



DISCUSSION PAPER ON
PSAR (PRIVATE SECURITY AGENCIES REGULATION) ACT 2005

(This draft Paper is for consultation purpose only)

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INTRODUCTION

“One of the first motives to civil society, and which becomes one of its fundamental rules, is, that no man should be judge in his own cause. By this each person has at once divested himself of the first fundamental right of uncovenanted man, that is, to judge for himself, and to assert his own cause. He abdicates all right to be his own governor. He inclusively, in a great measure, abandons the right of self-defence, the first law of Nature. Man cannot enjoy the rights of an uncivil and of a civil state together. That he may obtain justice, he gives up his right of determining what it is in points the most essential to him. That he may secure some liberty, he makes a surrender in trust of the whole of it.”

Edmund Burke: Reflections on the Revolution in France, 1790.

Economic development and financial growth, which are one of the most critical indicators of national prowess, is dependant on law and order. Safety and security, being an integral part of social DNA structure and the nation as a whole, has been identified as a pillar of the demographic progress since the early concepts of society/nation/democracy.

The importance of law and order cannot be overemphasized. India is a 5000 year old civilization with about 7516 kms borders to protect and even more number of critical establishments to secure. There is also a need to secure the 29 states and 6 Union Territories from internal threats or law and order situations. As the 7th largest and 2nd most populous country in the world (population of 1.15 billion) our country has less 2.5 million policemen. This effectively translates into a very poor police to public ratio. With the ever-increasing growth in population and establishments, the traditional policing function has to restrict itself to serve the fundamental duties to protect the citizens.

Keeping this in mind, the above quote has evolved in the current times to mean that ‘*right of self-defence*’ or protection is now partly within the domain of citizens. To cater to increasing needs of private establishments, private security industry has emerged as a viable alternative globally and in India. It is estimated that this industry is growing at 25% CAGR every year in India. Approximately 15000 private security companies are employing more than 5 million personnel, with an estimated turnover of 13,000 crores. It was reported¹ that industry contributes about 10,000 crores annually by way of service tax, provident fund and contribution to the employees to the state insurance.

The instant paper attempts to assess the measures required for harmonizing the evolving private security needs of the Indian economy with the extant statutory and policy framework, identifying of legal and policy bottlenecks connected therewith, and recommends key changes/approaches endeavouring resolution of the hurdles. A holistic approach has been adopted to address impending issues for all factions that contribute to the security industry, i.e. private security agencies, customers/end-users, professional guards, government/regulators and the extant international framework. The core focus of

¹ The Hindu, 2006.

this whitepaper is to create an organized, professionally-driven and responsible service sector which can contribute to economic development of the country.

SCOPE OF SERVICES

'Defence of a country or the security of a country is not a static concept...A country has to be in a perpetual state of preparedness. Eternal vigilance is the price of liberty.'

The above observations of the Hon'ble Supreme Court of India² are of utmost relevance today. Goods and services cannot be static and have to constantly evolve in order to respond to the needs of the economy and the market, with the security industry being no exception.

With the traditional policing and national security agencies serving the law and order function, there is an increasing uptake of private security agencies for protection of establishment/goods/person. Industry today requires private security to perform functions other than mere guarding services:

Civil Policing/Protection of establishments

'I will not exclude the possibility that private security companies as such can be used for specific security tasks, protection of facilities, protection of people in certain areas.'

Anders Fogh Rasmussen³

In the wake of this new economic reality and to ensure that the government resources are focused towards better delivery towards internal security, private security agencies can serve as viable alternative perform to traditional police performing non-critical security functions.

In most countries budgetary restraints have led to a review of the catalogue of the police duties and responsibilities. Some of the assignments taken up by security companies across the world are reflective of this trend towards utilization of private security agencies as a extension tool for the government:

- Airport security control: Belgium, England, Germany, Sweden
- Coast guard surveillance and primary protection: Australia
- Guarding nuclear power plants: Germany, France
- Guarding military compounds: Germany

² in the case of *Giani Bakshish Singh vs. Government of India*, ((1973) 2 SCC 688).

³ Secretary General, NATO.

