

BANGLADESH POLICE ORDINANCE, 2007 (DRAFT)
ANALYSIS, CRITIQUE AND RECOMMENDATIONS FOR AMENDMENTS

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The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international NGO working for the practical realisation of human rights in the countries of the Commonwealth.

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Introduction

Arguably one of the most significant reform initiatives of the Care-taker Government (2006-2008) was the drafting of the Police Ordinance 2007 to replace the (still) existing 1861 Police Act. This initiative came out of the long felt need to replace the 150 odd year old police legislation that was intended for a subject population. The archaic Act failed to recognise the policing needs of a modern democratic society as well as reflect the realities of the day. New legislations are intended to transform them from a law-enforcing force to a service that upholds the law.

To this end, the drafting of the Police Ordinance 2007 by UNDP (Police Reform Programme) in collaboration with the Bangladesh Police was a laudable step. Overall, the draft is an exceptional document in incorporating principles of democratic policing. The Ordinance focuses on citizen-centric police and lays great emphasis on accountability.

However, there are lacunae which if left unaddressed will leave implementation weak and incomplete.

This submission represents the Commonwealth Human Rights Initiative's (CHRI) consideration of the Draft Ordinance and our corresponding recommendations. We have analysed the Draft Ordinance, identified gaps and weaknesses, provided suggestions for amendments as well as recommended the inclusion of provisions that will better define police powers and functions, the limits of political control and oversight as well as accountability of the police.

Bangladesh has waited long years to initiate reforms. The Ordinance needs to be revived and legislative reform should be given the attention it deserves. Given the huge impact any new law on policing is going to have on the citizens of the country we urge that the government take residents fully into confidence and broaden its consultative processes. In order that a comprehensive legislation adequately reflect the needs and aspirations of the people in relation to the police service they want, the government needs to go beyond consulting only small, essentially elite groups, senior bureaucrats and policemen. It needs to take time to invite wide public debate on the type of police service that people would like to see and include an open dialogue with the rank and file at all levels of the police about the type of service they want to be part of.



Chapter I

Preliminary

Clause 2 – Definitions

Clause 2 of the Ordinance sets out the definitions. Under 2(1)(i)(a), all persons appointed as special police officers or additional police officers form part of the Bangladesh Police Service. We understand the need of Special Police Officers as force multipliers under specific circumstances. However, such officers are appointed not on a permanent basis but in emergency situations. Without the adequate training in use of force and firearms and without the knowledge of the law, such officers will only prove to be a liability on the police service. To officially include them as part of the police service will only be detrimental to the image of the organization in need of a desperate makeover.

We thus recommend that the Clause be deleted from the Draft Ordinance.

Clause2(1)(xxxx) defines terrorist activity as an act that includes “*any activity of a person or a group using explosives or inflammable substances or firearms or other lethal weapons or noxious gases or other chemicals or any other substance of a hazardous nature with the aim to strike terror in the society or any Clause thereof, and with an intent to overawe the government established by law.*” The definition of *terrorist acts* is already provided for in the Anti Terrorism Ordinance, 2008.¹ These definitions are not similar but not substantially different. Having two sets of definitions for similar offences will only create legal uncertainties making prosecution that much more difficult. It must be recognised that a police act is not the sole law that regulates police functions. All police actions are guided by a plethora of laws. The primary function of a police act is to regulate policing. To include and duplicate offences of terrorism clearly falls beyond its remit. It is, therefore, recommended that this definition be deleted from the Ordinance.

Recommendation

Clause2 (1) (i) (a) should be deleted from the definitions.

Clause2 (1) (xxxx) should be deleted from the definitions.

¹ As per Section 6 of the Anti Terrorism Ordinance 2008, Bangladesh, terrorist acts is defined as:

1. terrorist acts means striking terror in the people or any section of the people in order to compel the Government of Bangladesh or any other person to do or abstain from doing any act with intent to threaten the unity, solidarity, security or sovereignty of Bangladesh through
 - a) killing, injuring grievously, abducting a person or causing damage to the property of a person; or
 - b). possessing or using explosives, inflammable substance, firearms or any other chemical to achieve the purpose of sub-clause a); or
2. Whoever commits a terrorist act shall be punished with death or imprisonment for life or maximum 20 years and not less than 3 years rigorous imprisonment to which fine may be added



Chapter III

Organisation of the Police

Clause 7 – Appointment of Chief of Police

In appointing the Chief of Police, the Ordinance authorizes the government to appoint a police officer from a short list of three (out of five senior most officers) police officers recommended by the National Police Commission (NPC) established under Chapter IV. The Ordinance, however, does not lay down an empanelment procedure to be followed by the NPC. The post of Chief of Police comes with great responsibility, and whilst seniority surely plays an important role in selection, merit cannot be discounted. Care must also be given to ensure that the candidate for the chief's post is a person of impeccable record of service and good character. Accordingly, it is recommended that the empanelment procedure should take into consideration both seniority and service record of the officers.

Recommendation

A new sub-clause should be inserted after sub-clause 7 (1) to read as follows:

- 2) The empanelment for the rank of Inspector General of Police shall be done by the National Police Commission created under Clause 37 of Chapter IV of this Ordinance, considering, *inter alia*, the following criteria:
- a) Length of service and fitness of health, standards as prescribed by the government;
 - b) assessment of the performance appraisal reports of the previous 15 years of service by assigning weightage to different grading, namely, 'Outstanding', 'Very Good', 'Good', & 'Satisfactory';
 - c) range of relevant experience,
 - d) indictment in any criminal or disciplinary proceedings or on the counts of corruption or moral turpitude; or charges having been framed by a court of law in such cases.

Clause 8 – Organization

Clause 8 lays down the lines on which the Bangladesh Police is organized. Sub-clause 3 describes the entry levels into the service as well as the quotas for direct recruits and departmental promotions. It is in this sub-clause that the Draft Ordinance can lay down the foundations of a truly representative and diverse police service reflecting minorities, marginalized groups and women. This will go a long way in building trust between the police and the community and act as a plank for effective policing. Women currently make up 3.4% of the total strength of the Bangladesh Police. There is a pledge to reach a target of 10% in the near future. If legislation makes this diversity mandatory then steps can be taken to achieve targets. Additionally what is important is for the rules to insist on a time frame within which these diversities within policing will be achieved.

Recommendation

A new sub-clause should be inserted in Clause 8 to read as follows:



8. (6) The composition of the Police Service shall, as far as possible, reflect adequate representation of all clauses of society, including gender representation.

Clause 10 – Superintendence of Police

Clause 10 of the Draft Ordinance vests the superintendence of the police in the hands of the government with the purpose of ensuring that the police function in accordance with the Constitution and the law. At the same time, in order to make sure that superintendence does not result in meddling in the functioning of the police, sub-clause 2 criminalises any unlawful direct or indirect interference in policing functions like investigations, law and order maintenance, promotions, transfers and the like. These are welcome provisions acknowledging the reality that unwarranted and undue interference in routine police functioning has historically been the crux of the problem of policing in the country.

However, we would point out that the sub-clauses are still too general to cure the mischief they seek to address. This is not to suggest that the police are a law unto themselves. Like any other public department, the police too must be accountable to the elected representatives. Superintendence is the ultimate purview of the government and must be exerted with due attention. But superintendence must be such that it allows operational autonomy to develop within a police service in order for it to be effective and credible, and yet provide necessary guidance in terms of policy vision. This requires striking a healthy balance between administrative and superintendence functions in a mutually reinforcing rather than exclusive manner. The Ordinance unfortunately does not demarcate clearly between these functions, thereby leaving room for undue meddling by extraneous forces. Only a clear expression of these functions will assure operational responsibility and accountability of police without, at the same time, sacrificing legitimate political oversight and supervision.

