

Tripura Government Compliance with Supreme Court Directives on Police Reform

TRIPURA 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 Tripura legislation creates a State Police Board (SPB) [analogous to SSC], however the SPB does not have the power to make binding recommendations (Act s.25) despite the clear directive from the Supreme Court that the Commission's decisions must be binding to avoid undue influence on the police.
- 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** (Soli Sorabjee Committee) is not met. The legislation requires only 2 independent members to be appointed by the State (Act s.21(1)(f)—however, the MPA 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 which follows a transparent process (MPA ss.42, 43, 44). The MPA also stipulates that the Leader of the Opposition must be a member, that 2 members must be women, and that minorities must be adequately represented (MPA s.42(2)). The MPA adds that the High Court Judge (ret'd) who sits on the SPC must be *nominated by the Chief Justice*—this requirement is absent from the Tripura legislation.
 - 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 sitting or retired 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).
 - Under the legislation the removal of independent members is more expedient, and hence subject to potential abuse. The statute indicates that independent members may be removed by a resolution passed by a simple majority of members of the SPB (Act s.24)—whereas the MPA (s.47(1)) stipulates that such resolutions should require a two-thirds majority of the SPB in order to take effect.
 - According to the SC directives, the SPB is intended to ensure that the State Government does not exercise unwarranted influence or pressure on the State Police. This function is not reflected in the legislation.
 - The Tripura Act violates the Court's directive through its failure to set out reporting requirements for the SPC. The SC clearly indicated that the SPB must prepare an annual report on police evaluation to be placed directly before 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 Assembly itself, including opposition members. (Note: the MPA (at s.50(2)) adds that the Annual Report must be made available to the public.)
 - The functions of the SPB (Act, s.25) also do not mirror some of the models recommended by the Supreme Court:

- The Tripura legislation states one of the functions of the SPB is to “frame broad policy guidelines for promoting efficient, effective, responsive and accountable policing” (at s.25(1)(a)), however, the statute fails to add “in accordance with the law”. This important qualifier is found in the MPA s.48(a), and serves to ensure that the SPB operates within all proper legal norms.
- The MPA also states that one of the functions of the SPC is to recommend the DGP candidates for appointment by the State Government (MPA s.48).

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.

- Although the new Tripura legislation sets out a minimum tenure requirement of 2 years, it stipulates that this tenure may be reduced in the event of superannuation. This directly violates the SC directive, wherein the Court stated that the tenure should run for 2 years independent of any retirement related issues that may arise [see also MPA s.6(3)].
- The legislation sets out criteria which the SC stated must be used for selecting a DGP, however the Act (s.6) does not require that the state government select a DGP from a panel of candidates chosen by the UPSC, a non-state organization, as required by the SC. (The selection process also contradicts MPA (s.6(2)).
- The statute sets out grounds for the premature removal of the DGP (Act s.6(3)), but fails to stipulate that according to the SC such removal can only be effected “in consultation with the State Security Commission” [State Police Board].
- The grounds upon which a DGP may be removed prior to 2 years of tenure are overly broad. The Tripura legislation stipulates that a DGP may be removed early due to suspension from service, punishment or dismissal (Act s.6(3)(b),(c)), however, the new 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 the SC directives. [See also MPA s.6(3)(b),(c).] This omission is significant, because it fails to provide DGPs with adequate protection from the threat of arbitrary removal by the State Government.
- The Tripura Act adds additional grounds for the premature removal of a DGP not found in the SC directive--namely “inefficiency or negligence prima-facie established after a preliminary inquiry”. The nature of such a preliminary inquiry is not outlined, and the Act does not provide any procedural protections to DGPs who may be subject to such an inquiry (see, as a counter example, the procedural protections provided to officers who are subjected to inquiries under MPA s.13(2)). As such, s.6(3)(f) of the new Act is subject to abuse and manipulation by the State. (Arguably s.6(3)(f) is redundant given the ability to prematurely remove a DGP due to disciplinary issues, contained in s.6(3)(b) and (c) of the new Act.)

Additional Concerns regarding the MPA Model

- The new legislation 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)).

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 Tripura Act provides for a minimum tenure of 2 years for certain officers (the SHO, an officer in charge of a Sub-division, and the SP of a Police District), but it does not extend the minimum tenure requirement as far as the SC directed—the IGP and DIG are not provided similar safeguards.

- The legislation provides for removal of the protected officers on more grounds than the SC contemplated, thereby rendering the positions still vulnerable to arbitrary state interference. Contrary to the SC's directives, in Tripura the officers may be removed prior to 2 years due to "voluntary resignation" of the individual (Act s.11(6)). This would permit the State to manipulate the process by effectively forcing an unwanted DGP to tender his/her resignation.
- As is the case for DGPs, in Tripura the SHO, an officer in charge of a Sub-division, and the SP of a Police District may also be removed for "inefficiency or negligence prima-facie established after a preliminary inquiry" (Act s.11(7)). The concerns outlined in the section immediately above regarding this provision as applied to DGPs are also applicable here.

Additional Concerns regarding the MPA Model

- The Tripura legislation has deliberately omitted the procedural protections afforded to officers who are under an inquiry for the purpose of premature removal. The protections contained in MPA s.13(2) are not present. (Arguably s.11(7) is redundant given the ability to prematurely remove officers due to disciplinary concerns, contained in s.11(3) and (4) of the new Act.)

