

Compliance with Supreme Court Directives on Police Reforms

An Overview

This note provides information on the status of compliance by states and union territories with the Supreme Court directives on police reforms. States have implemented the directives either through new Police Acts (including Amendment Acts) or through government orders. No state, however, has complied fully with the directives. States have either blatantly rejected or ignored the directives, or diluted significant features. We have marked states either as partially compliant or non-compliant. Please note our assessment refers only to compliance on paper, as provided for in the Police Act or the government order, and does not address compliance on the ground. This note also does not cover Telangana.

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”. The Commission is a means of conditioning and defining the powers of the political executive and police and clarifying each one’s sphere of responsibility and accountability. Its composition is designed to ensure bipartisanship and shield policing from changes in political power by keeping policies more or less constant. Its functions are designed to ensure that the political executive always has ultimate responsibility for providing the public with efficient, honest, unbiased and accountable policing while retaining authority over the police.

Composition	Functions	Powers
<p>The Court provided three models – of the NHRC, the Ribeiro Committee and the Sorabjee Committee – for members of the Commission. Generally, the models included:</p> <ul style="list-style-type: none"> √ Chief Minister or the Home Minister as the Chairperson √ DGP as ex-officio secretary √ Leader of opposition √ Chief Secretary √ A retired judge nominated by the Chief Justice of the High Court √ 3-5 non-political independent members 	<p>Main functions include</p> <ul style="list-style-type: none"> √ Laying down broad policy guidelines √ Performance evaluation of the police √ Preparing a report and placing before the legislature <p>The Model Police Act 2006, which created a similar body known as the State Police Board, added one more function for the Board – preparing panels of police officers for the rank of DGP against prescribed criteria.¹</p>	<p>Recommendations of the Commission were made binding on the state governments</p>

Compliance by States and UTs

We mark compliance against the following components:

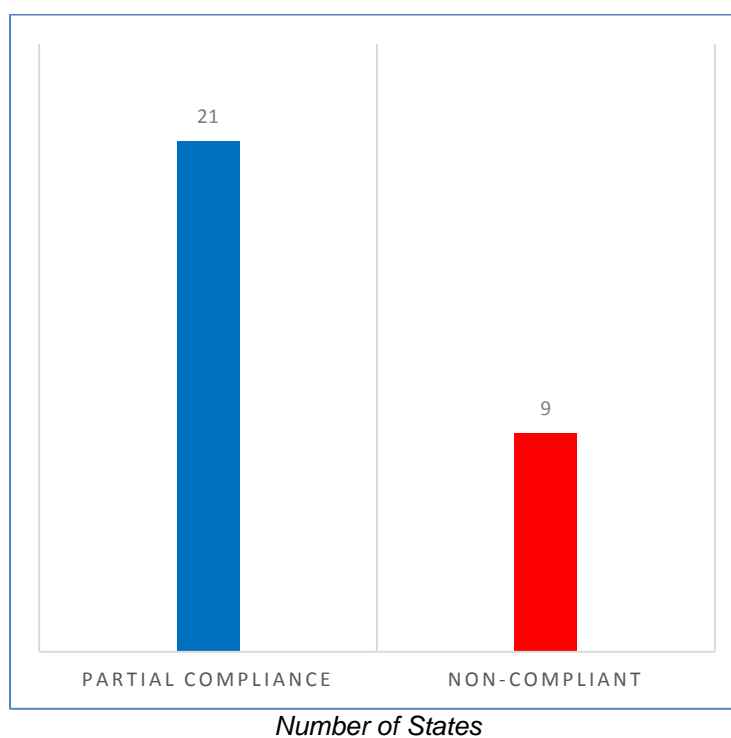
- a) Establishment of State Security Commission: States that have not constituted the SSC, either through a Police Act or through executive order/notification, are marked as non-compliant.
- b) Inclusion of the Leader of Opposition: States that have constituted SSC but the body fails to include leader of the opposition are marked as non-compliant.
- c) Inclusion of independent members in the SSC and inclusion of an independent panel for selection of the independent members: Mere inclusion of independent members alone will not guarantee diversity of perspectives and representativeness. It is equally critical for the independent members to be selected through an objective and independent process for them

¹ Section 48, Model Police Act 2006

to play an effective role. 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”. States are marked as non-compliant if they fail to include both these provisions together.