Recommendation

CHRI recommends that sub-clause 1 be amended to read as follows:

10.1. The superintendence of the police shall be exercised by the government through the Minister-in-charge in accordance with the provision of this Ordinance, and no other person, officer, authority or the court shall be empowered by the government to supercede or control any police functionary.

- a. the Minister-in-charge may give the chief of police directions on matters of government policy that relate to
 - i. the prevention of crime
 - ii. the maintenance of public safety and public order
 - iii. the delivery of police service; and
 - iv. general areas of law enforcement



- b. The Minister-in-charge must not give directions to the chief of police in relation to the following:
 - i. enforcement of the criminal law in particular cases and classes of cases
 - ii. matters that relate to an individual or group of individuals
 - iii. decisions on individual members of the police
- c. If there is dispute between the Minister-in-charge and the chief of police in relation to any direction under this Clause, the Minister-in-charge must, as soon as practicable when the dispute arises,
 - i. provide that direction to the chief of police in writing;
 - ii. publish a copy in the gazette; and
 - iii. present a copy to the parliament.

Clause 11 – Administration of the Police

Clause 11 vests the entire management of the police service with the Chief of Police. The management functions include financial management, human resources, administration, transfer, deputation, etc. As per sub-clause 3 the Chief of Police and other officers in charge of individual units are expected to exercise powers and perform functions as provided for in the Ordinance.

The clause is vague and fails to define in detail the role of the Chief of Police as well as the precise contours of the police-executive relationship. This clear delineation within police legislation itself is crucial so that both the police and the government/executive have a clear understanding of the limits of their respective jurisdiction.

We therefore recommend the insertion of the following sub-clauses:

Recommendation

The following sub-clauses should be inserted in Clause 11:

- (1) The Chief of Police shall be responsible to the government for
 - (a) carrying out the functions and duties of the police;
 - (b) the general conduct of the police;
 - (c) the effective, efficient, and economical management of the police;
 - (d) tendering advice to the government; and
 - (e) giving effect to any lawful directions.
- (2) The Chief of Police shall act independently of the government regarding
 - (a) the maintenance of order in relation to any individual or group of individuals
 - (b) the enforcement of the law in relation to any individual or group of individuals; and
 - (c) the investigation and prosecution of offences; and



(d) decisions about individual police officers.

Clause 13 - Appointment of Legal Advisors, Financial Advisors and Experts

This provision is a major requirement in terms of legal advice and financial planning for the police. The appointment of one or more dedicated legal and financial advisors available on call to the police department will certainly assist the police to function within the law and evaluate the weight of evidence available before making arrests or charging suspects. However sub-clause 3 states that qualifications, eligibility and terms and conditions of the service of these experts will be as per prescribed rules. If these rules for appointment follow the same pattern as earlier, the same poor quality services and competencies are likely to be replicated in the new post. Unless a bold new system of selecting appointing, contracting, paying, removing and reviewing is put in place there is every danger that the creation of one more post will do nothing to assist efficiencies.

Clause 17 – Administration of Police in a District

Clause 17 vests the administration of police throughout a district in the District Police Officer. But experience has been that a great deal of political interference in the administration of police happens at the district level through the post of District Magistrate who is overall in charge of the district administration. The relationship between the two is often affected by political and partisan interests rather than concerns of law and order. To minimize this, and keeping in mind the objectives of this Ordinance to reduce undue political interference, it is important to delineate the relationship between the District Magistrate and the District Police Officer. Accordingly, it is suggested that Clause 17 be amended to align it with the principles laid out in Clause 11.

Recommendation

Clause 17 should be amended as follows:

- 1) For the purpose of efficiency in the general administration of the district, it shall be lawful for the District Magistrate, in addition to the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), and other relevant Acts, to coordinate the functioning of the police with other agencies of district administration in respect of matters relating to the following:
 - a) extensive disturbance of the public peace and tranquillity in the district;
 - b) the conduct of elections to any public body;
 - c) the handling of natural calamities and rehabilitation of the persons affected thereby;
 - d) situations arising out of any external aggression or internal disturbances;
 - e) any similar matter, not within the purview of any one department and affecting the general welfare of the public of the district; and
 - f) removal of any persistent public grievance.
- 2) For the purpose of such coordination, the District Magistrate may call for information of a general or special nature, as and when required, from the District Police Officer and heads of other departments of the district. Where the situation so demands, the District Magistrate shall pass appropriate orders and issue directions in writing, to achieve the objective of coordination.



- 3) For the purpose of coordination, the District Magistrate shall ensure that all departments of the district, whose assistance are required for the efficient functioning of the police, will render full assistance to the Superintendent of Police.

Clause 19 – Posting of Head of Investigation and Detective Branch

Clause 19 provides for the posting of heads of investigation and detective branch in a district and calls upon cases related to offences punishable with more than 7 years of imprisonment to be investigated by the Investigation and Detective Branch staff. The importance of establishing a strong investigation branch cannot be overstated. Police investigations constitute, in a sense, the first essential step in the administration of justice, and therefore, require great investment in terms of training and knowledge building. This calls upon developing specialised cadre trained in various aspects of investigation ranging from crime scene analysis to forensics to interrogation and such. Unless personnel are allocated to this branch for a fixed tenure without being used for other duties, it will be impossible to build investigative capacity. It is therefore urged that the Clause be amended to reflect this.

Recommendation

We recommend the insertion of a new sub-clause (1) as provided below whereas the existing sub-clauses (1) and (2) be numbered as (2) and (3) respectively.

- (1) The government shall ensure availability of adequate strength of staff at the Investigation and Detective Branch in each district, duly based on the population, incidence of crime, law and order-related workload, and the geographical area.

Provided that the staff including the head as provided under 19 (2) shall serve a tenure of not less than two years and shall not be diverted to other duties.

Clause 21 – Special Branch and Criminal Investigation Department

This clause provides for the establishment of intelligence and criminal investigation departments in the police organization. Sub-clauses (2) and (4) refer to appointing the officers to these two departments. To ensure an effective and fully operational criminal investigation department like in the case of Clause 19, it is critical that the staff not be deployed to other duties (such as law and order) and focus on developing specialised investigative skills and capacities in relation to sub-clause 21 (5).

Recommendation

Clause 21 (4) be amended by adding a proviso as follows:

Provided that the personnel posted to this department shall not be diverted to any other duties

Clause 34 – Appointment of Special Police Officers

Clause 34 vests with the Head of District Police (DPO) or any other officer especially empowered by the government the power to appoint Special Police Officers (SPOs)



for special purposes or to fill a manpower shortage in the police of an area. The clause however does not define the special circumstances that would occasion the appointment of such officers nor does it indicate the rank to which such appointments will be made and the criteria that would be used to select them. Such unrestricted power with the DPO opens the door to every kind of un-credentialed person being appointed an SPO on any kind of excuse.

Further sub-clause 2(b) grants these officers the same powers and immunities as ordinary police officers. In the absence of a specific provision to the effect, it may be presumed that officers so appointed are unlikely to receive any training before appointment. Logically due to the emergency nature of their appointment special police officers will not have adequate time to receive training in the principles of law relating to the police powers, functions and responsibilities, important principles regarding the use of force and rights of the public. Inclusion of SPOs would run the risk of expanding the ranks of the Bangladesh Police with poorly trained and unprofessional officers. Even trained officers seldom fail to understand the limits of police powers and duties, therefore, having untrained officers with powers of a police officer could potentially lead to the creation of vigilante groups which at some point the provincial police would be unable to control. Sweeping powers to create special officers are unwarranted and should be removed in their entirety given the pre-existing powers to appoint regular police officers in a timely manner.

