

Minutes of Meeting of the Core Advisory Group on Criminal Justice System Reforms

18th August 2021, 11 am to 2 pm at Room No. 508, Manav Adhikar Bhawan and Cisco Webex platform

Core Advisory Group Members present during the meeting:

1. Justice Sh. B K Mishra (Retd.), Former Acting Chairperson of Odisha State Human Rights Commission
2. Prof. (Dr.) Geetha Oberoi, Professor, National Judicial Academy, India (Bhopal, M.P)
3. Dr. B.T. Kaul, Advocate, Supreme Court of India
4. Ms. Shanchobeni P Lotha, Advocate, Wokha District Legal Services Authority, Nagaland
5. Sh. Rishi Kumar Shukla IPS (Retd.), Former Director, Central Bureau of Investigation
6. Dr. Meeran C Borwankar IPS (Retd.), Former DG, Bureau of Police Research & Development
7. Sh. G K Pillai IAS (Retd.), Former Union Home Secretary, Government of India
8. Prof. (Dr.) M. Srinivasan, Professor & Head of Department of Criminology, University of Madras
9. Prof. (Dr.) Vijay Raghavan, Professor at Centre for Criminology and Justice, TISS, Mumbai

Ex-officio members

10. Sh. Ashok Kumar Jain, Member Secretary, National Legal services Authority
11. Sh. Neeraj Sinha, Addl. Director General, Bureau of Police Research and Development
12. Sh. Amit Garg, Joint Director, Sardar Vallabhai Patel National Police Academy
13. Sh. Niraj Kumar Gayagi, Joint Secretary, Ministry of Law and Justice
14. Sh. Shri Prakash, Joint Secretary (Judicial), Ministry of Home Affairs

NHRC Officers Present for the meeting:

1. Justice Sh A K Mishra, Honorable Chairperson
2. Justice Sh M M Kumar, Honorable Member & Chair
3. Dr. D. M Mulay, Honorable Member
4. Sh. Bimbadhar Pradhan, Secretary General
5. Sh. Santosh Mehra, Director General (Investigation)
6. Sh. Surajit Dey, Registrar (Law)
7. Smt. Anita Sinha, Joint Secretary
8. Smt. Manzil Saini IPS, Dy. IG (Investigation)
9. Sh. Anupam Sharma, Senior Superintendent of Police
10. Sh. Sudesh Kumar, Senior Research Officer
11. Sh. Sam T John, JRC
12. Ms. Saaniya Srivastava, JRC
13. Sh. Shonit Nayan, JRC

INAUGURAL

Introductory Remarks: Sh. Santosh Mehra, Director General (Investigation), NHRC

- To promote an enabling ecosystem in the country inclusive of legislations, protection and strong and time bound actions whenever the law enforcement agencies are at fault.
- Police force in the country works hard to ensure the maintenance of law and order along with the duty to prevent the commission of crime in the society. These duties were carried even during the pandemic where a large number of police personnel were affected by the virus and many died while enforcing the lockdowns orders.
- In the past few years, there is a definite decline in the number of civilian casualties due to police firing, police encounters and deaths in police custody.
- Certain judgments of the courts and amendments in the legislations are misused by the police in many instances, such as the use of handcuffs, procedures of arrests and jurisdictional issues.

Address: Sh. Bimbadhar Pradhan, Secretary General, NHRC

- Criminal Justice System is responsible for enforcing law, adjudicating crime and correcting criminal conduct.
- There is a huge backlog of cases in the courts at all levels across India. There is a wide gap in the ratio of the number judge to the population. The 120th Law Commission of India report recommends that there must be atleast 50 judges per million population.
- New challenges have emerged in the form of terrorism, cyber-crime, online abuse, human trafficking, and financial frauds.
- Police force should be given functional autonomy to enforce rule of law. It should be smart, strict and sensitive, modern and mobile, alert and accountable, reliable and responsible and tech savvy.

Address of the Guest: Dr. D M Mulay, Hon'ble Member, NHRC

- Criminal Justice System Reforms cannot be delinked from Legislature and Executive. There is no doubt that most representatives from the state and central **legislatures** who are accused of serious crimes like extortion, abduction, rape, murder etc. will not be interested to initiative reforms in the criminal justice system.
- Pending cases in the **Judiciary**, vacancies in the judicial administration and the rate of conviction is a serious matter of concern in terms of reforms in the criminal justice system. **Executive reforms** in the country is also essential for expecting changes in the functioning of the administration.
- We need to involve in such discussion the members of the legislature and encourage them to take forward the process of reforming the criminal justice system.

