

**Bihar Government Compliance with  
Supreme Court Directives on Police Reform**

**BIHAR POLICE ACT (Bihar Act 1, 2007)**

**Directive 1**

Constitute a binding State Security Commission to (i) ensure that the state government does not exercise unwarranted influence or pressure on the police, (ii) lay down broad policy guidelines, and (iii) evaluate the performance of the state police. In the composition of this Commission, governments have the option to choose from any of the models recommended by the National Human Rights Commission, the Ribeiro Committee or the Sorabjee Committee.

- The new Bihar legislation creates a State Police Board (SPB), however the SPB does not have the power to make binding recommendations (Act s.25) despite the clear directive from the Supreme Court that the Commission's decisions must be binding to avoid undue influence on the police. Quite the opposite, the Bihar legislation plainly states in violation of the Court order that "overall superintendence and control of the police force shall be vested in the government" (Act s.22).
- The creation of the SPB is not immediate, pursuant to SC directive, but shall take place "within six months of the implementation of this Act" (Act s.23).
- The composition of the SPB does not conform with the SC directive. The Court expressly indicated that the Chair of the SPB must be the Chief Minister or Home Minister, and the DGP must serve as the Member-Secretary. Nevertheless, the Bihar legislation purports to create a SPB with the Chief Secretary as Chair, and the Home Secretary as Member Secretary (Act s.23).
- Apart from the Chair and the Member-Secretary, the Court stated that the remaining members of the SPB can be selected according to any of 3 recommended models. However, the Bihar statute does not conform with any of the models recommended by the Court, and lacks significant protections against government control and manipulation of the new Commission:
  - The legislation does not require any independent members to be appointed by the State whatsoever (Act s.24). This violates several of the models suggested by the Supreme Court and entirely subverts the goal of ensuring objective oversight.
  - The **MPA model** (Sorabjee Committee) is not met. It calls for the Home Minister to serve as Chair, and the DGP to serve as Member-Secretary. The MPA requires 5 independent members (none of whom can be sitting government persons), and adds that they must be appointed only on the recommendation of a tri-partite Selection Panel that follows a transparent process ( MPA ss.42, 43, 44).
  - The MPA also stipulates that the Leader of the Opposition, and a High Court Judge (ret'd) nominated by the Chief Justice must be members, that 2 members must be women, and that minorities must be adequately represented (MPA s.42).
  - The MPA sets out extensive rules for ineligibility and removal of independent members (MPA ss.45,47) not addressed in the Bihar Act, as the statute does not even contemplate using independent members!
  - The **Ribeiro Committee** model is not met—the Ribeiro model requires the Home Minister to serve as Chair, and the DGP to serve as Member-Secretary on a SPB

totalling 7 persons. It stipulates that the SPB must include 3 independent members chosen by a panel created by the Chair of the NHRC. The Ribeiro Model also calls for the Leader of the Opposition and a High Court judge nominated by the Chief Justice, to sit as members (Ribeiro Recomm. 1.2).

- The **National Human Rights Commission** model is not met—the NHRC model calls for the Chief or Home Minister to serve as Chair, and the DGP as Member-Secretary. The model also requires 4 other members, including the Leader of the Opposition and two sitting or retired High Court judges (nominated by the Chief Justice) sit as members of the SPB (NHRC petition, p.87). In the alternative, one judge may sit, together with a member of the State Human Rights Commission or the Lok Ayukta of the State (NHRC petition, p.87).
- The term of service for Members is not articulated. This provision does not comply with some of the suggested models. The MPA calls for a 3-year renewable term (MPA s.46), while the Ribeiro Committee requires a 3-year non-renewable term (Ribeiro Recomm. 1.3).
- The function of the SPB does not comply with the SC directive. The Court expressly stated that the purpose of the SPB is to ensure that the State Government does not exercise unwarranted influence or pressure on the Police, and its functions must include giving directions for the performance of preventative tasks by the Police. Each of these specific functions/purposes is absent from the Act s.25. (See also Ribeiro Recomm. 1.5, and NHRC petition, p. 88)
- The Act violates the Court’s directive regarding reporting. The SC clearly stated that the SPC must prepare an annual report to be placed directly before the State Legislature. (See also Ribeiro 1.5; NHRC Petition, p.88.) This aspect of the decision ensures that the report proceeds on a timely and unadulterated basis to the Assembly itself, including opposition members. (Note: the MPA (at s.50(2)) adds that the Annual Report must be made available to the public.) The reporting function is not addressed in the legislation whatsoever.
- The function of the SPC does not mirror the models recommended by the Supreme Court. For example, the MPA states that one of the functions of the SPB is to recommend the DGP candidates for appointment by the State Government (MPA s.48) The MPA also states that the expenses of the SPC must be paid by the State Government (MPA s.49). These functions are absent from s. 25 of the Bihar Police Act.

