

**Tamil Nadu Government Compliance with
Supreme Court Directives on Police Reform**

TAMIL NADU POLICE BILL, 2008

(1st Reading in the Legislature, 14 May 2008)

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 Tamil Nadu Police Bill, 2008 creates a State Security Commission which will be known as the Tamil Nadu Police Board (TNPB). This Board, however, lacks the power to make binding recommendations (Bill s.28), despite the clear directive from the Supreme Court that the Board's decisions must be binding to avoid undue influence on the police.
- The creation of the TNPB is not immediate, pursuant to the SC directive, but shall take place "within six months from the date of coming into force of this Act" (Bill s.27(1)).
- The composition of the Board does not conform with any of the models recommended by the Supreme Court, and lacks significant protections against government control and manipulation:
 - The **MPA model** (Sorabjee Committee) is not met. It calls for 5 independent members, and stipulates 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 Tamil Nadu Police Bill, conversely, does not expressly reference "independent members". The Bill states only that 4 non-government/non-police members will be unilaterally appointed by the Government from among the ranks of public service officers! (Bill s. 27(2)).
 - The MPA sets out extensive rules for ineligibility and removal of independent members, as well as term limits (MPA ss.45-47). These rules are not addressed in the Bill, as the Tamil Nadu proposal does not specifically contemplate independent Board members.
 - The MPA also states that a High Court Judge (ret'd) nominated by the Chief Justice must be a member of the Board, that 2 members must be women, and that minorities must be adequately represented (MPA s.42). These provisions are not reflected in the Bill.
 - The Bill is silent on the process for the removal of members. It lacks the requirements contained in MPA s.47, which stipulates that removal from the Board 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—Ribeiro requires 3 independent members, chosen by a panel created by the Chair of the NHRC, to sit on the Board for a fixed period of time. The Ribeiro model also stipulates that a High Court judge nominated by the Chief Justice, must be a member. Ribeiro does not contemplate the Home Secretary serving on the Board (Ribeiro Recomm. 1.2).

- The **National Human Rights Commission** model is not met—the NHRC does not permit the Home Secretary to serve on the TNPB. This model also does not contemplate Board members from the Tamil Nadu Public Service Commission, the State Women’s Commission and the State Minorities Commission (NHRC petition, p.87).
- Every one of the enumerated members of the TNPB is designated as “*ex officio*” save for the Leader of the Opposition (Bill s.27(2)). Generally, *ex officio* members can participate in the working of an organisation, but are prevented from exercising a vote/key decision-making functions. As currently drafted, the TNPB amounts to little more than a one-person decision-making body—this composition clearly violates each of the Court’s recommended models.
- The function of the TNPB does not comply with the SC directive. The Court expressly stated that the purpose of the Board 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 s.28 of the Bill. (See also Ribeiro Recomm. 1.5, and NHRC petition, p. 88).
- The function of the TNPB also does not mirror the models recommended by the Supreme Court. For example, the MPA states that one of the functions of the Board is to recommend the DGP candidates for appointment by the State Government (MPA s.48). This function is not addressed in the Tamil Nadu Bill.

Directive 2

Ensure that the Director General of Police is appointed through a merit based, transparent process and enjoys a minimum tenure of two years.

- The Tamil Nadu Bill provides a guarantee of 2 years tenure to the DGP, however, the provision does not comply with the Court’s Order. The section stipulates that the DGP shall have tenure “till the date of his superannuation” (Bill s.7(2)). 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. 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 Bill does not require that the state government select a DGP from a panel of candidates chosen by the UPSC (Bill s.7). 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.
- The nature of the DGP’s tenure is actually quite tenuous, as the grounds upon which a DGP may be removed prematurely are over broad. The Tamil Nadu Police Bill states that a DGP may be removed early if he/she is “under suspension”, “transferred for specific reasons,” or “relieved on other administrative grounds” (Bill s.7(3)). These broad powers undermine the Supreme Court’s entire purpose of securing the tenure of DGPs to immunize them from State Government interference. For example, the basis for the “suspension” in s.7(3)(iv) is not delineated. Further, the fact that the terms “specific reasons” and “other administrative grounds” are undefined, renders this provision subject to tremendous manipulation.

- 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” (Police Board). However, the Tamil Nadu Bill permits the Government to act unilaterally in removing a DGP based on one of the enumerated grounds in s.7(3) of the Bill.

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 Tamil Nadu Bill legislation provides 2 years tenure to the required officers, this guarantee does not fully comply with the SC directive. The grounds upon which the officers may be removed prematurely are over broad:
 - The SC directive permits premature removal to fill vacancies caused by “promotion” or “retirement”, but the Bill (s.13(2)(vii)) adds that premature removal is also possible to address a vacancy caused by “transfer”. This violates the Court’s Order—this ground was specifically omitted by the SC because of the State Governments’ historic exploitation of the transfer power.
 - As is the case with DGPs (above), the Tamil Nadu Police Bill states that Senior Officers may be removed early if they are “under suspension”, “transferred for specific reasons,” or “relieved on other administrative grounds” (Bill s.13(2)). These broad, undefined powers undermine the Supreme Court’s objective of securing the tenure of Senior Officers to immunize them from State Government interference. [See the discussion under Directive 2, above.]
- Tamil Nadu has also added grounds for early removal not contemplated by the Court. Senior officers may be removed early due to “promotion to a higher post” (Bill s.13(2)(vi)). This provision opens the senior officers up to potential pressure and manipulation on the part of political masters, particularly since the officer’s consent to the promotion is not required under the proposed legislation.

