

A Summary – Critique of Kerala Police Performance and Accountability Commission Report, September 2005

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BACKGROUND

The Kerala Police Performance and Accountability Commission was set up in November 2003 by a Government Order on the initiative of A.K Anthony - the then Chief Minister of Kerala. The Commission's establishment was the result of sustained demands by civil society and ordinary citizens for greater efficiency and accountability from the Kerala State Police. The Commission - seen as bold and progressive step towards good governance - was vested with the mandate to: (i) evaluate the general performance of the police during the years 2002 and 2003 (ii) to examine the effectiveness of the autonomy given to the police and to comment on its merits and demerits (iii) to make recommendations on improving the functioning and accountability of the police.

The Commission, which submitted its report on March 21, 2005 was headed by Justice K.T Thomas, retired Supreme Court Judge and comprised of K.V Rajgopalan Nair, former Director General of Police, Kerala and T.N Jayachandran, former Additional Chief Secretary, Kerala and former Vice- Chancellor Calicut University. The Commission mentioned in its report that it met and interviewed a large number of people from all walks of life, including former judges, police officers, civil servants, representatives of the Kerala Police Service Officers' Association, Kerala Police Officers' Association and others associated with police work, in public sittings held in five towns. In addition, the Commission also called for the views of prominent women's organisations of the state, non-governmental organisations, writers, journalists, chief editors, grass roots democracy representatives and chairs of municipalities and mayors of all the five corporations in Kerala.

This summary – critique by the Commonwealth Human Rights Initiative (CHRI) evaluates the Commission's report in light of its mandate and summarises the main recommendations by dividing these into (a) useful and (b) contentious/ controversial from a human rights and good governance standpoint.

EVALUATION OF THE GENERAL PERFORMANCE OF THE POLICE

A significant part of the Commission's mandate was to evaluate police performance. To ensure that the police are effectively discharging their responsibilities - for which they are allocated public money and granted extraordinary powers - it is imperative to regularly review their performance. Assessing performance means looking at the police in terms of the *results* they deliver, particularly in tackling criminality, responding to victims' needs and creating a safe environment for the public.

Unfortunately, nowhere in its report does the Commission clearly mention the particular areas where police performance was poor, or conversely where it was good. The commissioners did identify ten "broad parameters"¹ for reviewing performance but did not use any specific indicators or formula to properly base an evaluation. No statistics about the percentage of respondents' satisfied or dissatisfied with policing have been included in the report. Nor is there any reference to how the police are viewed by different socio-economic groups in the state. An "assessment" of public feedback on police performance has been simplistically passed off as "a mixed bag ranging between accusation and adulation". The Commission's broad assessment of the police reads, "while some improvement in the overall police performance during 2002 and 2003 was noticed, there was a disturbing tendency towards deterioration subsequently". This "deterioration" is apparently based on recorded crime, which increased in 2004 though the Commission itself mentioned that crime statistics are "not a safe guide to make a correct evaluation of police performance". Clearly, any "deterioration" in police performance should have been gauged by the police response to the increased recorded crime, but this aspect was notably absent in the report.

The Commission may have benefited from the experience in England and Wales, where the performance of different police forces is measured and compared by a dedicated Police Standards Unit, which grounds its evaluation in the Police Performance Assessment Framework (PPAF) prepared each year by the U.K Home Office. The PPAF assesses police performance on a number of factors, including: satisfaction of victims of domestic burglary, violent crime, vehicle crime and road traffic collisions with respect to police handling of their cases; people's perception about their local police doing a good job in the British Crime Survey; satisfaction of victims of racist incidents to the service provided by the police; representation of women and minorities in the force; incidence (per 1000 population) of domestic burglaries, violent crime, robberies, vehicle crime, life threatening and gun crime; number and percentage of offences brought to justice; action taken in domestic violence incidents; statistics regarding fatalities or serious injuries in road accidents; people's perception about the fear of crime, anti-social behaviour, local drug use/selling in the British Crime Survey; percentage of officer time spent in frontline duties; delivery of internal efficiency targets; and time lost due to sickness of police officers.

¹ prevention of crimes; investigation of crimes and prosecution of crimes; maintenance of law and order; traffic management; police response to public grievances; police response to emergencies; police response to information on cognizable crimes; conduct of police towards public with courtesy; reputation of integrity and impartiality of individual officers and the force in general; efficiency of the police in collecting advance intelligence on potential law and order incidence including communal tension.

