

# Report of the Ribeiro Committee on Police Reforms

## A Critical Analysis

### Background

The Ministry of Home Affairs, Government of India, recently<sup>1</sup> set up a Committee on Police Reforms (Committee)<sup>2</sup> in pursuance of the Supreme Court's directions issued in the context of Writ Petition (Civil) No. 310 of 1996<sup>3</sup>.

The terms of reference of the Committee are as follows:

1. To review action taken to implement the recommendations of the National Police Commission(NPC), National Human Rights Commission (NHRC) and the Vohra Committee.
2. To suggest ways and means to implement the pending recommendations of the above Commissions/Committee.
3. Consider and make recommendations regarding any other matter which the Government may refer to the Committee or which the Committee Considers necessary in this behalf.

On a reference made by the petitioners, the Supreme Court asked the Committee to review action taken to implement the recommendations of the NPC, particularly focusing on the need, relevance and practicability of:

1. setting up a Security Commission or Police Authority in each State and at the Centre on the lines suggested by the NPC,NHRC and the petitioners, and if so its functions and composition;
2. prescribing a procedure for the appointment of Police Chiefs which would be transparent and ensure that the best officers are selected and giving the senior incumbents a minimum tenure; and
3. insulating the investigative wing of the police from its law and order functions.

The Committee recently completed its deliberations on these three issues and submitted its report to the Court through the Government of India.

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<sup>1</sup> Vide Office Memorandum No.11018/1/98-PMA dated May 25, 1998.

<sup>2</sup> The composition of the Committee is as follows:

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| ▪ Shri J.F. Ribeiro,IPS(Retd.),<br>Former Ambassador of India                       | Chairperson |
| ▪ Ms Nirmala Buch, IAS (Retd.),<br>Former Chief Secretary, Government of M. Pradesh | Member      |
| ▪ Shri Arun Bhagat, IPS (Retd.),<br>Former Director, Intelligence Bureau            | Member      |
| ▪ Ms Prabha Sankarnarayanan,<br>Advocate  | Member      |

<sup>3</sup> This petition was filed in the Supreme Court by two retired police officers, praying for issue of orders to the Government to implement the recommendations of the NPC.

## **CHRI's Comments**

### **Police Reforms- the Guiding Principle**

During a short period, the Committee has attempted to make several recommendations. However, confronted with a complex problem, the Committee appears to have gone against its own convictions and has recommended institutions and arrangements, which, in our view, are weak. It has done so on grounds of “practicability,” as it feels that the NPC’s recommendations in their original form would not be acceptable to the State Governments. The Committee’s recommendations have, therefore, been guided, according to its own admission, by the need to make “compromises and adjustments.”

Referring to its recommendations about the constitution of State Security Commission (SSC) the Committee suggests that this is not “*to be taken as substituting our judgement for that of the worthy and wise men who were instrumental in making most profound and useful recommendations. If their intentions have to be achieved, their objectives attained and their goal realised, then some compromises and adjustments have to be made in public interest.*”<sup>4</sup>

We do not agree. The present functioning of the police system in this country has been the result of all types of ‘compromises and adjustments’, which have been made with what is absolutely necessary to bring about police reforms. Compromises have been made not in public but private interests. In fact, three main pressure groups have obstructed police reforms in this country- the politicians, bureaucrats and in many cases the police officers themselves.

Measures for police reforms should never be defined or circumscribed by the reaction of any of these pressure groups. Police is a part of the community and it is only the community’s interest, which should guide the movement for police reforms in the country.

### **Committee’s Composition**

The Committee consists of four members, including the Chairperson. The Committee was, however, “deprived of the benefit of the views of Mrs. Nirmala Buch in arriving at the conclusions as she did not associate herself with the Committee’s work after attending the first meeting from 6<sup>th</sup> to 8<sup>th</sup> July, 98.”<sup>5</sup> The report does not explain as to why the retired senior bureaucrat dissociated herself from the Committee’s work after attending only the first meeting.<sup>6</sup> This was an unfortunate development as it disturbed the original composition of the Committee. Any disagreement within the Commission could have been accommodated by recording notes of dissent. The total disassociation of one of the four members with the Committee’s work does create an avoidable feeling of disquiet.

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<sup>4</sup> Committee’s Report, paras.55&56, pp23-24.

<sup>5</sup> Committee’s Report, p2.

<sup>6</sup> The Government appoints members on such Committees only after obtaining their consent.

