

CHAPTER III

Issues raised in WP(C) No. 310/1996 – Prakash Singh and others vs Union of India and follow up action by various Governments.

Writ Petition (Civil) no. 310/1996 was filed on 17.04.96 by 3 petitioners viz. Sri Prakash Singh IPS (retd.), Sri N.K. Singh IPS (retd.) and Common Cause a Public Interest Organisation with the intention that Honble Court issue appropriate directions to the Central and state Governments to ensure that the investigative wing of the police organisations are separated and freed from administrative control of the political executive and to make Police accountable to the Law and the people alone and not to the political executive.

Issues raised in Writ petition No. 310 of 1996:

With the above said broad theme a series of prayers to give effect to this request were also made in the petition which can be highlighted here below.

1. Direct the Union Govt. To redefine the role and functions of the Police and frame a new Police Act on the lines of the model act drafted by the National Police Commission in order to ensure that Police is accountable essentially and primarily to the law of the land and the people.
2. Issue directions to the Central and the State Governments to constitute National Security Commission at the central level which would take a macro view of the country's security related matters and inter alia lay down the policies to deal with Terrorism, insurgency and other anti – national groups

and State Security Commission in each state to ensure that the police functions strictly according to the laws of the land respectively.

3. Issue directions to the Union and the State Governments to ensure that the investigative work at the state level is separated from the law and order functions and that all the investigating agencies in states as well as at the Centre function uninfluenced by any extraneous pressure or consideration.
4. Issue orders to the Union as well as the State Governments to prescribe a procedure for appointing chiefs of State Police and the Central Police Organisations which would inspire confidence and ensure that only the finest officers reach the top and also give them a minimum statutory tenure so that they have stability and long term planning of tenure.

This petition traced the chronology of all the attempts undertaken at police reforms in the country and lamented that the complete subordination of the police agencies including the investigative agencies to the political executive has led to a situation where the fundamental and human rights of the people and indeed the democratic foundations of our Society are themselves threatened by the continuance of the situation. The inaction of the executive and legislature in not remedying the situation is leading to a continued violation of the Fundamental and Human Rights of the people at the instance of such a politicised police or a police force which can be manipulated and misused by the Political Executive.

The instant petition is a well researched document which dilates upon the matter of the question in four parts. These parts are covering the historical background, the details of various commissions and their recommendations both at the state and central levels whose recommendations were never implemented. The

instances of misuse and abuse of police by unscrupulous masters and lastly the need to redefine the scope and functions of police.

In as much as historical perspective is concerned the petition has explained the background of police act of 1861 and also discussed the report of Frazer Commission which was set up in 1902-3 the constitutional/legal position with reference to superintendence of police vis-à-vis control over police has also been discussed. In this segment of the petition the views of Royal Commission on Police in UK 1962 have also been quoted which talks of functional autonomy of the Police Chief. The petition disputes the view held by some that the police have any accountability towards the political executive or the bureaucracy who in today's scenario exercise total control over the police. Even the NPC in their well researched recommendations found the need for a three-fold accountability only i.e. to the People, the Law and the Organisation. The misuse of police by vested interests as commented upon by various commissions has also been discussed at length.

In the second part tracing recommendations of various commissions for police reform, the petitioners have referred to Kerala Police Reorganisation committee (1959), West Bengal Police Commission (1960-61), Punjab police Commission (1961-62), Delhi police Commission (1968) and Tamil Nadu Police Commission (1961) and found that all these commissions have noted with concern the aspects of political interference in police functioning.

Further to this, the reports of National Police Commission have been discussed about the functions of police, the reasons for decline of police as an institution and the remedial measures for the same which *inter alia* include setting up of a State Security Commission in each state, making investigative functions of the

police completely independent from any extraneous influences and prescribing a procedure for appointment of police chief and giving him a minimum statutory tenure.

It has been noted a sense of disquiet that such universal recommendations which find echoes in state police commission reports as well have remained only on paper due to lack of political will and complete disinterest shown by bureaucracy. For bureaucracy control over the police is an intoxicant they have become addicted to and are not willing to give up claim the petitioners.