EFFECTIVENESS OF THE AUTONOMY GIVEN TO THE POLICE

The Commission was given an unprecedented opportunity to consider a weighty issue in the quest for better policing - the value of functional autonomy - particularly as this was the first real initiative by any state government in India to attempt to free the police of illegitimate political interference. The National Police Commission (NPC) in its Second Report has categorically mentioned that the manner in which political control has been exercised over the police in India has led to gross abuses, resulting in the erosion of the rule of law and loss of police credibility as a professional organisation. The threat of transfer/ suspension is the most potent weapon in the hands of politicians to make the police bend to their will. Perhaps in the light of this, Chief Minister Anthony had assured his officers that they need not fear whimsical transfers if they declined interference by politicians in doing their duty by law. It was therefore expected that the Commission would examine how the policy impacted specific aspects of police work, such as registration and investigation of crime; crime prevention; maintenance of law and order; police-public interface; and human rights protection.

The Commission responded by oversimplifying the issues into sweeping generalisations. Its comments on the merits of the policy were simply that the police were emboldened to act according to the dictates of their conscience, and people were free to approach the police without power brokers. The demerits were that ordinary people who feared to approach the police by themselves were denied the assistance of a political power-broker, and also that some police officers used the autonomy to misuse their vast powers. Interestingly, the final opinion of the Commission holds that it is “not a useful exercise to work out the cumulative effect of the new policy” (in asserting this, the Commission violates a central aspect of its own mandate). Saying “autonomy to the police is the ideal, but it should be tempered with measures to prevent its misuse”, without explaining or elaborating these measures, amounts to blatant abdication of responsibility.

RECOMMENDATIONS FOR IMPROVING THE PERFORMANCE OF THE POLICE

The bulk of the report focuses on recommendations to improve the performance of the police. The Commission has made its recommendations under fifteen heads. Some of these are useful but others are contentious/ controversial with far reaching implications for key human rights and good governance.

Useful Recommendations

Recruitment

To address the problem of sporadic police recruitment, the Commission recommended the creation of a **permanent recruiting board**, distinct from the Public Service Commission to be headed by a Sessions Judge of selection grade. The advantages will be recruitment will become a continuing process, allowing expeditious filling up of vacancies.

Reduction in the age limit for recruitment of sub-inspectors to 25 from the present 30 years was recommended. The benefits are: the police will have a more youthful profile; training will be more effective as younger people are more amenable to training; and officers will serve the force longer. The Commission did however support “suitable relaxations” in respect of age for candidates belonging to the scheduled castes and scheduled tribes. A recommendation was also made for **recruitment of women as sub-inspectors**. Gender balancing in the police will go a long way in making the police accessible to women who large perceive it as a male dominated and patriarchal organisation.

Entry qualifications for constables should be raised to standard XII or its equivalent. To ensure a steady stream of young persons wanting to join the police, Police Colleges should be set up at Thiruvanthapuram, Thrissur and Kohzhikode.

Training

The Commission rightly felt that training is not given due importance in the police. It recommended that the best officers in the force should man training institutes. In order to encourage them to take up training assignments they should get a 30% hike in salary along-with perks such as accommodation, residential telephone and transport along-with a one-step promotion for the period of training assignment. The Commission recommended that a **new syllabus** giving importance on behavioural and professional skills of practical relevance in day to day policing should be introduced which includes law, organisation and administration , society and behaviour, police duties and skills, field craft and tactics.

Service Conditions

Concerned after meeting members of the Kerala Police Association, the Commission felt that, “discontent among them was created consequent on the indiscriminate transfer of many officers in 2002-2003”. The Commission recommended that there should be **clear cut transfer norms and fixed tenure** of 2 years for each post. Transfers should be finalised and implemented well before the beginning of each academic year so that the education of the children of police officers is not affected.

Noting the ill effect of long and indeterminate working hours on police morale and functioning, the Commission recommended that **working hours should not exceed 8 hours per day**. This is achievable through proper deployment of personnel.

Careers of officers should be planned and they should be posted to different branches such as the Special Branch, Crime Branch etc. before being considered for promotion to the next stage. This will help in creating a better and more balanced cadre of officers who can function in diverse situations. Officers should also be subject to screening tests regarding their knowledge, skills and aptitude before promotion. The Commission felt that promotions to head constable from constable should be at a much higher pace and a certain percentage of posts should be reserved at “higher level” for promotion through fast track on the basis of tests to be specially conducted for this purpose.

