

5th January 2013

Hon'ble Justice J. S. Verma

Former Chief Justice of India

Chairperson of the Committee on law, policing and related matters to ensure justice and curb impunity for sexual violence against women

Re: Submissions from NGO's working on Police Reform – Commonwealth Human Rights Initiative, Common Cause, Foundation for Restoration of National Values and Manushi

Hon'ble Justice Verma and Committee Members,

This submission represents the views of the above mentioned NGO's that have for long years worked concentratedly on the issue of police reforms. Though the submission may not directly fall within the mandate of your Commission we strongly believe that any proposals and efforts to change laws around sexual assault will yield no results until police organisations that are the first port of call for every victim of sexual abuse are reformed. Fundamental and core changes in policing are the need of the hour and we hope that the Commission pays serious note to this.

The incident in the closing phase of the year 2012 which led to setting up of the Committee under Justice J.S. Verma and the events following it has put the spotlight on State's inability to fulfil its most fundamental responsibility; to provide its citizens a safe and secure ambience in which they can go about their normal life and channelize their energies into socially beneficial activities.

Worse still, the events during the year 2012 have also made glaringly visible the fault-lines which have developed between the State and the citizens resulting in rapidly deepening mutual distrust. These fault lines need urgent repair for survival of our nation. It needs to be understood that merely passing of yet another law is not going to make much difference nor lead to an improvement in the feeling of security and safety unless the agencies charged with the enforcement of the legislation are made to become much more sensitive, efficient and effective. The root cause is non-implementation of the laws by the executive, in this case the police.

The widest and most critical of these fault-lines is between the police and the people. The interaction between the police and the people requires improvement. This interaction most commonly takes place at police stations and between people and the policemen and policewomen posted at the Police stations. The quality and training of Policemen and Policewomen, starting from recruitment process itself needs attention. Improvements in facilities and infrastructure at Police Stations is required to make the place people-friendly as also to improve the functional efficiency and morale of the police personnel.

It is not as if efforts have not been made and inputs have not been given to the govt. In 2006, a Committee set up by the Ministry of Home Affairs and chaired by eminent jurist, Soli Sorabjee prepared a new and comprehensive Model Police Act. In the same year, The Supreme Court issued seven directives to the Union and State govt. for improving police performance and ***its accountability to common citizens***. Even the directives of the Supreme have remained on paper till today while Sorabjee Committee's Model Police Act, 2006 gathers dust in government files.

In 2010, the Ministry of Home Affairs, GOI, posted a draft Delhi Police Act, 2010 on its website (it is still available on its website) after a prolonged persuasion by three NGOs,

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CHRI, Common Cause, FRNV and Manushi

Commonwealth Human Rights Initiative (CHRI), Common Cause and the Foundation for Restoration of Human Values (FRNV). These three NGOs worked together and submitted their joint recommendations on the Delhi Police Act to the Union Home Secretary with copies to the Union Home Minister, Chief Minister of NCT, Lt. Governor of NCT and others, on 3rd May, 2010. No action on the part of the Govt is visible yet. Had the government **passed and earnestly implemented the proposed Act**, we would have a much safer Delhi and may be Nirbhaya and many others would not have suffered loss of life and dignity which is their right in a free, democratic India.

Some suggestions to this end, largely derived from the above mentioned proposals which included the provisions of the Model Police Act, 2006 drafted by the Soli Sorabjee Committee and the recommendations of the 2nd Administrative Reforms Commission, are given below. These measures, if legislated, would help improve information channels and hence effectiveness of Police, thereby improving the trust in Police Departments and sense of security among all, especially among women, children and senior citizens.

We request the Committee to give us an opportunity, either individually or jointly with partner NGOs [Common Cause, Commonwealth Human Rights Initiative (CHRI), Foundation for Restoration of National Values (FRNV) and Manushi] to present our views in greater detail to the Committee.

We also feel that the time allotted to the Committee for finalising its recommendations on the revision of the laws on sexual assault ought to be extended. Given the far-reaching social repercussions of the undertaking, the Committee will need to hold extensive consultations with the stakeholders, followed by a dispassionate and informed debate over its provisional recommendations. A hurried exercise conducted in today's charged atmosphere runs the risk of paving the way for the enactment of draconian laws, which may fail to achieve their avowed objective.