Inaugural Address by the Chair: Justice Sh. M M Kumar, Hon'ble Member, NHRC

- The Supreme Court of India in the landmark judgment of the *Prakash Singh and Ors Vs Union of India* has also quoted the NHRC's report of 2002 on Police reforms.
- Despite having constituted various commissions/ committees in the past including the Law Commission reports, NHRC reports there is still a lacunae to implement the recommendations on ground. And on a daily basis there are series of complaints received by the NHRC on non-registration of FIRs, rape, kidnappings etc. especially from the states of Uttar Pradesh, Bihar and Odisha.
- It is a distant dream to see a reform of having One investigating officer and One trial judge for a Single case and the trials should be conducted on day to day basis by one judicial officer. And the Investigating Officer should not be transferred during the process of Investigation.

TECHNICAL SESSIONS

AGENDA ONE- POLICE DIGITISATION AND ACCOUNTABILITY

Presentation by Smt. Manzil Saini IPS

- In respect of the cases received in the NHRC, there is a sharp decline in the number of cases of false implications, illegal detentions, non-registration of FIRs, and custodial torture. In the NCRB Crime in India report, states like Uttar Pradesh, West Bengal and Bihar have given nil figures on the crimes committed/cases of inaction by police.
- There were more than 10 initiatives (Committees and Commissions) by the government and courts to reform the police force since 1861 to the present date ranging from pre-independence to 75 years after independence.
- The *Prakash Singh Vs Union of India* judgment of the Supreme Court of India in the year 2006 lays down seven directives to be followed by the Centre and State Governments to ensure police autonomy, efficiency and accountability.
- **Police Complaints Authority**- There is partial compliance by few states in terms of the functioning and constitution of the district and state level police complaints authority and many states have completely ignored this directive..
- There are various provisions and safeguards against arbitrary arrest and detention in the legislations. The landmarks judgments of the Supreme Court in *Joginder Kumar Vs State of U.P, 1994* and *D K Basu Vs State of West Bengal, 1996*, lay emphasis on the procedures to be followed during arrests.
- In cases of custodial deaths and encounters, the NHRC has to be informed and detailed guidelines and SOPs of the Commission is framed in this regard. There are also other provisions in the Code of Criminal Procedures and the Indian Evidence Act.
- NHRC and SHRCs have limitations on ensuring accountability as they function as recommendatory bodies and the findings of the investigations on the police inaction/custodial deaths/ any human rights violations are not binding on the states.

- Police Modernisation has improved the efficiency of the police, increased the accountability of police and also has increased the outreach of the police. The CCTNS, online services of police, database of offenders, cyber-crime reporting, ICJS by the Supreme Court are some of the police modernization introduced in recent years.

CORE GROUP DISCUSSION

Dr. Geetha Oberoi

- The 113th report of the Law Commission of India suggests for insertion of new Section 114 B in the Indian Evidence Act which will ensure that in case of a person in police custody sustains injuries, it is presumed that those injuries have been inflicted by the police, and the burden of proof shall lie on the authority concerned to explain such injury.
- The 135th report of the Law Commission of India on 'Woman in custody' was accepted in 2005 and 2006 and amendments were made on the time of arrests of woman. However, Assam, Himachal Pradesh and Haryana having introduced further safeguards by ensuring that if a woman is required to be arrested by a woman police officer after sunset and before sunrise, a written statement has to be obtained from a Judicial First Class Magistrate of the local jurisdiction.
- The 177th report of the Law Commission of India recommended incorporation of Supreme Court decision in *DK Basu case* by suitable amendment to CrPC and also allowing external monitoring of police station by representative of registered NGOs through visiting police stations to check against unlawful arrests and treatment.

Dr. Vijay Raghavan

- State governments can consider appointing members from the legal aid institutions to visit police station on a regular basis as a police accountability initiative.

