Comprehensive Analysis

Goa Police Bill, 2008

Suggestions and Recommendations for Amendments

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The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international NGO working for the practical realisation of human rights in the countries of the Commonwealth.

Analysis of the Goa Police Bill, 2008

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Recommendations for Amendments

Introduction

CHRI is an independent, non-partisan, non-governmental organisation headquartered in New Delhi. We are mandated to ensure the practical realisation of human rights in the countries of the Commonwealth. For the past 10 years, CHRI has been campaigning for police reform in India. The organisation participated in the Police Act Drafting Committee which drafted a Model Police Act, 2006 to replace the existing Police Act, 1861. CHRI has also intervened in the proceedings leading up to the Supreme Court decision in *Prakash Singh*.[1] Since that decision was released, CHRI has been involved in a series of consultations and meetings across India, where we have been interacting with law-makers, the police fraternity and civil society organisations, sharing our knowledge and expertise on policing. (For more information on CHRI's activities, please visit www.humanrightsinitiative.org.)

To date 12 States have enacted new legislations in response to the *Prakash Singh* decision. We are extremely pleased that Goa has put up its proposed legislation in on the assembly website. This submission represents CHRI's consideration of the *Goa Police Bill, 2008* (hereafter "the Bill") and our corresponding recommendations.

We have evaluated and critiqued the Bill against the following:

- The decisions of the Supreme Court in *Prakash Singh v Union of India case;*
- Other recent Police Legislations, including the Model Police Act, and the Police Acts/bills passed or proposed in several other States;
- National Police Commission and Law Commission Reports, where applicable
- The South Africa Police Act, 1995;
- Our own experiences in interacting with governments throughout India over the previous decade on the issue of Police Reform

A new police legislation is being proposed after almost 150 years to replace the 1861 Police Act. We believe that the Bill falls short of principles of democratic policing, undermines civil liberties and does not reflect a strong progressive legislation to meet modern day needs of society or police. There are several provisions which we feel need amendment or need to be deleted from the Bill. (Please note that our analysis does not discuss those sections in the Bill which we approve.) We hope that the Select Committee examining the Bill and the Goa Government give our submission careful consideration. We do not claim that the recommendations made by CHRI are complete in themselves. However CHRI would be keen to consult with you further, in person, regarding the contents of this document.

We also urge the Select Committee to publicise their mandate and invite feedback and suggestions from the public and interested groups. This could be done by holding district wide debates on the Bill and inviting comments/recommendations on the Bill. This will ensure that the legislation adequately reflects the needs and aspirations of the people in relation to the police service they want. Communities are after all 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.

In the future, we would like to work closely with the Government and Police Service to ensure that Goa's statute becomes the pre-eminent example of modern, progressive, democratic police legislation in India.

[1] *Prakash Singh and Othrs v Union of India and Othrs* (2006) 8 SCC 1

As a final note, while we are very pleased that the Goa government has placed its Bill on its assembly website, we hope that this vital process does not end at this stage. CHRI formally encourages the Government to continue to consult widely with the public and other key stakeholders on the Bill, and to spread awareness of its existence and provisions. Our experience has shown that a participatory law-making process can be a major factor in laying a strong foundation for an effective and accountable police service. Indeed best practice from around the world calls on policy-makers to proactively engage the public during the legislative process.

ANALYSIS

Section 8- Terms of office of key police functionaries

Section 8 sets out the terms of office of key police functionaries including the SHO, and the Superintendent of Police. However, although it provides the security of a two year tenure for these officers as required by the Supreme Court order, sub-section (g) allows for these functionaries to be removed for "an administrative exigency which shall be recorded in writing." This provision is vague, ambiguous and is liable to abuse. The purpose of the third Supreme Court directive in guaranteeing officers security of a two year tenure was to shield them from arbitrary political interference. Sub-section 1(g) allows the Executive to continue to wield this unwarranted interference by removing officers for political purposes.

Further, whilst sub-section 1(c) allows for removal of officers prior to completion of tenure due to punishment of dismissal, removal, discharge or compulsory retirement or of reduction to a lower rank awarded under the relevant Discipline and Appeal Rules, it is not specific enough. The relevant rules in this case are the Goa Police Subordinate Service (Discipline & Appeal) Rules, 1975. This should be specified in the legislation to avoid confusion.

8.1(c) Recommendation
Section 8.1 (c) should be amended by deleting "the relevant Discipline and Appeal Rules" should be deleted and replacing it with "the Goa Police Subordinate Service (Discipline & Appeal) Rules, 1975."

