

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

HARYANA POLICE BILL, 2007

(Bill No. 9-HLA of 2007, pending with the Central Government)

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 Haryana Bill creates a State Police Board (SPB), however the SPB does not have the power to make binding recommendations (Bill s.30) despite the clear directive from the Supreme Court that the Commission's decisions must be binding to avoid undue influence on the police. In violation of the Court's order, Haryana's Bill states simply that "the superintendence of State Police shall vest in and be exercised by the State Government" (Bill s.24).
- The creation of the SPB is not immediate, pursuant to the SC directive, but shall take place "within three months of the coming into force of this Act" (Bill s.25).
- The composition of the SPB 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, 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 ret'd 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 3 independent members, who are unilaterally appointed by the government from among the ranks of retired public service officers! (Bill s.26(h)).
 - The MPA also stipulates that a High Court Judge (ret'd) nominated by the Chief Justice must be a member of the SPB, that 2 members must be women, and that minorities must be adequately represented (MPA s.42).
 - The Bill sets out rules for ineligibility of independent members at s.27, but fails to replicate the grounds contained in the MPA. In particular, the Bill does not exclude anyone "who holds an elected office" or "is an office-bearer of any political party" (see as a counter example, MPA s.45(d)).
 - The Bill also contains grounds not listed in the MPA—a person who is not a graduate "from a recognized university" may not sit as an Independent Member (Bill s.27(b)). The definition of "recognized university" is not provided, and is subject to arbitrary state interference and manipulation.
 - In addition, the Haryana Bill provides for a broad ability to remove independent members. The Bill stipulates that removal can be effected by the State Government alone without

reasons (Bill s.29)—whereas the MPA stipulates that removal should occur only upon the approval of 2/3 of the members of the SPB, with reasons provided in writing (MPA s.47)

- The **Ribeiro Committee** model is not met—the Ribeiro model requires the three independent members 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, must be members. The Ribeiro model does not contemplate the Home Secretary serving on the SPB (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 SPB. 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 NHRC model does not contemplate the Home Secretary serving on the SPB, and does not permit both the Chief Minister and Home Minister from serving (NHRC petition, p.87).
- None of the 3 proposed models authorizes the Advocate General, Haryana, to sit as an Member. Equally, none of the models considers the independents to be “honorary” members, as articulated in the Bill s.26(h). (NHRC petition, p.87; MPA s.42; Ribeiro Recomm. 1.2)
- The function of the SPB does not comply with the SC directive. The Court expressly stated that the purpose of the SPB is to ensure that the State Government does not exercise unwarranted influence or pressure on the Police, and its functions must include giving directions for the performance of preventative tasks by the Police. Each of these specific functions/purposes is absent from the Bill s.30 (See also Ribeiro Recomm. 1.5, and NHRC petition, p. 88).
 - Importantly, the Bill (s.30) completely omits the Court’s directive that the SPB must evaluate the performance of the State police and prepare “a report thereon for being placed before the State legislature”. This provision is critical to maintain proper transparency regarding the oversight process. (See also Ribeiro 1.5; NHRC Petition, p.88) (Note: the MPA (at s.50(2)) adds that the Annual Report must be made available to the public.)
 - The function of the SPB also does not mirror the models recommended by the Supreme Court. For example, the MPA states that one of the functions of the SPB is to recommend the DGP candidates for appointment by the State Government (MPA s.48). The MPA also enumerates an actual list of performance indicators for evaluating the police, including: operational efficiency, public satisfaction, observance of human rights standards and victim satisfaction (s.48(c)). These attributes are not present in the Haryana Bill.

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 Haryana Bill provides tenure to the DGP (Act s.6(2)), however this guarantee does not comply with the Court’s directive. The tenure allocated is for a minimum of 1 year, whereas the SC stipulated that at least 2 years tenure is required to effectively insulate the DGP from arbitrary State interference.
- The new legislation does not enumerate the specific criteria which the SC stated must be used for selecting a DGP (length of service, very good record, and range of experience), 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.]

- 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 Haryana Bill permits the Government to act unilaterally in removing a DGP based on one of the enumerated grounds in s.6(2) of the legislation.
- The Bill provides for premature removal of the DGP on more grounds than the SC permits, rendering the position still vulnerable to arbitrary state interference. The Haryana Bill stipulates that a DGP may be transferred early in the event of “promotion to a higher post...either in the State or the Central Government” (Act s.6(2)(d)) This provision is open to government manipulation, particularly since there is no requirement that the DGP must consent to such promotion (see for example, MPA s.6(3)(e)).

