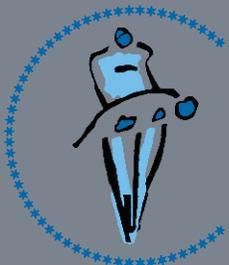


# STATE SECURITY COMMISSIONS Reform Derailed



# CHRI

Commonwealth Human Rights Initiative

working for the **practical realisation** of *human rights* in the countries of the Commonwealth

# Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the *practical* realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

The objectives of CHRI are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

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# STATE SECURITY COMMISSIONS

# Reform Derailed

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Commonwealth Human Rights Initiative  
2011

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# Foreword

A major cause of poor policing lies in the blurring of lines between the political executive and the police establishment. The overstepping intrusions of elected politicians and bureaucrats into the everyday management and functioning of the police weakens its leadership, creates uncertainty of direction, breaks chains of command, obscures accountability, destroys discipline and divides loyalties all down the line.

Fine policing – policing that is unbiased honest and capable of providing genuine safety and security to the population at large – requires the overall policy and performance parameters to be laid down by the political executive while operational responsibility to deliver good policing is left squarely in the hands of the police leadership. The State Security Commissions are designed to achieve this separation of power and function. They are intended to be an aid to political authority. Its presence neither derogates from the pre-eminence of the elected representative nor diminishes civilian control and supervision over police machinery. Instead its presence is meant to give definition to the relationship between police and political executive and establish transparent rules of engagement between the two.

To be true to its functions security commissions must itself be authoritative, timely and disciplined in its approach; and composed of the constitutional supervisors of the police, complemented by diverse expertise and representation of the kind that will bring in thoughtful, impartial and balanced assistance and fulfil expectations of lawful policing.

All this has long been understood by the rulers of this country. Committees and commissions from the 1979 National Police Commission through the Riberio and Padmanabhaiah and the Model Police Act of the Soli Sorabjee Committee

have consistently recommended the creation of a body that insulates everyday policing from political overreach and unwarranted interference. Finally in 2006 the Supreme Court in the Prakash Singh case directed that such bodies be set up in each state and at the Centre within three months.

Five years on, this report assesses the extent to which states have complied with the Court's directives: whether the entities that have been created are fit for purpose and whether in fact they are active and diligent in performance. Sadly the evidence indicates that none of the commissions that have been set up have the design, composition, power and functioning for success. Nor have they proved to be of use to improving police functioning. This begs the question of intention: are the commissions one more cosmetic device to overcome the Supreme Court's directions or intended as a genuine effort to wean the police from the politics of the day?

Everyone knows what is wrong with policing. Everyone knows the cure. Indeed the cure has been given legal weight by the clear directions of the Supreme Court. The creation of state security commissions is perhaps the keystone of the Court's holistic remedy to present day ills. But instead of a welcome for the remedy everywhere we see there is defiance, resistance and distortion of what was intended. This report like CHRI's earlier reports on the workings of the police complaints authorities - also mandated by the Supreme Court - offers up an evidence base for discussion in the hope that future improvements will be built on the failures of today. Police reforms are hard to digest. But they are too important to neglect and too urgent to delay. We avoid fulfilling the prescription at our peril.

A handwritten signature in black ink, appearing to read 'Maja Daruwala', with a horizontal line underneath the name.

Maja Daruwala  
Director, CHRI

## Chapter 1

# Purpose behind the Setting up of the State Security Commission

There is much wrong with policing in India. The need for reform is evident and urgent. What is questioned is not the need but the kind of reforms that need prioritising. There are two, not necessarily conflicting opinions about this. One set of arguments revolves around the notion that internal reforms within the existing system which include recruitment, training, service conditions and infrastructure upgradation are the priority. The other argument emphasises the need to bring about changes in statutes that will enable setting up of new institutions to make the police professional enough to function in accordance with the requirement of the law rather than according to the wishes of those in power.

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There is much wrong with policing in India. The need for reform is evident and urgent. What is questioned is not the need but the kind of reforms that need prioritising. There are two, not necessarily conflicting opinions about this. One set of arguments revolves around the notion that internal reforms within the existing system which include recruitment, training, service conditions and infrastructure upgradation are the priority. The other argument emphasises the need to bring about changes in statutes that will enable setting up of new institutions to make the police professional enough to function in accordance with the requirement of the law rather than according to the wishes of those in power.

At present the laws governing the relationship between police and the political executive are not clear enough to prevent the blurring of boundaries. Over the course of time this lack of clarity has permitted all kinds of illegitimate interferences to seep into police functioning and is one of the seminal causes for poor overall management of the police and the difficulty of fixing responsibility so as to achieve effective, unbiased and accountable performance.

The Police Act of 1861 on which all central and state legislation is modelled lays down the relationship between the political executive and the police in broad brush terms, merely stating that superintendence of police vests in the state governments.<sup>1</sup> At the district level, it puts the police under the command of the District Superintendent of Police, but subject to “general control and direction” of the District Magistrate.<sup>2</sup> Neither “superintendence” nor “general control and direction” have been defined in law. This enables the government of the day to use the police to serve the partisan interests of the regime in power, whenever required.

Some state governments passed new legislation since independence to govern their police forces. Police in Maharashtra and Gujarat are governed by the Bombay Police Act of 1951, in Kerala by the Kerala Police Act of 1960, in Karnataka by the Karnataka Police Act of 1963, in Delhi by the Delhi Police Act of 1978. The enactment of these laws have not brought about any noteworthy improvement in the organisational structure, performance and behaviour of the police, chiefly because the new enactments were all modelled on the antiquated 1861 legislation.

Thus it is plain to see that Police Acts themselves authorise the government or head of the political executive to exercise control over the police force, without ensuring that the superintendence is exercised to make the police function in accordance with law. In fact, the provisions relating to the exercise of control in some cases are deliberately left vague.

As a result, police organisation is marked by a lack of democratic functioning and adequate police direction. Police priorities are defined by, and changed according to, the will of the political executive. The manner in which political control has been exercised in India has led to gross abuses, resulting in the erosion of rule of law as well as police credibility. The executive’s stranglehold is in fact so pervasive that the police are reduced to mere tools in the hands of the political leaders, often acting in a partisan manner implementing the will of the political party in power rather than the law of the state. When important decisions relating to promotions, postings, appointments, transfers in the police are taken on political or other extraneous considerations and not on the basis of merit, it not only shatters the morale of honest officers but encourages them to court

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<sup>1</sup> Section 3, Police Act, 1861.

<sup>2</sup> Section 4, Ibid.

favour by pandering to the wishes of those in positions of power.<sup>3</sup> This distorts the internal command structure of the police, erodes discipline, breeds corruption and leads to abuse of police authority and miscarriage of justice. It ultimately shakes the confidence of the public not only in the police but the entire system of governance. This is what has been happening in this country for a fairly long time now.

Perhaps the most glaring example of illegitimate political interference affecting police work is evident in cases of communal riots and other disturbances. It has been noted by several committees that riots are often carefully orchestrated for political gains or the situation is allowed to simmer till certain political ends are achieved. The National Police Commission (NPC) notes that some police officers avoided taking responsibility for dealing with communal situations which was characterised by the NPC as a calculated strategy for self-preservation. Those officers who did take prompt action during riots were accused of all sorts of allegations, humiliation and harassment while those who allowed the

situation to deteriorate managed to go scot-free, if it suited political will. The Srikrishna Commission observed: “The bias of policemen was seen in the active connivance of police constables with the rioting Hindu mobs on occasions, with their adopting the role of passive on lookers on occasions...”<sup>4</sup>

Coupled with undue political interference police functioning is plagued by the lack of policy direction and absence of any formal performance evaluation framework. Within the police hierarchy, the commonly used parameters for assessing performance are crime and “preventive measures” statistics while policing policy is largely dependent on informal political direction by the executive.

## Police Reform Debates: A History

Police reform debates in India have long recognised the need for an independent body to ensure appropriate police direction, evaluate police performance and most importantly, to check undue political interference in police work. Of the various committees that have suggested police reforms, all have stressed the need for the creation of such a body, albeit with different names. Since independence, as many as four commissions entrusted with the task of suggesting police reforms have noted the endemic problem of political interference and the lack of an impartial system of police evaluation, reiterating the need for a buffer body such as the State Security Commission. This type of independent oversight is necessary to ensure that the police force is not pliant to the political/partisan interests of a powerful few.

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<sup>3</sup> A study by the National Council of Applied Research on the Constabulary reveals that 53 per cent and 43 per cent of constables in Uttar Pradesh and Delhi respectively were transferred in less than a year.

<sup>4</sup> Report of the Srikrishna Commission Appointed for Inquiry into the Riots at Mumbai during December 1992 and January 1993, Vol I, Chapter IV, paras 1.11 and 1.13.

The Srikrishna Commission observed: “The bias of policemen was seen in the active connivance of police constables with the rioting Hindu mobs on occasions, with their adopting the role of passive on lookers on occasions...”

The National Police Commission Report was the first to evolve a structure for the relationship between the government and the police so that the superintendence of the executive over the police would be exercised in an open manner and under the framework of law.<sup>5</sup> It recommended a State Security Commission be set up in each state to lay down broad policy guidelines for police functioning, evaluate performance and act as a forum of appeal to officers. It stated clearly that the basic role of the police is to function as a law enforcement agency, without any heed to the wishes, indications or desires expressed by the government.

The Ribeiro Committee also suggested the creation of a “Police Performance and Accountability Commission” in each state. As the name suggests, it is to evaluate police performance, ensure lawful transfers and merit-based promotions.

### The Police Act Drafting Committee

In 2005, the central government, irked by the constant criticism that the police in the country was still being governed by a colonial piece of legislation that had been enacted more than a century and four decades ago, appointed a committee to draft a model Police Act under the chairmanship of Soli Sorabjee, former Attorney General of India. The Committee drafted a comprehensive Model Police Act and sent it to the government in October 2006.

Soli Sorabjee’s Model Act focused on ensuring functional autonomy for police by insulating them from external pressures and influences. The Model Act called for the setting up of a State Police Board with as many as five independent members. It suggested that the Board should prepare Strategic and Annual Plans in consultation with the government, to clearly define policing objectives and targets. The Board would also identify performance indicators based on operational efficiency, public satisfaction, victim satisfaction, accountability, use of resources as well as human rights record. The Board would regularly evaluate each district and the state police performance.

## The Court’s Judgement

As the inaction of state governments and lack of political will in implementing police reforms became apparent, in 1996 two former Director Generals of Police filed a public interest petition in the Supreme Court of India, asking the Court to order the central and state governments to implement the recommendations of the National Police Commission. A decade later in September 2006, the Court ruled that given the gravity of the situation and “total uncertainty as to when the reforms would be introduced”, it would issue “appropriate directions for immediate compliance”.<sup>6</sup> The court stressed the need for a *buffer body between the police and politicians which will accord functional autonomy to the police even as they are supervised by the political executive. As a result, the relationship between the police and politician will lose its present characteristic of unfettered discretion and illegitimate interference.*

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<sup>5</sup> Pg 31, National Police Commission Report II.

<sup>6</sup> *Prakash Singh vs Union of India* (2006) 8 SCC 1.

The Court directed all states to set up a State Security Commission with immediate effect. The commission was to be a policy-setting body that helps government to lay down annual policing plans in consultation with the police chief and then monitors policing effectiveness and makes regular reports to parliament about the effectiveness and needs of the police and public satisfaction.

Despite Court orders most states are dragging their feet or have considerably altered the structure of these commissions, diluting their powers and thereby making them redundant. The lack of political will in implementing this reform is symptomatic of a larger malaise in the system, whereby the politician is reluctant to let go of his control over the police and law enforcement agencies.

## Security Commissions in Other Parts of the Commonwealth

As governments increasingly embrace the philosophy of democratic policing, attempts are on to make policing more transparent, involve outsiders, build public confidence, allay fears of bias, assure impartiality in functioning, change the internal culture and ensure even better performance by the police in serving the community.

Across the world, best practices have been designed to ensure that operational autonomy is coupled with strengthened accountability for the police forces. Specifically with regard to the relationship between the police and the government in power, attempts have been made in many countries to clarify and codify the essential principles that should govern the police-executive relationship in a democracy.<sup>7</sup> Along with this, increasing attention is being given to formulating long-term policy for the police that includes preparing plans and setting standards and performance measuring indicators. Many modern Police Acts refer to the guiding and directional role of the government in terms of responsibilities of ministers and lay down clearly, how these responsibilities should be discharged.

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In most democratic countries there are typically a range of bodies exercising oversight on the police. The commission model has in fact gained strength all over the world. This model serves two different purposes – one, to insulate the police from illegitimate influences of partisan politics and two, to involve community members in providing direction to the police and help improve police administration and management.

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<sup>7</sup> Stenning, P., “Ingredients for a Good Police/Executive Relationship”, Paper presented at the Roundtable Workshop on Police Reforms in South Asia, 23-24 March 2007.

Nigeria's Police Service Commission is a unique hybrid oversight body with the potential of being one of the most powerful and autonomous civilian oversight institutions in the world, if allowed to function according to the rules laid down by the 1999 Nigerian Constitution. Members of the Commission include representatives from the human rights community, organised private sector, women and the media, a retired justice of a superior court and only one retired police officer.

The Commission has powers to appoint persons to offices in the Nigeria Police Force (NPF), other than the Inspector General of Police. It has been entrusted with the responsibility of formulating guidelines for appointment, promotion, discipline and dismissal of officers of NPF; formulating policies aimed at increasing the efficiency of the NPF and performing other functions that are required to ensure optimal efficiency in NPF.

The power to discipline and dismiss police officers along with the statutory obligation to establish an investigative department, gives the Police Service Commission the legal powers necessary to receive complaints, investigate them and enforce disciplinary efforts. It also has powers to develop and implement policy, making significant contributions to setting higher standards in the force. The Commission is not subject to the direction or control of any other authority/person, which ensures independence.

Northern Ireland is a case in point of a conflict-torn society transitioning towards peace, where an impartial police force was a high priority since the Royal Ulster Constabulary was largely seen as an instrument of British rule which favoured the interests of Northern Irish Unionists. The Police (Northern Ireland) Act, 2000 apportions responsibility between the Executive (through the Secretary of State), police leadership and the Policing Board (an independent public body).

The Board is an independent body comprising 19 members, whose broad objective is to secure for the people an effective, efficient and impartial police service. It has a comprehensive charter that monitors police performance and also checks that the police do not violate human rights of citizens. The Board performs a very active management and oversight role, by holding the head of the police accountable for his actions and those of his staff and by overseeing the working of the internal police complaints and discipline system. Significantly, the Board also establishes the key principles to shape the duty of the Secretary of State relating to policing, to check illegal political interference.

Finally, among the most developed legislative formulations of a government's role comes from the United Kingdom. The system of control and accountability that governs the 43 forces of England and Wales is often called the "tripartite structure" which rests on a separation of powers. This complex system, brought in force by the Police Reform Act, 2002, distributes governance and the policy-setting authority between the Home Office, the local police authority and the chief constable of the force, precisely to create buffers between the police services and the state.

These international examples demonstrate the ability of a model commission to greatly increase the efficiency and accountability of the police while putting a check on illegitimate political interference. In fact, democratic countries have gone to great lengths to ensure the political neutrality of the police. These commissions also evolved various criteria to monitor police performance which go beyond crime statistics. Such international standards can be applied in India where police reforms aim to bring policing in line with democratic principles.

