

COMPARISON BETWEEN SUPREME COURT DIRECTIVES AND KERALA POLICE DRAFT LEGISLATIONS

DRAFT KERALA POLICE ACT, 2008 (KPAR COMMITTEE); AND KERALA POLICE BILL (KERALA
LAW COMMISSION, 2009)

Description	Supreme Court directives	Kerala Police Draft Act, 2008 Punnoose Committee	Kerala Police Bill, Law Reforms Commission, VK Iyer
Directive 1: State Security Commission	<p><i>Composition</i></p> <ul style="list-style-type: none"> Chief Minister/ Home Minister - Chairperson DGP - ex-officio secretary Chief Secretary Leader of Opposition Serving/retd. judge Independent members <p><i>Function</i></p> <ul style="list-style-type: none"> Lay down broad policies Giving directions Evaluate police performance Prepare & table a report before State Legislature <p><i>Powers</i> Binding</p>	<p><i>Composition</i> <u>Non compliant</u></p> <ul style="list-style-type: none"> Minster in charge of Law included Secretary to the govt. (Home) <p><i>Function</i> <u>Compliant</u></p> <p><i>Power</i> <u>Non compliant</u></p> <ul style="list-style-type: none"> Recommendations binding only on the <u>police department</u> <p>Govt. may fully or partially reject or modify any recommendations/directions of the SSC, for reasons provided in writing</p>	<p><i>Composition</i> <u>Non compliant</u></p> <ul style="list-style-type: none"> Principal Secretary of Home Dept. <p><i>Function</i> <u>Compliant</u></p> <p><i>Power</i> <u>Non compliant</u></p> <ul style="list-style-type: none"> Bill is silent on nature of powers
Directive 2: Selection and Tenure of the DGP	<p><i>Selection</i></p> <ul style="list-style-type: none"> Candidates empanelled by the UPSC based on the following selection criteria: <ul style="list-style-type: none"> length of service very good record range of experience for heading a police force State govt. will appoint the DGP from one of the empanelled candidates <p><i>Tenure</i></p>	<p><i>Selection</i> <u>Non compliant</u></p> <ul style="list-style-type: none"> Candidates not empanelled by UPSC/independent agency DGP directly appointed by the state govt. <p><i>Tenure</i> <u>Non compliant</u></p> <ul style="list-style-type: none"> Two years tenure <u>subject to superannuation</u> <p><i>Premature removal</i> <u>Non compliant</u></p> <ul style="list-style-type: none"> DGP can be removed by the state govt. without 	<p><i>Selection</i> <u>Compliant</u></p> <ul style="list-style-type: none"> Candidates empanelled by SSC Selection criteria fulfilled <p><i>Tenure</i> <u>Compliant</u></p> <p><i>Premature removal</i> <u>Non compliant</u></p> <ul style="list-style-type: none"> DGP can be removed by the state govt. without consultation with the SSC



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	<ul style="list-style-type: none"> Minimum of two years tenure irrespective of superannuation <p><i>Premature removal</i></p> <ul style="list-style-type: none"> Can be removed prematurely: <ul style="list-style-type: none"> consequent upon actions taken against him under the AIS (Discipline and Appeal) Rules following conviction in a criminal offence/in a case of corruption otherwise incapacitated from discharging duties State govt. can only remove DGP in consultation with the SSC 	consultation with the SSC	
Directive 3: Tenure for officers on operational duties	<p><i>Tenure</i></p> <ul style="list-style-type: none"> Minimum two years tenure for <ul style="list-style-type: none"> IGP (zone) DIGP (range) SP (district) SHO <p><i>Premature removal</i></p> <ul style="list-style-type: none"> Officers can be removed prior to two year tenure upon: <ul style="list-style-type: none"> disciplinary proceedings conviction in criminal offence corruption case incapacitation from discharging responsibilities promotions retirement 	<p><i>Tenure</i></p> <p><u>Compliant</u></p> <p><i>Premature removal</i></p> <p><u>Compliant</u></p>	<p><i>Tenure</i></p> <p><u>Compliant</u></p> <p><i>Premature removal</i></p> <p><u>Non compliant</u></p> <ul style="list-style-type: none"> Transfer for the purpose to fill up a <u>vacancy</u>
Directive 4: Separation between Law & Order and Crime Investigation	<p><i>Separation</i></p> <ul style="list-style-type: none"> The investigating police shall be separated from Law & Order police Full coordination between the two wings 	<p><i>Separation</i></p> <p><u>Non compliant</u></p> <ul style="list-style-type: none"> The Draft Act states that the govt. <u>may</u> separate Law & Order from crime investigation 	<p><i>Separation</i></p> <p><u>Compliant</u></p> <ul style="list-style-type: none"> Separation will take place if the Bill is implemented in urban areas and in crime-prone rural areas