## **NPC's Recommendations- the Centre's Response**

The Committee has referred to the *"concern of the successive Ministers in the Ministry of Home Affairs, Government of India about the implementation of the NPC Report..."*<sup>7</sup> This concern, according to the Committee, is reflected in the letters sent by Shri Rajesh Pilot, Minister of State in the Ministry of Home Affairs in July, 1994; Shri Inderjit Gupta, Union Home Minister in April 1997 and by Shri L.K.Advani, Union Home Minister in May 1998 to the Chief Ministers of all States/Union Territories, urging them to take action on the recommendations of the NPC. The Committee has tried to convey an impression as if the Central Government has been keen to bring about police reforms on the lines suggested by the NPC, but the State Governments have not shown even an inclination to consider the subject. This impression is ill founded.

While the State Governments have been stoically and consistently indifferent towards the recommendations of the NPC and even of their own State Police Commissions, the Central Government, except for occasional outbursts of sudden enthusiasm, has been equally lackadaisical in pursuing the subject with the State Governments.

The NPC had finalised its eight and last report in May, 1981. The Government of India circulated the last seven reports of the NPC (Second to the Eight Report) to the State Governments in 1983. The response of the Central Government towards some highly important recommendations of the NPC was negative. In 1983, when the reports were forwarded to the State Governments, they were not asked merely to take appropriate follow-up action. The State Governments were specifically informed that *"at some places in the 2<sup>nd</sup> Report (paras 15.24, 15.35 and 15.55) the Commission has relied on the observations and findings of the Shab Commission to arrive at certain conclusions. Government strongly repudiate all such conclusions. At several other places (such as paras 15.2, 15.4, 15.6, 15.7, 15.18, 15.19 and 15.26 of the 2<sup>nd</sup> Report; para 22.3 of the 3<sup>rd</sup> Report; para 32.7 of the 4<sup>th</sup> Report; para 44.9 of the 6<sup>th</sup> Report; paras 59.10, 59.19 and 59.25 of the 7<sup>th</sup> Report and para 61.8 of the 8<sup>th</sup> Report), the Commission has been unduly critical 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. Government are of the view that no note should be taken of such observations"*.<sup>8</sup> The message was loud and clear and after such advice, it is not surprising that the State Governments conveniently put the major recommendations of the NPC in the cold storage.

The Central Government has always had the option of implementing the important recommendations of the NPC by introducing the model Police Act as drafted by the NPC in the Union Territories<sup>9</sup>. If the Central Government had done so, it would then have acquired the moral authority to ask the State Governments to follow suit. It never did that and merely sent some routine reminders to the State Governments, which naturally failed to convince the States that the Centre was really and genuinely interested in implementing the NPC's recommendations. Even the present attempts at reviving a process of reforms have come about at the instance of a couple of public-spirited retired police officers, the Supreme Court and the NHRC.

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<sup>7</sup> Committee's Report, p3.

<sup>8</sup> The Government of India's letter no. 11013/11/83-NPC Cell dated March 31, 1983

<sup>9</sup> The model Act incorporates all the major recommendations of the NPC.

## Establishment of the State Security Commission

### Statutory or non-statutory

The Committee considers the establishment of the State Security Commission as highly relevant under the present circumstances. The SSC is required to (i) check the arbitrary acts of politicians, (ii) ensure transparency and accountability in governance, (iii) build public confidence in the police and (iv) protect politicians from unwanted pressures.

The Committee, however, departs from the recommendations of the NPC in a major way. While the NPC has recommended that the SSC should be a statutory body, the Committee has recommended that it should be a “*non-statutory, advisory and recommendatory*”<sup>10</sup> body. In the Committee’s view, the “*possibility of a statutory SSC as envisaged by the NPC seems a far fetched dream.*”<sup>11</sup> The main reason given by the Committee in arriving at this decision is that the Committee members encountered from the politicians “*stiff opposition to the idea of any monitoring body or to the concept of an institution to supervise the superintendence of the political executive over the police force. ...It must be remembered that for 17 years, no State Government has lifted a finger in this direction.*”<sup>12</sup> The Committee’s observations are correct. The reluctance of the political executive to accept the idea of such a body and the reasons for the reluctance as stated by the Committee are obvious. It is exactly and precisely for these reasons that the SSC should have a statutory base. The entrenched system of abuse of power and lack of political will to introduce police reforms need to be countered by establishing institutional structures backed by the force of law.

It is not enough to establish the SSC; what is necessary is to ensure that it remains in existence and functions independently, objectively and effectively to prevent the misuse of police force by politicians and bureaucrats and abuse of power by police personnel. A Commission established by administrative instructions and not backed by the authority of law would always be hostage to the very power it seeks to check.

Law will not merely set up such an institution, but spell out its composition, process of selection of members, charter of functions, budgeting, procedure for implementation of decisions, safeguards against its misuse etc. The process of setting up the SSC and its composition are highly crucial. The Committee has not examined these issues in great detail; nor has it discussed the pros and cons of the alternate ideas put before it in the course of its work.

