

Bihar Government Compliance with Supreme Court Directives on Police Reform

The Government of Bihar set up a Police Drafting Committee on 26 December 2006 and was the first state to pass a new police Act in March 2007. However, the new Bihar Police Act has many shortcomings of which placing the police under the supervision of the Chief Secretary is one. The Bihar Police Association has widely objected to this and aimed to challenge the law in court.

Further noticeable is that the Bihar Government passed three notifications in February 2007 complying with directive 1 (State Security Commission), directive 2 (tenure and selection of DGP) and almost fully complying with directive 5 (Police Establishment Board). However, it is disturbing to see that the Bihar Police Act, which was enacted only a month after the notifications, is diluting the directives and contradicting the notifications.

Although the Bihar Police Act addresses five out of the six Supreme Court directives, the Government has failed to comply with a single one, justifying Bihar's position as non compliant.

The Monitoring Committee was set up in May 2008 to look into the compliance by the States, it was also mandated to "examine the new legislations enacted by different States regarding the police to see whether these are in compliance with the letter and spirit of this Hon'ble Court's decisions"¹. After reading the Bihar Police Act it is painstakingly clear that the Act has not complied with the directives in letter nor in spirit and therefore appropriate actions should be taken against the State.

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 Bihar Police Act sets up a State Police Board (SPB) but the composition does not adhere to any of the three suggested models laid down by the Supreme Court. Surprisingly, the three-member SPB is completely bureaucratic-centric, headed by the Chief Secretary and comprising of the DGP and the Secretary in charge of the Home Department as members. This is in blatant violation of the Supreme Court's order that clearly stated that the SPB should be chaired by the Chief Minister/Home Minister and have the Leader of Opposition and independent members on the Board. In a diverse democracy as India it is crucial that the policies and directions of the police and their evaluation is decided by

¹ Supreme Court order dated 16 May 2008



government and non-government representatives of society since the performance of the police affects everyone in the society. The current set up lacks significant protections against Government control and manipulation of the new SPB.

Function

The SPB is not adhering to the functions set down by the Supreme Court. The directive clearly stated that the SPB is to ensure that “the State Government does not exercise unwarranted influence or pressure on the State police”, this has been excluded from the Act. Further the Bihar Police Act has instead of stating that the SPB shall *give directions* for performance, the Act states that the SPB shall *identify* performance indicators. By altering the words “*give directions*” to “*identify performance indicators*”, the Government has removed the decision making power of the SPB, leaving it with only recommendatory powers. To further support this conclusion the Bihar Police Act is completely silent on whether the SPB’s recommendations are binding on the State Government or not.

It is further problematic that the SPB does not have the power to prepare an annual report and present it before the State Legislature as mandated by the Apex Court’s directive. This omission ensures that the SPB has no accountability to the Parliament or the people, leaving little insight for the people to find out what guidelines the police are directed to follow.

Conclusion

Although the Bihar Police Act creates an SPB, it blatantly violates the respective Supreme Court directive and its key purpose. Instead of ensuring a healthy balance between political supervision and autonomy for the police in administrative issues, the SPB is completely under the bureaucracy. Further, the Act has diluted the power of the SPB and created a recommendatory body with no accountability to the Parliament. This is a grave violation of the Supreme Court’s directive and therefore the Bihar Government cannot and must not be seen as in compliance with this directive.

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

According to the Bihar Police Act, 2007, the DGP is directly appointed by the Government.² This is in stark contrast with the Supreme Court’s directive which clearly states that DGP candidates shall be nominated by the Union Public Service Commission (UPSC) and then selected by the State

² section 6, Bihar Police Act, 2007

Government. The idea behind UPSC nominating candidates to the DGP post is to ensure the impartiality of the selection procedure and to ensure that the DGP enjoys operational autonomy from the Government. Removing the UPSC's role in the selection procedure dilutes this intention, which is highly concerning.

Further concerning is that the selection criteria set out by the Court in this directive is omitted from the Bihar Police Act, 2007. The Act merely states that the DGP "shall be appointed from a panel of officers, which include officers already working at the post (...) or contain such officers who have been found suitable for promotion"³. It is crucial that the DGP is selected on objective criteria to preserve objectivity and immunise the process from influence within the State.

Tenure

The Bihar Police Act, 2007, ensures that the DGP shall *normally* have two years tenure. The reason behind two years tenure regardless of superannuation is to ensure that the DGP has functional autonomy from the Executive and other extraneous sources and to instil good management practice of continuity in leadership and strengthen the police chain of command. It is highly concerning that the Government has weakened the language and this can only be seen as reluctance to implement the directive in letter and spirit.

Premature Removal

The Supreme Court expressly stated three 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 secure tenure free from unwarranted political or subjective interference. However, it is deeply concerning that the exceptions provided in the Bihar Police Act, 2007, have a much wider scope and can be subject to arbitrary decisions. The Bihar Police Act states that the DGP can be removed "if he is incapable due to any physical or mental ailment or *due to any other reason*"⁴ and further states that the DGP can be removed due to "*any other administrative reason*, which is in favour of the effective discharge of the duty"⁵. These exceptions are overly broad and can lead to potential pressure and manipulation by political masters, to ensure that the DGP, first and foremost, serves the ruling elite rather than serving the people.