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 Haryana Bill legislation provides guaranteed tenure to certain officers, this guarantee does not fully comply with the SC directive. The minimum tenure provided is for only 1 year (Act s.13(1)), despite the explicit order of the Court that a minimum of 2 years is required to adequately protect officers from State manipulation.
- In addition, the tenure that is provided, is allocated only to the Inspector General in charge of a range, or the SP in charge of a district (Act s.13(1)). The Bill does not extend the minimum tenure requirement as far as the SC directed—the IGP in charge of a zone, and SHO are not provided similar safeguards.
- The grounds upon which the officers may be removed prematurely are overly broad. The SC directive permits premature removal to fill vacancies caused by “promotion” or “retirement”, but the Haryana Bill (s.13(1)(f)) adds that premature removal is also possible to address a vacancy caused by “transfer”. This violates the Court’s Order—this ground was specifically omitted by the SC because of the State Governments’ historic exploitation of the transfer power.
- The Bill adds additional grounds for the premature removal of a senior officer not contained the SC directive--namely for “gross inefficiency and negligence” where “a prima facie case of a serious nature is established after a preliminary enquiry” (Act s.13(2)). The nature of such a preliminary enquiry is not outlined, and the Act 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.13(2) is redundant given the ability to prematurely remove Officers due to disciplinary issues, contained in s.13(1)(c), and (d) of the new Bill.)

Directive 4

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

- The Haryana Bill enacts a partial separation of the law and order function from the investigative function of the police. Although the SC directive is general in terms of the structure of such a separation of functions, the MPA provides a useful template. When compared with the MPA, the sparse Haryana Bill fails to fully comply with several provisions recommended to ensure the success of the separation of the 2 functions:
 - The Bill contemplates the creation of a State Crime Investigation Wing (s.16), district-level Special Cells (s.11), and Criminal Investigation Units (s.12), but provides very little information regarding the composition and function of the former two entities. For example, there is no information regarding the State Crime Investigation Wing and the provision of legal advisors, crime analysts, funding, training and tenure (see MPA, ss.133-136).
 - Regarding the Criminal Investigation Units, the Bill provides for the training of officers, but it fails to stipulate that such training must take place on a regular basis (Bill s. 44).
 - The Bill contemplates the creation of a Forensic Science Laboratory and Finger Print Bureau at the state level (Bill s.17(2)), however it makes the provision of legal and forensic aids to the district level Criminal Investigation Unit discretionary (Bill s.46). Such assistance is mandatory under the MPA (ss. 135, 137).
 - Haryana's Bill makes no reference whatsoever to the tenure of officers within the Criminal Investigation Unit (MPA s. 124), or the provision of Crime Scene Technicians (MPA s. 126).

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 new Haryana Bill does not substantively address this SC directive, and is in violation of the Court's Order. The Bill simply states, in one clause dedicated to the issue, that "the State Government may constitute a police establishment committee" (Bill s.34(1)).
- This provision is entirely speculative, and leaves the decision about implementing a PEC, completely in the State Government's discretion. In order to minimize arbitrary state interference and manipulation of the police, the Supreme Court has stipulated that its directive must take immediate effect. The State of Haryana has ignored this part of the Court's ruling.
- The Bill is bereft of details regarding the potential PEC, including its jurisdiction and quasi-binding authority. In addition, the hypothetical PEC which the state "may" implement does not conform with the Court's directive in terms of its composition. The Bill purports that its potential PEC would be composed of the DGP and 2 other senior officers (Bill s.34(1)), whereas the Court is explicit that the PEC must be composed of a total of 5 senior police personnel, including the DGP.

