

Haryana 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 Haryana Government enacted the Haryana Police Act, 2007, which came into force on 28 May 2008. Upon a careful analysis of this Act, it is evident that the State of Haryana has not complied with the Apex Court's directives on police reform, justifying the characterisation of Haryana 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.

As per the Haryana Police Act, 2007 the government shall set up a State Police Board (SPB) within three months of the Act, to “*exercise the functions assigned to it under the provisions of this Chapter.*”¹ This is in violation of the Apex Court's directive of creating a State Police Board without delay.

Composition

The Act sets up a State Police Board (SPB). The composition of the Board resembles the Ribeiro model but with substantial modification. In addition to the Chief Minister, the Leader of the Opposition in the State Assembly, a retired High Court Judge or Advocate General, the Chief Secretary, DGP, and three non-political persons it has two additional political actors. Namely, the Home Minister as Vice-Chairperson, and the Secretary in charge of the Home Department. One of the three “non-political” persons who are meant to be independent members is in fact a retired Indian Administrative Services (IAS) officer. Having such a politicized SPB erodes the Supreme Court's intent to create a body that would shield the police from undue political interference. In this situation, it is difficult to imagine that they will exercise independent judgment. As a result, the proposed SPB 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 directive clearly states that one of the functions of the SPB is to evaluate the performance of the State police and produce a report that would be placed before the State legislature. The Act is silent on the requirement to submit such report.

¹ Section 25, The Haryana Police Act, 2007



Power

The Apex Court was firm in its stand that a Board such as this one should make binding recommendations to guarantee that the policies, directions, and evaluation of the police are adhered to by the Government. The Act does not define the nature of powers that the Board will yield thus violating the Court's directive.

Conclusion

The State Police Board as described in the Haryana Police Act turns out to be a highly politicized body. Its mandate is not in line with the Court's directive, and the nature of its powers is not defined within the Act leaving Haryana as non 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

According to the Haryana Police Act, 2007, the DGP is directly appointed by the State Government.² This subverts the Supreme Court's directive, which clearly states that the DGP shall be empanelled by the Union Public Service Commission (UPSC) and then selected by the State Government. The purpose of involving the UPSC in the selection process of the DGP post is to ensure that the selection procedure is impartial and appointments are not made on political considerations or personal preference. By removing the UPSC's role in the selection process, and leaving it in the hands of the State government Haryana is in complete violation of the Apex Court's directive.

Of further concern is that the selection criteria outlined by the Supreme Court in this directive is omitted from the Haryana Police Act. The directive clearly states that the DGP is to be selected from a pool of three senior-most officers who have been empanelled for promotion to that rank by the UPSC on the basis of their length of service, very good record, and range of experience for heading the police force. Despite this, the Act makes no mention of the pool of officers who are eligible for this position. Moreover, it simply states that the DGP is to be appointed from amongst the officers holding the rank of DGP.

Tenure

As per the Apex Court's directive, the DGP is ensured two years minimum tenure, however, the Haryana Police Act, 2007 ensures one year tenure to the police chief. This is in direct violation of the

² Section 5, The Haryana Police Act, 2007



Supreme Court's order which is unambiguous in ordering that the DGP be provided with a minimum two-year tenure.

Conclusion

The involvement of the UPSC in the merit-based transparent selection of the DGP is imperative, but the Haryana Police Act, 2007 allows for the State Government to appoint the DGP. Further, the DGP is given only a one-year tenure. As a result, Haryana remains non compliant with the 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

Even though the Supreme Court mandated a two-year tenure for officers on operational duties, the Haryana Police Act grants only one-year tenure to the IGP and SP.³ Further, the Act remains silent regarding the tenure of Station House Officers. The intent of this directive is to protect the DGP, SHO, SP, DIG and IGP against premature transfers at the hands of the political executive. Officers in leadership roles require stability of tenure to realise the vision of good policing. The complete lack of fixed tenure for the DIG and IGP subverts the Supreme Court's directive in both letter and spirit.

Premature Removal

The premature removal grounds for officers posted as Inspector General or Superintendent are overly vague and broad. The Act provides, at section 13 "...need to fill up a *vacancy* caused by promotion, transfer, or retirement."⁴ Besides enjoying only a one year tenure officers could potentially be transferred to fill up existing vacancies elsewhere. It can be argued that some vacancies need to be filled in order to meet law and order requirements. However such a transfer will leave a vacancy elsewhere and does not address the problem of shortfall. The clause could potentially be misused and to address this problem the Court directed unequivocally that tenure would be fixed.

Conclusion

The Haryana Police Act has only given one year tenure to officers on operational duties. Further, the Act has expanded the grounds for premature transfer beyond what is specified in the Supreme Court judgment. As these are all direct and overt violations of the Supreme Court judgement, Haryana should be seen as non compliant with this directive.