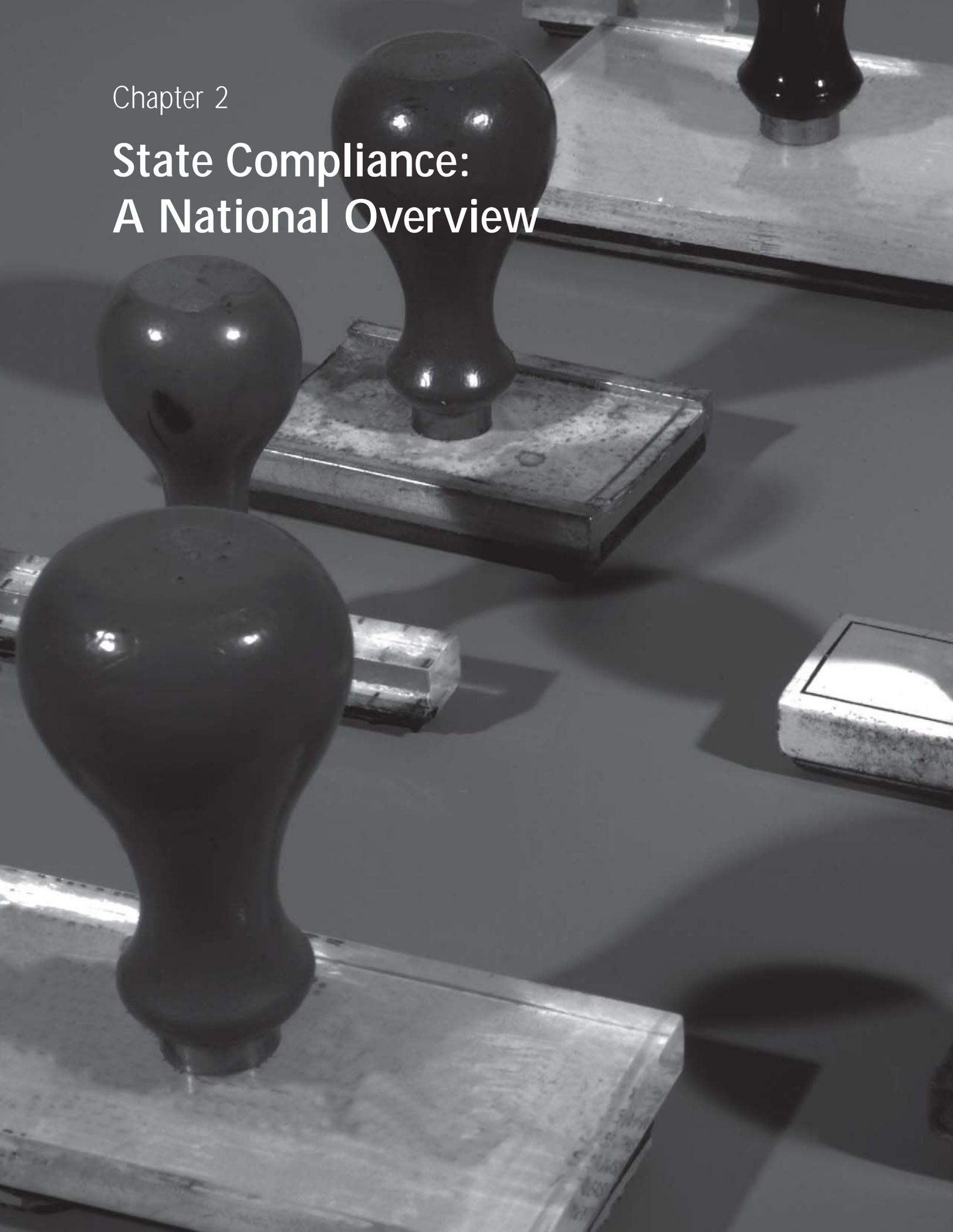
In most of these countries however, the precise contours of the executive-police relationship have been defined through legislation. Such legislation has not been enacted in India. Instead, the State Security Commissions have been entrusted with the task of articulating roles, responsibilities and policies for the police as well as defining the relationship between the police and the executive, ensuring that the police can do their job in a professional and accountable manner, and creating an efficient and impartial police force. The task entrusted to the commissions is immense and has the ability to bring far-reaching changes in the Indian polity and administration. It will not only make the police organisation more democratic and transparent but also increase its efficiency in serving the community. However, for the State Security Commissions to be actually effective, political will is necessary.

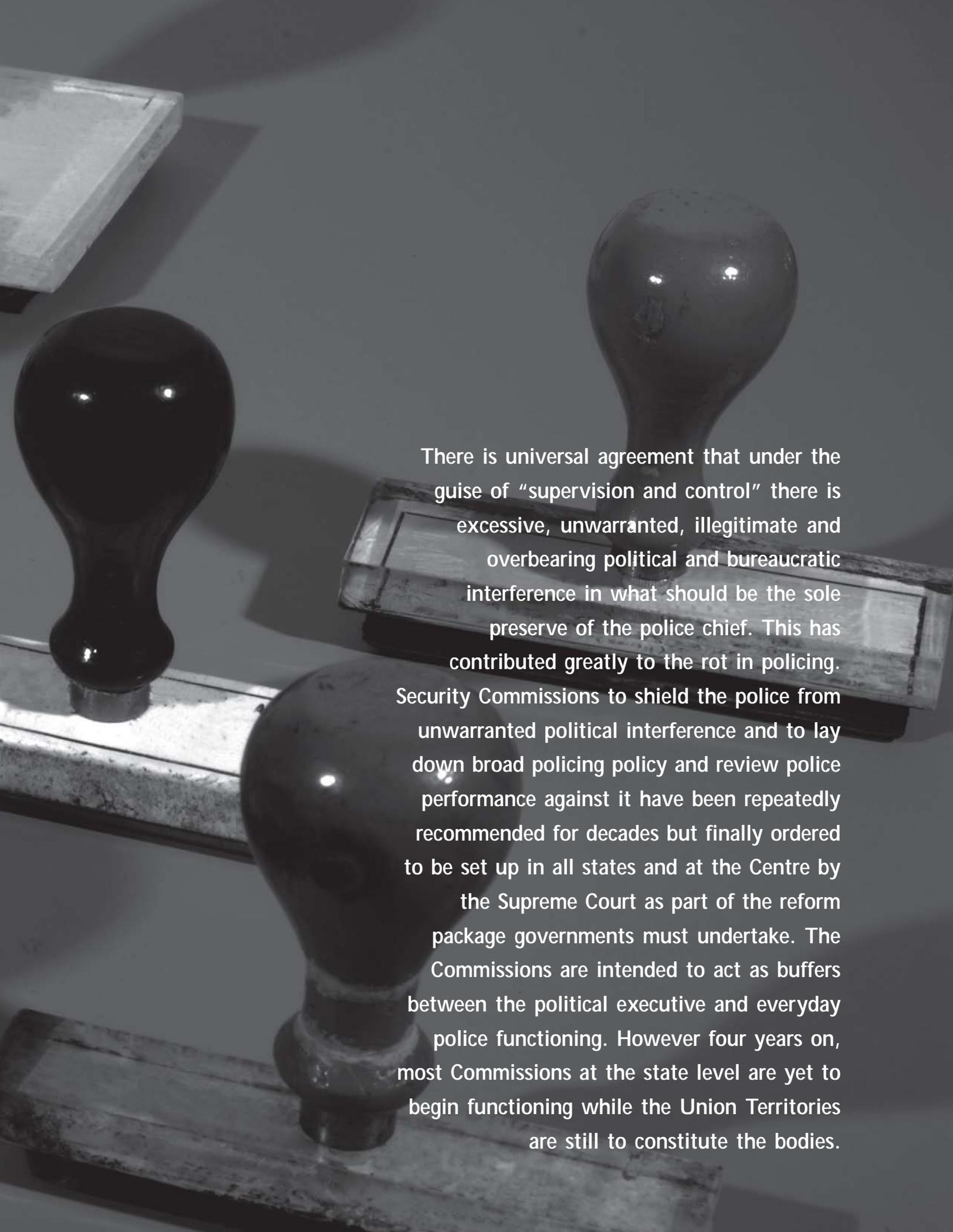
## **Aim of this Report**

The aim of this report is to carry out a comprehensive assessment of the working of the State Security Commissions set up since the Supreme Court judgement in 2008. The report will seek to analyse their potential, the extent to which they have been implemented in different states, their mandates, composition, power to make binding recommendations and whether these commissions have been given the requisite powers to carry out the functions assigned to them by the Supreme Court.

Chapter 2

# State Compliance: A National Overview





There is universal agreement that under the guise of “supervision and control” there is excessive, unwarranted, illegitimate and overbearing political and bureaucratic interference in what should be the sole preserve of the police chief. This has contributed greatly to the rot in policing. Security Commissions to shield the police from unwarranted political interference and to lay down broad policing policy and review police performance against it have been repeatedly recommended for decades but finally ordered to be set up in all states and at the Centre by the Supreme Court as part of the reform package governments must undertake. The Commissions are intended to act as buffers between the political executive and everyday police functioning. However four years on, most Commissions at the state level are yet to begin functioning while the Union Territories are still to constitute the bodies.

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If the purpose of these commissions is to be achieved then its composition, mandate and modes of setting up must be analysed to ensure that the body is not still born. For the commissions to be effective, they have to be robustly autonomous in their functioning and powers. Twelve states have till date set up State Security Commissions through legislation and nine through government orders/memorandums. However there are serious shortcomings in the composition, selection process of independent members and mandate of the commissions – all of which imply that these bodies are neither independent nor do they possess the requisite powers to reform the police architecture in India.

## Quick Overview of State Compliance

| Commission                                  | Established By   | Number of Independent Members* | Powers         | Model Adhered To | Set Up on Paper/ Ground Level |
|---|------------------|--------------------------------|----------------|------------------|-------------------------------|
| Arunachal Pradesh State Security Commission | Notification     | Five                           | Recommendatory | None             | Ground                        |
| Assam State Security Commission             | Police Act       | Three                          | Recommendatory | None             | Ground                        |
| Bihar State Police Board                    | Police Act       | None                           | Recommendatory | None             | Paper                         |
| Chhattisgarh State Police Commission        | Police Act       | Two                            | Recommendatory | None             | Paper                         |
| Goa State Security Commission               | Government Order | One                            | Recommendatory | None             | Paper                         |
| Gujarat State Security Commission           | Amendment Act    | Two                            | Recommendatory | None             | Ground                        |
| Haryana State Police Board                  | Police Act       | Three                          | Not defined    | None             | Paper                         |

| Commission                          | Established By                       | Number of Independent Members* | Powers  | Model Adhered To    | Set Up on Paper/ Ground Level |
|-------------------------------------|--------------------------------------|--------------------------------|---|---------------------|-------------------------------|
| Himachal Pradesh Police Board       | Police Act                           | Three                          | Recommendatory  | None                | Ground                        |
| Jammu & Kashmir                     | Not followed citing security reasons |                                |   |                     |                               |
| Jharkhand State Security Commission | Notification                         | Five                           | Recommendatory  | None                | Paper                         |
| Karnataka Security Commission       | Government Order                     | Two                            | Recommendatory  | None                | Ground                        |
| Kerala Security Commission          | Police Act                           | Three                          | Binding on the police department but not the government | None                | Ground                        |
| Madhya Pradesh                      | No notification issued till date     |                                |   |                     |                               |
| Maharashtra Security Commission     | Government Resolution                | Two                            | Recommendatory  | None                | Ground                        |
| Manipur Security Commission         | Government Order                     | Five                           | Recommendatory  | Soli Sorabjee Model | Ground                        |
| Meghalaya Security Commission       | Police Act                           | Five                           | Recommendatory  | None                | Paper                         |
| Mizoram Security Commission         | Notification                         | None                           | Recommendatory  | None                | Ground                        |
| Nagaland Security Commission        | Notification                         | Three                          | Recommendatory  | Ribeiro Model       | Ground                        |
| Orissa                              | No resolution to the effect          |                                |   |                     |                               |
| Punjab Police Board                 | Police Act                           | None                           | Recommendatory  | None                | Ground                        |
| Rajasthan Police Commission         | Police Act                           | Three                          | Recommendatory  | None                | Paper                         |
| Sikkim Police Board                 | Police Act                           | Three                          | Recommendatory  | None                | Ground                        |
| Tamil Nadu Police Board             | No resolution to the effect          | Four                           | Recommendatory  | None                | Paper                         |

| Commission                        | Established By                       | Number of Independent Members* | Powers         | Model Adhered To | Set Up on Paper/ Ground Level |
|-----------------------------------|--------------------------------------|--------------------------------|----------------|------------------|-------------------------------|
| Tripura Police Board              | Police Act                           | Two                            | Not Defined    | None             | Ground                        |
| Uttar Pradesh Security Commission | Office Memorandum                    | Three                          | Recommendatory | None             | Ground                        |
| Uttarakhand Police Board          | Police Act                           | Two                            | Recommendatory | None             | Ground                        |
| West Bengal                       | Notification                         | Three                          | Recommendatory | None             | Ground                        |
| Delhi                             | Office Memorandum                    | Five                           | Not Defined    | None             | Paper                         |
| Chandigarh                        | Punjab Police Act extended to the UT | None                           | Recommendatory | None             | Paper                         |

\*Number of independent members prescribed by the NHRC, the Ribeiro Committee and the Soli Sorabjee Committee are: 2, 3 and 5 respectively.

## Composition

As envisioned by the Supreme Court, the Commissions would be headed by the Chief Minister or Home Minister, and have on board the Leader of the Opposition and the DGP of the state as its ex-officio Secretary. With regard to other members, the Court directed that they be chosen “in such a manner that it is able to function independent of government control”. States were given the discretion to choose between models recommended by the National Human Rights Commission, the Ribeiro Committee and the Sorabjee Committee.

| NHRC   | Ribeiro Committee   | Sorabjee Committee  |
|--|---|---|
| 1. Chief Minister/<br>Home Minister as Chairperson                           | 1. Minister in charge<br>of police as Chairperson                                 | 1. Minister in charge of police (ex-<br>officio Chairperson)                          |
| 2. Leader of Opposition in<br>Lower House                                    | 2. Leader of Opposition   | 2. Leader of Opposition   |
| 3. Chief Secretary   | 3. Chief Secretary  | 3. Chief Secretary  |
| 4. A sitting or retired judge<br>nominated by Chief Justice<br>of High Court | 4. A judge, sitting or<br>retired, nominated by<br>Chief Justice of<br>High Court | 4. A retired High Court Judge,<br>nominated by the Chief Justice of<br>the High Court |

| NHRC  | Ribeiro Committee   | Sorabjee Committee             |
|---|---|--------------------------------|
| 5. Lok Ayukta or, in his absence, a retired Judge of High Court to be nominated by Chief Justice or a member of State Human Rights Commission | 5. Three non-political citizens of proven merit and integrity | 5. Five independent members    |
| 6. DGP as ex-officio Secretary  | 6. DGP as Secretary   | 6. DGP as ex-officio Secretary |

The composition was designed to ensure that the commission would have non-partisan or bi-partisan membership with independent civilians who can bring in their experience and expertise on board and be able to function independent of government interference.

The inclusion of major political players creates checks and balances that prevent temporary dominations. By consistent participation in informed policy-making all political parties – whether in power or not–eventually begin to own policing policy and become vested in year-on-year improvement and performance.

However, commissions set up by most states either through legislation or government resolutions have their composition manipulated, their mandate weakened and their powers diluted to perpetuate continued control over the police.

## Membership

The premier value of a Security Commission lies in its ability to be an impartial body which ensures that policing functions are performed in a non-partisan manner away from the pulls and pressures of the government of the day. The commission must be designed so that it cannot be captured by any single party or regime of the day and be able to balance powerful interests.

Four states have completely ignored the directive. Andhra Pradesh for instance has opposed the creation of the commission stating that it will weaken the state’s power of superintendence over the police.<sup>8</sup> Other states like Madhya Pradesh, Orissa and Tamil Nadu have chosen to remain silent on the directive whilst Jammu and Kashmir has requested to be exempted from complying with this directive owing to the security situation in the state.

Of the states which have made provisions for the creation of the commission, the majority have not complied with any of the three models suggested by the Supreme Court.<sup>9</sup> A few states have set up commissions that resemble one of the three models but with severe modifications to the original structure.

<sup>8</sup> Affidavit filed by the Chief Secretary, Government of Andhra Pradesh, Hyderabad, dated 29 December 2006.

<sup>9</sup> Tamil Nadu, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Himachal Pradesh, Karnataka, Maharashtra, Sikkim, Uttarakhand have all diverted significantly from the suggested models in terms of composition, mandate and powers assigned to the commission.

## Union Territory Commissions

Through an Office Memorandum, the Ministry of Home Affairs (MHA) announced the establishment of a single Union Territories Security Commission with jurisdiction over all Union Territories. This is an attempt to use a one-size-fits all approach which is inappropriate given the widely differing population sizes, the sizes of the police services, the population mix, urban and rural characteristics, crime profile and even the widely traversing geographical distances between the UTs. It is obvious that the nature of policing in New Delhi would be completely different from Puducherry.

Secondly, there are several weaknesses in its composition which will impact the ability of the Commission to operate as a robustly autonomous body in functioning and advice. The premier value of the Security Commission lies in its ability to be an impartial body, which ensures that policing functions are performed in a non-partisan way, without being influenced or pressured by the government of the day. With the exclusion of the Leader of the Opposition and inclusion of five bureaucrats on it, the Commission immediately loses its bi/non-partisan character and the bias is tilted entirely towards officialdom which is bound to serve the government of the day. Further, the independent members would be “nominated” by the government instead of being chosen in a democratic and transparent manner. No grounds for removal are stated that could provide a minimum, objective benchmark for removing a member. This begs the question whether these “independent” members would be able to function independent of the government’s reasoning.

This body thus is not representative of all UTs and neither is it designed to perform the functions assigned to it. In a subsequent memorandum the MHA has endeavoured to correct these flaws by constituting a separate Commission for Delhi. Vis-à-vis independent members, it has given the concession that they will now be chosen by the government from a panel prepared by a Search Committee. And the Leader of Opposition is also included to provide checks and balances in the functioning of the Commission. These changes however do not form a comprehensive rethink on the structure of the UT Security Commission.

Other states have ensured that most of the members on the commission are police officers, government officials or members who are beholden to the government. For instance, the Commission set up in Gujarat vide the Bombay Police (Gujarat Amendment) Act, 2007, has reserved for itself and the police five out of seven seats on the Commission. It now comprises the Chief Minister, the Home Minister, the Chief Secretary, the Home Secretary and two non-official members.<sup>10</sup> Bihar is in blatant violation of the Supreme Court order as the State Police Board<sup>11</sup> set up a three-member body which is completely bureaucrat-centric, headed by the Chief Secretary, with the DGP and

<sup>10</sup> Section 32A(2), Bombay Police (Gujarat) Amendment Act, 2007.

<sup>11</sup> Bihar Police Act, 2007.

