

Sikkim Government Compliance with Supreme Court Directives on Police Reform

The Government of Sikkim has enacted the Sikkim Police Act on 4 August 2008 to ensure compliance with the Supreme Court directives.¹ A careful analysis however indicates 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 Apex 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 Sikkim Police Act of 2008 establishes a State Police Board (SPB) but it does not adhere to any of the models suggested by the Supreme Court.² It includes three additional official members; namely, the Secretary in charge of the Home Department, the Secretary in charge of the Financial Department, and the Secretary in charge of the Social Welfare and Empowerment Department.³ With this heavily politicized composition, the SPB lacks protection against government control and manipulation.

Powers

Decisions made by the SPB are not expressly binding on the government. This dilutes the entire purpose of having an independent police board acting to deter unwarranted political influence of the political executive over the police.

Conclusion

Because the composition of the State Police Board does not mirror any of the models suggested by the Court and that the Board's decisions are not binding, Sikkim is not in compliance with this directive.

¹ Sikkim Police Act, 2008

² Section 40, Sikkim Police Act, 2008

³ Section 40(1), Sikkim Police act, 2008



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 Supreme Court has clearly stated that candidates for the post of DGP shall be drawn 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 the final selection of DGP will be made by the State Government. Instead of involving the UPSC, however, 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.⁴ The whole purpose of involving the UPSC in the selection process of the DGP 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, Sikkim is in complete violation of the Apex Court’s directive.

Tenure

The Act at section 6(3) stipulates that the DGP shall have minimum two years tenure until superannuation.⁵ This 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 two years tenure for the DGP based on objective criteria. The aim is to ensure that the DGP enjoys a secure tenure free from unwarranted political or subjective interference. However, it is concerning that the exceptions provided in the Sikkim Police Act, 2008 have a much wider scope bringing with it some level of arbitrariness. The Act at section 6(3)(e), 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”.⁶ Public interest and administrative exigencies are broad terms and too vague a ground to ensure removal.

Conclusion

The role of the UPSC in selected has been omitted, and the DGP’s tenure is subject to superannuation. As a result, Sikkim is non compliant with this directive.

⁴ Section 6(1), Sikkim Police Act, 2008

⁵ Section 6(3), Sikkim Police Act, 2008

⁶ Section 6(3)(e), Sikkim Police Act, 2008



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 Police Act provides a minimum two year tenure for SHOs and SPs,⁷ but does not extend the minimum tenure requirement as far as has been directed by the Supreme Court. As such, the IG and DIG are not mentioned in the list. This subverts the Court's directive, which explicitly states that the IG, DIG, SP, and SHO are to have two years minimum tenure.

Premature Removal

Moreover, the way in which tenure is guaranteed is quite unconvincing. Section 11(d) allows senior officers to be removed for reversion to a lower post for administrative reasons,⁸ and section 11(f) also allows premature removal based on "*administrative exigencies in the larger public interest.*"⁹ These grounds for removals are vague, undefined, and could be open for abuse. As such, the Act cannot be said to be compliant with the spirit of the directive.

Conclusion

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

4. Separation between Investigation and Law & Order

Directive 4

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

As per section 97, the Sikkim Police Act separates the law and order wing from the investigative wing, depending on the level of crime, or size of area.¹⁰ Further, the statute creates a Special Crime Investigation Unit (CIU) to investigate economic and heinous crimes.¹¹

Conclusion

⁷ Section 11, Sikkim Police Act, 2008

⁸ Section 11(d), Sikkim Police act, 2008

⁹ Section 11(f), Sikkim Police Act, 2008

¹⁰ Section 97, Sikkim Police Act, 2008

¹¹ *Id.*



The Sikkim 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.

Function

In Section 52, the Sikkim Police Act sets up a State Police Establishment Committee (PEC).¹² However, its function has been diluted in several aspects. The Sikkim Police Act states that the PEC will *approve* transfers and postings – not *decide* as intended by the Supreme Court, making the PEC a mere rubberstamp Committee. Further, the Apex Court ordered that the PEC decide all *transfers, postings, promotions and other service related matters* of officers of and below the rank of DySP. However, the Sikkim Police Act only permits the PEC to approve *postings and transfers* of officers below the rank of DySP, leaving out that the PEC shall also decide on *promotions* of the DySP and below.¹³ Further, the PEC has only been empowered to look into *service related matters* of the DySP and above and not the officers below DySP as intended by the Supreme Court.¹⁴ In other words, this provision removes protection provided to the DySP and below provided for by the Court. The purpose behind the Court's directive is to ensure that the executive does not interfere with a decision that should be made purely by the police department.