#### Additional Concerns regarding the MPA Model

- The new legislation indicates that one of the functions of the SPB is to generally identify performance indicators for evaluating the police. The MPA enumerates an actual list of such indicators that are not found in the Bihar statute, including: operational efficiency, public satisfaction, observance of human rights standards and victim satisfaction (s.48(c)).

#### **Directive 2**

Ensure that the Director General of Police is appointed through a merit based, transparent process and enjoys a minimum tenure of two years.

- While the new Bihar legislation provides a minimum tenure of 2 years, in fact this tenure is quite tenuous. The statute contains an override proviso at s.6(2)(d) which indicates that the DGP may be removed prematurely for any “other administrative reason”. This broad power

undermines the Supreme Court's entire purpose of securing the tenure of DGPs to immunize them from State Government interference! The fact that the term "administrative reasons" is undefined means that this provision will be subject to tremendous manipulation.

- The statute does not enumerate the specific criteria which the SC indicated must be used for selecting a DGP (length of service, very good record, range of experience).
- The statute calls for DGP candidates to be nominated by a Committee "under the rule formed under the All India Service Act, 1951" (Act s.6(1)), however the nature, membership and function of this Committee is completely undefined. This provision fails to meet the requirements set out in the SC directive. The Court expressly indicated that the State Government must select "from amongst the three senior-most officers of the Department who have been empanelled for promotion to that rank by the Union Public Service Commission". It is important that a non-state organization nominate candidates to preserve objectivity and immunize the process from influence within the state. [The selection process in the Bihar statute also contradicts MPA ss. 6(2), which outlines in detail the criteria upon which a DGP is to be chosen.]
- The SC directive only contemplates premature removal of the DGP on enumerated grounds when the State Government acts "in consultation with the State Security Commission". However, the Bihar Act permits the Government to act unilaterally in removing a DGP based on one of the enumerated grounds in s.6(2) of the legislation.
- The enumerated grounds for premature removal themselves do not comply with the SC judgment. Bihar has added grounds not contemplated by the Court—namely "promotion to a higher post" (s.6(2)(c)). This provision opens the DGP up to potential pressure and manipulation on the part of political masters, particularly since the individual's consent to the promotion is not required under the legislation. (See, conversely MPA s.6(3)(e), which calls for consent in similar circumstances.)
- The Bihar Act fails to include as grounds of premature removal: (i) an action taken against the DGP under the Discipline and Appeal section of the All India Service Rules, and; (ii) incapacitation. These omissions violate the SC directive.

#### Additional Concerns regarding the MPA Model

- The new legislation provides grounds for premature removal of a DGP, but does not stipulate that the reasons for removal must be reduced to writing (see MPA s.6(3)).

#### **Directive 3**

Ensure that other police officers on operational duties (Superintendents of Police in-charge of a district, Station House Officers in-charge of a police station, IGP (zone) and DIG (range)) also have a minimum tenure of two years.

- While the new Bihar legislation provides a minimum tenure of 2 years, in fact this tenure is quite tenuous. As is the case with DGPs, the Bihar legislation contains an override proviso at s.10(e) in the Act states that a senior officer may be removed prematurely for any "other administrative reason". This broad and undefined power undermines the Supreme Court's objective of securing the tenure of senior officers to immunize them from Government interference.
- While the new statute grants tenure for certain officers (the SHO and the Superintendent of police in charge of a district) (Act s.10(2)), it does not extend the minimum tenure requirement as far as the SC directed—the IGP and DIG are not provided similar safeguards.

- The legislation provides for the premature removal of the protected officers, however these provisions fail to comply with the Court's directive on many levels.
  - First, the Bihar Act includes more grounds than the SC permits. In this respect, the grounds upon which the officers may be removed prematurely are overly broad. The SC directive permits early removal to fill vacancies caused by "promotion" or "retirement", but the Bihar statute (s.10(2)(d)) adds that premature removal is also possible to address a vacancy caused by "transfer". This violates the Court's Order—this ground was specifically omitted by the SC due to the State Governments' historic exploitation of the transfer power.
  - Second, Bihar has added grounds for premature removal not contemplated by the Court. As is the case with DGPs, senior officers may be removed early due to "promotion to a higher post" (s.10(2)(a)). This provision opens the senior officers up to potential pressure and manipulation on the part of political masters, particularly since the officer's consent to the promotion is not required under the legislation.
  - Third, the legislation fails to include certain grounds for premature removal directed by the Court—namely if disciplinary action has been taken against the senior officer. This omission violates the SC directive.