- Guarding standstill traffic: Austria, Germany
- Productions of I.D. cards as well as supporting fire brigade services: Sweden
- Watching over fishing quotas: Netherlands
- Prisoner transportation, building of and running prison facilities: Great Britain

The Union Minister for Home Affairs had included private security forces as a viable alternative to state forces in his public address requesting state governments to conduct security assessment for nuclear and defence establishments, iconic structures, major religious shrines and key industrial establishments in the private, public as well as joint sector⁴.

Perhaps it is time that India also seeks to review the catalogue of roles and responsibilities for government security forces. It may be feasible that the federal/state government recognize the potential of private to render efficient security services to non-critical establishments in India. This would not only translate in critical savings in the form of reduced budgetary outgo but also streamlined traditional internal security services to citizens.

As a first measure, there should be a holistic identification of the establishment and related security duties/requirements. A uniform grading system can be adopted for this exercise, categorizing establishments and thereafter functions within those establishments from 'non-critical' to 'very critical'. For sake of illustration, the MHA was inclined towards introspection within CISF to review the doctrine of deployment of the CISF so that the focus would essentially be on critical security-related duties⁵.

Once the grading exercise has been completed, the 'non-critical' functions can be assigned to private security agencies through an appropriate procurement mechanism. Depending on the establishment and the security functions assigned therein to the private security agencies, appropriate changes can be made within the specific laws to allow the private security agency to perform certain enforcement activities to maintain security which are traditionally within the domain of government security agencies, i.e. right to detain, search and seizure, preparing an investigation report, firing non-lethal ammunition and the like. It is also important that private security guards are protected from adverse action for any act during the discharge of their duties. For example, in many US states there is a voluntary mechanisms whereby appropriately vetted private security guards can be designated as Special Police/Campus Security (for university campuses) with enhanced powers and protections. This would be particularly applicable for Public Sector establishments which are governed within the definition of 'state' as under Article 12 of the Constitution of India, 1950.

⁴ Press address after the 2009 internal security meeting with CM's of all states.

⁵ Statement by (the then) Union Home Secretary, Mr. Madhukar Gupta.

Armed guarding services

PSAs are currently involved in a variety of operations that essentially require armed security personnel. Today there are more than 6000 cash vans plying across 600 districts in the country. These cash vans carry Crores every day for the banking industry. Police forces do not provide protection for cash in transit for banks. Banks except RBI and SBI have to rely on private security. This operation alone requires more than 10000 personnel⁶. Similarly, guarding of ATMs, jewellery stores, fuel stations, toll booths and bank branches requires armed guards. Even the hotel industry is witnessing a surge in its demand for armed guarding services after 26/11.

In stark contrast with the ground-reality, the Act does not contemplate provision of armed security as a service. In addition, the current framework of the Indian Arms Act, 1959, only allows individual applicants to hold arms licenses. As a result, private security agencies have been technically compelled to employ people who hold Arms License in individual capacity. The firearms issued to individuals also have restrictions in terms of territories in which they can be used. This severely curtails the ability to pool armed guards in an efficient manner to service clients and can be particularly difficult in case of inter-state transfer of goods/personnel.

The central government has⁷ provided some exemptions to certain clauses of the Arms Act to enable companies, banks, industrial or other establishments to obtain licenses in the name of legal entity rather than obtain in the name of individuals. Technically, bank managers, bank branches do obtain weapons in the name of bank branch and then issue it on retainer ship basis to retired ex-servicemen to hold the arms to protect the bank premises. Such exemptions can expressly include certain categories of PSAs holding licenses for armed guard services to enable private security agencies to obtain arms in requisite numbers and then deliver the service.

As a positive step, the MHA⁸ has identified the need to consider grant of arms licences to private security agencies fulfilling certain criteria, to enable them to carry certain number of weapons of prescribed description in order to carry out their duties for security. Within the said public consultation, the MHA has impressed upon the difficulty in issuing firearms to individuals as there is a risk of pilferage and violence. In contrast, a license holder under the Act can be subjected to audit and end-use restrictions on the fire-arms that are deployed by it. With a corporate entity, there is a greater probity and ease of audit/investigation in connection with firearms.

There is an impending need to arrive at a policy for issuance of firearms to PSAs, which can be linked to the grade of license issued to any PSA under the Act. Thereafter, suitable amendments/notifications under the Arms Act can be issued by the MHA in order to enable such a framework.