Sincerely

Maja Daruwala
CHRI

Kamal Jaswal
Common Cause

Bharat Wakhlu
FRNV

Madhu Kishwar
Manushi

SUBMISSION

Police Reforms is really a vital issue and it is desperately needed. We are of the view that any crime – including those against women – require an overhaul in the criminal justice system, of which the police is the first critical element. Accordingly, we desire that your esteemed Commission must address the following expectations of Indian Citizens – which apply to ALL states of our diverse country:

Police Role in Prevention of Sexual Crimes Against Women

The police have a great role to play in the response to, and prevention of, sexual crimes against women. The police are the first port of call in the criminal justice system for victims, and it is with the police that the system's response begins. It is imperative that a clear message is sent from police leadership that every police officer, no matter how overworked or stressed, is sensitive towards crimes against women. It is not just about knowing the letter and sections of laws; but more largely, all the cogs of the criminal justice system must be made to understand the extraordinary courage that is required of women to report sexual crimes, deal with the trauma, and persist through the legal process. This will not require extensive gender sensitisation courses or training, it is simply reinforcing awareness of the ordinary social realities of women in India, and demanding that every police officer treat women victims with respect and understanding, no matter her caste, class, or background. Police officers must be made to understand that they are the system's first rung that must assist in providing immediate access to lawyers, medical attention and other support services required by victims.

In practical terms, there must be a demand for the highest standards of police investigation of sexual crimes in terms of collection of evidence (forensic, medical, written), preservation of crime scenes, collecting statements; and no tolerance of police collusion or alliances with suspects or accused persons. This will require thorough knowledge of what constitute sexual offences, and the detailed guidelines and standard operating procedures provided by police forces from different states and the courts for all aspects of strong investigation of sexual crimes.

Recommendation

- Crime mapping as required under the Punjab Police Rules
- Deployment of personnel based on results of crime mapping
- Increased presence of cops on the streets

Police Role in investigation of rape cases

The police's role in investigation of rape cases almost always comes under huge criticism. Police personnel at the thana level are insensitive and biased toward a woman coming before them to register an offence of rape. There is resistance to even register the crime. This long institutionalised practice has led to a complete erosion of public confidence in the police.

Despite the presence of several MHA advisories on "Crime Against Women" they seem to have gone unnoticed or ignored by states. Delhi police has a Standing Order on guidelines to be followed whilst investigating cases of rape. But they are generally followed in the breach.

Recommendation

1. Immediate compliance of all MHA advisories and Standing Orders on Crimes Against Women
2. Failure to comply with any laid down standards must attract strict action for all police personnel as well as senior officers
3. Well structured training programmes incorporated into the training syllabus of all training schools and academies;
4. Specialised training of investigation staff

Institutional Bias

We believe that there is not only individual bias amongst police personnel but also institutional bias. We believe this extends to the poor, women, minorities, scheduled castes and tribes each in its own particular way. The bias against women is particularly concerning as it relates to half the population who find themselves without a remedy for wrongs directly due to police attitudes. While this note foregrounds gender bias but speaks to all the other biases within the police. These biases are not honestly acknowledged and therefore have been left unattended for years.

Institutional bias can be discerned from the structures and behaviour of the institution. The most telling evidence of bias is clear from the numbers. Numbers do matter. The national average of women in policing remains extremely low at about 5% to 7%.

Further evidence of institutional bias in the police lies in the imbalance of women in the higher echelons. Those very few who have reached the apex of their professions are exceptions that prove the rule. In the main, the few women who are in the force have to 'behave like men' to gain acceptance and few concessions are granted them. Indeed tokenism is built into policy. We reject the notion that all women police stations are empowering of policewomen and privileging of complainants. In fact it isolates women into a sidelined category who are not expected to come in the way of the business of 'real' policing.

This isolationism further reinforces the maleness within as well legitimises the assumption of its superiority.

The ready excuses for not addressing the gender imbalance within, range from: policing work is dangerous; women would find the atmosphere and work inimical to their 'nature and needs'; women get pregnant and taken leave and are not useful in an organisation suffering manpower shortages; women need 'extraordinary' conditions for working; women cannot do 'men's' work; and finally despite efforts women do not want to join the police. We reject these excuses and indeed offer them as further demonstrations of the inherent unwillingness to align police establishment to accommodate women by creating conditions where women can be mainstreamed into policing work and will want to join the police. Equality of opportunities to get employment does not require that women must be 'more like men' before they can gain access to jobs but that environments must be created to accommodate their particularities. The lack of serious policy goals and practical effort across the board to remedy the present inhospitable environment is further evidence of the bias that continues within the police.

