

Prakash Singh v. Union of India An analysis of Police Reforms*

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The aim of this article is to discuss in detail the situation of police reforms. Ever since the Police Act was enacted in 1861, there have been few and far reforms to the police system in India. Several committees were set up by the Government to look into these reforms. One very important milestone in this regard was Prakash Singh v. Union of India¹ in 2006. The article stresses on this case and its impact on police reforms in India. It discusses elaborately on the reforms advocated in this case. The article further analyses on how these reforms were implemented at the State level and why they have not been very successful in terms of compliance by the States. It finally attempts at giving suggestions to improve the situation to rectify the police system in India.

The Police Act of 1861 largely governs Indian police forces, aiming to make them a more "efficient instrument for the prevention and detection of crime".² The Police Act gives each State Government the power to establish its own police force.³ Section 3 of the Police Act authorises the State Government to exercise the "superintendence" over the police force. The two police functions of the police are maintenance of law and order and investigation of offences. The police are essentially the investigating agency in the Indian criminal justice system and work in cooperation with the prosecution to collect evidence against the accused for the purpose of the trial.

The petition on police reforms The subordination of the police, including investigative agencies to politicians and bureaucrats has threatened the very foundations of democratic functioning by:

- letting the people in power or those having clout get away even with blatant violations of laws; and
- resulting in direct violations of the rights of citizens in the form of unauthorised detentions, torture, harassment, fabrication of evidence, malicious prosecutions, etc. A few glaring examples from the recent history of the erosion of the rule of law or of major violations of citizens rights resulting from the wrong type of political control over the police are:

- anti-Sikh riots of 1984;
- demolition of Babri Masjid on 6-12-1992;
- assault on the Allahabad High Court on 13-9-1994;
- excesses committed on Uttarakhand agitators at Muzzafarnagar, U.P. on 1-10-1994; and
- inaction in registering or pursuing cases of corruption, scams and frauds involving politicians. The police was blatantly misused for political purposes during the Emergency (1975-1977). The excesses committed by the police and magistracy were vividly brought out in the Report of the Shah Commission of Enquiry (April 1978)⁴. The Government of India appointed a National Police Commission in 1977 to undertake a review of the entire system and working of the police organisation. The Commission remained in existence till 1982 and submitted eight comprehensive reports to the Government, containing recommendations covering almost all aspects of police organisation and its work.

The problem of political interference in the work of the police and its disastrous consequences on the rule of law in this country were examined by the National Police Commission in its Second Report (August 1979). The Commission made the following major recommendations to deal with the problem⁵:

- A State Security Commission should be set up in each State to:
 - (i) lay down broad policy guidelines;
 - (ii) evaluate the performance of the State police (CHRI's comments: Present system of evaluation is through departmental heads. Monitoring under such arrangements is sporadic and irregular and not very effective in identifying inadequacies and deficiencies and in bringing about desired improvements);
 - (iii) function as a forum of appeal to dispose off representations from officers regarding their being subjected to illegal orders and regarding their promotion, and;
 - (iv) generally review the functioning of the police force.
- Investigative functions of the police should be made completely independent of any extraneous influences.
- The Chief of the State Police Force should be selected from a panel of three IPS officers of that State cadre. The panel itself should be prepared by a committee headed by the Chairman of the UPSC. The Police Chief thus selected should have a fixed tenure. (CHRI's comments: The model Police Act drafted by the NPC incorporates its recommendations regarding the selection of the head of the State Police Force and providing him with a fixed tenure of four years. Under the existing system, selection of the head of the State Police Force and his continuance in office are dependent on the discretion of the Chief Minister/Home Minister. This encourages a very unhealthy race amongst senior officers in the police to lobby for the top post. It leads to erosion of standards of leadership and discipline in the police, besides disrupting its organisational structure and command system.)
- The Police Act of 1861 should be replaced by a new Police Act, which not only changes the system of control and superintendence over the police but also enlarges the role of the police to make it function as an agency which promotes the rule of law in the country and renders impartial service to the people.⁶ The National Human Rights Commission in