The third segment of the petition highlights how the police machinery has been abused/ misused and the tools to make the organisation fall in line have been transfers and suspensions of the officials who are not amenable. The domains of misuse have been highlighted as transfers and postings, recruitment malpractices, tampering with investigations, malpractices and promotions, giving unlawful directions to police and misuse of intelligence apparatus for political purposes.

The petition holds that these attacks on police functioning have led to not only loss of self esteem and morale but also created a vicious nexus between the pliant police officers, politicians and their criminal associates. Almost half a dozen instances of police underperformance arising out of political interference have been quoted in the petition.

In its fourth segment of the petition issues related to redefining the role and functions of police have been highlighted. The petitioners hold that a suitable new police act on the lines suggested by NPC is a *sine qua non* and needs to be enacted fast. Police accountability to law has to be statutorily fixed as it is nowhere to be found today in Indian rule books. In support of the theory of accountability to law and people petitioners have relied upon the remarks of Lord Denning as well as the

views of the royal commission of UK that a police man "ought to be manifestly impartial and uninfluenced by external pressures"

The petitioners have highlighted a scathing critique of Indian criminal justice system given by Prof. David H. Bayley when he said,

"In India today a dual system of criminal justice has grown up- the one of law, the other of politics. With respect at least to the police, decisions made by police officials about the application of law are frequently subject to partisan review or direction by elected representatives. The autonomy of police officials in specific and routine applications of law has been severely curtailed. This is not only true of law and order situations. People accused of crimes have grown onto the habit of appealing to political figures for remission from the sanction of law. Police officers throughout India have grown accustomed to calculating the likely affect of any enforcement action they contemplate. Fearing for their careers and specially their postings, they have become actions and cynical...but everywhere officers expect to be held personally accountable by politicians even more than by senior officers for enforcement actions taken in the course of duty... Altogether then, the rule of law in modern India, the frame upon which justice hangs, has been undermines by he rule of politics. Supervision in the name of democracy has eroded the foundations upon which impartiality depends in a criminal justice system"

This petition which was filed way back in 1996 pended even at the level of Supreme Court for 10 years before the momentous ruling of the Hon'ble Court could see the light of the day on September 22, 2006.

The decision of the Supreme Court of India on CWP no. 310 of 1996 of 22.09.06:

On 22 September 2006 a three judge bench comprising of Justices, Y K Sabharwal(CJI), C.K.Thakker & P.K. Balasubramanyan of the Supreme Court of India directed the Governments at the state and the union level to institutionalise 'best practices' in the country's police force. In the landmark judgement, the court stated that given the "gravity of the problem" and the "total uncertainty as to when police reforms would be introduced" it felt compelled to issue "appropriate directions for immediate compliance". These directions given in the context of Article 32 read with Article 142 of the Constitution which empowers the court to issue directions as maybe necessary for doing complete justice in any cause or matter. All authorities are mandated by Article 144 to act in aid of the orders passed by Supreme Court. These directions therefore to the Governments were binding until state legislatures enacted their new police acts. It will be worthwhile to look at this judgement a little in details.

The Court recalled that considering the far reaching changes that had taken place in the country after the enactment of the Indian Police Act, 1861 and absence of any comprehensive review at the national level of the police system after independence despite radical changes in the political, social and economic situation in the country, the Government of India, on 15th November, 1977, appointed a National Police Commission (hereinafter referred to as 'the Commission'). The commission was appointed for fresh examination of the role and performance of the police both as a law enforcing agency and as an institution to protect the rights of the citizens enshrined in the Constitution.

