

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

RAJASTHAN POLICE BILL, 2007

**(Passed on 22 Sept 07 (?),
but Act is not available)**

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 Rajasthan Bill creates a State Police Commission (SPC), however the SPC does not have the power to make binding recommendations (Bill s.26) 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, Rajasthan's Bill plainly declares that the "power of superintendence of the Police Force in respect of all matters shall vest in the State Government" (Bill s.12).
- The composition of the SPC does not conform with the SC directive. The Court expressly indicated that the DGP must serve as the Member-Secretary. Nevertheless, the Rajasthan Bill purports to make the DGP a full member of the SPC, and appoint a police officer not below the rank of Add'l Director General as Secretary (Bill s.21(2)(d),(3)).
- Apart from the Chair and the Member-Secretary, the SC stated that the remaining members of the SPC can be selected according to any of 3 recommended models. However, the composition of the SPC in the Rajasthan Bill (s.21ff) does not conform with any of the models recommended by the 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 selected by a committee replete with government members, including the Chief Minister and the Home Minister.
 - The MPA also stipulates that a High Court Judge (ret'd) nominated by the Chief Justice must be a member of the SPC, 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 Bill, on the other hand, calls for a 3-year non-renewable appointment (Bill s.24).
 - The Bill provides for a wider ability to remove independent members. For example, the Bill (s.25(b)) stipulates that the State Government may remove a member on the recommendation of the original selection Committee—as that Committee is dominated by government members there is a significant danger of improper State influence. This basis for removing independent members is not contained in the MPA (s.47).

- Under the Bill the removal of independent members is easier than the process contemplated in the MPA. The body which is authorized to effect the removal is the State Government itself, absent written reasons (see Bill s.25, and deletion of s.25(2)). The MPA stipulates that reasons for removal must be reduced to writing, and removal may only occur on passage of resolution by a two-thirds majority of members of the SPC (s.47(1),(3)).
 - 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. The Ribeiro model does not contemplate the Home Secretary serving on the SPC (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 SPC. 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 SPC (NHRC petition, p.87).
 - The function of the SPC does not comply with the SC directive. The Court expressly stated that the purpose of the SPC 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.26 (See also Ribeiro Recomm. 1.5, and NHRC petition, p. 88). The fact that the State Government itself is responsible for setting the rules for the SPC regarding meetings, quorum and the transaction of business, demonstrates the significant potential for the Government to manipulate the SPC deliberations (Bill s. 21(4)).
 - In addition, while the Bill 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—this provision does not fully comply with the Court’s order. The judgment 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 SPC also does not mirror the models recommended by the Supreme Court. For example, the MPA states that one of the functions of the SPC is to recommend the DGP candidates for appointment by the State Government (MPA s.48). This function is not present in the Rajasthan Bill.
 - In addition, while the new Bill stipulates that a function of the SPC is generally identify performance indicators for evaluating the police (Bill s.26(b)), the MPA enumerates an actual list of such indicators, including: operational efficiency, public satisfaction, observance of human rights standards and victim satisfaction (s.48(c)).
 - The MPA also states that the expenses of the SPB shall be paid by the State Government (MPA s.49). The Rajasthan Bill stipulates that independent members serve “in an honorary capacity” and indicates that remuneration is discretionary (Bill s.24(2)).

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 new Rajasthan Bill sets out a minimum tenure requirement of 2 years (Bill s.13(3)), but it does not stipulate that the tenure will run irrespective of superannuation. This directly violates the SC directive, and provides an opportunity for arbitrary state interference. (See also MPA s.6(3)).
- The nature of the DGP's tenure is actually quite tenuous. A provision in s.13(4) permits the DGP to be removed prematurely due to an "administrative exigency". 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, makes this provision subject to tremendous manipulation.
 - Further, the DGP's 2-year tenure remains "subject to the rules made under [sic] 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 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 Rajasthan Bill permits the Government to act unilaterally in removing a DGP based on one of the enumerated grounds in s.13(4) of the Bill.
- The Bill does not require that the state government select a DGP from a panel of candidates chosen by the UPSC (Act s.13(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.
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- The Bill does not enumerate the specific criteria which the SC indicated must be used for selecting a DGP—namely 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.]

Additional Concerns regarding the MPA Model

- The new Bill provides grounds for premature removal of a DGP, but does not stipulate that the reasons for removal must be reduced to writing (see MPA s.6(3)). An earlier version of the Bill contained such a provision (old s.13(4) of Bill), but it has since been deleted.

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.