its report for the year 1995⁸ 1996⁷ has urged the Government to take urgent action to separate the investigative wing of the police from its law and order wing and insulate it from political, executive and other interference. It has also asked the Government to implement the recommendations made by the National Police Commission in its Second Report, including the establishment of State Security Commission and fixing a statutory tenure for the Chiefs of the Police Forces in the country. With time, it is being realised that the police cannot discharge both these functions simultaneously and that there is a need to separate the two.⁸ In the words of the Law Commission, "the faculties of the mind which must be brought into play at the time of the investigation are different from those which are to be exercised when dealing with an urgent situation of breach of public order"⁹.

In its 154th Report, the Law Commission highlighted the following benefits rising from separation of the two functions:

(i) reduction of executive control over police investigation as the latter would enjoy protection of the judiciary,
(ii) better investigation owing to scrutiny of courts which will lead to successful prosecutions,
(iii) reduction in the possibility of unjustified and unwarranted prosecutions,
(iv) speedy investigation leading to speedy disposal of cases,
(v) enhancement of "expertise of investigating police", and
(vi) increased public cooperation and confidence. The fact that the Police Act of 1861 had failed to produce an efficient and a professional police force had been realised even by the British. A major effort to improve the system was made in 1902, the very beginning of the last century, when the Government appointed a Commission under the Chairmanship of Sir A.H.L. Fraser to examine the system and suggest changes.¹⁰ The Commission made many recommendations but either failed to recognise or conveniently ignored the fact that most of the ills afflicting the organisation could be ascribed to the system established by the Police Act of 1861 and the philosophy of policing that was prescribed. The colonial system of policing established by the Act thus continued to remain in existence.

The advent of Independence changed the political system, but the police system remained more or less unaltered. However, the need for change and reform in the police had been realised widely. Throughout the 1960s, many State Governments took initiatives to set up commissions to examine the problems of the police and suggest improvements. During the 1970s, the Government of India became active and set up the Committee on Police Training in 1971, and later the National Police Commission in 1977.¹¹

The failure of these initiatives to usher in reforms was mainly due to lack of action by the Government in implementing the recommendations of the expert commissions and committees. This led to efforts from non-governmental actors in the 1990s to pressurise the Government to consider and implement the recommendations of the expert bodies. The following major initiatives have been:

- (1) The State Police Commissions
- (2) The Gore Committee on Police Training
- (3) The National Police Commission
- (4) A Letter from the Union Home Minister
- (5) Police Reforms and the Supreme Court: *Prakash Singh v. Union of India*
- (6) Writ Petitions (Criminal) Nos. 340-43 of 1996
- (7) The Ribeiro Committee on Police Reforms
- (8) The Padmanabhaiah Committee on Police Reforms
- (9) The National Human Rights Commission
- (10) The CHRI's Initiatives
- (11) Initiatives by the State Governments

This key recommendation has been echoed in *Prakash Singh* case¹² discussed below. In 1977, the National Police Commission was constituted by the Janata Party Government in the aftermath of the Emergency and entrusted with the task of reviewing the functions of the police and the flaws within the existing system of administration.¹³ The Commission described the threat of transfer from one posting to another or suspension as the "most potent weapon in the hands of the politician to bend down the police to his will" because the "suspension acts as a great humiliating factor, and a transfer acts as a severe economic blow and disruption of the police officer's family, children's education, etc."¹⁴ It recommended that the powers of the State Governments "be limited for purpose of ensuring that police performance is in strict accordance with law"¹⁵, thereby circumscribing the broad power vested with the State Governments under Section 3 of the Police Act, 1861. Such changes, along with other recommendations regarding police personnel's, security of tenure, would minimise political interference in the daily working of the police and encourage greater professionalism.

The National Police Commission also "recommended the constitution of a statutory commission in each State which may be called the State Security Commission which shall have the State Minister in charge of the police as the ex officio Chairman and six others as Members, two of whom should be chosen from the State Legislature, one from the ruling party and another from the opposition parties. The remaining four members of the Commission should be appointed by the Chief Minister subject to approval by the State Legislature, from retired Judges of the High Court, retired government servants who had functioned in senior positions in the Government while in service, social scientists or academicians of public standing and eminence."¹⁶ The National Police Commission also prepared a draft of a new Police Act to replace the archaic 1861 Act and incorporated its recommendations therein.

