

SEVEN STEPS TO POLICE REFORM

1. Introduction

The need for police reforms in India is long recognised. There has been almost three decades of discussion by government created committees and commissions. Way back in 1979 the National Police Commission (NPC) was set up to report on policing and give recommendations for reform. The Commission produced eight reports, dozens of topic specific recommendations and also a Model Police Act.

None of the major recommendations were adopted by any government. This persuaded two former Director General's of Police (DGPs) in 1996 to file a Public Interest Litigation (PIL) in the Supreme Court asking the Court to direct governments to implement the NPC recommendations. In the course of the 10 year long case, in 1998 the Court set up the Ribeiro Committee which handed in its reports in 1999. This was followed by the Padmanabhaiah Committee report in 2000 and eventually the Police Act Drafting Committee (PADC or Soli Sorabjee Committee) that drafted a new model police bill to replace the colonial 1861 Police Act. Meanwhile very little was ever done on the ground to improve policing or implement recommendations put forth by any of these committees or commissions.

It was only a decade later in 2006 that the Court delivered its verdict. In what is popularly referred to as the Prakash Singh case the Supreme Court ordered that reform must take place. The states and union territories were directed to comply with seven binding directives that would kick start reform. These directives pulled together the various strands of improvement generated since 1979. The Court required immediate implementation of its orders either through executive orders or new police legislation.

Initially, the Court itself monitored compliance of all States and Union Territories. However, in 2008 it set up a three member Monitoring Committee with a two year mandate to examine compliance state by state and report back to it periodically.

2. Chronology: *Prakash Singh and Ors v. Union of India and Ors*¹

Date	Supreme Court Hearings, Events and deadlines
1996	Two retired DGPs, Prakash Singh & N K Singh, file a PIL in the Supreme Court
22 Sep 2006	Supreme Court delivers judgment requiring state and central government to implement its seven directives. Governments have until 3 rd January 2007 to comply
11 Jan 2007	Supreme Court Hearing on compliance. Request for extension by states. Six states file separate review petitions. Supreme Court rejects review petitions and orders immediate compliance of directives 2, 3 & 5 while extending deadline for compliance of directives 1, 4, 6 & 7 by three months.
31 Mar 2007	Extension for implementation of directives 1,4,6 & 7
10 Apr 2007	Deadline to file affidavits of compliance
23 Aug 2007	Prakash Singh files contempt petitions against six states - Gujarat, Punjab, Maharashtra, Karnataka, Tamil Nadu, Uttar Pradesh
23 Aug 2007	Supreme Court dismisses review petitions filed in January

¹ (2006) 8 SCC 1



14 Dec 2007	Hearing on contempt petitions filed by Prakash Singh. Court makes no ruling on merits and grants a further extension of six weeks to all states and union territories to file affidavits of compliance.
13 March 2008	Supreme Court hearing and deadline for states to file compliance report
28 Apr 2008	Supreme Court considers establishing a Monitoring Committee (MC)
16 May 2008	Supreme Court passes an order to set up the MC
18 Dec 2008	Supreme Court hearing declines to rule on contempt before MC's report back
21 July 2009	Supreme Court hearing declines to rule on contempt, CJI stating "Not a single state government is willing to cooperate. What can we do?"
Feb 2010	Supreme Court hearing - Advocate Raju Ramchandran was appointed <i>amicus curiae</i> for the Monitoring Committee
Aug 2010	Monitoring Committee sends its final report to the Court
8 November 2010	Supreme Court issues notice to four states- Maharashtra, Uttar Pradesh, Karnataka and West Bengal for total non compliance.

3. Why the Seven Directives?

The seven directives provide practical mechanisms to kick-start reform. They make up a scheme which if implemented holistically will correct the common ills that create poor police performance and unaccountable law enforcement today. The scheme puts in place mechanisms to better ensure that: the police have functional responsibility while remaining under the supervision of the political executive; political control of police by the political executive is conditioned and kept within its legitimate bounds; internal management systems are fair and transparent; policing efficiencies are increased in terms of their core functions and most importantly public complaints are addressed and police accountability enhanced.