The terms and reference of the Commission were wide ranging. The terms of reference, *inter alia*, required the Commission to redefine the role, duties, powers and responsibilities of the police with special reference to prevention and control of crime and maintenance of public order, evaluate the performance of the system, identify the basic weaknesses or inadequacies, examine if any changes necessary in the method of administration, disciplinary control and accountability, inquire into the system of investigation and prosecution, the reasons for delay and failure and suggest how the system may be modified or changed and made efficient, scientific and consistent with human dignity, examine the nature and extent of the special responsibilities of the police towards the weaker sections of the community and suggest steps and to ensure prompt action on their complaints for the safeguard of their rights and interests. The Commission was required to recommend measures and institutional arrangements to prevent misuse of powers by the police, by administrative or executive instructions, political or other pressures or oral orders of any type, which are contrary to law, for the quick and impartial inquiry of public complaints made against the police about any misuse of police powers. The Chairman of the Commission was a renowned and highly reputed former Governor. A retired High Court Judge, two former Inspector Generals of Police and a Professor of TATA Institute of Social Sciences were members with the Director, CBI as a full time Member Secretary.

The Commission examined all issues in depth, in period of about three and a half years during which it conducted extensive exercise through analytical studies and research of variety of steps combined with an assessment and appreciation of actual field conditions. Various study groups comprising of prominent public men, Senior Administrators, Police Officers and eminent

academicians were set up. Various seminars held, research studies conducted, meetings and discussions held with the Governors, Chief Ministers, Inspector Generals of Police, State Inspector Generals of Police and Heads of Police organizations. The Commission submitted its first report in February 1979, second in August 1979, three reports each in the years 1980 and 1981 including the final report in May 1981.

The Hon'ble Supreme Court went into the contents of the various reports of the N.P.C. and noted that in its first report, the Commission first dealt with the modalities for inquiry into complaints of police misconduct in a manner which will carry credibility and satisfaction to the public regarding their fairness and impartiality and rectification of serious deficiencies which militate against their functioning efficiently to public satisfaction and advised the Government for expeditious examination of recommendations for immediate implementation.

The Commission observed that increasing crime, rising population, growing pressure of living accommodation, particularly, in urban areas, violent outbursts in the wake of demonstrations and agitations arising from labour disputes, the agrarian unrest, problems and difficulties of students, political activities including the cult of extremists, enforcement of economic and social legislation etc. have all added new dimensions to police tasks in the country and tended to bring the police in confrontation with the public much more frequently than ever before. The basic and fundamental problem regarding police taken note of was as to how to make them functional as an efficient and impartial law enforcement agency fully motivated and guided by the objectives of service to the public at large, upholding the constitutional rights and liberty of the people. Various recommendations were made.

In the Second report, it was noticed that the crux of the police reform is to secure professional independence for the police to function truly and efficiently as an impartial agent of the law of the land and, at the same time, to enable the Government to oversee the police performance to ensure its conformity to the law. A supervisory mechanism without scope for illegal, irregular or mala fide interference with police functions has to be devised. It was earnestly hoped that the Government would examine and publish the report expeditiously so that the process for implementation of various recommendations made therein could start right away. The report, inter alia, noticed the phenomenon of frequent and indiscriminate transfers ordered on political considerations as also other unhealthy influences and pressures brought to bear on police and, inter alia, recommended for the Chief of Police in a State, statutory tenure of office by including it in a specific provision in the Police Act itself and also recommended the preparation of a panel of IPS officers for posting as Chiefs of Police in States. The report also recommended the constitution of Statutory Commission in each State the function of which shall include laying down broad policy guidelines and directions for the performance of preventive task and service oriented functions by the police and also functioning as a forum of appeal for disposing of representations from any Police Officer of the rank of Superintendent of Police and above, regarding his being subjected to illegal or irregular orders in the performance of his duties.

With the 8th and final report, certain basic reforms for the effective functioning of the police to enable it to promote the dynamic role of law and to render impartial service to the people were recommended and a draft new Police Act incorporating the recommendations was annexed as an appendix.

When the recommendations of National Police Commission were not implemented, for whatever reasons or compulsions, and they met the same fate as the recommendations of many other Commissions, this petition under Article 32 of the Constitution of India was filed about 10 years back, *inter alia*, praying for issue of directions to Government of India to frame a new Police Act on the lines of the model Act drafted by the Commission in order to ensure that the police is made accountable essentially and primarily to the law of the land and the people.