- d) Binding recommendations: States that have constituted SSC but fail to specify that its recommendations are binding on the state government are marked as non-compliant. The Court ordered that the SSC’s recommendations are to be binding.

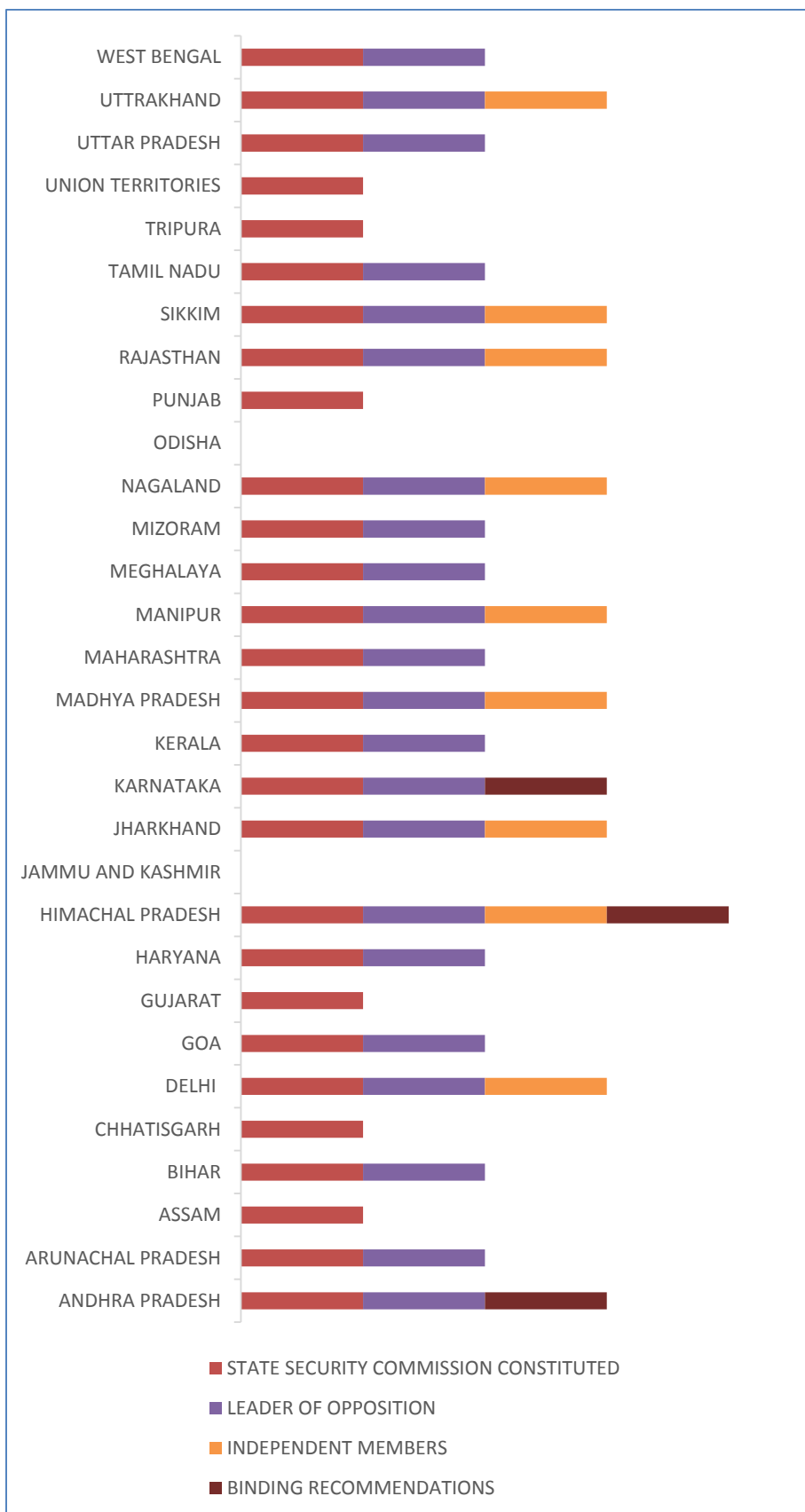
Table 1: Status of Compliance – State Security Commission