4. What are the Seven Directives?

In passing these directives the Court put on record the deep rooted problems of politicization, lack of accountability mechanisms and systemic weaknesses that have resulted in poor all round performance and fomented present public dissatisfaction with policing. The directives can be broadly divided into two categories: those seeking to achieve functional responsibility for the police and those seeking to enhance police accountability. They are as enumerated below:

THE SEVEN DIRECTIVES IN A NUTSHELL

Directive One

Constitute a State Security Commission (SSC) to:

- (i) Ensure that the state government does not exercise unwarranted influence or pressure on the police
- (ii) Lay down broad policy guideline and
- (iii) Evaluate the performance of the state police

Directive Two

Ensure that the DGP is appointed through merit based transparent process and secure a minimum tenure of two years

Directive Three

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) are also provided a minimum tenure of two years

Directive Four

Separate the investigation and law and order functions of the police



Directive Five

Set up a Police Establishment Board (PEB) to decide 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 above the rank of Deputy Superintendent of Police

Directive Six

Set up a Police Complaints Authority (PCA) at state level to inquire into public complaints against police officers of and above the rank of Deputy Superintendent of Police in cases of serious misconduct, including custodial death, grievous hurt, or rape in police custody and at district levels to inquire into public complaints against the police personnel below the rank of Deputy Superintendent of Police in cases of serious misconduct

Directive Seven

Set up a National Security Commission (NSC) at the union level to prepare a panel for selection and placement of Chiefs of the Central Police Organisations (CPO) with a minimum tenure of two years.

5. Salient Features of the Directives

5.1. The State Security Commission

The Problem

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

The Solution

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

At present, there is no well-established system of performance evaluation. The commonly used parameters for assessing performance on the basis of increase or decrease in crime statistics are inadequate. This means of measuring performance has led to the practice of refusing to register cases and disguising statistics. The new system opens up the possibility of consistent and holistic evaluation of the police on the basis of pre-determined planning, provisioning and rationalised performance parameters which would pave the road to better and better policing year on year.

5.2. Selection and Security of Tenure for the DGP

The Problem

Arbitrariness in the appointment of the highest ranking police officer, appointments made on considerations of personal preference and posts held at the caprice of the political executive leading to uncertainty of office and tenure.



The Solution

The DGP must be selected from amongst the three senior-most officers empanelled by the Union Public Service Commission (UPSC) for the post. The selection will be made on the basis of the candidate's: (i) length of service, (ii) service record, and (iii) range of experience.

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

5.3. Security of Tenure for Officers on Operational Duties

The Problem

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

The Solution

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

5.4. Separation of Investigation and Law and Order Police

The Problem

Investigations are poorly mounted, slow, done by inadequately trained and unspecialized staff and frequently subject to manpower deflection into other pressing law and order duties.

The Solution

Both investigation and law and order are vital and specific police functions. In order to encourage specialization and upgrade overall performance, the Court has ordered a gradual separation of investigative and law and order wings, starting with towns and urban areas with a population of one million or more. It is felt that this will streamline policing, ensure speedier and more expert investigation and improve rapport with the people. The Court has not said how this separation is to take place in practice but clearly indicates that there must be full coordination between the two wings of the police.

5.5. Police Establishment Board

The Problem

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

The Solution

The Court has directed the setting up of a Police Establishment Board within each police force. The Police Establishment Board, made up of the DGP and four other senior officers of



the department will serve the functions of (i) deciding all transfers, postings, promotions and other service related matters for police officers of and below the rank of Deputy Superintendent of Police; (ii) making recommendations to the state government on postings and transfers of officers above the rank of Deputy Superintendent of Police; (iii) being a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above and (iv) generally, reviewing the functioning of the police in the state.