Recommendations:

- Institutional bias needs to be addressed and immediate improvements shown.
- Any new recruitment by various police forces could be 100% for women until numbers are brought up.
- Police reporting to legislatures must indicate what has been done to improve confidence of women in policing and indicate what facilities and improvements in

conditions of service have been created to ensure women are well provisioned to do their policing work well.

- As a means of setting a baseline and measuring improvements we also strongly suggest that manifestations of institutional bias be studied by official institutions such as the Bureau of Police Research and development become the basis of designing interventions that will improve these biases.
- All police establishments must have a specific plan. It must detail action points for annually increasing recruitment, improving conditions of women already in the force and training, retraining and resocialisation of specific cadres. Both the plan and the performance under it must be presented to the State Security Commission or other oversight body and to the legislature before budgets are passed.

Police Planning

Almost all state police organisations lack an annual or strategic policing plan. If these are present they are nowhere available in the public domain, neither are they publicised and neither is public input sought before finalising these plans.

The need for police planning is self-evident. The basic requirement of strategic planning is to shape a vision for policing, identify precise goals and targets against the vision and put in place a system to evaluate implementation and police performance (such as performance indicators) against the set goals and targets.

The positive benefits which flow from strategic planning for the police include: a stated commitment to meeting community demands, a plan to reduce crime and greater understanding of the public's expectations within the police. This makes it crucial to ensure that a process of public consultation is written into the planning framework. Public consultation in strategic planning must be critical part of the legitimacy and relevance of the entire exercise. Not only does public consultation make the planning relevant and participatory, it also reduces the scope of political and/or partisan interests interfering in policing.

Ultimately, it is crucial that the various processes of strategic planning within an organization continue regularly, year after year, irrespective of change of guard. Only then will the practice become part of the organizational culture.

Police strategic planning was made mandatory in the Model Police Bill with an entire section devoted to it. The Supreme in its judgement in 2006 also established the need for strategic planning with the state security commission being tasked with the responsibility of laying down broad policy guidelines for the police. A strategic plan becomes absolutely necessary in order to effectuate and operationalise the policies laid down by the security commission.

It is discouraging to note that no state till date has implemented these provisions.

Recommendation:

1. Every state government should in consultation with the State Security Commission draw up a Strategic Policing Plan for a five-year period and Annual policing Plans duly identifying the objectives of policing sought to be achieved during the period and setting out an action plan for their implementation;
2. The Plan must be placed before the State Legislature, at the beginning of each financial year, a Progress Report on the implementation of the Strategic Plan as well as an Annual Policing Plan that prioritises the goals of the Strategic Plan for the year.

3. The Strategic and the Annual Plans shall be prepared after receiving inputs on the policing needs of the districts from the District Superintendents of Police who, in turn, shall formulate the same in consultation with the community.
4. The Strategic Plan, the Progress Report and the Annual Plan shall be made readily accessible to the public

Police Performance Measurement

At today's date the measure of policing is unfairly assessed. Externally the public is completely dissatisfied with performance and internally the police rank and file is frustrated by the prime measure of performance being gauged on the number of crimes registered and cases 'solved'. This method has so many blemishes that it is hard to rehearse them all. Suffice it to say that crime statistics are seriously skewed from reality due to under-registration. The practice of refusal to register crimes is entirely against the law and amounts to a denial of access to justice a fundamental right of all living in this country. Knowledge of police refusal has many more knock on effects including complete erosion of public confidence, alienation and resort to self help and seeking assistance from other more effective sources. Certain segments, including many in the generic category of 'poor' are worse affected than others. Perceptions of bias are nurtured and alienation of the state results with all the evident disruption we are increasingly witnessing. While there is no excuse that can justify non-registration the priority given to quantifying what crimes have been 'solved' when there is no clear understanding of what a 'solved' crime amounts to has perpetuated non registration to the extent that it has strongly emboldened criminals even as it has demoralized a force which is short handed overworked often underpaid and frequently involved in unjustifiably dangerous work.

The increased violence of the times, coupled with the increasing demand for better safety and security and cries of dissatisfaction with police performance necessitate examining ways and means by which policing can be incentivised to be more purposive and more fairly judged.