Key observations:

- 26 out of 28 states have constituted SSC either through Police Acts or through government orders. Jammu and Kashmir and Odisha are the only two states who have not taken any step to provide for the SSC. Note, this refers only to constitution on paper, and does not refer to Commissions functional on the ground.
- 6 out of 26 states – Punjab, Tripura, Gujarat, Chhattisgarh, Bihar and Assam – and the Union Territories (excluding Delhi) do not include leader of opposition in the SSC.
- Only 9 out of 26 states – Andhra Pradesh, Arunachal Pradesh, Himachal Pradesh, Jharkhand, Madhya Pradesh, Uttarakhand, Sikkim, Nagaland, Manipur – and Delhi comply with the provision for independent members as laid down by the Court.
- Only 4 states – Himachal Pradesh, Andhra Pradesh, Karnataka and Meghalaya – give binding powers to the SSC.

Table 2: State and Union Territory-wise compliance on State Security Commission



Directive 2: Tenure and Selection of the DGP

What the Directive says

The DGP 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 candidate's: (i) length of service, (ii) service record, and (iii) range of experience.

The DGP must have a minimum tenure of two years irrespective of date of superannuation.

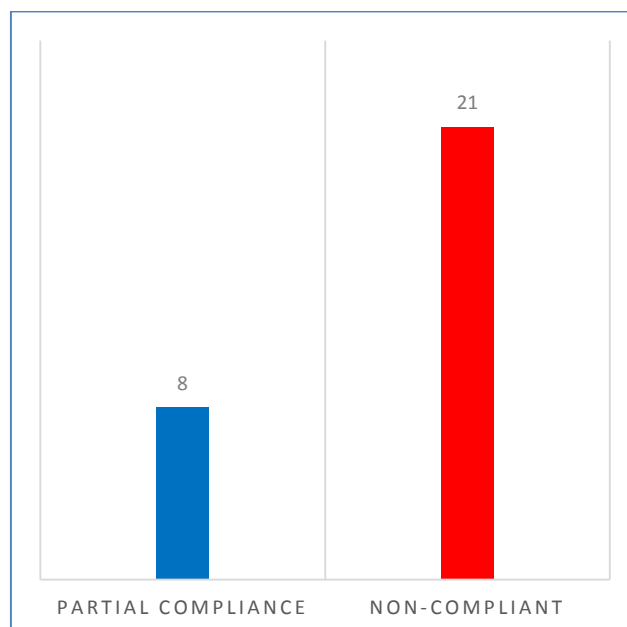
The DGP may, however, be relieved of his responsibilities by the State Government acting in consultation with the State Security Commission consequent upon: (i) any action taken against him under the All India Services (Discipline and Appeal) Rules; or (ii) following his conviction in a court of law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

Compliance by States and UTs

We mark compliance against the following components of the directive:

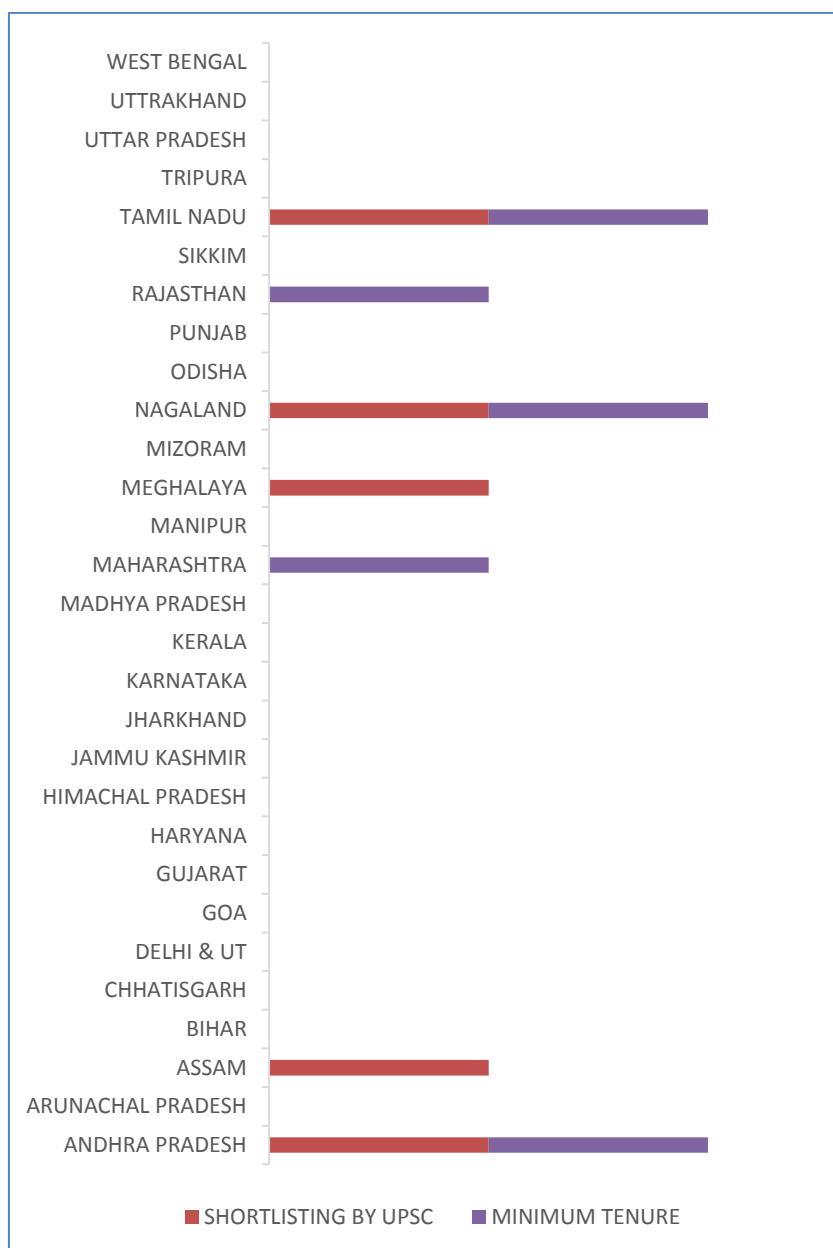
- a) Shortlisting by the Union Public Service Commission (UPSC): States/UTs are marked as non-compliant if they do not specify the requirement of selecting the DGP from amongst three senior most officers empanelled for promotion to the rank by the UPSC on the basis of their length of service, very good record and range of experience.
- b) Tenure: States/UTs 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.

Table 3: Status of Compliance – Selection and Tenure of the Director General of Police



Number of States

Table 4: State and Union Territory-wise compliance on Selection and Tenure of the DGP



Key Observations

- Only 8 states – Andhra Pradesh, Assam, Maharashtra, Manipur, Meghalaya, Nagaland, Rajasthan and Tamil Nadu – comply partially with this directive.
- Of the 8 states, only 5 states – Tamil Nadu, Nagaland, Maharashtra, Rajasthan, and Andhra Pradesh – provide minimum tenure. The rest either provide only 1 year tenure, or have made tenure subject to superannuation.
- Shortlisting by the UPSC for the post of DGP is provided only by 5 states – Assam, Andhra Pradesh, Meghalaya, Nagaland, and Tamil Nadu. Most states continue to vest the power of appointment of the DGP with the state government and either ignore or dilute the requirement of shortlisting by the UPSC.

Directive 3: Minimum Tenure of Inspector General of Police (IGP) and other officers