Police Welfare

Significant recommendations of the Commission on police welfare – which impacts morale – are: setting up a police school in every district for the wards of police personnel; medical group insurance for police officers to help them defray the expenses of injuries caused while performing their duty; and creation of a fund to cover legal expenses of officers who are prosecuted for actions committed in the discharge of their duties – however, if the case ends in conviction, then the officer should be required to return the amount received from the government.

A New Work Culture

The Commission favoured **separation of law and order from investigation** duties to enable “continuous and sustained investigation of cases”. Staff should be earmarked for each at the police station level. A similar recommendation was made by the Padmanabhaiah Committee on Police Reforms, 2000.

Greater emphasis in police stations should be on “grievance ventilating”. Their appearance should not be one of “instilling intimidation and fear”. Armed guards with rifles outside the police station should be removed. Instead officers equipped with handguns not displayed ostensibly should be deployed.

In addition, every **police station should be equipped with a computer** and an operator for feeding and storing necessary information. The present mode of maintaining records by hand is outdated. To overcome shortage of space in police stations, the Commission recommended that the lock-ups should be shifted outside to a centralised lock-up in each sub-division.

Commissioners of the three existing police commissionerates in Kerala - Thiruvananthapuram, Kochi and Kozhikode - should be conferred powers of the executive magistrate under Section 20 (5) CrPC as in other states. This will allow police commissioners to directly monitor the grant and revocation of arms licenses, and exercise powers under Chapter VIII of the CrPC (Security for Keeping the Peace and Good Behaviour).

Garnering of Police Personnel

Stressing the need for **better management of personnel deployment**, the Commission criticised the practice of a large number of policemen - drawn from different units – being kept by officers for their personal security. Deployment of security personnel on a prescribed scale from a single unit like the District Armed Reserve can remedy the situation. In addition, the present scale of escorts provided to VIPs which has become an “unnecessary appendage” should be reviewed. Chronic shortages of strength in police stations can also be beefed up by posting personnel of the District Armed Reserve there.

To reduce the work load on the police, the Commission recommended that Sections 62 and 91 of the Code of Criminal Procedure, 1973 (CrPC) which require police officers to serve court summons should be amended to allow the delivery of summons

by post in the first instance. The assistance of police could be taken if the person summoned fails to appear in court on the required date.

The Commission also suggested the creation of a departmental committee review and revise the job content of senior IPS officers not directly connected with law and order.

Traffic Management

The Commission devoted a large part of its report to traffic management because in its opinion, "Kerala has become notorious for the loss of lives due to mounting traffic accidents". Recognising the role of the police in preventing over-speeding, drunken driving etc., the Commission felt that **better traffic enforcement** will lead to reduction of accidents. The Commission recommended that traffic management should be made a special subject during training and it should be mandatory for all personnel to clear this subject before passing out of training institutions. The curriculum should also incorporate lessons on behaviour towards pedestrians, motorists and passengers. In addition, the Commission recommended the creation of a **Statutory Traffic Authority** in district headquarters and important towns, comprising of representatives of the Municipalities, Public Works Department, Transport Department and the Police who would have the legal authority to implement traffic improvements.

Two major causes of traffic accidents: (i) frontal collision of speeding vehicles (ii) riders of two wheelers not wearing helmets were identified by the Commission. The Commission recommended to the government that dividers should be put up on all highways as matter of policy and Bureau of Indian Standards should be moved to make a new design of helmet that is light, airy and does not obstruct hearing like the existing designs.

Police Accountability

A useful suggestion by Commission is that **Superintendents of Police should prepare annual reports** about the activities of all police stations under their charge. The report would include information relating to crimes, law and order, collection of intelligence and community service, reporting of First Information Reports (FIRs) and reasons for delay in filing of charge-sheets. In addition, the Commission has recommended that '*Adalaths*' should be periodically set up (at least once in six months) at sub-divisional level to solve problems connected with policing and for the clearance of long pending complaints and grievances.

Transparency

The Commission called for regulation of information in respect of the progress of investigations. It sought to discourage the tendency of investigating officers directly appearing before the media to disclose information. Instead the Commission favoured disclosure of information by the Superintendent of Police or a specially appointed police officer as spokesperson.

The Commission recommended that every police station should keep a **notice board to record weekly crime statistics** for the information of the public. Greater

transparency in police administration can come about through the implementation of community policing schemes that may be prepared by the Director General of Police.

Prosecution of Offences

To reinforce efficiency and integrity in the prosecutorial system, which is leading to a number of “unwarranted acquittals”, thus undoing the investigation efforts of the police, the Commission recommended that Public Prosecutors and Assistant Public Prosecutors should be appointed from a panel prepared by the District & Sessions Judge.