Recommendation

Clause 34 should be removed in its entirety.

Clause 35 – Appointment of Additional Police

Similarly, Clause 35 outlines the DPO powers to appoint additional police. Even these additional police have the same powers and immunities as regular police personnel. Like in the case of SPO's, the additional police recruited under the Clause will not have the requisite training and knowledge to effectively police the area assigned to them. Additional police will also run the risk of abuse of power, as is seen so often around Bangladesh. As argued above the police should, instead of appointing special police officers and additional police officers, ensure that vacancies are filled and the police is able to function to full strength, that they undergo proper training, and their deployment is done in a reasonable and logical manner. In light of this argument Clause 35 should be removed from the Ordinance.

Recommendation

Clause 35 should be removed in its entirety.

Chapter IV



National Police Commission

Clause 37 – Establishment

While providing for the establishment of a National Police Commission, no time frame has been laid down in the Ordinance. This leaves room for the government to delay the process, affecting in turn the stated objective of the Ordinance of reforming the Bangladesh police. It is therefore recommended that the government be obliged to establish the Commission within three months keeping in mind the procedures as mentioned under Clause 41.

Recommendation

Clause 37 should be amended as follows:

- 37. Establishment:** The government shall, within three months of the coming into force of this Ordinance, establish a National Police Commission for performing the functions as assigned under this Chapter, and consisting of eleven members including the *ex-officio* Chairperson.

Clause 38 – Composition

Clause 38 lays down the composition of the NPC with 11 members. In this current Ordinance, the NPC looks to be a well balanced body with the inclusion of four official members, including representation from the opposition, and four independent members to be selected by a three-member Selection Panel. But this by itself is not enough to ensure a strong and effective body. The Commission is created to enable the government discharge its superintendence function in an objective and prudent manner. This means that apart from being bi-partisan, much depends upon the quality of independent members, the perspectives and skill sets they bring on board and credibility they enjoy among civil society at large. In providing for representation of independent members in the Commission, the Ordinance does not lay down any principles or criteria, and this leaves room for a mindless compliance of this provision. Care must be taken to make sure that the independent members selected come from diverse professional backgrounds and don't end up being a set of retired bureaucrats or police officers. For instance, representation from the minority communities or indigenous groups will certainly enrich the functioning of the Commission. Only then will the mandate of the Commission be realized in its true essence. Further, the NPC should not allow membership to lie vacant, as this severely cripples its functioning and undermines its reputation.

Recommendation

Clause 38 (1) (b) should be amended as follows:

- (b) Four non-political persons (hereinafter referred to as independent members) who shall be appointed by the President from a list of six names recommended by the National Selection Panel:

Provided that at least one member shall be a woman and one shall be from the minority communities or indigenous communities;

Provided also that not more than one retired government employee shall be appointed as an independent member;

Provided also that the independent members must come from diverse fields such as law, academic, public administration, media or NGOs and not more than one retired bureaucrat may be appointed as an independent member.

A new sub-clause 4 should be inserted in Clause 38 to read as follows:



(4). Any vacancy in the National Police Commission shall be filled up as soon as practicable, but not later than three months after the seat has fallen vacant.

Clause 44 – Functions of the National Police Commission

The National Police Commission, together with the Bureau of Police Research (Clause 69) and the Police Policy Group (Clause 101), has been established to oversee the functioning of the police service and guide its overall improvement and modernisation. To set up a professional body guiding policing practices is a welcome step. This mandate, however, encompasses varied functions including, but not limited to, research on and monitoring of policing standards and practices. While some of these functions have been listed out, either under NPC or under the BPR and PPG, there are significant omissions on oversight functions without which the Commission will be truly handicapped.

One such function is performance evaluation of the police organization. At today's date the measure of policing is unfairly assessed. Externally the public is completely dissatisfied with performance and internally the police rank and file is frustrated by the prime measure of performance being gauged on the number of crimes registered and cases 'solved'. This method has so many blemishes that it is hard to rehearse them all. Suffice it to say that crime statistics are seriously skewed from reality due to under-registration. The practice of refusal to register crimes is entirely against the law and amounts to a denial of access to justice a fundamental right of all living in the country. Knowledge of police refusal has many more knock on effects including complete erosion of public confidence, alienation and resort to self help and seeking assistance from other more effective sources. Certain segments, including many in the generic category of 'poor' are worse affected than others. Perceptions of bias are nurtured and alienation of the state results with all the evident disruption we are increasingly witnessing. While there is no excuse that can justify non-registration the priority given to quantifying what crimes have been 'solved' when there is no clear understanding of what a 'solved' crime amounts to has perpetuated non registration to the extent that it has strongly emboldened criminals even as it has demoralized a force which is short handed overworked often underpaid and frequently involved in unjustifiably dangerous work.

Qualitative, rather than the solely quantitative, one point indicator of crime registration offers the possibility of offering incentives to police personnel to perform incrementally better year on year while affecting positive changes in the internal sub-culture of coercing confessions as a means of solving crime on the one hand and avoiding any knowledge of crime on the other. The use of multi-benchmarked nuanced indicators has many knock on effects as they become embedded year on year: improvements beyond crime assessment include sharpening policy and priority focus, streamlining management practices, targeting scarce resource more productively, assuring better manpower deployment, and measuring group and individual performance more fairly.

The need to go beyond present one dimensional quantitative crime based assessments of policing is also more urgently signaled by the new impetus for police reforms. An important function of the National Police Commission created to set policy will require success of such policies to be reflected in improved police performance that can be measured only through calibrated indicators such as public satisfaction, perceptions of increased safety and security for women and other vulnerable groups, as well as hard indicators such as prevention of frequent occurrences like communal violence. The NPC, being a multi-disciplinary body with both government and police representation, is well placed to perform the task of developing such an evaluation framework.



The other function that deserves elaboration is setting the policing policy and the formulation of strategic plans to guide the functioning of the police service. Clause 70 mandates the Bureau of Police Research to formulate such plans but those are more focused on “technology-based qualitative improvement in policing.” The need for police planning is self-evident. A strategic plan ensures a basis for evaluating progress in improved policing. Policing plans also enable the police to think strategically about how they can do more with less. Rising crime and general feeling of insecurity also requires that the police lay out priorities and achievable targets and goals clearly. Such planning will help promote efficiency and responsiveness and taken together with the performance indicators will help sharpen the decision making process of the police.

We would recommend that Clause 44 (2) (d) be removed in this draft and a separate sub-clause 44 (3) and 44(4) be inserted in Chapter IV of the Draft Ordinance that addresses the requirement to frame performance indicators as well as prepare policing plans as well as ensure that these plans are placed before the Parliament for debate and discussion and also made readily accessible to the public.

Recommendation

Clause 44 should be amended to include a new sub-clause 44 (3) as below:

44.(3). The National Police Commission shall draw up a Strategic Policing Plan for a five-year period (hereinafter referred to as the “Strategic Plan”), duly identifying the objectives of policing sought to be achieved during the period and setting out an action plan for their implementation

- (a) the Strategic Plan shall be placed before the parliament within three months of the coming into force of this Act, and subsequent Strategic Plans shall, thereafter, be laid before the parliament every three years;
- (b) place before the parliament at the beginning of each financial year, a progress report on the implementation of the Strategic Plan along with the annual report as mandated under 44. (2) (f);
- (c) the Strategic Plan shall be prepared after receiving inputs on the policing needs of the districts from the District Police Officer, who in turn shall formulate the same in consultation with the community;
- (d) it will be the responsibility of the National Police Commission to ensure that the objectives and priorities listed in the Strategic Plan are widely circulated and communicated to police officers in all districts.