When the Congress returned to power in 1980, it showed no inclination to act upon the recommendations or consider the draft Act prepared by the National Police Commission. The recommendations were forwarded to the State Governments with directions not to take into account the observations made by the Commission. The Central Government's view was that the Commission was biased; in its criticism of the political system or the functioning of the police in general.¹⁷ The Commission was disbanded in May 1981. Later Committees, the latest being the Soli Sorabjee Committee constituted in September 2005, have largely reiterated the above recommendations.

In 1996, Mr Prakash Singh, a retired police officer, petitioned the Supreme Court under Article 32, urging for the issue of directions to the 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 law of the land and the people.¹⁹ The petitioners attributed the abuse of power and inefficient functioning of the police to "archaic structure and organisation" outlined in the Police Act, 1861. The two former Director Generals of Police took the issue to the Supreme Court, requesting the Court to direct the Central and State Governments to address the most glaring gaps and bad practices in the functioning of the police. Given the "gravity of the problem" and "total uncertainty as to when police reform would be introduced", the Supreme Court considered in 2006 that it could not "further wait for the Governments to take suitable steps for police reforms" and had to issue "appropriate directions for immediate compliance". These directions binding upon the Governments until they frame "appropriate legislation".

The Supreme Court referred to the recommendations made by several committees on police reforms and culled four requisite points of reform:

20. ... (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.²⁰

On the issue whether the Court must wait for the executive to act upon the recommendations, the Court considered the "gravity of the problem", the need to enforce the rule of law, the similar recommendations by various committees, the ten year delay in the disposal of the petition and the "total uncertainty as to when the police reforms would be introduced" to conclude that ordering of directions was warranted.

On 22-9-2006, the Supreme Court of India delivered a historic judgment in *Prakash Singh v. Union of India*²¹ instructing the Central and State Governments to comply with a set of seven directives laying down practical mechanisms to kick-start police reform. The Court's directives seek to achieve two main objectives: functional autonomy for the police "through security of tenure, streamlined appointment and transfer processes, and the creation of a "buffer body" between the police and the Government" and enhanced police accountability, both for organisational performance and individual misconduct. After decades of public pressure, lack of political will and continued poor policing, a police reform process is finally budding. The need for reform is particularly acute as the archaic Police Act of 1861 continues to govern policing, despite far reaching changes in governance.

The Supreme Court required all the Governments, at the Centre and State levels, to comply with the seven directives by 31-12-2006 and to file affidavits of compliance by 3-1-2007.²² The State Government responses have varied tremendously, ranging from complying in time with the directives through executive orders, to expressing strong objections to the directives and asking the Court to review them. Others have requested the Court to grant them more time to comply with the judgment. On 11-1-2007²³, the Supreme Court cast away the objections raised and stated that its directions had to be complied with without any modification. The Court granted a three month extension to comply with four of its directives, while stating that the others had to be complied with immediately.²⁴

A number of States have taken the initiative to put in place special committees to draft a new Police Bill and committed to introducing it in the legislature in the coming months. It is hoped that these new pieces of legislation will be openly debated and ultimately reflect the essence of the Supreme Court judgment. The judgment is the first tangible step towards police reform in a long time but also only an initial step. What is now required is strong political will to introduce long-lasting reforms and not merely cosmetic changes.