Scientific Laboratories

The Commission recommended increasing the strength of the Forensic Laboratory to help cope with the growing demands of investigating officers for forensic analysis of evidence. To help clear the backlog of pending cases, the Commission recommended that an officer of the rank of Deputy Superintendent should be entrusted the specific responsibility of preparing a list of cases in which forensic analysis is no longer required. The Commission also recommended modification of existing rules or departmental instruction to clear the back log but it did not describe which rules if any should be modified.

Police Corruption

To tackle police corruption, the Commission recommended that the **Vigilance and Anti-Corruption Bureau should be “freed from police influence”**. It should be headed by a “very senior officer” designated as ex-officio Secretary to the State Government and ranked higher than the Director General of Police. Also to guarantee impartiality, the officer designated should not be eligible for further assignments by the government. To further minimise police influence, the Commission recommended that the Bureau should progressively develop its own cadre through direct recruitment of at least half its staff and by getting the remaining staff from government departments including the police through deputation or permanent absorption.

The Commission felt that the Bureau should be able to investigate and charge- sheet instances of corruption. It has suggested that governmental instructions be modified to enable the Bureau to directly present the charge-sheet to the government for according legal sanction to prosecute public servants in court.

The Commission also recommended the setting up of a cell formulated by the Director General of Police to make independent inquiries against corrupt elements in the police department. It favoured strengthening the government’s hands to tackle corruption by amending the Prevention of Corruption Act, 1988 to:

- (i) empower the government to confiscate the excess assets/wealth of the convicted public servant
- (ii) allow the court to presume that alleged *benami* assets belong to the accused public servant

Community Policing

Recognising the value of community policing in the prevention of crime, the Commission recommended **strengthening the ‘beat patrolling’ system** where officers acquaint themselves with the area through regular foot patrols and maintain steady communication with residents. The Commission pointed out that the police needs to recognise the value of community partnership; it has to identify specific concerns of the community as priority areas for work; and it has to bring about a change in its mindset and organisational set up. The State Police Manual should incorporate a chapter on community policing that clearly explains the rationale, approach, technique and type of activities that can be undertaken, alongwith methods of evaluation.

The Commission has called upon the government to issue enabling orders to allow police officers to undertake community policing schemes in their jurisdictions. Where required, funds should be made available. A officer should be designated as Coordinator, Community Policing Projects by the Director General of Police. Booklets on community policing should be brought out for public distribution and for the police department.

Contentious/ Controversial Recommendations

Rejecting the idea of a police complaints authority to favour complaint boxes

The Commission dismissed the suggestion of setting up a police complaints commission (like the one in the U.K) because it is “likely to be expensive”. Instead, it recommended installing police complaint boxes in offices of all local self government bodies (panchayats, municipalities *et al*). Complaints would be forwarded by the heads of the local bodies to the District Superintendent of Police. This suggestion does not address vital issues – the public have no faith in the internal disciplinary systems of the police and there is a tendency within the police itself to protect its staff and image. It is the considered view of CHRI that in the long run, the money spent on setting up an independent oversight body - to receive complaints against the police – actually saves government money. A police force subject to strict external accountability is more efficient and less prone to waste precious resources.

Mandatory signing of statements made to police officers

The Commission has recommended an amendment to the Code of Criminal Procedure, 1973 (CrPC) to make it mandatory to sign statements made to police officers, in the course of an investigation. At present, the law (Section 162 CrPC) expressly prohibits the signing of such statements. The logic given by the Commission is that this will ensure that witnesses and accused persons stick by their statements in court, and also prevent police officers from tampering with statements. This line of argument does not take into account the likelihood of witnesses being coerced (sometimes through torture) to sign statements in support of the police case, and then being put under undue pressure to stand by them simply because their signatures are affixed.

Sanctioning the police to investigate non-cognizable offences (with safeguards)

The Commission has favoured continuance - albeit with safeguards - of the existing practice in Kerala, of the police investigating non-cognizable offences on its own initiative. Under the CrPC (Section 155) police officers are prohibited from investigating non-cognizable offences without the order of a magistrate. Contrary to this provision, the police in Kerala is investigating non-cognizable offences on the basis of a departmental circular (No 1/73 dated 18.01.1973) issued by the Director General of Police. Despite the admission that this power has provided “fertile ground for corruption and indiscriminate harassment of people by the local police”, the Commission has recommended continuance of the practice. The safeguards² recommended by the Commission do not address the issue: sanctioning investigation into non-cognizable offences without magisterial authority, amounts to giving extra powers - that may be misused - to a force already replete with extensive powers.