44. (4). The National Police Commission shall, in consultation with the Bureau of Police Research:

- (a) frame broad policy guidelines for promoting efficient, effective and accountable policing, in accordance with the law;
- (b) identify performance indicators to evaluate the functioning of the police service. These indicators shall, *inter alia*, include: operational efficiency, public satisfaction, victim satisfaction vis-à-vis police investigation and response, accountability, optimum utilisation of resources, and observance of human rights standards;
- (c) review and evaluate organisational performance of the Police Service against (i) the Annual Plan, (ii) performance indicators as indicated and laid down, and (iii) resources available with and constraints of the police



44(5) The Strategic Plan, the progress report, the Annual Plan and Performance Indicators shall be made readily accessible to the public as per provisions of the Right to Information Act, 2009.



Chapter V

Metropolitan and Urban Policing

Metropolitan policing in Bangladesh is governed by separate legislations and as such, this chapter must be read along with those to avoid duplications or omissions in the law.

Metropolitan areas like Dhaka, Chittagong, Khulna, Sylhet and Rajshahi are governed by separate legislations such as the **Dhaka Metropolitan Police Ordinance, 1976²**, **Khulna Metropolitan Police Ordinance, 1985³**, **Chittagong Metropolitan Police Ordinance, 1978⁴**

It is unclear from the Ordinance whether these metropolitan police areas will remain to be governed by their respective ordinances or if all of policing (metropolitan, urban and rural) be brought under one integrated law? The Ordinance needs to be much clearer in this regard. If the Dhaka Metropolitan Police Ordinance (DMPO) is likely to remain in place then the present chapter needs to be brought in sync with the object and purpose of the DMPO and similarly for the four remaining metropolitan police limits.

It is CHRI's opinion that this chapter is poorly thought out. If the five metropolitan police ordinances are in place it is prudent to make references in this current Ordinance to say the DMPO 1976 or similar relevant legislation will apply to all major metropolitan and major commercial areas designated by the government. The DMPO is definitely more comprehensive in its scope and details than these few scattered provisions reflected in Chapter V and its purpose must be reconsidered by the drafting committee.

Section 53 – Power to Search Suspected Persons or Vehicles in Street Etc

The section gives a police officer the authority to search any person or vehicle who he suspects is carrying any article that has been unlawfully obtained and may be used for committing an offence. If the officer feels that the account given to him is manifestly false he may detain the articles, and report the facts to the officer-in-charge of police station. The clause is in contravention of a similar provision in the Dhaka Metropolitan Police Ordinance 1976 which provides for the police officer to report such facts to the Magistrate (Section 20, DMPO) who will then proceed according to section 523 and 525 of the Code of Criminal Procedure. To have dual procedures for the police to follow in such a situation will only create confusion and leave space for corruption. Additionally arrest, detention and search and seizure are areas where there is maximum abuse of police powers. The system of checks on police by the magistracy will ensure that there is greater accountability in police functioning. We thus recommend that this clause be deleted from the Ordinance if the DMPO is going to be in place. If the 1976 Ordinance is likely to be repealed then the present Ordinance must seek to ensure greater accountability and greater checks on police powers and not tend to dilute established standards.

² ORDINANCE NO. III OF 1976: <http://bdlaws.com/dhaka-metropolitan-police-ordinance-1976/> (Unofficial)

³ ORDINANCE NO. LII OF 1985: <http://bdlaws.com/khulna-metropolitan-police-ordinance-1985/> (Unofficial)

⁴ ORDINANCE NO. XLVIII OF 1978: <http://www.cmpolice.com/links/Ordinance/Ordinance.html>



Recommendation

Section 53 should be deleted.

Section 56 – Community Participation in Policing

Research has shown that well conceived community policing initiatives are most likely to reduce crime and forge a better relationship between the community and the police. Thus, it is incumbent upon the Bangladesh government to do more than simply provide for the possibility that citizens will come together with the police to create a Citizen's Police Committee (CPC). The present Ordinance suggests that community participation is restricted only to metropolitan and urban areas when the principle should be the bedrock of policing across the country. The Ordinance must force the government to strive to create one committee per police station area throughout Bangladesh's 64 districts across seven divisions.

The composition of the CPC is what will determine its success or failure. The Ordinance suggests that members shall be local residents and persons of unquestionable character, integrity and antecedents, committed to public safety and security. These terms are slightly vague. For community policing to be truly effective, it should be inclusive and allow for maximum participation. Members of any effective CPC should be able to adequately articulate the needs of the community as well as be representative of it. This needs reflection in the Ordinance. We also urge that the language be amended so as to ensure that members be chosen in a transparent manner by a Selection Committee empanelled for the purpose.

Further, this current Ordinance recommends in Section 56 (3) a meeting of the CPC be convened at least every three months. Experience tell us that quarterly meetings will have little or no impact and police have to show more commitment on this front, and meetings accordingly should be convened, at a bare minimum of once every month with concerned police officers in attendance to have any actual effect on the area.

Recommendation

Section 56 be deleted in its entirety and replaced with the following:

56. Community Policing – 1) The Government shall establish a Citizens' Police Committee for every Police Station area.

- (2) The objectives of the Citizens' Police Committee shall be as follows:
 - (a) establishing and maintaining a partnership between the community and the police;
 - (b) promoting co-operation between the police and the community in fulfilling the needs of the community regarding policing;
 - (c) promoting communication between the police and the community;
 - (d) improving the rendering of police services to the community at the district and local levels;
 - (e) improving transparency in the police and accountability of the police to the community;
- (3) Each Citizens' Police Committee shall have eight to eleven representatives. Persons wanting to serve in the Group shall submit an application to a Selection Panel constituted for the purpose consisting of the Officer in Charge of the area Police Station, the area Judicial Magistrate and the District Police



Officer. The Selection Committee shall induct members from the applicant pool in a transparent manner.

- (4) No person who is connected with any political party or an organization allied to a political party, or has a criminal record, shall be eligible to be inducted into the Citizens' Police Committee.
- (5) The Citizens' Police Committee will, in consultation with the Officer in Charge, identify the existing and emerging policing needs of the Police Station area and forward that document to the District Police Officer who will consider it when preparing the annual policing strategy and policing plan per the requirement under Section 44(3)⁵.
- (6) The head of the District Police, the Officer in Charge of the police station other concerned police officers must attend meetings of the Citizens' Police Committee and extend assistance to its members.
- (7) The committee shall convene meetings whenever necessary and at least once every month.

⁵ See CHRI Recommendations for Section 44(3) Strategic and Annual Police Plans.
Commonwealth Human Rights Initiative
Draft Police Ordinance, 2007_Analysis and Recommendations



Chapter VI

Internal Security and Public Order Challenges

Internal security and public order challenges are complex issues that require a comprehensive and holistic approach involving coordination between various wings of the administration. Responsibility for internal security may range from police to paramilitaries and in exceptional circumstances, the military itself. The task under no circumstances can be left to the police alone. The remit of any police act is to regulate policing; to define its powers and functions, to establish the relationship between the police, the political executive, the civil administration and the public; and finally to lay down accountability mechanisms for the police. No police law can go beyond this remit to give extraordinary powers to the police or create obligations for the public.

