

Tripura 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 Tripura Government enacted the Tripura Police Act, 2007, which came into force on 7th April, 2007.

Despite the passage of the new legislation, careful analysis shows that Tripura has violated most of the Supreme Court directives justifying the characterisation of Tripura 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 Tripura 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. Four out of the seven members are government officials, bureaucrats or police officers (Chief Minister, Chief Secretary, Home Secretary and DGP).¹ Further, the two "independent" members are to be appointed directly by the government. 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 judgment. As a result, the proposed SPB is likely to function as a mere façade for continued executive control over the police.

Powers

Further, there is no mention in the Act on the nature of powers the State Police Board will possess.. This violates the Supreme Court directive that is explicit in declaring that the recommendations of the SSC shall be binding on the state government.

Conclusion

The SPB established by Tripura stands in violation of the Supreme Court's directive. The nature of its powers is unknown. Most importantly, the fact that almost all the members have been either drawn from the government or the police or appointed directly by the government ensures that the State

¹ Section 21, Tripura Police Act, 2007

Police Board will function as an instrument of the government rather than as an institution 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.

Selection

The Tripura Police Act, 2007 does not provide for an independent body to conduct the empanelment of candidates for the post of DGP as expressly ordered by the Apex Court. Instead, it allows the state government the continued discretion to appoint the DGP.² This subverts the spirit of the Supreme Court's directive, which intended that the appointment process would be transparent, merit based and not driven by political considerations.

Tenure

The Tripura Police Act grants a two year tenure for the DGP, but makes this tenure subject to superannuation.³ This is in violation of the Supreme Court judgement, which is unambiguous in ordering that the DGP be provided with a minimum two-year tenure *irrespective of the date of superannuation*.

Conclusion

As per the provisions of the Act, candidates for the post of DGP are not empanelled by an independent selection panel. Further, as per the Act, DGPs could be appointed close to their date of superannuation and thus be denied the security and stability of a full two-year tenure. This leaves Tripura non compliant with 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

² Section 6(3), Tripura Police Act, 2007

³ Section 6(3), Tripura Police Act, 2007

The Tripura Police Act grants a two-year tenure to the SHO, Officer in Charge of a sub-division and SP but has failed to provide any fixed tenure for the DIG and IGP.⁴ 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. People in leadership roles require stability of tenure and a fixed period 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.

Conclusion

The Tripura Police Act has assured a two-year tenure to the SHO, Officer in Charge of a sub-division and SP but has neglected to provide any fixed tenure for other officers on operational duties. Therefore, Tripura is only partially compliant with this directive.

4. Separation between Investigation and Law & Order

Directive 4

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

Separation

As per Section 50 of the Act, the state government shall, "in the police stations of such crime-prone areas *as may be considered necessary*, by order, separate the investigation of crimes from law and order and other police functions." The use of the word *may* indicates weak intent to actually carry out separation. These Crime Investigation Units would be headed by an officer not below the rank of Sub-Inspector and officers posted to these units would have specialized training in investigative techniques and forensics. The uncertainty as to if, where and when separation will be effected, however, leaves Tripura only in partial compliance 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.

Mandate

⁴ Section 11, Tripura Police Act, 2007



Section 27 of the Act establishes a Police Establishment Committee with a limited mandate. In almost every aspect, what is specified in the Apex Court's directive has been diluted in the Act. Although the Court ordered that the PEC be a forum of appeal for disposing representations regarding transfers/postings/promotions and irregular and illegal orders, section 27(2) limits the Tripura PEC to take complaints from police officers regarding only illegal orders.

Moreover, although the Apex Court ordered that the PEC decide all transfers, postings and promotions of officers of and below the rank of DySP, the Act leaves this mandate out of the purview of the PEC. The Act, in clear violation of the directive, limits the PEC to only make recommendations to the government regarding postings of officers of the rank of DySP and above. Indeed, the Act is silent on the issue of promotions and transfers of all officers, indicating that this too will remain outside the purview of the PEC.

Powers

The Supreme Court ordered the PEC to *decide* all transfers, postings and promotions below the rank of SP. Further, the Apex Court had called for the PEC to be authorized to make appropriate recommendations to the state government regarding the posting and transfer of officers of and above the rank of SP and stated that the government shall *normally accept* these. As stated earlier, the Tripura PEC is not provided with the mandate to look into promotions and transfers. Even in the case of postings, which fall within the Tripura PEC's mandate, the Act weakens the PEC's powers by providing that the state government may "*suo-motu make such transfers and postings as deemed appropriate to meet any contingency.*"⁵ This overbroad provision is liable to rampant misuse as the PEC can be bypassed altogether whenever convenient. Allowing the state government to effect transfers at its discretion renders the PEC a weak and toothless institution. This provision goes against the spirit of the Supreme Court's judgement.

Conclusion

The Tripura Police Act subverts the Supreme Court's directive by establishing a PEC that has a very limited mandate and powers. The PEC that the Act establishes will by and large not be able to shield police officers from arbitrary transfers, postings and promotions. Thus, Tripura is non compliant with directive 5 in letter and spirit.

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.

⁵ Section 27(3), Tripura Police Act, 2007



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 of District PAC's

The Apex Court expressly ordered that complaints authorities be established at both the state and the district level. The Tripura Police Act, 2007 is completely silent on the creation of complaints authorities at the district level. It could be argued that the state is too small to create such authorities at both the state and district level. Nonetheless it still remains in violation of the Supreme Court's orders.

Composition of state PAC

Whilst the composition of the state level PAC appears independent on paper, the reality is that all the members and chairperson of the commission will be appointed directly by the government without exception.⁶ This violates the Supreme Court directive, which clearly calls for the retired judge who chairs the commission to be appointed by the government from a panel of names proposed by the Chief Justice, and for the empanelment of the other members to be done by the State Human Rights commission/ State Public Service Commission or the Lok Ayukta. Having a membership composed entirely of government appointees raises serious doubts over whether the PAC will be able to function as a robust independent oversight body as envisaged by the Supreme Court.

Powers of state PAC

The Supreme Court directive clearly states that the recommendations of the complaints authorities, for any action, departmental or criminal, against a delinquent police officer shall be *binding* on the concerned authority. The Act only grants the state PAC the power to make recommendations to the state government but does not oblige the state government to take any action on the same.⁷ Such a provision would mean that the state government will not be statutorily obliged to give due regard to the PAC's recommendations.

Conclusion

⁶ Section 60, Tripura Police Act, 2007

⁷ Section 70, Tripura Police Act, 2007



TRIPURA

Though Tripura has created a state level PAC, the fact that all its members are appointed directly by the government raises doubt whether it will be able to function as a truly independent oversight mechanism. This, and the fact that the Act does not stipulate the set up of district level PACs ensures that Tripura is only in partial compliance with this directive.

7. Recommendations

In light of the above analysis, appropriate action should be taken against the Tripura state government to ensure compliance with the letter and spirit of the Supreme Court directive.

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Commonwealth Human Rights
Initiative

