

## Assam Government Compliance with Supreme Court Directives on Police Reform

In response to the Supreme Court judgement on 22 September 2006 in *Prakash Singh and Others vs. Union of India and Others*, the Assam Government enacted the Assam Police Act, 2007, which came into force on 30<sup>th</sup> August, 2007.

Despite the passage of the new legislation, careful analysis shows that Assam has violated most of the Supreme Court directives in both letter and spirit, justifying the characterisation of Assam as non compliant with the Court's orders.

### 1. State Security Commission

#### 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.

#### Composition

The Assam Police Act sets up a State Security Commission (SSC) but the composition does not adhere to any of the three suggested models laid down by the Supreme Court. Four out of the eight members are government officials, bureaucrats or police officers (Chief Minister, Chief Secretary, Home Secretary and DGP).<sup>1</sup> Further, all the three "independent" members are to be appointed directly by the government. This is at odds with the judgement that clearly states that "the other members should be chosen in such a manner that it is able to function independent of government control." In this situation, it is difficult to imagine that they will exercise independent judgement. As a result, the proposed SSC is likely to function as a mere façade for continued executive control over the police.

#### Mandate

The mandate of the SSC constituted by the Act is only partially compliant with the Apex Court's directive. The SSC is only mandated to *identify* performance indicators to evaluate the functioning of the police service.<sup>2</sup> This is a dilution of the Apex Court's order, which mandated the SSC to actually *conduct* the evaluation of the state police and prepare a report thereon to be placed before the state legislature.

#### Powers

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<sup>1</sup> Section 35, Assam Police Act, 2007

<sup>2</sup> Section 40, Assam Police Act, 2007



Further, there is no mention in the Act whether the SSC will have binding powers. This violates the Court's directive that is explicit in declaring that the recommendations of the SSC shall be binding on the state government.

## **Conclusion**

The SSC established by Assam stands in violation of the Supreme Court's directive. Its mandate has been limited and its recommendations are not binding. Most importantly, the fact that almost all the members have been either drawn from the government and the police or appointed directly the government ensures that the SSC will function as an instrument of the government rather than as a mechanism designed to limit its unwarranted influence on the police.

## **2. Selection and Tenure of the DGP**

### **Directive 2**

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

### **Selection**

The Assam Police Act vests the empanelment of the DGP with the State Security Commission.<sup>3</sup> Considering the composition of the SSC constituted by the Act, it is difficult to see it functioning as an institution independent of the political executive. This leaves scope for continued non-merit based appointment of the DGP based on political considerations.

### **Tenure**

The DGP has only one year tenure subject to superannuation. This is in violation of the Supreme Court judgement, which is unambiguous in ordering that the DGP be provided with a minimum two-year tenure *irrespective of superannuation*.<sup>4</sup>

### **Removal**

The Supreme Court expressly stated exceptions to the rule of two years tenure for the DGP based on objective criteria. The aim with this was to ensure that the DGP enjoys a secure tenure free from unwarranted political or subjective interference. However, it is concerning that the exceptions provided in the Assam Police Act, 2007 have a much wider scope bringing with it some level of arbitrariness. The Assam Police Act reserves for the state government the right to "in the public interest transfer the DGP as may be deemed appropriate to meet *any* contingency"<sup>5</sup>. Public interest is too broad a term and too vague a ground to ensure removal.

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<sup>3</sup> Section 6(2), Assam Police Act, 2007

<sup>4</sup> Section 6(3), Assam Police Act, 2007

<sup>5</sup> Section 6(3), Assam Police Act, 2007



## **Conclusion**

As per the provisions of the Act, candidates for the post of DGP are empanelled by the SSC. This would on the face of it appear as though the selection is by an independent panel. However considering the composition of SSC which is far from independent, the selection process of the DGP will continue to remain a largely politically controlled exercise. Further, the DGP does not enjoy security of a two-year tenure and can be prematurely removed from his post on subjective grounds. Therefore, Assam can be termed as grossly non compliant with this directive.

## **3. Tenure for police officers on operational duties**

### **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.

## **Tenure**

The Assam Police Act grants only *one* year tenure to the SHO and the SP and neglects to provide any fixed tenure to other officers on operational duty namely the IGP and DIG.<sup>6</sup> This is highly disconcerting. The intent of this directive is to protect the tenure of the SHO, SP, DIG and IGP. People in leadership roles require stability of tenure and a fixed period to deliver good results. The one year tenure provided for a few officers is insufficient and the complete lack of fixed tenure for other officers on operational duties subverts the Supreme Court's directive in both letter and spirit.

## **Removal**

The removal grounds for the SHO and SP are overly vague and broad. The Act provides, at section 12(3), that "in public interest the DGP may transfer officers "as may be deemed appropriate to meet *any* contingency." One of the reasons for ensuring two years tenure was to curb the rampant practice of premature transfers upon political recommendations/considerations. An overly broad ground for removal, such as what the Act provides at section 12(3), goes against the spirit of the Apex Court's judgement.