In its judgment dated 22-9-2006²⁵, the Supreme Court (a) directed each State Government to establish a State Security Commission and a Police Establishment Board (to determine transfers, postings, promotions, etc.), (b) outlined the procedure for selection of the Director General of Police, (c) prescribed minimum two year tenure for police officers, and (d) directed police departments to separate law and order functions from the investigation function.²⁶ The Supreme Court also ordered the creation of a district and State level Police Complaints Authority to deal with complaints against the police. It directed the Central Government to constitute a National Security Commission whose main task shall be to review the existing measures in order to enhance their effectiveness and also focus on ameliorating the conditions of the service.²⁷

Directions of the Supreme Court in *Prakash Singh v. Union of India*²⁸ These directives can be broadly divided into two categories:

(i) those seeking to achieve functional autonomy for the police (Part I); and
 (ii) those seeking to enhance police accountability (Part II). Part I: Functional autonomy Directive 1. State Security Commission The State Governments are directed to constitute a State Security Commission to:

(i) ensure that the State Government does not exercise unwarranted influence or pressure on the police,
 (ii) lay down broad policy guidelines,
 (iii) evaluate the performance of the State police. Directive 2. Director General of Police The State Government is to ensure that the Director General of Police is appointed through a merit based, transparent process and enjoys a minimum tenure of two years.

Directive 3. Minimum tenure for other police officers The State Government is to ensure that other police officers on operational duties (including Superintendents of Police in charge of a district and Station House Officers in charge of a police station) also have a minimum tenure of two years.

Directive 4. Police Establishment Board The State Government is to set up a Police Establishment Board, which will decide all transfers, postings, promotions and other service related matters of police officers of and below the rank of Deputy Superintendent of Police and make recommendations on postings and transfers of officers above the rank of Deputy Superintendent of Police.

Directive 5. National Security Commission The State Government is to set up a National Security Commission at the Union level to prepare a panel for selection and placement of Chiefs of the Central Police Organisations (CPO), who should also be given a minimum tenure of two years.

Part II: Accountability Directive 6. Police Complaints Authority The State Government is to set up independent Police Complaints Authorities at the State and district levels to look into public complaints against police officers in cases of serious misconduct, including custodial death, grievous hurt or rape in police custody.²⁹

Directive 7. Separation of investigation and law and order police The State Government is to separate the investigation and law and order functions of the police.

(1) Security Commission 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 act 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 the 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 the 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 Committee³⁰, which are as under:

Under NHRC³¹ There would be the Chief Minister or Home Minister as the Chairman. In the second command would be the Lok Ayukta or, in his absence, a retired Judge of the High Court to be nominated by the Chief Justice or a Member of State Human Rights Commission. Third in command would be a sitting or retired Judge nominated by the Chief Justice of the High Court. Then there would be the Chief Secretary and then followed by the Leader of Opposition in the Lower House and then finally, the DGP as ex officio Secretary.³¹

Under the Ribeiro Committee³² There would be the Minister as Chairman, followed by the Leader of the Opposition, then the Judge sitting or retired nominated by the Chief Justice of the High Court. Then fourth in command would be the Chief Secretary, followed by three non-political citizens or proven merit and integrity and then the DGP as Secretary.

Under the Sorabjee Committee³² It is quite similar to the Ribeiro Committee. There would be the Minister as Chairman, followed by the Leader of the Opposition. But third in command would be the Chief Secretary, followed by the DGP as ex officio Secretary and then five independent members.

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.

(2) Selection and Minimum Tenure of Director General of Police The Director General of Police of the State shall be selected by the State Governments from amongst the three seniormost officers in 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.

(3) Minimum tenure of Inspector General of Police and other officers Police officers on operational duties in the field like the Inspector General of Police, in-charge Range, Superintendant 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.³³

(4) Separation of Investigation The investigating police shall be separated from 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.

(5) Police Establishment Board There shall be a Police Establishment Board in each State which shall decide the 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 Board shall also be authorised 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 all 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.³⁴

(6) Police Complaints Authority 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 Head of the State Complaints Authority shall be chosen by the State Government out of a panel of names proposed by the Chief Justice or 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 the retired civil servants, police officers, or officers from any other department or from civil society. They would work whole time for the Authority and would be suitably remunerated for the services rendered by them. The authority may also need the service of regular staff to conduct field inquiries.³⁵ The recommendations of the complaints authority, both at the district level and State level, for any action, departmental or criminal, against a delinquent officer shall be binding on the authority concerned.