8.1(g) Recommendation
Section 8.1(g) should be deleted in its entirety.

Section 20- Special Police Officers

Section 20 of the Bill empowers the Director General of Police to appoint Special Police Officers, and also authorizes the state to confer the "same powers, privileges and immunities" on these officers as may be prescribed. It is unclear as to under what conditions or for what reasons such SPOs would be appointed. It may seem that such measures maybe taken to involve the community in maintaining order. There are two traditions of community involvement in maintaining order. One is that of the "community watchmen" or "volunteer watchmen", that patrolled their communities to keep order without taking the law into their hands. The second tradition is that of the "vigilante." have the potential of turning into the vigilante mode of community involvement in maintaining order where non policeman are likely to take the law into their hands. To prevent such a situation from arising CHRI strongly recommends that this section be removed from the Bill.

The Bill is silent on whether these officers would receive any training. It is thus doubtful whether these officers would have the opportunity to undertake the comprehensive training that a regular officer is required to undergo, in subjects such as the powers and responsibilities of police officers, the principles of law relating to use of force and the legal rights of the public. Experience in Punjab and Chhattisgarh, where a system of Special Police Officers led to high levels of public complaints of police misconduct, shows that the

scope for abuse of powers would be very high. It has led to the set up of vigilante groups which have been difficult to control or regulate.

It is unclear what advantage there is to be had by authorizing the creation of what is essentially a mercenary cadre of Special Police Officers. It is unclear from this legislation if they will be answerable to the Police Complaints Authority. Even if this is the case, the omnibus exemption clause for actions taken "in good faith" at section 90 applies to persons authorized by police officers and can thus be extended to shield Special Police Officers from the rule of law. The Court's directives were made with the intention of create a more professional and accountable police service. If more police officers are needed for any situation, proper recruitment and training procedures must be followed to induct more regular police officers to meet that demand. There is no period too limited and no occasion so special for Goa to choose expediency over the need for the police service to be both professional and well trained.

20. Recommendation
Section 20 should be deleted in its entirety.

Section 22- Director General of Police

Section 22 provides for the appointment of the Director General of Police and provides him with a fixed minimum tenure of two years in compliance with the Supreme Court's order. However, section 22 is completely silent on the mechanics of the DGP's appointment and removal. The Bill's silence on the selection and removal process for the DGP raises doubt as to whether this will continue to be at the discretion of the state government. This leaves scope for non-merit based appointment and removal based on political reasons. If this is indeed the case, it is unlikely that the DGP will be independent as envisioned by the Supreme Court.

The Supreme Court has ordered that the DGP be chosen by the state government from a panel of officers prepared by an independent body. This body would empanel officers on the basis of their length of service, very good record and range of experience for heading the police force. The State Police Commission, made up of government officials, members of the bureaucracy and other eminent persons, is a body suited to empanel candidates. This ensures that whilst the state government would have the final say over which officer would be appointed as DGP, the officer selected would have fulfilled a set of objective criteria and not be a purely political appointee. Similarly, the removal criteria for the DGP provided in the Court's order must be incorporated in the Bill to ensure that the DGP is not removed for political reasons.

Therefore, this section must be amended to ensure that the Supreme Court's criteria with regards to the processes for the selection and removal of the DGP is incorporated in the legislation.

22.1 Recommendation
Section 22.1 should be removed in its entirety and replaced by the following:

"22.1 The Director General of Police shall be selected by the State Government from amongst the three senior most officers of the department who have been empanelled for promotion to that rank by the State Security Commission. The State Police Commission shall empanel candidates on the basis of their length of service, very good record and range of experience for heading the police service."

22.4 Recommendation
A new Section 22.4 should be added to read as follows:

"22.4 Notwithstanding such tenure, the Director General of Police may be removed by the State Government acting in consultation with the State Police Commission consequent upon:

(a) any action taken against him under the All India Services (Discipline and Appeal) Rules;

(b) conviction or charges being framed against him in a criminal offence or in a case of corruption;

(c) if he is otherwise incapacitated from discharging his duties."

Section 26- Control, Supervision and Direction of Police Force in a Police Range

Section 26 provides a minimum tenure of two years for the DIG in charge of a police range as per the Supreme Court's order. However, sub-section 4(f) allows for these officers to be removed for "an administrative exigency which shall be recorded in writing." For the same reasons articulated against section 8.1(g), section 26.4(f) stands in violation of the spirit of the Supreme Court order and should be removed.

