

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

In January 2008 the Government of Uttarakhand passed a new Police Act [Uttarakhand Police Act, 2007] as directed in the Prakash Singh case.

The Supreme Court passed an order in 16 May 2008 to set up a Monitoring Committee to look into compliance of the States, including analysing the new police legislations that are being passed in the states to see “*whether these are in compliance with the letter and spirit of this Hon’ble Court’s directions*”<sup>1</sup>.

Although Uttarakhand has enacted new legislation and addressed the six Supreme Court directives a careful analysis shows that the Government has not complied with the directives in letter and spirit and the state cannot be seen as fully compliant with the judgement.

### 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.

#### Creation of the State Police Board

The Uttarakhand Police Act states that a State Police Board (SPB) shall be created *as soon as may be*.<sup>2</sup> This is in direct diversion from the Apex Court’s directive of creating a State Police Board without delay. The wording of the Act does not cast a statutory obligation upon the state government to set up the Commission and fixes no time limit within which the state government would comply.

#### Composition

The composition of the SPB does not conform to any of the models recommended by the Supreme Court, and lacks significant protections against government control over the Board. The present composition comprises of the Home Minister as Chairman, the leader of the opposition, Chief Secretary, Principal Secretary, Director General of Police and two non-political persons as members. Additionally a police officer not below the rank of Add.DGP will be the secretary of the Board.

As seen, the Principal Secretary/Secretary Home and the additional police officer have been included in direct contradiction with the suggested models in the directive. Further, the model excludes the provision of a retired judge and only two independent members are included (instead of the three independent members as stipulated by the Riberio Committee or five independent members as

<sup>1</sup> Supreme Court of India, writ petition civil No. 310/1996 Order dated 16 May 2008

<sup>2</sup> Section 29 Uttarakhand Police Act, 2007



constituted by the Sorabjee Committee). The balance of government representation and independent members on the Board as envisioned by the Apex Court is thus disrupted leaving the body to function as an instrument of the government rather than as an institution designed to limit its unwarranted influence on the police.

A deeper analysis of the Act shows that the selection panel set up to recommend the independent members of the SPB comprises of members of the executive<sup>3</sup> (exception for the Leader of Opposition). These 'independent' members are thus in reality nothing but political appointees. This is reinforced by the fact that these members are only appointed for a two year period, ensuring that the ruling party will be able to appoint members favourable to it.<sup>4</sup> In addition, the state government can remove the independent members on the mere *recommendation* of the selection panel. This eliminates all checks and balances for the neutrality of these members since the majority of the selection panel is part of the executive (as seen above). By preventing true independence of these members, the SPB will be nothing but a tool for the government undermining the sole purpose of the Board.

## **Function & power**

The function of the State Police Board has been substantially weakened in the Act by diluting the language in section 35. This section states that the Board shall "*suggest*" [policy guidelines] while the Supreme Court order states that the Board shall "*laying down*" [policy guidelines]. This change of words alter the mandatory function of the SPB and makes it a mere recommendatory Body.

In addition, the Act is silent on the nature of powers the SPB will hold. This violates the Court's directive that is explicit in declaring that the recommendations of the SSC shall be binding on the state government.

## **Conclusion**

The Uttarakhand Police Act does establish a State Police Board but fails to adhere to the composition as suggested by the Court. Its mandate has been limited and its recommendations are not binding. Most importantly, the fact that almost all the members are political appointees ensures that the SPB will function as an instrument of the government rather than as a mechanism designed to limit its unwarranted influence on the police. Therefore Uttarakhand must not and cannot be seen as compliant with this directive.

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<sup>3</sup> Chief Minister of the State, Speaker of the State Legislative Assembly, Home Minister of the State and leader of opposition (section 31 Uttarakhand Police Act, 2007)

<sup>4</sup> Sections 31 and 32 Uttarakhand Police Act, 2007



## 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.

### **Tenure**

The Uttarakhand Police Act ensures that the DGP has a fixed 2-year tenure.<sup>5</sup> However the tenure is subject to superannuation. This is in direct violation of the Supreme Court's order that clearly states that the DGP shall have two years tenure regardless of superannuation.