(7) National Security Commission 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 the 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 the personnel, ensure that there is proper coordination between them and that the forces are generally utilised for the purposes they were raised and make recommendations in that behalf.

Compliance with Prakash Singh case³⁶ Reforms by States in India – An evaluative and analytical study On 11-1-2007, the States submitted affidavits to the Supreme Court setting out the steps that they had taken to comply with the judgment. On 9-4-2007, the States and the Union filed fresh affidavits to update the Court on compliance. Only around 15% have been compliant (have reported taking steps to implement all directives like Sikkim, Nagaland, Meghalaya, Arunachal Pradesh) while 63% have been partially compliant (have taken steps to comply with one or more directives, may have registered objections to some directives like Himachal Pradesh, Daman and Diu, Orissa, Jharkhand) while the rest have completely ignored them (have registered strong objections to some or all directives and do not indicate any steps for implementing or have stated that new police legislation is in the process of being drafted therefore no steps have been taken to implement directives or; have sought extensions with no details on concrete steps towards compliance like West Bengal, Tamil Nadu, Uttar Pradesh).

The States brought out the following problems with the Police Reforms post Prakash Singh case³⁷:

1.1. Political interference in police administration is minimal The need for a State Security Commission is questioned, as there is no unwarranted influence over the police. (Gujarat, Nagaland)

1.2. Undermines the power of the elected Government Setting up a State Security Commission with binding powers is likely to undermine the power of a constitutionally established State over the State police, lead to the creation of a parallel body which is not accountable to the people of the State and would infringe the rights of the State. (Andhra Pradesh, Gujarat, Karnataka, Uttar Pradesh)

1.3. Fixed tenure will demoralise officers and limit the Government's flexibility A fixed two-year tenure for the DGP, irrespective of their superannuation date, will block opportunities for other eligible senior officers, who will be demoralised. Further, the directives take away the right of the Government to transfer police officers to meet administrative exigencies. Similar arguments have been levelled against a fixed tenure for the IG, DIG, SP and SHO. (Andhra Pradesh, Uttar Pradesh, Gujarat, Nagaland)³⁸

1.4. Involvement of the UPSC is neither practical nor necessary Under the existing law, there is no provision for empanelling three officers by the Union Public Service Commission to provide three names of candidates for DGP to the State Government to appoint. The involvement of the UPSC in this is neither practical nor necessary. (Gujarat, Karnataka)

1.5. Fixed tenure is not important for good performance Short tenure does not impact on efficient functioning. (Andhra Pradesh)

1.6. Police Establishment Board will duplicate existing systems A Police Establishment Board would run contrary to the democratic functions of the Government and result in the creation of a separate power centre, comprising bureaucrats who are not answerable to the people, while also duplicating existing systems. (Gujarat, Uttar Pradesh)³⁹

1.7. Complaints Authorities will duplicate existing efforts and be a financial burden National and State Human Rights Commissions, the Minorities Commission, the Scheduled Castes and Schedules Tribes Commission, the Central Vigilance Commission, the State Vigilance Commissions and Lok Ayuktas are already in place to deal with complaints about the police. Creating new District and State Complaints Authorities would duplicate the work of existing fora and would be a financial burden. (Gujarat, Uttar Pradesh, Andhra Pradesh, Karnataka, Tamil Nadu)

1.8. No demonstrated need for Complaints Authorities Uttar Pradesh argued against the need for State and District Complaints Authorities based on a statistical argument comparing the current number of complaints against the police and the number found to be incorrect or unsubstantiated. Nagaland maintained that the commission of excesses by the police is a very rare occurrence.