Chapter VI seeks to do exactly the above. The primary aim of the chapter is to deal with insurgency, militant or terrorist activity or activities of armed groups. However, as stated above, such emergencies 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 can and must be dealt with by specific security/emergency legislation.

Clause 58, 59 and 60

Under Clause 58, the Chief of Police is authorised to lay down, in consultation with the Police Commission and with the approval of the government, general guidelines for the country to deal with challenges of public order and internal security. In light of these guidelines Standard Operating Procedures (SOPs) will be formulated based on local needs. These SOPs will be reviewed and revised as frequently as required. As mentioned above, internal security requires a multi-disciplinary approach; allowing the police to formulate guidelines in this regard will result in predominance of the law and order approach. This is not only ill conceived in that it fails to understand internal security in a holistic manner but also vests enormous power in the police without necessary checks and balance. Moreover, since the stress on SOPs or police plans and priorities feature nowhere else in the Ordinance, it seems to indicate that such heightened planning is only required for emergencies. Annual strategic planning for policing which by itself will lead to early warning signs of any challenges or disturbances seems to be totally overlooked.

Clause 61 – Creation of Special Security Areas

The Ordinance allows the government on a request from the Chief of Police to declare an area as a Special Security Area when threatened by “insurgency, terrorist or militant activity, or activities of any organized crime group”. The provision seems to be modeled on declaring areas as disturbed areas in the nature of an emergency law (like the Emergency Powers Rules of 2007). These cannot form part of a Police Act.

The idea of special, privileged enclaves, where extraordinary measures for security will be provided, is misconceived, and based on a misunderstanding of the challenges of terrorism, organised crime and law and order administration, which the proposed Special Security Areas are intended to address.

Creating SSAs would establish new and relatively stable jurisdictions within which a 'heightened' war against terrorism could be waged, neglecting the fluidity, and extraordinary mobility of contemporary terrorist and insurgent groups, and the



expanding networks of organised crime. The SSA concept communicates the notion that a discrete and geographically isolated or concentrated effort is required for the containment of terrorism. Such areas would tend to be defined in terms of intensities of violence, and would exclude areas of substantial consolidation, where the incidence of violence is lower, even though terrorist activities and mobilisation is significant.

The fact, however, is that the problem of terrorism extends far beyond the targets or 'points of delivery' of terrorist acts. SSAs would tend to distort the focus of counter-terrorism and enforcement agencies, and would deepen the already chronic neglect of 'hinterland' areas. The need for the creation of such areas would in itself be an indication that regular policing, maintenance of law and order and safety and security in that area has completely failed. This would also be an indication that there would have been significant deficiencies in the ordinary everyday policing plans of that area.

A proviso to the Clause allows for the notification of such a declaration to be placed before Parliament for ratification within a period of six months. This effectively means that the declaration would be out of purview of legislative oversight for as long as six months.

Clause 62 – Police Structure for Special Security Areas

In Clause 62 the Chief of Police is obligated to “create an appropriate police structure and a suitable command, control, and response system, for each such Special Security Area”. To create separate police structures for areas within a state’s boundary will only amount to parallel police structures operating outside the accountability mechanisms put in place by the Ordinance. Although, there are no special powers given to the police in these areas, this is a slippery slope. Experience indicates that once such areas are created, police will push for, and get special powers that will curtail civil liberties. Such a system is found to be dangerous in the long run, for it legitimises the argument of “special circumstances require special procedures” and thereby gradually erodes tolerance for rule of law. The assumption here is that the absence of a specialised structure has resulted in the deterioration of the security situation, which also provides a convenient alibi for states to overlook the failure of its policies. It would thus be advisable that such an administrative structure be developed within the constitutional framework for the entire state to deal with order and security of the state.

Clause 64 and 65

Clause 65 read with 64 gives the government the blanket provision to make rules to ban or regulate the movement of funds, articles and materials in such areas if the use of such devices is considered a threat to internal security. This Clause when read with Clause which gives the power to the state to create a suitable administrative structure, simply means giving unbridled power to the police without the necessary constitutional checks and balances.

Clause 66 – Involvement of Community

Community involvement in policing should and must become the philosophy underpinning everyday policing. To make a fleeting reference to it only diminishes its importance.

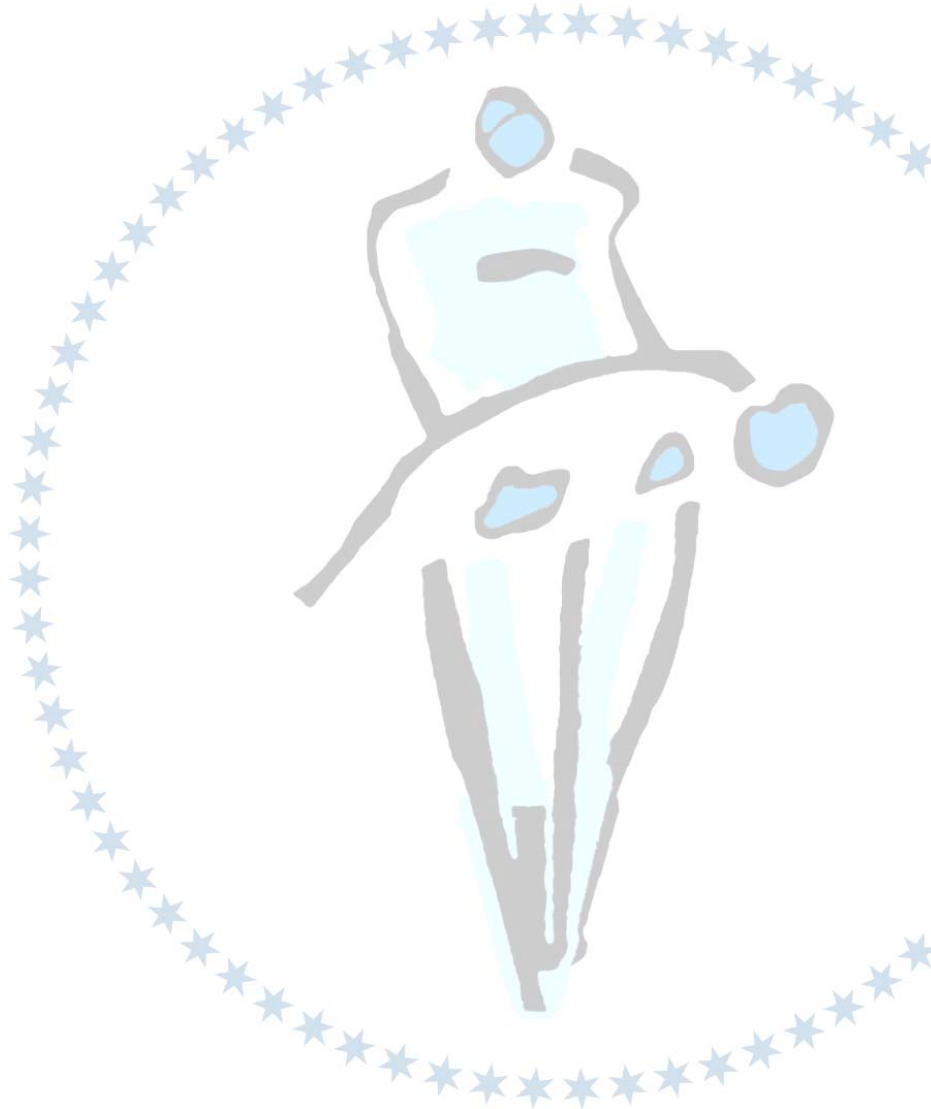
The approach in Chapter VI is too broad. It massively curtails civil liberties in its broad ambit. It gives enhanced powers with no increase in the effectiveness of the police to deal with issues of security and insurgency. The provisions throughout the chapter leave too wide a scope for the Government and police to crack down on



certain areas without having to create specific legislations through the regular parliamentary channels and hence has no place in this Ordinance.

