

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

THE BOMBAY POLICE (GUJARAT AMENDMENT) BILL, 2007

(Purporting to amend without replacing the Bombay Police Act, 1951)

**(Passed in the Legislature 20 July 2007, not yet notified,
currently before the State Law Commission)**

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 Gujarat Bill creates a State Security Commission (SSC), however the SSC does not have the power to make binding recommendations (Bill s.32B), 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 SSC 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. It 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. The selection panel is meant to be composed of non-government individuals, including a retd Chief Justice of the High Court, and the Chairs of the State Human Rights Commission and SPSC (MPA ss.42, 43, 44). Conversely the Bill proposes only 2 independent ("non-official") members, who are to be nominated by the Government itself! (Bill s.32A(2)(g))
 - The MPA also stipulates that the Chair of the SSC must be the Home Minister (rather than the Chief Minister as set out in the Gujarat Bill); the Leader of the Opposition and a High Court Judge (retd) nominated by the Chief Justice must be a member of the SSC; 2 members must be women, and; minorities must be adequately represented (MPA s.42).
 - According to the MPA, independent members must only sit for a maximum of 2 terms—the Bill fails to stipulate a term limit (Bill s.32A(5)).
 - The new Bill (s.32A(4)) provides some ability to remove independent members, but it fails to stipulate that removal ought to occur only upon the approval of 2/3 of the members of the SSC, with reasons provided in writing (MPA s.47).
 - The grounds of removal for independent members also do not conform with the MPA model. The Bill sets out that independents can be removed from the SSC for "misuse or abuse of powers" (Bill s.32A(4)(b)). These broad terms are undefined, and subject to significant manipulation by the State. This ground is not included in the MPA s.47.

- The **Ribeiro Committee** model is not met—the Ribeiro model requires 3 independent members who are to be chosen by a panel created by the Chair of the NHRC, and stipulates that a High Court judge nominated by the Chief Justice, as well as the Leader of the Opposition must be members. The Ribeiro model does not contemplate the Home Secretary or Chief Minister serving on the SSC (Ribeiro Recomm. 1.2).
- The **National Human Rights Commission** model is not met—the NHRC model calls for two sitting or retired High Court judges (nominated by the Chief Justice) to sit as members of the SSC. In the alternative, one judge may sit, together with a member of the State Human Rights Commission or the Lok Ayukta of the State. The Leader of the Opposition must be a member. Like the Ribeiro model, the NHRC model does not contemplate the Home Secretary serving on the SSC, and it stipulates that both the Chief Minister and the Home Minister should not simultaneously be members (NHRC petition, p.87).
- The function of the Gujarat SSC does not comply with the SC directive. The Court expressly stated that the purpose of the SSC is to ensure that the State Government does not exercise unwarranted influence or pressure on the Police. This function is not articulated in the Bill at s.32B.
 - In addition, while Gujarat calls for an annual report to be prepared by the SSC for the State Government, which is then obligated to place such report before the Legislature (Bill s.30C(2))—this does not fully comply with the Court’s order. The directive stipulates that the report of the SPB must proceed directly to 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 Legislature itself. (Note: the MPA (at s.50(2)) adds that the Annual Report must be made available to the public.)
 - The function of the SSC also does not mirror the models recommended by the Supreme Court. For example, the MPA states that one of the functions of the SSC is to recommend the DGP candidates for appointment by the State Government (MPA s.48). This function is not present in the Gujarat Bill.
 - The Bill sets out that the terms and conditions of independent members “shall be such as may be prescribed” (Bill s.32A(5)). However, the MPA is more explicit, it creates a positive onus. The Model Act states that the expenses of the SSC independent members re: travel, allowances and remuneration shall be paid by the State Government (MPA s.49).