⁶ Considering there are 6000 cash vans on an average, each cash van takes 2 armed personnel to operate and they work in two shifts.

⁷ vide circular of 8th December 1987.

⁸ Draft Arms and Ammunitions Policy – comments of general public reg., dated December 21, 2009.

- **It is recommended that the MHA, in coordination with State Governments, conducts a holistic review and grading of security establishments/duties thereunder. After due consultation with all government and industry factions/participants, categories from non-critical to very critical to be devised and security establishments/duties therein classified accordingly.**
- **Devise a framework for adopting PSAs to perform non-critical duties allowing police and other security forces to focus on internal security for citizens.**
- **Wherever necessary, empowering PSAs to conduct quasi-internal security functions in order to fully assist the police forces, eg. right to detain, submit report, fire non-lethal ammunition and the like.**
- **Amendment of the Act to allow for licenses to PSAs to conduct services beyond traditional security manning, including armed guard services.**
- **Appropriate notification to be issued under Arms Act to allow PSAs licensed to provide armed guard services to procure and store arms. Develop compliance and audit requirements under the Act for armed guard service licenses to PSAs.**

LICENSING REQUIREMENTS AND CONDITIONS

The security industry is subject to an overlapping set of federal and state regulations, leading to multiplicity of registrations to conduct business. This heterogeneous system acts as a barrier for PSAs in providing integrated professional services on a pan-India basis. Distinct enforcement often leads to disruption of services to clients, impacting the overall growth potential of the industry. There are other difficulties with varying conditions for operation in every state, eg. Police verification requirements for directors of the company and processing timelines for such applications are dissimilar for most states.

Although the matter is currently sub-judice, an example of this dichotomy may be the apparent overlap between PSAR and the Maharashtra Security Guard Board Regulation Act, 1984. The facts set out within the case are illustrative of the difficulty faced by PSAs while maintaining operations on a national scale.

Such regulatory issues adversely stunt the ability of the industry to organize itself in a professional manner and raise service-delivery as well as compliance standards. Therefore, it is critical that a single licensing system is created. Such a system can be a combination of central/state level registration, depending factors such as the size, scale/area of operations, employment conditions/terms, past experience and the like for the PSA. The Act, under the registration regulations, can specify the segregate categories of PSAs that can provide services throughout India on the basis of Central Registration and other PSAs that can obtain state-level registration. The actual enforcement of the Act can also be segregated between central/state-level authorities accordingly. With a view to incentivize professional services

and compliance, eligibility criteria can be defined to allow a state-level PSA to obtain a national license.

As a result of uniform licensing/registration, there can also be a homogenous set of rules/conditions of operation that can be made applicable. This would not only reduce enforcement time but also allow for national level integration to effectively monitor and plan for the private security industry.

- **Eliminate heterogeneous requirements under the Act and several state statutes governing PSAs by establishing a single licensing framework under the Act. Classification of PSAs requiring federal/state license according to variety of factors such as size, operations, employment conditions and the like.**
- **Provide for a graded licensing system, thereby encouraging professional services and compliance-driven operations.**
- **Create an expert panel, with MHA, State Governments and PSAs as members, to vet any new rules/regulations/compliance requirements before actual draft is prepared by the regulator.**
- **Uniform licensing timelines and requirements as well as other compliance parameters in order to enable efficient implementation and enforcement/oversight.**

REVIEW OF THE PENALTY SYSTEM

Facility in-charge

With the passage of time, PSAs have evolved into corporate entities with operational offices in every state or specific sites akin to manufacturing companies that would own one or more production units/factories in distinct states. As a normal practice, such state-wise or project-wise units and their day to day affairs are managed by a manager/person-in charge who reports to the Chief Executive Officer or the Board of Directors, as the case may be. The existing form of the Act and rules thereunder hold the Directors directly responsible for any act/omission on the part of a guard or guards while rendering private security services. In such scenarios, the concerned director/CEO is also summoned by the respective controlling authority.