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

5.6. Police Complaints Authority

The Problem

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

The Solution

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

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

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

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

6. State Compliance: National Overview

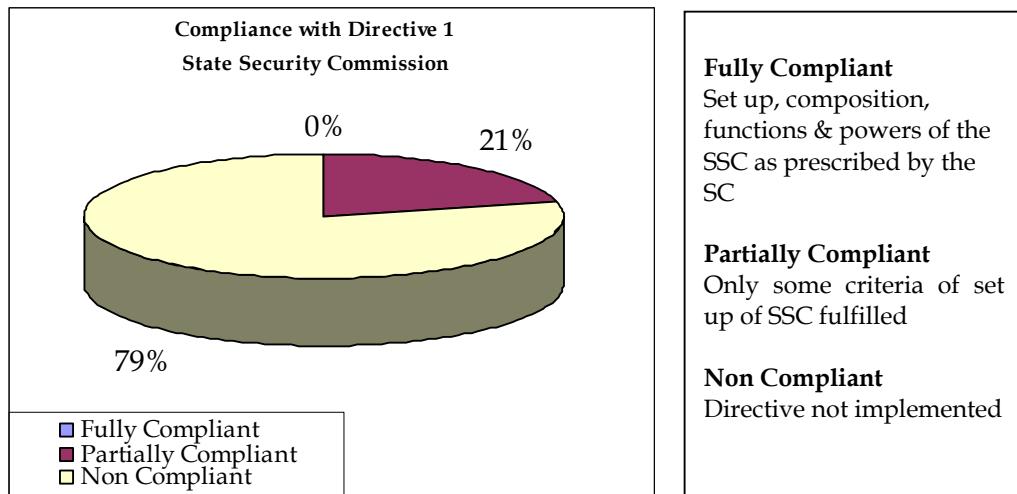
It has been four years since the Court passed its directives. However there is not a single state that has fully complied with the directives. The Court is still hearing the matter and the Monitoring Committee still examining the state's compliance. Clearly there is little political will to bring in the much needed reform. In November 2010, as per the findings of Justice Thomas Committee on state compliance, the Court pulled up the states and sent show cause notices to the Chief Secretaries of four states- Karnataka, Maharashtra, Uttar Pradesh and West Bengal.



This overview of compliance is based on affidavits submitted by states to the Court and thereafter to the Monitoring Committee and on executive orders or legislation passed by states that have been put up on state and police websites. It does not take account of the actual situation on the ground which is very different from what governments have averred on paper. It is disappointing to note that even today states are issuing government orders and notifications in compliance with the directives on the eve of the Monitoring Committee's visit to the states. Every reform attempt is clearly to avoid the scrutiny of the Court or the Monitoring Committee.

Given below is a graphic representation of the compliance status of all states based on the information in their affidavits and submissions.

6.1. Compliance with Directive 1: State Security Commission

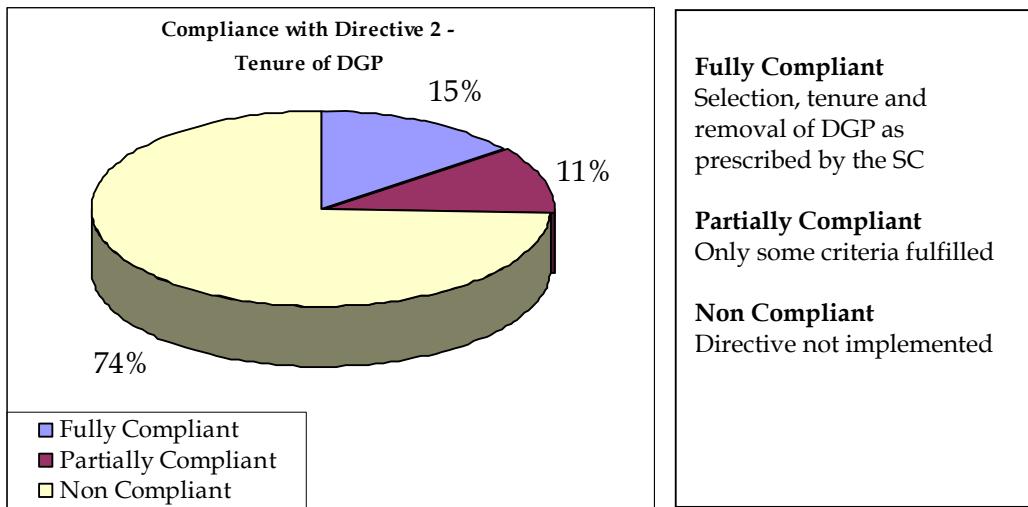


No state has managed to fulfil all the criteria prescribed by the Supreme Court with regards to the State Security Commission. Most states have set up SSCs that do not reflect the Court's criteria with regard to composition, function and powers. States such as Andhra Pradesh, Jammu & Kashmir, Madhya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

