

Himachal Pradesh Government Compliance with Supreme Court Directives on Police Reform

HIMACHAL PRADESH POLICE ACT, 2007

Directive 1

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

- The new Himachal Pradesh (HP) legislation creates a State Police Board (SPB), however the SPB does not have the full power to make binding recommendations (Act s.53(2)) despite the clear directive from the Supreme Court that the Commission's decisions must be binding to avoid undue influence on the police. The Act stipulates, instead, that the SPB's recommendations do not need to be followed "if the Government is of the opinion that it is not feasible in the public interest". A definition of "feasible" and "public interest" is not provided in the statute. This type of open-ended exemption will permit the very type of government interference which the SC has sought to prevent through its Order.
- 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 (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 (MPA ss.42, 43, 44). Conversely the Bill proposes only 3 independent members, who are to be selected by a panel that is composed in a manner that does not mirror the MPA.
 - Most importantly, the HP statute actually stipulates that the role of the selection panel is to choose individuals from among names originally suggested by the State Government! (Act s.50(2)) In fact, the role of the selection panel, according to the MPA, is intended to be exactly the opposite, wherein the State Government would be obligated to appoint independent members from among the list provided by the selection panel! (MPA ss. 42(g),43)
 - The MPA 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 Act is silent on the process for the removal of members. It lacks the requirements contained in MPA s.47, which stipulate that removal from the SPB can only occur upon resolution passed by a two-thirds majority of the Board, and with reasons provided in writing.
 - The **Ribeiro Committee** model is not met—the Ribeiro model requires the 3 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 a member (Ribeiro Recomm. 1.2). The term of service for independent members (Act s. 52(1)) does not comply with the model. Ribeiro calls for 3 year non-renewable term (Ribeiro, Recomm. 1.3)
 - 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 (NHRC petition, p.87). In the alternative, one judge may sit, together with a member of the State Human Rights Commission or the Lok Ayukta of the State (NHRC petition, p.87).

- None of the 3 proposed models authorizes the Principal Secretary (Social Justice), Principal Secretary (Finance), Director of Prosecution, Director of Forensic Science or Director of the State Police Training Academy to sit as members of the SPB. The trend among the 3 proposed models is to limit, rather than increase (!) the number of government members of the Board, so as to provide for independent oversight of the police (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 Act s.53 (See also Ribeiro Recomm. 1.5, and NHRC petition, p. 88).
- 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) This function is absent from s.53 of the HP Act.
 - In addition, while the statute calls for an annual report to be prepared by the SPB for the State Government, which is then obligated to place such report before the Legislature (Act s.55)—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.)

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 HP legislation provides a guaranteed tenure to the DGP, however, the provision does not comply with the Court’s Order. The actual quantity of time is not specified in s.6(3) of the Act. The section stipulates only that the DGP “shall have tenure till superannuation”. This violates the Court’s directive, which stipulated that the tenure must run irrespective of superannuation, in order to safeguard against the potential for arbitrary state interference/manipulation. For example, to circumvent the Supreme Court’s 2 year minimum requirement, the government could simply appoint candidates within 6 months of their date of retirement! (See also MPA s.6(3)).
- The nature of the guaranteed tenure is actually quite tenuous. A provision in s.6(3)(v) permits the DGP to be removed prematurely due to “administrative exigencies, in the larger public interest”. This broad power undermines the Supreme Court’s entire purpose of securing the tenure of DGPs to immunize them from State Government interference. The fact that the term “administrative exigency” is undefined, means that this provision will be subject to tremendous manipulation.
- The new legislation enumerates specific criteria which must be used for selecting a DGP, but this criteria does not mirror the criteria in the SC’s directive. In particular, the “length of service” criterion is missing from s.6(2) of the Act.

- The new legislation does not require that the state government select a DGP from a panel of candidates chosen by the UPSC (Act s.12(2)), as directed by the SC. Instead, the HP statute calls for an undefined “Screening Committee” to prepare a panel of 3 suitable DGP candidates. This screening committee will not function in an objective manner, but will be subject to domination and influence by the Government. The Act itself stipulates that the Committee is to be chaired by the Chief Secretary, and that “the Screening Committee may be asked to prepare a fresh panel by the Government, if in its view no one from a panel is suitable” (Act s.6(1)). [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 HP Act permits the Government to act unilaterally in removing a DGP based on one of the enumerated grounds in s.6(3) of the legislation.