Secretary Home Affairs as members. Mizoram and Punjab also have no provision for independent members on their commissions which are entirely dominated by government officials. Commissions in many other states are completely government-centric and dominated by bureaucrats. Himachal Pradesh has Principle Secretaries of Social Justice and Finance, as well as the Director of the State Police Training Academy on the Commission. The Rajasthan government has reserved for itself and the police an effective majority of five out of nine seats in the Commission. The Sikkim Police Board includes three additional bureaucrats – Secretary of the Home Department, Secretary of the Financial Department and Secretary of the Social Welfare and Empowerment Department. Five out of seven members of the Karnataka Commission are from the state executive and bureaucracy.

Further undermining the provision for independent checks and balances, states like Chhattisgarh fail to include the Leader of the Opposition or a retired judge among its members. Kerala also includes the Minister in charge for Law instead of a High Court Judge in the State Security Commission. A Security Commission heavily loaded with bureaucrats directly serving under the regime of the day will under no circumstances infuse a perception of neutrality or non-partisanship which is at the very essence of the Court's purpose in insisting on the creation of this body. The result is that the composition of the commissions is heavily politicised, largely defeating its objective of acting as an independent body between the police and the political executive.

### **West Bengal Commission: A Case Study**

The Security Commission in West Bengal divulges vastly from the Court's orders in terms of composition, perhaps more than any other state. Strangely, the Security Commission is headed by the Minister for Health and Family Department. The state did not follow any of the suggested models and instead constituted a ten-member Commission whose independent members included a Retired Chief of Army Staff, Ex-Rajya Sabha member, Home Secretary, Commissioner of Police, Kolkata, along with a member of the State Human Rights Commission and Vice Chancellor of Calcutta University. In terms of composition it was heavily dominated by bureaucrats and government officials. Independent members were also nominated by the government, with no prescribed selection process. The state thus tried to subvert the Court's orders for creating an independent body.

Because of its farcical compliance with the directives, the Supreme Court in December 2010 summoned the Chief Secretary and reprimanded the state for not complying in "letter and spirit" with its orders. As a result the state removed the Minister and appointed the Chief Minister as Chairman. The Commission has now been pruned to a six-member body, following the NHRC model and includes the Leader of the Opposition, Chief Secretary, DGP as well as a retired judge nominated by the Chief Justice of the High Court and a member of the State Human Rights Commission.

## Union Territories: Security Commission's Composition

The composition of the Union Territory Security Commission is also flawed and does not comply with any of the models suggested by the Apex Court. The Government of India had excluded the Leader of the Opposition and instead included the Joint Secretary thus making it a purely governmental body. This composition is highly inadequate especially in cases where the Commission is going to represent the diverse and multifaceted geography and demography of the UTs. These defects have been taken care of to some extent, in a subsequent government order which now includes the Leader of the Opposition and five independent members to be chosen from a panel prepared by a Search Committee.<sup>12</sup>

### Independent and Other Members

Each of the three models has a provision for a sitting or retired member of the judiciary, members of the Lok Ayukta or State Human Rights Commission (SHRC) and independent members. These members are meant to provide checks and balances against narrowly perceived policy-making dominated by police-government thinking. Representation from within the larger public assures that policy-making will benefit from informed diverse professional expertise and life experiences.

The provision for independent members on the commissions that have been set up is mere window dressing. Most states have reduced the number of independent members. For instance, the composition of the Commission in Kerala resembles the Sorabjee model but the number of independent members is reduced from five to three. The Maharashtra Commission closely resembles the NHRC model but the two independent members are not required to be sitting or retired judges or Lok Ayukta or members of the SHRC, as prescribed. States like Mizoram and Punjab have gone to the other extreme by not having any provision for independent members on their commissions.

Some states have included a retired judge to maintain the façade of independence but nevertheless ensured that the majority of the members in the Commission are part of the government in power. For instance, the Goa government has ensured for itself a clear majority of three in the five-member Commission.

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<sup>12</sup> GO No.14040/127/2010-UTP, dated 10 January 2011.

Goa, which follows the NHRC model, has omitted a second sitting or retired judge on the Commission which tilts the numbers in favour of the government and police who have a clear majority of three on the five-member Commission. Maharashtra for instance, includes five independent members but instead of a member of the judiciary, it includes the Additional Chief Secretary (Home) on the Commission. Jharkhand and Kerala have included the Advocate General and Minister for Law respectively, in place of a High Court Judge. And a vast number of states including Bihar, Chhattisgarh, Gujarat, Assam, etc. have no provision for a judge on the commission.

## Membership of the Commissions

The Government of India had stated that the five independent members of the Union Territories Security Commission shall be nominated by the central government, completely undermining independent checks and balances. This defect has been corrected to some extent, in light of the report of the Justice Thomas Committee, via a new Government Order.<sup>13</sup> It creates a separate State Security Commission for Delhi, which has the provision for five independent members to be chosen from a panel prepared by a Select Committee. For other UTs as well, the independent members are now to be chosen by the Union Home Minister from amongst a panel prepared by a Search Committee.

## Selection Process for Independent Members

The Ribeiro Committee's model,<sup>14</sup> the NHRC model<sup>15</sup> and the Sorabjee model<sup>16</sup> all lay down the selection process for independent members. No state government anywhere in the country has ensured that the independent members on their commissions are selected by an empanelment process. All governments have ensured that the independent members, if any, on the commission are appointed directly by the state government without any empanelment process or selection criteria. The complete lack of transparency on how non-official members are chosen has already created controversy. It is clear from the above analysis that the political executive does not wish to let go of its tenacious grip on police affairs in the country.

## Mandates

The mandates of the Security Commissions are to ensure that there is a buffer between the police and government, so as to allow the police to be functionally autonomous even as they are supervised by the political executive. Their mandates are expected to lay out the relationship between the

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<sup>13</sup> No. 14040/127.2010-UTP, dated 10 January 2011 issued by the Ministry of Home Affairs.

<sup>14</sup> Independent members to be chosen by a committee set up by the Chair of the National Human Rights Commission-Ribeiro Committee on Police Reforms, First Report, October 1998.

<sup>15</sup> According to the National Human Rights Commission, the independent members are to be appointed by the chief minister, with the approval of the state legislature. Members are to be chosen from among retired Judges of the High Court, retired senior government servants, and social scientists or academicians "of public standing and eminence". To note, this model is proposed by the National Police Commission (Second Report, August 1979).

<sup>16</sup> Independent members are to be appointed on the recommendation of a Selection Panel made up of i) Retired Chief Justice of a High Court to be nominated by the Chief Justice of the High Court (ii) Chair of the State Human Rights Commission, in the absence of whom a person nominated by the Chair of the National Human Rights Commission and (iii) Chair of the State Public Service Commission.

political executive and the police hierarchy such that each is confined to its own area of legal competence.

In its 2006 judgement, the Supreme Court laid down the mandates for the State Security Commissions:

- Laying down broad policy guidelines for performance of preventive tasks and service-oriented functions of the police
- Evaluation of the performance of the state police
- Preparing a report thereon, to be placed before the State Legislature.

The Court also ordered that the recommendations of the Commission shall be binding on the state government.

However, the state governments have been extremely reluctant to comply with this and the mandates of the commissions have been considerably diluted while drafting new legislation or passing government orders. Importantly, none of the new statutes have mentioned that one of the functions of the commission is to ensure that the state government does not exercise illegitimate influence on the police.

## Policy Guidelines

Clearly, deep public dissatisfaction with present policing calls for a new method by which policing policy is framed and made clear to the public. Ideally, the creation of long-term policing policy is an opportunity for the police, government and community to communicate. Policing plans should evolve from the police station level, consultations with the public, input from the constabulary and finally move from the ground upwards, to be then refined into a living document via a transparent process.

The Chhattisgarh Police Act, 2007 states that the State Police Commission shall *advise* the government on policy guidelines rather than *laying down* police guidelines. The Maharashtra Commission's mandate is not particularly strong. It too can only offer "advice"<sup>17</sup> on policy "guidelines" to promote efficient, effective, responsive and accountable policing, instead of a more active role as envisioned by the Supreme Court. The Bihar State Police Board is also a recommendatory body with no accountability to the legislature. This weakening of language severely dilutes the powers of the Commissions and is a matter of grave concern.

## Evaluating Police Performance

An important power assigned to the commissions is to evaluate police performance. In recent times there has been a vocal demand for more public accountability of police activities. In fact, this mandate of the commission is an opportunity to go beyond crime statistics and evolve a mechanism for a holistic evaluation of police performance. None of the states have complied with this directive.

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<sup>17</sup> Para 5 (i), Government Resolution No. NPC1008/2/CR-6/POL-3, dated July 2008.

For instance, the Assam Police Act, 2007 states that the Commission will “identify performance indicators to evaluate the functioning of the Police Service”.<sup>18</sup> This is a significant departure from what the Court ordered, which was not merely to identify indicators but actually *conduct the evaluation of the police* itself. Likewise the commission in Maharashtra can “assist” government to identify police performance indicators to evaluate policing.

## Reporting Mechanisms

The Court clearly required that the commission prepare a report of its working which is then placed before the state legislature. This is an essential feature for an institution set up to review performance and suggest improvements.

To be effective, the commission’s reports must always be made public and go to the legislature. They must be debated to determine what has been achieved against earlier policies. The assembly also has an oversight function. With a clear policing policy to judge police performance, their scrutiny and questions must be aimed at improving policing through critical, thoughtful suggestions.

However, most states have significantly departed from this requirement. Tripura, Assam and Haryana have no reporting requirements in their legislations. Other states such as Bihar and Gujarat have stipulated that the commission’s annual report should be submitted only to the state government and not to the legislative assembly as expressly articulated by the Supreme Court. This omission ensures that the commission has no accountability to the legislature or to the people. The Punjab Police Act states that the report will be in fact prepared by the state government, which will only be in “consultation” with the State Police Board.<sup>19</sup> States like Jharkhand that mention an annual report however do not elaborate the actions to be taken on that report.

Thus, it is clear that the state governments have no intention of allowing the commissions to function as intended. The Court provided for an independent body with significant autonomy of functioning and the mandate to chart out policies for a more efficient police force. But the commissions that have been created by various state governments do not have the structure or the mandate to perform the task envisioned for them.

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<sup>18</sup> Section 40, Assam Police Act, 2007.

<sup>19</sup> Section 29 (1)(b), Punjab Police Act, 2008.

## Powers

### To Make Binding Recommendations

State governments have shown complete and utter disregard for the directive which explicitly states that the Commissions shall possess binding powers. All states have given their State Security commissions the power to make recommendations, but none have explicitly stated in their legislation that such recommendations shall be binding on the concerned government. This is illustrated by the Uttarakhand Police Act, 2007, which limits the commission's power to simply providing "suggestions" and "advice" to the state government which may be accepted if the government deems suitable. Jharkhand, Meghalaya, Mizoram, Nagaland, etc. are also silent on the subject and do not state whether the commission has binding powers.

Ideally, if the government was to act on its recommendations and those are carefully arrived at, it will reduce today's patronage system and the police will not be seen as the handmaiden of the powerful, but as an essential service the population can rely on.

It can thus be assumed that the state governments are free to disregard any recommendations made by the commissions that they find politically inconvenient. The widespread practice of circumscribing the commissions' powers means that they will be incapable of having any real impact on police policy and performance.

It is evident from the above analysis that in practice, each of the new Police Acts or government orders have undermined the Supreme Court's directive regarding the security commissions. The commissions, as they exist, suffers from skewed composition, limited mandate and curtailed powers. Such bodies cannot check the arbitrary acts of politicians and ensure transparency and accountability in police functioning. Instead of ensuring a healthy balance between political supervision and police autonomy, the commissions have been rendered toothless.

### **Need to Insulate the Police from Political Pressures**

Could Nandigram have been averted? Could the Gujarat riots of 2002 have been prevented? We may never know for sure. But one thing is certain – even if these were indeed unavoidable, their gravity, and the severity of pain which accompanied these unfortunate incidents, would have been much less if the executive did not have a stranglehold over the police. The National Human Rights Commission, which extensively inquired into the Gujarat riots of 2002 also said, “the Commission is of the view that recent events in Gujarat and, indeed, in other states...underline the need to proceed without delay to implement the reforms that have already been recommended in order to preserve the integrity of the investigating process and to insulate (the police) from extraneous influences.”

The new systems directed by the Supreme Court and based on various earlier recommendations is intended to make sure that every single police officer is working to the maximum of his ability to provide day to day security. Not just when, and only when unusual circumstances like terrorist attacks or communal riots happen. Good policing is intended to protect every person every day. This is not the case today and the outcomes are plain to see.

It is disheartening to see the Indian experience against international trends. The report already mentions that the establishment of autonomous police commissions or boards has gained considerable ground across the world. The Commission model of police governance exists widely in many developed countries, and even some developing ones. The deliberate weakening of these bodies in India is even more apparent when seen against the bold powers given to other commissions, which have wide powers to shape policing policy, set police budgets, design performance indicators and standards, review police performance and frame policing plans. In many countries (Nigeria, the United Kingdom, Canada, Northern Ireland), commissions are even given disciplinary powers over police officers – this is the level of empowerment of these bodies. It is a sad comment on the strength of India's democracy that state governments across the country are resisting the development of yet another democratic institution, particularly one which has real potential to set higher standards and change the mode and style of policing in the country. Of all the Court's reform directives, the State Security Commissions are arguably the one new institution with the widest mandate and range of influence over policing as a whole. Doing away with commissions' powers to make binding recommendations is the best way to render these bodies useless – amply apparent in the case of other independent oversight bodies in the country. This makes clear that there is a definite political consensus not only to resist police reform, but to defeat it altogether.

## Chapter 3

# Monitoring Security Commissions: Performance and Impact at the Ground Level

Though on paper sixteen states have set up State Security commissions, it is only in a few states that the commission has moved from paper to actual functioning. Our research reveals that even in these states, the Commissions are barely working. There are vast differences regarding the degree of independence and functionality, their compositions, mandate and relative impact. Despite clear directives from the Supreme Court, state governments have tried to circumvent these orders by constituting bodies with heavily flawed compositions and limited mandate, which make a mockery of the Court's ruling. In the present scenario, it is difficult to perceive that these commissions will have any impact on the ground or achieve the purpose envisioned for them.



Though on paper sixteen states have set up State Security Commissions, it is only in a few states that the commission has moved from paper to actual functioning. Our research reveals that even in these states, the commissions are barely working. There are vast differences regarding the degree of independence and functionality, their compositions, mandate and relative impact. Despite clear directives from the Supreme Court, state governments have tried to circumvent these orders by constituting bodies with heavily flawed compositions and limited mandate, which make a mockery of the Court's ruling. In the present scenario, it is difficult to perceive that these commissions will have any impact on the ground or achieve the purpose envisioned for them.

This section contains brief descriptive information on the commissions in these states, particularly regarding membership, mandate, powers and impact. The Supreme Court established certain minimum standards for the Security Commissions in its 2006 judgement. At this juncture it is useful to reiterate those standards, to assess what has been achieved on the ground. This information was collected through requests made under the Right to Information (RTI) Act and correspondence with the commissions.

State Security Commissions are undoubtedly given birth by governments but in the present scenario they have also become their creatures – stillborn and incapable of being nurtured to maturity. The commissions in most cases have been reduced to advisory bodies and as is the fate of most advisory bodies, governments accept whatever advice suits their purpose and ignore the rest. Thus the impact of the commissions is miniscule and their functioning far removed from the mandate envisaged for them.

Right to Information requests were made in twenty-four states. The requests sought information regarding government orders/notifications creating the State Security commissions; the names, designations and contact details of the members; the number of times the Commissions met and the minutes of these meetings; and the process followed for selection of independent members and their remunerations, if any. Responses were received from only fifteen states. Of these, the states of Bihar, Haryana, Manipur and Jharkhand responded by stating that the application had been transferred to the relevant department, but did not provide any further information. Till date no information has been received from these states. Due to the newness of the body, most states are unclear as to which department has jurisdiction over it, which made accessing information more difficult. This also testifies to the fact that even after four years, the body is non-functioning. A telling example is Uttarakhand which sent information on the Police Complaints Authority when asked about the State Security Commission. Only the north eastern states of Arunachal Pradesh, Mizoram and Meghalaya readily provided minutes of their meetings and other information, often without asking for a fee. Kerala asked for a payment of a small sum of money through Treasury Challans which require the amount to be paid in person, creating unnecessary hassles for those seeking information from outside the state.

Chhattisgarh, Goa, Uttarakhand and Gujarat were candid enough to admit that their Commissions had not met even once since their inception.

Given below is a brief summary of the responses received to the RTI applications that were made.