Recommendation

Chapter VI should be removed in its entirety



Chapter VIII

Police Complaints Commission

Police accountability lies at the heart of democratic policing. Vested with enormous powers and authorised to use force, it is essential that the police be held accountable for their actions. There are various kinds of accountability and police should be answerable to multiple levels and layers of oversight. The creation of a Police Complaints Commission as countenanced by this Ordinance would establish a statutory, external mechanism with a dedicated oversight mandate. This development will be a vital feature of a comprehensive system of police accountability in Bangladesh. However, while this is an important development, it is not enough that such an agency is merely created. No doubt the Commission is set up to reduce impunity where the existing system of accountability is inadequate. But statutorily it gives the impression of a weak body with no investigatory powers and vague provisions. Inherently weak bodies that lack the necessary political support, human and financial resources, recommendatory powers, and financial/operational independence, land up being a little more than a paper tiger – set up as a buffer to civilian complaints, but with no real impact on police violence.

From this standpoint, the Police Complaints Commission envisaged in the Ordinance requires much strengthening to come into line with recognized best practice.

Clause 71 – Establishment of Police Complaints Commission

Clause 71 calls upon the government to establish a Police Complaints Commission for enquiring into “serious” complaints against the members of the Bangladesh police. It, however, does not lay down a time frame within which the Commission would be established. Considering that accountability within the police often tends to get sidelined, it is imperative that the Ordinance lay down a definite time frame within which the Commission would be established.

As stated above, the Commission is to enquire into “serious” complaints against the Bangladesh police. However, the Ordinance is silent on what constitutes “serious”. Moreover, in lieu of Clause75 (a) that mandates the Commission to look into complaints of “neglect, excess or misconduct,” it is not clear whether these are included in the meaning of word “serious.” A Commission vested with a vague mandate is not going to be able to impact police accountability the way it is intended. In the absence of a clear definition of serious and without an adequate mandated power, the Commission risks being used as merely a buffer against civilian concern and anger, rather than as an effective agent for accountability.

In order to provide clarity on the mandate it is urged that an explanation of serious misconduct and misconduct be included in Clause75 (a) whereas the word serious be removed from Clause71.

Recommendation

71. Establishment of Police Complaints Commission – The Government shall, as soon as the coming into force of the Ordinance or within three months of the coming into effect of the Ordinance, establish a Police Complaints Commission for enquiring into public complaints (as provided in Clause75) against the members of Bangladesh police.

Clause 72 – Composition

Clause 72 establishes a five member Commission comprising of a retired judge of the Apex Court, a retired police officer, a retired bureaucrat and two independent



members from civil society. The composition suggests that besides the Chair the other two members may be from a pool of retired officers. In relation to the presence of a police officer we are pleased to see that the clause limits the presence to just one retired officer. However, we believe that it is not necessary to have any police officer in the Commission. It is often argued that the presence of a retired police officer will provide inside experience and in fact enhance the functioning of such a body. We do not accept this argument. Should the Commission need expert advice, it can always call on retired police officers to provide them the same without having one sit on the Commission itself. It is also argued that a police member can access police information more easily. This argument has little weight as it is incumbent by law for the police establishment to cooperate with the Commission and assist it throughout any investigation without being 'persuaded' by the presence of an ex-member of the force. A final argument put forward for having a police member is that the Commission should have someone on it that "adequately represents the police point of view". We reject this as well as the members must be unbiased and examine each matter on its merits. In this light, a retired police officer as a member will have a tendency to tilt the balance in favour of police concerns and this cannot be the intent of the legislation.

But, if there must be a retired police officer, allow that officer to be eligible only after two years of retirement and not earlier, thereby allowing for a 'cooling off' period in which he can distance himself from obvious earlier attachments and interests in the force.

Independence is vital to the successful functioning of the Commission. If the independent members are co-opted by the government or appear too close to the police they face the same dangers of bias and corruption inherent in police internal investigations. The Ordinance must thus refer to these civil society members as independent members rather than mere civil society members and their independence should reflect in the manner they are selected.

Finally we do feel that considering the nature of task before it, a five member Commission may not be able to live up to its mandate.

We recommend the clause be suitably amended as below to address the concerns we raise as well as to be in conformity with recognised best practice.

Recommendation

72. Composition – The Police Complaints Commission shall have seven members with a brilliant record of integrity and commitment to human rights and shall consist of:

- (a) a retired judge of the Appellate Division of the Supreme Court of Bangladesh or a person of national repute who shall be the Chairperson of the Commission
- (b) a retired police officer, superannuated in the rank of Inspector General or Additional Inspector General;
- (c) a retired secretary/Additional secretary to the government;
Provided that the officers shall be eligible to be a member of the Commission only two years post retirement from service
- (d) Four independent members from diverse backgrounds and diverse skill sets and having life experience and reflective of the population;



Provided that at least one member of the Police Complaints Commission shall be a woman

Clause 73 – Selection of Members

In order to create a strong, impartial and effective Commission, the Selection Panel needs also to be fair and diverse. The selection process for members must be such as assures the appearance of impartiality and independence. The civil society members of repute must also be ones that are not co-opted by the government but are distinctly independent. Further, persons wanting to serve in the Commission must be allowed to submit applications to the Selection Panel constituted for the purpose. The Selection Panel can then induct members from the applicant pool in a transparent manner ensuring a fair representation from all strata and professions of society.

Moreover, Clause 2 of Clause 73 lays down that the Selection Panel shall be constituted no later than six months from the coming into effect of the Ordinance. This seems an unreasonably long period with no justifiable reasoning.

The Clause can thus be suitably amended as below to address the concerns raised.

Recommendation

Sub-clauses 2-4 be amended as follows and a new sub-clause 73(5) be inserted:

73. Selection of members –

- (2) Selection Panel shall be constituted no later than **one month** from the coming into effect of this Ordinance, and shall nominate members of the Police Complaints Commission within one month of its constitution, and when required thereafter;
- (3) Vacancies in the **Commission** shall be filled up as soon as practicable, and in no case later than three months after a seat has fallen vacant;
- (4) Persons wanting to serve in the Commission shall submit an application to the Selection Panel constituted for the purpose. The Selection Panel shall induct members from the applicant pool in a transparent manner ensuring a fair representation from all strata and professions of society;
- (5) In selecting members of the **Commission**, the Panel shall adopt a transparent process.

Clause 74 – Criteria and Terms of the Members

Clause 2 of Clause 74 lays down that “persons may be appointed as *whole-time* or *part-time* members of the Police Complaints Commission.” The Commission is bound to be a non-starter if its members will be made part-time when in any case complaints against the police is not easy to investigate. It will also slow down capacity building of the members in fulfilling their mandate. Additionally tenure of appointment is also important to ensure that members feel confident in asserting their independence and that they can be critical, where appropriate and necessary, of officials or government policy.

