

GOVERNMENT COMPLIANCE WITH SUPREME COURT DIRECTIVES ON POLICE REFORMS

AN ASSESSMENT

SEPTEMBER 2021



CHRI

Commonwealth Human Rights Initiative
working for the practical realisation of human rights in
the countries of the Commonwealth



THE COMMONWEALTH HUMAN RIGHTS INITIATIVE

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-governmental, non-profit organisation headquartered in New Delhi, with offices in London, United Kingdom, and Accra, Ghana. Since 1987, it has worked for the practical realization of human rights through strategic advocacy and engagement as well as mobilization around these issues in Commonwealth countries. CHRI's specialisation in the areas of Access to Justice (ATJ) and Access to Information (ATI) are widely known. The ATJ programme has focussed on Police and Prison Reforms, to reduce arbitrariness and ensure transparency while holding duty bearers to account. CHRI looks at policy interventions, including legal remedies, building civil society coalitions and engaging with stakeholders. The ATI looks at Right to Information (RTI) and Freedom of Information laws across geographies, provides specialised advice, sheds light on challenging issues, processes for widespread use of transparency laws and develops capacity. CHRI reviews pressures on freedom of expression and media rights while a focus on Small States seeks to bring civil society voices to bear on the UN Human Rights Council and the Commonwealth Secretariat. A growing area of work is SDG 8.7 where advocacy, research and mobilization is built on tackling Contemporary Forms of Slavery and human trafficking through the Commonwealth 8.7 Network.

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Although the Commonwealth, an association of 54 nations, provided member countries the basis of shared common laws, there was little specific focus on human rights issues in member countries. Thus, in 1987, several Commonwealth professional associations founded CHRI.

Through its research, reports, advocacy, engagement, mobilisation and periodic investigations, CHRI draws attention to the progress and setbacks on rights issues. It addresses the Commonwealth Secretariat, the United Nations Human Rights Council members, media and civil society. It works on and collaborates around public education programmes, policy dialogues, comparative research, advocacy and networking on the issues of Access to Information and Access to Justice.

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**GOVERNMENT COMPLIANCE
WITH SUPREME COURT
DIRECTIVES ON POLICE
REFORMS**

A N A S S E S S M E N T

S E P T E M B E R 2 0 2 1

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The Commonwealth Human Rights Initiative (CHRI) has developed the following quantitative assessment of the status of compliance by states and Union Territories (UTs) with the Supreme Court directives on police reforms¹ which points out that states/UTs have either blatantly rejected, ignored, or diluted significant features of the directives.

THE SEVEN DIRECTIVES IN A NUTSHELL

Directive One

Constitute a State Security Commission (SSC) to:

- i. Ensure that the state government does not exercise unwarranted influence or pressure on the police
- ii. Lay down broad policy guideline and
- iii. Evaluate the performance of the state police

Directive Two

Ensure that the Director General of Police is appointed through merit based transparent process and secure a minimum tenure of two years

Directive Three

Ensure that other police officers on operational duties (including Superintendents of Police in-charge of a district and Station House Officers in-charge of a police station) are also provided a minimum tenure of two years

Directive Four

Separate the investigation and law and order functions of the police

Directive Five

Set up a Police Establishment Board (PEB) to decide 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 above the rank of Deputy Superintendent of Police

Directive Six

Set up a Police Complaints Authority (PCA) at state level to inquire into public complaints against police officers of and above the rank of Deputy Superintendent of Police in cases of serious misconduct, including custodial death, grievous hurt, or rape in police custody and at district levels to inquire into public complaints against the police personnel below the rank of Deputy Superintendent of Police in cases of serious misconduct

Directive Seven

Set up a National Security Commission (NSC) at the union level to prepare a panel for selection and placement of Chiefs of the Central Police Organisations (CPO) with a minimum tenure of two years

This note grades the states/UTs on compliance based on a set of specific parameters for each directive. The grading refers only to compliance on paper (as provided for in the Police Act or the government order) and does not address implementation on the ground. States and Union Territories are marked either as compliant, partially compliant or non-compliant.

¹ Ordered in the Court's judgment in *Prakash Singh and Others vs. Union of India, 2006 (8) SCC1*.

The Big Picture

Neither a single state nor the union territories comply fully with the directives in true earnest signaling the central government's non-compliance. The failure to comply with the directives reveals the extent to which elected governments are resisting police reform across the country. Needed checks and balances that the directives seek to instill to make policing more professional and accountable are being stymied in multiple ways:

- Only 6 states provide security of tenure for their police chief.
- Only 7 states provide for independent shortlisting of candidates in the process of appointing police chiefs; everywhere else, the heads of the police continue to be handpicked by the state government.
- Only 13 states institute an internal mechanism to enable the police leadership to make decisions on transfers and postings of state police officers without political interference.
- Only 8 states retain an impartial selection processes to appoint independent members to state Police Complaints Authorities (PCAs), and only 5 for district PCAs
- Only Karnataka provides its State Security Commission the power to make binding recommendations
- Serving police and government officers are adjudicating members on police complaints bodies even though these are to be for the public and independent of the police department.

A. COMPLIANCE BY STATES

DIRECTIVE 1

STATE SECURITY COMMISSION

WHAT THE DIRECTIVE SAYS

The purpose of a State Security Commission 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.

COMPOSITION	FUNCTIONS	POWERS
<p>The Court provided three models to choose from to decide the SSC’s composition by: 1) the NHRC, 2) the Ribeiro Committee and 3) the Sorabjee Committee. Generally, the models include:</p> <ul style="list-style-type: none"> • Chief Minister or the Home Minister as the Chairperson • DGP as ex-officio secretary • Leader of the Opposition • Chief Secretary • A retired judge nominated by the Chief Justice of the High Court • 3-5 non-political independent members 	<p>The SSC’s main functions are to include:</p> <ul style="list-style-type: none"> • Drafting broad policy guidelines • Evaluating the performance of the police • Preparing an annual report to be placed before the legislature <p>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 criteria²</p>	<p>The recommendations of the SSC are <u>binding</u> on governments.</p>

Compliance parameters

Compliance is assessed against the following parameters based on the standard prescribed by the Court:

1. Establishment of State Security Commission: Whether states have constituted the SSC, either through a Police Act or through executive order/notification.
2. Inclusion of the Leader of Opposition: Whether the SSC constituted includes the Leader of the Opposition.
3. Inclusion of an independent panel for selection of the independent members: Whether an independent panel is provided for the selection of independent members. Mere inclusion of independent members alone will not guarantee diversity of perspectives and expertise. It is equally critical for the independent members to be selected through an objective and independent process. The Court itself stated that members of the Commission are to be chosen in such a manner that it is able to function independent of Government control.
4. Binding recommendations: Whether the SSC’s recommendations are made binding on the state government.
5. Annual report: Whether SSC's are required to prepare an annual report to be placed before the legislature.