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 HP legislation provides a minimum tenure of 2 years for certain officers (the SHO, and the Superintendent of police in charge of a district) (Act s.12), it does not extend the minimum tenure requirement as far as the SC directed—the IGP and DIG are not provided similar safeguards.
- In fact, the nature of the guaranteed tenure is actually quite tenuous. As above (re the DGP) a provision in s.12(vi) permits the senior officers to be removed prematurely due to “administrative exigencies, in the larger public interest” (see also s.12(vi), which permits “reversion to a lower post for administrative reasons”). This broad power undermines the Supreme Court’s entire purpose of securing the tenure of senior officers to immunize them from State Government interference. The fact that the terms “administrative exigency” and “administrative reasons” are undefined, makes this provision subject to tremendous manipulation.

Directive 4

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

- The HP legislation enacts a partial separation of the law and order, from the investigative, functions of the police. Although the SC directive is general in terms of the structure of such a separation of functions, the MPA provides a useful template. When compared with the MPA, the HP Act fails to fully comply with several provisions recommended to ensure the success of the separation of the 2 functions:
 - The statute contemplates the creation of a State Criminal Investigation Department (s.16), district-level Special Cells (s.10(2)), and station-level Criminal Investigation Units (s.11(6)). It provides for training of officers in the Criminal Investigation Unit, but fails to make such training mandatory (Act s.78(3)).
 - Minimum tenure is provided for officers posted to the Crime Investigation Unit, however the legislation (Act s.78(4),(6)) provides for premature removal of such officers on grounds not listed in MPA s.124. Importantly, the Act does not make any reference to the role that the Police Establishment Board must play in determining transfers, postings and promotions for officers, in violation of the Court’s order.

- Minimum tenure is not provided in the HP Act for officers posted to the Criminal Investigation Department (see, conversely, MPA s.134). In addition, the Act does not specify that the Criminal Investigation Department will be provided with an appropriate number of crime analysts (MPA s.135), nor sufficient staff and funds (MPA s.136). Induction training, and appropriate annual in-service training is not specific provided for officers in the Department (MPA s. 133),
- The HP Act states that assistance can be provided to Crime Investigation Units through the appointment of extra officers (Act s.78(2)), however, it does not indicate that these extra officers should be “posted for the specific purpose of ensuring quality investigation on professional lines” (MPA s.128)

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 HP Act creates a Police Establishment Committee, but fails to do so in conformity with the SC directive:
 - First, the SC directive explicitly provides the Establishment Committee a wide mandate to dispose of representations from officers concerning “promotion, transfer, disciplinary proceedings, or their being subjected to illegal or irregular orders” along with “generally reviewing the function of the police in the state.” Conversely, the authority granted in the HP legislation is more narrow in scope. It permits the PEC to dispose only of officer complaints relating to transfer, but not complaints pertaining to promotion or being subject to illegal orders (Act s.56(1)(iii)). Further, the power granted to the PEC in respect of “service matters” (disciplinary matters) is only recommendatory (Act s.56(1)(v)).
 - Second, the HP statute contemplates an advisory role for the PEC respecting posting and transfers of officers at the rank of Add'l SP or above (Act s. 56(1)(iv)). Conversely, the SC indicated that in many instances the view of the PEC ought to bind the State Government. It stated that although the decisions of the PEC for officers at the DSP rank or above (which would include Add'l SP and above) are recommendatory, “the Government is expected to give due weight to these recommendations and shall normally accept” them. (See also MPA, s.53(3))

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 HP Act.

Directive 6

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

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

The district level authority is to be chaired by a retired district judge to be chosen by the state government out of a panel of names proposed by the Chief Justice of the High Court or a High Court Judge nominated by him or her. It must also have three to five members selected according to the same process as the members of the state level Police Complaints Authority.

- The new HP Act ostensibly creates a Police Complaints Authority at the State level, but fails to provide any information whatsoever about the State PCA's composition, jurisdiction and powers. The legislation stipulates only that the "powers of the State Police Complaints Authority shall be such as may be prescribed" (Act s.93(3)). This provision is entirely speculative, and leaves the actual decision about the form and structure of a State 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. The State of HP has ignored this part of the Court's ruling.
- The legislation creates a District-level PCA, but defies the Court's order by failing to stipulate that the recommendations of the District PAC regarding disciplinary and criminal matters, are binding on the State Government (Act s.96).
- The Act ignores the Court's ruling regarding the composition of the District PCA. It fails to stipulate that the Chair must be a retired Judge of the District Court (Act s.95(1)), selected by the State Government from among a panel of names presented by the Chief Justice.
- The Act (s.95(1)) defies the Court's directive that all members of the PCA (other than the Chair), must be selected by the Government out of a panel of names prepared by the Lok Ayukta, the State Human Rights Commission and the State Public Service Commission. (MPA s.173(5) calls for a transparent selection process).
- The HP Act authorizes the PCA to inquire into criminal misconduct, but fails to define this term in accordance with the Court's ruling (Act s.96(i)). The SC directive indicates that the District PCA must inquire into: death, grievous hurt, rape in police custody, 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)
- The SC directive and the MPA (ss. 163, 165, 173(6)) stipulate that PCA members must be full-time and provided with staff assistance—both aspects are missing from the HP legislation.