Directive 4

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

- The Tripura legislation enacts a 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 Tripura Act fails to fully comply with several provisions recommended to ensure the success of the separation of the 2 functions:
 - The Tripura Act directs the creation of a separate state-level Criminal Investigation Department (Act s.13) as well as a station-level Crime Investigation unit (Act s.50), but fails to entrench Special Investigation Cells within each District (MPA s.129).
 - The Act fails to add that the personnel posted to the Crime Investigation Unit "shall not be diverted to any other duty, except under very special circumstances" (MPA s.122).
 - The statute indicates that the new Crime Investigation Unit will be headed by a DSP (Act s.54), however it does not stipulate that the supervisory officer may be assisted by an appropriate number of senior officers "posted for the specific purpose of ensuring quality investigation" takes place (MPA s.128).
 - The legislation does not include requirements for an appropriate number of Crime Science Technicians, nor the availability of prompt legal and forensic advice at Police Stations (MPA ss.126, 127).
 - Minimum tenure of 3-5 years is not provided for officers posted to the new Criminal Investigation Department (see MPA s.134).
 - The Tripura Act does not provide the new Criminal Investigation Department with adequate funding, scientific facilities and crime analysts (MPA ss. 135-137).
 - Officer training within both the Crime Investigation Unit and the Criminal Investigation Department is to be upgraded "from time to time" (Act ss.51, 57), rather than on a regular basis.

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 Tripura Act creates a Police Establishment Committee, but fails to do so in conformity with the SC directive:
 - First, the Tripura Police Establishment Committee has a narrow ambit regarding complaints. It is authorized only to examine officers' complaints about being subjected to illegal orders (Act s.27(2)). The SC directive explicitly authorizes the Establishment Committee to also dispose of representations from officers concerning "promotion, transfer, disciplinary proceedings" along with "generally reviewing the function of the police in the state."
 - Second, the Tripura Act contemplates a purely advisory function for the Establishment Committee with respect to transfers and postings (Act s.27(2),(3)). The statute provides an override provision whereby the State government may "suo-moto make such transfers and postings as deemed appropriate to meet any contingency." Conversely, the SC indicated that in many instances the view of the Establishment Committee ought to bind the State Government. 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)).

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 Tripura 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 Tripura Act creates a Police Accountability Commission, but fails to formally comply with the Court's directive (Act s.66(1)). Most importantly, the SC directive that the recommendations of the PAC regarding disciplinary and criminal matters must be binding on the State Government, has not been followed (see also MPA s.171(b)).
- Only one PAC is created for the entire state, rather than creating both a state level and a district level authority, as instructed by the Court (see also MPA s.173).
- The Act properly stipulates that the Chair must be a retired Judge of the High Court (Act s.60(a)), 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.60) ignores the Court's directive that members of the 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 creates a similar requirement).
- The Tripura Act authorizes the PAC to inquire into serious misconduct, but defines this narrowly at s.66(2). The SC directive authorizes inquiries into 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.) Such investigative powers are critical to achieve true police reform, yet these powers are completely absent from the Tripura Act.
- Both the SC directive and the MPA (ss. 163, 165) call for "suitable remuneration" for members of the PAC. Although the new statute provides for compensating Commission members, it does not stipulate that compensation "shall not be varied to their disadvantage after appointment" (MPA s.163(3)). This important safeguard is needed to guard against reprisals and attempts to influence the PAC. In addition, the provision of remuneration for PAC staff is vague and indeterminate (Act s.64(4)).
- The Act permits the State government 6 months within which to establish its PAC. Whereas SC's directive is intended to have immediate effect, and does not contemplate staged implementation.

Additional Concerns regarding the MPA Model

- The requirements under the MPA respecting the composition of the PAC are more stringent, and have not been followed. For example, MPA s.160 states 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, plus at least one woman and not more than one retired police officer (MPA s.160). These specific requirements are absent from the Tripura legislation, making the PAC more vulnerable to control and influence by vested interests within the State's police establishment.
- The new Act (s.40) excludes certain persons from serving on the PAC, but fails to exclude persons who have served in any police, military or allied organization within the previous 12 months (MPA s.162(c)).
- The Tripura legislation fails to limit the number of eligible terms for PAC members to 2, as per the MPA s.163(2).
- The Tripura legislation calls for staff to be selected by the Commission "in accordance with the procedure as prescribed by the Government" (Act s.64(3))—this fails to comply with the MPA provision which requires that the selection of Commission staff through a "transparent process" (MPA s.165(3)).
- The statute authorizes the PAC to monitor the status of internal departmental inquiries into more general police misconduct, but fails to define "misconduct" (see MPA s.167(3)).

Miscellaneous

- The Tripura Police Act includes an omnibus exemption clause, at s.76, which protects from civil liability any action taken in "good faith" by the State Government, the Police Board, and the PAC. This type of omnibus exemption clause is 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 this new legislation is meant to help implement.

- The Statute contains a clause which immunizes police officers from prosecution for an offence, absent the sanction of the State Government (s.92). 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 to law”. If the State may intervene to prevent prosecutions against unlawful officers from proceeding, the potential for collusion and the immunization of human rights abuses is extremely significant.
- The legislation 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 (unlike the MPA, ss.138-147).
- The Act does not create a Welfare Bureau for Police Personnel, to address their concerns regarding housing, education, financial security post-retirement, and maximum working hours (unlike MPA ss. 185-188).
- The legislation empowers the state to appoint Special Police Officers (s.18). 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—while Special Police Officers would 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 Tripura legislation whether such Special Police Officers will be answerable to the new Police Accountability Commission (Act s.58ff)
- The Act outlines the roles, functions and duties of the police, at s.28, but omits the responsibility to aid individuals who are in danger of physical harm to their person or property, and to provide necessary help and afford relief to people in distress situations (MPA s.57(j)).
 - 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))
- Chapter VI 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 Tripura Police Act—the concerns addressed in Chapter VI 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 Tripura statute.

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