² Section 48, Model Police Act 2006. As per the Supreme Court’s directive on appointment of the DGP, the Union Public Service Commission is the authority that prepares the shortlist. The Model Police Act 2006 replaces the UPSC with the State Police Board

Accordingly, the compliance index for Directive 1 is as follows:

Compliance	Partial Compliance	Non-Compliance
All 5 parameters provided	Parameters 2, 3, and 4 provided	Parameters 2 or 4 not provided

TABLE 1: COMPLIANCE WITH SUPREME COURT DIRECTIVES ON STATE SECURITY COMMISSIONS

S.NO.	STATES	STATE SECURITY COMMISSION ESTABLISHED (1)	LEADER OF OPPOSITION INCLUDED (2)	INDEPENDENT MEMBERS (3)		RECOMMENDATIONS MADE BINDING* (4)	PREPARE ANNUAL REPORT AND SUBMIT TO LEGISLATIVE ASSEMBLY (5)	OVERALL COMPLIANCE
				NUMBER OF MEMBERS	INDEP SELECTION			
1	ANDHRA PRADESH	Yes	Yes	5	No	No	Yes	NON-COMPLIANT
2	ARUNACHAL PRADESH	Yes	Yes	5	No	No	Yes	NON-COMPLIANT
3	ASSAM	Yes	No	3	No	No	No	NON-COMPLIANT
4	BIHAR	Yes	No	0	-	No	No	NON-COMPLIANT
5	CHHATTISGARH	Yes	No	2	No	No	N***	NON-COMPLIANT
6	GOA	Yes	Yes	0	-	No	No	NON-COMPLIANT
7	GUJARAT	Yes	No	2	No	No	No	NON-COMPLIANT
8	HARYANA	Yes	Yes	3	No	No	No	NON-COMPLIANT
9	HIMACHAL PRADESH	Yes	Yes	3	Yes	No	Yes	NON-COMPLIANT
10	JHARKHAND	Yes	Yes	5	No	No	No	NON-COMPLIANT
11	KARNATAKA	Yes	Yes	1	Yes	Yes	No	PARTIAL
12	KERALA	Yes	Yes	3	No	No	No	NON-COMPLIANT
13	MADHYA PRADESH	Yes	Yes	5	No	No	N***	NON-COMPLIANT
14	MAHARASHTRA	Yes	Yes	5	No	No	No	NON-COMPLIANT
15	MANIPUR	Yes	Yes	5	No	No	No	NON-COMPLIANT
16	MEGHALAYA	Yes	Yes	2	No	No	No	NON-COMPLIANT
17	MIZORAM	Yes	Yes	2	No	No	No	NON-COMPLIANT
18	NAGALAND	Yes	Yes	3	No	No	No	NON-COMPLIANT
19	ODISHA	No	-	-	-	-	-	NON-COMPLIANT
20	PUNJAB	Yes	No	0	-	No	No	NON-COMPLIANT

21	RAJASTHAN	Yes	Yes	3	Yes**	No	Yes	NON-COMPLIANT
22	SIKKIM	Yes	Yes	3	Yes	No	Yes	NON-COMPLIANT
23	TAMIL NADU	Yes	Yes	0	-	No	Yes	NON-COMPLIANT
24	TELANGANA^	SSC constituted. Copy of the order not available.						
25	TRIPURA	Yes	No	2	No	No	No	NON-COMPLIANT
26	UTTAR PRADESH	Yes	Yes	5	No	No	Yes	NON-COMPLIANT
27	UTTARAKHAND	Yes	Yes	1	Yes	No	Yes	NON-COMPLIANT
28	WEST BENGAL	Yes	Yes	3	No	No	Yes	NON-COMPLIANT
TOTAL		27	20		5	1	9	NO STATE COMPLIANT

* Where grounds are provided for governments to reject SSC recommendations, this is taken as not compliant with the Court's directive

** Committee for selection of independent members includes the Chief Minister, Leader of Opposition, Home Minister and the Chairperson of the Rajasthan Human Rights Commission

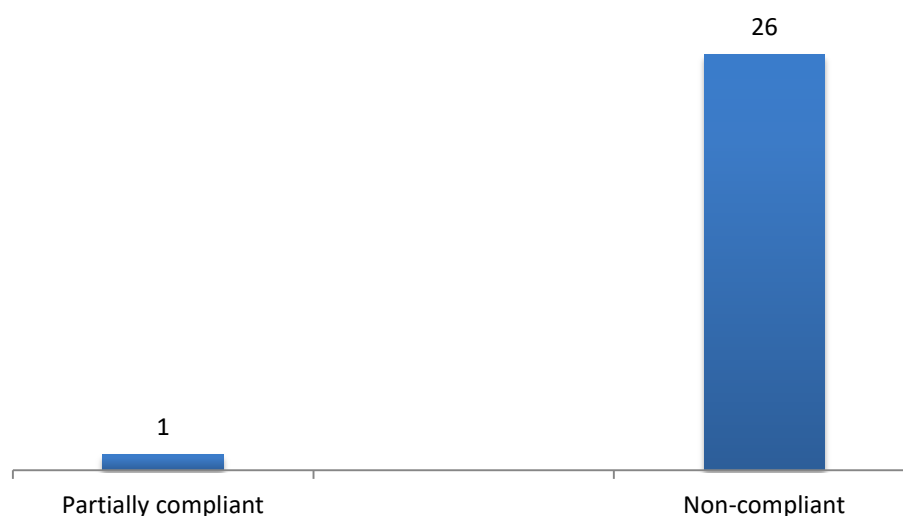
*** The two states of Chhattisgarh and Madhya Pradesh require SSCs to draft annual reports, but do not necessitate their tabling before the legislature

^ Based on news reports. Order not available in the public domain as of writing.

KEY OBSERVATIONS

Based on the parameters, 26 states are non-compliant with this directive.

Figure 1: Status of compliance by states on State Security Commissions



- ✓ 27 out of 28 states have constituted an SSC, either through Police Acts or government orders. Odisha remains the only state yet to establish a State Security Commissions on paper.
- ✓ 7 out of 27 states - Assam, Bihar, Chhattisgarh, Gujarat, Punjab, Telangana³ and Tripura - do not include the Leader of the Opposition in the SSC.
- ✓ 17 states - Andhra Pradesh, Arunachal Pradesh, Jharkhand, Madhya Pradesh, Manipur, Nagaland, Uttar Pradesh, West Bengal, Tripura, Assam, Chhattisgarh, Gujarat, Haryana, Kerala, Maharashtra, Meghalaya⁴ and Mizoram - include independent members as part of the SSC, but do not provide an independent selection panel for their appointments.
- ✓ Bihar, Goa, Tamil Nadu, and Punjab do not include independent members at all as part of the SSC.⁵ In fact, Bihar State Police Board is a three-member body headed by the Chief Minister and the Home Secretary and the Director General of Police as members.
- ✓ Karnataka is the only state that makes the recommendations of the SSC binding. Other states either do not include any provision on binding recommendations, or make it subject to broad terms like “only to the extent feasible” (Meghalaya and Himachal Pradesh), or “unless...the government decides to disagree with findings of the authority” (Delhi). Absence of a categorical articulation of the SSC recommendations being binding on the respective government weakens the body and reduces its role to being merely advisory, rather than policy- making, as intended by the Court.
- ✓ 9 states - Arunachal Pradesh, Andhra Pradesh, Chhattisgarh, Madhya Pradesh, Himachal Pradesh, Rajasthan, Sikkim, Tamil Nadu, Uttar Pradesh, Uttarakhand and West Bengal - are in compliance with the requirement to prepare an annual report and table it before the State legislature. Chhattisgarh and Madhya Pradesh require SSCs to draft annual reports but do not necessitate their tabling before the legislature.