26.4(f) Recommendation
Section 26.4(f) should be deleted in its entirety.

Section 28- Tenure of office of certain police officers on field duties

Section 28 provides a minimum tenure of two years for the officer posted as Officer-in-charge of a police station as per the Supreme Court's order. However, sub-section 1(j) allows for these officers to be removed for "an administrative exigency which shall be recorded in writing." For the same reasons articulated against section 8.1(g) and section 24.4(f), section 28.1(j) stands in violation of the spirit of the Supreme Court order and should be removed.

28.1(j) Recommendation
Section 28.1(j) should be deleted in its entirety.

Section 30- State Police Commission

Section 30 seeks to establish a State Police Commission. However, whereas the Supreme Court directive seeks to create a State Security Commission that is impartially structured, the Bill has set up a Commission that is dominated by government officials and political appointees.

While it appears loosely based on the model recommended by the Ribeiro Committee, the Bill gives membership to the Home Secretary instead of a sitting or retired judge nominated by the Chief Justice as suggested by the Committee. Further, there are two serving police officers in the Commission as opposed to one in the Ribeiro model. This change tilts the numbers in favour of the government and police. Furthermore, the three 'independent' members are to be appointed by a selection panel in which the government holds a majority of the seats. Three of the five members of the said panel, incidentally, are also named as members of the State Police Commission. It is unrealistic to expect these 'independent' members to serve as equal partners with those who have appointed them and those who even have the power to remove them. In any given situation, it is difficult to imagine that they will be able to exercise independent judgment. As a result of this

composition, the proposed Commission is likely to become a mere façade for continued executive control of the police.

In this regard, this section must be amended to reflect a balanced composition that includes members of the government, opposition, police and civil society. Only then will the Police Commission be able to function as a buffer body designed to shield the police from unwarranted political interference and pressure by the state government.

30. Recommendation
This section should be deleted in its entirety and replaced with the following:

"1. The state government shall establish a State Police Commission (hereinafter referred to as the "Commission"), which shall perform functions assigned to it under the provisions of this Chapter.

2. Minister- in- charge of the Home Department shall be the Chairman of the Commission and other members of the Commission shall be as follows:-

(a) Leader of the Opposition in the State Legislative Assembly or if there is no Leader of the Opposition, the leader of the largest opposition party (single or group of parties recognized by the Speaker) in the State Legislative Assembly;

(b) A sitting or retired Judge nominated by the Chief Justice of the High Court;

(c) Chief Secretary;

(d) Director General of Police as ex-officio secretary;

(e) Three persons of eminence (hereinafter referred to as "Independent Members") from any walk of public life to be appointed by the State Government.

3. The Commission shall follow such rules with regard to its meetings, quorum and transaction of business as prescribed."

Section 31- Committee for Selection of Independent Members

The Supreme Court order expressly states that "other members shall be chosen in such a manner that it is able to function independent of government control." Section 31 which, describes the composition of the committee that would select the three independent members, does not lay down a procedure that fulfils this part of the Supreme Court directive. The Selection Committee constituted in Section 31, is composed of the Chief Minister, Leader of Opposition, Home Minister, Chairman of the State Human Rights Commission/Lokayukta and Chief Secretary. As argued with regard to section 30, three of the members of this Committee are also named as serving members of the State Police Commission, and it is unethical for these members to be involved in the selection of their colleagues. Further, a clear majority of three out of five members of the Selection Committee represent the state executive, and it is very likely that the members chosen would not be truly independent in any sense and be beholden to the executive as a result. This rather problematic composition is compounded by the fact that there is at present neither a State Human Rights Commission nor Lokayukta present in Goa.

As a result of these factors, we believe that the Committee described in Section 31 should not be retained in the Bill. At the moment, the extensive experience of the State Public Service Commission (SPSC) in selecting candidates for government posts makes it the institution most suited to nominate independent members to the State Police Commission. The state government can continue to have the power to make the final appointment of the members from the panel of nominees provided to it by the SPSC.

