

Kerala Government Compliance with Supreme Court Directives on Police Reform

The Government of Kerala passed the Kerala Police (Amendment) Act on 10 September 2007 to ensure compliance with the Supreme Court directives. This Amendment Act is a complement to the Kerala Police Act of 1960.

Although Kerala claims to be compliant with the Supreme Court directives through its Kerala Police (Amendment) Act, 2007, a careful analysis shows that the Government has not complied in letter and spirit with the directives and the Act can therefore not 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

The Kerala Police Amendment Act sets up a State Security Commission (SSC) but while doing so fails to adhere to several of the objective criteria.

The composition of the SSC is not compliant with the directive. The Minister in charge of Law is included in the Act instead of a High Court judge,¹ making the SSC dominated by governmental officials. This dilutes the Court's intention of establishing a healthy relationship between the Government and the Police.

Further, the SSC only has three independent members.² The Supreme Court stipulated that the composition of the SSC must reflect both the Government's ultimate responsibility for law and order, plus the need for independent, non-government oversight of the State Police. In addition, the Amendment Act does not provide any provisions on how the independent members would be selected and the grounds for ineligibility.

Power

The powers of the SSC have been further diluted by including a clause that allows the government to issue any directions notwithstanding the directives of the SSC. This can be done during emergency

¹ Section 17A.2 (ii) and (v) Kerala Police (Amendment) Act, 2007

² Section 17A 2 (vii) Kerala (Amendment) Act, 2007



situations.³ It is crucial that there is greater adherence of the law during emergency situations by the Police. The composition of the SSC as prescribed by the Supreme Court ensures that there is an equal balance of responsible government and non government members. It is unreasonable to imagine that the decisions of the SSC would in any way interfere with an emergency situation. To have such a provision would only undermine the powers of the SSC

Further, the Supreme Court clearly stated that the recommendations of the Committee shall be binding on the *State Government*. The Kerala Police (Amendment) Act however makes these recommendations binding on the police department and is silent on the role of the state government. This clause thus remains ambiguous and leaving scope for abuse.

Conclusion

Although the Amendment Act creates an SSC, its composition and powers have been diluted to ensure continued governmental control over the police and to minimise independent oversight of the same. Therefore Kerala cannot be seen as totally 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

The selection process of the DGP in the Amendment Act is concerning from two perspectives. First, the Amendment Act ensures that the DGP is appointed by the State Government but omits the Court's stipulation that the DGP shall be empanelled by the UPSC or an independent selection committee. Removing the role of the UPSC in the selection procedure dilutes this intention.

Tenure

The Amendment Act provided the DGP with two years tenure; however it is subject to superannuation, promotion, reversion, suspension and leave.⁴ This is in violation of the Supreme Court directive. The directive ensures that the DGP shall have two year tenure regardless of superannuation, to instil good management practice of continuity in leadership and to strengthen the police chain of command.

Removal

The Supreme Court provided three exceptions to the premature removal of the DGP from his or her post. Two of these exceptions are included in the Amendment Act while nine other additional grounds

³ Section 17B.4 Kerala Police (Amendment) Act, 2007

⁴ Section 4A.1 Kerala Police (Amendment) Act, 2007

have been inserted of which most are subject to individual interpretation and can be misused. For example, the Court indicated that tenure could be terminated early in the event of “a conviction in a court of law for a criminal offence”. However the Kerala statute permits premature removal if the DGP is simply an accused in a criminal case.⁵ Equally disturbing are the sections that provide for premature removal of the DGP if he is “incompetent and inefficient”,⁶ if he “exhibits a palpable bias in discharging his duties”⁷, if he is found to “misuse or abuse powers vested in him”,⁸ if there is rampant crime or disorder in his area of jurisdiction,⁹ or, if public dissatisfaction is expressed¹⁰. Most of these grounds are broad and undefined and leave open the significant possibility of state manipulation and undue interference.

In addition the Government can unilaterally remove the DGP without consultation with the SSC. This is in clear violation of the Apex Court’s order which aimed to ensure that there would be no arbitrary termination of tenure based on unwarranted political interference.

Conclusion

The Amendment Act fails to guarantee an independent and objective selection procedure of the DGP or to provide the DGP with secure tenure. The DGP can be removed on vague grounds which allow for state manipulation and undue interference. Therefore Kerala cannot and must not be seen 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 Amendment Act ensures tenure for officers on operational duties except for the IGP Zone who does not have any secured tenure at all according to the Act.¹¹ Further, the tenure is subject to reversion, suspension and leave,¹² which breaches the intention of the Apex Court directive. It is crucial to ensure that police officers on operational duties are provided with fixed tenure to protect them from unwarranted extraneous interference.