After being summoned by the Supreme Court in December 2010, which took exception to the fact that none of the states had implemented its directions in both 'letter and spirit', Uttar Pradesh constituted a State Security Commission by government order. West Bengal, which had also come in for criticism by the Court for including the Health Minister of the State as the Chairman of the Commission, replaced the former with the Chief Minister. Though a commission had been constituted in Karnataka in 2009, it was not fully operational and had not conducted even a single meeting. In light of the Court's summons, the state has swung into action and has scheduled the first meeting of the Commission on December 14, 2010 and formalised the appointment of two retired High Court Judges as members.

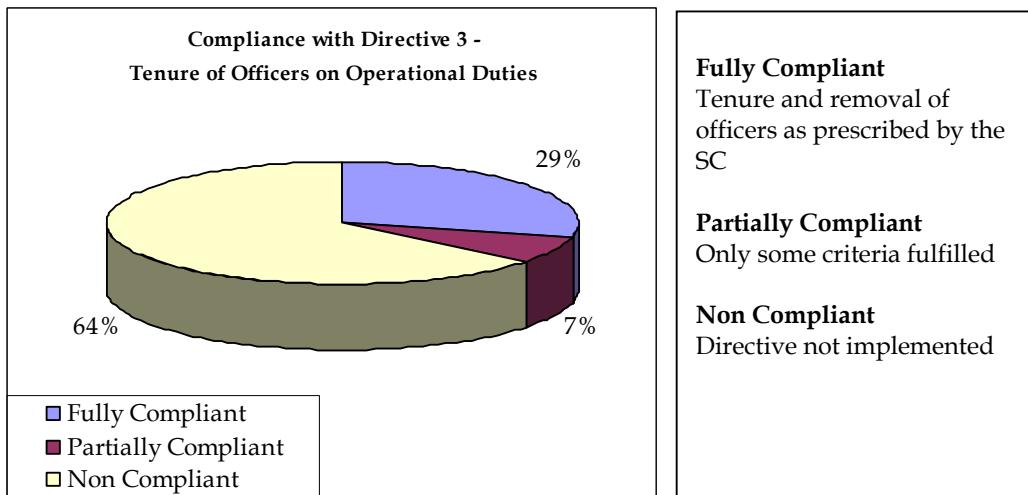


6.2. Compliance with Directive 2: Tenure and Selection of the DGP



Arunachal Pradesh, Meghalaya, 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. A few states have only partially incorporated these criteria, whilst several states, such as Andhra Pradesh, Haryana, Jharkhand, Karnataka and Kerala, are not compliant with this directive.

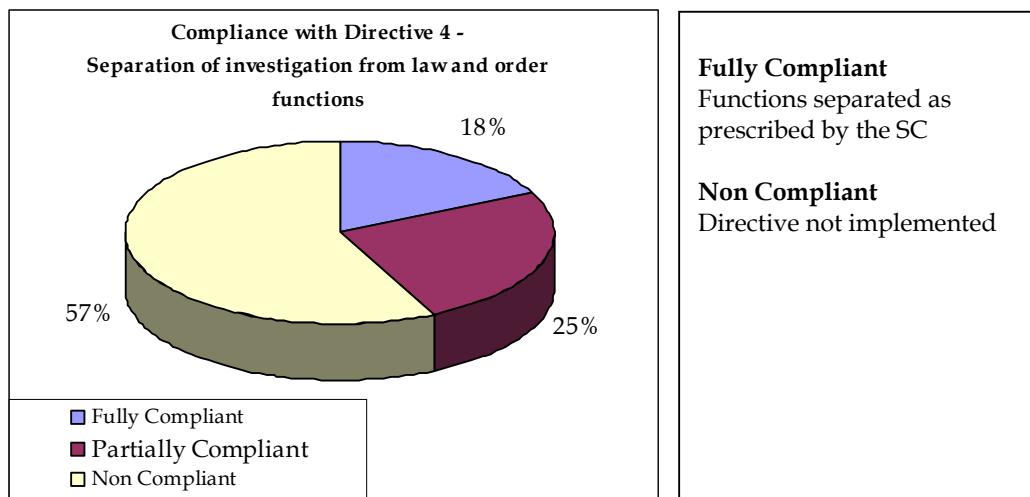
6.3. Compliance with Directive 3: Tenure of Officers on Operational Duties



Andhra Pradesh, 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 a few states have partially satisfied the criteria set by the Supreme Court, it is notable that majority are not in compliance with this directive.