- The new Rajasthan Bill extends the minimum 2-year tenure requirement to all 4 of the officers enumerated by the Court, however, the Bill fails to fully comply with the SC directive for

several reasons. While the Bill provides a minimum tenure of 2 years for certain officers (the Officer-in-Charge of a police station, the Superintendent of police in charge of a district and the DIG in charge of a Range) (Bill ss.14(3),16(3),19(1)), it does not extend the minimum tenure requirement as far as the SC directed—the IGP is not provided a similar safeguard.

- The nature of the tenure granted is actually quite tenuous. As above (re the DGP), there are provisions relating to each of the 3 protected officers that permit the State Government to remove them prematurely due to an “administrative exigency” (Bill s.14(4)(f), 16(4)(f), 19(2)(j)). 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 term “administrative exigency” is undefined, makes this provision subject to tremendous manipulation.
- In addition, the SHO’s may be removed prematurely if the State Government determines there is a need to “fill up a vacancy” (Bill s.19(2)(h)). This ground is new and entirely unwarranted. It entrenches the ability of the government to control and manipulate the police, and violates the SC directive.
- As above (re the DGP), the 2-year tenure of both the DIG in charge of a range, and Superintendent in charge of a District, is “subject to the rules made under [sic] All India Services Act, 1951” (Bill s.14(3), 16(3)). The content of such rules is undefined in the Bill. Adding this qualification is highly problematic as it permits the State Government to enact rules at a later date which may improperly interfere with the secured tenure, and thereby subvert the Court’s ruling. (Note: this qualification is not applicable to the tenure guarantees for other senior police officers—namely the SHO (Bill s.19(1))

Directive 4

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

- The Rajasthan Bill provides very little information on the separation of the investigation function, from the law and order function of the police. To the extent some separation of functions is contemplated, even this separation is not immediate. The Rajasthan Bill plainly flouts the SC’s directive in stipulating that the State may establish Crime Investigation “within a period not exceeding five years”! (Bill s.42(1)).
- 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 Bill fails to fully comply with several provisions recommended to ensure the success of the separation of the 2 functions:
 - The statute speaks only to the creation of Crime Investigation Units. It does not implement a State level Crime Investigation Department (MPA s.131ff), nor district level Special Investigation Cells (MPA s.129). However, even the implementation of these Crime Investigation Units is discretionary!—the Bill states simply that the State Government “may” create such Units (Bill s.42(1)).
 - The scope of investigation for the Unit is limited to cyber crimes, organized crimes and “other such offences as may be prescribed” (Bill s.42(2)). The MPA, by contrast, enumerates the various crimes that must be investigated by the new unit, including: murder, kidnapping, rape, dacoity, robbery, dowry-related offences, serious cases of cheating, and misappropriation (MPA s.125(1)).
 - Due to the brevity of the Bill, there is no detail whatsoever regarding important items, including: training for officers assigned to the Crime Investigation Unit,

tenure, funding, the provision of staff and adequate scientific facilities (see MPA ss.133-137)

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 Rajasthan Bill creates a Police Establishment Board, but fails to do so in conformity with the SC directive:
 - First, the PEB has a narrow authority respecting complaints. It is authorized only to analyze the grievances of police personnel and suggest remedial measures to the State Government (Bill s.28(2)(f)). However, the SC directive explicitly authorizes the Establishment Committee to hear and 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.”
 - Second, the Rajasthan Bill contemplates a purely advisory function for the Board regarding police transfers (Act s.28(2)(c),(e)). The Bill authorizes the PEB to “prescribe guidelines” and “prepare proposals” for the State Government. Conversely, the SC indicated that in many instances the view of the PEB ought to bind the State Government. According to the Court, the decisions of the Board 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 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))

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 Rajasthan 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 Rajasthan Bill creates a Police Accountability Committee at both the State and District level, but fails to formally comply with the Court's directive. Importantly, the Bill (ss.64,67) defies the Court's order by failing to stipulate that the recommendations of both the State and District-level PAC regarding disciplinary and criminal matters, are binding on the State Government (See also MPA s.171(b))
- With regard to the composition of the both the State and District-level PAC, the Bill 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 (Bill s.63(1)(c), 66(c)).
- The Bill (s.63(a), 66(a)) ignores the Court's directive that all members of the State and District-level PAC (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, and s.173(5) creates a similar requirement, calling for a transparent selection process).
- Both the SC directive and the MPA (ss. 163-164, 173(6)) stipulate that members of the PAC must work full-time and should be suitably remunerated. These aspects are absent from the Rajasthan Bill respecting both the State and District level PACs.
- The Court order addresses the use of regular staff to conduct filed inquiries, and states that such persons can be composed of retired investigators from the Criminal Investigation Department, or Vigilance. The Bill, however, speaks only to the possibility of providing "secretarial" assistance to the PAC, and nothing further (Bill s. 63(2)). (MPA s.165(1) speaks to providing adequate staff with requisite skills to the Commission.)
- The Rajasthan Bill authorizes the State level PAC to inquire into serious misconduct, but defines this in a manner that does not comply with the Court's ruling. For example, the SC directive explicitly authorizes inquiries into death and rape in police custody. Furthermore, the Court stated that at the District level, the PAC should also inquire into land/house grabbing and serious abuses of authority. These matters are not directly addressed in the Bill (Bill ss. 65(c)(l), 67(a)).

