

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

In response to the Supreme Court judgment on 22 September 2006 in *Prakash Singh and Others vs. Union of India and Others*, the Rajasthan Government enacted the Rajasthan Police Act, 2007 which came into force on 30th October 2007.

Despite the passage of the new legislation, careful analysis shows that Rajasthan has violated most of the Supreme Court directives both in letter and in spirit, justifying the characterisation of Rajasthan as non compliant.

### 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.

The Rajasthan Police Act, 2007 establishes a State Police Commission (SPC). However, this Commission complies with the Supreme Court's directive neither in letter nor in spirit in terms of its composition, mandate and powers.

#### **Composition**

The Rajasthan Police Act, 2007 is in violation of the Supreme Court's directive with regards to composition of the SPC. This is because section 21(2) of the Act, which addresses composition, does not follow any of the three models prescribed by the Apex Court. The Government has reserved for itself and the police an effective majority of five out of nine seats in the Commission. The provision for three independent members in the Act,<sup>1</sup> is mere window dressing as they would be appointed by a Committee where the government has two out of four seats. Thus, the likelihood of them acting as truly independent members is remote. Even if one were to do so, the state government would have the power to remove him under the arbitrary and vague pretext of "otherwise being unable to discharge his functions as a member."<sup>2</sup> Having independent members in the SPC is important because they can function impartially and thus steer the SPC towards ensuring that the state government does not exercise unwarranted influence or pressure on the state police as envisaged by the Supreme Court.

#### **Mandate**

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<sup>1</sup> Section 22 Rajasthan Police Act, 2007

<sup>2</sup> Section 25 (a) (iii) Rajasthan Police Act, 2007



The Act also undermines the Supreme Court's directive with regards to the mandate of the Commission. Commission has only been mandated to *advise* and *assist* the state government in laying down policy guidelines and evaluating the performance of the state police respectively. This advisory role is in marked contrast to the Supreme Court's directive, which vested the responsibility of laying down broad policy guidelines and evaluating the performance of police solely with the Commission.

## **Powers**

Further, there is no mention in the Act whether the SPC will have binding powers. This violates the Supreme Court directive which clearly states that the recommendations of the Commission shall be binding on the State Government.

## **Conclusion**

The SPC established by Rajasthan is in outright violation of the Supreme Court's directive. Its mandate has been limited and its powers have been watered down considerably from what was specified in the directive. Most importantly, a majority of the Commission's membership is drawn from Government and police personnel, turning it into an instrument of the Government rather than a mechanism designed to limit its unwarranted influence on the police.

## **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.

The Rajasthan Police Act, 2007 has addressed this directive in section 13. However, this section only brings Rajasthan into partial compliance with the Supreme Court's directive.

## **Selection Criteria**

The selection process articulated in section 13 of the Act does not comply with the selection procedure prescribed by the Supreme Court. Firstly, section 13(2) does not specify that the officers empanelled for selection shall be from amongst the three senior-most officers of the police department. Seniority is an important consideration as it is an indicator that the officer concerned is loyal to the police, has accumulated a wide range of experience and has performed consistently well over a long period of time.

The Act also provides no role for the Union Public Service Commission (UPSC) in the empanelment process and is silent on the criteria for empanelment. In place of the UPSC, the Act mentions that a 'Committee' will conduct a screening of officers considered suitable for promotion.<sup>3</sup> If this committee were to be constituted of independent members, this would be perfectly acceptable. Ominously, however, the Act does not mention who this committee would consist of. This lack of transparency over composition of the committee allows for the State Government to interfere and ensure that candidates it favours are selected over considerations of seniority and performance.

The vagaries and ambiguity of the selection process articulated in section 13(2) subverts the intention of the Supreme Court to bring about a merit based, transparent process for the appointment of the DGP.

### **Removal Criteria**

The Supreme Court is very clear in its order specifying the criteria for removal of the DGP. All of these criteria has been adopted in the Act at section 13(4). However, the Government has added a provision that is overly broad and not specified in the Supreme Court directive, namely, that the DGP can be removed for "an administrative exigency which shall be recorded in writing"<sup>4</sup>. This provision is vague and can easily become an excuse for the government to remove a DGP for political reasons.