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	<ul style="list-style-type: none"> Separation to start with in urban areas with a population of 10 lakhs or more and gradually extend to smaller towns 		
Directive 5: Police Establishment Board	<p><i>Composition</i></p> <ul style="list-style-type: none"> DGP plus four other senior police officers <p><i>Function</i></p> <ul style="list-style-type: none"> PEB shall decide <ul style="list-style-type: none"> transfers postings promotions and other service related matters for officers up to the rank of DySP. PEB shall recommend <ul style="list-style-type: none"> postings and transfers of officers of the rank of SP and above. PEB shall function as a forum for appeal for officers of the rank of SP and above regarding their: <ul style="list-style-type: none"> promotion transfer disciplinary proceedings being subject to illegal or irregular orders Generally reviewing the functioning of the police in the State <p><i>Powers</i></p> <ul style="list-style-type: none"> PEB decision regarding DySP and below is binding. Govt. may interfere in exceptional cases with reasons recorded in writing Govt. will normally accept the PEBs decision regarding SP and above. 	<p><i>Creation</i> <u>Non compliant</u></p> <ul style="list-style-type: none"> The Draft Act states that a PEB <u>may</u> be set up <p><i>Composition</i> <u>Compliant</u></p> <p><i>Function</i> <u>Non compliant</u></p> <p>PEB not mandated to:</p> <ul style="list-style-type: none"> Decide transfers, postings, promotions and other service related matters of DySP and below Make recommendations of postings and transfers of SP and above PEB only mandated to <u>decide on appeals and complaints</u> of Inspectors and below related to transfers, postings, promotions and other service related matters <p><i>Powers</i> <u>Non compliant</u></p> <ul style="list-style-type: none"> Non binding powers 	<p><i>Creation</i> <u>Compliant</u></p> <ul style="list-style-type: none"> PEB <u>shall</u> be set up <p><i>Composition</i> <u>Compliant</u></p> <p><i>Function</i> <u>Non compliant</u></p> <ul style="list-style-type: none"> Only mandated to <u>recommend</u> names of officers <u>below DySP</u> to be transferred or posted. Not mandated to function as a forum for appeal <p><i>Powers</i> <u>Non compliant</u></p> <ul style="list-style-type: none"> State govt. can refuse to accept recommendation of the PEB if it finds it unreasonable <u>but</u> there is no obligation in the Bill that the govt. must record its reasons in writing