In a recent judgement, the Supreme Court decreed that the superintendence over the Central Bureau of Investigation would be exercised not by the Central Government but by the Central Vigilance Commission (CVC)<sup>13</sup>. The CVC was already in existence, but it had been

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<sup>10</sup> Committee’s Report, p9.

<sup>11</sup> *Ibid.*, p9

<sup>12</sup> *Ibid.*, pp8-9

<sup>13</sup> Supreme Court’s judgement in *Writ Petition (Criminal) Nos. 340-343 of 1993*, Commonly known as the *Havala Case*

set up in 1964 through a Resolution of the Government of India<sup>14</sup>. The Supreme Court directed that the CVC should be given a statutory base so that it can exercise its superintendence over the CBI under the authority of law.

The Committee recognises that a statutory SSC is better than one set up through an executive fiat. It says: *“This issue could have been easily solved if the political executive were to rise above personal interest and co-operate to do what is best in public interest, since a statutory institution would be the most satisfactory and efficient of solving this problem.”*<sup>15</sup> The Committee, however, does not make this recommendation on grounds of *“practicability”*. It suggests an easier option, which would be acceptable to the political executive, who apparently can not be expected to rise above their personal interests.

Politics has been increasingly criminalised since the NPC made its recommendations. The weakness of the Committee’s recommendations lies in the fact that though the situation has worsened and the need to set up a strong institution is ever more acute and urgent, it nevertheless recommends a weak and vulnerable mechanism because it feels that entrenched power elite will resist. The advice being given to the Supreme Court is circuitous, to say the least. Luckily, the final decision rests with the Supreme Court.

### **SSC’s Secretariat & Budget**

According to another recommendation of the Committee, the SSC need not have a separate secretariat of its own. *“The DGP of the State would be the ex-officio Secretary and Convenor of the Commission and would provide secretarial assistance from time to time from his own establishment.”*<sup>16</sup> The basis of making this recommendation is not known, as its rationale is not spelt out in the report.

One of the important functions in the charter visualised for the SSC is, to use the Committee’s own words, to work as *“an impartial body to oversee”* the functioning of the police. That is why the Committee has suggested that the SSC should be called the *“Police Performance and Accountability Commission.”*<sup>17</sup> It is doubtful whether a Commission, whose Secretary and Convenor is the head of the State Police Force and who also provide the police staff to function as the secretariat of the Commission, can really be expected to monitor the functioning of that Force effectively and ensure its accountability. The Secretary and his Secretariat would be in a strong position to ensure that the Commission sees what the Police Department wants it to see and not what the public requires.

The absence of its own Secretariat means that the Commission would have to depend on the Police Department not only for the statistics and other material required by it but also for getting the necessary inquiries conducted in important matters of public interest. Such arrangements would clearly convey an impression to the public that the Commission is nothing but an adjunct of the Police Department. Lack of public faith in the institution would defeat the very purpose for which it is proposed to be set up.

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<sup>14</sup> By Resolution No. 24/7/64- AVD dated February 11, 1964

<sup>15</sup> Committee’s Report, p8.

<sup>16</sup> Committee’s Report, P9.

<sup>17</sup> *Ibid.*, p10

The Committee has been silent about the budget of the SSC. Presumably, this will be a part of the police budget, as the expenditure to be incurred on the functioning of the organisation as visualised by the Committee may not be much. According to the Committee's recommendations, the non-official members of the Commission "*would not be entitled to any emoluments or allowances, except transport costs and sitting fees.*"<sup>18</sup>

The recommendations appear to suggest that the Commission will not have a standing office of its own. The meetings will be convened by the DGP; members will attend and go home, presumably leaving the police staff to take follow up action too.

## **District Police Complaints Authority**

An important subject, like that of police accountability has not, in our view, been dealt with adequately. The Committee recommends the setting up of a "non-statutory body called the District Police Complaints Authority to examine complaints from the public on police excesses, arbitrary arrests and detentions, false implication in criminal cases, custodial violence etc and make appropriate recommendations to the SSC, the Government and the State or National Human Rights Commission"<sup>19</sup>. The Authority will be headed by the District Sessions Judge and have the District Collector and Senior Superintendent of Police as members.

The report is silent about the secretariat of the Authority and the procedure to enquire into complaints against police personnel. Since the District Superintendent of Police will be the Member Secretary of the Authority, it is safe to presume that the Committee wants the Secretariat to be provided by the District Police. If the SSC can function from the State Police Headquarters, the Committee obviously sees no reason why the Authority can not work from the District Police Office.