1.9. Complaints Authorities will demoralise police The establishment of District and State Complaints Authorities may lead to the police being demoralised, failing to implement various laws and becoming ineffective out of a fear of being prosecuted by yet another agency. (Andhra Pradesh)

Already, many instances have emerged of State Governments violating their own notifications of compliance. In both Arunachal Pradesh and Manipur, DGPs have been removed from their post, ahead of the two-year tenure assured to them by executive order, without any explanation for the grounds of removal, as required under law. In a unilateral move, the Manipur Government removed the DGP, A.K. Parashar. The Government has not stipulated the reasons for his removal and has not given a lawful basis for his removal (action taken under the All-India Service (Discipline and Appeal) Rules, conviction in a court of law in a criminal offence or case of corruption or incapacity).⁴⁰

In fact, reports from Kerala indicated that the Home Minister of that State has written to the Union Home Minister to convene a meeting of the Home Ministers of different States to discuss the directives of the Supreme Court and has taken steps to move the Supreme Court for a review.⁴¹ This was nothing short of the proverbial bolt from the blue. In fact it was earnestly hoped by the people at large, that the Communist Party (Marxist) led Ministry with a Home Minister from the CPM would show the way by hastening to implement the directives of the Supreme Court. The Minister himself had given strong indications that he was very receptive to the demand for police reforms.

It may be recalled that Kerala was the first among the States (reorganised on linguistic basis) in India, under a Communist Party led ministry, with Shri E.M.S Nambuthripad as Chief Minister and Shri V.R. Krishna Iyer (later Justice V.R. Krishna Iyer) as Home Minister which launched the very first initiative aimed to reform the police. A Kerala Police Reorganisation Committee was constituted with such eminent jurists and public men like N.C. Chatterjee, S. Mohan Kumarmangalam, S. Guru Swami and P.N. Krishna Pillai, on 15-1-1959⁴². The Terms of Reference were quite ahead of the times. The Committee submitted their Report, rather abruptly, on 29-1-1960 with recommendations on some items of the Terms of Reference. Most of the recommendations were progressive and forward looking. The Communist Party (Marxist) led ministries had come into office, not less than for four spells after 1960 but no steps were taken to implement at least selectively, any of the recommendations. The Report of the National Police Commission was with the State Government when they appointed on 30-7-1982 a Police Reorganisation Commission.

The Reports of the National Police Commission or the Commission mentioned above were also not acted upon. Despite such callous indifference to Police Commissions and their Reports, another Commission, Police Performance and Accountability Commission with no less a person than Justice K.T. Thomas, formerly of the Supreme Court, was appointed in 2004 by the then Chief Minister who held the Home portfolio. The Report of this Commission is also gathering dust in the morgue of police reforms efforts. The present Home Minister had stated on several occasions that he is having the recommendations of the various Commissions, including the Chatterjee Commission of 1960 vintage examined for implementation. He had also generally welcomed the directives issued by the Apex Court. It was therefore absolutely shocking and disturbing to find the very same Minister spearheading a move to abort the police reforms process kick-started by the Apex Court.

We have not yet heard the Minister's justification for the present stance. Marxist Party MLAs and spokesmen trot out the following in defence of their present stand: the Home Minister is accountable to the Legislature and therefore the

supervision of the police cannot be taken over by a State Security Commission; nor can the selection process for the post of Director General or a fixed tenure for him and some others, be accepted. Given the fact that the Supreme Court directives touch just five issues, it leaves the Kerala Home Minister with precious little to implement.

Some States, however, have shown commendable progress in reforms. The Meghalaya State Government set up a four-member Police Reform Committee in 2005, well before the Supreme Court's directives in the Prakash Singh case⁴³. This Committee had fairly broad terms of reference and travelled all over the State to examine problems that needed addressing. They consulted members of the public as well as the police in finalising their recommendations. The State Government accepted the majority of the Committee's recommendations. Meghalaya has issued notifications to comply with all the directives. Arunachal Pradesh has already consulted Superintendents of Police on their policing challenges and drafted a Strategic Policing Plan for the State with detailed performance targets, milestones and timelines for achievement. Himachal Pradesh has released a Five Year Strategic Policing Plan (2007-2011). It is heartening to note that the DGP in the forward to the Plan states that it has been formulated after extensive consultation with a cross-section of people, members of the community, leaders, opinion makers and police officers.

In some States, Police Complaints Authorities have already been set up to inquire into allegations of serious misconduct against police personnel. In Tripura, the official notification of the constitution of the Police Accountability Commission, its functions, the procedure for making complaints and its physical location was published in the Dainik Samvad on 4-5-2008, informing the public that the Commission would be functional from 2-6-2008.