## Analysis of RTI Responses

|                      |   |
|----------------------|---|
| 1. Arunachal Pradesh | Full information received   |
| 2. Assam             | No response   |
| 3. Bihar             | Letter transferred to relevant department; no response after that   |
| 4. Chattisgarh       | No meeting held till date   |
| 5. Goa               | No meeting held till date   |
| 6. Gujarat           | No meeting held till date   |
| 7. Haryana           | Partial information received  |
| 8. Himachal Pradesh  | Full information received   |
| 9. Jharkhand         | Letter transferred to DG's office; no response after that   |
| 10. Karnataka        | No response   |
| 11. Kerala           | Full information received   |
| 12. Maharashtra      | Partial information received  |
| 13. Manipur          | No response   |
| 14. Meghalaya        | Full information received   |
| 15. Mizoram          | Full information received   |
| 16. Nagaland         | No response   |
| 17. Punjab           | No response   |
| 18. Rajasthan        | No response   |
| 19. Sikkim           | No response   |
| 20. Tripura          | No response   |
| 21. Uttar Pradesh    | No response   |
| 22. Uttarakhand      | Information on PCA sent instead. Full information received on sending second application. No meeting held till date |
| 23. Tamil Nadu       | No response   |
| 24. West Bengal      | Partial information received  |

## Arunachal Pradesh

The Arunachal Pradesh government created a State Security Commission through a government Notification dated 27 February 2007.<sup>20</sup> The Commission has met only twice since its inception – on 11 June 2007 and 14 May 2010. Minutes of the first meeting were provided in response to our RTI request.

### Composition

| Members           |   |
|-------------------|---|
| 1. Dorjee Khando  | <i>Chairman, Chief Minister</i>                               |
| 2. Tamiyo Taga    | <i>Leader of the Opposition, BJP MLA</i>                      |
| 3. Tabam Bam      | <i>Chief Secretary, IAS</i>                                   |
| 4. Kanwaljit Kaur | <i>Ex Officio Secretary, DGP</i>                              |
| 5. T. Taloh       | <i>IAS, Home Department</i>                                   |
| 6. Lod Kojee      | <i>APCS, Independent Member</i>                               |
| 7. Norbu Wangdi   | <i>Retired Inspector, Independent Member</i>                  |
| 8. P. Potom       | <i>Ex DPI, Independent Member</i>                             |
| 9. Mamang Dai     | <i>Journalist, Independent Member</i>                         |
| 10. Renu Mungey   | <i>Secretary, Women's Welfare Society, Independent Member</i> |
| 11. S.B.K. Singh  | <i>IG Arunachal Pradesh, Independent Member</i>               |

An analysis of the notification discloses that the composition of the Commission does not follow any of the suggested models. The government has, apart from the Chief Minister, Leader of the Opposition, Chief Secretary and Director General of Police (DGP), included the Commissioner of Home and the Inspector General of Police (IGP) as members, tilting the balance firmly to the government's advantage. It has further appointed five members in their personal capacities without any specific criteria as to who and what these people represent. Even though the state is among the very few to constitute a selection panel for choosing the independent members of the State Security Commission – including a retired High Court Judge, retired IAS officer and Chairman of the Arunachal Pradesh Public Service Commission – the board had to choose members from a list provided by the government itself. The fact that these prominent citizens were short-listed for the selection committee by the state government implies that these too are government-held posts, thus bringing into question their ability to act independently of the government.

### Functioning and Impact

The Supreme Court directive states that the recommendations of the commission shall be binding on the state government. However this has been omitted in the notification, breaching its intended powers.

Further, the notification states that the commission shall meet “thrice a year to lay broad policy guidelines so that the state police always act according to the laws of the land and Constitution of the

<sup>20</sup> Government of Arunachal Pradesh, Home Department Notification No. HMB(A)-23/06, dated 27 February 2007.

country”.<sup>21</sup> However, it is disheartening to note that in the four years since its inception in 2007, the Commission has met only twice – 11 June 2007 and then on 14 May 2010. In light of this, it is questionable if it will have any real impact on policing in the state.

As the minutes of the meetings demonstrate, though the Commission has raised important issues and even proposed a strategic policing plan, the fact that its powers are not binding, effectively hinders it from making any long-lasting impact and changes in policing-related matters. The Commission has proposed a draft Strategic Police Plan for Arunachal Pradesh prepared in consultation with the District SSP/ Units in charge of the state. Issues such as illegal timber operation, the role of the police in social transformation, prison conditions and prisoners’ rights, public perceptions of the police, educational qualifications for recruitment, selection of candidates, training for dealing with rape victims – all have been taken up by the Commission in its meetings. However, as a member of the Commission pointed out, the few and short meetings were not enough to discuss the Strategic Plan at length or make any substantial difference. An agenda as broad as the one given to the Commission cannot be met within only two meetings. It needs regular functioning and deliberation.

Despite taking a much broader view of the purpose and functions of the State Security Commission than most other state governments, the Arunachal Security Commission is still an ineffective body as its composition is government-dominated and it has not been empowered with binding recommendations, as envisaged by the Apex Court. This saddles the Commission with a lofty agenda and almost no powers.

## Gujarat

The Bombay Police (Gujarat Amendment) Act, 2007 and a subsequent Home Department Notification have established a State Security Commission in Gujarat. However, the Commission does not comply with the Supreme Court’s directive in terms of its composition, mandate and powers. Besides sending the notification setting up the Commission, no other information was sent by the state in response to our RTI request. The Commission has not held any meeting so far.

## Composition

### Members

- |                       |  |
|-----------------------|--|
| 1. Narendra Modi      | <i>Chairman, Chief Minister</i>                                  |
| 2. Prafulla Patel     | <i>Minister of Home</i>  |
| 3. A. K. Jyoti        | <i>IAS, Chief Secretary</i>                                      |
| 4. Shari Balvantsingh | <i>Additional Secretary, Home</i>                                |
| 5. S.S. Khandvawala   | <i>Ex Officio Secretary, Director General &amp; IGP, Gujarat</i> |

In terms of its composition, the Gujarat Commission does not follow any of the three models prescribed by the Apex Court. Under the Amendment Act, the government has reserved for itself and the police a clear majority of six out of eight seats of the Commission. Subsequently, the gazette

<sup>21</sup> Government of Arunachal Pradesh, Home Department, Notification No. HMB(A)- 23/06, dated 27 February 2007.

notification issued by the government in 2008 abandons any pretence of adhering to the Supreme Court's directives.<sup>22</sup> The notification constitutes a five-member Commission composed *entirely* of members of the government and the state police. What is glaring is the absence of the Leader of the Opposition as well as a retired or sitting High Court Judge on the Commission, completely negating the idea of a bipartisan body overlooking and evaluating police performance.

The gazette notification lays down that "other members" interpreted as independent members will be appointed by the Government of Gujarat after due consideration. This rules out any possibility of adopting a transparent selection procedure for the independent members. Such a government-dominated Commission becomes a mere instrument for the executive to retain absolute control over police affairs and will *facilitate* rather than check government interference in police matters.

It is clear that the Commission constituted will be completely unfit to function as a body designed to shield the police from unwarranted influence by the government. As a result, the police will remain a force that continues to serve the narrow interests of the ruling elite rather than becoming a people-oriented service.

## Functioning and Impact

The Amendment Act lays down an exhaustive list of functions for the Commission. The Commission is mandated to advise the state government on policy guidelines for promoting efficient, effective, responsive and accountable policing; assist the state government in identifying performance indicators to evaluate the functioning of the police; review the performance of the police; suggest the performance of the preventive tasks and service-oriented functions of the police; review and evaluate the organisational performance of the police; suggest policy guidelines for gathering information and statistics related to police work; and suggest ways and means to improve the efficiency, effectiveness, accountability and responsiveness of the police. The government also reserves the right to assign any other functions to the Commission.<sup>23</sup>

The only function lacking is the mandate to ensure that the state government does not exercise unwarranted influence or pressure on the police. Besides that, clearly the Commission holds a wide mandate and if the composition of the Commission was prescribed – which means if the body was bipartisan with independent members on it as well and if there was the political will to implement its mandate, the Commission would probably be a powerful and effective body capable of bringing about the much desired change in police performance, functioning and culture.

Section 32C of the Amendment Act also requires the Commission to produce an annual report of its work and an evaluation of the performance of the police. This report is to be submitted to the state government for appropriate action. The Court's directive unequivocally mandated the Commission to submit its annual report evaluating police performance to the state legislature.

These reports of the commissions in addition to their working are also expected to make notes of disagreements between the political executive and the chief of police, and discuss both views with explanations in cases of any overstepping of jurisdiction and deviations. The report would also give

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<sup>22</sup> Gujarat Home Department Notification No. GG/56/NPC/102007/1141-V, 21 November 2008.

<sup>23</sup> Section 32B, Bombay Police (Gujarat Amendment) Act, 2007.

recommendations for improvements and changes and if placed before the legislature and duly debated would reduce today's patronage system and the police would not be seen as the handmaiden of the powerful, but as an essential service the population could rely on. Unfortunately, this is not the case in the present Commission or for that matter with any commission set up across the country.

According to the information received from the state till date, the Commission has not held a single meeting. Clearly it has been set up to escape the scrutiny of the Court and the Monitoring Committee. As a result, the Commission is rendered redundant, indicating the complete lack of political will to ensure transparency and democratic control over policing in the state. It makes a mockery of the Court order and has rendered the body incapable of having any impact on policy or on the ground.

### Gujarat Reluctant to Make Policing Accountable

At the recent Chief Ministers' conference on internal security the Chief Minister of Gujarat stated that the Supreme Court order in *Prakash Singh v Union of India* would lead to the "creation of new power centres" in the forms of the Security Commission and Police Complaints Authority, which might prove difficult to handle, even by the judiciary. Police administration and law and order were state subjects under the Constitution and the state legislatures were competent to make appropriate laws in this regard.

## Himachal Pradesh

Himachal Pradesh has created a State Police Board (SPB) under the Himachal Police Act, 2007. Despite flaws in its composition, it is the only commission to formulate extensive strategic plans for the police and identify variables for evaluating police performance. The first meeting of the Board was held on 7 June 2007. Minutes of the meeting and copies of the Strategic Plans were also sent along as part of the information sought by us.

### Composition

#### Members

1. Chief Minister
2. Leader of the Opposition
3. Chief Secretary
4. Principle Secretaries, Department of Finance  
Home and Social Justice
5. Director, Forensic Sciences, HP
6. Director, Prosecution, HP
7. *Ex Officio Secretary*, DGP
8. Justice D.P. Sood  
Former Judge, High Court,  
*Independent Member*

|                      |  |
|----------------------|--|
| 9. B.C. Negi         | Former Chief Secretary, HP,<br><i>Independent Member</i> |
| 10. R.R. Varma       | Former DGP<br><i>Independent Member</i>                  |
| 11. Pratibha Chauhan | Press Correspondent<br><i>Independent Member</i>         |
| 12. Saroj Gupta      | Rotary, Inner Wheel<br><i>Independent Member</i>         |

According to the Police Act, the Board is chaired by the Chief Minister. Other members include the Minister in Charge of Home, the Leader of the Opposition, Chief Secretary, Principle Secretary (Home), Principle Secretary (Social Justice & Empowerment), Principle Secretary (Finance), the Director of Prosecution, the Director of Forensic Science, the Director of the State Police Training Academy and three non-official members.<sup>24</sup> The independent members are to be selected by a panel comprising the Lok Ayukta, State Chief Information Commissioner and the Chairman of the State Public Service Commission.<sup>25</sup> The government is to provide a list of four suitable persons along with their biodata to the Panel, which will then make a selection from the short list.

Clearly, the composition of the Board does not adhere to any of the models prescribed by the Court.<sup>26</sup> None of the three models prescribed authorises the Principle Secretaries of Social Justice and Finance, the Director of Prosecution, the Director of Forensic Sciences, or the Director of the State Police Training Academy to be members of the Police Board. Regarding the selection of independent members, the selection panel is to choose names from a list suggested by the state government itself, which is at odds with the judgement which states that “other members should be chosen in a manner that it is able to function independent of government control”. In this situation, it is difficult to imagine that they will exercise independent judgement.

Though the Act provides for three independent members, the government issued a notification creating a twelve-member Board with five independent members. Furthermore, instead of being selected by a Panel as provided for in the Act, these independent members were nominated by the government of the state, completely undermining the transparency in the selection process.<sup>27</sup>

## Functioning and Impact

According to information gathered from RTI applications, the Board has formulated a Five Year Strategic Police Plan, 2007-2011 as well as an annual plan along with monitoring structural improvements in the Himachal Pradesh police since 2005. Issues important to policing such as forensic support to crime investigation as well as introduction of computerisation were also considered in the meeting of the Board. It is important to note here that the Act mandates that the Police Board meet as often as required but at least once in three months.<sup>28</sup> However based on the information provided, the Board has till date held only one meeting.

<sup>24</sup> Section 48, Himachal Pradesh Police Act, 2007.

<sup>25</sup> Section 50, Himachal Pradesh Police Act, 2007.

<sup>26</sup> Composition as per Section 49, Himachal Pradesh Police Act, 2007.

<sup>27</sup> Notification No. Home(A) B(14)69/06, dated 4 June 2007.

<sup>28</sup> Section 48, Himachal Pradesh Police Act, 2007.

While the Board is empowered to frame broad policy guidelines to promote effective and efficient policing, as well as evaluate the organisational performance of the state police, whether these recommendations would be binding on the state government has not been mentioned. The Board's Annual Report is to be submitted to the state government which will then submit an Action Taken Report to the state legislature, giving reasons for non implementation/delay on its part. The Court's order mandated the State Police Board (SPB) to conduct an evaluation of the state police and prepare a report thereon to be placed before the state legislature. The purpose of this is to ensure that the report receives a legislative review in a timely and unadulterated manner. The statute instead, calls for the annual report to be submitted to the state government which in turn will place it before the legislature. This provision goes against the spirit of the Court's directive. Moreover, the recommendations of the Police Board need not be followed if the government decides that it is unfeasible in public interest.<sup>29</sup>

Public interest can be defined loosely to block any recommendation made by the SPB. This will diminish its impact considerably. Despite being one of the more proactive commissions in the country, the Himachal Pradesh Police Board is also rendered toothless and ineffective.

The Security Commission is mandated to identify performance indicators and evaluate the performance of the state police. This is an opportunity to go beyond crime statistics to a more holistic evaluation of police performance. The Himachal Pradesh State Police Board has proposed the following indicators for monitoring police performance:

- i. Sense of security prevailing within the community
- ii. Level of willingness of the people to cooperate with the police
- iii. Honesty and impartiality in investigation
- iv. Extent of lawlessness and
- v. "Service delivery" functions such as treatment of weaker sections, services rendered in cases of natural disasters, etc.

The Board also devised an Annual Policing Performance Quotient (APPQ) which is computed by giving weighted average scores to Community Policing, Policing Efforts and Policing Results.

Such comprehensive indicators to measure police performance will go a long way in making policing more effective. At present, the information suggested by indicators like crime statistics is entirely quantitative in nature, and it leaves many questions about the police unanswered. Information on trends like perceptions of the police, satisfaction with their services, levels of fear, views about official policies must be taken into account as they help in understanding the effectiveness and actual performance of the police. At the same time, a fully transparent promotion and remuneration policy as well as career advancement based on merit will contribute immensely to the efficiency of the police force, positive morale and a level playing field.

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<sup>29</sup> Section 53 (2), Himachal Pradesh Police Act, 2007.

## Kerala

In compliance with the Court's order, the Kerala Police (Amendment) Act, 2007 was passed to create a Security Commission which appeared to be somewhat more functional than other commissions. It has held three meetings till date in January 2008, 15 January 2009 and September 2009. Minutes of the first two meetings have been furnished in response to our RTI request.

### Composition

#### Members

- |                         |  |
|-------------------------|--|
| 1. Kodyeri Balakrishnan | <i>Chairman</i> , Minister for Home            |
| 2. Oommen Chandy        | Leader of the Opposition                       |
| 3. M. Vijayakumar       | Minister for Law, Sports and Youth Affairs     |
| 4. P.J. Thomas          | IAS, Chief Secretary                           |
| 5. K.J. Mathew          | Additional Chief Secretary, Home               |
| 6. M.K. Damodaran       | Senior Advocate, <i>Non-Official Member</i>    |
| 7. K.V. Rajgopalan Nair | Former DGP, Kerala, <i>Non-Official Member</i> |
| 8. Linda Jacob          | Retired IAS, <i>Non-Official Member</i>        |
| 9. Raman Srivastav      | DGP, Kerala <i>Ex Officio Secretary</i>        |

\* Jacob Punnoose replaced Raman Srivastav as DGP in January 2009. Since then he has been part of the State Security Commission and attending its meetings as the *Ex Officio Secretary*

According to the 2007 Amendment Act, the Commission comprises the Minister in charge of Home, the Leader of the Opposition, the Minister in charge of Law, two bureaucrats, three non-official members and the Chief of Police as Ex Officio Secretary. This results in a body heavily dominated by government officials and bureaucrats that will ultimately impede the Court's intention of establishing a healthy relationship between the government and the police.

Two of the three independent members are retired bureaucrats and police officers, all of whom are to be nominated by the Governor. This is against the Court's directive which mandated a transparent process for selection of members by a committee. The Act stipulates that these members shall be persons of eminence in public life with wide knowledge and experience in law and order administration and human rights. Every member shall hold this position for three years and is eligible for re-nomination. The absence of a selection panel or procedure for appointment of non-official members will inevitably result in government appointments and the members will be unable to act independently and impose a check on executive interference in police matters.

