

## Himachal Pradesh 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 Himachal Pradesh Police Act, 2007, which came into force on 21 September 2007.

Despite the passage of the new legislation, careful analysis shows that Himachal Pradesh has violated most of the Supreme Court directives in both letter and spirit, justifying the characterisation of Himachal Pradesh 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 Himachal Pradesh 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. None of the three models proposed by the Court authorizes the Principal Secretaries of Social Justice and Finance, the Director of Prosecution, the Director of Forensic Science, or the Director of the State Police Training Academy to sit as members on the SPB.<sup>1</sup> The Board has only three independent members as against the five members as outlined in the Sorabjee model. All the three "independent" members are to be selected by a panel which consists of the Lokayukta, the State Chief Information Commissioner and the Chairman of the State Public Service Commission. The selection panel is to choose individuals from among a list of names suggested by the State Government itself.<sup>2</sup> 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

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<sup>1</sup> Section 49(1), Himachal Pradesh Police Act, 2007

<sup>2</sup> Section 50(2), Himachal Pradesh Police Act, 2007



# HIMACHAL PRADESH

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façade for continued executive control over the police. Further, the Police Act is silent on the process of removal of members of the SPB.

## **Mandate**

The Supreme Court expressly stated that the purpose of the SPB is to ensure that the State Government does not exercise unwarranted influence or pressure on the police so the police can function independent of Government control. The SPB is mandated to give directions for the performance of preventive tasks by the police. The Act is silent on these specific functions, and thus does not comply with the Supreme Court directive.

The Apex Court's order mandated the SPB to conduct the evaluation of the state police and prepare a report thereon to be placed before the state legislature. The purpose of this is to ensure that the report receives a legislative review in a timely and unadulterated manner. The statute instead calls for the annual report to be submitted to the state government who in turn will place it before the state legislature.<sup>3</sup> This provision thus goes against the spirit of the Court's directive.

## **Powers**

The Himachal Pradesh Police Act creates a State Police Board (SPB), but this body has no power to make binding recommendations<sup>4</sup>. This violates the Court's directive that is explicit in declaring that the recommendations of the SSC shall be binding on the state government. The Act stipulates that the SPB's recommendations need not be followed if the Government opines that it is unfeasible in the public interest.<sup>5</sup> The terms "feasible" and "public interest" remain undefined by the statute, which is precisely the kind of open-ended exemption which would permit the Government to interfere.

## **Conclusion**

Though the Police Act creates a State Police Board (SPB), its composition, function, and power do not conform to the Supreme Court's directive. As such, Himachal Pradesh can only be seen as non compliant with the directive.

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<sup>3</sup> Section 55, Himachal Pradesh Police Act, 2007

<sup>4</sup> Section 53(2), Himachal Pradesh Police Act, 2007

<sup>5</sup> *Id.*



## 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**

As per the Police Act, the State Government plays a significant role in the selection of the DGP.<sup>6</sup> This subverts the selection criteria outlined as by the Supreme Court, which clearly states that the DGP shall be selected from a pool of three senior-most officers who have been empanelled for promotion to that rank by the Union Public Service Commission (UPSC) on the basis of their length of service, good record, and range of experience, and then selected by the State Government. The length of service criterion is absent from Section 6(2) of the statute. Further, instead of involving the UPSC, the Act calls for a "Screening Committee", headed by the Chief Secretary which will prepare a panel of at least three suitable persons for the post of the DGP, one of whom will be then selected as the DGP by the state government. The whole 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 of the UPSC's role in the selection process, and leaving it in the hands of the State government, Himachal Pradesh is in complete violation of the Apex Court's directive.

### **Tenure**

The Act at Section 6(3) stipulates that the DGP shall have tenure until superannuation. In other words, though the statute guarantees tenure for the post of DGP, the length of this tenure has not been specified.<sup>7</sup> This also violates the Apex Court's directive, which clearly states that the tenure must run for at least two years, regardless of superannuation, which would safeguard against the potential for arbitrary state interference.

### **Premature 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

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<sup>6</sup> Section 5(i), Himachal Pradesh Police Act

<sup>7</sup> Section 6(3), Himachal Pradesh Police Act



unwarranted political or subjective interference. However, it is concerning that the exceptions provided in the Himachal Pradesh Police Act, 2007 have a much wider scope bringing with it some level of arbitrariness. The Act at section 6(3)v) reserves for the state government the right to prematurely remove the DGP from the post in case of “administrative exigencies in the larger public interest”. Public interest and administrative exigencies are broad terms and too vague a ground to ensure removal.

## **Conclusion**

The role of the UPSC in selection has been omitted, the DGP is not ensured two year tenure, and the tenure is subject to superannuation. As a result, Himachal Pradesh is 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 and Premature Removal**

Even though the Police act provides a minimum tenure of two years for certain officers (the SHO, and the Superintendent of Police in charge of a district)<sup>8</sup>, it does not extend the minimum tenure requirement as far as has been directed by the Supreme Court. As such, the Inspector General and Deputy Inspector General are not mentioned in this list.<sup>9</sup> Moreover, the way in which tenure is guaranteed is quite unconvincing. While Section 12(vi) allows senior officers to be removed prematurely based on “*administrative exigencies in the larger public interest.*”<sup>10</sup> These grounds for removal are vague, undefined, and could be open for abuse. As such, the Act cannot be compliant with the spirit of the directive.

## **Conclusion**

Though the Himachal Pradesh Government provides two years of tenure, it does not extend it to all the officers as laid down by the Court. The premature removal criteria of such officers are not in line with the Court’s directive. As a result, Himachal Pradesh is not in compliance with this directive.