The Court further noted that it had been averred in the petition that the violation of fundamental and human rights of the citizens are generally in the nature of non-enforcement and discriminatory application of the laws so that those having clout are not held accountable even for blatant violations of laws and, in any case, not brought to justice for the direct violations of the rights of citizens in the form of unauthorized detentions, torture, harassment, fabrication of evidence, malicious prosecutions etc. The petition sets out certain glaring examples of police inaction. According to the petitioners, the present distortions and aberrations in the functioning of the police have their roots in the Police Act of 1861, structure and organization of police having basically remained unchanged all these years.

The Operative part of the Verdict:

The Court while delivering the actionable and operative part of its verdict indicated that the petitioners seek that Union of India be directed to re-define the role and functions of the police and frame a new Police Act on the lines of the model Act drafted by the National Police Commission in order to ensure that the police is made accountable essentially and primarily to the law of the land and the people. Directions are also sought against the Union of India and State Governments to

constitute various Commissions and Boards laying down the policies and ensuring that police perform their duties and functions free from any pressure and also for separation of investigation work from that of law and order.

Besides the report submitted to the Government of India by National Police Commission (1977-81), various other high-powered Committees and Commissions have also examined the issue of police reforms, viz. (i) National Human Rights Commission (ii) Law Commission (iii) Ribeiro Committee (iv) Padmanabhaiah Committee and (v) Malimath Committee on Reforms of Criminal Justice System.

In addition to above, the Government of India in terms of Office Memorandum dated 20th September, 2005 constituted a Committee comprising Shri Soli Sorabjee, former Attorney General and five others to draft a new Police Act in view of the changing role of police due to various socio-economic and political changes which have taken place in the country and the challenges posed by modern day global terrorism, extremism, rapid urbanization as well as fast evolving aspirations of a modern democratic society. The Sorabjee Committee has prepared a draft outline for a new Police Act (9th September, 2006).

About one decade back, viz. on 3rd August, 1997 a letter was sent by a Union Home Minister to the State Governments revealing a distressing situation and expressing the view that if the Rule of Law has to prevail, it must be cured. Despite strong expression of opinions by various Commissions, Committees and even a Home Minister of the country, the position has not improved as these opinions have remained only on paper, without any action. In fact, position has deteriorated further. In the above noted letter of April, 1997 sent to all the State Governments, the Home Minister while echoing the overall popular perception that

there has been a general fall in the performance of the police as also a deterioration in the policing system as a whole in the country, expressed that time had come to rise above limited perceptions to bring about some drastic changes in the shape of reforms and restructuring of the police before the country is overtaken by unhealthy developments. It was expressed that the popular perception all over the country appears to be that many of the deficiencies in the functioning of the police had arisen largely due to an overdose of unhealthy and petty political interference at various levels starting from transfer and posting of policemen of different ranks, misuse of police for partisan purposes and political patronage quite often extended to corrupt police personnel. The Union Home Minister expressed the view that rising above narrow and partisan considerations, it is of great national importance to insulate the police from the growing tendency of partisan or political interference in the discharge of its lawful functions of prevention and control of crime including investigation of cases and maintenance of public order.

Besides the Home Minister, all the Commissions and Committees above noted, have broadly come to the same conclusion on the issue of urgent need for police reforms. There is convergence of views on the need to have (a) State Security Commission at State level; (b) Transparent procedure for the appointment of Police Chief and the desirability of giving him a minimum fixed tenure; (c) Separation of investigation work from law and order; and (d) A new Police Act which should reflect the democratic aspirations of the people. It has been contended that a statutory State Security Commission with its recommendations binding on the Government should have been established long before. The apprehension expressed is that any Commission without giving its report binding effect would be ineffective.

More than 25 years back i.e. in August 1979, the Police Commission Report recommended that the investigation task should be beyond any kind of intervention by the executive or non-executive. For separation of investigation work from law and order even the Law Commission of India in its 154th Report had recommended such separation to ensure speedier investigation, better expertise and improved rapport with the people without of-course any water tight compartmentalization in view of both functions being closely inter-related at the ground level. The Sorabjee Committee has also recommended establishment of a State Bureau of Criminal Investigation by the State Governments under the charge of a Director who shall report to the Director General of Police. In most of the reports, for appointment and posting, constitution of a Police Establishment Board has been recommended comprising of the Director General of Police of the State and four other senior officers. It has been further recommended that there should be a Public Complaints Authority at district level to examine the complaints from the public on police excesses, arbitrary arrests and detentions, false implications in criminal cases, custodial violence etc. and for making necessary recommendations.

