

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

PUNJAB 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 Punjab legislation creates a State Police Board (SPB), however the SPB does not have the power to make binding recommendations (Act s.28) despite the clear directive from the Supreme Court that the Commission's decisions must be binding to avoid undue influence on the police.
- The creation of the SPB is not immediate, pursuant to SC directives, but shall take place "within a period of three months of the coming into force of this Act" (Act s.27(1))
- 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 legislation does not require any independent members to be appointed by the State whatsoever (Act s.27). This violates several of the models suggested by the Supreme Court and entirely subverts the goal of ensuring objective oversight.
 - 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 (MPA ss.42, 43, 44). The MPA also stipulates that the Leader of the Opposition and a High Court Judge (retd) nominated by the Chief Justice must be members, that 2 members must be women, and that minorities must be adequately represented (MPA s.42). The MPA sets out extensive rules for ineligibility and removal of independent members (MPA ss.45,47) that are absent from the Punjab statute.
 - The **Ribeiro Committee** model is not met—the Ribeiro model requires 3 independent members chosen by a panel created by the Chair of the NHRC, and stipulates that the Leader of the Opposition and a High Court judge nominated by the Chief Justice, must be members (Ribeiro Recomm. 1.2).
 - The **National Human Rights Commission** model is not met—the NHRC model calls for the Leader of the Opposition and 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 Advocate General, Punjab, to sit as a Member (NHRC petition, p.87; MPA s.42; Ribeiro Recomm. 1.2)
 - The term of service for Members is not articulated. This provision does not comply with some of the suggested models. The MPA calls for a 3-year renewable term (MPA s.46),

while the Ribeiro Committee requires a 3-year non-renewable term (Ribeiro Recomm. 1.3).

- 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.28.
- 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 states that the expenses of the SPB must be paid by the State Government (MPA s.49). These functions and attributes are absent from s.28 of the Punjab Act.
- The new statute indicates that a report on Policing must be prepared and tabled in the Legislature, but it stipulates that this report should be created by the State Government (in consultation with the SPB)! This is a basic effort to manipulate and control the reporting process, and it is contradictory to the SC directive, which expressly indicates that the report must be created by the SPB itself! This provision of the Act also violates each of the proposed models suggested by the Court. The MPA (s.50), the NHRC (Petition, p.88) and the Ribeiro Committee (Recomm. 1.5) all stipulate that an annual report must be created by the SPB, and that this report must be tabled in the Legislature and 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 Punjab legislation provides 2 years minimum tenure to the DGP, however, this tenure is subject to superannuation (Act s.6(2)) 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 nature of the DGP's tenure is tenuous. An override proviso at the conclusion of s.6 in the Act states that the State Government may transfer the DGP before the completion of 2 years tenure "for special reasons, to be recorded in writing". 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 "special reasons" is undefined, makes this provision vulnerable to a high degree of manipulation.
- The new legislation does not enumerate the specific criteria which the SC stated must be used for selecting a DGP, and it does not require that the state government select a DGP from a panel of 3 candidates chosen by the UPSC (Act s.6(1)). These aspects are important to act as a buffer against unwarranted manipulation of the selection process by interests within the State. [The selection process also contradicts MPA ss. 6(2), which outlines detailed 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 Punjab Act 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 enumerated grounds for premature removal themselves do not comply with the SC judgment. Punjab has added a ground not contemplated by the Court—namely “promotion to a higher post”. This provision makes the DGP subject to significant pressure and manipulation, particularly since the individual’s consent to the promotion is not required under the legislation (see by comparison MPA s.6(3)(e), which requires the DGP’s consent in similar circumstances).
- The Punjab Act fails to include as a ground of premature removal, an action taken against the DGP under the Discipline and Appeal section of the All India Service Rules. This omission violates the SC directive.

Additional Concerns regarding the MPA Model

- The new legislation provides grounds for premature removal of a DGP, but does not stipulate (Act s.6(2)) that the reasons for removal must be reduced to writing in all cases (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 Punjab legislation provides guaranteed tenure to all 4 of the officers listed in the SC directive (Act s.15(1)), the actual duration of the tenure provided is not sufficient. Although the SC clearly stipulated that senior officers must be provided with a minimum of 2 years tenure, the statute provides for only one year. (See also MPA s.13(1)).
- The grounds upon which the officers may be removed prematurely are overly broad. The SC directive permits premature removal in to fill vacancies caused by “promotion” or “retirement”, but the Punjab statute (s.15(1)(e)) 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 due to the State Governments’ historic exploitation of the transfer power.
- The Punjab Act adds additional grounds for the premature removal of a senior officers not contained in the Court’s directive--namely “inefficiency or negligence or non-performance or where a prima facie case of a serious nature is found against him on the basis of a preliminary enquiry” (Act s.15(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 under MPA s.13(2)). As such, s.15(2) of the new Act is subject to abuse and manipulation on the part of the State Government. (Arguably s.15(2) is redundant given the ability to prematurely remove a DGP due to disciplinary issues, contained in s.15(1)(b) and (c) of the new Act.)