Additional Concerns regarding the MPA Model

- The new Act (s.95(2)) excludes certain persons from serving on the District PCA, but fails to exclude persons above 70 years of age; persons who are serving with any police or military organization, and; those who are employed as public servants (MPA s.162).
- The legislation does provides no detail whatsoever regarding the process for the removal of members from the District PCA (MPA s.164, and 173(6)).
- In accordance with the MPA, the HP statute authorizes the PCA to screen out false, vexatious and malicious complaints (Act s.96(vii)). However the Act provides for overly harsh

penalties, in the order of Rs. 25,000 against such complainants. Fines of this sum may have a real chilling effect on potential complainants, and thereby reduce the frequency with which the PCA is used. This negates the Court's entire objective—to hold police publicly accountable for their actions. (See also Act s.100(2)).

- 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. Nevertheless, the new State legislation restricts those with standing to file a complaint to victims (Act s.98(1)).
- The legislation addresses the rights of those who complain to the PCA, but fails to provide for interpretation assistance or the ability to appeal an unsatisfactory outcome (MPA s.177(5),(6).)
- The statute is silent on the powers and jurisdiction awarded to the PCA under MPA ss.168-170 (e.g. the power to ensure the protection of witnesses and statements, visit station houses, and operate as a civil court).
- While the legislation (s.97) sets out that the District PCA shall submit a report to the State PCA, the efficacy of this may be legitimately questioned, given the scarcity of details about how and when the State PCA will commence operating. Without a functioning State PCA, there is no ability to place the District PCA report before opposition members in the State Legislature and the public, as prescribed in the MPA (s.172).
 - In addition, the MPA stipulates that the District PCA's annual report should include recommendations to enhance public accountability—this function is absent from the Act.
- The MPA (s.173(6)) states that the tenure of District PCA members ought to run for a maximum of 2 terms, whereas the new Act provides for no maximum number of terms (Act s.95(1)).

Miscellaneous

- The statute contains a wide opt-out provision, which exempts the State from complying with the legislation within the first 2 years of its passage, if any “difficulty arises” and opting out is “necessary or expedient” (Act s.139). 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.139 increases the likelihood of state influence, and entirely undermines the Supreme Court's directives.
- The HP Police Act includes an omnibus exemption clause, at s.102, which protects from liability any action taken in “good faith” by the State Government, the State Police Board, either level PCA, its members, investigators and staff. A similar exemption is provided to police officers who act in good faith, at s.124(3) of the Act. These types of omnibus exemption clauses are dangerous and subject to significant abuse, as the government may seek to cloak any mishandling of police affairs under the guise of the undefined notion of “good faith”, and thereby immunize the police and the state from the very type of accountability the Court's ruling is meant to help entrench.
- The legislation calls for Police Stations to prominently display all information required under the RTI Act, and information related to the occurrence of crimes, etc., but fails to stipulate that SC guidelines and Directives must also be displayed (MPA s.12(7)).

- The legislation includes provisions related to mandatory training of new police recruits, but fails to stipulate that annual in-service training and pre-promotion training is also mandatory (MPA ss.139, 141).
- Section 60 of the new Act lists the functions, duties and responsibilities of police officers, but omits the duty to register all complaints, investigate all cognizable offences and duly supply a copy of the FIR to the complainant (as contained in MPA, s.57(f),(g)).
- The legislation empowers the state to appoint Special Police Officers (s.19), Additional Police Officers (s.20) and Railway Police (s.15). Broad powers to create such ad hoc officers are unwarranted, given the state's ample powers to appoint regular police officers. The creation of ad hoc police officers is arbitrary and may be subject to abuse by the State Government—while such ad hoc officers would generally possess the same powers as ordinary police officers, however due to the emergency nature of their appointment they will not have adequate time to receive the same level of comprehensive training (in the use of firearms, the principles of law relating to the use of force, and the legal rights of the public) that all officers must be required to undergo. It is also unclear in the HP legislation whether such ad hoc Officers will be answerable to the new State or District Police Complaints Authority (Act s.93ff).
- Chapter IX of the Act, entitled “Public Order and Internal Security” should be omitted in its entirety. This Chapter has no place in the HP Police Act—the concerns addressed in Chapter IX are more appropriately addressed in separate, 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 HP statute.
- The legislation sets out a list of offences pursuant to which an officer may arrest without a warrant. The enumerated offences are unduly harsh. For example, s.114(1)(xi), authorizes an officer to detain without a warrant any person who “begs or seeks alms”.

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

New Delhi

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