Recommendation

Sub-clauses 2-3 be amended as follows:

74. Criteria and terms of the members.



- (2) The term of office of a member, and the Chairperson, shall be three years unless:
 - (a) he resigns at any time before the expiry of his term; or
 - (b) he is removed from the office on any of the grounds mentioned in Clause 77
- (3) Members shall be eligible for reappointment on the expiry of term, provided that no member shall be eligible to hold office for more than two terms.

Clause 75 – Functions of the Police Complaints Commission

From a reading of Clause 75 of the Ordinance it appears that the objectives of the Commission are to monitor cases of police abuse, refer the cases to an appropriate authority and hold the police accountable to the parliament and to the public. Nowhere is it set out in this Clause that the Commission has a role in not only *monitoring*, but also in *investigating*, police actions and performance. This is important, because it makes clear that the Commission is to take an active role, as opposed to the more passive role of observing the police.

When considering the investigative mandate of the Commission, it is also important that the specific issues to be investigated are set out. Such specific investigative powers should be set out within this section, as well as reiterated in the next. At a minimum, a Commission of this kind should have a clear mandate to investigate every death at the hands of the police or in police custody. It may also be desirable to set out other serious matters, such as rape or torture, large-scale public disturbances/demonstrations where police are involved or take action against citizens, or police misconduct that are to be investigated by the Commission in all cases.

Within this section, the specific investigative mandate of the Commission should be set out again. At present, the reference to the investigative function (albeit vague) of the Commission is contained within sub-clause (b). The sub-clause, however, simply states that the Commission in serious cases may initiate action on its own.

It is submitted that, in addition to those areas, it should be made explicit that the Commission must investigate every death in police custody or at the hands of police, and that these matters must be reported to the Commission by the police. The Ordinance should describe the Commission as having a strong investigative mandate that covers not only misconduct by the police but also, specifically, police corruption, commission of a criminal offence by a police officer or officers, death in custody or at the hands of an officer/s, and serious matters such as rape and torture. As per sub-clause (c) the Commission can receive complaints of serious abuse from the Police Commission or the police themselves. However, this sub-clause should place a definitive obligation on the police to report serious matters themselves.

Recommendation

Clause 75 should be amended as follows:

75. Functions and Powers of the Police Complaints Commission –

Functions: 1-4

- (1) The Police Complaints Commission shall investigate all allegations of police misconduct, including serious misconduct, corruption and criminality, either *suo motu* or on a complaint received from either an aggrieved person or any



person on his/her behalf, the National Human Rights Commission, the police, the National Police Commission, or any other source.

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:

- (a) death in police custody ;
 - (b) grievous hurt, as defined in Clause 320 of the Bangladesh Penal Code, 1860;
 - (c) rape or attempt to commit rape; or
 - (d) arrest or detention without due process of law
- (2) The Commission may also inquire into any other case referred to it by the Inspector General of Police if, in the opinion of the Police Complaints Commission, the nature of the case merits an independent inquiry.
- (3) The Police Complaints Commission shall inquire into complaints of "misconduct" against gazetted officers of and above the rank of Deputy/Assistant Superintendent of Police. The Police Complaints Commission may monitor, **either on own initiative or in connection with Clause 78 (5)**, the status of departmental inquiries or actions taken in pursuance thereto on the complaints of misconduct against officers through a quarterly report obtained periodically from the police chief, and issue appropriate advice to the police department for expeditious completion of inquiry, if in the commission's opinion the departmental inquiry or action is getting unduly delayed

Explanation: "Misconduct" in this context shall mean any willful breach or neglect by a police officer of any law, rule, and regulation applicable to the police that adversely affects the rights of any member of the public.

- (4) The Commission may also lay down general guidelines for the police to prevent misconduct on part of police personnel.

Powers (5-9)

- (5) On receiving or being notified of a complaint under this Act, the Commission may do all or any of the following:
- (a) investigate the complaint itself, whether or not the Police have commenced an investigation
 - (b) refer the complaint to the police for investigation by the police but closely supervised by the Commission;
 - (c) defer action until the receipt of a report from the Inspector General of Police on a departmental investigation of the complaint in accordance with sub-clause 3 above
 - (d) defer action until the receipt of a report from the Inspector General following a criminal investigation or a disciplinary investigation, or both, initiated and undertaken by the police:
- (6) In the cases directly enquired by it, the Commission shall have all the powers of:
- (a) summoning and enforcing the attendance of witnesses and examining them on oath;
 - (b) discovery and production of any document;
 - (c) receiving evidence on affidavits;
 - (d) requisitioning any public record or copy thereof from any court or



- office;
- (e) issuing authorities for the examination of witnesses or documents; and
 - (f) any other matter as may be prescribed.
- (7) In cases other than those directly enquired by the Commission, it can
- (a) request the Chief Justice to appoint a District and Sessions Judge for judicial enquiry
 - (b) appoint in appropriate cases, a police officer who is senior in rank to the officer complained against as an inquiry officer, and supervise the inquiry proceedings
- (8) The Commission shall have the power to require any person, subject to legal privilege, to furnish information on such points or matters as, in the opinion of the Commission, 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.
- (9) The Commission shall have the power to advise the government on measures to ensure protection of witnesses, victims, and their families who might face any threat or harassment for making the complaint or furnishing evidence, and the government will be bound to take necessary action as advised or otherwise explain the reason for inaction in writing within twenty four hours of receiving the request from Commission.
- (f)-(l) clauses will remain the same.

Clause 76 – Secretariat

Clause 76 establishes a permanent secretariat for the Commission. The clause states that the staff requirement of the Commission will be judged from time to time. This is a reasonable provision. However, the Ordinance falls short in respect of independent investigators. The Ordinance fails to recognise the fact that the Commission may need the services of regular staff to conduct field inquiries and could utilize the services of retired investigators from the CID, Intelligence, Vigilance or any other organisation for this purpose.

Additionally the clause states that the government may in consultation with the Commission appoint such staff as it deems necessary. There are no other specifications or descriptions as to staff of the Commission, save to state in clause 81 that the Commission shall ensure that all its members and staff are regularly trained.

Given the functions of the Commission, and the strong investigative mandate that is urged, the staff of the body need to be both properly empowered and qualified. This is especially so in the case of investigative officers.

It is submitted that further specification should be made in this section, at least in relation to the appointment and empowering of investigative staff. Such staff should have certain qualifications and experience related to investigation, prior and in addition to any training that they might receive from the Commission or after appointment there. Additionally, it may be considered appropriate to endow investigative officers with a rank comparable to senior police investigators. This will further help ensure that the Authority is able to carry out its functions properly and in a way that is respected by both the public and the police.

Recommendation

Clause 76 should be amended to include two more sub-clauses (5) and (6).



76. Secretariat

- (5) The Commission may at any time avail of the services of independent investigators drawn from a pool retired investigators from the CID, Intelligence, Vigilance or any other organization.”
- (6) Investigative staff to the Commission must have at least 10 years of experience as investigators and superannuated in the rank of Inspector of Police or Deputy Superintendent of Police

New Clauses

In order to strengthen the functioning of the Commission, and in the interest of realizing police accountability in true essence, it is urged that the following new clauses be inserted in Chapter VIII in whatever order deemed fit.

I. Conduct of Business

- (1) Complaints can be received either in writing or through other electronic means in English or Bangla specifying the particulars of his or her complaint
Provided that where such complaint cannot be made in writing, the members of the Police Complaints Commission shall render all reasonable assistance to the person making the complaint orally to reduce the same in writing
- (2) The Police Complaints Commission shall devise its own rules for the conduct of its business as well as conduct of business by the [Division Complaints Commissions](#), within three months of its constitution and may amend it from time to time as necessary for its proper functioning.

