

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

The Government of Chhattisgarh set up a drafting committee in the beginning of January 2007,<sup>1</sup> and the comprehensive new Chhattisgarh Police Act was passed by the Legislative Assembly on 20 July 2007.<sup>2</sup> However already by the end of 2007 the Government had passed an amendment to the Act,<sup>3</sup> on a day when most of the opposition MLAs had been suspended for the day and no one was present to oppose or criticise the Amendment Act.

In the Supreme Court Order dated 16 May 2008 the Court directed the Monitoring Committee to not only look into compliance of the States that were drafting new police legislation but also analyse the new legislations passed by States to see *“whether these are in compliance with the letter and spirit of this Hon’ble Court’s directions”*<sup>4</sup>. Although Chhattisgarh has enacted new legislation, a careful analysis shows that the Government has not complied in letter and spirit with the directives and cannot therefore be viewed as compliant with the Supreme Court’s judgment.

### 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

Chhattisgarh has created a State Police Commission (SPC). However, the composition of the SPC constituted by the Chhattisgarh Government does not follow any of the models prescribed by the Supreme Court.<sup>5</sup> All three models require that the Leader of the Opposition and a retired judge are members of the SPC but this has not been adhered to in the Chhattisgarh model. This undermines the checks and balances intended with the SPC and results in the Commission lacking significant protections against government control and manipulation. Further the independent members on the Commission and the member from the SHRC are all appointed by the State Government. By preventing true independence on the SPC the Chhattisgarh Government ensures that the SPC will be nothing but a tool for the Government, thus undermining the sole purpose of the Commission.

#### Function

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<sup>1</sup> Government Order S.No. F-11-353/Writ Petition/Two-Home/2006, dated Raipur 6 January 2007

<sup>2</sup> Chhattisgarh Act (No 13 of 2007) Chhattisgarh Police Act, 2007

<sup>3</sup> Chhattisgarh Act (No 6 of 2008) Chhattisgarh Police (Amendment) Act, 2008

<sup>4</sup> *Prakash Singh and Others v Union of India and Others* (2006) 8 SCC 1

<sup>5</sup> Section 16 Chhattisgarh Police Act, 2007



The SPC is not mandated to ensure that the Government does not exercise unwarranted influence on the police as expressly ordered by the Supreme Court.<sup>6</sup> The SPC's recommendations are not binding on the State Government. Further the Act states that the SPC shall *advise* the Government on policy guidelines rather than *laying down* policy guidelines, as envisaged by the Court. Similarly the Act states that the SPC shall *assist* the Government in identifying performance indicators rather than *giving directions*, as decided by the Apex Court.

This weakening of the language describing the powers of the SPC is of grave concern. The alterations severely dilute the autonomy of the SPC and its powers. By changing the words "*laying down*" to "*advise*", in relation to policy making, the Government has removed the decision-making power of the SPC leaving it with recommendatory powers only. Similarly the words "*giving directions*" have been changed to "*assist*", ensuring that the powers of the SPC remain recommendatory and not binding. In addition the SPC does not have any binding powers despite the clear statement in the directive. By ensuring that the SPC can only give recommendations the Government retains the power to control the police rather than monitoring it as intended by the directive.

It is also of concern that the SPC is obliged to submit its annual report to the State Government rather than to the Legislative Assembly as provided in the directive.<sup>7</sup> This confirms the notion that the Government is reluctant to set up an effective SPC, and instead intends to keep open the avenues for political interference within the police.

## **Conclusion**

The Chhattisgarh Police Act creates an SPC but fails to adhere to the checks and balances put in place by the Supreme Court. Instead of ensuring a healthy balance between political supervision and autonomy for the police in administrative issues, the SPC has ensured that the Government has the legitimate right to interfere in the police organisation's work. This is a grave violation of the Supreme Court's directive and therefore the Chhattisgarh Government cannot and must not be seen as compliant 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**

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<sup>6</sup> Section 20 Chhattisgarh Police Act, 2007

<sup>7</sup> Section 21 Chhattisgarh Police Act, 2007



The Chhattisgarh Police Act states that the DGP shall be appointed by the Government from a panel of candidates. The candidates will be empanelled by a Committee set up under the All-Indian Services Act, 1951. However the section does not refer to any of the selection criteria the Committee should consider while empanelling the candidates.<sup>8</sup> It is important that a non-state organisation nominate candidates in order for the position of DGP to preserve objectivity, and to immunise the process from influence within the State.