The Court in its judgement acknowledged that the Commission, undoubtedly and undisputedly, did commendable work and after in depth study, made very useful recommendations. After waiting for nearly 15 years, this petition was filed. More than ten years have elapsed since this petition was filed. Even during this period, on more or less similar lines, recommendations for police reforms have been made by other high powered committees as above noticed. The Sorabjee Committee has also prepared a draft report. There was no doubt that the said Committee would also make very useful recommendations and come out with a model new Police Act for consideration of the Central and the State Governments.

They further said that *"We have also no doubt that Sorabjee Committee Report and the new Act will receive due attention of the Central Government which may recommend to the State Governments to consider passing of State Acts on the suggested lines. We expect that the State Governments would give it due consideration and would pass suitable legislations on recommended lines, the police being a State subject under the Constitution of India. The question, however, is whether this Court should further wait for Governments to take suitable steps for police reforms. The answer has to be in the negative."*

Having regard to (i) the gravity of the problem; (ii) the urgent need for preservation and strengthening of Rule of Law; (iii) pendency of even this petition for last over ten years; (iv) the fact that various Commissions and Committees have made recommendations on similar lines for introducing reforms in the police set-up in the country; and (v) total uncertainty as to when police reforms would be introduced, we think that there cannot be any further wait, and the stage has come for issue of appropriate directions for immediate compliance so as to be operative till such time a new model Police Act is prepared by the Central Government and/or the State Governments pass the requisite legislations. It may further be noted that the quality of Criminal Justice System in the country, to a large extent, depends upon the working of the police force. Thus, having regard to the larger public interest, it is absolutely necessary to issue the requisite directions. Nearly ten years back, in *Vineet Narain & Ors. v. Union of India & Anr.* [(1998) 1 SCC 226], Supreme Court noticed the urgent need for the State Governments to set up the requisite mechanism and directed the Central Government to pursue the matter of police reforms with the State Governments and ensure the setting up of a mechanism for selection/appointment, tenure, transfer and posting of not merely the

Chief of the State Police but also all police officers of the rank of Superintendents of Police and above. The Court expressed its shock that in some States the tenure of a Superintendent of Police is for a few months and transfers are made for whimsical reasons which has not only demoralizing effect on the police force but is also alien to the envisaged constitutional machinery. It was observed that apart from demoralizing the police force, it has also the adverse effect of politicizing the personnel and therefore, it is essential that prompt measures are taken by the Central Government. The Court then observed that no action within the constitutional scheme found necessary to remedy the situation is too stringent in these circumstances.

The Court further lamented that "more than four years have also lapsed since the report above noted was submitted by the National Human Rights Commission to the Government of India. The preparation of a Model Police Act by the Central Government and enactment of new Police Acts by State Governments providing therein for the composition of State Security Commission are things, we can only hope for the present. Similarly, we can only express our hope that all State Governments would rise to the occasion and enact a new Police Act wholly insulating the police from any pressure whatsoever thereby placing in position an important measure for securing the rights of the citizens under the Constitution for the Rule of Law, treating everyone equal and being partisan to none, which will also help in securing an efficient and better criminal justice delivery system. It is not possible or proper to leave this matter only with an expression of this hope and to await developments further. It is essential to lay down guidelines to be operative till the new legislation is enacted by the State Governments".