³ Though the government order is not yet accessible, media reports on the SSC constitution reveal that the leader of opposition is not included as a member. See “Telangana state government constitutes State Security Commission,” *Telangana Today*, 8 July 2021: <https://telanganatoday.com/telangana-state-govt-constitutes-state-security-commission>.

⁴ While Meghalaya has a selection panel, it includes the Chief Secretary and Principal Secretary (Home), both of whom are members of the SSC. This is conflict of interest and excessive control by the political executive, and is marked as non-compliance.

⁵ In Tamil Nadu, the “independent” members are all ex-officio members who are Chairpersons of various state commissions. This is outside the Court’s scheme, and will invariably affect the SSC’s efficiency. Chairpersons of statutory bodies have full-time charge and will not be able to devote the needed time to their role on the SSC. This is marked as non-compliance.

- ✓ In designing the SSC, Maharashtra, Rajasthan and Andhra Pradesh stand out for demonstrating efforts towards social inclusion. While Maharashtra requires representation of at least one woman and one member of Backward Class (defined to include Scheduled Caste, Scheduled Tribe, De-notified Tribes, Nomadic Tribes, Special Backward Category, Other Backward Classes) among non- official members of the SSC; Rajasthan and Andhra Pradesh mandates inclusion of a member from “weaker sections”.

DIRECTIVE 2
TENURE AND SELECTION
OF THE DIRECTOR
GENERAL OF POLICE

WHAT THE DIRECTIVE SAYS

The Director General of Police must be selected from amongst the three senior-most officers empanelled 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.

Compliance parameters

Compliance is assessed against the following parameters:

- 1) Shortlisting by the Union Public Service Commission (UPSC): States are marked as non-compliant if they do not specify the requirement of the UPSC preparing a shortlist of candidates on the basis of length of service, service record, and range of experience.
- 2) Tenure: States are marked as non-compliant when a) minimum tenure of 2 years is not provided for; and b) tenure is made 'subject to', instead of 'irrespective of', superannuation.
- 3) Grounds for Removal: States are marked as non-compliant if they do not categorically lay down the grounds of removal as stated by the Court.

Accordingly, the compliance index is as follows:

Compliance	Partial Compliance	Non-Compliance
All 3 parameters provided	Parameters 1 and 2 provided	Parameters 1 or 2 not provided

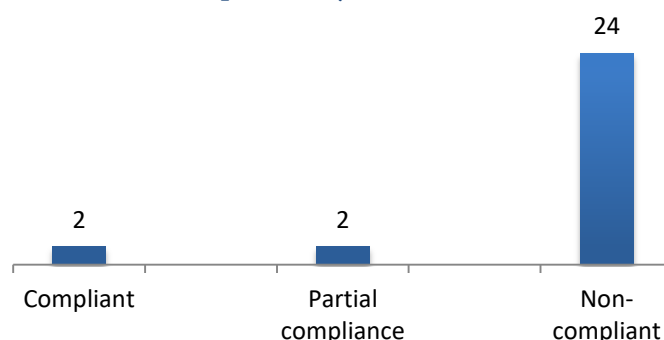
**TABLE 2: COMPLIANCE WITH SUPREME COURT DIRECTIVES
ON TENURE AND SELECTION OF THE DGP**

S.NO.	STATES	SHORTLISTING BY UPSC (1)	MINIMUM TENURE (2)	PREMATURE REMOVAL (3)	Overall Compliance
1	ANDHRA PRADESH	Yes	Yes	No	PARTIAL
2	ARUNACHAL PRADESH	Yes	Yes	Yes	COMPLIANT
3	ASSAM	No	No	No	NON-COMPLIANT
4	BIHAR	No	No	No	NON-COMPLIANT
5	CHHATISGARH	No	No	No	NON-COMPLIANT
6	GOA	No	No	No	NON-COMPLIANT
7	GUJARAT	No	No	Yes	NON-COMPLIANT
8	HARYANA	No	No	Yes	NON-COMPLIANT
9	HIMACHAL PRADESH	No	No	No	NON-COMPLIANT
10	JHARKHAND	No	No	No	NON-COMPLIANT
11	KARNATAKA	No	No	No	NON-COMPLIANT
12	KERALA	No	No	Yes	NON-COMPLIANT
13	MADHYA PRADESH	No	Yes	Yes	NON-COMPLIANT
14	MAHARASHTRA	No	No	Yes	NON-COMPLIANT
15	MANIPUR	Yes	No	Yes	NON-COMPLIANT
16	MEGHALAYA	No	No	No	NON-COMPLIANT
17	MIZORAM	No	No	Yes	NON-COMPLIANT
18	NAGALAND	Yes	Yes	Yes	COMPLIANT
19	ODISHA	No	No	No	NON-COMPLIANT
20	PUNJAB	No	No	No	NON-COMPLIANT
21	RAJASTHAN	No	Yes	No	NON-COMPLIANT
22	SIKKIM	No	No	No	NON-COMPLIANT
23	TAMIL NADU	Yes	Yes	No	PARTIAL
24	TELANGANA	No	No	No	NON-COMPLIANT
25	TRIPURA	No	No	No	NON-COMPLIANT
26	UTTAR PRADESH	No	No	No	NON-COMPLIANT
27	UTTRAKHAND	No	No	Yes	NON-COMPLIANT
28	WEST BENGAL	No	No	No	NON-COMPLIANT
Total		5	6	10	TWO STATES COMPLIANT

KEY OBSERVATIONS

Based on the parameters, 2 states are compliant, 2 partially compliant while 24 are non-compliant.

Figure 2: Status of compliance by states on selection and tenure of DGP



- ✓ Arunachal Pradesh and Nagaland are the only states that fully comply with this directive.
- ✓ 23 states - Assam, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Meghalaya, Mizoram, Odisha, Punjab, Rajasthan, Sikkim, Telangana, Tripura, Uttar Pradesh, Uttarakhand and West Bengal- omit shortlisting by the UPSC and give state governments the sole discretion to select the candidates for the DGP's post.
- ✓ Only 5 states - Andhra Pradesh, Arunachal Pradesh,⁵ Manipur, Nagaland and Tamil Nadu - include shortlisting by the UPSC.⁶
- ✓ In 5 states - Assam, Jharkhand, Karnataka, Meghalaya and Mizoram - the SSC has the responsibility to shortlist the candidates for the post of DGP. CHRI marks these states as non-compliant.⁷
- ✓ Only 6 states - Andhra Pradesh, Arunachal Pradesh, Madhya Pradesh, Nagaland, Tamil Nadu, and Rajasthan - provide a minimum tenure of 2 years.
- ✓ 2 states - Haryana and Meghalaya - provide a tenure of 1 year.
- ✓ 13 states make tenure subject to superannuation.
- ✓ 10 states - Arunachal Pradesh, Gujarat, Haryana, Kerala, Madhya Pradesh, Maharashtra, Manipur, Mizoram, Nagaland and Uttarakhand - lay down grounds for removal that are in line with the directive.
- ✓ 16 states - Andhra Pradesh, Assam, Bihar, Chhattisgarh,⁸ Himachal Pradesh, Karnataka, Meghalaya, Mizoram, Odisha, Punjab, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh and Uttarakhand - include problematic provisions for premature removal such as "on other administrative grounds to be recorded in writing" or "in the public interest". These are liable to be interpreted in multiple ways and misused.
- ✓ 18 states - Andhra Pradesh, Arunachal Pradesh, Assam, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Maharashtra, Meghalaya, Mizoram, Odisha, Rajasthan, Sikkim, Tamil Nadu, and Tripura- do not include the provision to consult the SSC in the decision to remove the DGP.