What the Directive says

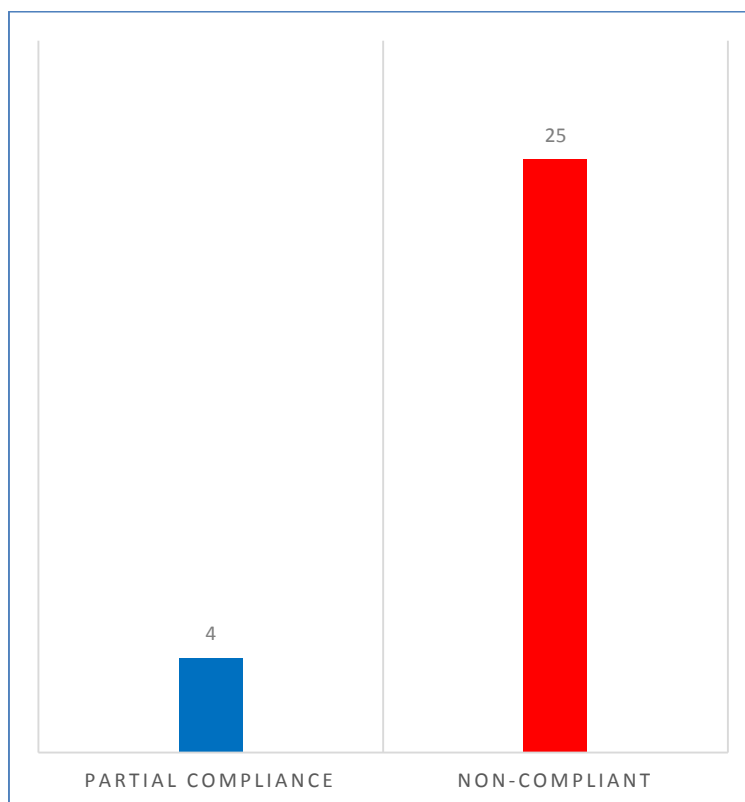
The Supreme Court directions provide **for a minimum tenure of two years** for the Inspector General of Police (in charge of a Zone), the Deputy Inspector General of Police (in charge of a Range), the Superintendent of Police (in charge of a District) and the Station House Officer (in charge of a Police Station). This ensures security of tenure for police officers on operational duties in the field and allows them to withstand undue political interference. Further it gives them time to properly understand the needs of their jurisdictions and do justice to their jobs. The Court provides for their premature removal on grounds of 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 by States and UTs

Compliance is marked against the following components:

- a) Minimum tenure of two years: States/UTs are marked as non-compliant if they fail to stipulate minimum tenure of two years for police officers on operational duties.
- b) Grounds of removal: States are marked as non-compliant where, despite stipulating minimum tenure, very broad grounds, liable to misuse, have been laid down to allow for premature removal by the state government.

Table 5: Status of Compliance: Tenure of IGP and other officers



Number of States

Table 6: State and Union Territory-wise compliance on tenure of the IGP and other officers



Key observations

- Only 4 states – Andhra Pradesh, Manipur, Nagaland and Meghalaya – provide for minimum tenure for IGP and other officers and clearly define grounds for removal.
- 9 states – Assam, Bihar, Chhattisgarh, Gujarat, Himachal Pradesh, Karnataka, Sikkim, Tripura and Uttarakhand – provide only one year tenure to certain officers, and lay down wide grounds for removal of these officers beyond what the directive suggests.
- Delhi, Goa, Jharkhand, Kerala, Madhya Pradesh, the Union Territories, and West Bengal are silent on the process of removal of the mentioned officers.

Directive 4: Separation of Investigation and Law and Order Functions

What the directive says

Both investigation and law and order are vital and specific police functions. In order to encourage specialization and upgrade overall performance, the Court has 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 is felt that this will streamline policing, ensure speedier and more expert investigation and improve rapport with the people. The Court has not said how this separation is to take place in practice but clearly indicates that there must be full coordination between the two wings of the police.