Dr. B T Kaul

- The Constitution bench of the Supreme Court in *Lalita Kumari Vs State of U.P* held that the registration of FIR is an access to justice and access to justice is a fundamental right. Non- registration of FIR can even lead to contempt of court.
- The Section 36 CrPC states that every superior officer above the rank of station house officer has the same powers as that of the station officer. And this provision ensures that every officer empowered as per the section is duty bound to check if there is any bottlenecks in registration of FIRs.

Sh. G K Pillai

- Unless there is more than 80% of the police force trained in digitalization, it will be extremely difficult to main records and upload contents.
- There are many instances where the CCTVs in the police stations were not functional, leading to the destruction of the digital evidences of police high handedness and torture.

- Police accountability does not come into force because no one is actually held accountable. Rate of conviction of police officers for violating fundamentals is poor and the compliance of the law by the police can be ensured only if such violators are punished.

Sh. Surajit Dey

- NHRC in large number of complaints received on delay or denial of registration of cases, has recommended to the states to take action as per section 166 A of the Indian Penal code which penalizes the public servant for disobeying the law and has also recommended for compensation on such delays.

Sh. Santosh Mehra

- There is a need to slowly increase the strength of human resources in the courts and police station despite the existing unfilled positions so as to provide speedy justice and disposal of cases.

AGENDA TWO- SPECIALIZED TRAINING, CAPACITY BUILDING AND STANDARDIZATION OF PROCEDURES

Presentation by Sh. Rishi Kumar Shukla IPS (Retd.)

- There is a drastic development in technology in the last 15 years and it is time to consider changing the criminal laws and procedures in accordance with the technological capabilities of the present. In specific, the procedural laws and the Evidence Act needs complete changes.
- Investigation procedures need to be simplified and standardized. The state police should lay down simple procedures without compromising effective investigation. The CBI Crime Manual is the recent example of the change, wherein, it covers the procedures to be followed by an investigating officer.
- Police trainings should include the very nature of the changing patterns of crime, changes in the process of investigation and demands of the evidence. There is also a need to empower the investigating officer and give a sense of esteem.
- We need to make efforts to segregate the investigation of offences based on its seriousness so that even the lower ranks police personnel can also contribute to the investigation processes. At the end, changes in the system have to come through technology and motivational efforts.

Presentation by Sh. Neeraj Sinha IPS

- Technology is available for the good, it is almost and always value neutral and hence, it is also equally available in the hands of criminals. The worst situation is that, while the

traditional crimes have still remained, newer and deadlier crimes have emerged and added over the years.

- With the emerging concerns relating to cybercrime, the Darknet, CBRN, Bitcoin and terrorism, there really is no alternative to learning the new tricks of the trade or getting exposed for an investigator.
- There is a need to identify the ‘disguised untrained’ who despite going through the training processes of the institutions lack the capability of handling the emergent concerns.
- There is a need to standardize the curriculum on the emerging concerns especially in the context of trans-border footprint of crime and events.
- There is a need to increasingly incentivize the training of best minds as the ill-trained police person impacts more than just the security environment.

CORE GROUP DISCUSSION

Dr. M Srinivasan

- Standard Operating Procedures should not be just confined to investigation and police procedure, but it should also include instances after the commission of crime till the disposal of case. This should also include the dignified treatment of the victims of crime.
- Poor conviction rate can be attributed to predominant factors such as the quality of investigation and efficacy of prosecution. Lack of scientific investigation and inability of the prosecution to establish the guilt are the corresponding elements for the low conviction rates along with the treatment meted out to the victims of criminal justice process also contributes to the same.
- Best practices around the world should be reviewed and adopted while preparing SoPs.

Representative from the SVPNPA, Hyderabad

- Concerns on capacity building and specialized trainings are being incorporated in the syllabus of IPS trainees. The National Police Academy is in constant touch with the State Police to identify the areas to be covered as part of the training.
- Subject on ethics, attitude and human rights have been introduced and best practices of the state in terms of pandemic policing is compiled as training materials.
- The introduction to e-pass systems, use of technology during Covid-19, challenges faced by the police during the pandemic, immediate protocols that were to be laid down etc. were also captured and compiled as modules for training.