⁶ The procedure laid down by a notification issued by the MHA is followed. The UPSC shortlists the candidates for the post of DGP and the MHA makes the final selection. This procedure applies to all AGMUT (Arunachal Pradesh, Goa, Mizoram and Union Territories) states but Arunachal Pradesh is the only state that complies with it.

⁷ The empanelment in Chhattisgarh is to be done by a committee under the provision of the All India Services Act, 1951. This has been marked as non-compliant as there is no mention of the UPSC.

⁸ Where the UPSC's role in shortlisting has been replaced by the SSC, CHRI views this as non-compliance. Our view is this goes against the intent of the arms-length shortlisting envisioned to be done by the UPSC, due to the presence of the highest political leadership of the state on the SSC, who will, also, ultimately make the final selection for the post of DGP.

⁹ Chhattisgarh lays down that the removal can be done 'on his own request or an administrative exigency which shall be recorded in writing'.

DIRECTIVE 3
MINIMUM TENURE OF
KEY FIELD-LEVEL 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.

Compliance parameters

Compliance is assessed against the following parameters:

- 1) Minimum tenure of two years: States are marked as non-compliant if they fail to stipulate minimum tenure of two years for police officers on operational duties.
- 2) Grounds of removal: States are marked as non-compliant where, despite stipulating minimum tenure, very broad grounds have been laid down to allow for premature removal.

Accordingly, the compliance index is as follows:

Compliance	Partial Compliance	Non-Compliance
Both parameters are compliant	Not Applicable	Either of the parameters is non-compliant

**TABLE 3: STATE-WISE COMPLIANCE WITH DIRECTIVE ON
MINIMUM TENURE OF KEY FIELD-LEVEL OFFICERS**

S.NO.	STATES	Provides minimum tenure of 2 years (1)	Specifies grounds for premature removal that are clear and limited to the four conditions laid down by the Court (2)	Overall Compliance
1	ANDHRA PRADESH	Yes	Yes	COMPLIANT
2	ARUNACHAL PRADESH	Yes	Yes	COMPLIANT
3	ASSAM	No	No	NON- COMPLIANT
4	BIHAR	Yes	No	NON- COMPLIANT
5	CHHATISGARH	No	No	NON- COMPLIANT
6	GOA	No	No	NON- COMPLIANT
7	GUJARAT	Yes	Yes	COMPLIANT
8	HARYANA	No	No	NON- COMPLIANT
9	HIMACHAL PRADESH	Yes*	No	NON- COMPLIANT
10	JHARKHAND	No	Yes	NON- COMPLIANT
11	KARNATAKA	No	No	NON- COMPLIANT
12	KERALA	Yes	Yes	COMPLIANT
13	MADHYA PRADESH	Yes	Yes	COMPLIANT
14	MAHARASHTRA	No	No	NON- COMPLIANT
15	MANIPUR	Yes	Yes	COMPLIANT
16	MEGHALAYA	Yes	No	NON- COMPLIANT
17	MIZORAM	Yes	No	NON- COMPLIANT
18	NAGALAND	Yes	Yes	COMPLIANT
19	ODISHA	No	Yes	NON- COMPLIANT
20	PUNJAB	No	Yes**	NON- COMPLIANT
21	RAJASTHAN	Yes	No	NON- COMPLIANT
22	SIKKIM	Yes***	No	NON- COMPLIANT
23	TAMIL NADU	Yes****	No	NON- COMPLIANT
24	TELANGANA	No	No	NON- COMPLIANT
25	TRIPURA	Yes*****	No	NON- COMPLIANT
26	UTTAR PRADESH	Yes	No	NON- COMPLIANT
27	UTTRAKHAND	No	No	NON- COMPLIANT
28	WEST BENGAL	Yes	No	NON- COMPLIANT
Total		17	10	SEVEN STATES COMPLIANT

* Minimum tenure rule not made applicable to Zonal IGPs and Range DIGs.

** In compliance with the Court's directive but in exceptional cases, an officer may be transferred for inefficiency or negligence or non-performance or where a prima facie case of a serious nature is found against him/her on the basis of preliminary enquiry.

*** Minimum tenure is provided only for IG, SP and SHO and leaves out DIG in charge of a range.

**** "Tenure of two years provided is limited to only District SPs, SHOs and officers heading commissionerates.

***** Minimum tenure not applicable to IGPs in charge of Zones and DIGs in charge of Ranges.

KEY OBSERVATIONS

Based on the parameters, 7 states are compliant with this directive while 21 are non-compliant.

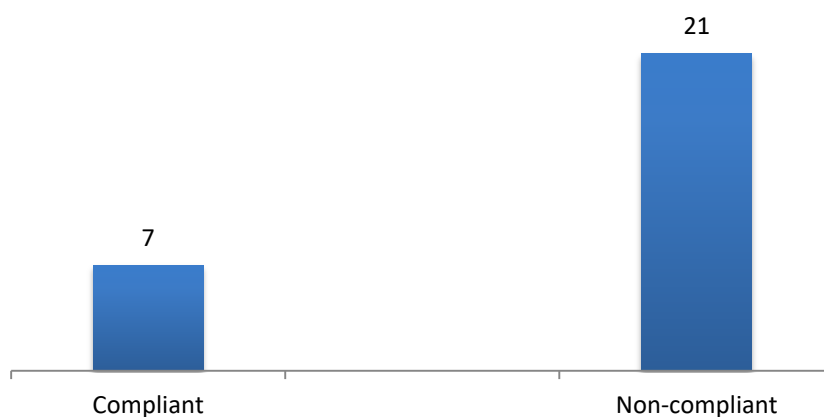


Figure 3: Selection and tenure of field-level officers

- ✓ 7 states – Andhra Pradesh, Arunachal Pradesh, Gujarat, Kerala, Madhya Pradesh, Manipur, and Nagaland - comply fully with this directive.
16 states - Andhra Pradesh, Arunachal Pradesh, Bihar, Gujarat, Himachal Pradesh, Kerala, Madhya Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Rajasthan, Sikkim, Tamil Nadu, Uttar Pradesh and West Bengal – comply with the requirement to provide 2-year minimum tenure.
- ✓ In Jharkhand and Maharashtra, the term is ‘generally’ or ‘normally’ two years. This has been marked as non-compliant as it dilutes the requirement.
- ✓ 5 states – Assam, Haryana, Karnataka, Punjab and Uttarakhand – provide only one year tenure to selective, and not all, ranks of officers stipulated by the directive.
- ✓ 4 states - Himachal Pradesh, Sikkim, Tamil Nadu and Tripura - minimum tenure is selectively laid down and does not include all the ranks indicated by the Court.
- ✓ 10 states - Andhra Pradesh, Arunachal Pradesh, Gujarat, Jharkhand, Kerala, Madhya Pradesh, Manipur, Nagaland, Odisha, and Punjab – establish grounds of removal in compliance with the Court’s directive.
- ✓ 16 states - Assam, Chhattisgarh, Himachal Pradesh, Maharashtra, Meghalaya, Rajasthan, Sikkim, Tamil Nadu, Bihar, Tripura, Uttar Pradesh, West Bengal, Haryana, Karnataka, Mizoram and Uttarakhand - lay down vague and objective grounds for premature removal. These include: for any other reasons or administrative grounds, to meet any other contingency, in public interest, subject to promotion and retirement of other officers.

