

Punjab Government Compliance with Supreme Court Directives on Police Reform

The Government of Punjab was initially reluctant to comply with the Supreme Court's directive and filed a review petition with the Court. This petition was dismissed by the Court in August 2007.

The Government introduced the new comprehensive Police Bill in the Legislative Assembly in October 2007. This Bill was heavily criticised by civil society and challenged in the High Court of Punjab. The High Court agreed that if the Bill was to become an Act it could be challenged for not adhering to the Supreme Court directives. The Bill received the Governor's assent in January 2008.

Although Punjab has enacted new legislation, a careful analysis shows that the Government has not complied in letter and spirit with the directives and cannot therefore be viewed as compliant with the Supreme Court's judgment.

1. State Security Commission

Directive 1

Constitute a binding State Security Commission to (i) ensure that the state government does not exercise unwarranted influence or pressure on the police, (ii) lay down broad policy guidelines, and (iii) evaluate the performance of the state police. In the composition of this Commission, governments have the option to choose from any of the models recommended by the National Human Rights Commission, the Ribeiro Committee or the Sorabjee Committee.

Composition

The Punjab State Police Board (SPB) does not adhere to any of the three models suggested by the Supreme Court. The Board is completely composed of governmental officials, save from the DGP. There are no independent members, no judge and no Leader of Opposition on the Board,¹ as envisaged by all the three models. This completely compromises the safeguards against Government control and manipulation of the new Board, and can only be seen as the Government's urge to control the police rather than monitoring it. Further it is crucial to understand that the intention with the SPB is not to ensure complete independence between the Police and the Executive. However, it is a way to ensure that the police service is accountable to the Executive (and in extension the people) without political interference in the actual police administration.

Functions

The function of the SPB does not comply with the SC directive. The Court expressly stated that the purpose of the SPB is to ensure that the State Government does not exercise unwarranted influence

¹ Section 27 Punjab Police Act, 2008

or pressure on the Police, and its functions must include giving directions for the performance of preventative tasks by the Police. Each of these specific functions/purposes is absent from the Act.²

The new statute indicates that a report on Policing must be prepared and tabled in the Legislature, but it stipulates that this report should be created by the State Government (in consultation with the SPB).³ This is a basic effort to manipulate and control the reporting process, and it is contradictory to the SC directive, which expressly indicates that the report must be created by the SPB itself.

Further the SPB does not have binding powers on the State Government as envisaged by the Apex Court. On the other hand, there are only governmental employees on the Board and it is unlikely that the recommendations will not be approved by the Government.

Conclusion

Although the Punjab Act creates an SPB it has not adhered to the Supreme Court directive in letter and spirit. Instead of ensuring a healthy balance between political supervision and autonomy for the police in administrative issues, the SPB has ensured that the Government has the legitimate right to interfere in the police organisation's work. This is a grave violation of the Supreme Court's directive and therefore the Punjab Government cannot and must not be seen as in compliance with this directive.

2. Selection and Tenure of the DGP

Directive 2

Ensure that the Director General of Police is appointed through a merit based, transparent process with the involvement of the UPSC and enjoys a minimum tenure of two years.

Selection process

The DGP is directly appointed by the Government rather than being empanelled by the Union Public Service Commission (UPSC).⁴ The idea behind UPSC (or any other independent selection panel) nominating candidates to the DGP post is to ensure the impartiality of the selection procedure and to ensure that the DGP enjoys operational autonomy from the Government. Removing the UPSC role in the selection procedure dilutes this intention which is highly concerning.

Equally concerning is that the DGP only gets selected on the ground that he has reached this rank.⁵ In a modern, professional and efficient police service it should not be permissible to select the DGP strictly based on seniority. In order to encourage a police service based on merit, the DGP post should

² Section 28 Punjab Police Act, 2008

³ Section 29 (1)(b), Punjab Police Act, 2008

⁴ Section 6 (1) Punjab Police Act, 2008

⁵ Section 6 (1) Punjab Police Act, 2008

be awarded to the most qualified and competent officer. To ensure this, impartial selection grounds should be laid down in the Act, as envisaged by the Court, to avoid manipulation from the State Government.