Additional Concerns regarding the MPA Model

- The requirements under the MPA respecting the composition of the State level PAC are more stringent, and have not been followed. For example, MPA s.160 states that the chair must be a retired High Court Judge, and that the PAC 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 PAC should include a minimum of 5 persons, including someone with experience in the law as a prosecutor or professor (MPA s.160).
- The MPA (s.163) states that the tenure of PAC members ought to be 3 years with a maximum of 2 terms, whereas the new Bill (s.68) provides for only 2 years of tenure, non-renewable.

- The Bill (s.69) excludes certain persons from serving on either level of PAC, 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 Bill does not articulate a process for removal of members from either level of PAC, and fails to indicate that vacancies in the PAC shall be filled as soon as possible (MPA s.161(4), 164, 173(4))
- The powers of the PAC to compel evidence, etc. are fairly broad in the new Bill at s.65, however, the full scope of powers and jurisdiction awarded to the PAC under MPA ss.168-170 are absent (e.g. the power to ensure the protection of witnesses and statements, visit station houses, and operate as a civil court).
- The function of the State level PAC 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.” [Similarly, the MPA contemplates that the District level PAC will compile an annual report for the State level PCA (MPA, s.175).]
- The Model Act authorizes the PAC to monitor the status of internal police department inquiries and guard against delays (MPA s.167(3),(4), 174(1)(d), (2)). Such investigative powers are critical to achieve actual police reform, yet these powers are completely absent from the Rajasthan Bill.
- The MPA (s.167) would permit complaints to be lodged with the State-level PAC from a wide array of groups, thereby increasing the likelihood of greater accountability. Nevertheless, the Rajasthan Bill is silent on the issue of who is permitted to lodge complaints.
- The Bill is completely silent on the rights of those who complain to the PAC, as found in MPA s. 177, which include the rights to attend hearings, inquire about delays, and be informed re all conclusions.

Miscellaneous

- The statute contains a wide opt-out provision, which exempts the State from complying with the legislation within the first 3 years of its passage, if a “difficulty arises” and opting out is “necessary or expedient” (Act s.72). 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.72 increases the likelihood of state influence, and entirely undermines the Supreme Court’s directives.
- The legislation includes a broad definition of “superintendence” that includes a power over administrative matters (s.2(l)). This definition is highly problematic, contradicts the position of CHRI in the main application, and undermines the MPA, which stipulates that the notions of superintendence and administration must be conceptually distinct in order to ensure an efficient and accountable police system. The MPA, at s.39, sets out that superintendence over the police vests in the State Government; whereas at s.51, the MPA stipulates that administration of the police vests in the DGP.
- The legislation empowers the state to appoint Special Police Officers (s.10) and Additional Police Officers (s.11). 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 Rajasthan Bill whether such ad hoc Officers will be answerable to the new State or District Police Accountability Committees (Act s.62ff).

- The Bill does not include any provisions related to mandatory training of new police recruits and Special (or Additional) Police Officers, nor does it include annual re-training of existing officers, or pre-promotion training (unlike the MPA, ss.138-147).
- The Bill permits excessive discipline of police personnel, including authorizing the confinement to quarters for a period of up to 15 days (Bill s.20(2)). Such punishments are not prescribed in the MPA.
- Section 29 of the new Bill 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 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))
- The Bill contemplates the use of village guards to assist with policing in rural areas. It calls on village guards to remain “alert and sensitive to any information about any suspicious activity”, but fails to define what constitutes “suspicious activity” (s.50(c)). In addition, the Bill addresses training of village guards, but fails to ensure that training will occur at least on an annual basis for in-service staff (s.51). The Rajasthan Bill must stipulate that Village Guards must be paid, rather than making remuneration discretionary (Bill s. 53(2)).
- Welfare of Police: the Bill is bereft of details concerning what specific protections the Welfare Bureau is intended to offer police personnel, it does not include a provision requiring the tabling of an annual report compiling police grievances, and the Bill does not stipulate maximum working hours for officers (unlike the MPA ss. 185-188)
- General Offences and Penalties: This section of the Bill is overbroad. For example, it makes the act of wilfully exposing “any offensive deformity or disease” unlawful (Bill s.60).

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