

THE BOMBAY POLICE (GUJARAT AMENDMENT) BILL, 2007.

GUJARAT BILL NO. 31 OF 2007

A BILL

further to amend the Bombay Police Act, 1951.

It is hereby enacted in the Fifty-eighth Year of the Republic of India as follows:-

1. (1) This Act may be called the Bombay Police (Gujarat Amendment) Act, 2007. **Short title and commencement**
- (2) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

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Insertion of new sections 5A and 5B in Bom. XXII of 1951.

2. In the Bombay Police Act, 1951 (hereinafter referred to as “the principal Act”), after section 5, the following sections shall be inserted, namely:-

Bom. XXII of 1951

Director General and Inspector General of Police

“5A. (1) For the overall direction and supervision of the Police Force, the State Government shall appoint a Director General and Inspector General of Police who shall exercise such powers, perform such functions and duties and have such responsibilities and authority as may be provided by or under this Act or orders made by the State Government.

(2) The Director General and Inspector General of Police shall be selected from a panel of officers consisting of the officers already working in the rank of the Director General of Police or of the officers in the rank of Additional Director General of Police who have been found suitable for promotion after screening by a Committee under the provisions of the All India Services Act, 1951:

61 of 1951

Provided that the panel of officers from the rank of Additional Director General of Police shall not exceed double the number of vacant posts to be filled in the rank of Director General and Inspector General of Police in the State.

(3) The Director General and Inspector General of Police so selected and appointed shall ordinarily have a minimum tenure of two years irrespective of his date of superannuation, subject to the relevant provisions under the All India Services Act, 1951 and the rules made thereunder.

61 of 1951

(4) The Director General and Inspector General of Police may be removed from his post before the expiry of his tenure by the State Government by an order in writing specifying the reasons thereof, consequent upon the-

(a) conviction by a court of law in a criminal offence of where charges have been framed by a court in a case involving corruption or moral turpitude; or

(b) punishment of dismissal, removal or compulsory retirement from service or of reduction to a lower post; or

(c) suspension from service; or

(d) incapability to discharge his functions as the Director General and Inspector General of Police due to physical or mental illness; or

(e) misuse or abuse of powers vested in him or for gross inefficiency and negligence or failure to provide leadership to the police.

- 5B.** (1) The Police officer on operational duties in the field viz. Inspector General of Police in a range, Deputy Inspector General of Police, Commissioner of Police, Deputy Commissioner of Police, Assistant Commissioner of Police, Superintendent of Police, Sub-Divisional Police Officer and a police officer posted as an Officer in-charge of the Police Station shall ordinarily have a minimum tenure of two years on such post. **Tenure of office of key police functionaries.**
- (2) Any police officer referred to in sub-section (1) may be removed or as the case may be, transferred from his post before the expiry of the tenure of two years consequent upon the -
- (a) conviction by a court of law, or
 - (b) punishment of dismissal, removal, compulsory retirement from service or of reduction to a lower rank; or
 - (c) charges having been framed by a court of law in a criminal offence; or
 - (d) suspension from service; or
 - (e) incapability to discharge his functions and duties due to physical or mental illness; or
 - (f) misuse or abuse of powers vested in him; or
 - (g) gross inefficiency and negligence where a prima facie case of a serious nature has been established after a preliminary enquiry; or
 - (h) superannuation; or
 - (i) promotion to a higher post; or
 - (j) on his own request.”.

3. In the principal Act, after section 7, the following section shall be inserted, namely:- **Insertion of new section 7A in Bom. XXII of 1951**

“7A. (1) The State Government may, having regard to the population in an area or the circumstances prevailing in such area, by an order, separate the investigating police from the law and order police wing in such area to ensure the speedier investigation, better expertise and improved rapport with the people. **Separation of investigating wing and law and order wing.**

(2) Such investigating police wing shall investigate the serious crimes such as offence punishable under Chapter XII, XVI, XVII of the Indian

Penal Code, Offences of Terrorist Activities, Cyber Offences, Inter State Offences and such other offences as the State Government may, by an order, direct.

(3) The Director General and Inspector General of Police or an officer authorized by him shall co-ordinate between the Law and Order Police and the Investigating Police wings.”.

