

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

KERALA POLICE (AMENDMENT) ACT, 2007

(Amending without replacing the Kerala Police Act, 1960)

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 Kerala legislation creates a State Security Commission (SSC), however the SSC does not have the power to make binding recommendations (Act s.17B(4),(5)) 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 that the "Government may, for reasons to be recorded in writing, fully or partially reject or modify any direction or recommendation of the Commission" (Act s.17B(5)).
- 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 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 to be nominated by the Governor.
 - The MPA also stipulates that a High Court Judge (ret'd) nominated by the Chief Justice must be a member of the SSC, that 2 members must be women, and that minorities must be adequately represented (MPA s.42).
 - According to the MPA, the term of office for Independent members is 3-years, with a maximum of 2 terms (MPA s.46). The Kerala Act does not put a limit on the number of terms (Act s.17A(4)).
 - The new statute (Act s.17A(5)) 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 **Ribeiro Committee** model is not met—the Ribeiro model requires the 3 independent members 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. The Ribeiro model does not contemplate the Home Secretary 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. Like the Ribeiro model, the NHRC model does not contemplate the Home Secretary serving on the SSC (NHRC petition, p.87).

- None of the 3 proposed models authorizes the Law Minister to serve as a Member of the SSC (NHRC petition, p.87; MPA s.42; Ribeiro Recomm. 1.2)
- The function of the 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 role is not articulated in the Act s.17B(1).
 - In addition, while the Act 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 (Act s.17B(1)(d),(2))—this does not fully comply with the Court’s order. The directive stipulates that the report of the SSC 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 Kerala statute. In addition, while the new Act stipulates that a function of the SSC is generally to evaluate the performance of the police (Act s.17B(1)(c)) the MPA enumerates an actual list of such indicators, including: operational efficiency, public satisfaction, observance of human rights standards and victim satisfaction (MPA s.48(c)).
 - The Act sets out that fees and allowances payable to nominated members of the SSC “shall be such as may be prescribed”. However the MPA is more explicit, it creates a positive onus. The Model Act states that the expenses of the SSC 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 Kerala Act provides 2 years minimum tenure to the DGP, however, this tenure is subject to superannuation (Act s.4A(1)) This is in direct violation of the SC directive which calls for minimum tenure independent of the date of superannuation [see also MPA s.6(3)].
- The new legislation does not enumerate all of the specific criteria which the SC stated must be used for selecting a DGP—the Court’s stipulation that “length of service” must be considered has been ignored (Act s.4(2)). In addition, the Kerala Act does not require that the state government select a DGP from a panel of 3 candidates chosen by the UPSC. 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 Kerala statute permits the Government to act unilaterally in removing a DGP based on one of the enumerated grounds in s.4A(2) of the legislation.

- Some of the enumerated grounds for premature removal (**s.4A(2)**) do not reflect the SC's directives. For example, the Court indicated that tenure could be terminated early in the event of "a conviction in a court of law for a criminal offence". However the Kerala statute permits premature removal if the DGP is simply an accused, prior to a conviction being entered (Act 4A(2)(b)).
 - Other grounds exceed what is permitted by the Court, rendering the position still vulnerable to arbitrary state interference. For example, contrary to the SC's directives, in Kerala a DGP may be removed prior to 2 years of tenure due to both "reversion" and "leave" (Act s.4A(1)).
 - The DGP may also be terminated early for a host of failures not in the SC's directive, including being found "incompetent and inefficient", misusing his powers, exhibiting "palpable bias" and public dissatisfaction with the effectiveness of his policing (see Act s.4A(2)(a)(d)(e)(i)(j)). These broad grounds are completely undefined, and leave open the significant possibility of state manipulation and improper interference. In any event, these grounds are redundant given the ability to prematurely remove a DGP due to disciplinary issues, contained in s.6A(5)(c)(g) of the new Bill.
 - The Bill must indicate, as the SC directed, that any disciplinary action must be taken under the All India Rules—this important qualification is currently absent.

Additional Concerns regarding the MPA Model

- The new legislation does not stipulate that the reasons for removing a DGP early must be reduced to writing (see MPA s.6(3)).

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 Kerala legislation provides a minimum tenure of 2 years for certain officers (the SHO, the Superintendent of police in charge of a district, and the Inspector General in charge of a Range) (Act s.4A(1)), it does not extend the minimum tenure requirement as far as the SC directed—the IGP in charge of a zone is not provided a similar safeguard.
- The statute addresses tenure of both the DGP and other senior officers in the same section (Act s.4A(2)), as such, it provides for identical bases of premature removal. The inconsistencies between s.4A(2) of the Kerala Act, and the SC directive, discussed under "Directive 2" above, are equally applicable here.

Directive 4

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

- The new Act does not substantively address this SC directive, and is in violation of the Court's Order. The legislation simply states, in one clause dedicated to the issue, that "the Government may...separate the investigating police from the law and order police in such area as may be specified..." (Act s. 3A(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 Kerala has ignored this part of the Court's ruling.

Directive 5

Set up a Police Establishment Board, which will decide all transfers, postings, promotions and other service related matters of police officers of and below the rank of Deputy Superintendent of Police and make recommendations on postings and transfers of officers above the rank of Deputy Superintendent of Police. This Board will comprise the Director General of Police and four other senior officers of the police department, and will be empowered to dispose of complaints from SPs and above regarding discipline and other matters.