Tenure

The DGP is ensured two years minimum tenure, however the tenure is subject to superannuation. This is in direct breach of the Supreme Court's order, which stipulated that the tenure must run irrespective of superannuation, in order to safeguard against the potential for arbitrary State interference. For example, to circumvent the Supreme Court's two year minimum requirement, the Government could simply appoint candidates within six months of their date of retirement.

Premature Removal

The Punjab Police Act provides two additional grounds for premature removal of the DGP. It states that the DGP can be removed prematurely if s/he is promoted to a higher post or transferred due to *special reasons*.⁶ This broad power undermines the Supreme Court's entire purpose of securing the tenure of the DGP, to immunise them from State Government interference. The fact that the term "special reasons" is undefined makes this provision vulnerable to a high degree of manipulation.

Further, the provision that the DGP shall be removed if there is any action taken against him/her under the All India Service Rules has been omitted in the Act, which is highly concerning.

In addition the Government can remove the DGP unilaterally without consulting the SSC, thus breaching the Court's check and balances on the premature removal procedure, and increasing the risk of arbitrary decisions.

Conclusion

Although the Punjab Police Act establishes minimum tenure for the DGP, it fails to adhere to the Apex Court's directive on several grounds. The tenure is subject to superannuation, the selection procedure of the DGP is not made in an independent transparent manner and the State can remove the DGP from his/her post on arbitrary grounds. It is therefore argued that Punjab Police Act cannot and must not be seen as in compliance with this directive.

3. Tenure for police officers on operational duties

Directive 3

Ensure that other police officers on operational duties (Superintendents of Police in-charge of a district, Station House Officers in-charge of a police station, IGP (zone) and DIG (range)) also have a minimum tenure of two years.

⁶ Section 6 (2) (c) Punjab Police Act, 2008

Tenure

The Punjab Police Act fails to adhere to the requirement for minimum tenure of police officers on operational duty⁷. This is a direct violation of the Supreme Court directive which states that the officer shall have two years minimum tenure. The intent behind this directive is to ensure that the police officers can work independently of external political interferences and not be arbitrarily transferred as soon as they go against the ruling political party. Secured tenure is further crucial to ensure good management in the police service.

Premature removal

The Punjab Police Act also provided two additional grounds for premature removal of police officers which had not been envisaged by the Supreme Court. It states that a police officer on operational duty can be removed to fill up a vacancy. The Supreme Court specifically ensured that a police officer should not be transferred to fill up vacancies, in consideration of the States' historic exploitation of transfer powers

The Act further allows the Government to transfer a police officer for inefficiency, negligence, non-performance or where a prima facie case of serious nature is found against him or her. The nature of such a preliminary enquiry is not outlined and the Act does not provide any procedural protections to officers who may be subject to such an enquiry (see, as a counter example, the procedural protections provided under MPA s.13(2)). As such this section is subject to abuse and manipulation on the part of the State Government.

Conclusion

The Punjab Police Act has only assured one year tenure to police officers on operational duties in direct violation of the directive. Further, the Act provides additional grounds for premature removal which promotes scope for political interference rather than isolating the police from such extraneous behaviour. Therefore the Punjab Police Act, 2008 cannot and must not be seen as in compliance with this directive.

4. Separation between Investigation and Law & Order

Directive 4

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

Separation

The Punjab Police Act is completely speculative on whether Law & Order and Crime Investigation will be separated in *municipal areas* but ensures that every *district* shall have crime investigation units.⁸

⁷ Section . 15 (1) Punjab Police Act, 2008

⁸ Section 36 Punjab Police Act, 2008

Although the SC directive is general in terms of the structure of such a separation of functions, the Model Police Act, 2006 (MPA) provides a useful template. When compared with the MPA, the Punjab Act fails to comply fully with several provisions recommended to ensure the successful separation of the two functions.

The Act stipulates that the officer in charge of the Crime Investigation Units shall be an individual not below the rank of Inspector; the MPA states that the supervising officer should be someone not below the rank of Addl SP (MPAs.128).

Further the Punjab Act states that assistance can be provided to Crime Investigation Units through the appointment of extra officers,⁹ however, it does not indicate that these extra officers should be posted for the specific purpose of ensuring quality investigation on professional lines (MPA s.128). It is also problematic that the training for officers within the Crime Investigation Units is to be upgraded from *time to time*,¹⁰ rather than on a regular basis.