Insertion of new Chapter IIIA in Bom. XXII of 1951.

4. In the principal Act, after Chapter III, the following Chapter shall be inserted namely:-

“CHAPTER IIIA

STATE SECURITY COMMISSION, POLICE ESTABLISHMENT BOARD AND POLICE COMPLAINTS AUTHORITY

Establishment and constitution of State Security Commission.

32A. (1) The State Government shall, by notification in the *Official Gazette*, establish a State Security Commission to exercise the powers and perform the functions as assigned to it by or under the provisions of this Chapter.

(2) The State Security Commission shall consist of the following members namely:-

- (a) the Chief Minister of the State, *ex-officio*, who shall be the Chairperson;
- (b) the Minister in charge of Home Department.....*Ex-officio*;
- (c) the Chief Secretary to the Government of Gujarat*Ex-officio*;
- (d) the Secretary to the Government of Gujarat, Home Department,*Ex-officio*;
- (e) the Director General and Inspector General of Police *ex-officio*, who shall be the Member Secretary; and
- (g) two non-official members to be appointed by the State Government of persons having reputation for integrity and competence in the field of academia, law, public administration or media.

(3) No person shall be appointed as a member under clause (g) of sub-section (2) if he:-

- (a) is not a citizen of India; or
- (b) has been convicted by a court of law or against whom charges have been framed in a court of law; or
- (c) has been dismissed, or removed from service or compulsorily retired on the grounds of corruption or misconduct; or

- (d) holds an elected political office, including that of member of Parliament or State Legislature or a local body, or is an office-bearer of any political party or any organization connected with a political party; or
- (e) is of unsound mind.

(4) A non-official member appointed under clause (g) of sub-section (2) may be removed on any of the following grounds:

- (a) Proven incompetence;
- (b) Proven misbehavior or misuse or abuse of powers vested to him;
- (c) Failure to attend three consecutive meetings of the State Security Commission without sufficient cause;
- (d) Incapacitation by reasons of physical or mental infirmity;
- (e) Otherwise becoming unable to discharge his functions as a member;
- (f) Conviction by a court of law in an offence punishable under chapter XII, XVI or XVII of the Indian Penal Code, 1860 or where charges have been framed by a court in a case in moral turpitude.

45 of 1860.

(5) The terms of office of the non-official members shall be for a period not exceeding three years. The other terms and conditions of such Members shall be such as may be prescribed.

32B. The State Security Commission shall exercise the following powers and perform the following functions :-

**Functions of
State Security
Commission**

- (1) to advise the State Government on policy guidelines for promoting efficient, effective, responsive and accountable policing of police force in the State;
- (2) to assist the State Government in identifying performance indicators to evaluate the functioning of the Police Force. These indicators shall, *inter alia*, include the operational efficiency, public satisfaction, victim satisfaction vis-à-vis police investigation and response, accountability, optimum utilization of resources and observance of human rights standards;
- (3) to review periodically, the performance of the Police Force;
- (4) to suggest for the performance of the preventive tasks and service oriented functions of the police;

- (5) to review and evaluate organizational performance of the police against –
 - (i) the performance indicators as identified and laid down by the Commission itself;
 - (ii) the resources available with, and constraints of the Police;
- (6) to suggest policy guidelines for gathering information and statistics related to police work;
- (7) to suggest ways and means to improve the efficiency, effectiveness, accountability and responsiveness of the police; and
- (8) such other functions as may be assigned to it by the State Government.

Annual Report.

32C. The State Security Commission shall, at the end of each year, prepare a Report on its works during the preceding year as well as on the evaluation of performance of the Police Force and submit it to the State Government for consideration and appropriate action.

Constitution of Police Establishment Board.

32D. (1) The State Government shall, by an order, constitute a Police Establishment Board consisting of the following members, namely :-

- (1) The Director General and Inspector General of Police, *ex-officio*, who shall be the Chairman;
- (2) Additional Director General of Police (Administration) ...*ex-officio*;
- (3) an officer not below the rank of the Deputy Secretary to Government of Gujarat, Home Department, ...*ex-officio*; and
- (4) an officer not below the rank of Inspector General of Police to be nominated by the State Government,*ex-officio* who shall be the Member Secretary

Powers and functions of Police Establishment Board.