With the assistance of learned counsel for the parties, the Court perused the various reports. In discharge of their constitutional duties and obligations having regard to the afore noted position, they therefore issued the following directions to the Central Government, State Governments and Union Territories for compliance till framing of the appropriate legislations :

State Security Commission

(1) The State Governments are directed to constitute a State Security Commission in every State to ensure that the State Government does not exercise unwarranted influence or pressure on the State police and for laying down the broad policy guidelines so that the State police always acts according to the laws of the land and the Constitution of the country. This watchdog body shall be headed by the Chief Minister or Home Minister as Chairman and have the DGP of the State as its ex-officio Secretary. The other members of the Commission shall be chosen in such a manner that it is able to function independent of Government control. For this purpose, the State may choose any of the models recommended by the National Human Rights Commission, the Ribeiro Committee or the Sorabjee Committee, which are as follows:

NHRC	Ribeiro Committee	Sorabjee Committee
1. Chief Minister/HM as Chairman.	1. Minister i/c Police as Chairman	1. Minister i/c Police (ex-officio Chairperson)
2. 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.	2. Leader of Opposition.	2. Leader of Opposition.
3. A sitting or retired Judge nominated by Chief Justice of High Court.	3. Judge, sitting or retired, nominated by Chief Justice of High Court.	3. Chief Secretary
4. Chief Secretary	4. Chief Secretary	4. DGP (ex-officio Secretary)
5. Leader of Opposition in Lower House.	5. Three non-political citizens of proven merit and integrity.	5. Five independent Members.
6. DGP as ex-officio Secretary.	6. DG Police as Secretary.	-

The recommendations of this Commission shall be binding on the State Government. The functions of the State Security Commission would include laying down the broad policies and giving directions for the performance of the preventive tasks and service oriented functions of the police, evaluation of the performance of the State police and preparing a report thereon for being placed before the State legislature.

Selection and Minimum Tenure of DGP:

(2) The Director General of Police of the State shall be selected by the State Government from amongst the three senior-most officers of the Department who have been empanelled for promotion to that rank by the Union Public Service Commission on the basis of their length of service, very good record and range of experience for heading the police force. And, once he has been selected for the job,

he should have a minimum tenure of at least two years irrespective of his date of superannuation. The DGP may, however, be relieved of his responsibilities by the State Government acting in consultation with the State Security Commission consequent upon any action taken against him under the All India Services (Discipline and Appeal) Rules or following his conviction in a court of law in a criminal offence or in a case of corruption, or if he is otherwise incapacitated from discharging his duties.

Minimum Tenure of I.G. of Police & other officers:

(3) Police Officers on operational duties in the field like the Inspector General of Police in-charge Zone, Deputy Inspector General of Police in-charge Range, Superintendent of Police in-charge district and Station House Officer in-charge of a Police Station shall also have a prescribed minimum tenure of two years unless it is found necessary to remove them prematurely following disciplinary proceedings against them or their conviction in a criminal offence or in a case of corruption or if the incumbent is otherwise incapacitated from discharging his responsibilities. This would be subject to promotion and retirement of the officer.

Separation of Investigation:

(4) The investigating police shall be separated from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people. It must, however, be ensured that there is full coordination between the two wings. The separation, to start with, may be effected in towns/urban areas which have a population of ten lakhs or more, and gradually extended to smaller towns/urban areas also.

Police Establishment Board:

(5) There shall be a Police Establishment Board in each State which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police. The Establishment Board shall be a departmental body comprising the Director General of Police and four other senior officers of the Department. The State Government may interfere with decision of the Board in exceptional cases only after recording its reasons for doing so. The Board shall also be authorized to make appropriate recommendations to the State Government regarding the posting and transfers of officers of and above the rank of Superintendent of Police, and the Government is expected to give due weight to these recommendations and shall normally accept it. It shall also function as a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above regarding their promotion/transfer/disciplinary proceedings or their being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State.