Removal

⁵ Section 4A.2 b) Kerala Police (Amendment) Act, 2007

⁶ Section 4A.2 a) Kerala Police (Amendment) Act, 2007

⁷ Section 4A.2 d) Kerala Police (Amendment) Act, 2007

⁸ Section 4A.2 e) Kerala Police (Amendment) Act, 2007

⁹ Section 4A2 i) Kerala Police (Amendment) Act, 2007

¹⁰ Section 4A.2 j) Kerala Police (Amendment) Act, 2007

¹¹ Section 4A 1) Kerala Police (Amendment) Act, 2007

¹² Section 4A 1 Kerala Police (Amendment) Act, 2007

The premature removal grounds for police officers are the same as for the DGP. As stated above, the Amendment Act provides additional grounds which are subject to subjective interpretation and can be misused.¹³ The inconsistencies between this section and the Supreme Court's directive, discussed under "Directive 2" above, are equally applicable here.

Conclusion

The Amendment Act fails to adhere to the independent checks and balances provided by the Court to protect against the premature removal of police officers on operational duties and has instead made them vulnerable to political interference. Therefore Kerala cannot and must not be seen as in compliance with the Supreme Court directive.

4. Separation between Investigation and Law & Order

Directive 4

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

Separation of Law & Order and Crime Investigation

The Amendment Act merely states that the Law & Order wing *may* be separated from the Crime Investigation wing.¹⁴ This provision is entirely speculative, and leaves the decision about separating the two functions completely to the State Government's discretion

Conclusion

The Act merely states that separation between Law & Order and Crime Investigation may happen, leaving the separation completely at the State Government's discretion. Therefore Kerala cannot and must not be seen as 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.

¹³ Section 4A. 2) Kerala Police (Amendment) Act, 2007

¹⁴ Section 3A Kerala Police (Amendment) Act, 2007

Creation

The Police Establishment Board is set up under circular No 1/2010 dated 15 January 2010.¹⁵

Function

The Amendment Act and the circular restricts the Kerala's PEB's mandate to only addressing *complaints* relating to promotions, postings, transfers and other service related matters of police officers of and below the rank of Inspector of Police.¹⁶ This subverts the Supreme Court's directive in which the PEB is mandated to make the final decision regarding promotion, posting transfer and other service related matters. This is a vast departure from the Court's directive, which called on the PEB to be empowered to decide *all transfers, postings, promotions and other service related matters* of officers of and below the rank of Dy.SP and make recommendations on postings and transfers of officers above the rank of Deputy Superintendent of Police. Further, the Act and the circular omit the provision for the PEB to look into illegal and irregular orders.

Power

In addition, the decisions of the PEB are not binding. Instead, the Amendment Act ensures that the Government can set aside or modify any decision or order made by the PEB.¹⁷ This is in direct breach of the Apex Court's order, which states that the Government may only in exceptional cases interfere with decisions regarding Dy.SP and below. This is highly concerning since this discretionary clause ensures that the Government still has the power to interfere in decisions that should be purely departmental, thus undermining the chain of command.

Conclusion

Despite creating a PEB, the Kerala Government has failed to do so in accordance with the Supreme Court order. The Amendment Act dilutes the function of the PEB to such an extent that it can only be seen as window-dressing and the reluctance to give the PEB binding powers highlights the Government's reluctance to give away any of its power to control the police.

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

¹⁵ Circular 1/2010, No T 8/65643/2009, Police Headquarters, Thiruvandapuram, dated 15/01/2010

¹⁶ Section 17 D a), Kerala Police (Amendment) Act, 2007

¹⁷ Section 17D 3) Kerala Police (Amendment) Act 2007



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.

Composition

The Amendment Act sets up Police Complaints Authorities (PCA) at both State and District level but neither the State level nor the District level PCAs follow the suggested composition set out by the Court. Both the PCAs are headed by a retired judge but have members who are *servicing* IAS and IPS officers.¹⁸ This is highly disturbing since it dilutes the impartiality and independence intended by the Supreme Court. Equally troublesome is that the chairperson of the PCA is not empanelled by the Chief Justice. Instead, the chairperson is directly appointed by the Government, giving doubt to whether that person can act fully independent from the Government. In addition, the Amendment Act also fails to ensure that the members of the PCA shall be empanelled by the SHRC/Lok Ayukta/SPSC as envisaged by the Apex Court. This ensures that the members of the PCAs are also governmental appointees, completely subverting the Court's intention of creating an independent oversight mechanism.

Function

The Amendment Act provides that the district PCA shall look into complaints against Dy. SP and below but without defining the mandate of the PCA.¹⁹ If Kerala is going to be compliant with the directive it should clearly state in its mandate that the district PCA can, at a minimum, look into complaints of house grabbing, extortion and abuse of power, as well as have jurisdiction over complaints of *grave misconduct* against officers of Dy. SP and below.

Conclusion

The Amendment Act creates PCAs at both State and District level but fails to comply with the composition and selection procedure of both Chairpersons and members of the Authorities. Therefore, Kerala cannot and must not be seen as in fully 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 directives.

¹⁸ Sections 17E 2 ii) and iii) and 17E 4 ii) and iii) Kerala Police (Amendment) Act, 2007

¹⁹ Section 17E 3) Kerala Police (Amendment) Act, 2007



KERALA

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Commonwealth Human Rights Initiative