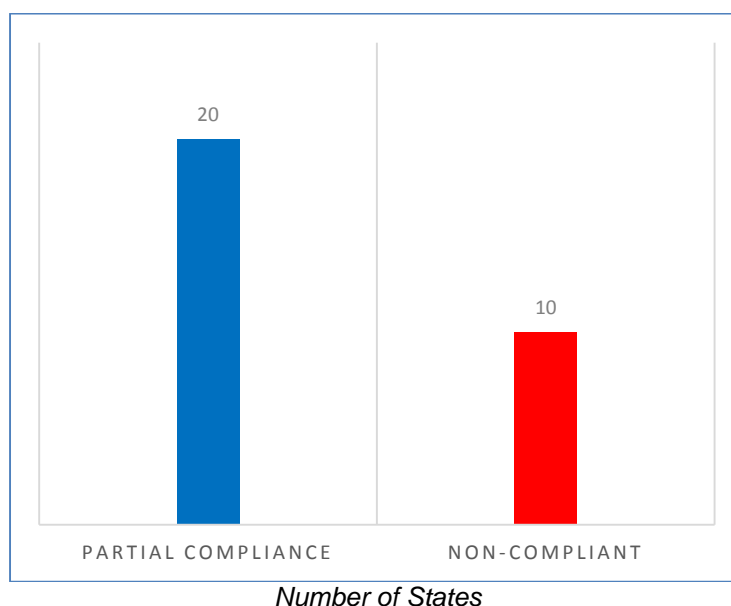
Compliance by States and UTs

Compliance on this directive refers to complete separation of police investigation from law and order duties while providing for coordination between the two wings. States that either

- do not provide any details of how the separation is to be effected; or
- have challenged the implementation of the directive in the Supreme Court are marked as non-compliant.

States that have created special crime investigation units in select areas and/or for select crimes are marked as partial compliance.

Table 7: Status of Compliance on separation of investigation and law and order



Key Observations

- States that fail to comply with this directive include: Andhra Pradesh, Gujarat, Haryana, Jammu and Kashmir, Madhya Pradesh, Manipur, Meghalaya, Nagaland, and Uttar Pradesh. Additionally, the Union Territories have also not implemented this directive.
- The remaining states have taken some measure towards separating investigation from law and order duties. States have either constituted special investigation units at police stations for specific offences, such as those triable in Sessions Court like in Maharashtra, or for select geographical areas.
- Mizoram is the only state to specifically provide for officers assigned to the special investigation units 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.

Directive 5: Police Establishment Board

What the Directive says

The Court has directed the setting up of a Police Establishment Board within each police force. The Police Establishment Board, made up of the DGP and four other senior officers of the department will serve the functions of (i) deciding all transfers, postings, promotions and other service related matters for police officers of and below the rank of Deputy Superintendent of Police; (ii) making recommendations to the state government on postings and transfers of officers above the rank of Deputy Superintendent of Police; (iii) being a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above; and (iv) generally, reviewing 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 the senior police leadership, but service related matters of other ranks should be internal matters. Experience in India shows that this statutory demarcation is absolutely required in order to decrease corruption and undue patronage given the prevailing illegitimate political interference in decisions regarding police appointments, transfers and promotions.

Compliance by States and UTs

Compliance is marked against the following components:

- a) Composition of the PEB: States that include government representatives, instead of confining the body only to senior police officers, as required by the directive, are marked as non-compliant.
- b) Mandate of the PEB: States are marked as non-compliant if the mandate is restricted on either of these counts:
 - 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;
 - Its recommendations regarding posting and transfers of officers *of and above* the rank of Superintendent of Police is not taken as normally binding by the state government.
- c) Appeal Forum: States are marked as non-compliant where they set up PEB but the body is not given the powers to act as a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above regarding their promotion/transfer/disciplinary proceedings or illegal orders.