Additionally, the Bihar Police Act fails to include that actions can be taken against the DGP under the Discipline and Appeal section of the All India Service Rules, clearly violating the Court's directive.

Not only are these premature removal grounds arbitrary but the Bihar Police Act has also omitted that the State Government can only remove the DGP "in consultation with the State Security Commission" and permits the Government to act unilaterally in removing the DGP from his post. This can only be seen as a direct violation of the directive and reluctance from the Government to comply.

³ section 6 (1), Bihar Police Act, 2007

⁴ section 6 (2)(b), Bihar Police Act, 2007 [emphasise added]

⁵ section 6(2)(d), Bihar Police Act, 2007 [emphasise added]

Conclusion

Candidates are not empanelled by an independent selection panel and nor is s/he selected on the objective criteria established by the directive. Further, the DGP does not enjoy two year secured tenure and can be prematurely removed from his/her post on subjective grounds. Finally, the final safeguard from political interference in the DGPs' tenure has been removed since the State Government can unilaterally remove him/her from the post. Therefore, the Bihar Police Act cannot and must not be seen as in compliance with the Supreme Court 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 Bihar Police Act grants two years tenure to the SHO and the SP but has excluded the same for the IGP and the DGP.⁶ This is highly concerning. The intent of this directive is to protect the DGP, SHO, SP, DIG and IGP against unwarranted political or external interference. To ensure that an officer has two years tenure is not encroaching upon the Executive rights; it is merely setting good management practices. People in leadership roles require stability of tenure and a fixed period to deliver good results. If the Government finds any of these officers objectionable, they still have the power to remove them through the objective removal grounds set out in the judgement.

Premature Removal

The removal grounds for the SHO and SP are the same as for the DGP and equally vague and broad, as seen above.⁷ Additionally, the Police Act also includes a provision which breaches the two year tenure rule if there is a "requirement to fill vacancies arising as a result of promotion, *transfer* or retirement".⁸ This is against the main purpose set out by the Supreme Court. One of the reasons for ensuring two years tenure was to mitigate against the rampant transfers of police officers on operational duties around the country. Further, the Police Act fails to include that actions can be taken against the SHO or SP under the Discipline and Appeal section of the All India Service Rules, clearly violating the Court's directive.

Conclusion

The Bihar Police Act has only assured two years tenure to the SHO and SP. Further, the Act has broadened and weakened the objectivity in the premature removal grounds, increasing the scope for

⁶ section 10(2), Bihar Police Act

⁷ section 10 (2), Bihar Police Act, 2007

⁸ section 10(2)(d), Bihar Police Act, 2007 [emphasis added]



political interference rather than isolating the police from such extraneous behaviour. Additionally, the Act has omitted the criteria to remove an officer under the All Indian Service Rules. This is all in direct violation with the Supreme Court's directive and therefore the Bihar Government cannot and must not be seen as in compliance with this directive.

4. Separation between Investigation and Law & Order

Directive 4

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

Separation

The Bihar legislation has created a State level Crime Investigation Department⁹, Crime Investigation Units¹⁰ and district level Special Investigation Cells¹¹, but has not explicitly defined the role of officers involved with maintenance of law and order and officers posted at investigation units.

The State has restricted the functioning of the investigating unit only to a few specified crimes instead of allowing it to encompass all crimes which entail investigation. The above mentioned division will facilitate speedier disposal of the cases. The department can also be ensured of continuity in Investigation and developing expertise to achieve greater efficiency and results in investigations

Tenure

The statute further prescribes a minimum tenure of 3 years for the officers appointed at the Crime Investigation department and is widely subjected to State interference. The Act stipulates that the officers "shall not be removed unless it becomes necessary to remove them on one or more of the reasons to be mentioned"¹². This provision empowers the Government to control the tenure of officers, in complete violation with the Supreme Court's directive, which ensures that police officers on operational duty shall have a minimum of two years tenure.

Conclusion

The Bihar statute has failed to follow the directive in totality. In compliance with the above mentioned directive, the statute has only outlined the establishment of separate investigating departments but a clear role for the officers placed therein has not been outlined. The investigating unit is further vulnerable to a lot of interference by the Government and gives total control to them, thus taking away the very functional autonomy of the police, which has been repeatedly stressed throughout this judgment. Therefore, the Bihar Police Act can only be seen as partially compliant with the directive.

5. Police Establishment Board

⁹ section 14, Bihar Police Act, 2007

¹⁰ section 39, Bihar Police Act, 2007

¹¹ section 41, Bihar Police Act, 2007

¹² section 46, Bihar Police Act, 2007



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.

Creation of PEB

The Bihar legislation has blatantly defied the Supreme Court directive for the creation of a Police Establishment Board (PEB).

The creation of a PEB was meant to alleviate the political control that is currently exercised over the police, and enable the officers to do their job without fear or favour while serving and protecting the people, rather than calculating the likely political effect of any enforcement action they contemplate fearing for their careers.