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Directive 6: Police Complaint Authority	<p><u>STATE LEVEL</u> <i>Composition</i></p> <ul style="list-style-type: none"> Chairperson: Retd. High Court/Supreme Court Judge, empanelled by the Chief Justice 3 - 5 members empanelled by the SHRC/Lok Ayukta/SPSC. Members can be from retd civil servants, retd police officers or civil society <p><i>Function</i></p> <ul style="list-style-type: none"> Look into complaints against SP and above Look into complaints of <ul style="list-style-type: none"> death in custody rape in custody grievous hurt in custody <p><i>Administration</i></p> <ul style="list-style-type: none"> Paid staff working full time Avail of services of CID, Intelligence, vigilance or other organisations <p><i>Power</i></p> <ul style="list-style-type: none"> Recommend registration of a FIR or initiate departmental proceedings against the delinquent officer <p><u>DISTRICT LEVEL</u> <i>Composition</i></p> <ul style="list-style-type: none"> Chairperson: Retd. district court Judge empanelled by the Chief Justice or a Judge of the High Court 3 - 5 members empanelled by the SHRC/Lok Ayukta/SPSC. Members can be from retd civil servants, retd police officers or civil society 	<p><u>STATE LEVEL</u> <i>Composition</i></p> <p>Non compliant</p> <ul style="list-style-type: none"> Chairperson not empanelled by the CJ The members are <u>servicing</u>: <ul style="list-style-type: none"> police officer (ADGP) officer of rank of Principal Secretary Members are directly appointed and not empanelled <p><i>Function</i></p> <p>Compliant</p> <p><i>Administration</i></p> <p>Non compliant</p> <ul style="list-style-type: none"> The Draft Act is silent on that the staff should work full time and be suitably remunerated It is also silent on possibility of the PCA to have its independent staff <p><i>Power</i></p> <p>Compliant</p> <p><u>DISTRICT LEVEL</u> <i>Composition</i></p> <p>Non compliant</p> <ul style="list-style-type: none"> Chairperson directly appointed by state govt. Members are <u>servicing</u>: <ul style="list-style-type: none"> district collector district SP Members are not empanelled <p><i>Function</i></p> <p>Compliant</p> <ul style="list-style-type: none"> The district PCA shall look into <u>complaints</u> against police officers up to the rank of DySP <p><i>Administration</i></p> <p>Not compliant</p> <ul style="list-style-type: none"> The Draft Act is silent on that the staff should work full 	<p><u>STATE LEVEL</u> <i>Creation</i></p> <p>Non compliant</p> <ul style="list-style-type: none"> The Bill states that PCA will be set up <u>three months after the Bill has become an Act</u> SC order states that the PCA shall be set up by 1 April 2007 <p><i>Composition</i></p> <p>Non compliant</p> <ul style="list-style-type: none"> Members are empanelled by the <u>Chief Justice</u> not the SHRC, Lok Ayukta or the SPSC <p><i>Function</i></p> <p>Compliant</p> <p><i>Administration</i></p> <p>Non compliant</p> <ul style="list-style-type: none"> The Bill states that remuneration and other terms and conditions shall be prescribed from time to time but no mention that the staff should work full time <p><i>Power</i></p> <p>Compliant</p> <p><u>DISTRICT LEVEL</u> <i>Creation</i></p> <p>Non compliant</p> <ul style="list-style-type: none"> The Bill states that PCA will be set up <u>three months after the Bill has become an Act</u> SC order states that the PCA shall be set up by 1 April 2007 <p><i>Composition</i></p> <p>Non compliant</p> <ul style="list-style-type: none"> Members are empanelled by the <u>Chief Justice</u> not the SHRC, Lok Ayukta or the SPSC <u>but</u> the state govt. can appoint more members if necessary and these members will be empanelled by the SHRC, Lok Ayukta or the SPSC



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	<p><i>Function</i></p> <ul style="list-style-type: none"> Look into complaints against DySP and below of: <ul style="list-style-type: none"> death in custody rape in custody grievous hurt in custody extortion land/house grabbing or any incident involving serious abuse of authority <p><i>Administration</i></p> <ul style="list-style-type: none"> Paid staff working full time Avail of services of CID, Intelligence, vigilance or other organisations <p><i>Power</i></p> <ul style="list-style-type: none"> Recommend registration of an FIR or initiate departmental proceedings against the delinquent officer 	<p>time and be suitably remunerated</p> <ul style="list-style-type: none"> It is also silent on possibility of the PCA to have its independent staff <p><i>Power</i> <u>Compliant</u></p>	<p><i>Function</i> <u>Not compliant</u></p> <ul style="list-style-type: none"> The District PCA cannot look into complaints of death, rape and grievous hurt in custody this is a big problem since the State PCA only has the mandate to look into these allegations made against SP and above → allegations of death, rape and grievous hurt against a DySP cannot be investigated by the PCA <p><i>Administration</i> <u>Not compliant</u></p> <ul style="list-style-type: none"> The Bill states that remuneration and other terms and conditions shall be prescribed from time to time but no mention that the staff should work full time <p><i>Power</i> <u>Compliant</u></p>
Persons competent to verify Station Diary and Custodial Facility	N/A	<ul style="list-style-type: none"> Section 13 enlists the persons competent to verify the station diary and custodial facilities. These persons include Chairs and members of the SHRC, Women's commission, and state and district PCAs. The station diary should in fact be open to the general public. Under the regime of transparency required by the RTI Act, the diary as a category of documents has not been excluded or exempted from disclosure. 	N/A
Police to Keep Information Confidential	N/A	<ul style="list-style-type: none"> Section 36 addresses the requirement to keep information that the police collect confidential except for official purposes. It is possible to interpret section 36(1) in a restrictive 	N/A