DIRECTIVE 4
SEPARATION OF
INVESTIGATION AND 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 of the police.

KEY OBSERVATIONS

Considering it has been 15 years since the Court's judgment, at this stage, properly assessing compliance with Directive 4 will require field-level examination of the separation of these two vital police functions, and how it is working where effected. As conducting field-level assessment has not been possible for CHRI, we are reproducing observations of compliance "on paper" last compiled up to 2018; but are not measuring compliance with Directive 4 at this time.

AS ON APRIL 2018

- ✓ 16 states - Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Himachal Pradesh, Karnataka, Kerala, Maharashtra, Meghalaya, Mizoram, Punjab, Rajasthan, Sikkim, Tamil Nadu, Tripura and Uttarakhand; and Delhi - had taken some measures⁹ to separate investigation and law and order duties.
- ✓ This directive is not applicable to Goa since its total population is less than 10 lakhs.
- ✓ 12 states - Andhra Pradesh, Gujarat, Haryana, Jammu and Kashmir, Jharkhand, Odisha, Madhya Pradesh, Manipur, Meghalaya, Nagaland, Uttar Pradesh and West Bengal - failed to comply with this directive.
- ✓ Mizoram was the only state to specifically ensure in its Police Act that officers assigned to special investigation units are to be a) given secure tenure; b) allowed to specialize; and c) not be diverted to any other duty except under special circumstances with written permission of the DGP.¹⁰

¹⁰They have either constituted special investigation units at police stations for specific offences, or for select geographical areas.

¹¹Section 15, Mizoram Police Act 2012.

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:

- i. 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;
- ii. 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;
- iii. 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
- iv. 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 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.

Compliance parameters

Compliance is assessed against the following parameters.

- 1) Composition of the PEB: States that include government representatives, instead of confining only to senior police officers as required by the directive, are marked as non-compliant.
- 2) Mandate of the PEB: States are marked as non-compliant if the mandate is restricted on either of these counts:
 - i. Deputy Superintendent of Police and below: Its powers to decide transfers, postings, promotions and other service related matters is restricted to select ranks of officers and not extended to all officers of and below Deputy Superintendent of Police; and its power relating to transfers, postings and promotions is reduced to recommendatory;
 - ii. Superintendent of Police and above: Its recommendations regarding posting and transfers of officers of and above the rank of Superintendent of Police are not taken as normally binding on the state government.
- 3) Appeal Forum: States are marked as non-compliant where the PEB is not given the powers to act as a forum of appeal for officers of the rank of Superintendent of Police and above.
- 4) Review the functioning of the police: States are marked as non-compliant if the PEB is not given the role to review police functioning.

Accordingly, the compliance index is as follows:

Compliance	Partial Compliance	Non-Compliance
All five parameters provided	Parameters 1, 2 and 3 provided	Parameters 1, 2, or 3 are missing

**TABLE 4: COMPLIANCE WITH SUPREME COURT DIRECTIVE
ON POLICE ESTABLISHMENT BOARD**

S.NO.	STATES	Composition restricted to the DGP and four senior officers* (1)	Decide transfer/posting for DySP and below (2)	Recommend transfer/posting for DP and above (3)	Function as an appeal forum for SP and above (4)	Review functioning of the police (5)	Overall Compliance
1	ANDHRA PRADESH	Yes	Yes	Yes	No	No	PARTIAL
2	ARUNACHAL PRADESH	Yes	Yes	Yes	Yes	Yes	COMPLIANT
3	ASSAM	Yes	No (only recommend up to SI rank)	No	No	No	NON-COMPLIANT
4	BIHAR	Yes	Yes	No	No	No	NON-COMPLIANT
5	CHHATISGARH	Yes	Yes	No	No	No	NON-COMPLIANT
6	GOA	Yes	No	No	Yes	No	NON-COMPLIANT
7	GUJARAT	No**	No (only for Inspector/SI)	No	No***	No	NON-COMPLIANT
8	HARYANA	Yes	No	No	No	No	NON-COMPLIANT
9	HIMACHAL PRADESH	Yes	No	Yes	Yes	No	NON-COMPLIANT
10	JHARKHAND	Yes	Yes	Yes	No	No	PARTIAL
11	KARNATAKA	Yes	Yes	Yes	Yes	Yes	COMPLIANT

S.NO.	STATES	Composition restricted to the DGP and four senior officers* (1)	Decide transfer/posting for DySP and below (2)	Recommend transfer/posting for DP and above (3)	Function as an appeal forum for SP and above (4)	Review functioning of the police (5)	Overall Compliance
12	KERALA	Yes	No (only up to Inspector rank)	No	No***	Yes	NON-COMPLIANT
13	MADHYA PRADESH	Yes	Yes	Yes	No	No	PARTIAL
14	MAHARASHTRA	No**	Yes	Yes	No	No	NON-COMPLIANT
15	MANIPUR	Yes	Yes	Yes	No	No	PARTIAL
16	MEGHALAYA	Yes	No (only recommend)	Yes	No	No	NON-COMPLIANT
17	MIZORAM	Yes	No (only recommend)	Yes	No	No	NON-COMPLIANT
18	NAGALAND	Yes	No	No	No	No	NON-COMPLIANT
19	ODISHA	Yes	Yes	No	No	No	NON-COMPLIANT
20	PUNJAB	Yes	No (only recommend for non-gazetted)	No	No	No	NON-COMPLIANT
21	RAJASTHAN	Yes	Yes	No	No	No	NON-COMPLIANT
22	SIKKIM	Yes	No (approving, not deciding)	Yes	Yes	No	NON-COMPLIANT
23	TAMIL NADU	Yes	No	Yes	Yes	No	NON-COMPLIANT
24	TELANGANA	No Information					
25	TRIPURA	Yes	No	Yes	No	No	NON-COMPLIANT
26	UTTAR PRADESH	Yes	No	No	Yes	No	NON-COMPLIANT
27	UTTARAKHAND	Yes	Yes	Yes	No	No	PARTIAL
28	WEST BENGAL	Yes	Yes	No****	Yes	No	NON-COMPLIANT
Total	27	25	13	14	8	3	TWO STATES COMPLIANT

* Composition is taken as compliant in all cases where it restricts to the DGP and senior officers, even when less than 4 as required by the Court officers are included.

** Includes government representatives in the composition.

*** Functions as an appeal forum for DySP and below, or up to Inspector rank, instead of SP and above.

**** Omits stipulation that state government must normally accept PEB's recommendation.

KEY OBSERVATIONS

Based on the parameters, 2 states are compliant, 5 are partially compliant and 20 non-compliant.