31. Recommendation
This section should be deleted in its entirety and replaced with the following:

"31. *Procedure for selection of Independent Members-* **The State Public Service Commission shall empanel a list of ten candidates of proven merit and integrity for the three independent member positions on the State Police Commission. The State Government shall appoint the independent members from the panel provided by the State Public Service Commission."**

Section 32- Disqualification for appointment as Independent Members

Most of the provisions of section 32, which are designed to bar unsuitable candidates from being appointed as independent members, are reasonable and necessary. However, section 32.1(f) which disqualifies anyone who "is or has been a Member of Parliament or the Legislature of a State or a local body; or is or has been an office-bearer of any political party or any organisation connected with a political party; or is or has been a member of any political party or any organisation affiliated to a political party" is vague and overly broad. The intent of this sub-section, which is to bar persons of overtly involved in politics from entering and prejudicing the work of the State Police Commission, is commendable. However, words used in drafting these sections, such as *connected to* and *affiliated to* are both undefined and rather ambiguous. As worded, this section can be used to disqualify an entire class of persons who have been vaguely involved with an organisation that has at one time worked with a political party from being nominated to the post of independent member. For this reason, we find that this sub-section unduly limits the selection of candidates and should be amended to only bar persons with overt political affiliations.

31(f) Recommendation
This sub-section should be amended to read as follows:

"(f) is or has been a Member of Parliament or the Legislature of a State or a local body; or is or has been an office-bearer or member of any political party."

Section 34- Removal of an Independent Member

For a State Police Commission to function as a body that can adequately insulate the police from unwarranted and illegitimate political interference, members should have the freedom to act in an independent manner. In this regard, section 34(a(iii)), which allows for the removal of an independent member for "otherwise becoming unable to discharge his functions as a member" is overly broad and risks being misused. The state government can use this vague clause to remove independent members who have pushed opinions it sees inimical to its political interests. Thus, this section must be removed from the Bill.

Further, section 34(b) allows for the removal of independent members on the recommendation of the selection committee referred to in section 31. For the reasons stated above with regard to section 31, we have recommended that the selection committee alluded to be replaced by the State Public Service Commission for the purpose of nominating independent members. Accordingly, the reference made to the selection committee in Section 34(b) should be removed.

34 (a(iii)) Recommendation
This sub-section should be deleted in its entirety.

34 (b) Recommendation
This sub-section should be deleted in its entirety.

Section 35- Functions of the Commission

The mandate of the State Police Commission provided at section 35 of the Bill has subverted the Supreme Court order to a great extent. Firstly, there is no mandate for the Commission to ensure that the state government does not exercise unwarranted influence or pressure on the police as expressly articulated by the Apex Court. Second, the Commission's functions have been limited to merely *advice* the State Government on policy guidelines for promoting efficient and accountable policing and to *assist* the State Government in identifying performance indicators to evaluate the functioning of the police service. This is a watering down or the Court's order, which called on the Commission to *lay down* the broad policies and actually *conduct the evaluation* of the state police. Finally, nowhere in the Bill does it state that the recommendations of the Commission shall be binding on the state government as explicitly stated in the Supreme Court judgment. Without binding powers, the government will feel free to disregard those recommendations it does not agree with for political reasons, leaving the Commission toothless.

The Bill's redefinition of the State Police Commission's mandate and powers violates the Supreme Court's order in letter and spirit. Therefore, section 35 must be amended to ensure that the Commission is able to fulfill its role as a body designed to insulate the police from unwarranted political interference and provide them with a certain degree of functional autonomy as envisaged by the Supreme Court.

35a) Recommendation
This sub-section should be deleted in its entirety and replaced with the following:

"to ensure that the State Government does not exercise unwarranted influence or pressure on the State police and for laying down the broad policy guidelines for promoting efficient and accountable policing."

35b) Recommendation
This sub-section should be deleted in its entirety and replaced with the following:

"to identify performance indicators and conduct the evaluation of the state police."

35(f) Recommendation
A new sub-section (f) should be added to read as follows:

"The recommendations of this Commission shall be binding on the State Government."

Section 37- Police Establishment Board

The Supreme Court's directive calls for the Police Establishment Board to make recommendations to the government on postings and transfers of officers above the rank of Deputy Superintendent of Police, which will *ordinarily be accepted* by the government. This provision of check and balance is diluted and weakened by the Bill, which states only that such recommendations for transfers shall be *considered* by the State Government in consultation with the DGP. Furthermore, transfer of lower subordinates will be decided by SPs with the approval of the DIG and transfers of Police Inspectors shall be decided by the DGP. All these provisions ensure that the proposed Police Establishment Board will be insufficiently empowered to take on the role envisioned by the Supreme Court.