### **Selection**

The DGP is appointed by the government after being empanelled by a committee.<sup>6</sup> However, the Act furnishes no details of who the members of this committee are. The section merely states that the committee will be “constituted by the Government.”<sup>7</sup> This is in direct violation of the Apex Court's order which establishes that the DGP shall be selected by the Union Public Service Commission (UPSC). The intention with involving the UPSC was to ensure that a Committee independent from the state government would select the DGP to minimise the unwarranted political interference.

To further ensure that the DGP is appointed through an independent and transparent process the Court established three selection criteria of which none is found in the Act – leaving the whole selection procedure of the DGP arbitrary. This is highly concerning since the DGP is a political appointee enjoying no independence and will be directly under the influence of the government.

### **Removal**

To ensure the independence of the DGP, the Supreme Court laid down four grounds for premature removal of the DGP. The Uttarakhand Police Act has included three of the four grounds but with some modifications.<sup>8</sup> The Supreme Court directive stated that the DGP could be prematurely removed if there were actions taken against him under the All India Service (Discipline and Appeal) Rules, however, this has not been included in the Uttarakhand Police Act. Further, the directive states that the DGP could be removed if he was “incapacitated” but the Act instead states that he can be removed if he is “incapable”. Whilst it can be argued that being incapable to serve as a DGP is a strong ground for removal, the ground could also be misused to shunt out a DGP who is not subservient to the government of the day.

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<sup>5</sup> Section 20.3 Uttarakhand Police Act, 2007

<sup>6</sup> Section 20.1 Uttarakhand Police Act, 2007

<sup>7</sup> Section 20.2 Uttarakhand Police Act, 2007

<sup>8</sup> Section 20.4 Uttarakhand Police Act, 2007



In addition the Uttarakhand government can remove the DGP unilaterally without the consent of the State Police Board which is in direct violation of the directive. The Apex Court specifically established that the decision to remove the DGP should be made by the government and the SPB jointly to ensure a fair and transparent process.

## **Conclusion**

It is concerning that the Uttarakhand Police Act has failed to ensure that the DGP is selected through a transparent and objective process. It is further concerning that the removal process has been weakened by leaving out one of the provisions for premature removal. In addition, it is concerning that the Act is also broadening the removal criteria opening it for subjective interpretations. Therefore Uttarakhand cannot be seen compliant with the 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**

In direct violation of the Supreme Court directive, the Uttarakhand Police Act only provides one year tenure for the Station House Officer. No security of tenure has been provided to the zone IGP and other officers on operational duty.<sup>9</sup>

## **Removal**

As seen in the case of the DGP above, the Act has left out the provision of premature removal of a police officer on operational duty due to disciplinary proceedings against him.<sup>10</sup> In addition, it has also used the word “*incapable*” instead of “*incapacitated*” widening the scope for removal leaving it open for subjective interpretations. Further, the Act states that filling up a vacancy would be a ground for premature removal in stark contrast with the intention of the directive. Today many police officers are transferred on arbitrary grounds under the pretext of filling up vacancies, violating the sole intention with the directive.

## **Conclusion**

The Uttarakhand Police Act does not provide two year tenure for the Station House Officer which is in direct violation of the Supreme Court directive. The Act has also added a removal ground stating that a police officer can be removed to fill up a vacancy. Further, the Act has omitted the ground for removal due to disciplinary proceeding against a police officer on operational duties. In addition, it has widened

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<sup>9</sup> Section 28 Uttarakhand Police Act, 2007

<sup>10</sup> Section 28.1 Uttarakhand Police Act, 2007



the scope of premature removal. Therefore the Uttarakhand government cannot be seen compliant with the directive.