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		manner and limit access to information collected by the police for purposes that are deemed to be official under the Police Act.	
Procedure for Arrest	N/A	<ul style="list-style-type: none"> Section 53 refers to the procedure for making arrests. This is not in line with the CrPC (Amendment) Act, 2008 	N/A
Community Policing	N/A	<ul style="list-style-type: none"> Section 72 does not allow for maximum participation of the community Members are appointed by the District SP. This could lead to members being chosen who are neither able to adequately articulate the needs of the community nor are necessarily representative of it. Members need to be chosen in a transparent manner by a Selection Committee empanelled for the purpose 	<ul style="list-style-type: none"> Section 75 does not allow for maximum participation of the community The CP will appoint members of the CPCs. This would mean that the CPCs would only exist at the Commissionerate level and not in the districts. Members need to be chosen in a transparent manner by a Selection Committee empanelled for the purpose
Special Security Zones	N/A	<ul style="list-style-type: none"> Section 91 provides for the govt. on the recommendation of the police chief to notify an area as a special security zone The provision in the Draft Act gives too much undefined power to the police. NPC acknowledged the problem of security threat but stated that this should be addressed through a separate law dealing with serious and widespread disturbance of public order. 	<ul style="list-style-type: none"> Section 79 provides for the govt. to notify and area as a special security zone The provision in the Bill gives too much undefined power to the police. NPC acknowledged the problem of security threat but stated that this should be addressed through a separate law dealing with serious and widespread disturbance of public order.
Protection to police officers - Good faith clause	N/A	<ul style="list-style-type: none"> Section 124 mirrors the language used at section 197 of the CrPC. The govt. can cloak any mishandling of police affairs under the guise of the undefined notion of "good faith", and thereby immunise 	<p>Sections 111 and 131 mirrors the language used at section 197 of the CrPC.</p> <ul style="list-style-type: none"> The govt. can cloak any mishandling of police affairs under the guise of the undefined notion of



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		the police from the very type of accountability that is desired.	"good faith", and thereby immunise the police from the very type of accountability that is desired.
Cognisable and Bailable Offences	N/A	<ul style="list-style-type: none"> Section 136 of the Draft Act classifies vexatious arrests, search, seizure and violence by a police officer as cognisable and bailable offences. Torture and inhuman personal violence is listed in this category at section 136(d). Offence of torture is synonymous to sections 330 and 331 of the IPC. They are cognisable and non bailable offences. The punishment for torture as listed in the Draft is one year. The punishment for the equivalent offence in the IPC is seven to 10 years. 	<ul style="list-style-type: none"> N/A
Compoundability of cases		<ul style="list-style-type: none"> Section 138 gives the power of compounding non cognisable offences under the Draft Act to the SHO. The process of compounding may be initiated upon an application from the accused. Fees will be levied by the SHO and these fees will be notified by the Police Chief with the approval of the government. Compounding of a case can be done by the Executive Magistrate. <p>All these provisions are violating section 320 CrPC which lays down the procedure for compounding of offences.</p>	N/A
Special police officers for temporary period	N/A	<ul style="list-style-type: none"> Section 107 of the Draft empowers the SP to appoint Special Police Officers, and provides such officers the "same powers, privileges and immunities" as possessed by "a regular police officer". 	<ul style="list-style-type: none"> Section 19 empowers the SP to appoint special police officers Due to the emergency nature of their appointment special police officers will not



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			have adequate time to receive training in the law relating to the use of force, and the legal rights of the public <ul style="list-style-type: none"> • They will not be accountable under the PCA
Removal of persons about to commit offences	N/A	<ul style="list-style-type: none"> • Section 46 allows a police officer to remove a person who does not comply with reasonable directions given by an officer. • The removal will be to a nearby unspecified place for a period of six hours. • The removal will not be to be an arrest. 	<ul style="list-style-type: none"> • Section 70 refers to removal of persons about to commit an offence. • It allows the CP to extern such a person for two years.

