

THE ASSAM POLICE (AMENDMENT) BILL, 2021

A

BILL

further to amend the Assam Police Act, 2007.

Preamble

Whereas it is expedient further to amend the Assam Police Act, 2007, hereinafter referred to as the principal Act, in the manner hereinafter appearing;

Act No.
XX of
2007

It is hereby enacted in the Seventy-second year of the Republic of India, as follows :-

Short title,
extent and
commencement

1. (1) This Act may be called the Assam Police (Amendment) Act 2021.
- (2) It shall have the like extent as the principal Act.
- (3) It shall come into force at once.


Amendment of
section 76

2. In the principal Act, in section 76, for sub-section (3), the following shall be substituted, namely:-

“(3) The staff of the Commission shall be placed by the State Government on deputation basis in consultation with the Commission.”

Amendment of
section 78

3. In the principal Act, in section 78,-
 - (i) in sub-section (1),-
 - (a) clause (d) shall be omitted .
 - (b) in explanation, the clauses (d), (e), (f) and (g) shall be omitted.
 - (ii) in sub-section (3),-
 - (a) in second line, for the word “misconduct”, appearing in between the words “of” and “against” the words “serious misconduct as defined in sub-section (1) above” shall be substituted
 - (b) the provision of Explanation shall be omitted.
 - (iii) in sub-section (4), in sixth line, for the word “misconduct” appearing in between the words “ of” and “as” the word “serious misconduct as defined in sub-section (1) above” shall be substituted.
 - (iv) in sub-section (5), in second line, for the word “misconduct” appearing in between the words “prevent” and “on” the word “serious misconduct as defined in sub-section (1) above” shall be substituted.


VETTED BY THE
LEGISLATIVE DEPARTMENT
ON 18.12.2021

Amendment of 4.
section 83

In the principal Act, in section 83, in sub section (1),-


- (i) in clause (b), for the word "misconduct" appearing in between the word "of" and "referred" the word "serious misconduct as defined in sub-section (1) above" shall be substituted.
- (ii) in clause (e), in first line, for the word "misconduct" the word "serious misconduct as defined in sub-section (1) above" shall be substituted.

Amendment of 5.
section 85

In the principal Act, in section 85,-

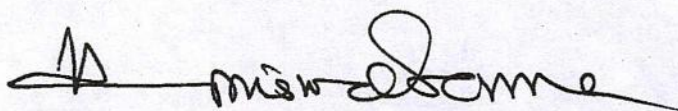
- (i) in sub-section (1), in clause (b), after the proviso the following Explanation shall be inserted, namely:-

"Explanation : "Misconduct" in this context shall mean any wilful breach or neglect by a police officer of any law, rule, regulation applicable to the police which adversely affects the rights of any member of the public, excluding what is defined by "serious misconduct" under sub-section (1) of section 78 of the Act.

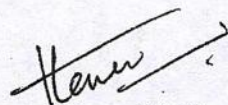

VETTED BY THE
LEGISLATIVE DEPARTMENT
ON 18.12.2024

STATEMENT OF OBJECTS AND REASONS

The proposed Assam Police (Amendment) Bill, 2021 seeks to amend the relevant sections of Assam Police Act, 2007 pertaining to power and functions of State-level Police Accountability Commission so that the provisions are in consonance with the judgement of Hon'ble Supreme Court of India dated September 22, 2006 passed in WP(C) No. 310 of 1996 - Prakash Singh & Others - Versus- Union of India and Others. It also seeks to remove the ambiguities in functioning of State-level Police Accountability Commission vis-a-vis other constitutional and statutory authorities.



(Dr. Himanta Biswa Sarma)
Chief Minister
&
Minister-in-charge,
Home & Political, Assam



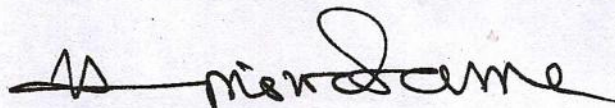
(Hemen Das, IAS)
Principal Secretary,
Assam Legislative Assembly
Dispur

FINANCIAL MEMORANDUM

There is no financial involvement in the proposed amendment.

MEMORANDUM OF DELEGATED LEGISLATION

No delegation of legislative power is sought in the proposed
"The Assam Police (Amendment) Bill, 2021".