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 Haryana Bill creates a Police Complaints Authority, but fails to formally comply with the Court's directive. Most importantly, the 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.67(1)).
- Only one PCA 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 Bill indicates "the State Government may notify and constitute a District Police Complaint Authority for each district as and when required" (Act s.68). This provision is entirely speculative, and leaves the actual decision about the creation of a District PCA, completely in the Government's discretion. In order to ensure greater police accountability to the public, the Supreme Court has stipulated that its directive must take immediate effect on the Court's terms. Haryana has plainly ignored this part of the Court's ruling.
- The composition of the proposed State PCA clearly violates the SC directive. Instead of implementing a large 4-6 member body, Chaired by a retired Judge of the High Court or Supreme Court (nominated by the Chief Justice), the Bill provides for a one-person PCA! (Act s.59) The Court's order is clear that apart from the Chair, the 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). By centralising the PCA into only one person, who may be a retired civil servant, the State is plainly attempting to manipulate the oversight process, and has contravened the Court's ruling!
- The Bill permits the State government 6 months within which to establish its PCA—whereas the SC directive is intended to have immediate effect, and does not contemplate staged implementation.
- Haryana's Bill indicates that that the mandate of the State PCA is to investigate "serious misconduct" (Bill s.65(b)). Although the definition of serious misconduct matches that prescribed by the Supreme Court, the scope of misconduct investigated by the State PCA should include extortion, land grabbing and other serious abuses, since these violations are meant to be the domain of the District PCA which has not been created by the State's Bill.
 - Note: The MPA (s.167) provides for inquiry into situations of arrest or detention without due process of law, and authorizes the PCA 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 Bill.

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, MPA s.160 states that the PCA may include a retired DGP or retired officer with experience in public administration, but only if such persons hail from a different state.
- The new Bill (s.60) excludes certain persons from serving on the PCA, but fails to exclude a person serving in any police or military organization (MPA s. 162(c)).
- The MPA permits complaints to be lodged with the PCA from a wide array of groups, thereby increasing the likelihood of greater accountability. Nevertheless, the Bill (s.65) does not include the open-ended permission granted in the MPA to receive a complaint from a victim, any person on his behalf, or “any other source” (MPA s. 167(1)).
- The legislation is completely silent on 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 regarding all conclusions.
- The powers of the PCA to compel evidence, etc. are fairly broad in the new Bill at s.66, however, the full scope of powers and jurisdiction awarded to the PCA under MPA s.168 are absent (re: protecting witnesses and statements, visiting stations and lock-ups, and operating as a civil court).
- The function of the State level PCA does not include preparing an annual report on policing for the Government each year, including recommendations on measures to improve Police Accountability (MPA s. 172). The MPA sets out that the annual report must be laid before the “State Legislature” and “shall be a public document.”

Miscellaneous

- The Bill contains a wide opt-out provision, which exempts the State from complying with the legislation, if a “difficulty arises” and opting out is “necessary or expedient” (Bill s.93). 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.93 increases the likelihood of state influence, and entirely undermines the Supreme Court’s directives.
- The Bill contains a clause which immunizes police officers from prosecution for an offence, absent the sanction of the State Government (s.80). This provision is an anachronism, and must be removed. It is entirely contradictory to both the letter and spirit of the SC ruling and the guiding philosophy of the legislation—which, as the Bill’s preamble states, is “to enable” the police to function as an “accountable, people friendly and responsive agency”. If the State may intervene to prevent prosecutions against unlawful officers from proceeding, the potential for collusion and the immunization of human rights abuses is extremely significant.
- Haryana’s Bill prevents a court from taking cognizance of an Offence committed after the end of the limitation period provided in s.468 of the Code of Criminal Procedure. This time limitation is unwarranted in our view, and will effectively immunize the police from the scrutiny and oversight mandated by the Supreme Court.
- The Bill empowers the state to appoint Special Police Officers (s.21), and also authorizes the State to confer the “same powers, privileges and immunities” as possessed by “an ordinary

police officer”. 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. For example, due to the emergency nature of their appointment Special 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. It is also unclear in the Haryana Bill whether such Special Police Officers will be answerable to the new Police Complaints Authority (Bill s.59ff)

- Section 47 of the new Bill 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(f),(g),58). In addition:
 - The Bill 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 Bill 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 IV of the Bill, entitled “Policing in the Context of Public Order and Internal Security Challenges” should be omitted in its entirety. This Chapter has no place in the Haryana Bill—the concerns addressed in Chapter IV 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 Haryana Bill.
- Welfare of Police: the Bill is bereft of details concerning what specific protections the State will offer police personnel. The Haryana Bill does not purport to create a Police Welfare Bureau, fails to require tabling of an annual report compiling police grievances and does not stipulate maximum working hours for officers (unlike the MPA, ss. 185-188). Other provisions are unduly restrictive. For example, s. 55(1) states that no member of the police shall be a member of a trade union, labour union or political association.

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