#### **Directive 4**

Separate the investigation and law and order functions of the police.

- The Bihar legislation enacts a partial separation of the law and order, from the investigative functions of the police. Although the SC directive is general in terms of the structure of such a separation of functions, the MPA provides a useful template. When compared with the MPA, the Bihar Act fails to fully comply with several provisions recommended to ensure the success of the separation of the 2 functions:
  - The statute contemplates the creation of a State level Crime Investigation Department (s.14), Crime Investigation Units (s.39) and district level Special Investigation Cells (s.41). However, the prescribed training levels are insufficient. Training for officers within the Crime Investigation Department, Units and Cells is to be upgraded "from time to time" (Act ss.37, 42 and 45), rather than on a regular basis.
  - The legislation mandates the creation of a Forensic Science Laboratory (Act s.15(2)(a)), but fails to stipulate that necessary legal and forensic aid shall be provided to investigating officers. The MPA makes this requirement mandatory (s.127).
  - Minimum tenure of 3 years is provided for officers posted in the Crime Investigation Department, however, such tenure is not secure against arbitrary State interference. The Act stipulates the officers "shall not be removed unless it becomes necessary to remove them on one or more of the reasons to be mentioned" (Act s.46). This provision is speculative and open-ended. It is not commensurate with MPA s.134 and grants the Government wide discretion to subjectively limit the tenure of officers.

- The Bihar Act does not address the need to provide the new Crime Investigation Unit with adequate funding and crime analysts (MPA ss. 135-136).

#### **Directive 5**

Set up a Police Establishment Board, which will decide all transfers, postings, promotions and other service related matters of police officers of and below the rank of Deputy Superintendent of Police and make recommendations on postings and transfers of officers above the rank of Deputy Superintendent of Police. This Board will comprise the Director General of Police and four other senior officers of the police department, and will be empowered to dispose of complaints from SPs and above regarding discipline and other matters.

- The Bihar legislation openly defies the SC directive, by failing to create a Police Establishment Board. Instead, the statute (s.30) actually centralizes the power over transfers, promotions and postings in the hands of the State Government, completely ignoring the Supreme Court's critique that measures must be put in place to prevent the prevailing practice of subjective government transfers!
- The statute plainly states that the transfer and posting of police personnel of the "supervisory grade" (an undefined term subject to State manipulation) "shall be governed by the ... rule formulated by the government" (s.30.1). The Act adds that these officers may be transferred from their posts for any "administrative reason which is in favour of effective discharging of duties" (Act s.30.2(e)). As set out above, (under Directive 3), this type of broad, unchecked power completely undermines the Supreme Court's objective of attempting to immunize officers from State Government manipulation through the creation of a Police Establishment Board.
- Absent a PEB, the Bihar statute contains no mechanism whatsoever to address concerns of aggrieved officers. The SC's directive clearly states that the PEB must be created to serve as a forum of appeal for disposing of representations from officers at or above the SP level, regarding: (i) their promotion or transfer; (ii) disciplinary proceedings against them, or; (iii) their being subject to illegal or irregular orders. This function is entirely absent from the Bihar legislation (Act s.32) in violation of the Court's order.
- The absence of a PEB, among other things, has prompted a PIL to be commenced against the State of Punjab by the Police Officers themselves!

#### **Directive 6**

Set up independent Police Complaints Authorities at the state and district levels to look into public complaints against police officers in cases of serious misconduct, including custodial death, grievous hurt, rape in police custody, extortion, land grabbing and serious abuse. The Complaints Authorities are binding on criminal and disciplinary matters.

The state level authority is to be chaired by a retired judge of the High Court or Supreme Court to be chosen by the state government out of a panel of names proposed by the Chief Justice. It must also have three to five other members (depending on the volume of complaints) selected by the state government out of a panel of names prepared by the State Human Rights Commission, the Lok Ayukta and the State Public Service Commission. Members of the authority may include members of civil society, retired civil servants or police officers or officers from any other department.

The district level authority is to be chaired by a retired district judge to be chosen by the state government out of a panel of names proposed by the Chief Justice of the High Court or a High

Court Judge nominated by him or her. It must also have three to five members selected according to the same process as the members of the state level Police Complaints Authority.