The Supreme Court also calls for the Board to function as a *forum of appeal* for disposing of representations from officers of the rank of SP and above regarding their promotion/transfer/disciplinary proceedings or their being subjected to illegal or irregular orders. The Bill, however, has diluted this part of the Board's mandate to merely *analyzing* the grievances of police personnel and suggesting remedial measures to the government. It is vital that police officers can appeal such orders to ensure that their posting or transfer as

not been motivated by political or extraneous interference. In our interaction with police officers all around India, we have several times encountered the argument that transfers of police officers based on political interference, are rampant. To succeed in setting up a modern, professional and people-friendly police service it is imperative that such orders are stayed and that there is an appeal board to look into the matter.

Further, in terms of composition, section 35 does not specify the number of officers who will join the DGP in the Committee. In this, the Apex Court's judgment is clear that the DGP should be joined by *four* other senior officers.

If section 35 of the Bill is allowed to stand, the state government would retain most of its powers with regard to postings, transfers and promotions. These violations of the directive, if allowed to stand, would leave Goa's police officers subject to continued political pressure and interference. The objective of giving the police functional autonomy would not be met. These points of non compliance with the Supreme Court judgment necessitate amendment of section 37.

37.1 Recommendation
This section should be amended to read as follows:

"The State Government shall constitute a Police Establishment Board (hereinafter referred to as the "Board"), with the Director General of Police as its Chairman and four other officers of the rank of Superintendent of Police and above as its members."

37.2 Recommendation
This section should be amended to read as follows:

"The Board shall perform the following functions:

(a) decide all transfers, postings, promotions and other service related matters of and below the rank of Deputy Superintendent of Police. The state government may interfere with the decision of the Board in exceptional cases only after recording its reasons for doing so;

(b) make appropriate recommendations to the state government regarding the posting and transfer of officers of and above the rank of Superintendent of Police. The government shall normally accept such recommendations;

(c) function as a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above regarding their promotion/transfer/disciplinary proceedings or their being subjected to illegal or irregular orders;

(d) generally reviewing the functioning of the police in the state.

37.3 Recommendation
This section should be deleted in its entirety.

37.5- 37.8 Recommendation
These sub-sections should be deleted in their entirety.

Section 52- Creation of Security Zones and Operating Procedures

The idea of special, privileged enclaves, where extraordinary measures for security will be provided, is misconceived, and based on a misunderstanding of the challenges of terrorism, organised crime and law and order administration, which the proposed Special Security Zones are intended to address.

Creating SSZs would establish new and relatively stable jurisdictions within which a 'heightened' war against terrorism could be waged, neglecting the fluidity, and extraordinary mobility of contemporary terrorist and insurgent groups, and the expanding networks of organised crime. The SSZ concept communicates the notion that a discrete and geographically isolated or concentrated effort is required for the containment of terrorism. Such zones would tend to be defined in terms of intensities of violence, and would exclude areas of substantial consolidation, where the incidence of violence is lower, even though terrorist activities and mobilisation is significant.

The fact, however, is that the problem of terrorism extends far beyond the targets or 'points of delivery' of terrorist acts. SSZs would tend to distort the focus of counter-terrorism and enforcement agencies, and would deepen the already chronic neglect of 'hinterland' areas.

The present chapter is entirely dangerous. It gives too much undefined power to the police and civilian authority without the requisite accountability. By virtue of a single declaration it will take whole chunks of India's geography and make it vulnerable to authorities not subject to the Constitution.

There is sufficient legislation on the books to deal with special situations such as a breakdown of law and order. Police Acts must not impinge on those other regulations. Police laws are put in place to regulate policing. The rationale for any police legislation is to regulate policing; to provide the police with a new vision of itself; to change the underlying assumptions on which it functions; articulate the relationships that the police establishment will have with the political executive, the civil administration and the public; define its role and function; delimit its powers and activities and define its structure. The Bill should not go beyond this remit to give extraordinary powers to the police or create obligations for the public.

The need for the creation of SSZs would in itself be an indication that regular policing, maintenance of law and order and safety and security in that area has completely failed. This would also be an indication that there would have been significant deficiencies in the ordinary everyday policing plans of that area.

Sections 52 and 53 of the Bill deal with Special Security Zones (SSZ), defined as "any area threatened by insurgency or any terrorist or militant activity." The Bill allows for SSZs to be notified as such by the State Government. Once notified, the Bill allows the state government to, on the recommendation of the DGP, take drastic measures to curtail civil liberties within the SSZ. These measures include banning or regulating "the production, sale, storage, possession or entry of any devices, or equipment….or any inflow of funds" (s.52(4)) in an SSZ. Consequently, section 52 has no place in the Bill and should be removed. The provisions for severe curtailment of civil liberties and creation of a parallel police system within the Special Security Zones appear to be similar to provisions of emergency laws such as the Armed Forces (Special Powers) Act, 1958. Although the police are not given special powers overtly in the Bill, the blanket provision in section 53 to take measures "to prevent and control the activities of persons or organisation having impact on internal security or public order" in any SSZ leaves open the potential for vast abuse of power to occur in the SSZs without the requisite checks and balances.

