

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

CHHATTISGARH POLICE ACT, 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 Chhattisgarh legislation creates a State Police Commission (SPC), however the SPC does not have the power to make binding recommendations (Act s.20) despite the clear directive from the Supreme Court that the Commission's decisions must be binding to avoid undue influence on the police.
- The composition of the SPC does not conform with any of the models recommended by the Supreme Court, and lacks significant protections against government control and manipulation of the new Commission:
 - The **MPA model** (Sorabjee Committee) is not met. The legislation requires only 2 independent members to be appointed by the State (Act s.16(2))—however, the MPA calls for 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 (retd) nominated by the Chief Justice must be members, that 2 members must be women, and that minorities must be adequately represented (MPA s.42(2)).
 - The **Ribeiro Committee** model is not met—the Ribeiro model requires 3 independent members chosen by a panel created by the Chair of the NHRC, and stipulates that the Leader of the Opposition and a High Court judge nominated by the Chief Justice, must be members (Ribeiro Recomm. 1.2).
 - The **National Human Rights Commission** model is not met—the NHRC model calls for the Leader of the Opposition and two sitting or retired High Court judges (nominated by the Chief Justice) to sit as members of the SPC (NHRC petition, p.87). In the alternative, one judge may serve, 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 independent members is 2 years, non-renewable. This provision does not comply with 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 Act provides that certain persons are ineligible for service on the SPC (Act s.17). These terms do not comply with the suggested models.
 - For example, the MPA lists certain grounds of ineligibility that are not contained in the Chhattisgarh Act (someone penalized for corruption or misconduct is ineligible, MPA s.45(c)).
 - The MPA is also more strict than the new legislation—the MPA states that anyone convicted by a court of law or against whom charges have been framed is ineligible (MPA s.45(b)). The Chhattisgarh Act precludes

from eligibility only those convicted or charged with serious criminal offences, involving “moral turpitude” (Act s.17(h),(i)), all others convicted or charged for lesser offences remain eligible!

- Further, certain grounds for ineligibility contained in the earlier version of the Chhattisgarh Police Bill have been removed (e.g. the provision which would have excluded from eligibility anyone serving in any police, military or allied organization in the previous 12 months, (s.17(c)) has been deleted from the Act).
- Under the legislation the removal of independent members is more expedient, and hence subject to abuse. The statute says independent members may be removed by an order of the State Government in writing—whereas the MPA states removal should only occur on resolution passed by a two-thirds majority of the SPC (MPA s.47(1)).
- 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 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 SPC is to recommend 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.20 of the Chhattisgarh Act.

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.

- The Chhattisgarh legislation provides a minimum tenure of 2 years to the DGP, however it provides for removal of the DGP on more grounds than the SC permits, rendering the position still vulnerable to arbitrary state interference. Contrary to the SC’s directives, in Chhattisgarh a DGP may be removed prior to 2 years of tenure due to superannuation or “administrative exigency” (Act s.12(4))
- 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 Act permits the Government to act unilaterally in removing a DGP based on one of the enumerated grounds in s.12(4) of the legislation.
- The new legislation does not enumerate the specific criteria which the SC stated must be used for selecting a DGP, and it does not require that the state government select a DGP from a panel of candidates chosen by the UPSC (Act s.12(2)). It is important that a non-state organization nominate candidates for the position of DGP to preserve objectivity, and immunize the process from influence within the state. [The selection process also contradicts MPA ss. 6(2), which outlines in detail the criteria upon which a DGP is to be chosen.]

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 Chhattisgarh legislation provides a minimum tenure of 2 years for certain officers (the Officer-in-Charge of a police station, and the Superintendent of police in charge of a district) (Act s.14(1)), 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 removal of the protected officers on more grounds than the SC permits, rendering the positions still vulnerable to arbitrary state interference. Contrary to the SC's directives, in Chhattisgarh an Officer-in-Charge of a station, or a District Superintendent may be removed prior to 2 years due to: suspension; or charges having been framed by a court of law in a criminal case (Act s.14(2))

Directive 4

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

- The legislation is completely silent on separating the law and order function of the police from the investigation function of the police, and in complete violation of the Court's Order.
- In order to ensure expedited investigations, improved expertise and better rapport with citizens, the Court stipulated that directive 4 must take immediate effect. Chhattisgarh has ignored this part of the Court's ruling.

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 Chhattisgarh Act creates a Police Establishment Board, but fails to do so in conformity with the SC directive. The Court expressly indicated that the PEB shall dispose of representations from officers at or above the rank of SP, regarding their discipline, or their being subjected to illegal or irregular orders. However, the new legislation provides the government an ability to override the PEB, wherein the State government may review any order of the PEB respecting a complaint by an aggrieved officer within 90 days (Act s.22(3)).
- According to the Court, the decisions of the PEB respecting transfer, promotion and posting of all officers at or below the rank of DSP are meant to be virtually binding (the Court allowed that the Government could interfere with the decision of the PEB in "exceptional" cases only after recording its reasons for doing so"). The decisions of the PEB for all other officers are recommendatory, however, the Court expressly stated "the Government is expected to give due weight to these recommendations and shall normally accept" them. (See also MPA, s.53(3)). These provisions are absent from the Chhattisgarh legislation (Act s.22).
- The new Act does not allow officers to complain to the PEB about any orders made pursuant to Article 309 of the Constitution (Act s.22(2)(b)). This Article broadly permits the Legislature to "regulate the recruitment, and conditions of service of person appointed, to public services". In effect virtually all state regulation of the police could be construed as falling under

s.309, thereby eviscerating the purpose of the PEB in its entirety, of countering the prevailing practice of subjective appointments, transfers and promotions!

