

Implementation of Supreme Court Directives on Police Reforms (2006)

TAMIL NADU

As of July 2020

Tamil Nadu has consistently failed to take meaningful steps to implement the directives on police reforms issued by the Supreme Court in *Prakash Singh & Ors versus Union of India & Ors*, 2006. The directives represent a holistic scheme of reforms aimed to prevent illegitimate political influence over policing, improve organizational efficiency and enhance external oversight. Following the Court's judgment, several states passed new Police Acts to give statutory basis to the adoption of the Court's directives.¹

Supreme Court directives applicable to states on police reforms

Directive 1	Establish a State Security Commission
Directive 2	Selection and tenure of Director General of Police
Directive 3	Tenure of other officers in operational positions
Directive 4	Separation of investigation from law and order
Directive 5	Police Establishment Board
Directive 6	Police Complaints Authorities

Tamil Nadu has resisted wholesale reform of the police. At first, the state raised objections to several of the Court's directives, which the Court dismissed in full. Between 2007 and 2010, the state passed government orders as the route to implementation; none of which complied with the Court's standards. In 2008, the state attempted to bring in a new Police Act - a bill was introduced in the Assembly in 2008 and referred to a Select Committee in 2009 - but these efforts went to naught with the subsequent change of the government. It was only in 2013 that the state finally enacted the Tamil Nadu Police (Reforms) Act, 2013, (hereafter the 2013 Act) where too, the state enacted a piecemeal approach of legislating only on the Court's directives but refrained from putting in place a holistic police law. As significant as they are, comprehensive police reform has to go beyond the Court's directives. Worryingly, this Act was first promulgated as an Ordinance, a provision for the executive to legislate on urgent issues under emergent circumstances, despite it being seven years post the Supreme Court judgment.

The 2013 Act does not comply with the Court's directives and is replete with dilutions and omissions. In fact, taken all together, the 2013 Act's provisions serve to strengthen unchecked political control over the police.

This note summarises the components of each directive as given by the Supreme Court, followed by a brief analysis of the level of compliance with each in the 2013 Act.

¹ For instance, 10 states passed new Police Acts in 2007: Assam, Bihar, Chhattisgarh, Haryana, Rajasthan, Sikkim, Himachal Pradesh, Punjab, Tripura and Uttarakhand.

DIRECTIVE 1: STATE SECURITY COMMISSION

What the Directive says: The purpose of a State Security Commission (SSC) is to “ensure that the State Government does not exercise unwarranted influence or pressure on the state police”. It is designed to be a buffer between the political executive and police through its policy-making role and wide membership. In short, it is to ensure that the political executive has ultimate responsibility for providing the public with efficient, unbiased and accountable policing while retaining its legitimate authority over the police. The composition, functions and powers of the SSC, as laid down by the Court, is as follows:

Composition	To decide the SSC’s composition, the Court provided three models to choose from, as put forward by: 1) the NHRC; 2) the Ribeiro Committee; and 3) the Sorabjee Committee. Generally, the models include:
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- a. Chief Minister or the Home Minister as the Chairperson
- b. DGP as ex-officio secretary
- c. Leader of the Opposition
- d. Chief Secretary
- e. A retired judge nominated by the Chief Justice of the High Court
- f. **3-5 non-political independent members**

Functions	<ol style="list-style-type: none">1. Draft broad policy guidelines2. Evaluating the performance of the police3. Preparing an annual report to be placed before the legislature
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The Model Police Act 2006, which calls SSCs the State Police Board, gives one more function to these bodies - shortlisting police officers for selection as DGP against prescribed criteria (Section 48).

Powers	The recommendations of the SSC are <u>binding</u> on governments
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Tamil Nadu Police (Reforms) Act, 2013: Sections 5 and 6 constitute the State Security Commission. These provisions are at odds with the Court’s directive as there are significant dilutions in the design of the SSC:

- √ It is dominated by members of the executive with the inclusion of the Home Minister, Chief Secretary, Secretary Home and the Director General of the Police;
- √ It includes the Leader of the Opposition
- √ It fails to include a retired judge, as required by the Court;
- √ It fails to include non-political members selected through an independent process ; the “independent” members included are all serving Chairpersons of state commissions;
- √ The functions of the SSC conform to the court’s requirement,
- √ The SSC is not vested with binding powers in violation of the Court categorically stating so.