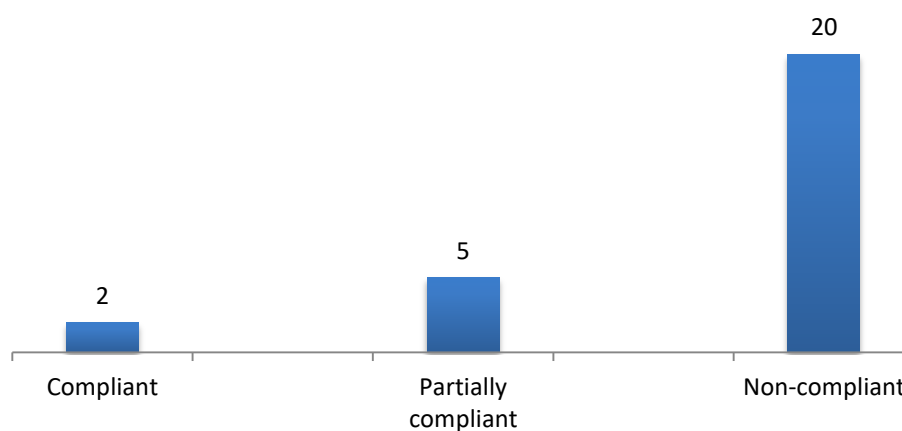


FIGURE 4: POLICE ESTABLISHMENT BOARD

- ✓ Notably, all states, except Telangana, have constituted Police Establishment Boards on paper.
- ✓ Only 2 out of 27 states - Arunachal Pradesh and Karnataka - comply fully with the directive in the composition, functions and powers of the PEB.
- ✓ 5 states - Andhra Pradesh, Jharkhand, Manipur, Madhya Pradesh, and Uttarakhand - comply partially with the directive. In other words, the PEB constituted by these states complies with the directive in its composition (includes the police chief and senior officers), and is mandated to both decide transfer, postings and promotion of DySP rank and below, and recommend for SP rank and above, as laid down by the Court. Where they fall short is not specifying the PEB to function as an appeal forum, or in reviewing the functioning of the police, as the directive requires.
- ✓ 20 states are non-compliant. Of these:
 - Gujarat and Maharashtra violate the required composition by including serving government officials as members of the PEB, instead of restricting to only the police chief and senior police officers
 - 14 states do not vest the PEB with the power to decide transfer, posting and promotions for officers of DySP rank and below (see table). Some states limit the power to decide for only select non-gazetted ranks (these would be ranks above the constabulary), or condition the power to government's prior approval
 - 13 states do not vest the PEB with the power to recommend transfer, posting and promotions for officers of SP rank and above; and
 - 14 of the states that are non-compliant, plus the 5 states that are partially compliant, do not vest the PEB with the mandate to serve as an appeal forum for representations from officers (SP rank and above) regarding their promotion/transfer/disciplinary proceedings or being subjected to illegal or irregular orders.

The cumulative picture that emerges is of the political executive retaining control over decisions regarding transfer, posting and promotion of police officers across ranks, when these fall squarely within the purview of internal management. The Court's intention in this directive was to bring this internal decision-making firmly to the police leadership. Continued non-compliance with this directive will only further undermine the authority of the police leadership, affect morale of officers and blur accountability.

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.

Compliance Parameters

Compliance is assessed against six parameters. :

- a. Chairpersons: States are marked as compliant when the Chairperson of the State Police Complaints Authority is a retired High Court judge, and when the Chairperson of the District Police Complaints Authority is a retired district judge.
- b. Independent Members: States are marked as compliant when independent members are chosen from a panel prepared by the State Human Rights Commission/ Lokayukta/ State Public Service Commission.
- c. Binding Recommendations: The recommendations of the Complaints Authority, both at the district and state level, are binding.
- d. Independent Investigators: States have been marked as non-compliant if provision for independent investigators is not included.

Accordingly, compliance index is as follows:

Compliance	Partial Compliance	Non-Compliance
All five parameters provided	Parameters 1, 2 and 3 provided	Parameters 1, 2, or 3 are missing

TABLE 5: STATE POLICE COMPLAINTS AUTHORITIES: COMPLIANCE

	State PCA					Overall Compliance
	Headed by Retired Judge (1)	No of Members	Panel for Selection (2)	Recommendations are Binding (3)	Provides for Indep Investigators (4)	
ANDHRA PRADESH	N*	3	N	N	N	NON-COMPLIANT
ARUNACHAL PRADESH	Y	3-5	Y	Y	Y	COMPLIANT
ASSAM	Y	3	N	Y	N	NON-COMPLIANT
BIHAR	<i>No State PCA constituted</i>					NON-COMPLIANT
CHHATTISGARH	Y	3	N	N	N	NON-COMPLIANT
GOA	Y	3	N	Y	Y	NON-COMPLIANT
GUJARAT	N*	3	N	N	N	NON-COMPLIANT
HARYANA	N*	3	Y***	Y	Y	PARTIAL
HIMACHAL PRADESH	<i>Designates Lokayukta to perform PCA function</i>					NON-COMPLIANT
JHARKHAND	N**	4	N	N	N	NON-COMPLIANT
KARNATAKA	Y	4	Y	N	N	NON-COMPLIANT
KERALA	Y	4	Y	Y	N	NON-COMPLIANT
MADHYA PRADESH	<i>No state level PCA constituted</i>					NON-COMPLIANT
MAHARASHTRA	Y	4	N	N	N	NON-COMPLIANT
MANIPUR****	Y	no info	N	N	N	NON-COMPLIANT
MEGHALAYA	N	2	N	Y	N	NON-COMPLIANT
MIZORAM	N*	4	N	Y	N	NON-COMPLIANT
NAGALAND	Y	5	Y	N	N	NON-COMPLIANT
ODISHA	<i>State Lokayukta designated as the state PCA</i>					NON-COMPLIANT
PUNJAB	N*	2	N	N	N	NON-COMPLIANT
RAJASTHAN	N**	4	N	N	N	NON-COMPLIANT
SIKKIM	Y	2	Y	N	Y	NON-COMPLIANT
TAMIL NADU	N	2	N	N	Y	NON-COMPLIANT
TELANGANA	State PCA constituted. Copy of order not available					
TRIPURA	Y	4	N	N	N	NON-COMPLIANT
UTTAR PRADESH	<i>No PCA constituted</i>					NON-COMPLIANT
UTTARAKHAND	Y	4	Y	Y	N	PARTIAL
WEST BENGAL	N	4	N	N	N	NON-COMPLIANT
TOTAL	12		7	8	5	

* Chairperson could be either a retired judge, or retired Principal Secretary rank officer, or retired Director General of Police.