Emergencies of public order and the problems of terrorism, insurgency or militancy require a coordinated and integrated approach that goes beyond the policing requirements and includes action by various other wings of administration. The overly far reaching provisions and resulting constitutional implications of section 52 go well beyond the scope of this Bill and should, if at all required, be addressed in separate security or emergency legislation. The same was acknowledged by the National Police Commission, which made no mention of such provisions in the model Police Bill they drafted but instead recommended a separate "special law for dealing with serious and widespread breaches of disturbance of public order."

52. Recommendation
This section should be deleted in its entirety.

Section 53- Measures to be taken

For the same reasons articulated above with regard to section 52, section 53, should be removed from the Bill.

53. Recommendation
This section should be deleted in its entirety.

Section 54- Separation of Crime Investigation and Law and Order

In its directive, the Supreme Court has stressed that the investigation and law and order functions of the police *must* be separated. Use of the word "*may*" in section 54 of the Bill indicates that the intent of the Government to separate the two wings is weak. The Bill leaves absolute uncertainty as to if and when separation will be effected in reality.

CHRI recommends that there be a literal separation between the investigation police and law and order police at all levels and that this is reflected in the form of strong wording in the Bill. In practice, Goa can implement this provision gradually, beginning with the most crime prone areas and moving on to less crime prone districts.

In this respect, we find that the Model Police Act is instructive. The Model Police Act sets out, in detail, several sections that pertain to the separation of the investigation function. In our view, these sections are vital in terms of the comprehensiveness and the safeguards they provide to ensure that the new investigative units receive sufficient infrastructure, training, support and tenure. Sections 122-137 of the Model Police Act should be incorporated in the Bill to ensure that Goa will be in compliance with directive 4 of the Supreme Court in the *Prakash Singh* case.

54. Recommendation
Section 54 should be deleted in its entirety and replaced with the following:

"Separation of Crime Investigation and Law and Order
54.1. The State Government shall ensure that in all urban Police Stations, and those in the crime-prone rural areas, a Special Crime Investigation Unit, headed by an officer not below the rank of Sub-Inspector of Police, is created with an appropriate strength of officers and staff. The personnel posted to this unit shall not be diverted to any other duty, except under very special circumstances with the written permission of the State Police Chief.

54.2. The officers posted in Special Crime Investigation Units will be selected on the basis of their aptitude, professional competence and integrity. Their professional skills will be upgraded, from time to time, through specialised training in investigative techniques, particularly in the application of scientific aids to investigation and forensic science techniques.

54.3 Officers posted to Special Crime Investigation Units will normally have a minimum tenure of three years.

54.4. Each Police Station shall be provided with an appropriate number of Crime Scene Technicians to promptly visit the scenes of crime along with the Investigating Officer concerned to spot and gather all available scientific clues. These Crime Scene Technicians will be specially selected and adequately trained for the purpose.

54.5. Necessary legal and forensic advice will be made available to investigating officers during investigations.

55.6. There will be a separate allocated budget for the Special Crime Investigation Units.

55.7 The hierarchy for officers serving in Special Crime Investigation Units shall be the same as for officers serving in the law and order police.

55.8. The officers and staff to be posted to this Cell shall also be selected and specially trained, as provided in section 54.2."

Section 57- Power to seek information

Section 57 bestows the District SP with the power to require "every owner of a household, a shop, or hotel or a guest house (or) a public premise, to furnish details of a tenant or occupant tourist or domestic help in the format specified by him." This section is dangerous and is liable to be misused by the police to needlessly harass innocent persons belonging to either the minority community or to weaker sections of society. It is unclear why "domestic help", "tenants" and "occupant tourists" have been singled out in this section for special scrutiny. Section 57 is almost prejudicial in this respect as it operates from the assumption that these categories of people are most likely to commit offences.

Section 165 of the CrPC states that a search without warrant can only be conducted if the police officer has *reasonable grounds* for believing that anything necessary for the purposes of an investigation into *any offence* which he is authorised to investigate may be found in a certain place, and that such thing cannot be otherwise obtained *without undue delay*. In these cases, the officer concerned has to *record in writing* the grounds for his belief and what he is searching for before commencing the search. Section 165 should be read with section 100 of the CrPC, which provides the proper procedure that police officers must follow whilst entering a private place. None of these checks and limitations find mention in the Bill.