As a policy oversight body, the effectiveness of the SSC depends on its ability to review policing concerns and priorities from a balanced perspective, drawing from varied perspectives, knowledge, skill sets and experiences of its members. Without independent members, the body will fail to inspire public confidence and trust and pave way for the much-needed external oversight over policing.

Assessment: PARTIALLY COMPLIANT

DIRECTIVE 2: Selection and Tenure of Director General of Police

What the Directive says: The DGP must be selected from amongst the three senior-most officers empaneled by the Union Public Service Commission (UPSC) for the post. The selection will be made on the basis of the candidates': (i) length of service, (ii) service record, and (iii) range of experience.

The DGP must have a minimum tenure of two years irrespective of the date of superannuation. The DGP may, however, be relieved of his responsibilities by the State Government acting in consultation with the State Security Commission consequent upon: (i) any action taken against him under the All India Services (Discipline and Appeal) Rules; or (ii) following his conviction in a court of law in a criminal offence or in a case of corruption; or (iii) if he is otherwise incapacitated from discharging his duties.

Tamil Nadu Police (Reforms) Act, 2013: Section 3 provides for the selection and appointment of the Director General of Police. The Act conforms broadly with the Court's directive. The DGP is to be selected from among five senior-most police officers empanelled by the Union Public Service Commission, having regard to length of service, very good record and range of experience for heading the police force. Section 3(2) specifies two years as the minimum tenure of the DGP, irrespective of superannuation.

The grounds of removal under Section 3(3), however, go beyond the conditions specified by the Court. It allows the DGP to be removed "*on other administrative grounds to be recorded in writing*", a sweeping provision that effectively undercuts the minimum tenure guarantee and leaves ample room for state governments to carry out arbitrary removals.

Assessment: PARTIALLY COMPLIANT

DIRECTIVE 3: Minimum Tenure of Other Officers

What the Directive says: The directive provides minimum tenure of two years for the Inspector General of Police (in charge of a Zone), the Deputy Inspector General of Police (in charge of a Range), the Superintendent of Police (in charge of a District) and the Station House Officer (in charge of a Police Station). This is to ensure security of tenure for police officers in key operational positions in the field. Security of tenure should safeguard against undue political interference, and also give the time necessary to properly understand the needs of their jurisdictions and do justice to their jobs. The Court stipulates that premature removal before the expiry of tenure of any personnel can only be done on the basis of specific grounds, that include disciplinary proceedings, or conviction in a criminal offence or in a case of corruption, or if the incumbent is otherwise incapacitated from discharging their duties.

Tamil Nadu Police (Reforms) Act, 2013: Section 4 of the Act provides for the term of office for other officers. It is at variance with the Court's directive in the following ways:

- a. The section refers to only select operational positions, namely officer in charge of a police station, police district and/or commissionerate. It leaves out other important positions namely officers in charge of a zone and a range, as laid down by the Court.
- b. While Section 4 provides for a minimum tenure of two years for the officers mentioned above, this is made subject to superannuation and not instead of. The imprecise drafting connotes that , the officer will serve in the position till his/her retirement, no matter the duration of the appointment.
- c. The grounds for removal here too go beyond what the Court laid down to allow the removal of officers "*on any other administrative grounds to be recorded in writing*". This, in effect, negates the guarantee of minimum tenure, irrespective of retirement age.

Assessment: NON-COMPLIANT

DIRECTIVE 4: SEPARATION OF INVESTIGATION FROM LAW AND ORDER

What the Directive says: Both investigation and law and order are vital and specific police functions. To encourage specialization and upgrade overall performance, the Court ordered a gradual separation of investigative and law and order wings, starting with towns and urban areas with a population of one million or more. It stated that this will streamline policing, ensure speedier and more expert investigation, and improve rapport with the people. The Court did not specify how this separation is to take place on the ground, but clearly indicates that there must be full coordination between the two wings.