### Functioning and Impact

The functions of the Commission are more or less in line with those mandated by the Court.<sup>30</sup> Its impact is however curtailed by the fact that its mandate and powers have been diluted by a clause in

<sup>30</sup> According to Section 17B(1) and (2) of the Kerala Police (Amendment) Act, 2007, the functions of the Commission are to formulate broad policy guidelines for the functioning of the police; to give directions for the performance of preventive tasks and service-oriented functions; periodically evaluate the functions of the police; prepare an annual report on the work of the Commission and submit it to the government; and to fulfill any other duties entrusted to it by the government.

the Kerala Police Act itself that allows the government to issue any direction notwithstanding the directives of the Commission, in situations of emergency.<sup>31</sup> Even though the recommendations of the Commission are binding on the Police Department, the caveat added is that the state government will have the power to “fully or partially reject or modify any recommendation or direction of the Commission”.<sup>32</sup> This makes its work heavily dependant on political will and the nature of the government in place, which is exactly what the Apex Court aims to check. The Commission has to function as an independent body and must not be bound by political shackles.

Since its inception in January, 2008, the Commission has met only thrice in as many years – 23 January 2008, 15 January 2009 and 8 September 2009. The first meeting saw Raman Srivastav present as DGP, Kerala while the other two had Jacob Punnoose, the present DGP of the state. The Commission has a crucial mandate to perform. Framing policing policy and developing performance indicators is by no means an easy task. It would be imprudent to imagine that such a large mandate could be discussed and debated at meetings held “*annually*”. Even the best intentioned bodies are likely to fail if they seldom meet. Because of the paucity of meetings, the impact of the Commission thus will be extremely negligible as most of the time is taken up in administrative decisions and there is very little to show in terms of initiatives towards broad policy change.

It was stated in the meetings that the report of the Commission is to be presented to the legislative assembly. If the recommendations are accepted, the government shall communicate the decision to the secretaries of the relevant departments. The DGP is to compile an “Action Taken Report”, which is to be presented before the Commission. The DGP as Ex Officio Secretary plays an important role in the Kerala Commission and is allowed two senior staff members to assist with administrative tasks, who are also permitted to attend the meetings of the Commission.

In terms of performance and functioning, the Kerala Commission has performed far better than the ones set up in other states and is in line with its mandate, though by no means fully compliant with the Court’s vision for the body. An analysis of the minutes of the meetings demonstrates that important issues such as extending the community policing initiative to other areas, examining the police population ratio in Kerala, separation of law and order at the police station level and non-professional duties of the police and how they could be delegated to others, have been taken up by the Commission. The Commission has in turn directed the DGP to form a committee to prepare a preliminary report on these issues which it would then discuss in detail. However, paucity of meetings and their short durations considerably limit the scope of work the Commission can do.

Moreover, regarding these initiatives, the Commission has directed the DGP to send a proposal to the state government. For instance, the minutes demonstrate that the Commission raised the important issue of separating law and order from investigation, the lack of scientific investigation by Kerala Police and the rampant use of third degree and torture as a method of investigation. It suggested that there should be a Sub-Divisional Investigation Team comprising the best officers and a legal consultant employed to aid the police. The Commission also suggested imparting training to officers at various levels, through workshops, regarding the Domestic Violence Act and dealing with rape victims. Thirdly, the Commission recommended extending the Community Policing Programme to twenty additional police stations during this year which are to be identified by the DGP.

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<sup>31</sup> Section 17B(4) Kerala Police Act, 2011.

<sup>32</sup> Section 17B(5) Kerala Police (Amendment) Act, 2007.

The Commission sends its recommendations to the government by means of “proposals” through the DGP – which may be accepted or rejected. It is clear looking at the decisions and recommendations made by the Commission, that these “proposals” are made to the state government, instead of “directions”. The impact of the Commission is thus severely reduced as none of its decisions are binding on the government. While the Commission has without doubt raised important issues related to policing in the state, these must not be left at the mercy of political will.

Additionally, the working of the Commission in Kerala demonstrates a rather broad interpretation of the Supreme Court’s directive to give broad policy guidelines and identify indicators for assessing the performance of the police. The DGP was, according to the minutes of the Commission, given the authority to appoint an in-house committee to devise process-oriented parameters for performance appraisal regarding crime, conviction, police activity, public satisfaction, traffic control, modernisation, training, human rights protection, response time, police preparedness, police public interface, Scheduled Castes/ Scheduled Tribes atrocities, gender equity, exceptional good work by police, etc. To identify indicators is too important and lengthy a matter and should be deliberated upon by all members of the Commission or the Commission as a whole.

Moreover, the meetings are largely used as a showcase for the provisions introduced by the Home Ministry for police-related matters, rather than discussing existing problems and assessing the performance of the state police; for instance, initiatives of the Kerala Police to be more people-friendly, securing the coastline for national security, increasing marine capability of coastal police, creating smart ID cards for fishermen, Special Investigation Team to combat terrorism, etc. While these small initiatives are undoubtedly important and will contribute to better policing in the state, the Commission’s mandate is to induce far-reaching and systemic change in the police-executive relationship and the manner in which police performance is assessed. If the Commission is to make a far-reaching impact and live up to the function assigned to it by the Supreme Court, it has to take a broad view of its functions and act in a manner rigorously independent from the government.

It is essential to note here that the Commission has taken some very important and indeed useful and timely decisions to improve the performance of the police in the state. However, the scope of these proposals being implemented and leading to change in policing is limited by the fact that its powers are only recommendatory. The nature of governance in India is such that there are tremendous delays in implementation of schemes and proposals, owing to bureaucratic red tape, financial constraints, and at times lack of political will to initiate reform. In this scenario it becomes very important to give a body like the Commission effective powers and teeth so that it can facilitate change in governance and not be bound by the usual constraints that plague every such body in India.

### **Security Commission to Increase the Number of Sub-Inspectors**

In February 2011, the Kerala DGP Jacob Punnoose recommended to the State Security Commission that the number of Sub-Inspectors (SI) and Assistant Sub-Inspectors (ASI) in the state be increased so that there is one SI and one ASI for each case. At present the number of SIs in Kerala is 1600 only. Each year around 1,50,000 cases are registered which means increasing the number of SIs to almost 6000, to ensure efficient and speedy investigation.<sup>33</sup>

<sup>33</sup> Cited in *Mangalam*, 7 February 2011.

## The New Commission

In January 2011 after much public debate and consultation, the Kerala Police Act, 2011 was passed in the legislature. According to the Act, a slight change has been introduced in the composition of the Commission. The Act provides for a retired High Court Judge nominated by the Chief Justice, on the Commission. However, since it retains the Minister for Law as well as two bureaucrats, the composition of the Commission still remains largely flawed. The new Act also does not include any transparent method for selecting the independent members of the Commission, choosing to retain the previous provision whereby independent members will be nominated by the governor. The government's eagerness to maintain a stranglehold over policing is greatly evident in the composition of the Commission though admittedly, not as much in its functioning, as analysed above.

## Maharashtra

The state had initially opposed the creation of the State Security Commission and filed a Review Petition against the directive.<sup>34</sup> The petition was rejected by the Supreme Court on 3 August 2007. Maharashtra then passed a Government Resolution on 25 July 2008 creating the Security Commission. In April 2010, the state government, after due reconsideration of the Court's directives, struck down its earlier resolution and passed another one.<sup>35</sup> Just one day prior to the Supreme Court's Monitoring Committee's visit to the state the government passed the resolution constituting the Commission, including five non-official members and also finally announced the names of the Security Commission members. Four years on, the Maharashtra government has gone only as far as announcing the names. The Commission is yet to begin functioning.

## Composition

### Members

1. Minister for Home Affairs, *Chairman*
2. Leader of the Opposition
3. Chief Secretary
4. Additional Chief Secretary,  
Home Department
5. DGP, *Ex Officio Secretary*
6. Dr P.S. Pasricha
7. Pratima Umarji
8. Ashutosh Kumbhkoni
9. Farida Lambe  
Vice Principle, College of Social Work
10. Vijaya Kalantri  
*Director, Indian Institute of Technology, Powai, Mumbai is a special invitee to the Commission's meetings.*

<sup>34</sup> Para 4, Application for Direction, 20 April 2007, Maharashtra.

<sup>35</sup> Government Resolution No. NPC 1008/2/CR-2/POL 3 dated 14 April 2010.

The composition of the Commission does not follow any of the three models suggested by the Apex Court. Though it does have both the Home Minister and the Leader of the Opposition it also includes the additional Chief Secretary, which is clearly against the Court's orders making it a government-steered body, undermining the independent checks and balances intended. According to the government resolution there are two independent members on the Commission. However in the notification, names of five independent members have been mentioned. It appears that these members have been included at the expense of other members such as a sitting or retired judge and/or members of the Lok Ayukta. Moreover, the independent members are to be "nominated" by the state government, which considerably reduces their chances of acting as impartial members of the Commission. The lack of a judicial member chosen by the Chief Justice and the lack of any transparency on how non-official members were chosen have already created controversy. It is inexplicable why the Director of IIT Powai is only a special invitee. It is even more disconcerting that a person under the scanner in various inquiries is on the policing board.

## Functioning and Impact

The functions of the Commission according to the Resolution are in line with the Court's directive.<sup>36</sup> However, the Commission has merely advisory powers when it comes to laying policy guidelines and further can only "recommend steps" for the performance of preventive tasks and service-oriented functions instead of "giving directions" as stated by the Apex Court.

The Maharashtra government refused to divulge the minutes of meetings held by the State Security Commission invoking Section 8(1)(e)(i) of the RTI Act. Section 8 (1)(e) exempts information about a person in his fiduciary relationship from disclosure under the RTI Act. However to the best of our knowledge the minutes of meetings held by the State Security Commission are not held by the Office of the Director General of Police in a fiduciary capacity. The State Security Commission is an executive body established in pursuance of the Court's orders. Therefore it performs executive functions such as assisting the government on formulating policy and performance evaluation guidelines for the state police force. The meetings of the State Security Commission are held in order to take action aimed at fulfilling these objectives. The State Security Commission does not stand in a fiduciary relationship with either the Office of the Director General of Police or the Government of Maharashtra in relation to the minutes of its meetings. Fiduciary relationships generally exist between a lawyer and client, doctor and patient, directors and company. From this response we received, it can only be concluded that the state government is evading responsibility or does not understand the true nature of the body proposed by the Supreme Court. Maharashtra, particularly Mumbai, has seen some of the worst terror attacks recently. Arbitrariness, favouritism and caprice have bedeviled Mumbai police in recent times and have been the cause of its deteriorating performance.

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<sup>36</sup> The functions of the Commission include: (i) to lay down broad policies; (ii) give directions for the performance of preventive tasks of the police; (iii) evaluate police performance; and (iv) prepare a report to be placed in the state legislature.

# Meghalaya

Meghalaya constituted a State Security Commission via Government Notification dated 18 March 2009.<sup>37</sup> Till date the Commission has not held a single meeting.

## Composition

### Members

- |                               |                             |
|-------------------------------|-----------------------------|
| 1. Chairman, Home Minister    |                             |
| 2. Leader of the Opposition   |                             |
| 3. Chief Secretary            |                             |
| 4. Director General of Police | <i>Ex Officio Secretary</i> |
| 5. H.W.T. Syiem               | <i>Member</i>               |
| 6. I.T. Longkumer             | <i>Member</i>               |
| 7. P.C. Chakraborty           | <i>Member</i>               |
| 8. T. Blah                    | <i>Member</i>               |
| 9. T. Phanbuh                 | <i>Member</i>               |

According to the notification, the Commission established by Meghalaya appears to be based on the model suggested by the Ribeiro Committee. It is chaired by the Home Minister and has as members the Leader of the Opposition as well as the Director General of Police as the Ex Officio Secretary. However, the notification names five other persons as members without stating their backgrounds or qualifications and without specifying the criterion for selection.

## Functioning and Impact

The notification states that the Commission's task shall be to lay down broad policy guidelines for the functioning of the state police, give directions for the performance of preventive task and service-oriented functions of the police, evaluate their performance of the state police, and finally prepare a report to be placed before the state legislature. This mandate of the Commission is expansive and in line with the Supreme Court's guidelines. However since its inception in March 2009, the Commission has not met even once, which defeats its purpose.

There is no mention in the notification on whether the Commission possesses binding powers or not. This violates the Supreme Court directive that is explicit in declaring that the recommendations of the Security Commission should be binding on the state government.

Though Meghalaya has established a State Security Commission, its flawed and lopsided composition ensures that the institution will be unable to serve the purpose envisaged for it by the Supreme Court. Further, its inability to make binding recommendations and most importantly the fact that the Commission had not met even once highlights its ineffectiveness.

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<sup>37</sup> Notification No. HPL 180/94/Pt/2.

## Mizoram

The government set up a State Security Commission through a Government Notification in November 2006.<sup>38</sup> Since its formation, the Commission has met only once on 6 November 2009. The minutes of this meeting were provided in response to our RTI request.

### Composition

According to the information received under the RTI Act the present Commission is an eight-member body comprising the Home Minister as the Chairperson, two MLAs and two serving bureaucrats including the Chief Secretary as members. The DGP of the state serves as Ex Officio secretary of the Commission. An allowance of Rs. 350 per sitting is paid to the non-official members of the State Security Commission.<sup>39</sup> The Commission has no retired judges or the Leader of the Opposition, making it purely government-dominated, breaching the intended balance between the executive and independent members. It also removes the possibility of the body acting as a buffer between the police and the political executive as envisaged by the Supreme Court.

#### Members

|                              |  |
|------------------------------|--|
| 1. Pu R. Lalzirliana         | Chairman, Home Minister                    |
| 2. Lt. Col. (Rtd) Z.S. Zuala | MLA  |
| 3. C. Ramhluna               | MLA, <i>Independent Member</i>             |
| 4. Van Hela Pachuau          | IAS  |
| 5. Lalmalsawma               | IAS, <i>Independent Member</i>             |
| 6. F. Lalremsiama            | IPS (Retired), <i>Independent Member</i>   |
| 7. Lalngheta Sailo           | IPS (Retired)                              |
| 8. Lalrokhuma Pachuau, IPS   | <i>Ex Officio Secretary</i> , DGP, Mizoram |

Though there is no provision for independent members in the Commission according to the notification, the information received states that the *independent members* of the Commission comprise an MLA, the Chief Secretary of the Home Department and a retired IPS officer.

Including the Chief Secretary of a government department to act as an “independent member” is highly questionable as well as intriguing. The Chief Secretary is a serving government employee and is by no means able to act independent of government controls. According to the notification, there is no empanelment to select these members; they are simply nominated by the government. This non-transparent process immediately casts a shadow over the credibility of the entire Commission. No members from civil society are on the Commission. The purpose of including non-official and independent members on the Commission is to ensure that they act impartially without being influenced by the political leadership. In fact, the Sorabjee Committee clearly states that no serving government employee shall be included as an independent member,<sup>40</sup> in order to assure the

<sup>38</sup> Notification Number C18018/12/90-HMP (SC) No. 288 published in the Mizoram Gazette.

<sup>39</sup> Notification No. C18018/12/90-HMP (SC)/ Vol III dated 6 May 2010.

<sup>40</sup> Model Police Act, 2006, Sec 42 (3).

independence and impartiality of the Commission. Including a serving IAS officer as an “independent” member tilts the balance of the Commission heavily in favour of the government.

## Functioning and Impact

According to the notification, the Commission’s mandate is to lay down broad policy guidelines for the functioning of the state police and assist the government in identifying performance indicators. This is in tune with the Court’s ruling which required the body to prepare long-term strategic plans for policing, define methods for evaluating police performance and actually undertake this evaluation.

The Commission has met only once since it was set up, on 6 November 2009. Besides the selection of non-official members by the Chairman and deciding on their remunerations, none of the issues deliberated at the meeting fall within the Commission’s mandate as outlined by the Supreme Court. The minutes indicate that issues such as the establishment of a Police Complaints Authority and the separation of law and order as required by the Supreme Court judgement in the Prakash Singh case were discussed by the Commission. Setting up of complaints authorities as well as separation of law and order from investigation, though extremely important requirements, do not really fall within the mandate of the Security Commission. There is no mention of formulating long-term plans for policing or evaluating police performance in the state. The introduction of the City Police Mobile Squad to curb crime in Aizwal City was the only matter discussed at this meeting that directly related to making policing more effective. The Commission has not met since.

