

## Jammu & Kashmir Government Compliance with Supreme Court Directives on Police Reform

The Government of Jammu & Kashmir has, according to our information, filed two affidavits before the Supreme Court in the *Prakash Singh* case.

The first affidavit (Affidavit of the Chief Secretary as per the Order dated 22<sup>nd</sup> September 2006 passed in the aforesaid matter) verified on 29 December 2006, seeks for an extension to file a compliance report. The second affidavit (Affidavit on behalf of the State of Jammu & Kashmir) verified on 23 April 2007, applied for an exception to implement directives 1, 4 and 6, thus clearly opposing the most important directives.

Although Jammu & Kashmir has set up a drafting committee according to their affidavit in December 2006, new police legislation has not been submitted to the Court or posted in the public domain or introduced in the Legislative Assembly. This coupled with the State's reluctance to implement the directives, clearly justify characterising Jammu & Kashmir as non compliant.

### 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 Jammu & Kashmir Government has in their April 2007 affidavit asked to be exempted from implementing this directive based on the specific security situation in the State.<sup>1</sup>

#### Creation of a State Security Commission

The Jammu & Kashmir Government has suggested that the creation of a State Security Commission (SSC) would destabilise the current system of coordination and control between the Army, the Central Para-military Forces and local police (which is headed by the Chief Minister).<sup>2</sup> However, the establishment of a State Security Commission has little to do with maintaining the internal security of a state. Rather, the Court envisaged it as a means to control unwarranted influence or pressure on the state police, set policy frameworks and evaluate policing performance. None of the security agencies named by the State Government perform the functions stipulated by the court. The Jammu & Kashmir Government is using its security situation as an excuse to avoid taking the steps needed to address the prevailing systemic problems of frequent illegitimate political interference in operational policing, a lack of clear policy guidelines to promote efficient, effective, responsive and accountable policing in accordance with the law, and inadequate methods and parameters for assessing police performance.

<sup>1</sup> Para 5, page 9, Affidavit on behalf of State of Jammu & Kashmir, date 23 April 2007

<sup>2</sup> Para 6, page 19, Application for suspension of implementation of direction no 1, 4 and 6 of the order of this Hon'ble court dated 22.9.2006



This appears indicative of a lack of commitment to undertake urgent and much needed police reform as ordered by the Court.

## **Conclusion**

The excuse to not create a SSC due to the prevailing security situation in Jammu & Kashmir is without merit. The functions of the SSC have little to do with the internal security in the state and the Government's reasons can only be seen as reluctance to implement the directive in letter and spirit. Therefore, Jammu & Kashmir is not compliant with this directive.

## **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**

Despite the Jammu & Kashmir Government's assurance that they have complied with the directive, the candidates for the DGP post are empanelled by the Central Government and not the UPSC.<sup>3</sup>

Further, the affidavit is silent on the selection criteria of the DGP set out by the Apex Court. To ensure a modern, professional, efficient, and service minded police organisation, it is crucial that the head of the organisation is selected based on merit and experience.

## **Tenure**

All police officers are ensured minimum two years tenure. However, the affidavit is silent on the objective criteria to be used for the termination of tenure.<sup>4</sup> The Apex Court clearly set out three exceptions as to when to terminate the DGP's tenure. It is desirable that these exceptions are reiterated in a Government Order or Circular to ensure that the tenure is not subject to unwarranted political interference or subjective opinions.

## **Conclusion**

Although Jammu & Kashmir asserts that they have complied with the directive a careful analysis shows that the selection procedure and safeguards for tenure is missing. Therefore, Jammu & Kashmir cannot and must not be seen as compliant with this directive.

## **3. Tenure for police officers on operational duties**

### **Directive 3**

<sup>3</sup> Para 5, page 9, Affidavit on behalf of State of Jammu & Kashmir, date 23 April 2007

<sup>4</sup> Para 5, page 9, Affidavit on behalf of State of Jammu & Kashmir, date 23 April 2007



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.

The Jammu & Kashmir Government asserts that they have already complied with this directive through Orders passed in 1978, 1988 and 1991.<sup>5</sup>

## **Tenure**

All police officers are ensured minimum two years tenure. However, the Government's orders and memorandum are silent on the objective criteria for termination of tenure before the stipulated period. As stated above, the Apex Court set out exceptions as to when to terminate a police officer's tenure. It is desirable that these exceptions are reiterated in a Government Order or Circular to ensure that the tenure is not subject to unwarranted political interference or subjective opinions.