(Dr. Himanta Biswa Sarma)
Chief Minister
&
Minister-in-charge,
Home & Political, Assam

**EXTRACT OF THE PROVISIONS OF THE PRINCIPAL ACT AND THE
CORRESPONDING AMENDMENT PROPOSED**

| Amendment proposed in Sections | Principal Act Sections content | Proposed amendment |
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| <p>Sec. 76 (3)</p> <p>The Staff of the Commission</p> | <p>(3) The staff shall be selected by the Commission, inter alia, on a contractual basis, through a transparent process</p> | <p>In the principal Act, in section 76, for sub-section (3) the following shall be substituted, namely:-</p> <p>“(3)The staff of the Commission shall be placed by the State Government on deputation basis in consultation with the Commission.”</p> |
| <p>Sec. 78</p> <p>Functions of the Commission</p> | <p>(1) The Commission shall enquire into allegations of “serious misconduct” against police personnel, as detailed below, either suo moto or on a complaint received from any of the following:</p> <p>(a) a victim or any person on his behalf;</p> <p>(b) the National or the State Human Rights Commission;</p> <p>(c) the police; or</p> <p>(d) any other source.</p> <p>Explanation: “Serious misconduct” for the purpose of this Chapter shall mean any act or omission of a police officer that leads to or amounts to:</p> <p>(a) death in police custody;</p> <p>(b) grievous hurt, as defined in section 320 of the Indian Penal Code,</p> | <p>In the principal Act, in section 78:-</p> <p>(i) in sub-section (1),</p> <p>(a) clause (d) shall be omitted</p> <p>(b) in explanation, the clauses (d), (e), (f) and (g) shall be omitted.</p> |

**EXTRACT OF THE PROVISIONS OF THE PRINCIPAL ACT AND THE
CORRESPONDING AMENDMENT PROPOSED**

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| | <p>1860;</p> <p>(c) molestation, rape or attempt to committing rape; or</p> <p>(d) arrest or detention without due process of law;</p> <p>(e) forceful deprivation of a person of his rightful ownership or possession of property;</p> <p>(f) blackmail or extortion;</p> <p>(g) non registration of First Information Report:</p> <p>Provided that the Commission shall enquire into a complaint of such arrest or detention, only if it is satisfied prima facie about the veracity of the complaint.</p> | |
| Sec. 78 (3) | <p>(3)The Commission may monitor the status of departmental inquiries or departmental action on the complaints of "misconduct" against Gazetted officer of and above the rank of Deputy/Assistant Superintendent of Police through a quarterly report obtained periodically from the Director General of Police of the State, and issue appropriate advice to the police department for expeditious completion of inquiry, if in the Commission's opinion the department inquiry or department action is getting unduly delayed in any such case;</p> <p>Explanation : "Misconduct" in this context shall mean any willfull breach or neglect by a police officer of any law, rule, regulation applicable to the police that adversely affects the rights of any member of the</p> | <p>-in sub-section (3),</p> <p>(a) in second line, for the word "misconduct", appearing in between the words "of" and "against" the words "serious misconduct" shall be substituted</p> <p>(b) the provision of Explanation shall be omitted.</p> |

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| | <p>1860</p> <p>(c) prohibition, or attempt to commit, of</p> <p>(d) arrest or detention without due process of law</p> <p>(e) forced deprivation of a person of his right of ownership or possession of property</p> <p>(f) blackmail or extortion</p> <p>(g) non-registration of First Information Report</p> <p>Provided that the Commission shall enquire into a complaint of such arrest or detention only if it is satisfied from facts about the veracity of the complaint</p> | |
| <p>in sub-section (2), (a) in second line for the words "misconduct" appearing in between the words "and against" the words "arrest" "misconduct" shall be substituted</p> <p>(2) the provision of Explanation shall be omitted</p> | <p>(2) The Commission may inquire the status of departmental charges or departmental action in the interests of "misconduct" against a gazetted officer or one above the rank of 1st Deputy Assistant Superintendent of Police through a detailed report or a periodically from the District, General of Police of the State and take appropriate advice to the police department for expeditious completion of inquiry in the Commission which the department against or departmental action is being taken against in any such case</p> <p>Explanation "Misconduct" in this context shall mean any willful breach or neglect by a police officer of any law, rule, regulation applicable to the police that adversely affects the rights of any member of the</p> | <p>Sec. 19 (3)</p> |

**EXTRACT OF THE PROVISIONS OF THE PRINCIPAL ACT AND THE
CORRESPONDING AMENDMENT PROPOSED**

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| | public, excluding "serious misconduct" as defined in sub-section (1). | |
| Sec. 78 (4) | (4)The commission may also call for a report from, and issue appropriate advice for further action or, if necessary, a direction for a fresh inquiry by another officer, to the Director General of Police of the State when a complainant, being dissatisfied by the outcome of, or inordinate delay in the process of departmental inquiry into his complaint of "misconduct" as defined above, by any police officer, brings such matter to the notice of the Commission; and | - in sub-section (4), in sixth line, for the word "misconduct" appearing in between the words " of" and "as" the word "serious misconduct" shall be substituted. |
| Sec. 78 (5) | (5)The commission may lay down general guidelines for the State police to prevent misconduct on the part of police personnel. | -in sub-section (5), in second line, for the word "misconduct" appearing in between the words "prevent" and "on" the word "serious misconduct" shall be substituted. |
| Sec. 83(1) Reports of the Commission | (1) The Commission shall prepare an annual report at the end of each calender year, inter alia, containing,- (a) the number and type of cases of "serious misconduct" inquired into by it; (b) the number and type of cases of "misconduct" referred to it by the complainants upon being dissatisfied by the department | In the principal Act, in Section 83,in sub section(1),- (i) in clause (b), for the word "misconduct" appearing in between the word "of" and "referred" the word "serious misconduct" shall be substituted. (ii) in clause (e), in first line, for the word "misconduct" the word "serious misconduct" shall be substituted. |