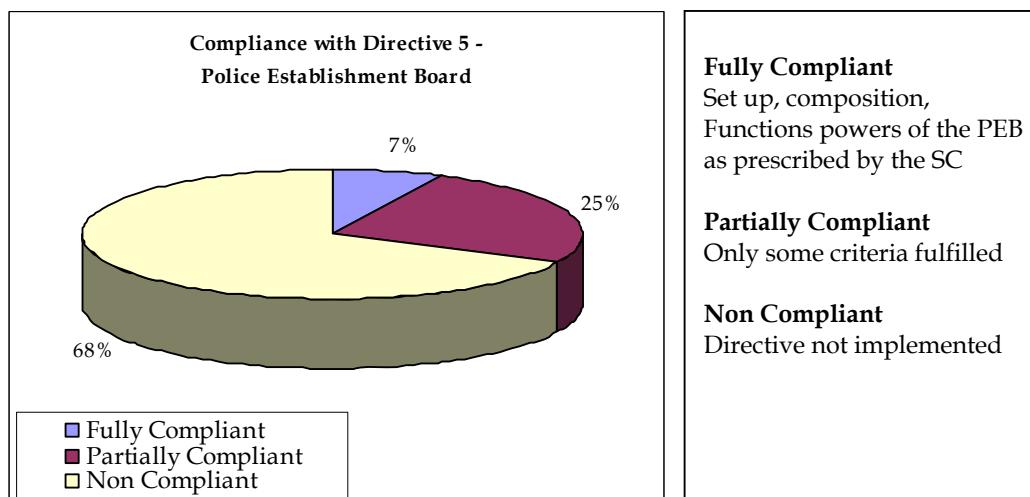


6.4. Compliance with Directive 4: Separation of Investigation and Law & Order Functions



Several states - Assam, Arunachal Pradesh, Haryana, Himachal Pradesh, Karnataka, and Sikkim 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 fully implemented this directive.

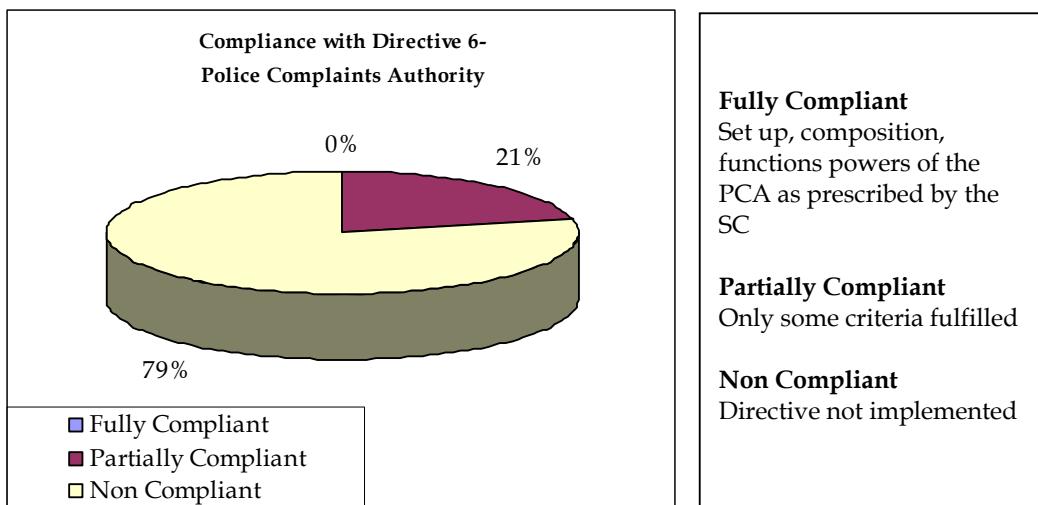
6.5. Compliance with Directive 5: Police Establishment Board



Most states have established a Police Establishment Board, but only Arunachal Pradesh and Goa 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.



