Security Commission at the Union level to prepare a panel for being placed before the appropriate Appointing Authority, for selection and placement of Chiefs of the Central Police Organisations (CPO), who should also be given a minimum tenure of two years. The Commission would also review from time to time measures to upgrade the effectiveness of these forces, improve the service conditions of its personnel, ensure that there is proper coordination between them and that the forces are generally utilized for the purposes they were raised and make recommendations in that behalf. The National Security Commission could be headed by the Union home Minister and comprise heads of the CPOs and a couple of security experts as members with the Union Home Security as its Secretary.

According to the affidavit filed by the Government of India, the Committee on National Security & Central Police Personnel Welfare (National Security Commission) was created on 2 January 2007.²⁵

Composition

The composition of the National Security & Central Police Personnel Welfare (NSCPP) does not adhere to the directive. The Apex Court stated that the heads of the Central Police Organisations should be members of the NSCPP. Despite this clear statement, only the Director of IB is a member of the NSCPP; the rest are IAS officers and one is an expert adviser.²⁶ This is in clear violation of the Apex Court's order. Since the major function of the NSCPP is to select candidates for the Central Police Organisations (CPO) and to review the police and its service conditions, it is crucial that there is proper representation from the police on the Board. In its current composition the NSCPP is overburdened with Governmental officials and the risk of unwarranted political interference with pure police departmental issues is quite high. Naturally there has to be representation of the Government since the NSCPP also deals with national security concerns. But this does not justify divergence from the directive. Instead, the current composition of the NSCPP can only be seen as reflective of the Government's urge to rule, rather than govern, the police.

Function

The Apex Court has clearly set out specific functions of the NSC. In its current version these functions have been weakened to such an extent that they are unrecognisable from what was originally intended.²⁷ Therefore, the Government of India should expediently redraft the functions of the NSCPP so that it is compliant with the Apex Court's order.

Conclusion

²⁵ Office Memorandum No. 255019/15/2005-PM-II, dated 2 January 2007, Government of India, Ministry of Home Affairs

²⁶ Para 2, Office Memorandum No. 255019/15/2005-PM-II, dated 2 January 2007

²⁷ Para 5, Office Memorandum No. 255019/15/2005-PM-II, dated 2 January 2007



GOVERNMENT OF INDIA

In its current version the National Security & Central Police Personnel Welfare is clearly violating the Supreme Court's order, both in regards to its composition and to its functions. Therefore, the Government of India cannot and must not be seen as compliant with this directive.

7. Recommendations

In light of the above analysis, the following should be considered:

1. To direct immediate compliance with directives 1, 2, 3, 4, 6 and 7;
2. To direct the Government of India to report to the Monitoring Committee upon compliance within 1 month; and
3. To issue a notice of contempt against the Government of India if it fails to comply with directive 1, 2, 3, 4, 6 and 7 within one month's time.

It is further generally submitted to the Monitoring Committee that the following should be considered:

4. To report to the Supreme Court that it consider directing the UPSC to nominate candidates for the post of State DGPs and to amend the UPSC (Exemption from Consultation) Regulation 1958 regulations to enable this to happen.

New Delhi, 28 December 2008

Commonwealth Human Rights Initiative