Section 57 of the Bill undermines the CrPC as it clearly does not meet the high standard of proof that requires to be met before a police officer can enter a private place without a magistrate's warrant. Once again, this is a section that the police can misuse to needlessly harass persons by violating the sanctity of their private homes without sufficient cause. The provisions of the CrPC are more than sufficient to deal with the exigencies that have motivated the drafting of this section and as such, this section should be removed.

57. Recommendation
This section should be deleted in its entirety.

Section 60- Community Liaison Group

CHRI is encouraged that community policing has been addressed in the Bill. Through community policing the public can be informed of the difficulties police are facing in different stages of their work and the police may learn about specific community issues that can be addressed before crime occurs. In this way community policing permit the police to work proactively rather than reactively. The key element in community policing is to build trust and this is done through ensuring the right composition of the community liaison groups, and by having regular meetings attended by both the public and police.

Although community policing is a relatively new concept in India and is not addressed in the 1861 Police Act, it can be found in police acts all over the Commonwealth such as Northern Ireland, New South Wales, Australia, the United Kingdom, Ontorio, Canada and South Africa. To ensure that all this is achieved, CHRI recommends that language should be

adopted from section 18 of the South African Police Act, 1995 that comprehensively addresses the objectives of community policing. Further, the Model Police Act 2006 states that the meetings of the community liaison group should be attended by the Sub-Divisional Magistrate as well as the Sub-Divisional Police Officer, Station House Officer and Circle Inspector. CHRI endorses this provision as it is important that representatives from the police and magistracy are present at the meetings so that the public can discuss pressing matters with the police in a less intimidating environment than the police station.

Moreover, for community policing to be truly effective, it should be inclusive and allow for maximum participation. The language in the Bill suggests that the District Superintendent of Police shall have the sole power to constitute the Community Liaison Groups and this is worrying as it can lead to members being chosen who are neither able to adequately articulate the needs of the community nor are necessarily representative of it. CHRI urges that the language be amended so as to ensure that members be chosen in a transparent manner by a Selection Committee empanelled for the purpose.

Further, CHRI feels that the Liaison Groups should meet at least once a month, to ensure that there is a constant two-way communication occurring between the police and the public. This communication is an essential element to building an effective police-public partnership.

60 Recommendation
Section 60 should be deleted in its entirety and replaced by the following:

"60.1 The objectives of the community liaison groups shall be as follows:
(a) establishing and maintaining a partnership between the community and the police;
(b) promoting co-operation between the police and the community in fulfilling the needs of the community regarding policing;
(c) promoting communication between the police and the community;
(d) improving the rendering of police services to the community at the state, district and local levels;
(e) improving transparency in the police and accountability of the police to the community;
(f) promoting joint problem identification and problem-solving by the police and the community."

60.2 The Community Liaison Group shall have eight representatives. Persons wanting to serve in the Group shall submit an application to a Selection Panel constituted for the purpose consisting of the Station House Officer, the area Judicial Magistrate and District Superintendent/Commissioner of Police. The Selection Committee shall induct members from the applicant pool in a transparent manner.

60.3 No person who is connected with any political party or an organisation allied to a political party, or has a criminal record, shall be eligible to be inducted into the Community Liaison Group.

60.3 The Community Liaison Group shall meet at least once every month.

60.4 Provided further that the meetings shall be attended by the Sub-Divisional Magistrate, Sub-divisional Police Officer, officer in charge of the Police Station and the Circle Inspector."

Section 86- Prosecution of police officers

The provision that no court shall take cognisance of any offence when the accused is a police officer without prior sanction of an officer authorized by the state government in this behalf in section 86 of the Bill mirrors the language used at section 197 of the CrPC. This immunity clause under the CrPC itself is under much debate and there have been

several recommendations and suggestions to modify the same. Since a similar clause is already provided for in the CrPC it would be inappropriate to include it in the Bill as well.

86. Recommendation
Section 86 should be deleted in its entirety

Section 90- Protection of action taken in good faith

In addition to Section 86, the Bill also retains an omnibus exemption clause, at section 90, which protects from liability any action taken in "good faith" by the state government, State Police Commission, Police Complaints Authorities, their members, staff, or persons acting under their direction. It is particularly perplexing and illogical for such immunity to be provided for the state government and their members in a *Police Act*. This type of omnibus exemption clause is dangerous and subject to significant abuse. The government can cloak any mishandling of police affairs under the guise of the undefined notion of "good faith", and thereby immunise the Police Complaints Authorities, the State Police Commission and the state government from the very type of accountability the Apex Court decision is meant to help bring about.