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<sup>8</sup> Section 12, Himachal Pradesh Police Act, 2007

<sup>9</sup> *Id.*

<sup>10</sup> Section 12(vi), Himachal Pradesh Police Act, 2007

## 4. Separation between Investigation and Law & Order

### Directive 4

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

The Himachal Pradesh Police Act separates the law and order wing from the investigative wing. The statute creates a State Criminal Investigation Department<sup>11</sup>, district-level Special Cells<sup>12</sup>, and station-level Criminal Investigation Units.<sup>13</sup>

### Conclusion

The Himachal Pradesh Police Act is thus 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.

The Himachal Pradesh Police Act creates a Police Establishment Committee (PEC), but with a limited mandate. While it permits the PEC to dispose only of complaints relating to transfers, it does not address complaints pertaining to promotions or being subject to illegal orders.<sup>14</sup>

### Conclusion

The existing PEC's composition, function, and powers are not in line with the Supreme Court's directive. As a result, the Himachal Pradesh Government cannot be termed as compliant with this directive.

## 6. Police Complaints Authorities

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<sup>11</sup> Section 16, Himachal Pradesh Police Act, 2007

<sup>12</sup> Section 10(2), Himachal Pradesh Police Act, 2007

<sup>13</sup> Section 11(6), Himachal Pradesh Police Act, 2007

<sup>14</sup> Section 56(1)(iii), Himachal Pradesh Police Act, 2007



## **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 Himachal Pradesh Police Act creates a Police Complaints Authority (PCA) at both the State and District level but the composition, function, and power of these PCAs is not in line with the Supreme Court's directive.<sup>15</sup>

## **Composition**

In its judgment, the Apex Court has clearly specified that 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. This composition of the Authority to ensure that the institution is able to function as a robust, independent accountability mechanism. However, as per the Himachal Pradesh Act, the PCA will comprise of the Lokayukta.<sup>16</sup> In Himachal Pradesh, the Lokayukta is a one-man institution created by the Himachal Pradesh Lokayukta Act, 1983 for investigation into the complaints by the citizens against public functionaries alleging corruption. Considering that this in itself

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<sup>15</sup> Section 93 and 94, Himachal Pradesh Police Act, 2007

<sup>16</sup> Section 93, Himachal Pradesh Police Act, 2007



# HIMACHAL PRADESH

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is a very wide mandate it is difficult to see the same Lokayukta as an institution doing justice to the mandate of the Complaints Authority.

Further, as per the Act, the District PCA is to be headed by the Divisional Commissioner of the Division and three other non-official members such as retired police officers of the rank of SP and above, retired prosecutors of the rank of District Attorney and above, or retired Judicial officers of the rank of Additional District Judge and above.<sup>17</sup> This composition of the District PCA is in complete violation of the Supreme Court's directive, which explicitly states that a District level PCA is to be headed by a retired District Judge selected by the State Government from among a panel of names presented by the Chief Justice.

## **Mandate**

The Himachal Pradesh Police Act has diluted the function and power of the PCA. Section 93(3) of the Act stipulates that the powers of the State PCA shall be as may be prescribed.<sup>18</sup> The Supreme Court has explicitly stated that the District PCA is to look into complaints against officers of and up to the rank of Deputy Superintendent of Police, and the State level PCA is to look into complaints against officers of and above the rank of Superintendent of Police. The Police Act, however, does not adhere to this structure. Instead, the Act mandates the State level PCA to generally enquire into allegations of criminal misconduct by police officers, and to generally oversee the police system accountability to reduce corruption.<sup>19</sup> The District level PCA is mandated to simply receive complaints of misconduct and criminal misconduct,<sup>20</sup> and forward them to the State level PCA.<sup>21</sup>

The directive also specifically indicates that the State PCA must inquire into death, grievous hurt, and custodial rape; and the District PCA must inquire into the above, as well as extortion, land/house grabbing, and any incident involving a serious abuse of authority. It is difficult to comprehend why the mandate of the PCA has not been specified in the Act. This leaves too much ambiguity with regard to an already weak body. The Court directed this directive to be complied with immediately and any further delay leaves Himachal non compliant.

## **Powers**

While the Act creates a District level PCA, it defies the Court's order by failing to state that the findings of the District PCA regarding disciplinary and criminal matters are binding on the State Government.<sup>22</sup>

## **Conclusion**

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<sup>17</sup> Section 95, Himachal Pradesh Police Act, 2007

<sup>18</sup> Section 93(3), Himachal Pradesh Police Act, 2007

<sup>19</sup> Section 93, Himachal Pradesh Police Act, 2007

<sup>20</sup> Section 94, Himachal Pradesh Police Act, 2007

<sup>21</sup> Section 96, Himachal Pradesh Police Act, 2007

<sup>22</sup> Section 96, Himachal Pradesh Police Act, 2007



# HIMACHAL PRADESH

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The composition, function, and power of the State and District level PCAs is a clear deviation from the Apex Court's ruling. As a result, the Himachal Pradesh 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 compliance with directives 1, 2, 3, 5, and 6.
2. To direct the Government of Himachal Pradesh to report to the Monitoring Committee upon compliance within 1 month; and
3. To issue a notice of contempt against the Government of Himachal Pradesh if it fails to comply with directives 1, 2, 3, 5, and 6 within one month's time.

It is further generally submitted to the Monitoring Committee that the following should be considered:

4. To report to the Supreme Court that it consider directing the UPSC to nominate candidates for the post of State DGPs and to recommend the amendment of the UPSC (Exemption from Consultation) Regulation 1958 regulations to enable this to happen.

New Delhi, 4 December 2009

Drafted by: Commonwealth Human Rights Initiative