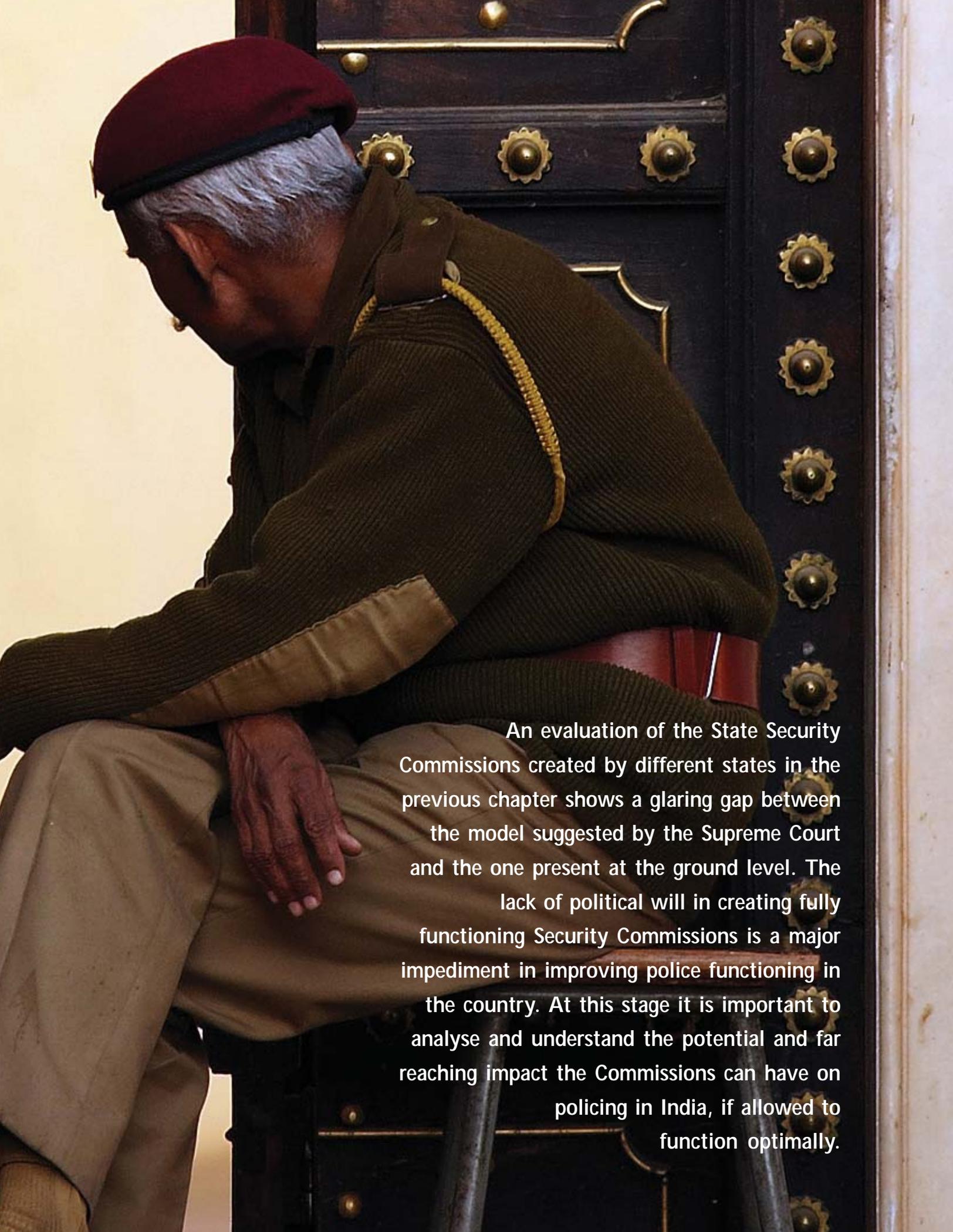
The notification is silent on whether the recommendations of the Commission are binding or not as well on its reporting obligations. It is also clear that the Commission itself takes a very limited view of its mandate and powers. The real nature and function of the body as envisioned by the Apex Court is distorted on the ground. The Commission is barely functioning, it has had only one meeting and its composition is heavily flawed. Taken together the Commission is one more weak body added to the existing bodies that have been set up and failed to perform over the years.

In conclusion, it is easy to see that a fully functioning State Security Commission exists nowhere in the country. The bodies created by the states do not conform in any way to the institution envisioned by the Supreme Court. As a result, the impact of these Commissions on policing is, and will continue to remain, negligible. The Commissions need to act in a rigorously independent manner so that they are not reduced to yet another redundant government body unable to live up to its mandate or make any real impact on the ground.

Chapter 4

# The Need for State Security Commissions





An evaluation of the State Security Commissions created by different states in the previous chapter shows a glaring gap between the model suggested by the Supreme Court and the one present at the ground level. The lack of political will in creating fully functioning Security Commissions is a major impediment in improving police functioning in the country. At this stage it is important to analyse and understand the potential and far reaching impact the Commissions can have on policing in India, if allowed to function optimally.

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It is widely understood that the major problem that plagues policing in India is illegitimate political interference in every aspect of police work. This is aggravated by the absence of mechanisms to monitor and evaluate police performance. Together, these problems have created an inefficient police force that is incompatible with a modern democracy. These problems can be addressed to a large extent by the creation of functional State Security Commissions. They are mandated to act as impartial, buffer bodies between the political executive and police as well as to identify indicators and evaluate police performance in every state. With democracy taking firm roots, large-scale urbanisation and industrialisation, terrorism and the problems of a rapidly deteriorating security scenario, the need for Security Commissions is urgent and paramount.

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## The Endemic Problem of Political Interference

By its very nature, policing is a highly controversial and important aspect of governance, and its relation to politics is both close and complex. There is room for ambiguity in the principle that democratic governments (and individual politicians) cannot use their authority over the police to promote specific political interests or worse, for corrupt or illegitimate ends. However, in the absence of strong checks and balances, the pull of introducing private interests and/or political agendas into the daily operations of the police can dominate, resulting in illegitimate interference in policing often accompanied with disastrous consequences. There are countless manifestations of illegitimate interference in policing, and very broadly, these include: manipulating police recruitment, promotion and dismissal practices to suit political agendas, bringing political elements in crime control and investigation, or using the strong arm of the police to endanger political stability in the worst case.

The distinction between appropriate political direction from a government to the police, and inappropriate political interference in operational policing matters is an immensely significant one, both in terms of the way it is expressed in law and policy, as well as in practice. One important step in establishing truly appropriate political direction to the police is to define the parameters of the government's role in relation to the police. In the archaic police legislation of 1861, the government's legitimate role is not clearly articulated. A clear delineation of roles, responsibilities and relationships

between the police and the executive helps to pinpoint accountability. It also minimises the possibility of unfettered interference seeping into policing matters and influencing its functioning. Importantly, executive control must be kept out of police operational matters to protect the police's operational autonomy.

While this division is stressed through legislation in most developed countries, in India this important function has been assigned to the State Security Commission. The Supreme Court in its judgement had stressed the need for a buffer body between the police and political executive which will accord functional autonomy to the police even as they are supervised by the political executive. If the Security Commission is created thus, the relationship between the police and politicians will lose its present characteristic of unfettered discretion and illegitimate interference and the Commission can be a "watchdog body" to ensure that the political executive "does not exercise unwarranted influence or pressure on the state police".

All three models of the Security Commission prescribed by the Apex Court include the Chief Minister or Home Minister as well as the Leader of the Opposition in its composition. This ensures a bipartisan body which will lay down police policy and be a means by which the performance of the police as an entity is kept continuously under review with the aim of assuring that year on year the police improves its performance for ensuring the safety of the citizen's life, property and liberty. The bipartisan design is intended to ensure that the commission cannot be captured by any party.

Besides the ruling and opposition parties, the commission also comprises a sitting or retired High Court Judge nominated by the Chief Justice of the High Court along with independent members or non-political citizens of merit and integrity. Thus by virtue of its composition alone, the commission poses a powerful check on the ability of the government of the day to interfere in policing matters. The Security Commission as a body would represent a wide constituency; not just the political leaders but also ordinary citizens. It will thus be an impartial body that will approach matters of policing in an unbiased manner.

As a result, a buffer body like the Security Commission will ensure that the police are able to act independent of executive will in matters of law enforcement and administration, and who to investigate, search, question, detain, arrest and prosecute in a particular case. Operational autonomy is paramount, and if denied can be a serious hindrance to effective policing. Thus if the hands of the police are not tied by the politicians, policing will become more effective and impartial.

Most importantly, the commission will enforce some form of civilian oversight and control over the police. All the three models suggest inclusion of independent and non-official members.<sup>41</sup> Non-political members include persons from the fields of academia, law, public administration, media and NGOs. This will go a long way in changing the nature of policing in India. A recurring concern regarding modern police forces has been that these institutions "empowered and equipped to employ coercive force, may be deployed by the governments for the purpose of oppression".<sup>42</sup> This has been evident in India in incidents of communal violence and riots, and cases of police

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<sup>41</sup> Two independent members in the NHRC model, three in the Ribeiro Model and five in the Soli Sorabjee or PADC model.

<sup>42</sup> Stenning, P., "Ingredients for a Good Police/Executive Relationship", Paper presented at the Roundtable Workshop on Police Reforms in South Asia, 23-24 March 2007.

violence against tribes resisting eviction and resettlement where police approach has been selective. As the second National Police Commission Report notes, the police has often been used to punish personal enemies and political opponents, not only by politicians but also by wealthy, influential, upper caste/class individuals. Police performance under such compulsions has consequently fallen short of duty on several occasions. Some form of civilian control over police can be an effective check over such abuse of power.

Given its mandate and powers, the State Security Commission has the potential to create far-reaching changes in police functioning in India, leading to the transformation of the police into an impartial and non-partisan service.

## Absence of Indicators to Monitor Performance

The quest for better policing is a harbinger of better governance, particularly for ordinary citizens who identify the quality of governance in large measure with the quality of policing in local communities. Methodological setting of police standards, thoughtful articulation of strategies and scientific evaluation of the police's performance against these can only lead to greater public satisfaction with the government of the day.

Unfortunately, as of 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 the cases "solved". This method has so many blemishes that it is difficult to report all of them. Suffice to say that crime statistics are seriously skewed from reality due to under-registration. The practice of refusing to register crimes is entirely against the law and amounts to a denial of access to justice, a fundamental right of every person living in this country. Knowledge of police refusal has several more over-arching 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 of crimes to the extent that it has strongly emboldened criminals even as it has demoralised a force which is short-handed, over-worked, often underpaid and frequently involved in unjustifiably dangerous work.

The increased violence of the times, coupled with a greater demand for better safety and security along with the cries of dissatisfaction about police performance necessitate examining ways and means by which policing can be incentivised to be more purposive and 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 resources more productively, assuring better manpower deployment, and measuring group and individual performance more fairly.

## Performance Evaluation: The British Experience

England has the most comprehensive performance measurement programme of any country. The Home Office instituted the Policing Performance Assessment Framework (PPAF) in 2004 in an attempt to bring the quality of police performance measurements up to the levels developed for other public services. The measures were designed to monitor progress toward achieving key priorities set forth in the National Policing Plan.

The set of indicators announced in 2004 included thirty-five measures for monitoring the performance of regional police forces. The indicators were highly specific, with detailed instructions on how each indicator is to be calculated, to yield numerical measures that can be used to make mathematical comparisons.

Thirty-five statutory performance measures are divided into seven dimensions of policing, including: reducing crime, investigating crime, promoting safety, providing assistance, citizen focus, resource use and local policing.

Two assessments are made for each of the seven performance areas using a combination of performance data and professional judgement. One assessment compares the performance of a force in one year to that achieved by the same force in the previous year. Each force receives a grade of “improved”, “stable” or “deteriorated”. A second assessment examines the performance delivered by a force relative to their peers. Forces receive a rating of excellent, “good”, “fair” or “poor”, depending on how their performance stacks up against their peers.

Originally, the Home Office performance assessment website allowed citizens to view a national overview of all force assessments, and to see at a glance the areas where their local force was doing well and where it needed improvement, relative to other forces that are similarly situated. However, after police administrators argued that idiosyncrasies of forces made it misleading to make direct comparisons, the graphic was eliminated.

Home Office officials have recognised the need to monitor the process of generating the indicators to ensure accuracy and reduce likelihood of bias. While local police forces are responsible for providing much of the data used to construct the indicator, an extensive quality assurance programme helps to ensure their integrity. Formal audits are conducted to determine whether aggregate statistics provided by police forces are consistent with source data records. The emphasis on ensuring consistent, reliable data is another way in which the process developed in England is unique.

Whereas PPAF provides a broad, holistic framework for the evaluation of policing in England and Wales, the Secretary of State also announces specific annual indicators designed to measure the performance of police forces quantitatively. He/she does this through the promulgation of an annual Best Value Performance Indicators Order. The order in force for 2008-09 prioritises thirteen areas including victim satisfaction, ensuring that the police force is representative of the community it serves; reducing drug-related and violent crimes; and

reducing deaths and serious injuries from road traffic collisions. In 2008, the Home Office announced that it was replacing the Police Performance Assessment Framework with a new system for evaluating police performance. This is known as “Assessments of Policing & Community Safety” (APACS). The new framework aims to harmonise existing arrangements and strengthen accountability to citizens.

The new impetus for police reforms by the Prakash Singh judgement signals the need to go beyond the present one-dimensional, quantitative, crime-based assessments of policing. The Security Commissions are mandated to identify performance indicators and evaluate the performance of the police service in the state as a whole as well as district-wise against the annual plan, performance indicators identified and the constraints and resources available with the police. This is an opportunity to go beyond crime statistics to a more holistic evaluation of police performance.

## Formulating Broad Policy Outline and Laying Down Policing Plans

Governments have a legitimate and very central role to play in setting the strategic direction and broad policy priorities for the police, on behalf of the people they represent. In the framework of democratic policing, the prime responsibility of the government remains confined to providing a well-resourced, well-led, well-trained police organisation, and to impose suitable checks on the powers of the police to ensure that they discharge functions in accordance with law, and are held accountable when they act outside or above it.

The Draft Model Police Bill also mandates the Security Commission to draw up a Strategic Police Plan for a five year period, identifying key priorities and objectives of policing to be achieved, as well as setting out an action plan for implementation. This will help determine policing objectives, direct police authorities to establish performance targets, and determine cash grants for police authorities. These strategic plans as well as annual plans are to be prepared after receiving inputs on the policing needs of each district from the District Superintendent of Police who shall formulate them in consultation with the community. These plans are to be submitted in the state legislature as well as made available in the public domain for wider consultations with the community and civil society.

The importance of establishing a policy directing role for Security Commissions is crucial to set objective criteria and policy priorities for policing, which above all reflect the safety needs and crime concerns of the public. Setting criteria and establishing clear strategic direction, through policing plans for instance, is integral for government to effectively monitor police performance, be attuned to the most pressing crime concerns, build local partnerships, and measure police use of public funds. To prioritise in particular, public safety and crime areas for special police attention may help the police itself to develop specialist expertise in responding to particular types of crimes. Most importantly, any measures to direct government’s role in relation to the police must be put in place with a view to preventing undue interventions into any aspect of policing, and guard against the creation of covert arrangements or mutual dependencies that can shut out public scrutiny.

In order to enhance democratic oversight, it is important to include members from civil society, and not just politicians, while evolving a policy and goals for policing. It is here that the commission will play an important role in increasing democratic oversight of the police. The basic role of the police is to serve the community and this requires some level of consultation with the communities at the local level as well as representatives of civil society. Without such consultations, policing will be unresponsive to the needs of the community. By including independent and non-official members, the commission will ensure that the police are accountable not only to the executive, but also the community and people at large.

**Ideally the creation of long-term policing policy is a moment for police, government and community to communicate. The plan should evolve from police station level consultations with the public, input from the constabulary and move upwards, to be then refined into a living document via a transparent process.**

If implemented, the Security Commission can thus bring far-reaching changes within the police organisation. Not only would it have the ability to make the force more efficient but would also have the power to check the abuse of police authority. As an external oversight body, it is mandated to ensure that the police function efficiently and within the broader limits of democratic accountability. Within the broader debate on police reforms taking place in the country, the State Security Commission is a step in the right direction.

## Chapter 5

# Conclusion and Recommendations

The clear distinction between the political executive and police administration that the government recognises is necessary to create a demarcation in the functions, powers and responsibilities between the political executive and the police chief requires new language and new mechanisms to effectuate it. The demarcation must be guided by the fact that the government is primarily responsible for the safety and security of the population by providing society with effective unbiased and lawful policing. Policing in a democracy requires that the police do not enforce the law on behalf of the rulers but is a public service charged with upholding the law on behalf of fellow citizens so as to create an atmosphere of security where all can realise their rights.





# Remedying the Lack of Political Will to Introduce Police Reforms

The clear distinction between the political executive and police administration that the government recognises is necessary to create a demarcation in the functions, powers and responsibilities between the political executive and the police chief requires new language and new mechanisms to effectuate it. The demarcation must be guided by the fact that the government is primarily responsible for the safety and security of the population by providing society with effective unbiased and lawful policing. Policing in a democracy requires that the police do not enforce the law on behalf of the rulers but is a public service charged with upholding the law on behalf of fellow citizens so as to create an atmosphere of security where all can realise their rights.

Clear and unequivocal detailing of spheres of competence has several advantages. It ensures that: the police are always accountable to people's representatives; there is no room for unfettered discretions to be at play; and the chain of command within policing is intact while responsibility is well known and fixed.

We have seen that both the union and state governments have shown resistance to the idea of police reform, particularly when it aims to insulate the police forces from illegitimate control of politicians and bureaucrats and establish civic oversight structures to make them accountable for their misconduct and poor performance. The reason no government is willing to let its control over the police force be weakened is that they have developed a vested interest in retaining control and superintendence over the police organisation.