Police Complaints Authority:

(6) There shall be a Police Complaints Authority at the district level to look into complaints against police officers of and up to the rank of Deputy Superintendent of Police. Similarly, there should be another Police Complaints Authority at the State level to look into complaints against officers of the rank of Superintendent of Police and above. The district level Authority may be headed by a retired District Judge while the State level Authority may be headed by a retired Judge of the High Court/Supreme Court. The head of the State level

Complaints Authority shall be chosen by the State Government out of a panel of names proposed by the Chief Justice; the head of the district level Complaints Authority may also be chosen out of a panel of names proposed by the Chief Justice or a Judge of the High Court nominated by him. These Authorities may be assisted by three to five members depending upon the volume of complaints in different States/districts, and they shall be selected by the State Government from a panel prepared by the State Human Rights Commission/Lok Ayukta/State Public Service Commission. The panel may include members from amongst retired civil servants, police officers or officers from any other department, or from the civil society. They would work whole time for the Authority and would have to be suitably remunerated for the services rendered by them. The Authority may also need the services of regular staff to conduct field inquiries. For this purpose, they may utilize the services of retired investigators from the CID, Intelligence, Vigilance or any other organization. The State level Complaints Authority would take cognizance of only allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt or rape in police custody. The district level Complaints Authority would, apart from above cases, may also inquire into allegations of extortion, land/house grabbing or any incident involving serious abuse of authority. The recommendations of the Complaints Authority, both at the district and State levels, for any action, departmental or criminal, against a delinquent police officer shall be binding on the concerned authority.

National Security Commission:

(7) The Central Government shall also set up a National Security Commission at the Union level to prepare a panel for being placed before the appropriate Appointing Authority, for selection and placement of Chiefs of the Central

Police Organisations (CPO), who should also be given a minimum tenure of two years. The Commission would also review from time to time measures to upgrade the effectiveness of these forces, improve the service conditions of its personnel, ensure that there is proper coordination between them and that the forces are generally utilized for the purposes they were raised and make recommendations in that behalf. The National Security Commission could be headed by the Union Home Minister and comprise heads of the CPOs and a couple of security experts as members with the Union Home Secretary as its Secretary.

The aforesaid directions shall be complied with by the Central Government, State Governments or Union Territories, as the case may be, on or before 31st December, 2006 so that the bodies afore-noted became operational on the onset of the new year. The Cabinet Secretary, Government of India and the Chief Secretaries of State Governments/Union Territories are directed to file affidavits of compliance by 3rd January, 2007. “

Compliance Issues related to Various Governments:

As could be expected in a country with strong federal features and with states having different parties ruling in different states, there has been an extremely varied follow up on the directives of the Supreme Court. Not a single Government including the Union Govt. has fully complied with the directions. However, it is a fact that certain valid procedural issues need to be sorted out before these directions can be fully complied with but side by side, it cannot be denied that considerable hair splitting is also being done by several states.

Taking due note of these facts Hon'ble Supreme Court as regards the implementation of the of the various directions made earlier in its judgement dated

22.9.2006 directed to set up a Commission under the Chairmanship of Justice K.T. Thomas, former retired Judge of the Supreme Court and other two person, as members with the following terms and conditions which are subject to the variation by the Commission –

- (i) To examine the affidavits filed by the different States and the Union Territories in compliance to the Court's directions with reference to the ground realities.
- (ii) Advise the Respondents wherever the implementation is falling short of the Court's orders, after considering the Respondents' stated difficulties in implementation.
- (iii) Bring to the notice of the Court any genuine problems the Respondents may be having in view of the specific conditions prevailing in a State or Union Territory.
- (iv) Examine the new legislations enacted by different States regarding the police to see whether these are in compliance with the letter and spirit of this Hon'ble Court's directions.
- (v) Apprise the Court about unnecessary objections or delays on the part of any respondent so that appropriate follow up action could be taken against that Respondent.
- (vi) Submit a status report on compliance to this Hon'ble Court every six months.

This Commission has been given the time period initially for a period of two years only. However, the Hon'ble Court may extend its life span if considered necessary. The Commission has been provided necessary infrastructure and required financial assistance by Ministry of Home Affairs carry on its day to day functions. The Commission has so far held twelve meetings in this regard.

Having mentioned this, an overview of compliance based on affidavits submitted by States to the Court and thereafter to the Monitoring Committee and on executive orders passed by states that have been put up on state and police websites has been attempted. It does not take account of the actual situation on the ground which is often somewhat different from what governments have claimed on paper. Given below are brief details of the compliance status of all states based on the information in their affidavits and submissions.