Sh. G K Pillai

- **Example:** Since all the police personnel have smart phones with them these days, the Maharashtra Police has introduced a method of sending capsules everyday through text messages, to all the police personnel of all ranks, about the latest guidelines and court directions/judgments and sections of the criminal laws. At the end of the month, there is an online test for the police personnel on the above subjects.

AGENDA THREE- COMMUNITY POLICING AND POLICE-PUBLIC RELATIONSHIP

Presentation by Dr. Meeran C Borwankar IPS (Retd.)

- Citizens and police collaboration automatically ensures that human rights are respected as per various surveys and studies. There are various initiatives by the states police organizations and some of which are temporary in nature and changes with appointment of new officers. Some initiatives like Mahila Suraksha/Dakshata Samitis and Mohala Committees of Maharashtra, Friends of police of Tamil Nadu, Maitri of Andra Pradesh, Saanjh of Punjab among others are not centered around one officer or one regime and are found to be successful benefiting both the police and citizens.
- Emphasizes to be given on action oriented research as mostly research is reduced to secondary data. Primary/ field oriented research could be encouraged to understand the issues at ground level.
- Disseminating existing research projects entrusted by NHRC in regional languages for better understanding and implementation of the recommendations made by the researchers.

Presentation by Dr. Vijay Raghavan

- Community policing is basically developing partnership with citizens to reduce crime or social disorder in the society. It is related to problem oriented or intelligence- led policing.
- Some of the methods used in ensuring community policing practices are establishing neighborhood watch groups, foot patrolling, increasing accountability to the community through workshops, programmes, meetings etc., partnership with government, non-government and community based organizations, involving specific/vulnerable groups like youth, women, minorities who are left out of justice delivery process through formal or informal ways and counter community alienation.
- There were two projects by TISS which turned out to be successful and adopted by others states as well. The project was where the trained social workers were placed in police stations under Special Cell for Women and Children and they addressed issues of violence against women, children and other marginalized groups.

CORE GROUP DISCUSSION

Dr. Meeran C Borwankar IPS (Retd.)

- The expertise of the trained social workers of TISS working in policing station was utilized by the police officials.
- The initiatives of TISS can be encouraged and adopted by all States and UTs.

Sh. Rishi Kumar Shukla IPS (Retd.)

- Madhya Pradesh has started an internship for students in police station to understand the working of police officials.

- MP has started Gram Tatha Nagar Raksha Samiti Adhiniyam which provided budget to support the citizens in times of crises and ensure peace and harmony in the city.

Sh. Santosh Mehra

- There are few examples of enduring successes of community policing in the country. Maitri Scheme was started by Andhra Pradesh and it was a success in Hyderabad and other cities. Members part of the scheme prevented potential serious situation like communal riots. Over a period of time, there was deterioration and large of undesirable elements/volunteers joined who were affiliated to some political parties. Currently, the scheme is dysfunctional.
- There is a need to study and identify models which have been successful in long term basis and recommend the government to incorporate these in the existing schemes/policies.

Dr. Geetha Oberoi

- Police response to harmful practices prevalent among different communities like honour based abuse, forced marriages, dowry violence, witchcraft must be improved.

CLOSING SESSION

Remarks by the Guest: Justice Sh. Arun Kumar Mishra, Hon'ble Chairperson, NHRC

- Digitization should ensure fair investigation, it should keep a record of imprisonment of under-trial prisoners in jails or details of the post-conviction or the remission earned can add to the effective administration of justice. There is concern that large numbers of people are languishing in jails even after the end of the term of conviction.

Closing remarks by the Chair: Justice Sh. M M Kumar, Honb'le Member, NHRC

- There is a genuine concern of police overburdened with large number of complaints along with the shortage of human resources in police stations.
- Whenever a new legislation is brought, there should be an impact assessment to know the financial implications, required human resources and assessing the infrastructure required.
- Community policing should be institutionalized and the initiative must not end with the expiry of the tenure of the officer in charge of the jurisdiction.