Qualitative, rather than the solely quantitative, one point indicator of crime registration offers the possibility of incentivising police personnel to perform incrementally better year on year while affecting positive changes in the internal sub-culture of coercing confessions as a means of solving crime on the one hand and avoiding any knowledge of crime on the other. The use of multi-benchmarked nuanced indicators has many knock on effects as they become embedded year on year: improvements beyond crime assessment include sharpening policy and priority focus, streamlining management practices, targeting scarce resource more productively, assuring better manpower deployment, and measuring group and individual performance more fairly.

The need to go beyond present one dimensional quantitative crime based assessments of policing is also more urgently signaled by the new impetus for police reforms given by the Prakash Singh judgement. Newly created state security commissions setting policy will require success of such policies to be reflected in improved police performance that can be measured only through calibrated indicators such as public satisfaction, perceptions of increased safety and security for women and other vulnerable groups, as well as hard indicators such as prevention of frequent occurrences like communal violence.

Recommendations

- The state security commission along with the police comes up with holistic police performance indicators and a means of evaluating progress against those indicators.

Recruitment

The recruitment should be made through the State-level Police Recruitment Board through a transparent process. The recruitment standards and the details of procedure including written tests as well as tests for physical, psychological and medical fitness for Police duties must be prescribed and published to promote transparency in recruitments. The minimum educational qualification should be 10+2 Higher Secondary or equivalent examination. All those who are selected should be compulsorily given a stipendiary three year intensive education and training on police subjects, including on-the-job training on community policing and liaison with vulnerable sections such as women, children, disabled persons and senior citizens. Those candidates who successfully complete the education and training program only should be inducted into the Police and posted for initial two years at Police Stations on patrolling and policing the Beat duties and engaging with the citizens and gaining their confidence and co-operation.

Police Stations

Each Police Station must be provided with all essential amenities including a “reception-cum-visitors room, separate toilets for men and women and separate lock-ups for men and women. Each Police Station must have a Women and Child Protection Desk, staffed, as far as possible, by women police personnel, to record complaints of crimes against women and children and to deal with the tasks relating to administration of special legislations relating to women and children. There should be adequate number of Police station and each Police Station should have availability of adequate strength of staff. Establishment of each Police Station and its outposts, their location and staffing should be decided in a transparent manner duly keeping in view the population, the area, the crime situation, the workload in terms of law and order and the distances to be traversed by the inhabitants to reach the Police Station.

Training-cum-Education Policy for the police

A Training-cum-Education Policy covering all ranks and categories of police personnel should be formulated and placed in public domain. The policy should aim to promote a service culture of police personnel and their acquiring appropriate educational and professional qualifications as they advance in their careers. This Policy shall ensure that all police personnel are adequately trained to efficiently perform their job taking due care of proper attitudinal development, and shall be linked to career development scheme of police personnel in different ranks and categories. Successful participation in appropriate training programmes should be linked, as far as possible, to the promotion of police personnel of different ranks, and to their postings to different assignments, in a structured manner.

Adequate infrastructure and capabilities of training institutions in consonance with the holistic training needs of police personnel of different ranks should be created and regularly upgraded in each District. For an objective periodical evaluation of the Training Policy of the state and its implementation, the state police may utilise the available assistance of organisations such as the Bureau of Police Research and Development of Government of India.

Prevention of Torture Bill

The Prevention of Torture Bill, 2010 after being hurriedly passed in the Lok Sabha was referred to a Select Committee in the Rajya Sabha. After prolonged deliberations and

discussions the Select Committee submitted its detailed report with a revised Bill that altered several provisions of the original Bill.

Till date the revised Bill presented by the Select Committee has not been tabled in Parliament. We believe that, radical reform of policing (and of larger criminal justice system) will only be achieved if custodial torture and impunity are not permitted to continue as at present.

Recommendation

- The Revised Prevention of Torture Bill as proposed by the Rajya Sabha Select Committee is adopted by the MHA and introduced in Parliament

The Supreme Court Directives on Reform

Now six years on, it is still the case that not a single state can claim to have fully complied with the reform package suggested by the Supreme Court in the Prakash Singh case on police reforms. The ground level situation presents a grim picture of compliance.

Till date 14 states have passed new police legislation. Other states have issued government (executive) orders, but not for every directive. Consistency in compliance is not the only problem, as with past years, the comment of the (now defunct) Court-appointed Monitoring Committee still holds true: both the orders and the legislations “clearly reflect dilution, in varying degree, of the spirit, if not the letter, of the court’s directives” (Justice K.T Thomas Committee Report, p.11).