90. Recommendation
Section 90 should be deleted in its entirety.

Section 91- Police Accountability Authority

Section 91 of the Bill seeks to transfer the powers of the existing Goa State Police Complaints Authority (PCA) constituted by government order to the Lokayukta. As there is presently no Lokayukta in Goa nor any discernable signs that one may be constituted, Section 91 also provides that "if…the Lokayukta is not in position, the composition of the Authority…may be such as may be notified by the State Government." This vague clause subverts the Supreme Court order in letter and spirit. The Apex Court expressly states that, in terms of composition, the State Police Complaints Authority be headed by a retired Judge of the High Court/Supreme Court and constituted of members chosen by the state government from a panel prepared by the State Human Rights Commission/State Public Service Commission/ Lok Ayukta. Thus, the state government does not have the absolute power to appoint whoever it pleases as members of the Authority as provided for in Section 91. Such a clause allows for the government to select members who are essentially political appointees beholden to the government. It is very difficult to see the Authority so constituted functioning as a robust independent accountability mechanism envisaged by the Supreme Court.

These arguments notwithstanding, even if the Lokayukta comes into position by the time this Bill is enacted, it is difficult to see that institution doing justice to the mandate of the Authority, given that it will also be burdened with other responsibilities. The Supreme Court's directive that the members of the Authority should work full time has clearly not been taken into account.

Thus, whether or not the Lokayukta is constituted in time, section 91 of the Bill will be a major step backwards for Goa after the promise shown by existing multi-member State PCA headed by a retired high court judge. This section must be amended to ensure that the authority constituted by the Bill is in compliance with the Apex Court's directive.

91. Recommendation
Section 91 should be deleted in its entirety and replaced with the following:

"91.1 The state government may as soon as may be establish a State Police Complaints Authority.

91.2 The Authority shall be headed by a retired judge of the High Court appointed by the state government from a panel of names proposed by the Chief Justice of the Bombay High Court.

91.3 The Authority shall have three additional members appointed by the State Government from a panel of names proposed by the State Public Service Commission. The panel may include members from among retired civil servants, retired police officers or members of civil society."

Section 94 – Reports of the Authority

Reports by the Complaints Authority which are to be placed before the State Legislature is a very crucial step to addressing police misbehaviour. Section 94 is a welcome inclusion in the Bill. Section 94(1)(b) indicates that the report will contain the number of types of misconduct referred to it by the Director General of Police. We feel that it should also reflect the cases referred to it by the State government.

94.1(b) Recommendation
This section should be amended as follows:
(b) the number of types of cases of misconduct referred to it by the State government and the Director General of Police

Section 95- Decisions and Recommendations of the Authority

The Supreme Court judgment unequivocally states that "the recommendations of the Complaints Authority….for any action, departmental or criminal, against the delinquent police officer shall be binding on the concerned authority." To its credit, the Goa government has in its government order constituting the existing State PCA complied with this part of the directive and granted binding powers to the Authority. Section 95.1(b), unfortunately represents a step back from this posture, for it allows the state government to, for reasons to be recorded in writing, disagree with and block the recommendations of the authority. In this sense, section 95.1 (b) allows for the state government to block those recommendations of the authority it does not agree with for political reasons.

In the interest of ensuring that the Goa PCA is not significantly weakened as a powerful accountability mechanism, Section 95.1(b) should be amended.

95.1(b) Recommendation
This section should be amended by deleting the following:

",unless the State Government for reasons to be recorded in writing disagreed with such recommendations"

Section 96- Rights of the Complainant

Section 96 guarantees the Complainant certain essential procedural rights whilst dealing with the Authority. However, section 96.1, which states that "no complaint shall be entertained by the Authority if the subject matter of the complaint is being examined by any other commission, or any court", is unduly limiting. Nowhere in the Supreme Court directive is it specified that the state PCA cannot take cognizance of complaints being looked upon by other bodies. Thus, this provision, which effectively removes a large number of complaints from scrutiny by the PCA, is in gross violation of the Supreme Court directive and should be removed.

96.1 Recommendation
This section should be amended by deleting the following:

"Provided that no complaint shall be entertained by the Authority if the subject matter of the complaint is being examined by any other commission, or any court."