MAJOR RECOMMENDATIONS OF THE CORE ADVISORY GROUP ON CRIMINAL JUSTICE SYSTEM REFORMS

I. POLICE DIGITISATION AND ACCOUNTABILITY

1. Immediate need to set up Police Complaints Authorities at the State/ UT and District level as per the directions of the Hon'ble Supreme Court directives in the landmark judgment of *Prakash Singh Vs Union of India*, 2006. **(Action to be taken by the Ministry of Home Affairs and State Governments)**
2. Status of compliance of the all the directives issued by the Supreme Court in the 2006 judgment of *Prakash Singh Vs Union of India* to be displayed on the website of the concerned union ministry and the state home departments websites. **(Action to be taken by the Ministry of Home Affairs and State Governments)**
3. To consider implementing the recommendations of the 113th report of the Law Commission of India for insertion of Section 114 B in the Indian Evidence Act to ensure that 'in case of a person in police custody sustains injuries, it is presumed that those injuries have been inflicted by the police, and the burden of proof shall lie on the authority concerned to explain such injury'. **(Action to be taken by the Ministry of Home Affairs and Ministry of Law & Justice)**
4. Presently the legal framework is not suitable for adoption of technology in the criminal justice system. From witness examination to digital service of processes to production of digital documents to digital recording of evidence to impediments in admissibility of internationally located evidence etc. The legal framework needs to be made technology friendly to expedite criminal justice system processes. **(Action to be taken by the Ministry of Law & Justice)**
5. To upgrade the police stations by digitizing the records and providing online services to the citizens even in the rural parts of India. There is a need for wide awareness about such user-friendly mediums to access police. **(Action to be taken by the Ministry of Home Affairs)**
6. Government should invest more human and financial resources in 'Interoperable Criminal Justice System' (ICJS) linking Police, Prosecutors, Judiciary, Prisons and Forensics to expedite justice delivery. **(Action to be taken by the Ministry of Home Affairs)**
7. Supreme Court's order of December 2020 directing the State and UTs to install CCTV cameras equipped with night vision in every police station of the country, should be implemented immediately. This is mandatory to ensure the accountability of police stations. **(Action to be taken by the State Home Department)**

II. SPECIALIZED TRAINING, CAPACITY BUILDING AND STANDARDIZATION OF PROCEDURES

1. Trainings on cybercrime investigations and collection of digital evidences should be imparted to the police personnel on a regular basis. **(Action to be taken by the State Home Department)**
2. Regular Mid-Career Experience Sharing and Cross Training Combined training sessions of Judges, Investigators and Prosecutors must be periodically conducted to promote experience sharing and exchange of viewpoints. Presently the level of interaction is very formal and limited and there is insufficient cross understanding of issues involved. **(Action to be taken by the State Home Department)**
3. The existing Criminal Law Reforms process should also focus on the provisions for speedy trials, protection of witness, addressing the victim concerns, improving investigative mechanisms, and eliminating custodial torture. Therefore, reforms can be best achieved through inclusive and victim centric approaches. **(Action to be taken by the Ministry of Home Affairs)**
4. Police officers with competence, integrity and known reputation should necessarily be involved during the process of amendments or framing of legislations with regard to the matters of reforming the criminal justice system and the criminal laws. **(Action to be taken by the Ministry of Home Affairs, Ministry of Law & Justice and State Governments)**
5. The field level officers (SHOs, Sis & constables) should be periodically trained about legal provisions, amendments in law, important judgments etc. as they are the ones who implement policing on ground. Training should be specialized, scientific & given to subordinates more than at senior levels. **(Action to be taken by the State Home Department)**

III. COMMUNITY POLICING AND POLICE-PUBLIC RELATIONSHIP

1. NHRC or the Ministry of Home Affairs can prepare and issue advisory to the states to constitute a safe, reliable and effective community policing programme. **(Action to be taken by the NHRC and Ministry of Home Affairs)**
2. Action plan for the core group are: **(Action to be taken by the NHRC)**
 - i) To hold virtual zonal conferences for sharing best community policing practices of each State with other States.
 - ii) Separate virtual meetings with the Commissioner of police of metro cities as the situations or requirements of the metros are different from rural areas
 - iii) Virtual zonal conferences with police training academies/colleges/ schools to review their curriculum and training courses on human rights and community policing.

3. Trained social workers, law students, persons with credible & meritorious background on subjects should be attached to police stations as a part of Community policing. **(Action to be taken by the State Home Department)**
4. Community Policing is no longer at an experimental stage but it should be incorporated as a practice/ policy in police manuals, laws, advisories and police training syllabus. **(Action to be taken by the State Home Department)**