Provisions and general trends in state Police Acts are cause for grave concern. Since new police legislation has begun to be passed, it has been observed that states are pretending to obey the Court’s orders, but in reality are subverting and diluting them so that they have little corrective value.

In fact, on close examination of the provisions of the new Police Acts, the extent of the subversion and dilution is very worrying. The very maladies the Court’s directives sought to address are being given statutory sanction, evident in new state Police Acts. Further, some Police Acts include provisions on internal security, which are not only outside the scope of a Police Act, but also unjustifiably and unnecessarily extend police powers. Some of the dominant trends include:

- the political executive seeking greater unfettered control over the police, particularly by doing away with checks and balances ordered by the Court;
- the weakening of independent oversight bodies through direct appointments and the reduction of independent members;
- the extension of police powers through the creation of special security zones and discretionary appointment of special police officers

The Court’s Directives

In 2006 the Supreme Court in the Prakash Singh case directed the Centre and State governments to make six major changes that would - if taken together in the spirit of the judgment - tackle the major ills that plague policing today. Simply put, these ills relate to: ensuring the police are at arms length from illegitimate political interference, have professionalized internal systems of management based on transparent criteria, and are much more accountable.

The directives are as follows.

1. State Security Commissions:

At present there is no established meaning in law or conventions in practice that indicate the limits of political 'supervision' and 'control' over the police. This has led to unfettered and undue interference by politicians in the everyday functioning of the police, disrupted the authority of supervisory cadres within the force and obscured command responsibility. Further there is no rationale system for evaluating police performance against a set of pre-determined criteria.

To remedy this problem the Supreme Court ordered the creation of a State Security Commission made up of both the responsible minister, the leader of the opposition, bureaucrats, experts, and credible members of civil society. Its functions are to lay down policing policy, indicate performance criteria and keep police performance, challenges and its needs under review. The Commission is a means of conditioning and defining the powers of the political executive and police and clarifying each one's sphere of responsibility and accountability. Its composition is designed to ensure bipartisanship and shield policing from changes in political power by keeping policies more or less constant. Its functions are designed to ensure that the political executive always has ultimate responsibility for providing the public with efficient, honest, unbiased and accountable policing while retaining authority over the police.

The Commission is tasked with:

- i) Ensuring that the state government does not exercise unwarranted influence or pressure on the police
- (ii) Laying down broad policy guidelines, and
- (iii) Evaluating the performance of the state police

- There is complete disobedience of the Court's orders. At the ground level except in Kerala no Commission has met or discussed its mandate. Implementation of the directive remains a far cry.
- Seven states¹ have **not** included the Leader of the Opposition as a member of the State Security Commission in their legislation or government order. This completely extinguishes the bi-partisan nature of the Commissions in these states.
- Five states² have **not** included a single "non-political" or independent member in the State Security Commission in their legislation or government order. As a result, in these states, the Commissions are made up only of government and police members, either serving or retired. Diversity of experience and knowledge is thereby absent in these Commissions. Also, in many Police Acts and government orders, retired police and government officers have been designated as the "independent" members. While retired officers are clearly not with the police or administration anymore, truly independent members would be those drawn entirely from outside police/government circles.
- States have also opted out of establishing independent selection panels to shortlist independent members in their Police Acts - another way in which the independence of oversight bodies is severely weakened in legislation. Only **two** Police Acts, of the states of Rajasthan and Sikkim, contain independent panels for the selection of

¹ These are Assam, Bihar, Chhatisgarh, Gujarat, Mizoram, Punjab, and Tripura.

² These are Bihar, Goa, Karnataka, Manipur, and Punjab.

independent members to State Security Commissions.³ This means that in the majority of states, “independent” members of State Security Commissions are appointed at the sole discretion of state governments, or in some cases, through selection panels which are made up entirely of the political executive.⁴

2. Selection and Tenure of DGP

There is arbitrariness in the appointment of the highest-ranking police officer, appointments made on considerations of personal preference and posts held at the caprice of the political executive leading to uncertainty of office and tenure. To remedy this the Supreme Court in its second directive held that the DGP must be selected from amongst the three senior-most officers empanelled by the Union Public Service Commission (UPSC) for the post. The selection will be made on the basis of the candidate's: (i) length of service, (ii) service record, and (iii) range of experience.