In addition, the Supreme Court has mandated that the PEC to recommend *postings and transfers* of officers of SP and above. However, the Act, only states that the PEC shall make recommendations of *transfers* of SP and above, omitting the mandate to recommend their *postings*.¹⁵

Further, the Apex Court's directive states that the PEC shall function as a forum of appeal for officers of SP and above disposing their complaints regarding their *promotions, transfers, disciplinary proceedings or being subjected to illegal or irregular orders*. But the Sikkim Police Act only takes into consideration that the PEC shall function as a forum of appeal in regards to *transfers*, omitting the PEC to look into complaints about promotions, disciplinary proceedings or complaints about being subjected to illegal or irregular orders.¹⁶

¹² Section 52, Sikkim Police Act, 2008

¹³ Section 52(1)(i), Sikkim Police Act, 2008

¹⁴ Section 52(1)(v) Sikkim Police Act, 2008

¹⁵ Section 52(1)(iv), Sikkim Police Act, 2008

¹⁶ Section 52(1)(iii), Sikkim Police Act, 2008



Conclusion

The Sikkim government has created a PEC according to the Supreme Court. However, it has excluded the protection for the DySP, and does not function as a forum of appeal as outlined by the Apex Court. As a result, Sikkim is not in compliance 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.

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 132 of the Sikkim Police Act only sets up a Police Accountability Commission (PAC) at the state level.¹⁷ However the Act does not create a similar Commission at the district level. The directive is binding on all states and creation of these Authorities at both levels is not optional. Further, state PAC has only one chairperson and two members,¹⁸ contradicting the Supreme Court order which stated that the PAC shall be headed by a chairperson and three to five members.

Selection of Chairperson and Members of the PAC

As per the Apex Court's directive, the chairperson of the PAC shall be a retired High Court or Supreme Court judge, *empanelled* by the Chief Justice. However, according to the Sikkim Police (Amendment) Act, 2008, the Chief Justice of Sikkim will only be *consulted* on who to appoint as a chairperson,

¹⁷ Section 132, Sikkim Police Act, 2008

¹⁸ Section 133, Sikkim Police Act, 2008



clearly violating the Court's order.¹⁹ Further, the members of the PAC will be selected on the recommendation of a selection panel set up by the state government,²⁰ breaching the impartial empanelment procedure laid down in the directive where the members would be empanelled by the State Human Rights Commission, the Lokayukta, and the State Public Service Commission.

Function

Since the Sikkim government has decided to only create a state level PAC the function of the district level PAC to look into *extortion, land/house grabbing or any other incident involving serious abuse of authority* is excluded, thus falling short of the intended mandate, breaching the Supreme Court's directive.

Powers

Of great concern is that the state level PAC does not have binding powers. As per the Sikkim Police Act, it is optional for the PAC to communicate its findings to the DGP and the state government, giving a *recommendation* of further action.²¹ This contradicts the Supreme Court's directive which clearly states that a PAC's recommendations against a delinquent police officer shall be binding. As a result, the Sikkim state level PAC as it stands now is merely a recommendatory body, which dilutes its purpose as envisioned by the Supreme Court.

Conclusion

The absence of a district PAC is a clear deviation from the Apex Court's ruling, also concerning is that the mandated of the district level PAC has not been included in the state level PAC. The method of selection for the state PAC's chairperson and members does not guarantee it to be an independent and impartial body. Further, the statute has rendered the state PAC toothless and ineffective by making its recommendations non-binding. As a result, the Sikkim 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 Sikkim to report to the Monitoring Committee upon compliance within 1 month; and
3. To issue a notice of contempt against the Government of Sikkim 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:

¹⁹ Amendment 4, Sikkim Police (Amendment) Act, 2008

²⁰ *Id.*

²¹ Section 144(1), Sikkim Police Act, 2008



SIKKIM

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, 8 December 2009

Commonwealth Human Rights

Initiative