Dispensing with physical presence of the accused in court if s/he is a grave security risk

To tide over staff shortages, the Commission proposes that magistrates can visit prisons for routine judicial proceedings, like remand extension, not involving hearing or presentation of evidence. This will free a number of officers from the responsibility of escorting prisoners back and forth from the jail to the courts. But in situations where an undertrial prisoner appears to be a security risk, the Commission has made an alarming suggestion: “trial can be proceeded with either dispensing with his personal appearance and substituting a photograph for his identity or by resorting to video conferencing”. If accepted, this recommendation will violate the fundamental right to a fair trial that strictly requires the accused to be physically present to defend the charges against them.

Making public prosecutors accountable to the police

Concerned that the efforts of the police in investigating crimes “usually wither out at the culmination stage when criminal cases which deserve conviction end in acquittal”, the Commission recommended that Assistant Public Prosecutors should be made accountable to the Superintendent of Police who will have a say in making observations about the performance of Assistant Public Prosecutors in their annual confidential reports and report any inadequacies in performance to the Director of Prosecutions. This goes against well established principles of the criminal justice system. Though the prosecution may work in close coordination with the police, it must be able to weigh the merits of a case independently. The Supreme Court of India has categorically affirmed that the prosecutor is not part of the investigating agency

² (i) a police officer requiring the attendance of any person in connection with a non-cognizable offence should supply a copy of the complaint to the person at the time of summoning to the police station (ii) in case the person summoned comes to the police station and the officer in-charge is absent then the officer who is immediately subordinate should conduct and complete the inquiry without requiring further summoning of the person to the police station. If necessary, the police should complete the inquiry by visiting the place of occurrence.

and is an independent statutory authority appointed under the Code of Criminal Procedure.³

Posting relatively junior officers to head investigation wings of the Human Rights Commission, Lok Ayukta and Ombudsman

The Commission favoured amendment in the Acts governing the Human Rights Commission, Lok Ayukta and Ombudsman to allow police officers of the rank of Superintendent of Police to head their investigation wings. In the opinion of the Commission, the present practice of posting officers of the rank of Inspector General/ Additional Director General “leads to a drain of precious experience and expertise, which otherwise should have been used effectively for the department”. This suggestion discounts the practical advantage of posting senior police officers to these institutions: they are in a better position to withstand pressure while conducting inquiries – including, against members of their own department - than officers of junior ranks who have to operate within strict governmental hierarchies.

Posting women constables as receptionists in police stations

To reflect an atmosphere of “cordiality and homeliness” in police stations, the Commission has recommended that a woman constable should be posted as receptionist to maintain the prescribed documents and registers; record the names and addresses of visitors; give acknowledgement receipts; and be of assistance to visitors seeking information and documents from the police station. While this suggestion may be useful especially to women while reporting crimes, there is a danger that an assumption may be drawn within the department that women officers are more suited to reception duties than frontline tasks.

³ *Hitendra Vishnu Thakur* (1994) 4 SCC 602, *S.B Shahane* AIR 1995 SC 1628

Conclusion

Some recommendations of the Commission are noteworthy. These are clear cut transfer norms and a fixed tenure of two years for all police officers; separation of law and order and investigation duties at the station house level; greater emphasis on traffic management at training institutions; increased use of information technology; thrust on community policing; and greater powers and autonomy for the Vigilance and Anti-Corruption Bureau.

Others like amending the law to make signing of statements made to police officers mandatory; making public prosecutors accountable to the police; dispensing with the physical presence of the accused in court if they are a grave security risk; sanctioning the police to investigate non-cognizable offences without magisterial sanction; and amending the law to post Superintendents of Police instead of Inspector Generals/ Additional Director Generals to head investigation wings of the State Human Rights Commission, Lok Ayukta and Ombudsman, are highly controversial.

However, in the final analysis, the Commission has not lived up to its mandate. It has skirted the real issues – accountability, transparency and public participation – to overemphasise what is already known – for instance, that training should be given greater attention or that recruitment should be streamlined. Civil society and concerned citizens expected the Commission to make a strong case for dedicated periodic evaluation of police performance against set indicators; institutionalising the public's input in annual policing plans; and the establishment of a credible and independent disciplinary mechanism to deal with officers accused of violating people's rights.