** Chairperson is among the independent members appointed by the state government.

*** Selection is by a state committee constituted by the state government. Details of the state committee not provided.

**** Manipur is taken as non-compliant because its PCA does not have binding powers

**TABLE 6: DISTRICT POLICE COMPLAINTS AUTHORITIES:
COMPLIANCE**

	District PCA					Overall Compliance
	Headed by Retired Judge	No of Members	Panel for Selection	Recommendations are Binding	Provides for Indep Investigators	
ANDHRA PRADESH	N*	3	N	N	N	NON-COMPLIANT
ARUNACHAL PRADESH	No district PCA constituted					NON-COMPLIANT
ASSAM	Y	3	N	N	N	NON-COMPLIANT
BIHAR	N**	4	N	N	N	NON-COMPLIANT
CHHATTISGARH	No district PCA constituted					NON-COMPLIANT
GOA	No district PCA constituted					NON-COMPLIANT
GUJARAT	N**	2	N	N	N	NON-COMPLIANT
HARYANA	N	3	Y	Y	Y	PARTIAL
HIMACHAL PRADESH	N**	3	N	N	N	NON-COMPLIANT
JHARKHAND	N		N	N	N	NON-COMPLIANT
KARNATAKA	N**	3	Y	N	N	NON-COMPLIANT
KERALA	Y	2	NA***	Y	N	NON-COMPLIANT
MADHYA PRADESH	N	0	N	N		NON-COMPLIANT
MAHARASHTRA	Y	4	N	N	N	NON-COMPLIANT
MANIPUR	Y		Y	N	N	NON-COMPLIANT
MEGHALAYA	No district PCA constituted					NON-COMPLIANT
MIZORAM	Y	2	N	Y	N	PARTIAL
NAGALAND	No district PCA constituted					NON-COMPLIANT
ODISHA	No district PCA constituted					NON-COMPLIANT
PUNJAB	N*	2	N	N	N	NON-COMPLIANT
RAJASTHAN	N	4	N	N	N	NON-COMPLIANT
SIKKIM	No district PCA constituted					NON-COMPLIANT
TAMIL NADU	N	2	N	N	Y	NON-COMPLIANT
TELANGANA	DPCA constituted. Copy of order not available.					NON-COMPLIANT
TRIPURA	No district PCA constituted					NON-COMPLIANT
UTTAR PRADESH	Not constituted					NON-COMPLIANT
UTTARAKHAND	Y	2	Y	Y	N	PARTIAL
WEST BENGAL	No district PCA constituted					NON-COMPLIANT
TOTAL	6		4	4	2	

*Chairperson could either be a retired district judge or an IAS officer of Secretary rank and above or retired police officer of DIG rank.

** Chairpersons are either the District Magistrate or the Superintendent of Police or the Divisional/Regional Commissioner.

***Both members are ex-officio.

KEY OBSERVATIONS

Based on the parameters, 24 State PCAs and 25 District PCAs constituted are non-compliant with the Court's directives.

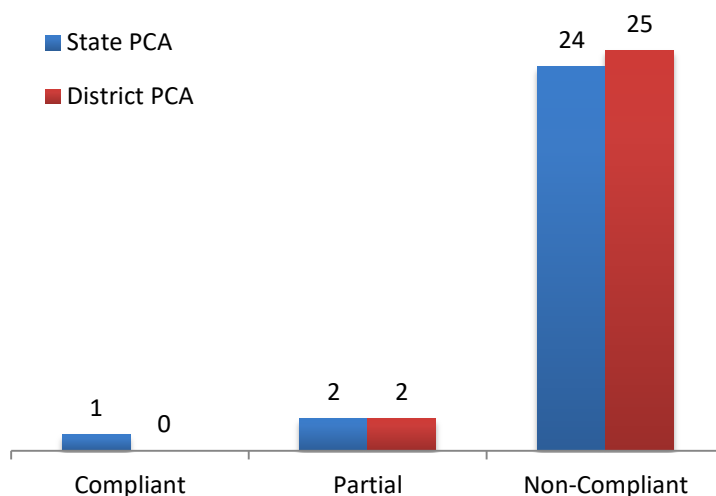


FIGURE 5: POLICE COMPLAINT AUTHORITIES - STATE AND DISTRICT

23 states have constituted State Police Complaints Authority (SPCA) on paper, while 18 states have constituted District Police Complaints Authority (DPCA) on paper.

Only at the state level	Only at the district level	State and district levels	No authority
Arunachal Pradesh Chhattisgarh Goa Meghalaya Sikkim Tripura West Bengal Nagaland	Bihar Madhya Pradesh Himachal Pradesh ¹¹	Andhra Pradesh Assam Gujarat Jharkhand Karnataka Kerala Maharashtra Manipur Mizoram Punjab Rajasthan Tamil Nadu Telangana Uttarakhand Haryana	Uttar Pradesh Jammu and Kashmir <u>Assigned to Lokayukta</u> Odisha Himachal Pradesh (State police complaints authority)
Total: 8 states	Total: 3 states	Total: 15 states	
Number of states with a State PCA: 23 (15 + 8) Number of states with a district PCA: 18 (15 + 3)			

Himachal Pradesh and Odisha have designated the state Lokayukta to function as the PCA. CHRI considers this a total violation of this directive in that it does not establish a full-time, dedicated, independent PCA.

Uttar Pradesh claims it has enough forums to handle complaints and will result in multiplicity of forums creating confusion in the minds of the public. Jammu & Kashmir moved an application before the Supreme Court for suspending the implementation of this directive, based on the security situation in the state.

State Police Complaints Authorities

Of the 23 SPCAs constituted:

- ✓ 10 states deviate from the requirement of a retired judge heading the authority. Some states (Gujarat, and Haryana) give an option between a retired judge or a retired Principal Secretary rank officer or even a retired Director General of Police (Mizoram and Punjab). For Rajasthan and Jharkhand, the chairperson can be from among the independent members.
- ✓ In a brazen violation, Tamil Nadu constitutes a SPCA headed by the Secretary, Home, and includes the Director General of Police and the Additional Director General (Law and Order) as the members of the authority.
- ✓ 9 states - Gujarat, Karnataka, Kerala, Maharashtra, Rajasthan, Tamil Nadu, Tripura, West Bengal and Uttarakhand - include serving police officers as members of the PCA. While the court did not specifically prohibit this, including serving officers in an authority mandated to inquire into public complaints against the police undermines the principle of independent external oversight and accountability.
- ✓ Only 7 states - Arunachal Pradesh, Haryana, Karnataka, Kerala, Nagaland, Sikkim and Uttarakhand - specify a selection panel for the selection of independent members of the PCA. In other states, other members are either ex-officio members or are appointed directly by the state government.
- ✓ Only 8 states - Arunachal Pradesh, Assam, Goa, Haryana, Kerala, Meghalaya, Mizoram, and Uttarakhand - make PCA recommendations binding.
- ✓ Only 5 states - Arunachal Pradesh, Goa, Haryana, Sikkim and Tamil Nadu - provide for appointment of independent investigators to assist the authority in conducting inquiries.

District Police Complaints Authority

Of the 18 DPCAs constituted:

- ✓ 11 states - Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Punjab, Rajasthan, and Tamil Nadu - deviate from the requirement of a retired district judge heading the authority.
- ✓ 8 states - Bihar, Gujarat, Karnataka, Kerala, Maharashtra, Rajasthan, Tamil Nadu and Jharkhand - have serving police officers (either Deputy Superintendent of Police, Additional Superintendent of Police or the superintendent of Police) as members of the district authority. In fact, Bihar, Gujarat, Kerala, and Tamil Nadu do not have any independent member from civil society in the authority.

¹² In contravention of the Supreme Court directives to establish an independent complaints body, the Himachal Pradesh Police Act, 2007, assigns the function of the State Police Complaints Authority to the state Lokayukta (Section 93).

- ✓ Only 4 states - Haryana, Karnataka, Manipur and Uttarakhand - provide a panel for selection of the independent members.
- ✓ Only 4 states - Haryana, Kerala, Mizoram, and Uttarakhand - specify that the PCA recommendations will be binding on the state government.
- ✓ Only 2 states - Haryana and Tamil Nadu - provide for independent investigators to assist the authority in conducting inquiries.

With compromised composition dominated by members of the government/police, weakened authority and lack of independent expertise, the Police Complaints Authorities will unlikely be able to emerge as an effective remedy against police misconduct and brutality.