Table 8: Status of Compliance on Police Establishment Board

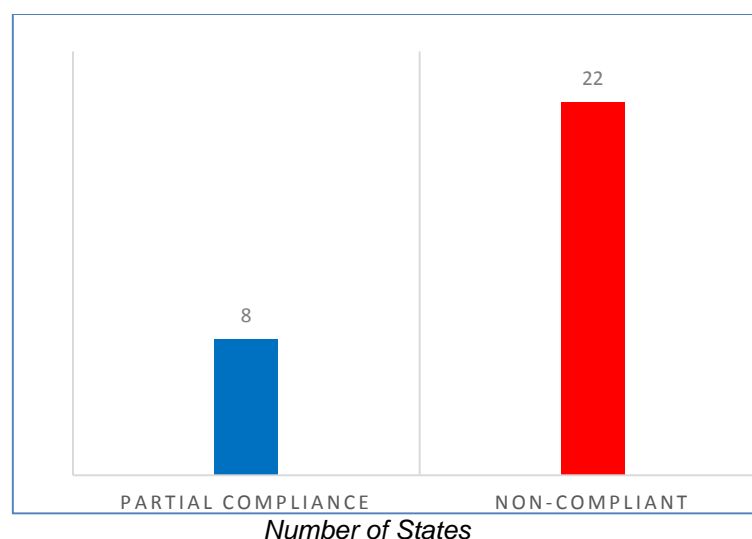
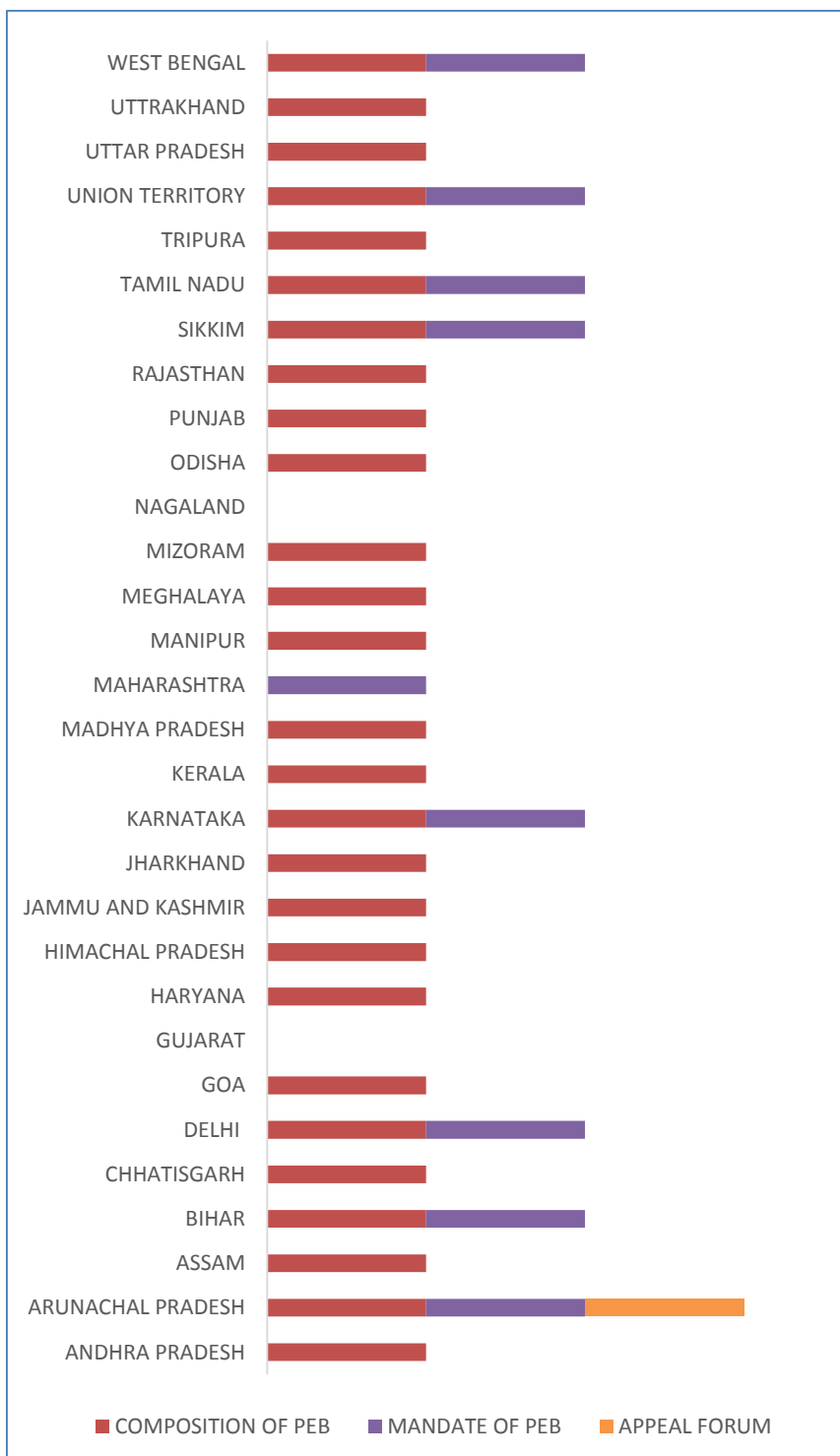


Table 9: States and Union Territory-wise compliance on Police Establishment Board



Key Observations

- All states except Nagaland, Maharashtra and Gujarat have constituted a PEB (or similar departmental bodies).
- Only 6 states – Arunachal Pradesh, Bihar, Karnataka, Sikkim, Tamil Nadu and West Bengal together with Delhi and other Union Territories – partially comply with the directive.