It is positive that the State Governments are choosing to draft new police legislation. It is also a cause for enormous concern that the community is not involved and is not aware of the process. The State Governments must publicise their initiatives to redraft police legislation widely, using a range of methods. Publishing this information will educate the public and strengthen democracy.

The State Governments can take the following types of action:

- Allowing and requesting civil society and community input in police act drafting committees;
 - Advertising the membership of any existing committee;
 - Inviting public submissions on the type of police service and police law the community would like to have;
 - Inviting police at all levels to make submissions about the type of police service and police law they would like to be part of;
 - Holding focus groups with police at all levels, particularly at the Deputy SP rank and below on their views;
 - Holding public forums and meetings to generate a community voice on policing and to take into account this voice;
 - Compiling the outcomes of public forums and distributing them through print and electronic media as the "voice of the people"; and
 - Ensuring the draft legislation that goes before State Assemblies and Parliament is in the public domain and has been made available for comment under proactive disclosure provisions in Section 4(1)(c) of the Right to Information Act, 2005.⁴⁴
- Conclusion 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.

The crux of the police reform is to secure professional independence for the police to function truly and efficiently as an impartial agent of law of the land and, at the same time, to enable the Government to oversee the police performance to ensure its conformity to 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.

It has been noticed that 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 the 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.

Former top police official Prakash Singh emphasised the importance of police reform for a better democracy and stable

economy, and said that without drastic systematic improvement in the police system, the country might turn into a criminal State. "With the growing nexus between politicians and criminals and politicisation of police forces, the country is fast turning into a criminal State," Mr Singh said.⁴⁵

The ideas behind these suggested reform measures like setting up of National Security Commission, fixed tenure for key police officials, separate inquiry wings and a Police Complaints Authority, down to district level is not new as these measures are part of the various committees and commissions in the past. Unless the police get working autonomy, the honest and dedicated officials will continue to be sidelined in the system.

The existing Police Act was meant to protect the "British Raj". It has become archaic and redundant and anachronistic. Despite several recommendations by committees and commissions in the past, the Government did not take a single step to give autonomy and establish accountability in the police system. The Prakash Singh Reforms intended to direct 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 the police is made accountable essentially and primarily to 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.

The commitment, devotion and accountability of the police have to be only to the rule of law. The supervision and control has to be such that it ensures that the police serve the people without any regard, whatsoever, to the status and position of any person while investigating a crime or taking preventive measures. Its approach has to be service oriented; its role has to be defined so that in appropriate cases, where on account of acts of omission and commission of police, the rule of law becomes a casualty, the guilty police officers are brought to book and appropriate action taken without any delay.

It is crystal clear that the professional practitioners of politics have realised that the directives when implemented would make the police an agent of law, accountable to law and thus an important tool in strengthening the rule of law and enriching our democratic process. These are perhaps important objectives to be achieved; but they would not like to loosen their grip on the police, a grip with which they made use of the police for narrow political ends. This is a pivotal moment in the struggle for police reforms. The move for a review of the directives of the Supreme Court should be resisted.

It is thus a strong, formidable array of interests that have lined up against the very tentative steps towards police reforms. This is thus the most crucial moment for all well-meaning people of this country to make their voice heard; to come to the open and press their case for a clean and efficient police; a police accountable to law and respecting the rule of law. Educating the public through debates and discussions features and talk shows in the media and by all other means is the first priority. The struggle for police reforms should not be given up at this stage.

* The police, the Public Prosecutors, the courts, and citizens are all important actors in India's criminal justice system. BA, LLB (Hons.) 4th year student, W.B. National University of Juridical Sciences (W.B. NUJS), Kolkata, [email:].

- (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417.

- See, "Preamble, the Police Act, 1861", at http://www.mha.nic.in/padc/police_act_1861.pdf

#search=%22police%20act%201861%20%22 last accessed 10-11-2008.