- The new Bihar Act creates a Police Accountability Authority, but fails to formally comply with the Court's directive. Most importantly, the SC directive that the recommendations of the PAA on discipline and criminal matters must be binding on the State Government, has not been followed. The legislation states only that the PAA "shall give proper advice" and leaves ultimate disciplinary control in the hands of the DSP (Act ss.60(1)(b) and 60(2)).
- Only a District-level PAA is created (Act s.59), rather than implementing a State-level and a District-level authority, as instructed by the Court (see also MPA s.173).
- The composition of the District-level PAA in Bihar does not conform with the Court's directive. The legislation (Act s.59) appoints the District Magistrate as Chair, despite the explicit directive from the SC that the Chair must be a retired District Judge nominated by the Chief Justice of the High Court or their designate.
- The Bihar statute contemplates 3 additional persons serving as members of the PAA, but fails to adhere to the Court's directive that all other members of the PAA must be selected by the Government out of a panel of names prepared by the Lok Ayukta, the State Human Rights Commission and the State Public Service Commission. (MPA s.161 creates a similar requirement).
- The Bihar Act authorizes the PAA to inquire into "misbehaviour" but fails to define this term, leaving the PAA subject to wide discretion and potential manipulation by the State (Act s.60(1)(a), 61.1(a)). The SC directive stipulates that the District-level PAA must inquire into serious misconduct, including death, grievous hurt, rape in police custody, extortion, land/house grabbing and any incident involving a serious abuse of authority. The failure to enumerate such a list violates the Court's order. (Note: The MPA (s.167) adds that the PAA should be authorized to inquire into situations of arrest or detention without due process of law.)
- The statute actively attempts to narrow the scope of the PAA's jurisdiction, in violation of the Supreme Court Order. Section 26 of the Act stipulates that complainants in all human rights related matters (or negligence in preventing human rights violations) must address their concerns to the State Human Rights Commission, rather than the PAA. This contravenes the Court's directive, and will prove ineffective. It entirely undermines the notion that all police-related complaints ought to be directed to a specialized police-related authority, which can develop required expertise in handling such complaints.
- The SC directive (and the MPA, ss. 163(3),164(1)(d),165,173(6)-(9)), stipulates that PAA members must be full-time, remunerated and provided staff assistance—these provisions are missing from the Bihar legislation.

#### Additional Concerns regarding the MPA Model

- The requirements under the MPA respecting the composition of the PAA are more stringent, and have not been followed. For example, MPA s.160 states that the PAA may include a retired DGP or retired officer with experience in public administration, but only if such persons hail from a different state. The MPA states that the PAA should include a minimum of 5 persons, including someone with experience in the law as a prosecutor or professor, plus at least one woman (MPA s.160).
- The new legislation is bereft of important information regarding the composition of the PAA, which renders the Authority subject to greater State interference. The Act fails to list the terms of office for members of the District-level PAA, conditions of ineligibility, and the process for

removal of members. It also fails to stipulate that vacancies on the PAA shall be filled up as soon as possible, and no later than 3 months following the vacancy (MPA ss. 162-164, 173(4),(6)).

- By creating only a District-level authority, Bihar has sought to curtail several important powers that would normally be exercised by a State-level PAA.
  - For example, a State-level PAA is meant to provide an annual report on policing directly to the State Legislature (MPA 172(2)), rather than simply to the Government as set out in s.61.1 of the Act. There is no requirement in the Bihar statute that such report must be turned over by the Government to opposition members in the Legislature.
  - In addition, the broad jurisdiction of the State-level PAA to function as a court, compel evidence, and protect witnesses (MPA s.168-170) is entirely absent from the Bihar statute.
  - The MPA (s.167) would permit complaints to be lodged with the State-level PAA from a wide array of groups, thereby increasing the likelihood of greater accountability. Nevertheless, the new State legislation is silent on the issue of who is permitted to lodge complaints.
- The legislation outlines certain rights of complainants, however this list is abridged. The statute does not include the right to inquire about delays, the right to be informed about and attend hearings, the right to be provided with interpretation assistance, or the right to seek directions from the PAA in the event of an unsatisfactory outcome (MPA s.177 (2),(4)-(6)).