## **Tenure**

Chhattisgarh has provided the DGP with two years tenure.<sup>9</sup> However, it violates the Supreme Court's order by allowing for removal of the DGP prior to completion of tenure in case of superannuation.<sup>10</sup> This is in direct violation of the Apex Court's order and undermines the safeguards against potential arbitrary interference from the State. For example, to circumvent the Supreme Court's two year minimum requirement, the Government could simply appoint candidates within six months of their date of retirement.

## **Removal**

The Supreme Court provided three grounds for removal of the DGP before the expiry of his/her tenure. These exceptions are all included in the Police Act, however it is concerning that the section has added several other grounds for removal. One of the removal grounds is vague and can be misused by political interests. It merely states that the DGP can be removed due to "an administrative exigency which shall be recorded in writing."<sup>11</sup> Further the DGP can be removed unilaterally without consulting the SPC as envisaged by the Supreme Court. This undermines the checks and balances provided by the Court to protect the DGP from political interference and manipulation.

## **Conclusion**

Chhattisgarh has included the directive in the Act but has diluted it in regard to the selection procedure and undermined it by adding more grounds for removal which are vaguely drafted, thus breaching the directive both in letter and spirit. Therefore Chhattisgarh must be seen as 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.

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<sup>8</sup> Section 12 (2) Chhattisgarh Police Act, 2007

<sup>9</sup> Section 12 (3) Chhattisgarh Police Act, 2007

<sup>10</sup> Section 12 (4) Chhattisgarh Police Act, 2007

<sup>11</sup> Section 12 (4)(g) Chhattisgarh Police Act, 2007



## **Tenure**

The Chhattisgarh Police Act provides minimum tenure of two years for police officers on operational duties but only for SHOs and SPs in-charge of a district. The DIG in-charge of a Range and IGP in-charge of a Zone has not been provided with minimum tenure at all.<sup>12</sup> This is a clear breach of the Apex Court's order. The intent behind this directive is to ensure that the police officers can work independently of external political interference and not be arbitrarily transferred as soon as they go against the ruling political party. Secured tenure is further crucial to ensure good management in the police service.

## **Removal**

Similarly to the above, the Act provides additional grounds for the premature removal of police officers on operational duties. One of the removal grounds is vague and can be misused by political interests. It merely states that the DGP can be removed due to "an administrative exigency which shall be recorded in writing".<sup>13</sup>

## **Conclusion**

Similarly to the tenure of the DGP, the Chhattisgarh Police Act has ensured tenure, but only for SHOs and SPs, omitting the safeguard for the DIG and IGP. Further the Act has included additional removal grounds, of which one is drafted vaguely, breaching the letter and spirit of the directive. Therefore Chhattisgarh cannot and must not be seen as compliant 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 Chhattisgarh Police Act merely states that Law & Order and Crime Investigation *may* be separated.<sup>14</sup> This is in stark contrast with the directive which states that separation must take place. The act is silent on any further detailed information about how the separation would take place if the Government should decide to implement it. Due to the brevity of the Act, there is no detail whatsoever regarding important items, including: training for officers assigned to the CID, tenure, funding, provision of staff, adequate scientific facilities, crime scene technicians and legal/forensic advice.<sup>15</sup>

## **Conclusion**

Chhattisgarh has not committed to complying with the directive and merely states that separation between the two wings may take place. This can only be seen as reluctance to implement the directive and Chhattisgarh cannot and must not be seen as in compliance with this directive.

<sup>12</sup> Section 14(1) Chhattisgarh Police Act, 2007

<sup>13</sup> Section 14 (2)(i) Chhattisgarh Police Act, 2007

<sup>14</sup> Section 32 (1) Chhattisgarh Police Act, 2007

<sup>15</sup> Sections 126-127 and 133-137 Model Police Act, 2006



## 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.

### **Function**

Chhattisgarh has constituted a Police Establishment Board (PEB). However, there is no provision in the Act for the PEB to make recommendations on postings and transfers of officers above the rank of SP.<sup>16</sup> Further the Act limits the PEB's power to decide only *transfers* of officers up to the rank of Inspector (not postings, promotions and other service related matters as specified in the Supreme Court order).<sup>17</sup> This is in direct breach of the Supreme Court's order and undermines the checks and balances provided by the Court which are intended to ensure that the decisions on postings, transfers and appointments were determined by the Police leadership and insulated from political interference.