- The Kerala Act creates a Police Establishment Board, but fails to do so in conformity with the SC directive. The SC directive explicitly provides the PEB a wide mandate to dispose of complaints from SPs and above 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." This provision is violated in three different respects:
 - The PEB is not permitted to ultimately dispose of police complaints before it in Kerala—s.17D(3) grants the Government the final ability to set aside or modify any decision or order of the Board.
 - The Board is not authorized to hear appeals from SPs. It's appellate jurisdiction is limited to hearing complaints from subordinate officers (Inspectors and below). (Act 17D(a))
 - The PEB cannot entertain complaints regarding illegal or irregular orders. It is restricted to considering the complaints about promotion, posting, transfer "and other service related matters" (Act s.17D(a)).
- Contrary to the Court's order, the Kerala statute does not authorize the PEB to play a direct role in deciding transfers, posting and promotions for any level of officers. 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 Kerala legislation (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 Kerala 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 Kerala Act 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. Instead, the Act qualifies the "binding" nature of PCA disciplinary recommendations, stipulating that any such recommendation "shall, however, not prejudice the application of mind by the enquiry officer or the investigating officer when he is conducting the departmental inquiry" (Act s.17E(9)).
- The Act properly stipulates that the Chair of both the State and District-level PCA must be a retired Judge (Act s.17E(2)(i), (4)(i)), but fails to adhere to the Court's directive that the Chair must be selected by the State Government from among a panel of names presented by the Chief Justice.
- The statute (s.17E(2),(4)) ignores the Court's directive that all members of the State and District-level 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.161 creates a similar requirement).
- The Kerala Act authorizes the State-level PCA to inquire into serious misconduct, but does not extend the scope of the District-level PCA's inquiry to include other misconduct enumerated by the Supreme Court. The SC directive indicates that the District PCA must inquire into the same incidents covered by the State-level PCA, together with the issues of extortion, land-grabbing and serious abuse of authority. (Note: The MPA (s.167) provides for inquiry into situations of arrest or detention without due process of law, and authorizes the PAC to monitor the status of internal police department inquiries and guard against delays.) These kinds of investigative powers are critical to achieve actual police reform, yet they are absent from the Kerala legislation.
- Both the SC directive and the MPA (ss. 163-165) stipulate that members of the PCAs must be full-time, suitably remunerated, and provided staff assistance—these attributes are missing from the Kerala legislation.

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 MPA states that the PCA should include a minimum of 5 persons, including someone with experience in the law as a prosecutor or professor, plus at least one woman (MPA s.160).
- There are a host of items not addressed in the Kerala Act:

- Tenure. The MPA (s.163) states that the tenure of PCA members ought to be 3 years—the Kerala legislation does not contemplate tenure of PCA members.
 - Eligibility. The new Act 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 Kerala Act is silent regarding this issue.
 - Rights of Complainants. The legislation 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 Kerala Act is silent respecting any reporting duties of its PCAs whatsoever.
- The powers of the PCA to compel evidence, etc. are fairly broad in the new Act at s.17E(7), however, the full scope of powers 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).

Miscellaneous

Unlike many other states, Kerala has not elected to repeal its old Police legislation in its entirety. Instead, the state has opted to pass an amendment to its existing legislation, the Kerala Police Act, 1960.

Certain portions of the Kerala Police Act, 1960 that have not been amended are addressed immediately below:

- The Kerala Police Act, 1960 retains an omnibus exemption clause, at s.64, which protects from liability any action taken in “good faith” by a Magistrate or Police Officer. This type of omnibus exemption clause is 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 type of accountability this new Court decision is meant to help implement.
- The 1960 Act actually prevents a prosecution from commencing if more than 6 months have passed from the act complained of (Act s.64(3)). This time of limitation is entirely unwarranted and ought to have been removed. It effectively immunizes the police from real scrutiny.
- The original statute, at s.6, contemplates a broad disciplinary power which may be exercised by senior officers over subordinate ranks. However, this broad power must be qualified by the advent of the Police Establishment Board, pursuant to the SC directive. Nevertheless, s.6 of the 1960 legislation fails to refer to the officers’ ability to appeal their disciplinary punishments to the Board.
- The 1960 Act empowers the state to appoint Special Police Officers (s.11), and also authorizes the State to confer the “same powers, privileges and protection” as possessed by “an ordinary police officer”. Sweeping powers to create Special officers are unwarranted and should be removed, given the state’s pre-existing 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 Kerala legislation whether such Special Police Officers will be answerable to the new Police Complaints Authority (Act s.17E)

- The 1960 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 and promotion of human rights.
- The 1960 Act has not been amended to address police training or the creation of a Police Academy. It does not 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 (unlike the MPA, ss.138-147).
- The 1960 Act lists the powers and duties of police officers (Act s.29ff), but has not been amended to reflect police officers' social responsibilities and omits the duty to register and investigate all cognizable offences and duly supply a copy of the FIR to the complainant (as contained in MPA, ss.57,58). In addition:
 - The original 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 1960 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))
- The 1960 Act 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)

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Date: 2 March 2008