Two of the three members composing the Authority are a part of the existing executive set-up of the district. The District Police Force, despite being headed by the SP, is subject to the "general control and direction"<sup>20</sup> of the District Magistrate. The way the system is functioning, the public can not be expected to repose its trust and confidence in either of the two functionaries. The public can hardly be expected to approach with confidence the very persons who are supervising the system that has aggrieved them and who are now being asked to sit in judgement over themselves.

The credibility of the proposed institution will be further reduced because the Authority is not being provided with an independent investigating agency of its own. Obviously, the Authority will depend upon the police force to enquire into public complaints against the police personnel. This is precisely the reason why the existing system lacks public credibility. No police accountability mechanism can be considered successful if it fails to inspire public confidence.

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<sup>18</sup> Committee's Report, p9

<sup>19</sup> *Ibid.* p 12.

<sup>20</sup> Section 4 of the Police Act of 1861,

According to its charter suggested by the Committee, the Authority can not initiate action; it can merely make recommendations. The organizations to which it can make recommendations include the SSC. However, the SSC itself is a recommendatory body only. In addition, the SSC is not meant to deal with public complaints against police personnel. At least, the charter prescribed for it by the Committee does not say so.

The trend all over the world is to set up complaint mechanisms under law, invest them with resources and authority to guarantee independent and fair investigations and clothe them with powers to ensure that the guilty policemen are not allowed to get away with their sins of commission and omission. In this country also, if the proposed institution is to succeed, it must be established to do its work openly, quickly, effectively and with patent impartiality. It must be independent, so that it has public confidence and the community sees it as unbiased.

### **Establishment of the Police Establishment Board**

The Committee has recommended that a Police Establishment Board consisting of the Director General of Police as Chairman and four senior-most officers who are immediately junior to him in the police hierarchy should be set up *“to monitor transfers, promotions and other related matters.”*<sup>21</sup> The Committee feels that *“transfers, promotions, rewards, punishments, including suspensions and all service-related matters of officers of and below the rank of Deputy Superintendent of Police should be the sole prerogative of the police hierarchy”*.<sup>22</sup> The Police Establishment Board has been suggested to ensure this. However, how the Board will do so has not been spelt out clearly anywhere in the report. The only suggestion made by the Committee is to amend the Service Rules.

It is presumed that this would bestow enough authority on the Police Establishment Board to enable it to discharge its functions without fear or favour. What is not realised is that presently It is not the rules which allow the political executive or bureaucrats to decide or interfere in transfers, promotions, rewards, punishments and other service related matters of the non-gazetted ranks in the Police. Again it is not the rules which obstruct the police leadership to exercise its authority in such matters. In fact, the existing rules in most States empower the police hierarchy to take such decisions. The crux of the problem is that the senior hierarchy in the police has become vulnerable and in many cases is a willing party to outside illegitimate pressures. The scheme formulated by the Committee does not suggest measures to reduce the vulnerability of the senior leadership in the police or to break the nexus between the politicians and police officers.

According to another recommendation made by the Committee, the Board will also consider the postings and transfers of officers of and above the rank of Superintendent of Police and send its recommendations to the Government for final orders. According to the Committee, the Government should, *“as a matter of course”* accept these recommendations. In case of disagreement, the Government should record the reasons in writing and then *“seek the views of the State Security Commission before issuing orders.”*<sup>23</sup>

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<sup>21</sup> Committee's Report, p 14.

<sup>22</sup> *Ibid.*, p14

<sup>23</sup> *Ibid* ,p9

This recommendation of the Committee creates confusion about the role of the SSC. Once the SSC has expressed its views to the Government, it can hardly be expected in such cases to attend to an important part of its mandate, which is to work as an advisory forum of appeal for disposing of representations from officers against their transfers or postings.

### **Selection Procedure for the post of DGP in the State**

The NPC had recommended that selection for the post of the head of the police force in the State should be done by a Committee consisting of the Chairman of the UPSC, the Union Home Secretary, the State's Chief Secretary and the senior-most among the heads of the Central Police Organisations. The Ribeiro Committee agrees with this recommendation, except in respect of one point. It feels that instead of assigning one slot in the Selection Committee to the senior most police officer among the Central Police Organisation Chiefs, it should be reserved for Director, Intelligence Bureau. As at various other places in the report, the Committee once again does not substantiate this recommendation with supporting arguments, except expressing a subjective opinion that it “ *would be more appropriate*”<sup>24</sup> to do so.

In our view, it would not be appropriate to do so, as it would result in depriving the Selection Committee of wide diversity of perspectives, experiences and opinions, which the NPC's scheme would enable it to have. No organisation or individual should have a permanent interest in a matter of such vital importance as the selection of heads of police forces in the country. Rotating the slot amongst the heads of Central Police Organizations is a much better idea than to assign it to the head of one agency.

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<sup>24</sup> Committee's Report, p18.