## **Conclusion**

The Jammu & Kashmir Government has only partially complied with this directive, through already existing Government Orders. However, it does not appear to demonstrate any sincere intent to address the issue raised by the Court through this directive. As a result, Jammu & Kashmir can only be seen as partially compliant.

## **4. Separation between Investigation and Law & Order**

### **Directive 4**

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

The Jammu & Kashmir Government has in their April 2007 affidavit asked to be exempted from implementing this directive based on the specific security situation of the State.<sup>6</sup>

## **Separation**

The Jammu & Kashmir Government asserts that due to the safety of the general public, separation between law and order can be counterproductive and disturb the existing security set up in the state.<sup>7</sup> Moreover, the Government asserts that most criminal activity is followed by law and order issues and vice versa.<sup>8</sup> As seen above, the Government again uses the prevailing security situation in the state as an excuse to not fulfil its obligations towards the Supreme Court and the given reasons are again

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<sup>5</sup> Para 6, page 9, Affidavit on behalf of State of Jammu & Kashmir, date 23 April 2007

<sup>6</sup> Para 5, page 9, Affidavit on behalf of State of Jammu & Kashmir, date 23 April 2007

<sup>7</sup> Para 7, page 19, Application for suspension of implementation of direction no 1, 4 and 6 of the order of this Hon'ble court dated 22.9.2006

<sup>8</sup> Para 7, page 19 Application for suspension of implementation of direction no 1, 4 and 6 of the order of this Hon'ble court dated 22.9.2006



without merit. It can be argued that especially in a State with insurgency it is imperative to separate Law & Order from Investigation to ensure that crimes are properly investigated without the additional responsibility of Law & Order duty. Further, many insurgency groups finance their operation by illegal means which makes it even more important for Jammu & Kashmir to ensure separation between the two wings.

## **Conclusion**

It is evident that the Government of Jammu & Kashmir under the excuse of the security situation in the state is avoiding the implementation of the Apex Court directive. Separating Law & Order from Investigation is crucial, especially in a state with insurgency problems. The Government's reluctance to implement this directive can only be seen as non compliant.

## **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.

Jammu & Kashmir has created a Police Establishment Board (PEB) through a Government Order.<sup>9</sup>

## **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 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

<sup>9</sup> Government Order PHQ Order No. 434 of 2007, dated 6.2.2007

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.

The Jammu & Kashmir Government has in their April 2007 affidavit asked to be exempted from implementing this directive based on the specific security situation in the State.<sup>10</sup>

## **Creation of Police Complaint Authorities**

The Jammu & Kashmir Government asserts that creating Police Complaints Authorities (PCA) would give a forum for the insurgency elements to lodge false complaints against the police to demoralise the police.<sup>11</sup> This argument is without merit. The risk of false complaints is true in any state. Some states, like Assam, have tried to avoid this by ensuring that a complaint has to be sworn in the form of an affidavit. Moreover, if the complaint has merit it does not matter whether it is coming from the public or from insurgency groups. The point is that police abuse should not and will not be acceptable. The PCA is also a safeguard for the police officers. If the accusation turns out to be false it must be a relief to know that the allegation has been thoroughly and independently investigated by a competent body which enjoys the trust of the public.

Further, the Jammu & Kashmir Government asserts that there are already sufficient oversight mechanisms in the state, such as the SHRC, Vigilance Commission and departmental superiors.<sup>12</sup> This argument is without merit. Contrary to existing complaints mechanisms, the PCA has the power to make binding recommendations on the state government. The PCA will also be a specialised body dealing with only police abuse while the other complaints mechanisms have a much wider mandate.

## **Conclusion**

Jammu & Kashmir Government has opposed implementation of this directive with a series of objections. Since all the objections are without any merit, the Government must be seen as non-compliant to the directive.

## **7. Recommendations**

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

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

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<sup>10</sup> Para 5, page 9, Affidavit on behalf of State of Jammu & Kashmir, date 23 April 2007

<sup>11</sup> Para 8, page 20, Application for suspension of implementation of direction no 1, 4 and 6 of the order of this Hon'ble court dated 22.9.2006

<sup>12</sup> Para 8, page 20, Application for suspension of implementation of direction no 1, 4 and 6 of the order of this Hon'ble court dated 22.9.2006



# JAMMU & KASHMIR

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Commonwealth Human Rights Initiative