## **Conclusion**

The Assam Police Act has only assured one year tenure to the SHO and SP and neglected to provide any fixed tenure for other officers on operational duties. Further, the Act has expanded the grounds for removal of the SHO and SP beyond what is specified in the Supreme Court judgment, increasing the scope for political interference. As these are all direct and overt violations of the Supreme Court judgement, Assam should be seen as non compliant with this directive.

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<sup>6</sup> Section 12(3), Assam Police Act, 2007

## 4. Separation between Investigation and Law & Order

### **Directive 4**

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

### **Compliance**

As per Section 55 of the Act, the state government shall ensure that in all metropolitan police stations having a population of 10 lakhs or more, a Special Crime Investigation Unit is created with an appropriate strength of officers and staff. The persons posted to this unit cannot be diverted to any other duty, except under very special circumstances with the written permission of the DGP. The State Government may gradually extend this scheme to other urban police stations. The Act further provides that officers posted to this Special Crime Investigation Unit will have their professional skills upgraded through specialized training in investigative techniques.

As the Act has clearly declared that separation will take place and elaborated on its mechanics, Assam is fully compliant with this directive.

## 5. Police Establishment Board

### **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.

### **Mandate**

Section 45 of the Act establishes a Police Establishment Board (PEB) with a limited mandate. The Apex Court's directive has in almost every aspect been diluted in the Act. Although the Court ordered that the PEB be a forum of appeal for disposing representations regarding transfers/postings/promotions and irregular and illegal orders, section 45(a) limits the Assam PEB to take complaints from police officers regarding illegal orders.

Moreover, while the Court ordered that the PEB decide all transfers, postings and promotions of officers of and below the rank of DySP, the Assam PEB is only empowered to recommend the postings of DySPs and the transfer and posting of officers up to the rank of Sub Inspector. The Act leaves the transfer and postings of non-gazetted officers at the discretion of the Superintendent of

Police.<sup>7</sup> Further, the Act is silent on the issue of promotions of all officers, indicating that this too will remain outside the purview of the PEB.

## **Powers**

The Apex Court had also envisioned the PEB to make appropriate recommendations to the state government regarding the posting and transfer of officers of and above the rank of SP and that the government shall *normally accept* these. The Assam Police Act, however, greatly weakens the PEB's powers by providing that the DGP can transfer any officer up to the rank of Inspector "as deemed appropriate to meet any contingency."<sup>8</sup> This overbroad provision is liable to rampant misuse as the PEB can be bypassed altogether whenever necessary. Allowing the DGP to effect transfers at his discretion renders the PEB a weak and toothless institution.

## **Conclusion**

The Assam Police Act subverts the Supreme Court's directive by establishing a PEB that has a very limited mandate and powers. The PEB that the Act establishes will by and large not be able to shield police officers from arbitrary transfers, postings and promotions. Thus, Assam is non compliant with directive 5 in letter and spirit.

## **6. Police Complaints Authorities**

### **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.

## **Constitution of District PAC's**

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<sup>7</sup> Section 46, Assam Police Act, 2007

<sup>8</sup> Section 45(d), Assam Police Act, 2007



The Apex Court expressly ordered that complaints authorities be established at both the state and the district level. The Assam Police Act only states that the government “*may* establish in each police district or a group of districts in a police range, a district police accountability authority”.<sup>9</sup> The word *may* reveals weak intent and leaves complete uncertainty as to if and when the district authorities will be established.

### **Composition of the state PAC**

Whilst the composition of the state level PAC appears independent on paper, the reality is that all the members as well as the chairperson of the commission will be appointed directly by the government without exception.<sup>10</sup> This violates the Supreme Court directive, which clearly calls for the retired judge who chairs the commission to be appointed by the government from a panel of names proposed by the Chief Justice, and for the empanelment of the other members to be done by the State Human Rights commission/ State Public Service Commission or the Lok Ayukta. Having a membership composed entirely of government appointees raises serious doubts over whether the PAC will be able to function as a robust independent oversight body as envisaged by the Supreme Court.

### **Conclusion**

Though Assam has created a state level PAC that has a strong mandate and powers, the fact that its members are appointed directly by the government raises doubt whether it will be able to function as a truly independent oversight mechanism and not be vulnerable to acting on the basis of political considerations. This, and the uncertainty in the statute over whether and when the PACs will actually be established at the district level ensures that Assam is only in partial compliance with this directive.

## **7. Recommendations**

In light of the above analysis, appropriate action should be taken against the Assam state government to ensure compliance with the letter and spirit of the Supreme Court directives.

New Delhi, 19 November 2009  
Commonwealth Human Rights  
Initiative

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<sup>9</sup> Section 84, Assam Police Act, 2007

<sup>10</sup> Section 71, Assam Police Act