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| <p>Section 8 (4)</p> | <p>public excluding misconduct as defined in sub- section (1)</p> | |
| <p>Sec 8 (4)</p> | <p>(2) The Commission may also call for a report from any person appearing before it for further evidence or if necessary to direct the Director General of Police of the State to the Director General of Police of the State when a complaint is made or referred to the Director General of Police of the State in the process of the investigation into a complaint of misconduct as defined above by any person or persons and matters in the name of the Commission and</p> | <p>in sub-section (1) in each line for the word "misconduct" appearing in between the words "of and" the word "behaviour" shall be substituted</p> |
| <p>Sec 14 (2)</p> | <p>(2) The Commission may lay down general guidelines to the State Police to direct the Director General of Police of the State to the Director General of Police of the State when a complaint is made or referred to the Director General of Police of the State in the process of the investigation into a complaint of misconduct as defined above by any person or persons and matters in the name of the Commission and</p> | <p>in sub-section (2) in second line for the word "misconduct" appearing in between the words "of and" the word "behaviour" shall be substituted</p> |
| <p>Sec 15 (1) Reports of the Commission</p> | <p>(1) The Commission shall prepare an annual report at the end of each calendar year containing (a) the number of cases of serious misconduct referred to it by (b) the number and type of cases of misconduct referred to it by the complainants upon being classified by the Department</p> | <p>in the Principal Act in Section 15 (1) in sub-section (1) in clause (a) for the word "misconduct" appearing in between the words "of and" the word "behaviour" shall be substituted in clause (b) in first line for the word "misconduct" the word "behaviour" shall be substituted</p> |

**EXTRACT OF THE PROVISIONS OF THE PRINCIPAL ACT AND THE
CORRESPONDING AMENDMENT PROPOSED**

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| | <p>inquiry into his complaint;</p> <p>(c) the number and type of cases including those referred to in (b) above in which advice or direction was issued by it to the police for further action;</p> <p>(d) the number of complaints received by the District Accountability Authorities, and the manner in which they were dealt with;</p> <p>(e) the identifiable patterns of misconduct on the part of police in the State; and</p> <p>(f) recommendations on measures to enhance police accountability.</p> | |
| <p>Sec. 85</p> <p>Functions of District Accountability Authority</p> | <p>(1) The District Accountability Authority may perform the following functions as may be notified by the Government,-</p> <p>(a) forward the complaints of "serious misconduct", received directly by it, to the Commission for further action;</p> <p>(b) forward for further action, the complaints of "misconduct" received directly by it, to the District Superintendent of Police:</p> <p>Provided that if the complaint contains allegations against any police officer of or above the rank of Assistant/Deputy Superintendent of Police, the</p> | <p>In the principal Act, in Section 85,-</p> <p>(i) in sub-section (1), in clause (b), after the proviso the following Explanation shall be inserted, namely:-</p> <p>"Explanation : "Misconduct" in this context shall mean any wilful breach or neglect by a police officer of any law, rule, regulation applicable to the police which adversely affects the rights of any member of the public, excluding what is defined by "serious misconduct" under sub-section (1) of section 78 of the Act.</p> |

**EXTRACT OF THE PROVISIONS OF THE PRINCIPAL ACT AND THE
CORRESPONDING AMENDMENT PROPOSED**

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| | <p>District Accountability Authority shall forward the same to the Director General of Police of the State under intimation to the Commission, for further action;</p> <p>(c) issue appropriate advice to the District Superintendent of Police for expeditious completion of inquiry, if, in the Authority's opinion, the inquiry is getting unduly delayed in any such case;</p> <p>(d) report cases to the Commission where departmental enquiry into "misconduct" is not concluded in time by the police department in spite of the Authority's advice(s) to the District Superintendent of Police.</p> | |
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Director, Accounts, Finance
and Internal Audit, to the
Director, General of Police of
the State, and in relation to
the Commission for Human
Rights.

(a) to issue a summons
to the Director
Superintendent of Police
for execution of the
of duty, if the
Authority, or the
Authority, or the
Authority, or the

(b) to report to the
Commissioner
Departmental Security, into
the conduct of the
conducted in the
Police Department, in
of the Department
to the
Superintendent of Police