6.6. Compliance with 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 - Uttar Pradesh, Tamil Nadu, Punjab, Mizoram, Madhya Pradesh, Karnataka, Jammu & Kashmir, and Andhra Pradesh have completely ignored this directive.

7. Union Territories Compliance

In March 2010, four years after the Apex Court judgment, the Union Government finally took some steps towards implementing the Supreme Court's directives. The Ministry of Home Affairs (MHA) issued two memoranda, the first setting up a single Security Commission to cover all the Union Territories (UTs), and the second setting up Police Complaints Authorities (PCAs).

The proposed model for the Security Commission suggests that there would be one SSC for all the UTs. The composition is not along the lines suggested by the Court, powers are not binding and no credible process for the selection of its members has been laid out. In fact the model is weak, defeating the entire purpose of setting it up.

Regarding the Complaints Authority, a single authority is envisioned for looking into the complaints from Daman & Diu, Dadra & Nagar Haveli, and Lakshadweep; another to handle Andaman & Nicobar Islands, Chandigarh and Puducherry and a third Authority set up at the state level would look into complaints in Delhi.

Unfortunately, eight months after the passage of the memorandum save in Chandigarh these authorities have nowhere been set up. Chandigarh in September 2010 set up its three-member Complaints Authority. Unfortunately the same was done without following either the composition or selection process as laid down by the Court.

8. Compliance Watchdog: The Monitoring Committee

In May 2008 the Supreme Court set up the three- member Monitoring Committee to look at the implementation of the Court's directives by the Governments. The committee is headed by Justice K.T. Thomas- a retired judge of the Supreme Court, Mr. Kamal Kumar a retired IPS officer and Mr. Dharmendra Sharma- Joint Secretary of Police Modernisation.



Every six months, the Committee was to submit compliance reports to the Court. Between October 2008 and December 2009 the Committee filed four interim reports before the Court and in August 2010, the Committee submitted its final comprehensive report to the Court.

The Committee examined all the available documents, including the affidavits filed by the central and state governments before the Supreme Court. It also decided to take stock of the New Police Acts legislated by some of the states, in order to review whether or not they conformed to the Supreme Court guidelines.

Unsatisfied with the level of compliance as well as the attempts of the states to comply only on paper, the Committee felt the need to look into the ground realities. However, considering that it would be impossible for it to visit all the States and UTs, it decided to visit four states of Maharashtra (West Zone), Uttar Pradesh (North Zone), Karnataka (South Zone) and West Bengal (East Zone)- all of which in the Committee's assessment were defaulters besides being populous.

Based on the report of the Committee the Apex Court at its hearing on 8 November 2010, took serious note of the lack of compliance and issued notices to the four errant states of Maharashtra, Uttar Pradesh, West Bengal and Karnataka asking their Chief Secretaries to appear before the Court at the next hearing to clarify as to why the six directions given in its order of September, 2006, have not been complied with. The Court has stated that it does not want its judgment to lie in the courtroom and has also asked for a timeline from these states for the separation of investigation from law and order duties of the police.

9. In the High Courts

In several instances, High Courts have played a vital role in monitoring state compliance by ensuring that states function is accordance with the Supreme Court directives. 751 police personnel, posted in various places in Uttar Pradesh had petitioned the Allahabad High Court challenging their transfer, saying the same had not been effected by the Police Establishment Board set up by the State government in pursuance of the Supreme Court directive in the Prakash Singh case. The state government in response stated that getting approval for every transfer from the Establishment Board was not possible "looking at the strength of the police personnel in the state". Allowing the petition, the Court in October 2010 set aside the transfers of hundreds of police personnel across the State on the grounds that they were illegal as "they were not in consonance with the judgement of the Supreme Court".

In its October 8 judgment in 2010, the Madras High Court had similarly quashed the appointment of Letika Saran as DGP of Tamil Nadu on the grounds that the Supreme Court guidelines in the Prakash Singh judgment which lay down the process of selection of the DGP had not been followed. The Court directed the State government to forward the names of all eligible officers in the rank of DGP to the UPSC in order for them to prepare the panel of officers for selection. Once the UPSC had forwarded the panel the state government was to select the new DGP no later than December 7, 2010. The state government however chose to appeal the order of the High Court before the Apex Court. The Apex Court has refused to stay the order of the High Court thus giving the message to states that its time to start complying with the orders passed in the Prakash Singh case.