Additional Concerns regarding the MPA Model

- The legislation (Act s.15(1)(b),(c)) stipulates that the officers may be removed early due to suspension from service, conviction or charges having been framed, however, the statute 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 Punjab legislation 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 Punjab Act fails to fully comply with several provisions recommended to ensure the successful separation of the 2 functions:
 - The statute contemplates the creation of a State Crime Investigation Wing (s.18), and district-level Crime Investigation Units (s.36(2)), however it fails to implement Special Investigation Cells (MPA s.129).
 - Although the Act stipulates that the officer in charge of the Crime Investigation Units shall be an individual not below the rank of Inspector, the MPA states that the supervising officer should be someone not below the rank of Addl SP (MPA s.128).
 - The Punjab Act states that assistance can be provided to Crime Investigation Units through the appointment of extra officers (Act s.36(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)
 - The training for officers within the Crime Investigation Units is to be upgraded “from time to time” (Act ss.37), rather than on a regular basis.
 - The legislation mandates the creation of a Forensic Science Laboratory and Finger Print Bureau (Act s.19(2)), but it stipulates only that the State “may provide” necessary legal and forensic aid to investigating officers. The MPA makes this requirement mandatory (s.127).
 - Minimum tenure of 3 - 5 years is not provided for officers posted to the new Crime Investigation Unit (MPA s.134).
 - The Punjab Act does not address the need to provide the new Crime Investigation Unit with adequate funding and crime analysts (MPA ss. 135-137).

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 Punjab Act creates a Police Establishment Committee, but fails to do so in compliance with the SC directive. The new legislation provides an override (Act s.32(6)), whereby the DGP may unilaterally transfer any officer up to the rank of Assistant SP “as he deems fit”, without any recourse to the PEC whatsoever (Act s.46). This kind of broad power eviscerates the PEC and undermines both the letter and spirit of the SC decision.
- According to the Court, the decisions of the PEC 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 PEC in “exceptional” cases only after recording its reasons for doing so). The decisions of the PEC 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)). Notwithstanding these clear directives from the Supreme Court, the Punjab legislation is not

sufficiently broad—the statute gives the PEC binding power over the transfer (but not the promotion) of officers at the specific level of DSP, but no binding or quasi-binding authority over the transfer and promotion of any officers above or below this level (Act s.32(2)).

- The function of the PEC violates the SC directives. The Court plainly stated that that the PEC must be a forum of appeal for disposing of representations from officers at or above the SP level, regarding: (i) their promotion or transfer; (ii) disciplinary proceedings against them, or; (iii) their being subject to illegal or irregular orders. This function is entirely absent from the Punjab legislation (Act s.32).
- The Court stated that the PEB must generally review the functioning of the police in the state. This function is not addressed in the Punjab legislation (Act s.32).

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 Punjab 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 Punjab Police 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 State Government may by notification, constitute Police Complaints Authorities at the State Level as well as District Level" (Act s.54).
- This provision is entirely speculative, and leaves the decision about implementing both a State-level and District-level PCA, completely in the State Government's discretion. In order to ensure greater police accountability to the public, the Supreme Court stipulated that its directive must take immediate effect. The State of Punjab has completely ignored this part of the Court's ruling.

Miscellaneous

- The Punjab Police Act includes an omnibus exemption clause, at s.81(1), which exempts the State from having to comply with its own legislation "if any difficulty arises in giving effect to the provisions of this Act." This type of broad exemption clause is dangerous and subject to significant abuse, 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.81(1) increases the likelihood of state manipulation, and entirely undermines the Supreme Court’s directives.

- The Statute also contains a clause which immunizes police officers from prosecution for any offence done “in good faith”, absent the sanction of the State Government (Act s.69). 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 Act’s preamble states, is to make the police personnel “accountable”. If the State may intervene to prevent prosecutions under the guise of the undefined notion of “good faith”, the potential for collusion and the immunization of human rights abuses is extremely significant.
- The legislation includes provisions related to mandatory post-induction training of new police recruits, as well as mandatory pre-promotion training (Act s.20(1),(3)). However, it fails to specifically require re-training of existing officers on an annual basis (MPA s.141).
- The legislation empowers the state to appoint Special Police Officers (s.23). Broad powers to create Special Police Officers are unwarranted, given the state’s ample powers to appoint regular police officers. The creation of Special Police Officers is arbitrary and may be subject to abuse by the State Government—while Special Police Officers would possess the same powers as ordinary police officers, 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. Given the dearth of information regarding the Police Complaints Authority, it is not indicated in the Punjab legislation whether such Special Police Officers will be answerable to the new PCA whenever it happens to be created! (Act s.54). The payment of such Special Police Officers is not fixed, but “may” be set by way of honorarium (Act s.23(3)).
- Chapter IV of the Act, 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 Punjab Police Act—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 Punjab statute.
- The Act contemplates creation of Research Wing within the Police Force (Act s.19(4)), but limits its scope. In particular, the function of “examining the present system of policing and suggesting structural and other changes that need to be introduced” (MPA s.146(e)) is absent.
- Although the Act lists duties and responsibilities of police (Act ss.40-41) which conform with the MPA (MPA ss.57-58), certain additional guarantees are not provided:
 - 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 statute 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))
- Welfare of Police: the Act is bereft of details concerning what specific protections the Welfare and Grievance Redressal Mechanism (Act s.55ff) is intended to offer police personnel. The statute does not include a provision requiring the 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, Section 50 states that no member of the police shall be a member of a trade union, labour union or political association.

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