The shocking lack of political will in allowing the Security Commissions to function freely, if at all, demonstrates all that is wrong with the working of democratic institutions in India and testifies to the benefits derived by the political leaders from excessive control over the police. The opportunity to initiate far-reaching reform provided by the Supreme Court's judgement is being squandered. As noted before, in most states the Security Commissions exist only on paper. Where it has been created the composition is flawed, and the mandate and powers are severely limited. Most commissions have not met even once and an analysis and minutes of meetings demonstrates clearly that members themselves take a very limited view of the role and powers of the commissions. Almost four years after the judgement, no state has fully complied with the Supreme Court directives and properly functioning State Security Commissions are nowhere to be seen.

In no state despite almost two years of being created are the commissions functional. Most have not had any meetings, the composition is seriously compromised and their powers are not binding. Across the board, members of the commissions are almost exclusively government servants; in most cases the independent members are retired bureaucrats or police officers and in extreme cases ministers serving in the government form part of the group of independent members. This is in blatant defiance of the Court's requirement of an independent body, and a serious impediment to the development of truly empowered State Security Commissions. The mandate and powers of the commissions are not clear, effectively reducing them to merely advisory bodies, adding to the already long list of such institutions already existing in this country.

Additionally, the record of implementation is virtually nil; and the quality of implementation is so poor that the commissions are struggling to live up to their mandates, much less deliver on them.

State governments have a responsibility to realise the Court's demand for truly independent bodies with demonstrable impact. In the absence of any real political will or corrective action, these bodies will become accountability and oversight mechanisms only in name, with the continuation of political meddling in policing duties and of the police functioning without any accountability.

The Court's orders of setting up a body that would lay down the broad policies and give directions relating to the preventive and service-oriented functions of the police needs to be better understood. State governments should realise that these steps will in fact go a long way in addressing the security concerns of the state, provide for better safety and security of the people as well as ensure that citizens have a police that sees itself as part of the community and not predominantly as the coercive arm of the state that has little connection with the people. This will not be possible with states dragging their feet, creating powerless bodies and trying to circumvent the Court's directives in every possible way.

## Recommendations

In view of the urgency and necessity of setting up fully functioning State Security Commissions, CHRI puts forth the following recommendations:

### Membership

Across all states the membership of the commission is heavily compromised. The three models suggested by the Court in terms of membership have not been followed. There is an overwhelming presence of government secretaries, ministers and bureaucrats as official members, essentially killing the spirit behind having a bipartisan body to oversee policing. The presence of serving government officials is often at the expense of retired judges, independent and non-official members including prominent members of civil society, which entirely defeats the purpose of these bodies.

**CHRI recommends that state governments adopt any of the three models for the Security Commissions as suggested by the Court. As a bare minimum, CHRI suggests that every Security Commission includes a member of the judiciary, and efforts are made to specifically ensure that the commissions are not dominated by bureaucrats but are open and inclusive of other expertise and interests.**

As seen in all states the independent members have not been selected by any transparent, credible process. The membership lacks the diversity that is fundamental to the success of such a body. In almost all states independent members have been handpicked by the government ensuring that they will always be beholden to the government.

**CHRI recommends that the independent members be selected from a range of different fields - civil society, lawyers, academics, rights activist, trade unions, voluntary organisations and community groups. The commissions should comprise a group of individuals representative of the community as a whole, with the expertise both to set policing priorities and to probe and scrutinise different areas of police performance, from management of resources to the safeguarding of human rights.**

**CHRI also recommends that the “independent” members are appointed after a credible process of selection and by a Selection Panel as suggested by the Court as well as in the Model Police Act. Such a process alone will form the basis for the legitimacy of the commission.**

The premier value of a Security Commission lies in its ability to be an impartial body that will ensure that policing functions are performed in non-partisan ways away from the pulls and pressures of the government of the day. The commission must be designed not only so that it is unable to be captured by any single party or by the regime of the day but also in ways that are designed to balance powerful interests. Membership that includes varied expertise, professional skills, life experiences and citizens’ interests can enrich its functioning, assure its legitimacy and its acceptance by the force.

## **Mandate**

The State Security Commission must have the mandate to set policing standards, conduct scientific evaluation of police performance and articulate strategies. A sizeable majority of states have afforded these mandates to the Security Commissions but added a clause to also perform any other task as required by the state government. The present mandate of the commission is in itself wide enough and to add a clause that requires it to do more would be unrealistic.

In addition, despite the existing mandate, none of the commissions have come up with anything concrete in terms of policing plans, policies or evaluation frameworks. In fact with the present composition of all the commissions they have no expertise to devise such structures and frameworks and thus in their few years of existence have failed miserably in their mandates.

**CHRI recommends that commissions gear up to fulfilling their mandates. Long-term and strategic policing plans are absolutely essential to improve the quality of policing in India and commissions should come up with these as required. Their powers should be used in a concerted action of rigorous, periodic and consistent monitoring of police functioning in their states. In terms of evaluation indicators as well, they should aim at comprehensive and holistic evaluation of police performance, above and beyond crime statistics.**

## **Reporting Obligations**

The Supreme Court in its directive clearly laid down that one of the functions of the commission would be to prepare an annual report of its working which would be placed before the legislature. As noticed, several states have chosen to remain silent on this requirement. This would mean that commissions are not statutorily obligated to report on their functioning. This happens too frequently and makes a complete nonsense of oversight bodies.

**CHRI recommends that to be effective, the commissions must prepare annual reports of their work that go to parliament in time for the budget session. These reports must be debated to see what has been achieved against earlier policies. The assembly also has an oversight function. With a clear policing policy to judge police performance, their scrutiny and questions must be aimed at improving policing through critical, thoughtful suggestions.**

CHRI also recommends that these reports are always made public. A singular safeguard against the ills that may beset the commissions is public vigilance and monitoring. Access to all their records is available under the Right to Information and the people of every state need to monitor the new body, engaging with it and making it their own.

## Powers to Make Binding Recommendations

Experience shows that even independent oversight bodies with sufficient resources can prove ineffective if governments routinely ignore their recommendations. If these bodies are to have only recommendatory powers then they will, like other existing bodies, be reduced to toothless institutions causing public hopes of a more democratic and representative policing to quickly dissipate. Despite the clear recommendation of the Court that the commissions be vested with binding powers, most states have reduced them to merely advisory bodies.

**CHRI recommends that all State Security Commissions be given the power to make binding recommendations. This is vitally important in the present scenario where lack of political will is proving to be a major impediment in initiating change in police functioning. Without the powers to make binding recommendations, it can be taken for granted that any proposals to introduce far-reaching changes in police functioning in the states by the commissions will remain a distant dream.**

## Frequency of Meetings

Most states save a couple that have set up Security Commissions have not indicated either in their statutes or government orders how often the commission is required to convene. Unfortunately even where this has been specified, as in the case of Himachal Pradesh, the commission has not lived up to the statutory requirement.

As noted in the previous chapters most commissions have met at best annually and in some cases only once in their two or three years of functioning. Bodies with such important mandates set up to cure an ill, if seldom ever convened, will become sick liabilities themselves, unaccountable and compromising, merely for the perks of office and government largesse

**CHRI recommends that statutory provisions setting up the commissions specify the frequency of meetings. Members of the commissions both official and independent must then be responsible to their mandates, realise and acknowledge the important role they are seized with and meet as often as required to fulfill their responsibilities. Their mandates are not something that can be delivered overnight, but a beginning has to be made.**

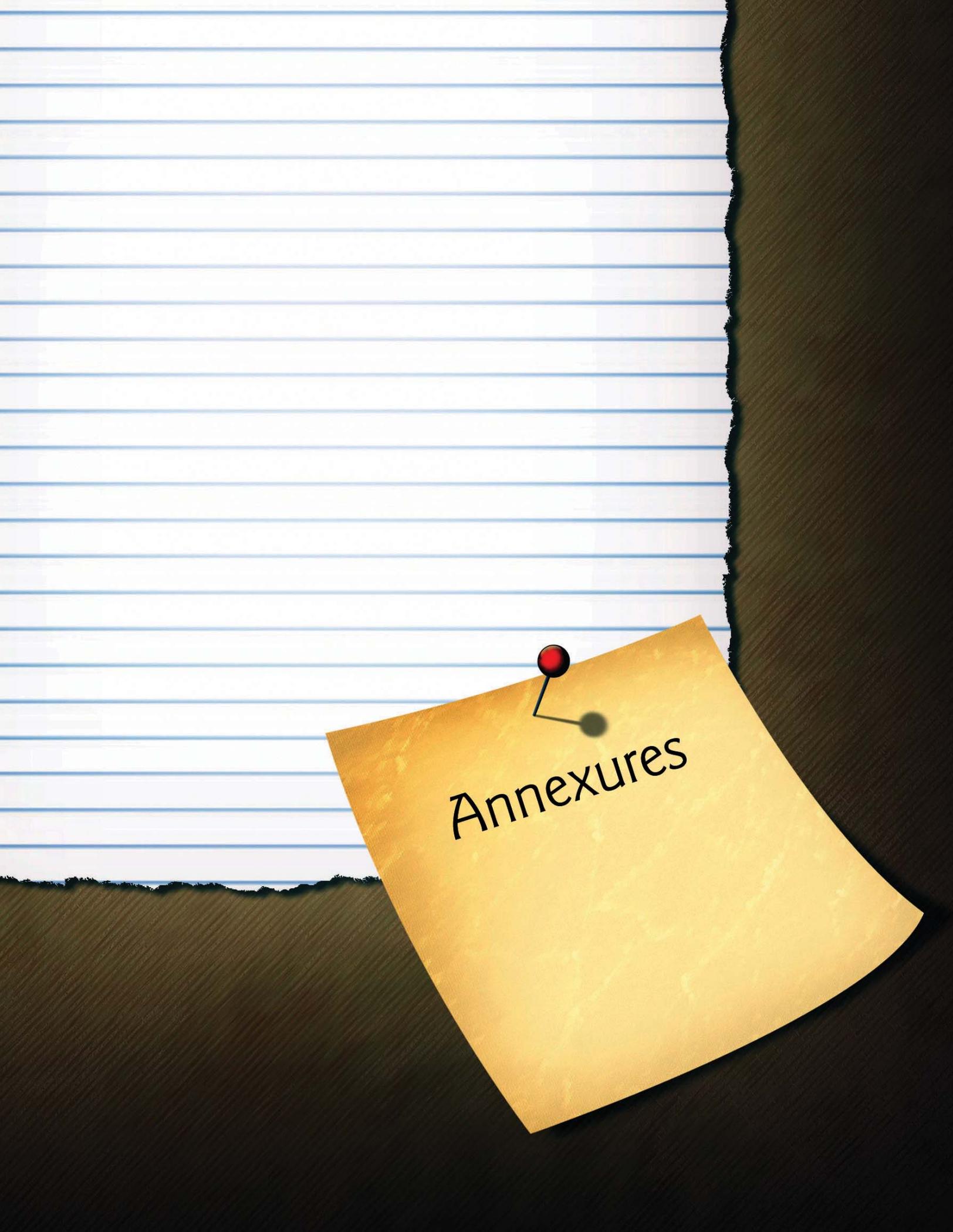
## Rule-Making Powers

Experience shows that in the absence of rules/guidelines to function effectively, monitoring bodies are rendered useless. Till date, none of the commissions have created rules for their own functioning. Since their composition is overwhelmingly governmental, they are largely dependent on the state government for functioning. This is one reason behind the lax operations of the commissions, many of which have met not even once.

The Commission should be allowed to frame its own set of rules for its operations, along with the specifics of how regularly its meetings should be held, in what form its recommendations should be presented, etc. Unless given the power to function independently, these bodies would effectively be non-starters and cannot hope to make any far-reaching impact in police functioning in the states.

**CHRI recommends that rules for the functioning of the Commission be framed and notified without further delay. This will ensure smooth functioning of the bodies.**

The Supreme Court's orders, if sincerely implemented, should have far-reaching implications. They would change the working philosophy of the police and transform what has been a "ruler's police" into a people's police. In the manner discussed in this report, the need to condition the relationship between the police and the political executive seeks to work towards strengthening democracy, not limiting it. CHRI appeals to all state governments to turn these bodies around by paying heed to the Court's requirement that they remain truly independent as well as functional. The basic truth is that for policing to transform, it is necessary for the government itself – to whose authority the police are subject to – be committed to democratic norms of checks and balances, and most importantly view the police as an instrument for protecting democratic rights and ensuring the safety of the citizens.



Annexures

# State Security Commission: Constitution

| State  | Composition  |
|--|--|
| 1. <b>Arunachal Pradesh</b> State Security Commission<br><i>Established by:</i> Notification No. HMB(A)23/06 (Pt-V), dated 18 December 2006 published in the Arunachal Pradesh Gazette 29 December 2006. | Chief Minister (Chair); Leader of the Opposition; Chief Secretary; DGP; Commissioner (Home); Inspector General of Police; 5 Independent Members.   |
| 2. <b>Assam</b> State Security Commission<br><i>Established by:</i> Assam Police Act, 2007; Sections 34 to 41.   | Chief Minister (Chair); Chief Secretary; Home Secretary; DGP; Retired High Court Judge; 3 Independent Members.   |
| 3. <b>Bihar</b> State Police Board<br><i>Established by:</i> Bihar Police Act 2007; Sections 23 to 25.   | Chief Secretary (Chair); DGP; Secretary in Charge of Home Department.  |
| 4. <b>Chhattisgarh</b> State Police Commission<br><i>Established by:</i> Chhattisgarh Police Act 2007; Sections 16 to 21.  | Home Minister (Chair); Secretary (Home Department); DGP; Member, State Human Rights Commission; 2 Independent Members.   |
| 5. <b>Delhi</b> Security Commission<br><i>Established by:</i> Office Memorandum No. 14040/127/2010-UTP, dated 10 January 2011.   | Administrator of Delhi (Chair); Chief Minister; Leader of the Opposition; Joint Secretary in Charge of UT Division in Ministry of Home Affairs; Commissioner of Police; 5 Independent Members. |
| 6. <b>Goa</b> State Security Commission<br><i>Established by:</i> Government Order No. 2/51/2006-HDLG.   | Chief Minister (Chair); Retired High Court Judge; Chief Secretary; Leader of the Opposition; DGP.  |

## Annexure I

| Mandate   | Powers  |
|---|---|
| <p>The Commission shall meet thrice in a year to:</p> <ul style="list-style-type: none"> <li>(i) Lay down broad policy guidelines for the state police</li> <li>(ii) Give appropriate directions to police for performance</li> <li>(iii) Evaluate the performance of the state police and prepare a report thereupon annually which shall be placed in the state legislature.</li> </ul> | <p>Notification does not state if the Commission will have binding powers</p> |
| <ul style="list-style-type: none"> <li>(i) Frame broad policy guidelines for policing</li> <li>(ii) Prepare panel of five officers for the rank of DGP</li> <li>(iii) Identify performance indicators to evaluate police performance (operational efficiency, victim satisfaction, etc.).</li> </ul>  | <p>The Act does not state if the Commission will have binding powers.</p>     |
| <ul style="list-style-type: none"> <li>(i) Formation of comprehensive policy guidelines for the police</li> <li>(ii) Identify performance indicators for assessment</li> <li>(iii) Review district-wise police service vis-à-vis resources available to the police.</li> </ul>  | <p>The Act does not state if the Commission will have binding powers.</p>     |
| <ul style="list-style-type: none"> <li>(i) Advise the state government on policy guidelines for police</li> <li>(ii) Assist the government in identifying performance indicators</li> <li>(iii) Communicate its views to the government</li> <li>(iv) Submit its annual report to the state government.</li> </ul>  | <p>Recommendations not binding.</p>   |
| <ul style="list-style-type: none"> <li>(i) Frame broad policy guidelines for efficient policing</li> <li>(ii) Identify performance indicators</li> <li>(iii) Review organisational performance of the police service against the Annual Plan and resources available with and constraints of the police.</li> </ul>   | <p>Powers of the Commission not specified.</p>                                |
| <ul style="list-style-type: none"> <li>(i) Lay down broad policies and guidelines for performance of police</li> <li>(ii) Evaluate the performance of the state police and prepare a report to be placed in the state legislature.</li> </ul>   | <p>The order does not state if the Commission will have binding powers.</p>   |

## State Security Commission: Constitution

| State  | Composition  |
|--|--|
| <p>7. <b>Gujarat</b> State Security Commission<br/> <i>Established by:</i> Bombay Police (Gujarat Amendment) Act, 2007; and Notification No. GG/56/NPC/1002007/1141.</p> | <p>Chief Minister (Chair); Minister of State for Home; Chief Secretary; Additional Chief Secretary; DGP.</p>   |
| <p>8. <b>Haryana</b> State Police Board<br/> <i>Established by:</i> Haryana Police Act, 2007; Sections 25 to 31.</p>   | <p>Chief Minister (Chair); Home Minister (Vice Chair); Leader of the Opposition; Advocate General; Chief Secretary; Secretary (Home Department); DGP; 3 Non-Political Persons.</p>   |
| <p>9. <b>Himachal Pradesh</b> State Police Board<br/> <i>Established by:</i> Himachal Pradesh Police Act 2007; Sections 48 to 55.</p>                                    | <p>Chief Minister (Chair); Leader of the Opposition;<br/>           Chief Secretary; Principal Secretaries - Departments of Finance, Home &amp; Justice; Director, Forensic Sciences; Director, Prosecution; DGP; 5 Independent Members.</p> |
| <p>10. <b>Jharkhand</b> State Security Commission<br/> <i>Established by:</i> Notification No. 4332 dated 31 December 2006.</p>  | <p>Minister of Home (Chair); Leader of the Opposition; Chief Secretary; Advocate General; DGP; 5 Independent Members.</p>  |
| <p>11. <b>Karnataka</b> State Security Commission<br/> <i>Established by:</i> Government Order No. HD 61 POSAEE 2009 dated 14 July 2009.</p>                             | <p>Chief Minister (Chair); Home Minister; Leader of the Opposition; Retired Judge; Chief Secretary; Additional Chief Secretary; DGP; 2 Independent Members.</p>  |
| <p>12. <b>Kerala</b> State Security Commission<br/> <i>Established by:</i> Kerala Police Act, 2011; Sections 24 to 26.</p>   | <p>Home Minister (Chair); Law Minister; Leader of the Opposition; Retired High Court Judge; Chief Secretary; Secretary (Home); DGP; 3 Non- Official Members</p>  |