Directive 4

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

- The Tamil Nadu Police 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, this separation is not immediate—the Bill simply states that the “Government may, having regard to the population in an area...by order, separate the investigating police from law and order police in such area as may be specified” (Bill s.16(5)). This provision is entirely speculative, and leaves the decision about compliance with the Court’s directive entirely in the State Government’s discretion.
- 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 Tamil Nadu Bill fails to fully comply with several provisions needed to ensure the success of the separation of the 2 functions:
 - The Bill speaks only to the creation of a state level Criminal Investigation Department (Bill s.16(1)). It does not establish station level Crime Investigation Units (MPA s.122ff) nor district level Special Investigation Cells (MPA s.129).

- The Bill does not delineate the types of offences which fall under the mandate of the new Criminal Investigation Department. The MPA, s.132, specifies that certain significant offences require special units within the Criminal Investigation Department, such as: cyber crime, organised crime, homicide cases, and economic offences.
- Due to the brevity of the Bill, there is no detail whatsoever regarding important items, including: training for assigned officers, guaranteed officer tenure, sufficient funding, the provision of staff, adequate scientific facilities, crime scene technicians and legal/forensic advice (see MPA ss.126-27, 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 Tamil Nadu Police Bill creates a Police Establishment Committee, but fails to do so in conformity with the SC directive. The composition of the PEC violates the Court's directive. The SC stated the PEC must be comprised of the DGP and 4 other senior officers—whereas the Bill permits the Additional DGP to operate the Committee entirely alone, or with “such number of officers as may be specified by the Government” (Bill s.31(1)). This type of broad discretionary power is unwarranted, and may be used to further entrench control over transfers, promotions and appointments in the hands of the State Government.
- 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 Bill is much more narrow. It permits the PEC only to “examine” the grievances of police personnel and “make recommendations to the Director General of Police” (Bill s.31(2)(a)).
- Tamil Nadu addresses the jurisdiction of the PEC re the transfer of certain low ranking officers (Bill s.31(2)(c))—whereas the Court's directive is more broad. The SC empowers the PEC with quasi-binding authority over not only transfers, but appointments and postings as well. 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 PEB in “exceptional” cases only after recording its reasons for doing so”). (See also MPA, s.53(3)). This wide jurisdiction is absent from the Tamil Nadu proposal (Bill s.31(2)(c)).

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 does not exist in the Tamil Nadu 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 Tamil Nadu Bill is entirely silent on the vital issue of implementing Complaints Authorities at both the State and District levels. In this respect, the Bill constitutes a wholesale violation of the Court's Order.
- In order to ensure greater and more effective police accountability to the public they are intended to serve, the SC stipulated that Police Complaints Authorities must be put in place immediately. Nevertheless, the Tamil Nadu Government has completely ignored this aspect of the Court's judgment. The Bill is even more shocking in its disregard of the Apex Court, given that the "Statement of Objects and Reasons" states that the "Bill seeks to give effect" to the *Prakash Singh* decision.
- The failure to implement proper Complaints Authorities flies in the face of the Bill's own preamble, which professes "respect for human rights" and the goal of making Tamil Nadu's police "professionally organised", service oriented" and "accountable to law".

Miscellaneous

- The Bill contains an extremely restrictive limitation clause. The Tamil Nadu proposal states that no one may be sued or prosecuted for violating the Statute, if the event complained of occurred more than 3 months earlier (Bill s.60). This limitation period is highly objectionable, and must be removed. It is entirely contradictory to both the letter and spirit of the SC ruling and the guiding philosophy of the legislation—which, as the Bill's preamble states, is "to enable the police to function as an ... effective, people-friendly and responsive agency" that is "accountable to law". If the State is permitted in this manner to openly prevent suits/prosecutions against unlawful officers from proceeding, the potential for gross human rights abuses to escape unchecked is extremely significant.
- Tamil Nadu's Bill includes an omnibus exemption clause which protects from liability any action taken in "good faith" by the State Government, the Tamil Nadu Police Board, the PEC, its members or staff (Bill s.63). 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 Bill 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" (Bill s.67). This permissive override is hazardous 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.67 increases the likelihood of State influence, and entirely undermines the Supreme Court's directives.

- The Tamil Nadu proposal includes provisions related to mandatory post-induction training of new police recruits, as well as mandatory pre-promotion training and in-service training (Bill s.17(1)). Nevertheless, the Bill fails to enumerate that in-service training of existing officers must occur on an annual basis (MPA s.141). [The Bill stipulates only that such training will occur “as deemed necessary, from time to time”.]
- Sections 32-33 of the new Bill list the functions, duties and social responsibilities of police officers, however:
 - 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, 2007, s.65)
 - It does not prevent a police officer from serving in his home police station or district. (See as a counter example, Himachal Pradesh Police Act, 2007, s.86(2))
 - The Bill does not incorporate a formalized witness protection program (including name changes and re-location) along with measures to ensure the safety and protection of witnesses in the face of reprisals from accused parties (See as a counter example, the Uttarakhand Police Act, 2007, ss.54, 55)
- Welfare of Police: Although the Bill purports to limit the maximum working hours of police personnel (Bill s.49), it is bereft of details concerning what protections the State Government will provide to police personnel in areas such as medical care, housing, education and insurance. The Bill does not create a Welfare and Grievance Redressal Mechanism for police, nor does it require the tabling of an annual report compiling police grievances (unlike the MPA, ss. 185-187)

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