32E. The Police Establishment Board shall exercise the following powers and perform the following functions and duties, namely :-

- (a) Transfer of officers in the rank of Police Inspector and Sub-Inspectors;
- (b) Prescribe guidelines and instructions for transfer of Subordinate ranks from one Police District to another;
- (c) Analyses the grievances of the police personnel below the rank of Deputy Superintendent of Police and suggest remedial measures to the State Government;
- (d) Grant promotion to higher post from the cadre of Constable and *Lok Rakshak*;

- (e) Such other functions as may be assigned to it by the State Government.

32F. (1) The State Government shall constitute, by an order, the State Police Complaints Authority consisting of the following members, namely:- **Establishment of State Police Complaints Authority.**

- (a) a retired Judge of the High Court or a retired officer not below the rank of Principal Secretary to the Government of Gujarat who shall be the Chairperson;
- (b) the Principal Secretary to the Government of Gujarat, Home Department,*ex-officio*;
- (c) an officer not below the rank of an Additional Director General, nominated by the State Government, *ex-officio* who shall be the Member Secretary; and
- (d) a person of eminence appointed by the State Government.

(2) The terms and conditions of the members of the State Police Complaints Authority, other than *ex-officio*, shall be such, as may be prescribed.

32G. The State Police Complaints Authority shall exercise the following powers and perform following functions, namely :- **Powers and functions of State Police Complaints Authority.**

- (1) to look into complaints against police officers of the rank of Deputy Superintendent of Police and above, in respect of serious misconduct, dereliction of duty, misuse of powers, or any other matter specified by the Government, not covered by the Vigilance Commission, National Human Rights Commission, State Human Rights Commission, Commission for Minorities, Commission for Scheduled Castes and Scheduled Tribes, Commission for Women and Commission for Backward Communities, or any other Commissions as may be appointed from time to time either by the General Government or by the State Government.
- (2) to require any person to furnish information on such points or matters as, in the opinion of the Authority, may be useful for, or relevant to, the subject matter of the inquiry, and any person so required shall be deemed to be legally bound to furnish such information within the meaning of sections 176 and 177 of the Indian Penal Code, 1860.
- (3) to enforce attendance of any person and take evidence on oath in the manner of a civil court.
- (4) to make appropriate recommendations to the State Government on any case required into by it, wherever required.

**Establishment of
District Police
Complaints
Authority.**

32H. (1) The State Government shall, by an order, constitute the District Police Complaints Authority for each District consisting of the following members, namely:-

- (a) the Superintendent of Police of the District,*ex-officio*, who shall be the Chairperson;
 - (b) the Additional District Magistrate of the District, to be appointed by the State Government, *ex-officio*;
 - (c) two members of the Gujarat Legislative Assembly elected from the concerning District, to be appointed by the State Government;
 - (d) The Deputy Superintendent of Police, *ex-officio* who shall be the Member-Secretary.
- (2) The terms and conditions of the members of the District Police Complaint Authority other than *ex-officio*, shall be such as may be prescribed.
- (3) (a) The District Police Complaints Authority shall meet at least once in every quarter and assess the record of at least one-fourth of all Police Stations within the District with respect to the following matters and also prepare a rating in the prescribed manner:
- (i) Prompt registration of First Information Report;
 - (ii) Custodial violence;
 - (iii) Extortion of money from complainants and the victims;
 - (iv) Drunken behaviour; and
 - (v) Misbehaviour with the public
- (b) The report and the rating shall be sent to the concerned authorities for taking appropriate action.

**Powers and
functions of
District Police
Complaints
Authority.**

32I. The District Police Complaints Authority shall exercise the following powers and the perform following functions, namely:-

- (a) to receive complaints against police officers posted in the District;
- (b) inquire into the complaints involving serious dereliction from duty grave misconduct, misuse of powers and any such other matter as may be directed by the State Government against police officers up to the rank of Police Inspector;

- (c) forward the complaints to the State Police Complaints Authority against the police officers in the rank of Deputy Superintendent of Police and above;
- (d) receive and inquire into complaints of non-registration of First Information Report;
- (e) monitor the progress of departmental inquiries into cases of complaints of misconduct against police officers;
- (f) after an inquiry into a complaint of misconduct, the District Police Complaints Authority may make its recommendations to the concerned Disciplinary Authority;
- (g) direct the registration of an First Information Report if a complaint of non-registration is found to be correct by the Authority.