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 Gujarat Bill provides for minimum tenure for the DGP, but it fails to comply with the Court’s directive. The Bill does not require that the state government select a DGP from a panel of candidates chosen by the UPSC (Bill s.5A(2)). Instead, the Bill stipulates that the DGP shall be selected after screening by a committee constituted under the provisions of the All-India Services Act, 1951, 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 Bill does not enumerate the specific criteria which the SC indicated must be used for selecting a DGP: length of service; very good record, and; range of experience. [The selection process also contradicts MPA ss. 6(2), which outlines in detail the criteria upon which a DGP is to be chosen.]
- The DGP's 2-year tenure is not quite secure--it remains "subject to the rules made under All India Services Act, 1951" (Bill s.13(3)). The content of such rules is undefined in the Bill. Adding this qualification is problematic as it permits the State Government to enact rules at a later date which may improperly interfere with the DGP's tenure.
- The grounds upon which a DGP may be removed prematurely are overly broad and violate the Court's ruling:
 - The Gujarat Bill provides that a DGP may be removed early due to suspension from service, punishment or dismissal (Bill s.5A(4)(b)(c)), however, the Bill does not stipulate that such discipline must occur "under the provisions of the All India Services (Discipline and Appeal) Rules 19", as set out in the SC directives, and MPA s.6(3)(b),(c). This omission is significant, because it fails to provide DGPs with adequate protection from the threat of arbitrary removal by the State Government.
 - The Bill also includes "misuse or abuse of power..or gross inefficiency and negligence", as bases for removing a DGP prior to the expiration of 2 years of tenure (Bill s.5A(4)(e)). These grounds are not captured in the SC Order. "Misuse" and "inefficiency" are undefined, and as such, subject to significant manipulation by the State Government. (Arguably s.5A(4)(e) is redundant given the ability to prematurely remove a DGP due to disciplinary issues, contained in s.5A(4)(b) and (c) of the new Bill.)
- 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, Gujarat permits the Government to act unilaterally in removing a DGP based on one of the enumerated grounds in s.5A(4) of the Bill.

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 Gujarat Bill provides a minimum tenure of 2 years for certain officers, it does not explicitly extend the tenure requirement as far as the SC directed—the IGP in charge of a zone is not provided a similar safeguard (Bill s.5B(1))
- The Bill articulates bases for premature removal of the senior officers, however, these grounds do not reflect the SC's directive.
 - The Court stipulated that any officer with "a conviction in a court of law for a criminal offence" would not be eligible for full tenure, however the Bill authorizes early removal of any officer who is nothing more than an accused party, prior to a conviction being entered (Act s.5B(2)(c)).
 - The Bill also includes "misuse or abuse of powers" as grounds for premature removal of a senior officer (Bill s.5B(2)(f)). This vague, undefined provision is not contained in the SC directive, and it provides ample opportunity for undue state interference and manipulation of police personnel. (Arguably s.5B(2)(f) is

unnecessary, as the Bill already wields the ability to prematurely remove a senior officer due to disciplinary issues—see s.5B(2)(b) and (d) of the new Bill.)

- Gujarat adds a further ground for the premature removal of a senior officer not contained in the SC directive--namely “gross inefficiency or negligence where a prima facie case of a serious nature has been established after a preliminary enquiry” (Bill s.5B(2)(g)). The nature of such a preliminary enquiry is not outlined, and the Bill does not provide any procedural protections to Officers who may be subject to such an enquiry (see, as a counter example, the procedural protections provided to officers who are subjected to enquiries under MPA s.13(2)). As such, this new ground for the removal of Officers is subject to abuse and manipulation by the State. (Arguably s.5B(2)(g) is redundant, for the same reason listed immediately above.)

Additional Concerns regarding the MPA Model

- As above (re DGPs) the Bill provides for the premature removal of senior officers due to suspension from service, punishment or dismissal (Bill s.5B(2)(b)(d)), however, the Bill does not stipulate that such discipline must occur “under the provisions of the All India Services (Discipline and Appeal) Rules 19”, as set out in MPA s.13(1)(c),(d).

Directive 4

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

- The new Bill does not substantively address this SC directive, and is in complete violation of the Court’s Order. Gujarat simply states, in one clause dedicated to the issue, that “the State Government may...separate the investigating police from the law and order police” (Bill s. 7A(1)).
- This provision is entirely speculative, and leaves the decision about separating the two functions completely in the State Government’s discretion. In order to ensure expedited investigations, improved expertise and improved rapport with citizens, the Court stipulated that its directive must take immediate effect. The State of Gujarat has entirely 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 Gujarat Bill creates a Police Establishment Board, but fails to do so in compliance with the Court’s directive. The SC explicitly called for the Board to be comprised of the DGP, as chair, and 4 other senior officers. Nevertheless, the Bill provides for only 3 other officers to serve along with the Chair (Bill s.32D(1)).
- The function of the Board does not conform with the Supreme Court Order:
 - Under the Gujarat Bill, the PEB does not have the jurisdiction to “generally review the functioning of the police in the state”, per the Court’s directive.