- See, Section 2, http://www.mha.nic.in/padc/police_act_1861.pdf#search=%22police%20act%201861%20%22 last accessed 10-11-2008.

- Supra, n. 3.

- 2nd Report of the National Police Commission, Chapter 15, Para. 15.14, available at <http://www.geocities.com/npcreport/Vol2Chap15.htm> last accessed November 2008.

- Law Commission of India, 152nd Report on the Code of Criminal Procedure, 1973, Vol. I, p. 6 at <http://lawcommissionofindia.nic.in/101-169/Report154Vol1.pdf>.

- Police Reforms in India Seven Steps to Police Reform 14-10-2008, Commonwealth Human Rights Initiative (CHRI), www.humanrightsinitiative.org *Working Document, Continuously being revised pursuant to most up to date information received http://www.humanrightsinitiative.org/programs/aj/police/india/initiatives/seven_steps_to_police_reform.pdf last accessed November 2008.

- Law Commission of India, 152nd Report on Custodial Crimes, 1994, <http://lawcommissionofindia.nic.in/101-169/Report152.pdf>, last accessed 10-11-2008.

- Ibid.

- "Political and Administrative Manipulation of the Police", (1979) Bureau of Police Research and Development, Law Commission of India, 154th Report.

- Ibid.

- Supra, n. 1.

- Joshi, G.P. "A Requiem for the NPC", Seminar, November 1999, <http://www.india-seminar.com/1999/482/483%20joshi.htm> last accessed November 2008.

- Supra, n. 6.

- Ibid.

- Ibid.

- Joshi quotes from Government of India Letter No. 110013/11/83-NPC Cell, dated 31-3-1983, at some places in the 2nd Report, the Commission has relied on the observations and findings of the Shah Commission to arrive at certain conclusions. The Government strongly repudiates all such conclusions. At several other places, the Commission has been unduly criticised of the political system or of the functioning of the police force in general. Such general criticism is hardly in keeping with an objective and rational approach to problems and reveals a biased attitude. The Government is of the view that no note should be taken of such observations.

- Article 32(1) of the Indian Constitution provides that the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part (that is, fundamental rights) is guaranteed.

- Supra, n. 1.

- Ibid, 11, para 20.

- Ibid.

- Section 2, http://www.mha.nic.in/padc/police_act_1861.pdf#search=%22police%20act%201861%20%22 last accessed 10-11-2008.

- Prakash Singh v. Union of India, (2009) 17 SCC 329.

- Supra, n. 6.

- Supra, n. 1.

- Supra, n. 6.

- Supra, n. 4.

- Supra, n. 1.

- Ibid.

- Supra, n. 6.

- Supra, n. 11.

- Ibid.

- Supra, n. 13.

- Supra, n. 8.

- Supra, n. 1.

- Supra, n. 1.

- See Police Initiatives at Seven Steps To Police Reform 14-10-2008, Commonwealth Human Rights Initiative (CHRI) http://www.humanrightsinitiative.org/programs/aj/police/india/initiatives/seven_steps_to_police_reform.pdf last accessed November, 2008.

- Supra, n. 8.

- Supra, n. 6.

- Supra, n. 8.

- Ibid.

- Supra, n. 4.

- Supra, n. 1.

- Supra, n. 8.

- He said this while inaugurating a workshop for journalists organised by Delhi Journalists Association (DJA) in collaboration with NUJ School of Journalism. He pointed out that not only the democratic system but also the much-hyped "fast economic growth" was also at stake. "No investor would stay in the country if our polity is criminalised and is no autonomous agency to police the society," Mr Singh explained. "The Police Act, 1861 has lost its merit, as the definitions and scopes of the crime have taken new meanings and dimensions," he said. Referring to his now famous petition before the Supreme Court, which had resulted in seven-point directives for the police reforms to the Centre and the States, the former U.P. DGP, Singh said the resistance from the Centre and the States to implement the reform policy did not augur well for the people. (See

http://news.webindia123.com/news/ar_showdetails.asp?id=701150464&cat=&n_date=20070115 last accessed November, 2008.)