Directive 1: State Security Commission

No state has managed to fulfil all the criteria prescribed by the Supreme Court with regards to the State Security Commission. Most states have set up SSCs that do not reflect the Court's criteria with regard to composition, function and powers. States of Andhra Pradesh, Jammu and Kashmir, Madhya Pradesh, Orissa and Tamil Nadu are in complete non compliance with this directive.

Directive 2: Tenure and Selection of the DGP

Arunachal Pradesh, Mizoram and Nagaland are the only states that have adopted the Supreme Court's prescribed criteria with regard to selection, tenure and removal of the DGP. The majority of states have only partially incorporated these criteria, whilst a quarter of all states – Karnataka, Jharkhand, Kerala, Maharashtra, Punjab, Sikkim and Tamil Nadu are in non-compliance with the entirety of this directive.

Directive 3: Tenure of Officers on Operational Duties

Madhya Pradesh and the north-eastern states of Arunachal Pradesh, Meghalaya, Manipur, Mizoram and Nagaland are in full compliance with this directive which

provides for a fixed tenure for officers on operational duties. While eleven states have partially satisfied the criteria set by the Supreme Court, it is notable that an equal number of states have not made any attempt to comply this directive.

Directive 4: Separation of Investigation and Law & Order Functions

Slightly more than one third of all states – Assam, Arunachal Pradesh, Bihar, Jharkhand, Nagaland, Orissa, Punjab, Sikkim, Tamil Nadu and Tripura have complied with the Supreme Court's directive to separate the law and order police with the investigation police. However a majority of states have not implemented this directive.

Directive 5: Police Establishment Board

Most states have established a Police Establishment Board, but only Arunachal Pradesh and Meghalaya are in full compliance with all the Court's stipulated criteria in this regard. In contrast Bihar is the only state which has taken no steps towards complying with this directive.

Directive 6: Police Complaints Authority

No state government has established Police Complaints Authorities at both district and state level that fully comply with the Supreme Court's orders. The vast majority of states have established Authorities which only partially comply with the Court's directive in terms of composition, mandate and powers. A significant minority of states – Andhra Pradesh, Jammu and Kashmir, Karnataka, Madhya Pradesh, Mizoram, Punjab, Tamil Nadu, Uttar Pradesh and West Bengal have completely ignored this directive.

Drafting New Police Acts by States

On the question of drafting new Police Acts the position so far evident is that, States of Assam, Bihar, Chhattisgarh, Haryana, Himachal Pradesh, Punjab, Rajasthan, Sikkim, Tripura, & Uttarakhand have passed new police legislations. Kerala and Gujarat have passed Amendment Acts. Goa and Tamil Nadu have tabled their drafts in the Assembly. Karnataka and Kerala have their drafts ready and could be tabled in the coming sessions. Andhra Pradesh, Arunachal Pradesh, Jammu and Kashmir, Jharkhand, Madhya Pradesh, Manipur Orissa, Uttar Pradesh and West Bengal have set up committees for drafting new legislations.

It is however heartening that the Supreme Court is still according same priority to his vexed issue of Police Reforms as is evident from the fact that they in their hearing held in December 2010 said that their directives and orders on police reforms have to be implemented earnestly and cannot be held in "limbo". "We want all our directions to be implemented," the special bench of Chief Justice S H Kapadia told the chief secretaries of West Bengal, Karnataka, Maharashtra and Uttar Pradesh who were asked by its 8th November order to appear in person for non-compliance of its directions.

The bench, which also included Justices Aftab Alam and K S Radhakrishnan, asked them to keep their houses in order while making it clear that it may summon them again if there was any laxity on their part in implementing the September 2006 verdict and subsequent directions.

The bench made it clear that the states were free to seek its help and guidance in implementing the ruling but neither any laxity will be tolerated nor leniency shown for it. "The chief secretaries (of four states) are present. We are

making it clear that if they have any difficulty you can come forward and tell us. We only want our orders to be implemented. If there will be any problem for implementation, we will give reconsideration but we will not allow it to be held in limbo," the bench remarked.