## 4. Separation between Investigation and Law & Order

### Directive 4

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

### Separation

The Uttarakhand Police Act does not separate law and order from the investigation functions of the police. It merely states that the state government “*may*” create a crime investigation department respectively a special crime investigation unit.<sup>11</sup> The word *may* reveals weak intent and the Act does not specify if and when the separation will take place, leaving the decision about compliance with the Apex Court’s directive entirely up to the state governments discretion

Further, in a letter sent by the Principal Secretary Home of Uttarakhand the state government states that this directive does not apply to the state since there are no towns/urban areas with a population of 10 lakh or more. This is a misinterpretation of the directive which clearly states that the separation between law and order and investigation shall *start* in urban areas with 10 lakh or more and then *gradually extend to smaller areas*.

### Conclusion

Uttarakhand government has not complied with the fourth directive. The government has stated that the directive does not apply to the State because it does not have any towns/urban areas with more than 10 lakh population. This can only be seen as reluctance to implement the directive and therefore the Uttarakhand government must not be seen compliant with the 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

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<sup>11</sup> Sections 11 and 50.1 Uttarakhand Police Act, 2007

The Uttarakhand Police Act sets up a Police Establishment Committee (PEC) but fails to adhere to its intended functions.<sup>12</sup> The directive clearly states that the PEC shall decide on transfers, postings, promotions and other service related matter for DySP and below while the Uttarakhand Police Act only states that the PEC shall transfer subordinate police officers.<sup>13</sup> Further, the Act is also silent on the feature that the government is expected to give due weight to the recommendations of the PEC concerning officers of and above the level of SP and normally accept them.

The function and power of the PEC is further weakened by the discretionary clause stating that the government can at any time alter the decisions of the PEC.<sup>14</sup> This wide and undefined power entirely subverts the Supreme Court's intention of countering the prevailing practice of subjective appointments, transfers and promotions through the creation of an Establishment Committee, which is meant to be immunised from inappropriate political interference.

## **Conclusion**

The Uttarakhand Police Act creates a PEC but with very limited functions. The PEC cannot look into postings, promotions and other service related matters of police officers of subordinate ranks nor can it review the functioning of the police service as stipulated by the Supreme Court's directive. Therefore Uttarakhand government cannot and must not be seen compliant 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.

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<sup>12</sup> Section 38 Uttarakhand Police Act, 2007

<sup>13</sup> Section 38.2 (b) and (c), Uttarakhand Police Act, 2007

<sup>14</sup> Section 38.3 Uttarakhand Police Act, 2007



## **Composition**

The Uttarakhand Police Act sets up a Police Complaint Authority (PCA) on state level but not at the district level.<sup>15</sup> The Act states that the PCA shall consist of five members directly appointed by the government leaving out the provision set by the Apex Court that the members should be empanelled by the State Human Rights Commission (SHRC), Lok Ayukta or State Public Service Commission (SPSC). The Act does not specify the exact composition of the Authority and fails to mention the criteria for Chairpersonship. All that the Act states is that a person having good knowledge of the law should be a member of the Authority failing to adhere to the Apex Court's directive which unequivocally laid down that the Chairperson of the Authority should be a retired Judge of the High Court or the Supreme Court.<sup>16</sup>

## **Function**

The function of the state level PCA is adhered to but since there is no district level PCA the latter's mandate to investigate complaints of land/house grabbing or any other incident involving serious abuse of authority falls outside of state level PCA's ambit. This is highly concerning and to address this issue the state level PCA should take cognisance of these complaints as well.

In direct violation of the Supreme Court directive the state level PCA only has recommendatory powers according to the Act and not binding as anticipated by the Apex Court.<sup>17</sup>

## **Conclusion**

The Uttarakhand Police Act sets up a state level PCA but not at district level. The composition of the state level PCA does not adhere to the directive by disregarding the fact that the Chairperson should be a retired Judge. In addition, the PCA does only have recommendatory powers leaving the PCA to be a toothless instrument. In the light of this Uttarakhand Government cannot and must not be seen as compliant with the 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, 9 December 2009  
Commonwealth Human Rights Initiative

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<sup>15</sup> Section 64 Uttarakhand Police Act, 2007

<sup>16</sup> Section 65 Uttarakhand Police Act, 2007

<sup>17</sup> Section 72.3 Uttarakhand Police Act, 2007