- Although the Board is empowered to consider grievances of police personnel, the Bill does not enumerate the various grievances which may be heard. The Court stipulated that the PEB can hear representations regarding officers: (i) promotion or transfer; (ii) disciplinary proceedings against them, and; (iii) their being subject to illegal or irregular orders.
- The Bill only grants the PEB advisory power respecting grievances of police below the DSP rank. The SC directive is stronger. It stipulates that the PEB must have binding authority to “dispose” of representations from SPs and above.
- Gujarat addresses the jurisdiction of the Board re the transfer of certain low ranking officers—whereas the Court’s directive is more broad. The SC empowers the PEB with quasi-binding authority over not only transfers, but appointments and postings as well. 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)). This wide jurisdiction is absent from the Gujarat Bill (Act s.17D).

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 Gujarat Bill.

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 Gujarat Bill creates a State and District-level Police Complaints Authority, but fails to formally comply with the Court’s directive. Most importantly, the straightforward SC directive that the recommendations of the PCA regarding criminal and disciplinary matters must be binding on the State Government, has not been followed (Bill s.32G(4), 32(I))
- The composition of the proposed State PCA clearly violates the SC directive. The Court explicitly directed that the Chair must be a retired Judge of the High Court or Supreme Court,

nominated by the Chief Justice. The Bill, conversely, stipulates that the Chair may be a retired Judge chosen by the government OR a retired senior government officer not below the rank of Principal Secretary. This is bold attempt to ensure political control over the Complaints Authority, and subverts the goal of ensuring objective public oversight.

- Apart from the Chair, according to the Court the State-level PCA must include several other members 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 ss.160-161 creates a similar requirement). However, the Gujarat Bill (Bill s.32F(1)) provides that the majority of the remaining members of the State-level PCA will come from the ranks of government and serving police officers! (See also MPA s.160, 161).

- The composition of the District PCA similarly violates the SC's directive. The Bill purports to entrench the District Superintendent of Police as Chair, despite the Court's order that the Chair of the District PCA must be a Retd District Judge, nominated by the Chief Justice. As outlined immediately above, the State of Gujarat has ignored the Court's order regarding selection of the remaining members of the District PCA, and proposes instead to staff the Authority with serving police officers and serving politicians! (Bill s.32(H)(1)). This, again, is a blatant attempt to enhance, rather than limit, political control of policing in the state! (See also MPA s.173).

- The mandate of the PCAs does not comply with the Court's Order. The Bill authorizes the State level PCA to inquire into "serious misconduct, dereliction of duty, [and] misuse of powers", but fails to define these terms. Similarly, the Bill provides that the District PCA should assess complaints re "serious dereliction from duty, [and] grave misconduct", without providing further details. Conversely, the SC's directive is very explicit. It mandates the State level PCA to assess complaints relating to death, grievous hurt, rape in police custody. The District level PCA has the same jurisdiction, plus extortion, land/house grabbing, and any incident involving a serious abuse of authority. (Note: The MPA (s.167) provides for inquiry into situations of arrest or detention without due process of law)

- Significantly, the Gujarat government attempts to limit the jurisdiction of the State-level PCA, by stipulating that the PCA shall only inquire into those matters not already covered by a host of pre-existing organizations (e.g. The NHRC, the Commission for Minorities, the Commission for SC/ST, the Commission for Women, etc.) The list contained in the Bill at s.32G(1) is fairly exhaustive, and if adhered to, it would virtually preclude the State-level PCA from ever hearing a complaint regarding police misconduct. This completely undermines the Supreme Court's ruling, and demonstrates merely token facial compliance with the Court's order. The directive aims for meaningful and substantive public oversight by a new body, specialized in policing matters—not simply to have pre-existing mechanisms attempt to address police misbehaviour.

- Both the SC directive and the MPA (ss. 163-165) stipulate that members of the both levels of PCAs must be full-time, suitably remunerated, and provided staff assistance—these explicit attributes are missing from the Gujarat Bill. (The Bill states only that the government shall provide such sum to the District PCA to enable it to discharge the functions assigned—Bill s.32J. See also the vague provisions contained at s.32F(2) and s.32H(2))

Additional Concerns regarding the MPA Model

- The requirements under the MPA respecting the composition of the PCA are more stringent, and have not been followed. For example, the MPA states that the PCA should include someone with experience in the law as a prosecutor or professor, plus at least one woman (MPA s.160).