Tamil Nadu Police (Reforms) Act, 2013: Section 9 of the Act provides for separation of investigation from the law and order functions:

- a. Every police station, except those designated as crime police stations, are to have a separate Law and Order wing and an Investigation wing, both under the control of the Station House Officer;
- b. Police officers posted in the Investigation wing are not to be diverted for any law and order/bandobast work, except with the prior approval of the zonal Inspector General of Police or Commissioner of Police;
- c. Investigation wing is to be provided with adequate staff, to be determined by the Police Establishment Board;
- d. Every police station is to have a Missing Person Liaison Officer;
- e. The Investigation wing is to designate one officer as Juvenile or Child Welfare Officer, as required under the Juvenile Justice (Care and Protection of Children) Act, 2000.

Assessment: COMPLIANT ON PAPER; No information of how it is operating on the ground.

DIRECTIVE 5: POLICE ESTABLISHMENT BOARD

What the Directive says: The Court directed the setting up of a Police Establishment Board (PEB) within each police department, made up of the DGP and four senior officers. The PEB's functions are to:

- a. Decide all transfers, postings, promotions and other service related matters for police officers of and below the rank of Deputy Superintendent of Police. State governments can interfere with the Board's decisions only in "exceptional cases" after recording reasons;
- b. make recommendations to the state government on postings and transfers of officers above the rank of Deputy Superintendent of Police. The state government is expected to give due weight to these recommendations and normally accept them;
- c. act as a forum of appeal for officers of the rank of Superintendent of Police and above for any grievances regarding promotion/transfer decisions, disciplinary proceedings, or illegal orders; and
- d. generally review the functioning of the police in the state.

In effect, the Board is intended to bring these crucial service-related matters largely under police control. Notably, the government's role lies in appointing and managing senior police leadership. Service related matters of state cadre ranks should be overseen internally within the department, as already laid down in Police Manuals and service rules. Experience in India shows that this demarcation is absolutely required in practice to decrease corruption and undue patronage given the prevailing illegitimate political interference in decisions regarding police appointments, transfers and promotions.

Tamil Nadu Police (Reforms) Act, 2013: Section 8 splits up the PEB function among several police committees at different levels.

- a. It constitutes a Police Establishment Board headed by the Director General of Police and four other senior police officers of the rank of Additional Director General of Police.
- b. The PEB's function is limited to recommending promotion, transfer and posting of officers *up to* the rank of Inspector General of Police only. For officers above the rank of IGP, the Director General alone is to send recommendations to the government. This is at odds with the Court's directive where the PEB is to recommend for all officers above DySP.
- c. It has no authority to decide transfer, postings and promotions of officers below the rank of Deputy Superintendent of Police, as required by the Court. The Act proposes separate State Police Establishment Committees at zonal, range, city and district levels for such decisions.
- d. Though the PEB has been given the function of serving as a forum to deal with representations from the rank of SP and above, the Act falls short of specifying types of grievances for which appeals may be preferred.

Assessment: PARTIALLY COMPLIANT

DIRECTIVE 6: POLICE COMPLAINTS AUTHORITY

What the Directive says: The Court has directed the creation of a new mechanism - a Police Complaints Authority (PCA) to be established at both state and the district levels. Their mandate is to look into complaints against police officers from the public in cases of serious misconduct and select types of misconduct.

State-level Police Complaints Authority:

- √ To be chaired by a retired High Court or Supreme Court Judge who shall be chosen out of a panel of names proposed by the Chief Justice of the state.
- √ Mandate: To inquire into cases of serious misconduct including incidents involving (i) death, (ii) grievous hurt, or (iii) rape in police custody by police officers of and above the rank of Superintendent of Police.

District-level Complaints Authority:

- √ To be headed by a retired District Judge who shall be chosen out of a panel of names proposed by the Chief Justice or Judge of the High Court nominated by him/her.
- √ Mandate: To inquire into cases of serious misconduct including incidents involving (i) death, (ii) grievous hurt, or (iii) rape in police custody; and into allegations of extortion, land/house grabbing or any incident involving serious abuse of authority by police officers of Deputy Superintendent of Police and below.

Common features:

- √ May be assisted by 3-5 members to be chosen by the state government from a panel prepared by the State Human Rights Commission/ Lok Ayukta/ State Public Service Commission. Members may include retired civil servants, police officers or officers from any other department, or from civil society.
- √ May use services of retired investigators from intelligence, CID and Vigilance.
- √ On completion of its inquiry, the PCA can recommend 1) registration of an FIR against the implicated police officer(s), and/or 2) initiation of disciplinary proceedings against the implicated police officer(s).
- √ PCA recommendations are to be binding on the police department and state government.