Once recommended on the basis of transparent objective criteria the Chief Minister can choose from amongst the best of the candidates. This way the chosen DGP is assumed to enjoy the trust of the political executive, the police service and the public. It would therefore be anomalous to retain the ability of the executive to remove the head of police at will. Hence the Court has provided for a minimum tenure of two years for the DGP. The grounds for removal prior to the two-year period must be in accordance with the laid down law.

- The Police Acts of 10 states⁵ enable the state government to unilaterally appoint the Director General of Police, in the absence of any independent short-listing and objective criteria. This is in complete contravention of the Court's directive, and also of the countless official recommendations on an appointment process for state police chiefs.

3. Tenure of Officers on Operational Duty

Arbitrary and frequent transfers taking place at the behest of influential third parties. These are done as means to punish and reward and outside rational administrative necessities related to policing requirements.

The Supreme Court directions provide for a minimum tenure of two years for the Inspector General of Police (in charge of a Zone), the Deputy Inspector General of Police (in charge of a Range), the Superintendent of Police (in charge of a District) and the Station House Officer (in charge of a Police Station). This ensures security of tenure for police officers on operational duties in the field, allows them withstand undue political interference. Further it gives them time to properly understand the needs of their jurisdictions and do justice to their jobs.

³ In Rajasthan, the committee consists of the Chief Minister (Chair), Leader of the Opposition in the state Assembly, the state Home Minister, and the Chair of the Rajasthan state human rights commission (Section 22, Rajasthan Police Act, 2007). In Sikkim, the selection panel is made up of a retired High Court judge (Chair), Chair of the state Public Service Commission, and Chair of the state Election Commission (Section 41, Sikkim Police Act, 2008).

⁴ For instance, an illustrative example is the selection panel constituted in the Meghalaya Police Act, 2010 which consists of a retired High Court judge, the Chief Secretary, Principal Secretary, and Director General of Police. Even with the presence of the retired High Court judge, the balance on this panel is heavily tilted in favour of the political executive. The presence of the police chief on the selection panel for a police oversight body is also problematic, considering the DGP is also the Member Secretary of the Commission.

⁵ Bihar, Chandigarh, Haryana, Himachal Pradesh, Karnataka, Kerala, Punjab, Sikkim, Tripura, and Uttarakhand

The Police Acts and government orders of 14 states⁶ do not comply with the Court's directive on a fixed two year tenure for key field-level officers (the ranks specified by the Court were Inspector-General of Police, Deputy Inspector General of Police, Superintendent of Police, and Station House Officer) with specific command responsibilities, in various ways – limiting tenure to one year only, not fixing tenure for the senior ranks of Deputy Inspector and Inspector General of Police, and/or including very broad grounds for premature removal including “for special reasons” or “administrative exigencies” in most cases.

At the ground level state governments are complicit adhoc arbitrary transfers without following the Court's guidance and their own rules.

4. Separation of Law and Order from Investigation Wing

Investigations are poorly mounted, slow, done by inadequately trained and unspecialized staff and frequently subject to manpower deflection into other pressing law and order duties. Both investigation and law and order are vital and specific police functions. In order to encourage specialization and upgrade overall performance, the Court has ordered a gradual separation of investigative and law and order wings, starting with towns and urban areas with a population of one million or more. It is felt that this will streamline policing, ensure speedier and more expert investigation and improve rapport with the people. The Court has not said how this separation is to take place in practice but clearly indicates that there must be full coordination between the two wings of the police.

The Model Police Act in turn devoted an entire section to how this separation would occur ensuring that the separation would not result in any lack of coordination between the two wings.

No state till date has worked out this separation schema.

5. Police Establishment Board

Subjective appointments, transfers and promotions within the police force that lead to influence peddling and patronage on the one hand and uncertainty fear and de-motivation on the other.

The Court has directed the setting up of a Police Establishment Board within each police force. The Police Establishment Board, made up of the DGP and four other senior officers of the department will serve the functions of (i) deciding all transfers, postings, promotions and other service related matters for police officers of and below the rank of Deputy Superintendent of Police; (ii) making recommendations to the state government on postings and transfers of officers above the rank of Deputy Superintendent of Police; (iii) being a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above and (iv) generally, reviewing the functioning of the police in the state.

In effect, the Board is intended to bring these crucial service related matters largely under police control. Notably, government's role lies in appointing and managing the senior police leadership, but service related matters of other ranks should be internal matters. Experience in India shows that this statutory demarcation is absolutely required in order to decrease corruption and undue patronage, given the prevailing illegitimate political interference in decisions regarding police appointments, transfers and promotions.