## Annexure I

| Mandate   | Powers  |
|---|---|
| <ul style="list-style-type: none"> <li>(i) Advise the state government on policy guidelines for effective policing.</li> <li>(ii) Assist the state government in identifying performance indicators.</li> <li>(iii) Review the performance of the police force periodically.</li> <li>(iv) Other functions that may be assigned by the government.</li> </ul> | <p>The Act does not state if the Commission will have binding powers.</p>                                       |
| <ul style="list-style-type: none"> <li>(i) Aid and advise the state government.</li> <li>(ii) Frame broad policy guidelines.</li> <li>(iii) Review and evaluate organisational performance.</li> </ul>  | <p>The Act does not define the nature of the Commission's powers.</p>   |
| <ul style="list-style-type: none"> <li>(i) Frame broad policy guidelines.</li> <li>(ii) Identify performance indicators.</li> <li>(iii) Review and evaluate organisational performance.</li> <li>(iv) Accept and examine representation from police officers subject to illegal orders and make recommendations to the state government.</li> </ul>           | <p>No power to make binding recommendations, and these are subject to "feasibility" and "public interest".</p>  |
| <ul style="list-style-type: none"> <li>(i) Frame broad policy guidelines</li> <li>(ii) Identify performance indicators.</li> </ul>  | <p>Notification is silent on the powers of the Commission.</p>  |
| <ul style="list-style-type: none"> <li>(i) Lay down broad policy guidelines for the state police</li> <li>(ii) Give directions for service-oriented functions of the police</li> <li>(iii) Evaluate the performance of the police and submit a report to the state government.</li> </ul>   | <p>Recommendations are binding on the government.</p>   |
| <ul style="list-style-type: none"> <li>(i) Formulate general policy guidelines for the state police</li> <li>(ii) Periodically evaluate functioning</li> <li>(iii) Prepare an annual report and submit to the government</li> <li>(iv) Perform any other duties assigned by the government.</li> </ul>  | <p>The Clause allows the government to issue directions notwithstanding the Commission during an emergency.</p> |

## State Security Commission: Constitution

| State   | Composition  |
|---|--|
| <p>13. <b>Maharashtra</b> State Security Commission<br/> <i>Established by:</i> Government Resolution No. NPC1008/2/CR-6/ POL-3, dated 25 July 2008.</p>                                  | <p>Deputy Chief Minister/ Minister for Home (Chair); Leader of the Opposition<br/>           Chief Secretary; Additional Chief Secretary; DGP; 2 Non-Official Members.</p> |
| <p>14. <b>Manipur</b> State Security Commission<br/> <i>Established by:</i> Government Order No. 2/8(32)/2006-H, Imphal, dated 31 March 2007.</p>   | <p>Minister of Home (Chair); Leader of the Opposition; Chief Secretary; Retired High Court Judge; DGP; 5 Independent Members.</p>  |
| <p>15. <b>Meghalaya</b> State Security Commission<br/> <i>Established by:</i> Notification No. HPL 122/96/516 on 19 December 2006.</p>  | <p>Minister for Home (Chair); Leader of the Opposition; Chief Secretary; DGP; 5 Independent Members.</p>   |
| <p>16. <b>Mizoram</b> State Security Commission<br/> <i>Established by:</i> Notification No. C18018/12/90-HMP(SC) issue No. 288 published in the Mizoram Gazette on 10 November 2006.</p> | <p>Home Minister (Chair); Two MLAs; Chief Secretary; DGP; 3 Additional Bureaucrats.</p>  |
| <p>17. <b>Nagaland</b> State Security Commission<br/> <i>Established by:</i> Notification No. POL-9/SF/20/2000 dated 30 March 2007.</p>   | <p>Minister of Home (Chair); Leader of the Opposition; Sitting or Retired Judge; Chief Secretary; DGP; 3 Non-Political citizens.</p>                                       |
| <p>18. <b>Punjab</b> State Police Board<br/> <i>Established by:</i> Punjab Police Act, 2007; Sections 27 to 29.</p>   | <p>Chief Minister (Chair); Home Minister (Vice Chairman); Chief Secretary; Principal Secretary, Department of Home Affairs &amp; Justice; Advocate General; DGP.</p>       |

## Annexure I

| Mandate  | Powers   |
|--|--|
| <ul style="list-style-type: none"> <li>(i) Advise the government on policy guidelines</li> <li>(ii) Assist the government in identifying performance indicators</li> <li>(iii) Review performance periodically</li> <li>(iv) Other functions that may be assigned to it.</li> </ul>  | <p>The Commission has merely “advisory” powers which are not binding.</p>    |
| <ul style="list-style-type: none"> <li>(i) Advise the government on policy guidelines</li> <li>(ii) Assist the government in identifying performance indicators.</li> </ul>  | <p>Not given binding powers.</p>   |
| <ul style="list-style-type: none"> <li>(i) Lay down broad policy guidelines for the functioning of the state police</li> <li>(ii) Give directions for performance of preventive and service-oriented tasks</li> <li>(iii) Evaluate the performance of the state police</li> <li>(iv) Prepare an annual report to be placed before the state legislature.</li> </ul>  | <p>The Notification is silent on the powers of the Commission.</p>           |
| <ul style="list-style-type: none"> <li>(i) Lay down broad policy guidelines for the functioning of the state police</li> <li>(ii) Assist the government in identifying performance indicators.</li> </ul>  | <p>The Notification is silent on the powers of the Commission.</p>           |
| <ul style="list-style-type: none"> <li>(i) Ensure that no unwarranted influence or pressure is exercised on the state police</li> <li>(ii) Lay down broad policy guidelines for the state police.</li> </ul>   | <p>The Notification is silent on the nature of powers of the Commission.</p> |
| <ul style="list-style-type: none"> <li>(i) Aid and advise the state government in discharge of responsibilities under the Act</li> <li>(ii) Frame broad policy guidelines for effective policing</li> <li>(iii) Review organisational performance of police service</li> <li>(iv) Identify shortcomings regarding infrastructure &amp; equipment</li> <li>(v) Strategic and Annual Policing plans shall be drawn up by the state government in consultation with the Board.</li> </ul> | <p>The Commission does not have binding powers.</p>                          |

# State Security Commission: Constitution

| State  | Composition  |
|--|--|
| <p>19. <b>Rajasthan</b> State Police Commission<br/> <i>Established by:</i> Rajasthan Police Act, 2007;<br/>           Sections 21 to 27.</p>  | <p>Minister of Home (Chair); Leader of the Opposition; Chief Secretary; Secretary (Home Department); DGP; 3 Non-Political Members.</p>   |
| <p>20. <b>Sikkim</b> State Police Board<br/> <i>Established by:</i> Sikkim Police Act 2008;<br/>           Sections 39 to 49.</p>  | <p>Chief Minister (Chair); Leader of the Opposition; Retired High Court Judge; Chief Secretary; Secretary, Home Department; Secretary, Financial Department; Secretary, Social Welfare &amp; Empowerment Department; DGP; 3 Non-Political Persons.</p> |
| <p>21. <b>Tripura</b> State Police Board<br/> <i>Established by:</i> Tripura Police Act, 2007;<br/>           Sections 20 to 26.</p>   | <p>Home Minister; Chief Secretary; Home Secretary; DGP; 2 Independent Members.</p>   |
| <p>23. <b>Uttar Pradesh</b> State Security Commission<br/> <i>Established by:</i> Office Memorandum Government of Uttar Pradesh Home (Police) Section - 10 No. 615/6-pu-10-2008 Lucknow on 12 March, 2008.</p> | <p>Chief Minister (Chair); Chief Secretary Principal Secretary, Home; Chairperson, State Advisory Council; Member, State Human Rights Commission; DGP; 2 Non-Political Citizens.</p>   |
| <p>24. <b>Uttarakhand</b> State Police Board<br/> <i>Established by:</i> Uttarakhand Police Act, 2007; Sections 29 to 37.</p>  | <p>Home Minister (Chair); Leader of the Opposition; Chief Secretary; Principal Secretary; DGP; Additional DGP (Secretary to the Board); 2 Non- Political Members.</p>  |
| <p>25. <b>West Bengal</b> State Security Commission<br/> <i>Established by:</i> Government Notification.</p>   | <p>Chief Minister (Chair); Chief Secretary; Retired High Court Judge; Member of State Human Rights Commission; DGP; 3 Independent Members.</p>   |

## Annexure I

| Mandate  | Powers  |
|--|---|
| <ul style="list-style-type: none"> <li>(i) Advise the government in laying down policy guidelines</li> <li>(ii) Assist the government in evaluating the performance of the state police</li> <li>(iii) Formulate perspective plans on policing and submit them to the government</li> <li>(v) Prepare training policy</li> <li>(vi) Perform other functions assigned to it.</li> </ul> | <p>The Act does not state if the Commission will have binding powers.</p>   |
| <ul style="list-style-type: none"> <li>(i) Frame broad policy guidelines for efficient policing</li> <li>(ii) Approve Strategic and Five Year Police Plans</li> <li>(iii) Identify performance indicators</li> <li>(iv) Review organisational performance</li> <li>(v) Present Annual Reports to the state government.</li> </ul>  | <p>Recommendations made by the SPB will not be binding on the state government.</p>   |
| <ul style="list-style-type: none"> <li>(i) Frame policy guidelines for promoting effective policing</li> <li>(ii) Identify performance indicators to evaluate functioning of the police</li> <li>(iii) Review organisational performance</li> <li>(iv) Examine complaints from members of Police Establishment Committee being subjected to illegal orders</li> </ul>                  | <p>The Act is silent on the nature of powers of the SPB.</p>  |
| <ul style="list-style-type: none"> <li>(i) Advise the state government on policy guidelines</li> <li>(ii) Assist the government to identify performance indicators</li> <li>iii) Review organisational performance</li> <li>(iv) Other functions assigned to it by the government.</li> </ul>  | <p>No binding powers.</p>   |
| <ul style="list-style-type: none"> <li>(i) Suggest and advise the government on policy guidelines for the police</li> <li>(ii) Suggest to the government performance indicators</li> <li>(iii) Suggest measures to enhance the performance of the police force</li> <li>(iv) Suggest policy guidelines for gathering information and statistics.</li> </ul>                            | <p>No binding powers.</p>   |
| <ul style="list-style-type: none"> <li>(i) Lay down broad policies</li> <li>(ii) Formulate principles for performance of preventive tasks and service-oriented functions</li> <li>(iii) Deliberate on the security concerns of the state and make recommendations.</li> </ul>  | <p>Notification shall be binding unless the state government issues a directive in writing of its inability to carry out recommendations.</p> |

### Sample of RTI Request Sent to Various States

To  
The Public Information Officer  
Home Department  
Government of .....

Application for information under Section 6(1) of the Right to Information Act, 2005.

Dear Sir,

I seek the following information from your office under the RTI Act.

- a. Photocopy of the government circular issued for setting up of the State Security Commission under Section 34 of the Assam Police Act, 2007.
- b. The names, designations and contact details of members appointed to the State Security Commission.
- c. Procedure followed for the selection of independent members of the Commission
- d. The number of times the Commission has met since it was set up and the dates of such meetings.
- e. A certified copy of the minutes of every meeting held by the State Security Commission.
- f. The fee structure and mode of payment to the members.

**The period to which the information relates:**

From the date of the establishment of the State Security Commission to 10 October 2010.

I am a citizen of India and I would like to obtain the photocopied information by registered post at the address mentioned above. I am enclosing the required fee of Rs. 10 via postal order (No. \*\*\*\*\*) with this request.

**Kindly inform me of the additional fee payable for obtaining this information.**

Thank you.  
Sincerely

(Signature)

## Abbreviations

|       |  |
|-------|--|
| APACS | - Assessments of Policing and Community Safety |
| APPQ  | - Annual Policing Performance Quotient         |
| ASI   | - Assistant Sub-Inspector                      |
| BJP   | - Bhartiya Janata Party                        |
| DGP   | - Director General of Police                   |
| GO    | - Government Order                             |
| IAS   | - Indian Administrative Service                |
| IGP   | - Inspector General of Police                  |
| IPS   | - Indian Police Service                        |
| MHA   | - Ministry of Home Affairs                     |
| MLA   | - Member of Legislative Assembly               |
| NGO   | - Non-Governmental Organisation                |
| NHRC  | - National Human Rights Commission             |
| NPC   | - National Police Commission                   |
| NPF   | - Nigeria Police Force                         |
| PADC  | - Police Act Drafting Committee                |
| PCA   | - Police Complaints Authority                  |
| PPAF  | - Police Performance Assessment Framework      |
| RTI   | - Right to Information                         |
| SHRC  | - State Human Rights Commission                |
| SI    | - Sub-Inspector                                |
| SPB   | - State Police Board                           |
| SPC   | - State Police Commission                      |
| SSC   | - State Security Commission                    |
| SSP   | - Senior Superintendent of Police              |
| UPSC  | - Union Public Service Commission              |
| UT    | - Union Territory                              |
| UTSC  | - Union Territory Security Commission          |



# CHRI Programmes

CHRI's work is based on the belief that for human rights, genuine democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. CHRI furthers this belief through strategic initiatives and advocacy on human rights, access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

## Strategic Initiatives:

CHRI monitors member states' compliance with human rights obligations and advocates around human rights exigencies where such obligations are breached. CHRI strategically engages with regional and international bodies including the Commonwealth Ministerial Action Group, the UN, and the African Commission for Human and Peoples' Rights. Ongoing strategic initiatives include: Advocating for and monitoring the Commonwealth's reform; Reviewing Commonwealth countries' human rights promises at the UN Human Rights Council and engaging with its Universal Periodic Review; Advocating for the protection of human rights defenders and civil society space; and Monitoring the performance of National Human Rights Institutions in the Commonwealth while advocating for their strengthening.

## Access to Information:

CHRI catalyses civil society and governments to take action, acts as a hub of technical expertise in support of strong legislation, and assists partners with implementation of good practice. CHRI works collaboratively with local groups and officials, building government and civil society capacity as well as advocating with policy-makers. CHRI is active in South Asia, most recently supporting the successful campaign for a national law in India; provides legal drafting support and inputs in Africa; and in the Pacific, works with regional and national organisations to catalyse interest in access legislation.

## Access to Justice:

**Police Reforms:** In too many countries the police are seen as oppressive instruments of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In East Africa and Ghana, CHRI is examining police accountability issues and political interference.

**Prison Reforms:** CHRI's work is focused on increasing transparency of a traditionally closed system and exposing malpractice. A major area is focused on highlighting failures of the legal system that result in terrible overcrowding and unconscionably long pre-trial detention and prison overstay, and engaging in interventions to ease this. Another area of concentration is aimed at reviving the prison oversight systems that have completely failed. We believe that attention to these areas will bring improvements to the administration of prisons as well as have a knock-on effect on the administration of justice overall.

The problem of political interference in policing in India is perennial and pervasive. Politically motivated transfers and dismissals, political agendas imposed on policing during communal riots and mob control, and lack of scientifically defined policing goals, are well recognised facts. To mix politics and policing is treading a dangerous path. There is a gulf of difference between accountability to the law and accountability to politicians. This is often lost on governments which aggregate greater powers to interfere in the functional autonomy and professional discretion of the police. As a result, the police are often mired in local politics and act on behalf of those in power, instead of upholding the law.

The State Security Commission is an innovation introduced in the landmark Prakash Singh judgment of the Supreme Court, along with other directions towards systemic police reforms in the country. The commission is to act as a buffer between the political executive and the police, providing a legitimate paradigm for political interaction with and control over the police force. The Security Commission as a body would represent a wide constituency, not just the political leaders but also ordinary citizens. It is a step towards making police accountable to the people and transforming the “force” to a “service”. This report aims to provide the first comprehensive look at the existing State Security Commissions across the country. Along with a theoretical understanding of the need for such a Commission and why it is a desirable model, the report also provides a detailed analysis of functional Security Commissions in various states and a critical look at whether they have achieved the stated objectives. International models where such Commissions have proved successful and what can be done to make them more effective in India have also been analysed.

Five years since the Supreme Court issued the directives, the state of police reforms in the country is abysmal. It is hoped that this pioneering effort on the State Security Commission will engender a more detailed inquiry into the functioning of commissions in each state, and will serve as a guide to those who wish to work for accountable governance in the country.



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