Further, the Act allows for the Government to remove the DGP without consulting with the State Security Commission. Again, this violates the Supreme Court directive which impresses that. "The DGP may... be relieved of his responsibilities by the State Government *acting in consultation* with the State Security Commission".

### **Conclusion**

The Rajasthan Government has partially complied with this directive by providing the DGP a two-year tenure irrespective of his date of superannuation<sup>5</sup>. However, it fails to comply fully with the directive by failing to provide for a transparent, merit based process for the selection of the DGP and by adding provisions allowing for arbitrary removal of the DGP by the executive.

## **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>3</sup> Section 13 (2) Rajasthan Police Act, 2007

<sup>4</sup> Section 13 (4) (f) Rajasthan Police Act, 2007

<sup>5</sup> Section 13 (3) Rajasthan Police Act, 2007



The Rajasthan Police Act, 2007 addresses this directive under sections 14, 16, 17 & 19 and is partially compliant with the Supreme Court directive as a result.

## **Removal Criteria**

In its directive, the Supreme Court gives an exhaustive list of criteria for removal of officers. All of these criteria have been incorporated in sections 14, 16, 17 & 19 of the Act, which apply to officers in charge of a police range, district, circle and police station respectively. However, all these sections, by allowing for the removal of these officers for “an administrative exigency which shall be recorded in writing”, violate the Supreme Court directive for the same reasons given above with regards to the DGP.

This blanket provision is as vague as it is dangerous as it allows for the Government to make a subjective determination on what constitutes an “administrative exigency”.

## **Conclusion**

Rajasthan has partially complied with the Supreme Court directive by providing other officers with a minimum tenure of two years. However, the Act violates the directive as it includes a vague provision allowing for the Government to transfer or remove officers arbitrarily based on political considerations prior to the completion of their tenure.

## **4. Separation between Investigation and Law & Order**

<b>Directive 4</b>
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Separate the investigation and law and order functions of the police.
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## **Separation**

The Rajasthan Police Act, 2007 addresses this directive under section 42 but it is clear upon reading of this section that there is no political will to implement this directive. Section 42 is extremely brief and does not specify how the government intends to separate the two wings. The word *may*<sup>6</sup>, indicates that the intent to bring about an actual separation of Law and Order and Investigation police is weak. This is confirmed by an absence of any Government notifications designed to effect separation on the ground nearly a year after the Act coming into force. It is important that separation occurs as soon as possible so as to ensure that there is an investigation police solely dedicated to ensuring speedy investigation of cases.

## **Conclusion**

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<sup>6</sup> 6 Section 42 Rajasthan Police Act, 2007



Rajasthan has responded to this directive by drafting a vaguely worded section that shows weak intent to carry out an actual separation of police wings. This has not been followed up with any implementing resolutions, nor indeed, with any action on the ground. In view of the total uncertainty regarding if and when separation will be implemented, Rajasthan is in violation of the Supreme Court 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 Rajasthan Police Act's provisions<sup>7</sup> with respect to the Police Establishment Board (PEB) are only in partial compliance with the Supreme Court's directive.

### **Mandate**

The mandate of the PEB as specified in section 28 of the Act is extremely limited. This ensures that the Rajasthan Government is in violation of the Supreme Court directive on several counts discussed below.

The Supreme Court's directive calls for the PEB to make recommendations to the Government on postings and transfers of officers above the rank of Superintendent of Police, which will *normally be accepted* by the government. The intent with this criterion was that the Government should enjoy some autonomy regarding transfers and postings of SP and above but with the safeguard of objective checks and balances in place through the PEB's recommendations. This provision of check and balance is missing in the Act, which does not bestow any role for the PEB on transfer of officers holding these ranks.

Further, the PEB as envisaged by the Supreme Court was to have the mandate to *decide* all transfers, postings, promotions and other service related matters of officers of and below the rank of DySP. The Rajasthan Government has curtailed this mandate by limiting the PEB's power to granting recruitment of Constables<sup>8</sup> and to deciding promotions and transfers of officers up to the rank of Dy.SP. This limitation is significant because it gives the government the continued ability to decide the fate of a large number of officers in an arbitrary fashion.