The above scenario presents a very difficult situation, discouraging organized professionals/corporate to enter in the private security sector. Although it is important to affix responsibility of the overall functioning of the PSA and its compliance with the license conditions to the directors/CEO, the Act should follow a graded approach by incorporating the 'occupier' concept. Accepted in recent legislations dealing with industries having pan-India operations and facilities in various states, this concept entails holding the person in-charge of the facility as the first point of contact for the authorities and also the person primarily responsible for compliance with the statute. Upon the failure of appointment of such person in-charge (which may be mandated to be notified to the authority concerned),

the directors/CEO would be held responsible. Such a framework would not only inculcate better compliance ethos within the respective state/site offices of the PSAs but also allow better enforcement for the regulatory authorities.

Therefore, it is recommended that the Act and Rules be amended to incorporate an 'occupier' concept whereby the person in-charge of the PSA facility for a state/project is primarily liable for any violations and the directors/CEO can be prosecuted upon failure to nominate such person in-charge or on serious offences/violations.

Graded penalty system

Consistent with the modern enforcement practices, it is recommended that the Act is amended to adopt a graded approach while prescribing penalties for offences. The current framework of the Act and the Rules does not allow enforcement agencies or PSAs to compound offences and adopts a archaic approach towards penalties. A compounding provision would allow regulators to be flexible in case(s) of minuet, very technical or first-time offences.

Additionally, provisions relating to issuance of improvement notice and suspension of license for non-compliance may be incorporated to aid better enforcement. If any PSA does not adhere to the compliance conditions specified within the improvement or suspension notice, as the case may be, then the regulator may proceed to cancel/revoke the license. It has been observed that providing for some time-period to incur compliance enables efficient enforcement while avoiding time and cost-intensive litigation. Affording such clauses within the Act and the Rules would allow for the industry to gear-up for true self-regulation and improvise on compliance pit falls.

- **It is recommended that the existing framework under the Act is revised to hold the person in-charge for operations in a particular state/project office primarily responsible for any violations. All service/process in connection with such violations should also involve such person as the first point of contact. The board or CEO should only be summoned in cases of serious breaches or in the absence of any such person in-charge being nominated by the PSA.**
- **Revise the Act to allow for compounding of offences, at the discretion of the regulator, for minuet, very technical or first-time offences.**
- **Provisions relating to issuance of improvement notice and suspension of license for non-compliance may be incorporated to aid better enforcement. Regulator may proceed to cancel/revoke the license if the PSA does not satisfy compliance even after the said notices.**

FOREIGN DIRECT INVESTMENT

While organised sector constitutes close to 40% of the overall PSA industry, the remaining 60% of the business still comes from the unorganised sector. Manned security continues to

be a major contributor to the total business. Most of the large players are privately held companies. However, increase in deployment and upgradation of services is a capital intensive exercise for an operations-heavy industry such as the PSA. Also, the induction of global best practices for security services depends on the ability of multi-national PSAs to establish/partner in operations in India.

Although the foreign direct investment (“FDI”) policy till 2009 allowed for 100% FDI in manned security services, this limit has been rolled-back to 49% FDI only. It is understood that this roll-back was owing to the nascent regulatory structure under PSAR and that of the security industry from 2005 onwards. The security industry is now poised to grow at 25% CAGR and there is greater organization as well as regulatory framework in place. With the policy/legislative changes recommended above, the security industry may be positioned to further growth in a professional manner and it is expected that greater part of the industry would continue to shift to the organized side of business.

Additionally, deployment of converging security services, i.e. manned guarding alongwith technical equipment has an ever increasing uptake. Advanced security assessment techniques and expertise gained by foreign security services would allow for provision of efficient services to the clients. India’s experience in other sectors shows that foreign players are not willing to impart critical know-how and technology unless they have a considerable stake in the industry. It would also be imprudent to equate security services with sensitive sectors like defence or other critical sectors affecting the economy such as insurance/banking/financial services. In order to maintain adequate checks and balances, the Government can mandate prior-approval for investment beyond a certain threshold in PSAs.

Therefore, it is recommended that the limit for FDI in PSAs is increased from 49% to 100%, with FDI upto 49% being permitted under the automatic route and any investment beyond such limit being subject to prior approval from the Government.

- **It is recommended that the Government of India considers increasing the limit for FDI in PSAs from 49% to 100%, with FDI upto 49% being permitted under the automatic route and any investment beyond such limit being subject to prior approval from the Government.**
 - **A comprehensive vision document to be drawn up by the MHA in consultation with industry stakeholders, panning the target growth and function of the security industry as a whole.**
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