- Some states like UP instead provide for four different Police Establishment Boards to deal with state level transfers but the function of these bodies is limited to dealing only with transfers and does not address other service related matters nor are they authorized to function as a forum of appeal.
- Maharashtra, in its 2014 Ordinance, has set up Boards, but these are hugely diluted from the Court's model and ultimately the state government has retained almost all power over transfers and postings.

Directive 6: Police Complaints Authority

What the Directive says

The Court has directed the creation of a new mechanism - a Police Complaints Authority to be established at both state and the district levels. Their mandate is to look into public complaints against police officers in cases of serious misconduct.

State Complaints Authority:

- ✓ To be headed by 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 Complaints Authority:

- ✓ To be headed by 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.
- ✓ 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.

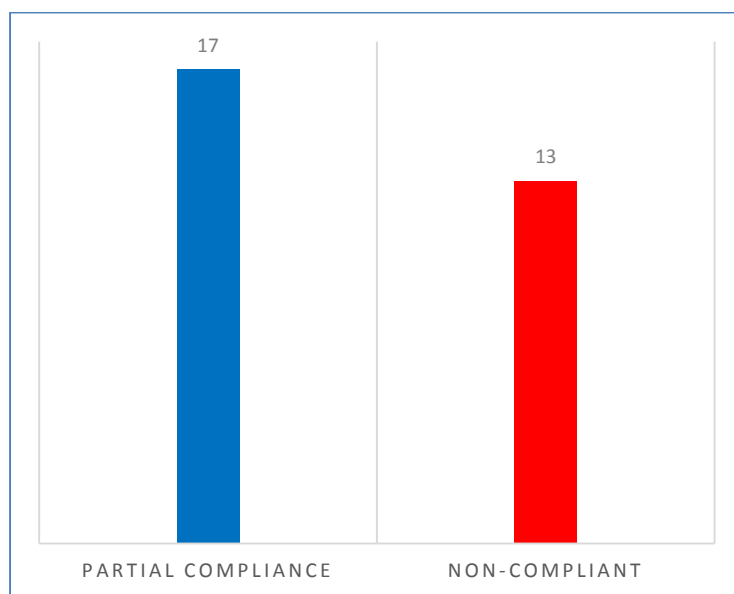
Common features:

- ✓ 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.
- ✓ Once the inquiry is completed, the Authority can recommend a suitable disciplinary punishment to the appointing authority which will be bound by it. The Authority can also recommend the registration of an FIR against the erring police officer.
- ✓ The recommendation to be binding on the state government.

Compliance is marked against four components:

- a) Established Police Complaints Authority at State Level – States are marked as compliant on establishment of PCAs at State Level.
- b) Established Police Complaints Authority at District Level – States are marked as compliant on establishment of PCAs at District Level.
- c) Independent Members – States are marked compliant when independent members are panelled from a panel prepared by the State Human Rights Commission/Lok Ayukta/State Public Service Commission.
- d) Binding Recommendation - The recommendations of the Complaints Authority, both at the district and state level, is considered as binding on the concerned department.

Table 10: Status of Compliance on Police Complaints Authority



Number of States

Key Observations:

- 23 states have set up PCAs at state level and 15 states at the district level. Of these, only 12 states – Andhra Pradesh, Assam, Gujarat, Jharkhand, Karnataka, Kerala, Maharashtra, Manipur, Mizoram, Punjab, Rajasthan and Tamil Nadu – have constituted PCAs both at state and district level.
- Only 6 states (26%) have independent members who are selected through a transparent and independent selection process.
- Only 9 states (30%) have specifically made recommendations made by the Authorities binding on the state government.

Table 11: States and Union Territory-wise compliance on Police Complaints Authority