⁶ Assam, Bihar, Chandigarh, Chattisgarh, Haryana, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Sikkim, Uttarakhand, West Bengal
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These Boards have been created in most of States but their effectiveness has been persistently questioned. The ground-situation of transfers in the four States where sample checks were made by the Justice Thomas Committee (Monitoring Committee) (UP, Maharashtra, Karnataka and West Bengal) was found to be suggestive of uncertainty of tenures in the transfers and postings of police officers.

There is an embedded public perception that there is too much wrong doing by the police and too little accountability, remedy or recompense for victims of abuse of power and criminal behaviour. Internal inquiries are lengthy, opaque and do not in general command public confidence.

The Court directed the creation of a new mechanism - a Police Complaints Authority to be established at both state and the district levels. Their mandate is to look into public complaints against police officers in cases of serious misconduct.

The state level Authority will inquire into cases of serious misconduct including incidents involving (i) death, (ii) grievous hurt, or (iii) rape in police custody by police officers of and above the rank of Superintendent of Police.

The district level Authority will inquire into cases of serious misconduct including incidents involving: (i) death; (ii) grievous hurt; (iii) rape in police custody; (iv) extortion; (v) land/house grabbing; and (vi) any incident involving serious abuse of authority by police officers of and up to the rank of Deputy Superintendent of Police.

Membership in the authorities must be a full time occupation; the members should be provided suitable remuneration; the Authority can use the assistance of regular staff to conduct field inquiries; and the recommendations of the Authority for any action, both disciplinary and criminal, shall be binding. In practice, this implies that the inquiry conducted by the Authority replaces the internal disciplinary inquiry. Once the inquiry is completed, the Authority can recommend a suitable disciplinary punishment to the appointing authority, which will be bound by it. The Authority can also recommend the registration of a FIR against the erring police officer.

At the Ground Level:

More than six years after the Court passed its judgment, only six states - Assam, Goa, Haryana, Kerala, Tripura and Uttarakhand and four union territories - Chandigarh, Dadra & Nagar Haveli, Daman & Diu and Delhi - have Authorities which are actually operational at the ground level. Kerala is the only state which has Authorities functioning at both the state and district levels.

On Paper:

Of the fourteen states which have passed Police Acts post 2006 that create Police Complaints Authorities:

- Six states - Assam, Gujarat, Himachal Pradesh, Karnataka, Kerala and Rajasthan have established Authorities at both the state and district level in their Police Acts;
- Five states - Chhattisgarh, Meghalaya, Sikkim, Tripura and Uttarakhand – have legislated only state-level Authorities, neglecting the districts altogether;
- The Bihar Police Act, 2007 creates Authorities only at the district level.
- The Haryana Police Act, 2007 firmly establishes a state-level Authority, leaving the state government the option to set up Authorities at the district-level which, to date, the government has not chosen to do;
- While the Karnataka Police (Amendment) Act 2012 was passed in June 2012, the Police Complaints Authorities have still not been fully constituted and thereby are not

operational. A state Chair was appointed in 2010, under a government memorandum but to date, he has not been able to assume his position.

For a full picture of the working of the Police Complaints Authorities please see CHRI Report: Police Complaints Authorities in India: A Rapid Study. [ANNEXURE 1]

Recommendations

- All six directives of the Supreme Court must be complied with (without any tinkering or dilution) immediately
- States that fail to do so must be pulled up for contempt

The Model Police Act

The Draft Model Police Act prepared by the Soli Sorabjee Committee developed at the behest of the Central Government was submitted to the Centre and the Supreme Court in 2006. The Act was to be adopted by the Centre and to be taken as a template for all other states. We had expected that at a minimum the Union Territories most especially Delhi which is the largest and most populated of these would ensure that the Act was adopted. Unfortunately neither the Centre nor any state has adopted the Act in its complete version. States have adopted parts of the Act diluting essential safeguards of independence and accountability.

Both the Supreme Court's six directives and the Draft Model Police Act if followed in spirit and implemented holistically as a package will deliver good policing in future. The Draft Model Police Bill complements the Supreme Court judgement in that it provides the detailed nuts and bolts through which the directions of the Supreme Court can be most effectively implemented.

Recommendation

- The Centre and states must implement the Model Police Act without any further delay