

PADC Model Police Act, 2006
Chapter IX:
Policing in the Context of Public Order and Internal Security Challenges:
A NOTE OF DISSENT

Chapter IX has no place in the Police Act. First, the issues dealt with in the Chapter should not be dealt with in police legislation – they are more appropriately addressed in separate, specific security legislation. Secondly, the Chapter does not deal with the issues of security appropriately – powers are too broadly granted with little regard for their practical application.

1. Chapter IX belongs in specific security legislation

1.1. Chapter beyond the Committee's terms of reference

The terms of reference of the Committee include the directive to “examine the roles and responsibility of the police in view of new challenges before it, especially growth and spread of insurgency/militancy/naxalism, etc.” The mandate of the Committee is to *limit itself to roles and responsibilities of the police* in view of these challenges.

Given this mandate, it is appropriate that the Police Act includes provisions empowering the Chief of the Police to frame schemes to deal with problems of public order and security, to review and revise these schemes and to ensure that they are rehearsed regularly. However, this power does not require an entire chapter in itself. It is more appropriately sited in Chapter V (Superintendence and Administration of Police), sitting alongside related provisions for drawing up a policing plan. In any case, the terms of reference do not justify the creation of Special Security Zones, which would be more appropriate in an emergency law.

1.2. Police Act should only regulate the police

Police laws are put in place to regulate policing. The rationale for any police legislation is to regulate policing; to provide the police with a new vision of itself; to change the underlying assumptions on which it functions; articulate the relationships that the police establishment will have with the political executive, the civil administration and the public; define its role and function; delimit its powers and activities and define its structure.

The Police Act should not go beyond this remit to give extraordinary powers to the police or create obligations for the public. Large portions of Chapter IX are in the nature of an emergency law (like the Disturbed Areas Act), and encroach on areas of administration that fall outside the purview of a Police Act.

Emergencies of public order and the problems of insurgency or militancy require a coordinated and integrated approach that goes beyond the policing requirements and includes action by various other wings of

administration. It is inappropriate that the Police Act, meant to regulate the police, should be dealing with issues of control over and coordination between different government agencies. This must be dealt with by specific security/emergency legislation. [Section 114]

The creation of Special Security Zones and empowering the government to set up more courts – neither of which are related to policing – are particularly concerning aspects of Chapter IX. [Section 121]

1.3. Redefining the Centre-State relationship

Chapter IX seeks to do two things: insure better preparedness of police to handle public order and internal security issues in cooperation with other authorities, and to provide for the possibility of the Centre's intervention in certain specific situations where state problems of law and order have internal security dimensions. Even given these limited objectives, the Police Act is not the place for such complex constitutional issues that touch on centre state powers and relations. [Sections 112, 116 and 119]

1.4. The approach in other jurisdictions

Foreign governments facing the problems of terrorism and insurgency have passed dedicated anti-terror laws. Nowhere has any attempt been made to include emergency provisions in the Police Act that is meant mainly for normal policing. None of India's proposed state Police Acts (such as Madhya Pradesh Police Vidheyak 2001 and the Punjab Police Bill 2003) have included any special provisions to deal with internal security threats.

1.5. National Police Commission's view

The National Police Commission was also required to redefine the role, duties, powers and responsibilities of the police with special reference to maintenance of public order.

The Commission examined the subject in Chapter XVI of its Third Report and made many recommendations in this regard, but did not include any of these in the model Police Bill they drafted. Instead, they recommended a separate "special law for dealing with serious and widespread breaches of public peace or disturbance of public order."

2. Chapter IX does not deal with security issues appropriately

2.1. Approach too broad

The approach in Chapter IX is too broad. It massively curtails civil liberties in its broad ambit and creation of duties and powers, with no increase in the effectiveness of the police to deal with issues of security and insurgency. For example, section 108 sets out a system of Internal Security Schemes – policing plans for security-challenged geographic areas. The system

empowers the Scheme to “cover all major problems the area is prone to or which can otherwise be anticipated in the whole or any part thereof. The broad and vague nature of the section means that:

- a. the Schemes must purport to cover all “major problems” in the area, which, for example, could include natural disaster management (for earthquake or tsunami-prone locations); and
- b. the Schemes can be drafted to respond to a particular insurgency or issue in a limited geographic location and then applied across the whole state – this has the potential to act as a stand in emergency power without the checks and balances usually associated with the use of emergency powers.

This is well beyond the scope and intention of the Chapter.

In Section 113, the state government is empowered to “create an appropriate police structure and a suitable command, control, and response system, for each such Special Security Zone”. This section was intended to require the state to put in place a system to assist para-military groups and other organisations to coordinate their activities within an insurgency-affected area with the police. However, it has been drafted so broadly that in practice it would allow the state to set up a parallel police structure that operated outside the accountability mechanisms put in place by the Police Act in each Special Security Zone.

Chapter IX can lead to the removal of freedom of assembly, commerce and speech from any person falling under the Police Act, without any system of checks and balances in place to prevent an abuse of power. [Sections 117 to 119]. Although, are no special powers given to the police in these areas this is a slippery slope. Experience indicates that once the SSZ are created, police will push for, and get special powers that will curtail civil liberties.

2.2. Technical concerns

Chapter IX is technically flawed.

a. *Sections meaningless*

The Chapter includes meaningless provisions. For example, section 110 allows organisations to notify the police when they are undertaking an activity that may have the potential for disturbing law and order. Organisations already possess this power. Police are empowered to take ‘necessary measures’ in response; again, a power they already possess. Unless, the provision is interpreted to mean that all organisations must inform the police, it is meaningless. And if it mandates all organisations “taking up any activity or programme” to inform the police, it is very dangerous. When and how would an organisation know that its “otherwise unobjectionable” activity might have potential for disturbing law and order? If they don’t inform, what consequences would flow?

b. No penalties included

No penalties are provided to flow from violations of the Chapter. What happens if the government bans the sale of a chemical substance in a Special Security Zone under Section 117 and the substance is sold in violation of the ban?

This chapter is not in sync with the rest of the Act that aims at providing an efficient, effective, responsive and accountable police service. Indeed, large chunks of this Chapter have nothing at all to do with the police. CHRI urges the Committee to delete this Chapter and include some of the important provisions of police preparedness, and preparation of Schemes in other appropriate chapters of the Draft Police Act.