32J. The State Government shall provide such sum to the State Security Commission, Police Establishment Board and State and the District Police Complaints Authorities to enable it to discharge the functions assigned to it under this Chapter.” **Providing funds to Commission, Board, etc.**

STATEMENT OF OBJECTS AND REASONS

The law and order administration need to be equipped legally to carry out functions and fulfill its responsibility to ensure efficiency, transparency and proactive action in ensuring the well being of the citizen at large. The existing Bombay Police Act, 1951 as applicable in the State of Gujarat need to be amended to provide for certain provisions so that the police force of the State achieve new direction in terms of policy guideline, performance parameters, responsiveness too public and need and above all to provide for grievance redressal mechanism against the acts of police personnel keeping in view of the direction of the Hon'ble Supreme Court in *Prakash Singh and others Vs. Union of India (2006) 8 SCC 1*.

It is, therefore, considered necessary to amend the Bombay Police Act, 1951 by inserting new sections in the following respects :-

- (1) The selection, appointment and tenure of the Director General and Inspector General of Police in accordance with the proposed section 5A.
- (2) The tenure of other police officers and their removal and transfer in accordance with the proposed section 5B.
- (3) The separation of investigating wing from the law and order wing in the area as decided by the State Government for speedier investigation, better expertise and improved rapport with the people and the powers of such investigating wing as provided in proposed section 7A.
- (4) The establishment of State Security Commission and its powers and functions as provided in the proposed sections 32A and 32B.
- (5) The constitution of the Police Establishment Board and its powers and functions as provided in the proposed sections 32D and 32E.
- (6) The establishment of State Police Complaints Authority and its powers and functions as provided in the proposed sections 32F and 32G.
- (7) The establishment of District Police Complaints Authority and its powers and functions as provided in the proposed sections 32H and 32I.

- (8) The State Government shall provide such sum to the aforesaid authorities to carry out their functions under the Act as proposed in section 32J.

This Bill seeks to amend the said Act to achieve the aforesaid objects.

AMIT SHAH,

FINANCIAL MEMORANDUM

Section 32J proposed to be inserted by clause 4 provides that the State Government shall provide such sum to the Security Commission, Board and Authorities to enable it to discharge its functions. Section 7A proposed to be inserted by clause 3 provides for separation of investigating police from the law and order police wing in such area as the State Government may decide. If these provisions are enacted and brought into force it would involve expenditure of rupees fifty eighty crores and forty-seven lacs from the Consolidated Fund of the State, out of which rupees forty crores would be of recurring nature and rupees eighteen crores and forty-seven lacs would be of non-recurring nature.

AMIT SHAH,

MEMORANDUM REGARDING DELEGATED LEGISLATION

This Bill involves delegation of legislative powers in the following respects, namely:-

Clause 1.- Sub-clause (2) of this clause empowers the State Government to appoint, by notification in the *Official Gazette*, the date on which the Act shall come into force.

Clause 3.- (1) Sub-section (1) of section 7A proposed to be inserted by this clause empowers the State Government to separate, by an order, the investigating police from law and order police wing in the area as may be decided by the State Government.

(2) sub-section (2) of section 7A empowers the Sate Government to direct, by an order, the other offences which shall be investigated by the investigating police wing.

Clause 4.- (1) Sub-section (1) of section 32A proposed to be inserted by this clause empowers the State Government to establishment, by notification in the *Official Gazette*, the State Security Commission;

(2) sub-section (5) of section 32A empowers the State Government to prescribe by rules the terms and conditions of the non-official members of the State Security Commission;

(3) sub-section (2) of section 32F proposed to be inserted by this clause, empowers the State Government to prescribe by rules the terms and conditions of the non-official members of the State Police Complaints Authority.

(4) sub-section (2) of section 32H proposed to be inserted by this clause, empowers the State Government to prescribe by rules the terms and conditions of the non-official members of the District Police Complaints Authority;

The delegation of legislative power as aforesaid is necessary and is of a normal character.

Dated the 13th July, 2007.

AMIT SHAH.