#### Miscellaneous

- The Bihar Police Act includes an omnibus exemption clause, at s.63, which protects from liability any action taken in “good faith” by the State Government, the State Police Board, any police officer, the PAA or their staffs. This type of omnibus exemption clause is dangerous and subject to significant abuse, as the government may seek to cloak any mishandling of police affairs under the guise of the undefined notion of “good faith”, and thereby immunize the police and the state from the very type of accountability this new legislation is meant to help implement.
- Further, the Bihar statute (Act s.95) contains a provision which actually exempts the state from having to comply with its own legislation “if any difficulty arises in giving effect to the provision [sic] of this Act.” This permissive override is dangerous and vulnerable to manipulation, as the government may simply defer complying with its own legislation based on the assertion that “difficulties” have arisen in the implementation process. The existence of s.95 increases the likelihood of state influence, and entirely undermines the Supreme Court’s directives.
- The Statute contains a clause which immunizes police officers from prosecution for an offence, absent the sanction of the State Government (s.81). This provision is an anachronism, and must be removed. It is entirely contradictory to both the letter and spirit of the SC ruling and the guiding philosophy of the legislation—which, as the Act’s preamble states, is “to make the police personnel...accountable to law”. If the State may intervene to prevent prosecutions against unlawful officers from proceeding, the potential for collusion and the immunization of human rights abuses is extremely significant.
- The legislation prevents a court from taking cognizance of an Offence committed under the Bihar Police Act after the end of the limitation period provided in s.468 of the Code of Criminal Procedure. This time limitation is unwarranted, and will effectively immunize the police from the scrutiny and oversight sought by the Supreme Court.

- The legislation includes a broad definition of “superintendence” that includes a power over investigation and administrative matters (s.2(x)). This definition is highly problematic, contradicts the position of CHRI in the main application, and undermines the MPA, which stipulates that the notions of superintendence and administration must be conceptually distinct in order to ensure an efficient and accountable police system. The MPA, at s.39, sets out that superintendence over the police vests in the State Government; whereas at s.51, the MPA stipulates that administration of the police vests in the DGP.
- The legislation (Act s.17, 49) includes provisions related creating a state police academy, however it does not make mandatory post-induction training of new police recruits, pre-promotion training, and annual re-training of existing officers (as compared to MPA s.141). In addition, the Bihar statute does not provide for appropriate staffing of the police training academy, with faculty from the fields of law, criminology and forensic science (MPA s. 18(3),(4)).
- The legislation empowers the state to appoint Special Police Officers (s.19), Railway Police Officers (s.13(4)) and Additional Police Officers (ss.20-21). Broad powers to create such ad hoc officers are unwarranted, given the state’s ample powers to appoint regular police officers. The creation of ad hoc police officers is arbitrary and may be subject to abuse by the State Government—while such ad hoc officers would generally possess the same powers as ordinary police officers, however due to the emergency nature of their appointment they will not have adequate time to receive the same level of comprehensive training (in the use of firearms, the principles of law relating to the use of force, and the legal rights of the public) that all officers must be required to undergo. It is also unclear in the Bihar legislation whether such ad hoc Officers will be answerable to the new Police Accountability Authority (Act s.59ff).
- The legislation provides (Act ss. 31, 33) for functions, duties and responsibilities of police, largely in conformity with the MPA ss.57-58. However, it is significant that the Bihar statute adds s.31(o), which stipulates that officers must “perform all such duties and responsibilities, which have been imposed upon them by any authority vested with the power to issue such instructions”. This wide clause is subject to considerable manipulation and abuse on the part of the state government. It will permit political interference and exploitation to continue unabated, contrary to the spirit of the Court’s ruling. In addition:
  - The statute lacks any provisions outlining the duty of police officers upon arrest or detention of any individual (to employ only reasonable force, provide access to a lawyer and doctor, etc.). (See as a counter example, Himachal Pradesh Police Act s.65)
  - The statute does not prevent a police officer from serving in his Home police station or district. (See as a counter example, Himachal Pradesh Police Act s.86(2))
- The legislation permits excessive discipline of police personnel, including authorizing the confinement to quarters for a period of up to 15 days (Act s.29(b) and subjecting offending officers to “rigorous imprisonment” (s.78). Such punishments are not prescribed in the MPA.
- The Act creates a State Police Research and Development Bureau, but fails to stipulate that one of the functions of such a Bureau is to prepare “five-year Perspective Plans to modernise and upgrade police infrastructure with the objective of enhancing the professional competence and efficient management of the Police Service” (MPA s.146(a)).
- Welfare of Police: the Act is bereft of details concerning what protections the State Government will provide to police personnel (in areas such as medical care, housing, education and insurance). The statute does not include a provision requiring the tabling of an annual report



compiling police grievances, and the legislation does not stipulate maximum working hours for officers (unlike the MPA, ss. 185-188)

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