In line with the ruling of the Supreme Court in the Prakash Singh case, Andhra Pradesh High Court in November 2010 ordered the state government to involve the UPSC while appointing the DGP. The court made it mandatory for the state to fill the post only after a list of all eligible DG rank officers had been sent to the UPSC which would then shortlist three for final selection by the state government, thereby making the process more transparent.



10. New Police Legislation

It is widely accepted that it is untenable to continue to police the citizens of India under the Police Act of 1861, which was drafted by the colonial authorities close on the heels of the first War of Indian Independence in 1857.

The National Police Commission in its 8th and concluding report of 1981, submitted a new Police Bill for India. Thereafter in 2005 the Ministry of Home Affairs constituted the Police Act Drafting Committee (PADC) to draft a Model Police Bill for India. Very shortly after the Supreme Court delivered its judgment, the PADC submitted its draft Model Police Bill, 2006 to the Home Ministry. This draft bill was also circulated among all state governments. The Model Police Bill complements the Supreme Court judgment in that it provides the detailed nuts and bolts through which the directions of the Supreme Court can be most effectively implemented. The Union Home Minister had stated that the Union Government would enact the new law for police in union territories in the 2007 budget session of Parliament. It was hoped that state governments would enact their own police legislation whilst drawing on the best elements from the PADC's Model Police Bill, the NPC's Model Police Bill and the Supreme Court directives on police reform. This however never happened and almost four years after the Supreme Court judgment as well as the Model Police Bill being submitted to the union government and union territories still have no new Police Act.

11. Public Input into Legislative Reform

Till date, only eleven states have enacted fresh Police Acts to replace the old legislation and two states have amended their earlier laws on the subject to accommodate the new directives of the Court². The UT of Chandigarh has chosen to adopt the Punjab Police Act. Six states have completed the drafting of new police legislations or tabled bills in the assembly.³ Two states are currently in the process of drafting⁴.

In April, 2010 Delhi came up with a Draft Delhi Police (Amendment Bill). The piecemeal amendments completely disturbed the internal logic of the Principal Delhi Police Act of 1978 and in every way thwarted the directives of the Apex Court. In October 2010 after much civil society uproar the MHA decided to abandon the idea of an amending legislation and introduced the Draft Delhi Police Bill, 2010. The Draft Bill is much along the lines of the Draft Model Police Bill but unfortunately sans the safeguards that were present in the model bill.

However, important to note is the complete lack of transparency, community consultation or civil society input in this process by most states. A noteworthy exception is Kerala which after tabling its Bill in the legislature referred it to a 10 member Select Committee. The Select Committee has taken upon itself the task of going to each district and inviting public feedback on the Bill. It has drafted a questionnaire on the Bill which has been put up on its website. Responses to the questionnaire have been invited and should hopefully be considered by the Committee before placing its report in the Assembly.

Communities are the main beneficiaries of good policing and the main victims of bad policing - community and civil society participation in the process is essential if the police is going to be efficient, effective and accountable.

State governments therefore need to publicise their initiative to redraft police legislation. This will ensure that the legislation adequately reflects the needs and aspirations of the people in relation to the police service they want. This can be done by various means including:

² States of Assam, Bihar, Chattisgarh, Haryana, Himachal Pradesh, Punjab, Rajasthan, Sikkim, Tripura, Uttarakhand & Meghalaya have passed new police legislations. Kerala and Gujarat have passed Amendment Acts.

³ Goa, Kerala and Tamil Nadu have tabled their drafts in the assembly. Arunachal Pradesh, Andhra Pradesh, Delhi and West Bengal have their drafts ready, though some are not in the public domain.

⁴ Orissa and Uttar Pradesh have set up committees for drafting new legislations but have not produced a draft.



- Inviting public and civil society participation in drafting committees
- Inviting public submissions on the type of police service communities would want
- Inviting input from police at all levels about the type of service they want to be part of.
- Ensuring that draft that go before the state assemblies and Parliament is in the public domain and made available for comment under proactive disclosure provisions in section 4(1)(c) of the Right to Information Act.