- There are a host of items not addressed in the Gujarat Bill:

- Eligibility. The new Bill fails to address eligibility requirements for those serving on the PCA, or grounds for removal of members (see MPA s.162, 164)
 - Ability to file complaint. The MPA (s.167) would permit complaints to be lodged with the PCA from a wide array of groups, thereby increasing the likelihood of greater accountability. The Gujarat Bill is silent regarding this issue.
 - Rights of Complainants. The Bill does not address the rights of those who complain to the PCA, as found in MPA s. 177, which include the rights to attend hearings, inquire about delays, and be informed re all conclusions.
 - Annual Reporting. MPA s.172 contemplates an annual report being prepared by the PCA, summarizing the cases monitored, and providing recommendations regarding misconduct. This report is to be placed directly before the State Legislature during the Budget session, and made accessible to the public. The Gujarat Bill is silent respecting any reporting duties of its PCAs whatsoever. (See also MPA s.175)
- The powers of the State level PCA to enforce attendance and take evidence exists, (Bill s.32G(3)) however, the full scope of powers awarded to the PCA under MPA s.168-170 are absent. For example, the Bill does not give the PCAs the power to: discover documents, requisition public records, issue authorities for the examination of witnesses, protect witnesses and statements, and visit stations and lock-ups.
 - The MPA suggests a broad mandate for the Authority. The MPA authorizes the PCA to monitor the status of internal police department inquiries and guard against delays (MPA ss.167(3),(4), 174(1),(2)). These kinds powers are critical to achieve meaningful police reform, yet they are absent from the Gujarat Bill.

Miscellaneous

Unlike many other states, Gujarat has not elected to repeal its old Police legislation in its entirety. Instead, the state is planning to pass an amendment to its existing legislation, the Bombay Police Act, 1951.

Certain portions of the 1951 Act that have not been amended are addressed immediately below:

- The 1951 Act retains omnibus exemption clauses, at s.159-160, which protect from liability any action taken in “good faith” by a Magistrate, Police Officer or public servant. These types of exemption clauses are dangerous and subject to significant abuse, as the government can 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 accountability the Supreme Court’s decision is meant to help implement.
- The original Statute contains a clause which immunizes police officers from prosecution for an offence, in the event the suit was not commenced within 6 months of the act complained of. This provision is an anachronism, and must be removed. It creates barriers to holding police responsible for their misdeeds, and as such it is entirely antithetical to both the letter and spirit of the SC ruling and the guiding philosophy of the legislation.
- The 1951 Act has not been amended to include a preamble, similar to the one contained in the MPA, which enshrines respect for the rule of law, accountability and the promotion of human rights.
- The 1951 Act empowers the state to appoint Special Police Officers (s.21), Additional Police Officers (s.22) and Railway Police (s.23). It also authorizes the State to confer on them

the “same powers, privileges and immunities” as possessed by “an ordinary Police officer” (s.21). Sweeping powers to create ad hoc officers are unwarranted and should be removed, given the state’s pre-existing broad powers to appoint regular police officers. The creation of such ad hoc Police Officers is arbitrary and may be subject to abuse. For example, due to the emergency nature of their appointment, ad hoc Police Officers 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.

- The 1951 Act has not been amended to include any provisions related to mandatory training of new police recruits, annual refresher training, or pre-promotion training. It also lacks a requirement for training of Special Police Officers or Additional Officers (unlike the MPA, ss.138-147).
- The 1951 Act lists the powers and duties of police officers (Act s.64), but has not been amended to reflect the duty to complete an FIR and supply a copy of the FIR to the complainant (as contained in MPA s.57). In addition, the “public duties” of officers captured at s.66 of the original statute do not mirror the comprehensive list of social responsibilities articulated in MPA s.58. For example, the statute does not indicate that officers must act with courtesy to seniors, provide requisite assistance to victims, and behave impartially in all conflicts between communities, classes and castes. 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 1951 Act 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))
- Chapter V of the original Act, entitled “Special measures for maintenance of public order and safety of State” should be removed in its entirety. This Chapter has no place in the Act—the concerns addressed in Chapter V are more appropriately addressed in separate, specific security related legislation. Emergencies of public order and problems of insurgency require a unique and carefully tailored response, which goes beyond the scope of the routine police requirements and regulations contained in the 1951 statute.
- The original Gujarat statute remains bereft of details concerning government protections that will be offered to police personnel (e.g. education, health care, housing, training). 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)

DRAFTED BY
Mr. ARIF VIRANI
Programme Officer
Commonwealth Human Rights Initiative

New Delhi

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