³ Section 13, The Haryana Police Act, 2007

⁴ *Id.*



4. Separation between Investigation and Law & Order

Directive 4

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

Section 43 of the Haryana Police Act, 2007 creates a crime investigation unit in every district headed by an officer not below the rank Inspector, which will investigate crimes such as murder, kidnapping, rape, dacoity, robbery, dowry-related offences, serious cases of cheating, misappropriation and other economic offences, as notified by the Director General of Police, besides any other cases specially entrusted to the unit by the Superintendent of Police of a district. The officers posted to this unit are not to be diverted to any other duty except with the written permission of the DGP, and will be selected based on their aptitude, professional competence, and integrity⁵.

Conclusion

While these are steps in the right direction, the Act is silent on the desired coordination between these two separate units, i.e the law and order wing and the investigation wing. Besides this Haryana can be termed as compliant with the particular 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.

The purpose of setting up a Police Establishment Committee (PEC) is to ensure that appointments, transfers and promotions within the police force are decided by the police leadership alone without the influence peddling and patronage of political executive. The Haryana Police Act states that the Government may set up a Police Establishment Committee (PEC), chaired by the DGP with two other senior officers of at least IGP rank as members.⁶ The Court directed the Committee to be set up immediately and was not left optional. The wording of the Act seems to suggest that the set up of the Committee will be at the discretion of the government.

Mandate

Section 34 of the Act establishes a Police Establishment Committee (PEC) with a limited mandate. The Apex Court's directive has in almost every aspect been diluted in the Act. There is no provision in

⁵ Section 44, The Haryana Police Act, 2007

⁶ Section 34, The Haryana Police Act, 2007



the Act for this committee to make decisions regarding postings, transfers, promotions, and other service-related matters of officers of and below the rank of Deputy Superintendent of Police. The Act also does not give the PEC the powers to function as a forum for appeal for *disposing* complaints from officers of the rank of SP and above regarding their postings and transfers. This is in clear violation of the Supreme Court order and can only be seen as the Government's urge to control rather than oversee the functioning of the police.

An additional mandate of the Committee is to oversee infrastructure facilities, professionalism, general discipline, modernization, training, and welfare. While this is commendable, it fails to capture the essence of the Supreme Court's directive, the purpose of which is to counter the prevailing practice of subjective appointments, transfers and promotions and bring these crucial service related matters largely under police control.

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 Haryana Police Act remains silent on this issue. This silence can only be interpreted as an unwillingness to let go of unwarranted methods and an urge to rule rather than govern the police.

Conclusion

The existing Police Establishment Committee's function and purpose is not in line with the Supreme Court's directive. As a result, the Haryana Government cannot be termed as compliant with this 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.

HARYANA

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

The Apex Court expressly ordered that complaints authorities be established at both the state and the district level. Section 59 of the Haryana Police Act sets up a Police Complaints Authority at the state level. However the Act at section 68 of Haryana Police Act states that the State Government may create a District PCA as and when required. The directive is binding on all states and creation of these Authorities is not optional.

Members

As per the Apex Court's directive the State level PCA is to be Chaired by a retired Judge of the High Court or Supreme Court. The Haryana Police Act sets up a one man Authority at the state level. According to the Act the Chair may be a retired Judge or civil servant. This violates the Supreme Court directive which clearly does not allow a civil servant to chair the body. The purpose behind having a judge as the chair was to maintain an independence and neutrality within the body as well as have a person with sound knowledge of the law. Having a civil servant chair this body undermines this purpose completely. In addition to this the Authority is to function solely on the abilities of one person. Not having any other members is largely going to render the body inefficient and unable to live up to its mandate.

Powers

Of great concern is that the State level PCA does not have binding powers. As per the Act, it is optional for the PCA to communicate their findings to the State Government.⁷ Further, the State Government shall consider the findings and recommendations of the PCA and take appropriate action.⁸ This language is quite contradictory to the Supreme Court's directive which clearly states that the PCA's recommendations against a delinquent police officer shall be binding. As a result, the Haryana State level PCA as it stands now, is merely a recommendatory authority, which dilutes its purpose as envisioned by the Supreme Court.

Conclusion

The creation of a State PCA is a clear deviation from the Apex Court's ruling. The statute has rendered the body toothless and ineffective by making its recommendations non-binding. The composition does not guarantee it to be an independent and impartial body. More importantly, the

⁷ Section 67(1), The Haryana Police Act, 2007

⁸ Section 67(2), The Haryana Police Act 2007



creation of district level PCAs remain at the discretion of the state Government. As a result, the Haryana Government is not in compliance with this directive.

7. Recommendations

In light of the above analysis, the following should be considered:

1. To direct immediate full compliance with all six Supreme Court directives.
2. To direct the Government of Haryana to report to the Monitoring Committee upon compliance within 1 month; and
3. To issue a notice of contempt against the Government of Haryana if it fails to implement these directives.

New Delhi, 3 December 2009

Commonwealth Human Rights Initiative