In addition the PEB is mandated to function as a forum for appeal for *disposing* of complaints from officers of the rank of SP and above regarding their postings and transfers. However this has not been adhered to by the Act. The Act merely states that the PEB can *receive and examine* such complaints but not dispose of them.<sup>18</sup> Further the Act provides the Government with an ability to override the PEB's recommendation. The State Government may review any order of the PEB respecting a complaint by an aggrieved officer within 90 days.<sup>19</sup> This is in clear violation of the Supreme Court order and can only be seen as the Government's urge to control rather than monitoring the police.

### **Conclusion**

Despite creating a PEB the Chhattisgarh Government fails to do so in accordance with the Supreme Court order. The Police Act dilutes the function of the PEB to such an extent that it breaches the letter and spirit of the directive. Further, reluctance to give the PEB the binding powers it is envisaged as having can only be seen as the Government's urge to control the police rather than monitoring it.

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<sup>16</sup> Section 22(2) Chhattisgarh Police Act, 2007

<sup>17</sup> Section 22(2) Chhattisgarh Police Act, 2007

<sup>18</sup> Section 22(2)(b) Chhattisgarh Police Act, 2007

<sup>19</sup> Section 22(3) Chhattisgarh Police Act, 2007



## 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**

Chhattisgarh Police Act states that the Government “may as soon as may be” constitute a State Police Accountability Authority (SPAA).<sup>20</sup> This highlights that the intent to establish an authority is weak. Further, Chhattisgarh has not issued any notifications establishing an authority, violating the Supreme Court’s order.

In addition, the Act fails to mention anything about setting up a Police Accountability Authority at the district level. This is a blatant violation of the SC order, which clearly calls for PCAs to be set up at the District level.

### **Composition**

The composition of the SPAA is adhered to, but not the selection procedure of the chairperson and the members of the Authority.<sup>21</sup> The Supreme Court clearly specified that the Chairperson shall be a retired judge empanelled for the post by the Chief Justice and appointed by the State Government. In the Act the chairperson is directly appointed by the Government. Further, the members of the Authority are supposed to be empanelled by the SHRC/Lok Ayukta/SPSC and appointed by the Government. However, similarly to above, the members are in fact directly appointed by the Government. This is highly concerning and will most likely compromise the independence these members have, since they are all political appointees. Moreover, the fixed two year term of members

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<sup>20</sup> Section 38(1) Chhattisgarh Police Act, 2007

<sup>21</sup> Section 39 Chhattisgarh Police Act, 2007



ensures that the ruling party of the State will be able to appoint members favourable to it within a short period of assuming office.<sup>22</sup>

## **Function**

The Act states that the SPAA shall not take cognizance of a complaint if it is received after six months from the date of occurrence. It is understandable that the Act should include a time limit for receiving complaints. However, it is crucial that this time limit should be in compliance with the equivalent sections of the CrPC. Further limitation has been included in the Act, which states that a complaint that is being investigated by the NHRC, SHRC or is a subject under the Commission of Enquiries Act, cannot be investigated by the SPAA.<sup>23</sup> This was not the intention of the Supreme Court and this provision should therefore be annulled.

In addition the Act defines “serious misconduct” in a narrow manner. Since there is no district Police Accountability Authority it is crucial to ensure that all the functions of that Authority are included in the SPAA. The Act is silent on the power of the SPAA to look into land-grabbing, extortion and serious abuse of authority. This is in direct violation of the Supreme Court’s order and dilutes the power of the Authority.

Finally the recommendations of the SPAA are not binding as envisaged by the Court.<sup>24</sup> This is a blatant violation of the Apex Court’s order and undermines the effective checks and balances provided to the Authority.

## **Conclusion**

The Chhattisgarh Police Act creates a Police Complaints Authority only at the State level and fails to adhere to the Supreme Court directive. The SPAA does not enjoy true independence as envisaged by the Court and neither are its powers binding on the concerned authorities. Therefore Chhattisgarh cannot and must not be seen as compliant with this 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.

New Delhi, 25 February 2009

Commonwealth Human Rights Initiative

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<sup>22</sup> Section 41 (1) Chhattisgarh Police Act, 2007

<sup>23</sup> Section 43(2) Chhattisgarh Police Act, 2007

<sup>24</sup> Section 43(4) Chhattisgarh Police Act, 2007