Additionally the Punjab Act fails to ensure minimum tenure for officers posted to the new Crime Investigation Unit (MPA s.134) and neither does it ensure that the Crime Investigation Units will be equipped with adequate funding and staff (MPA ss. 135-137).

It is welcoming though that the legislation mandates the creation of a Forensic Science Laboratory and Finger Print Bureau.¹¹ However, it stipulates only that the State may provide necessary legal and forensic aid to investigating officers, while the MPA makes this requirement mandatory (s.127).

Conclusion

The Punjab Act creates Crime Investigation Units on the district level but is entirely speculative on separating the two wings in municipal areas. This can be seen as only a half-hearted attempt to comply with the directive and therefore the Government of Punjab can only be seen as partially compliant with the directive.

5. Police Establishment Board

Directive 5

Set up a Police Establishment Board, which will decide all transfers, postings, promotions and other service related matters of police officers of and below the rank of Deputy Superintendent of Police and make recommendations on postings and transfers of officers above the rank of Deputy Superintendent of Police. This Board will comprise the Director General of Police and four other senior officers of the police department, and will be empowered to dispose of complaints from SPs and above regarding discipline and other matters.

⁹ Section 36 (2) Punjab Police Act, 2008

¹⁰ Section 37 Punjab Police Act, 2008

¹¹ Section 19 (2) Punjab Police Act, 2008

Function

The Punjab Police Act creates a Police Establishment Committee (PEC), however the PEC's functions are not adhered to. The PEC is envisaged as deciding transfers, postings, appointments and other service related functions for officers of the ranks of Dy.SP and below. However, according to the Punjab Police Act, the PEC can only *decide transfers and postings of the Dy.SP*.¹²

It is also concerning that the Act undermines the power of the PEC by ensuring that the DGP can at any time s/he deems fit, without any recourse, decide transfers, postings and promotions of subordinate rank officers.¹³

Further, the Act omits two more functions of the PEC. First, the PEC is supposed to function as a forum for appeal for officers of the rank of SP and above, in order to safeguard the officers from illegal and irregular orders based on political interference. Second, the PEC should also review the function of the police in the state. Neither of these functions are included in the Act, thus undermining the power of the PEC and ensuring that avenues for political interference stay intact instead of being eliminated.

Conclusion

The Act establishes a PEC but undermines its powers and functions, leaving some of the avenues for political interference intact. It is therefore held that the Punjab Police Act cannot and must not be seen as compliant with the Supreme Court directive.

6. Police Complaints Authorities

Directive 6

Set up independent Police Complaints Authorities at the state and district levels to look into public complaints against police officers in cases of serious misconduct, including custodial death, grievous hurt, rape in police custody, extortion, land grabbing and serious abuse. The Complaints Authorities are binding on criminal and disciplinary matters.

The state level authority is to be chaired by a retired judge of the High Court or Supreme Court to be chosen by the state government out of a panel of names proposed by the Chief Justice. It must also have three to five other members (depending on the volume of complaints) selected by the state government out of a panel of names prepared by the State Human Rights Commission, the Lok Ayukta and the State Public Service Commission. Members of the authority may include members of civil society, retired civil servants or police officers or officers from any other department.

¹² Section 32 (2) Punjab Police Act, 2008

¹³ Section 32 (6) Punjab Police Act, 2008

The district level authority is to be chaired by a retired district judge to be chosen by the state government out of a panel of names proposed by the Chief Justice of the High Court or a High Court Judge nominated by him or her. It must also have three to five members selected according to the same process as the members of the state level Police Complaints Authority.

Creation

The Punjab Police Act completely fails to set up Police Complaint Authorities (PCA) at the State and District Level. The Act merely states that the Government *may* set up PCAs, leaving all other details out of the Act. This section is entirely speculative and the Government of Punjab has completely ignored this directive, eliminating any effort to ensure greater police accountability to the public.

Conclusion

The Punjab Government has failed to create PCAs on State and District Level, in direct violation of the Supreme Court's order. The Act is completely speculative on the matter and no effort has been made to ensure that this crucial oversight mechanism will be set up in the state of Punjab.

7. Recommendations

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

New Delhi, 25 February 2009
Commonwealth Human Rights Initiative