COMPLIANCE BY UNION TERRITORIES

All Union Territories, including the National Capital Territory of Delhi, are non-compliant with most of the directives, as shown below:

	Parameters	Delhi	Other UTs	Overall Compliance	
DIRECTIVE 1	State Security Commission established	YES	YES	NON-COMPLIANT	
	Leader of Opposition included	YES	NO		
	Number of Independent Members	5	5		
	Independent selection	YES*	YES*		
	Recommendations made binding	NO	NO		
	Prepare annual report and submit to assembly	NO	NA		
DIRECTIVE 2	Specifies shortlisting by the UPSC	NO	NO	NON-COMPLIANT	
	Provides minimum tenure of 2 years irrespective of superannuation	NO	NO		
	Specifies grounds for premature removal that are clear and limited to the four conditions laid down by the Court	NO	NO		
DIRECTIVE 3	Provides minimum tenure of 2 years	YES	NO	NON-COMPLIANT	
	Specifies grounds for premature removal that are clear and limited to the four conditions laid down by the Court	YES	NO		
DIRECTIVE 6	Parameters	Delhi	Daman & Diu, Dadra and Nagar Haveli and Lakshadweep	Puducherry, Andaman and Nicobar Islands and Chandigarh	Overall Compliance
	Headed by Retired Judge	YES	NO**	NO**	NON-COMPLIANT
	No of Members	3	0	2	
	Panel for Selection	YES	NA	NO	
	Recommendations are Binding	NO***	NO	NO	
Provides for Indep Investigators	NO	NO	NO		

*Members are selected from a panel prepared by a Search Committee to be constituted for the purpose by the Administrator for Delhi and the Union Home Minister for other UTs.

**The chairperson can either be a retired judge or a retired civil service officer.

***It is taken as not provided because it states recommendations are binding unless the government decides to disagree with the findings of the Authority for reasons to be recorded in writing.

KEY OBSERVATIONS

- ✓ The Ministry of Home Affairs, Government of India, has constituted one SSC for Delhi and one for all the other Union Territories combined.¹² Although the non-official members are selected from a panel prepared by a Search Committee, the MHA Memo is silent on the composition of the committee, binding recommendations and preparation of annual report.
- ✓ On the selection of the police chief, the Ministry of Home Affairs omits shortlisting by the UPSC.¹³ Tenure is fixed at two years or more subject to superannuation. The Union government does not favour affixing a tenure “apprehending legal and administrative repercussions”.
- ✓ Other senior level police functionaries have a minimum tenure of two years but only “as far as possible”. This is non-compliant with the directive.
- ✓ On the establishment of the Police establishment Board, as per the 2007 affidavit filed by the Government of India before the Supreme Court, the board has been constituted for all UTs but since the affidavit does not provide further details in terms of its mandate, an assessment of compliance with this directive is not possible.
- ✓ The Ministry of Home Affairs together with the Government of Delhi constituted an independent Police Complaints Authority for the capital city in January 2018 in a government notification. Although the Delhi PCA complies with the Court’s directive in its composition and functions, its recommendations have not been made categorically binding.

JAMMU AND KASHMIR, AND LADAKH

Following the enactment of the Jammu and Kashmir Reorganisation Act, 2019, that led to the bifurcation and conversion of the state of Jammu and Kashmir into two separate Union Territories of Jammu and Kashmir and Ladakh,¹⁴ the Government of India is yet to issue orders on the implementation of the Supreme Court directives. The information below relates to status of compliance in the erstwhile state of Jammu and Kashmir:

- The Jammu and Kashmir state government had moved an application before the Supreme Court challenging the implementation of the directives on the State Security Commission, the Police Complaints Authority and separation of investigation from law and order:
 - On State Security Commissions, the government had asked to be exempted from implementing this directive based on the specific security situation in the State. It had said that establishing a body such as the SSC would destabilize the system of coordination and control between the Army, the Central Para-military Forces and local police, headed by the Chief Minister.
 - On Police Complaints Authority, government alleged that creating Police Complaints Authorities would give a forum for insurgency ‘elements’ to lodge false complaints against the police to demoralize the police. Further, they claimed there are already sufficient oversight mechanisms in the state, such as the SHRC, Vigilance Commission and departmental superiors.

¹³ As per the Ministry of Home Affairs Office Memorandum No.14040/127/2010-UTP, dated 10 January 2011.

¹⁴ As per the affidavit filed by the Union of India to the Supreme Court of India, dated 12.02.2007.

¹⁵ <http://egazette.nic.in/WriteReadData/2019/210407.pdf#page=2>.

- On Police Establishment Board, the state government had first issued an order dated 06.02.2007 and then subsequently on 19.04.2017 superseding the previous order. As per the 2017 order, the PEB was made up of the DGP and 9 other senior officers. It had the mandate to decide all transfers, postings, promotions and other service related matters of police of and below the rank of DySP. It was silent on its power to recommend for SP and above.

Status of Police Acts in India

No	States	Police Acts/ Amendment Acts passed after Supreme Court judgment, 2006
1	Assam	Assam Police Act 2007
2	Andhra Pradesh	Andhra Pradesh Police Reforms (Amendment) Act 2014
3	Bihar	Bihar Police Act 2007
4	Chhattisgarh	Chhattisgarh Police Act 2007
5	Gujarat	Bombay Police (Gujarat Amendment) Act 2007
6	Haryana	Haryana Police Act 2007; Haryana Police (Amendment) Act 2014
7	Himachal Pradesh	Himachal Pradesh Police Act 2007
8	Karnataka	Karnataka Police (Amendment) Act 2012
9	Kerala	Kerala Police Act 2011
10	Maharashtra	Maharashtra Police (Amendment and Continuance) Act 2014
11	Meghalaya	Meghalaya Police Act 2011
12	Mizoram	Mizoram Police Act 2011
13	Punjab	Punjab Police Act 2007
14	Rajasthan	Rajasthan Police Act 2007
15	Sikkim	Sikkim Police Act 2007
16	Tamil Nadu	Tamil Nadu Police (Reforms) Act 2013
17	Tripura	Tripura Police Act 2007
18	Uttarakhand	Uttarakhand Police Act 2007; Uttarakhand Police (Amendment) Act 2018
19	Arunachal Pradesh	Police bill drafted but not tabled in the legislature
20	Goa	Goa Police Bill 2008 introduced in state legislature, and referred to a Select Committee for review. This Bill lapsed in 2012. The state government is reportedly drafting a revised Police Bill.
21	Jammu and Kashmir	Jammu and Kashmir Draft Police Bill 2013, made public for feedback but no progress since then.
22	Odisha	Odisha Police Bill 2015 passed by state assembly, sent to Governor for approval but returned back to assembly with comments.
23	West Bengal	Police Bill drafted in 2007 but not tabled. No progress since.
In Jharkhand, Madhya Pradesh, Manipur, Nagaland, Uttar Pradesh and the newest state of Telangana, efforts have been made to draft Police Bills which to date have not moved further.		
Union Territories		
1	Chandigarh	Adopted the Punjab Police Act 2007 in 2010
2	Delhi	Police Bill drafted in 2010-11 but no progress made. Delhi Police Act 1978 in force.
Other UTs–Daman and Diu, Lakshadweep, Andaman and Nicobar Islands, Dadra and Nagar Haveli, and Puducherry–continue to be governed by the Police Act of 1861.		



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