Tamil Nadu Police (Reforms) Act, 2013: Sections 10 and 14 sets up the state and district Police Complaints Authorities under the Act. These provisions completely violate the standards laid down by the Court:

- √ It sets up complaint authorities made up of serving members of the executive, including serving police officers both at the state and district levels. The SPCA is headed by the Secretary in charge of the Home Department and includes the Director General of Police and Additional Director General of Police (Law and Order) as the members; while the District Police Complaints Authority is headed by the District Magistrate and includes the Superintendent of Police and the Additional Superintendent of Police as its members. **This make-up not only violates the Court’s directive, it defeats the very purpose of creating an independent complaints body at the local level. This design also serves to actively discourage victims of police abuse from seeking accountability, and on the other hand, provides an assurance to police of protection against any disciplinary action in the case of misconduct.**

The composition of the PCAs has been challenged at the Madras High Court through a public interest litigation (WP/33510/2019) filed by Advocate A.P. Suryaprakasam on 19 November 2019.² The petition seeks a direction for the constitution of the authorities in accordance with the Supreme Court directions laid down in *Prakash Singh*, 2006. Taking cognizance of the petition, the High Court in a hearing in December 2019 asked the state government to respond by 20 January 2020. The case continues to be heard. 4 June 2020 has been listed as the latest hearing date, though no further update is available.

- √ The skewed composition aside, the Act imposes other barriers for victims of abuse seeking accountability. A complaint can be submitted only in the form of a sworn affidavit duly attested by a notarized officer. The PCAs have the discretion to accept complaints “only on *prima facie* satisfaction about the veracity of the complaint”. These are unnecessary steps that place unreasonable burdens on the victim to support their complaint and will discourage reporting of police misconduct.

Assessment: NON-COMPLIANT

² “Police Complaints Authority constituted in Tamil Nadu,” *The Hindu*, 4 December 2019: <https://www.thehindu.com/news/cities/chennai/police-complaints-authority-constituted-in-tn/article30153790.ece>.

**Summary of compliance with key provisions of the Supreme Court Directives under the
Tamil Nadu Police (Reforms) Act, 2013**

		Status	Assessment
Directive 1: State Security Commission			
1	Establishment of the SSC	√	Partially compliant
2	Includes Leader of the Opposition	√	
3	Includes Independent members <i>and</i> provides for an independent panel for their selection	×	
4	Includes Retired Judge	×	
5	Includes Director General of Police	√	
6	Recommendations are made binding	×	
7	Requires submission of an Annual Report	√	
Directive 2: Selection and Tenure of Director General of Police			
1	Specifies shortlisting by the UPSC	√	Partially compliant
2	Provides minimum tenure of 2 years irrespective of superannuation	√	
3	Specifies grounds for premature removal that are clear and limited to the four conditions laid down by the Court	×	
Directive 3: Tenure of Other Officers			
1	Provides minimum tenure of two years irrespective of superannuation	×	Non-compliant
2	Tenure is for all officers in operational positions	×	
3	Grounds for premature removal limited to the conditions laid down by the Court	×	
Directive 4: Separation of Investigation from Law and Order			
1	Provides for complete separation of investigation from law and order while providing for coordination between the two wings	√	Compliant on paper
Directive 5: Police Establishment Board			
1	Composition is restricted to the DGP and four senior officers	√	Partially compliant
2	Mandate of the PEB is as per the Court's scheme	×	
	a. Power to decide transfer and postings for DySP and below		
	b. Recommend transfer and posting for SP and above	√	
3	Authorized to function as an appeal forum	√	
4	Authorized to review the functioning of the police	×	
Directive 6: Police Complaints Authority			
1	Provides for establishment of state PCA	√	Non-compliant
2	Provides for establishment of district PCAs	√	
3	Chairpersons are retired judges	×	
4	Provides for independent members and specifies their selection through an independent panel	×	
5	Recommendations are made binding	×	
6	Provides for a pool of independent investigators	×	