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<sup>7</sup> Section 28 Rajasthan Police Act, 2007

<sup>8</sup> Section 28 2 (a) Rajasthan Police Act, 2007



## **Conclusion**

In sum, the PEB constituted by the Rajasthan government is a largely ineffectual. By altering the mandate of the Board, the Rajasthan government has turned the PEB into a toothless body that will not be able to shield the majority of police officers, particularly those from the higher ranks, from politically motivated transfers, postings and promotions. Most importantly, the Act waters many of the powers mandated to the PEB by the Supreme Court directive to the extent that the state government would retain most of its powers with regard to postings, transfers and promotions.

## **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.

The Rajasthan Police Act, 2007 grossly undermines the Supreme Court directive on setting up accountability authorities at the state and district levels. The state government's weak intent to establish the authorities on the ground is highlighted by the use of the words "*may, as soon as may be*" at section 62 of the Act. Further, both authorities are weakened from inception by virtue of their composition and lack of binding power.

### **Composition of State Police Complaints Authority**

Section 63 of the Act constitutes a State Police Accountability Committee (SPAC) but fails to adhere to any of the compositional models prescribed by the Supreme Court directive. The Member-Secretary of

the Committee is a serving officer of the rank of Additional Director General of Police. In addition, all the four independent members are to be appointed *directly* by the Government.<sup>9</sup>

It is impossible for the SPAC as composed to function as the robust, independent mechanism designed to bring about accountability as envisaged by the Supreme Court. As the Chairperson and the “persons of eminence” are to be appointed directly by the government, they would essentially be political appointees and be beholden to the government. Any facade of independence is lost with the presence of a serving police officer as Member Secretary. The mere presence of a serving police officer in the SPAC is bound to prejudice the work and compromise the independence of the authority.

In essence, the most critical intent of the directive, that the authority be *independent*, has been undermined by virtue of its composition.

### **Composition of District Police Complaints Authority**

The Rajasthan Government, has through the Act<sup>10</sup> provided for the establishment of District Accountability Committees (DACs) in each district of the State. Unfortunately, the arguments against the composition of the SPAC made above are equally applicable in the case of the DACs.

The Supreme Court directive clearly states that the DAC should be headed by a retired District Judge chosen by the government out of a panel of names proposed by the Chief Justice or a Judge of the High Court nominated by him. Further, the Court has called for the Committee to have its members selected by the State Government from a panel prepared by the State Human Rights Commission/ Lokayukta /State Public Service Commission.

Rajasthan has violated this directive by stating that all the four independent members will be nominated directly by the state government. Further, section 66(1(b)) states that a serving officer of the rank of Additional Superintendent of Police will be the Committee’s Member-Secretary.

For the same reasons above as with the SPAC, it is impossible to see DACs so composed function in an independent manner so as to enhance accountability within the police.

### **Powers**

#### **State Committee**

The Supreme Court directive clearly states that the recommendations of the Complaints Authority, both at the district and State levels, for any action, departmental or criminal, against a delinquent police officer shall be *binding* on the concerned authority. The Act only grants the SPAC the power to

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<sup>9</sup> Section 63 (1) (b) Rajasthan Police Act, 2007

<sup>10</sup> Section 62 Rajasthan Police Act, 2007



make recommendations to the State Government but does not oblige the State Government to take any action on such recommendations.<sup>11</sup> As such, the State Government is left free to completely disregard such recommendations.

## District Committee

As with the SPCA, the District Committees are limited in their power to making recommendations to the concerned disciplinary authority and monitoring departmental enquiries against police officers in the subordinate ranks.<sup>12</sup> Nowhere in the Act is there any language that puts a positive obligation on the State Government or the police to take action on recommendations made by the DACs. The Government is thus free to disregard it. This is in blatant violation of Supreme Court order, that clearly grants *binding* powers to recommendations made by the DPCA.

## Conclusion

Fundamental flaws in the composition of the authorities and the fact that recommendations made by both the SPAC and DACs have no binding power at all ensure that they will not be able to function as an effective independent check on police excesses. The Rajasthan Government has crippled these authorities to the extent that they are rendered completely unable to bring about police accountability as intended by the Supreme Court's 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, 10 July 2009

Commonwealth Human Rights Initiative

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<sup>11</sup> Section 64 (c) Rajasthan Police Act, 2007

<sup>12</sup> Section 67 Rajasthan Police Act, 2007