The objective of the PEB was to bring the crucial service related matters like promotions, appointments and transfers under police control. Instead, the statute¹³ actually centralises the power over transfers, promotions and postings in the hands of the State Government, completely ignoring the Supreme Court's critique that measures must be put in place to prevent the prevailing practice of subjective government transfers.

Function

The statute further prevents the vested interest of the State Government by stating that the transfer and posting of police personnel of the "supervisory grade" (an undefined term) "shall be governed by the ... rule formulated by the Government"¹⁴. The Act adds that these officers may be transferred from their posts for any "administrative reason which is in favour of effective discharging of duties"¹⁵. This type of broad, unchecked power completely undermines the Supreme Court's objective of attempting to immunise officers from State Government manipulation through the creation of a Police Establishment Board.

The Bihar statute contains no redressal mechanism whatsoever for aggrieved officers who are subjected to arbitrary or irregular orders regarding their transfer, promotions etc. Experience has shown that police officers at all levels are subjected to whimsical and arbitrary orders by the political leadership to fulfil their own vested interest. The Court has clearly sought to prevent such orders through the envisaged constitutional machinery. The absence of the PEB as a forum for appeal has rendered such officers without representation and is a gross violation of Supreme Court's directive.

¹³ section 30, Bihar Police Act, 2007

¹⁴ section 30(1), Bihar Police Act, 2007

¹⁵ section 30(2)(e), Bihar Police Act, 2007



Conclusion

The Bihar Police Act clearly violated the Supreme Court's directive by not establishing the PEB. In fact, it has subverted the whole spirit behind such a directive by giving the Government a broad unchecked power with relation to transfer and promotion of police officers. Therefore, the Bihar Government cannot and must not be seen as in compliance with the directive.

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.

Creation

In another clear contravention of the directive the State has created only a District-level PAA¹⁶ rather than implementing a State-level and a District-level authority, thereby limiting the forum to entertain complaints only against police officers of and up to the rank of Deputy Superintendents of Police. No explanation has been provided for shielding officers above the rank of Deputy Superintendents of Police.

Composition

The deviation from the Court's directive is again reflected in the composition of the District-level PAA. The legislation appoints the District Magistrate as Chair, despite the explicit directive from the Supreme Court that the Chair person must be a retired District Judge nominated by the Chief Justice of the High Court or their designate.

¹⁶ section 59, Bihar Police Act, 2007



The Bihar statute also failed to adhere to the Court's directive that all other members of the PAA 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. It is important to retain the independence of this authority and shield it from political interference so that it can function in an impartial, unbiased manner and without any fear or favour. Any intervention by the Government in the order or functioning of this agency will completely jeopardise the whole objective which it intends to serve.

Function

The new Bihar Act creates a district Police Accountability Authority (PAA), which completely jeopardises the Court's intention and spirit guiding the creation of an independent body. Most importantly, the Supreme Court directive that the recommendations of the PAA on discipline and criminal matters must be binding on the State Government has not been followed. The legislation states only that the PAA "shall give proper advice" and leaves ultimate disciplinary control in the hands of the DSP¹⁷. If the PAA is not bestowed with binding powers, it will be one of the toothless bodies like the NHRC, and will fail to live up to its mandate and objective. Thus the Bihar statute, by taking away the binding powers and thereby reducing it to an advisory body, has blatantly defeated the whole objective of the Apex Court to create an independent and powerful body to redress the wrongs committed by the police.

The Bihar Act authorises the District PAA to inquire into "misbehaviour" but fails to define this term, leaving the PAA subject to wide discretion and potential manipulation by the State¹⁸. It has failed to even enumerate the list put forth by the SC directive entailing serious misconduct, including death, grievous hurt, rape in police custody, extortion, land/house grabbing and any incident involving a serious abuse of authority. The failure to enumerate such a list violates the Court's order.

The statute actively attempts to narrow the scope of the District PAA's jurisdiction, in violation of the Supreme Court Order, by inserting arbitrary provisions which stipulate that complainants in all human rights related matters (or negligence in preventing human rights violations) must address their concerns to the State Human Rights Commission¹⁹ rather than the PAA. It entirely undermines the notion that all police-related complaints ought to be directed to a specialised police-related authority, which can develop the required expertise in handling such complaints.

Conclusion

The creation of a District PAA is more of an eyewash and a clear deviation from the spirit and objective behind the Supreme Court's ruling. The statute has rendered the body toothless and ineffective by allowing the State to choose the chairpersons and making its recommendations non binding. It has

¹⁷ sections 60(1)(b) and 60(2), Bihar Police Act, 2007

¹⁸ sections 60(1)(a) and 61(1)(a), Bihar Police Act, 2007

¹⁹ section 26, Bihar Police Act



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further jeopardised the mandate of the authority by using an undefined term “misbehaviour” instead of elaborating upon the list put forth by the Supreme Court. Therefore, the Bihar Government cannot and must not be seen as in compliance with the directive.

7. Recommendations

In light of the above analysis, appropriate action should be taken against the State Government to ensure compliance with the letter and spirit of the Supreme Court directive.

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Commonwealth Human Rights Initiative