Additional Concerns regarding the MPA Model

- The MPA provides that all police personnel subject to a promotion or transfer will be provided with a minimum tenure of 2 years (MPA s.53(7)). This protection is absent from the Chhattisgarh Act.

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 Chhattisgarh 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 regarding criminal and disciplinary matters must be binding on the State Government, has not been followed.
- Only one PAA is created for the entire state, rather than creating a state level and a district level authority, as instructed by the Court (see also MPA s.173).
- The Act properly stipulates that the Chair must be a retired Judge of the High Court (Act s.39(1)), but fails to adhere to the Court's directive that the Chair must be selected by the State Government from among a panel of names presented by the Chief Justice. This step is important to immunize the process from undue manipulation.
- The Act (s.39) ignores the Court's directive that all members of the PAA (other than the Chair), 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 Chhattisgarh Act authorizes the PAA to inquire into serious misconduct, but defines this narrowly at s.43(b)(i). The SC directive authorizes inquires into extortion and land-grabbing. (Note: The MPA (s.167) provides for inquiry into situations of arrest or detention without due process of law, and authorizes the PAA to monitor the status of internal police department inquiries and guard against delays.) Such investigative powers are critical to achieve actual police reform, yet these powers are completely absent from the Chhattisgarh Act.

- Both the SC directive and the MPA (ss. 163, 165) call for suitable remuneration for members of the PAA, as well as provision of staff assistance to PAA members—both aspects are missing from the Chhattisgarh 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 Act (s.40) excludes certain persons from serving on the PAA, but fails to exclude an “office-bearer of any political party” (MPA s.162(g)). Further, certain grounds for ineligibility contained in the earlier version of the Chhattisgarh Police Bill have been removed (e.g. the provision which would have excluded anyone serving in any police, military or allied organization in the previous 12 months, has been deleted (old Act s.40(c)).
- The MPA (s.167) permits complaints to be lodged with the PAA from a wide array of groups, thereby producing greater accountability. Nevertheless, the new State legislation restricts those with standing to file a complaint to victims or their close relatives (Act s.43(1)(a)).
- The legislation is completely silent on the rights of those who complain to the PAA, as found in MPA s. 177, which include the rights to attend hearings, inquire about delays, and be informed re all conclusions.
- The Act actually prevents the PAA from hearing a complaint that is more than 6 months old (Act s.43(3)). This time limitation is unwarranted, and will effectively immunize the police from the scrutiny and oversight mandated by the Court.
- The powers of the PAA to compel evidence, etc. are fairly broad in the new legislation at s.43(4), however, the full scope of powers and jurisdiction awarded to the PAA under MPA ss.168-170 are absent. For example, the Bill does not give the PCAs the power to: protect witnesses and statements, visit stations and lock-ups, and operate as a civil court.
- While the legislation sets out that the PAA shall submit a report to the State Government, the content and timing of such a report is not delineated in the statute, in a manner commensurate with the MPA. For example, the MPA (s.172) sets out that the annual report must be laid before the “State Legislature” and “shall be a public document.”
- The MPA (s.163) states that the tenure of PAA members ought to be 3 years, whereas the new Act provides for only 2 years of tenure.

Miscellaneous

- The statute contains a wide opt-out provision, which exempts the State from complying with the legislation within the first 3 years of its passage, if a “difficulty arises” and opting out is “necessary or expedient” (Act s.52) 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.52 increases the likelihood of state interference, and entirely undermines the Supreme Court’s directives.

- The legislation does not include a preamble, similar to the one contained in the MPA, which enshrines respect for the rule of law and promotion of human rights.
- The legislation does not include any provisions related to mandatory training of new police recruits and Special (or Additional) Police Officers, nor does it include annual re-training of existing officers (unlike the MPA, ss.138-147).
- The legislation empowers the state to appoint Special Police Officers (s.9), and also authorizes the State to confer “on any person any of the powers which may be exercised by a police officer” (Act s.36). Such sweeping powers to create Special Officers are unwarranted, given the state’s broad powers to appoint regular police officers. The creation of such Special Police Officers is arbitrary and may be subject to abuse—Special Police Officers would 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 Chhattisgarh legislation whether such Special Police Officers will be answerable to the new Police Accountability Authority (Act s.38ff)
- The legislation permits excessive discipline of police personnel, including authorizing the confinement to quarters for a period of up to 15 days (Act s.15(1)). Such punishments are not prescribed in the MPA. In addition, the Chhattisgarh legislation would permit disciplined to be meted out by the DGP or any other officer authorized by the State, whereas the MPA restricts this role to officers at or above the rank of SP (MPA s.149).
- Section 23 of the new legislation lists the functions and responsibilities of police officers, but completely omits any recognition of police officers’ social responsibilities and omits the duty to register and investigate all cognizable offences and duly supply a copy of the FIR to the complainant (as contained in MPA, ss.57,58). Certain additional guarantees are also not provided:
 - 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))
- Welfare of Police: the Act is bereft of details concerning what specific protections the Welfare Bureau is intended to offer police personnel, 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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