II. Division Police Complaints Commission

The Police Ordinance provides for the establishment of one Police Complaints Commission for whole of Bangladesh. Given the deep distrust of the people against the police, and keeping in mind the geographical spread (64 districts clubbed in 7 divisions) and population growth of Bangladesh (over 160 million as of 2010), one such commission for the country will hardly be able to provide necessary redress. On the contrary, it is likely to get overburdened in no time, present practical problems of access for the complainants and thus become ineffective. Ideally, there should be one such Commission in every district of Bangladesh, but while it may not be feasible to do so, a beginning can be made by establishing a Commission in every division.

We recommend the inclusion of a Chapter or Clause on the Division Police Complaints Commission with following clauses:

1. Establishment of Division Police Complaints Commission (DPCC):

- (a) The Administrator shall establish in each administrative division a Division Police Complaints Commission to enquire into misconduct or abuse of power against police officers below the rank of Deputy/Assistant Superintendent/Commissioner of police and to monitor departmental inquiries into cases of complaints of misconduct against police personnel, as defined in Clause 75(3)
- (b) The Division Police Complaints Commission shall have three members with a credible record of integrity and commitment to human rights and shall consist of a retired High Court Judge, who shall be the Chairperson of the Commission; a retired senior police officer, and a person with a minimum of



10 years total experience as a judicial officer, public prosecutor, practicing advocate, professor of law, or a person with experience in public administration as members.

- (c) The Chairperson and other members of the DPCC shall be appointed by the government on the recommendation of the four-member Selection Panel referred to in Clause 73.
- (d) Vacancies in the DPCC shall be filled up as soon as practicable, and in no case later than three months after a seat has been vacated.
- (e) In selecting members of the DPCC, the Selection Panel shall adopt a transparent process.
- (f) The criteria, terms and removal of the members of the DPCC will be the same as provided in Clause 74 and 77 respectively.
- (g) The DPCC shall be assisted by adequate legal and administrative staff with requisite skills and experience. The staff shall be selected by the Police Complaints Commission, inter alia, on a contractual basis, through a transparent process.
- (h) The remuneration and other terms and conditions of service of the staff shall be as prescribed from time to time.

2. Powers and Functions of Division Police Complaints Commission

i. The Division Police Complaints Commission shall

- (a) have the power to enquire into misconduct or abuse of power against police officers below the rank of Deputy Superintendent of Police. In this the DPCC shall perform the same functions and have all the powers vested in the Police Complaints Commission as recommended in Clause 75.
 - (b) if the complaint contains allegations against any police officer of or above the rank of Deputy Superintendent of Police, the DPCC shall forward the same to the Police Complaints Commission, for further action;
 - (c) forward the complaints of “serious misconduct”, received directly by it, to the Police Complaints Commission for further action;
 - (d) monitor the status of departmental inquiries or action on the complaints of “misconduct” against officers below the rank of Assistant/ Deputy Superintendent of Police, through a quarterly report obtained periodically from the District Police Officer of all districts under the division;
 - (e) issue appropriate directions to all the District Police Officers under the division for expeditious completion of inquiry, if, in the DPCC’s opinion, the inquiry is getting unduly delayed in any such case;
 - (f) report cases to the Police Complaints Commission where departmental enquiry into “misconduct” is not concluded in time by the police department in spite of the District Authority’s advice(s) to the District Police Officer issued under sub-clause (e) above.
- ii. The DPCC may also, in respect of a complaint of “misconduct” against an officer below the rank of Assistant/ Deputy Superintendent of Police, call for a report from, and issue appropriate advice for further action or, if necessary, a direction for fresh inquiry by another officer, to the District Superintendent of Police when a complainant, being dissatisfied by an inordinate delay in the process of departmental inquiry into his complaint of “misconduct” or outcome



of the inquiry if the principles of natural justice have been violated in the conduct of the disciplinary inquiry, brings such matter to its notice. It may also transfer the complaint to itself.

- iii. The DPCC may visit any police station, lock-up, or any other place of detention used by the police and, if it thinks fit, it may be accompanied by a police officer.

3. Report of the Division Police Complaints Commission

- (i) Each DPCC shall prepare and submit to the Police Complaints Commission an annual report before the end of each calendar year, *inter alia*, containing:
 - (a) the numbers and types of cases of “serious misconduct” and “misconduct” forwarded by it to the Police Complaints Commission during the year;
 - (b) the number and types of cases monitored by it during the year;
 - (c) the number of cases received by it, disposed off by it and the pendency during the year
 - (d) the number and types of cases of “misconduct” referred to it by the complainants upon being dissatisfied by the departmental inquiry into his complaint;
 - (e) the number and types of cases referred to in (d) above in which advice or direction was issued by it to the police for further action; and
 - (f) recommendations on measures to enhance police accountability.
- (ii) The annual report of the DPCC’s shall be incorporated into the annual report of the Police Complaints Commission and presented before the Parliament and also be published as a public document, easily accessible to the public.



Chapter IX

Conduct and Discipline

Clause 82 - Code of Conduct

The inclusion of a code of conduct for police personnel is important by way of guiding standards of behaviour and professionalism of police officers. However, these are not intended to guide statutory obligations like those involved in search and seizures. Guidelines for these should be included in rules and regulations which can be legally enforced. Clause 82 should thus be amended to read as follows:

Recommendation

Clause 82 should be amended to read as follows:

82 (1) Code of Conduct –

- (a). The Chief of Police shall issue, and may from time to time revise, a code of conduct stating the standards of behaviour expected from police officers.
 - (b). It is the duty of every police officer to conduct himself or herself in accordance with the code of conduct.
- (2). The Chief of Police shall take steps to ensure that
- (a) that all police officers have read and understood the code in force
 - (b) that a record is made and kept of the steps taken in relation to each officer
- (3). Subject to Rules to be formulated under Clause 92, a police officer found guilty of contravening the code of conduct may be awarded one or more penalties/punishments provided under Clause 90.



Chapter XII

Power to Regulate Assemblies, Processions

The chapter places undue restrictions on fundamental rights and freedoms. The right to freedom of peaceful assembly is an essential component of democracy that provides individuals with - amongst other things - the opportunity to express political opinion or protest government action. Article 37 of the Constitution guarantees this freedom. As such, it is the duty of the state to respect and fully protect the rights of all individuals to assemble peacefully and associate freely. This includes protecting the rights of persons espousing dissenting views or beliefs, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with applicable domestic and international human rights law.

This chapter lays down the conditions for holding a procession or assembly and the powers available to the police for maintaining order. It must be remembered that the duty of the police in this regard is to prevent any violence or disturbance from erupting. It is *not* their duty to curtail people's right to protest. This is a fundamental right and an essential feature of a democracy. The essence of this principle must reflect in all the sections of this chapter.

Clause 106 – Regulation of Public Assemblies and Processions and Licensing of Same

The Clause disallows any assembly or procession from being held without a prior sanction from the Head of District Police. Every license so granted will set out conditions that have to be followed by the organizers. This implies that there will be an obligation on the public to seek permission before organizing any gathering or protest. The Clause is silent on whether the Head of District Police has the power or discretion to refuse grant of a license.

In a democracy where the Constitution guarantees the right to peaceful assembly, the right should exist with as few restrictions as possible. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety and public order. People cannot be expected to seek permission before being able to exercise a fundamental right. Any such provision will be ultra vires the constitution and likely to be struck down.

Recommendation

Clause 106 shall be amended in entirety to read as follows:

106. Regulation of public assemblies and processions –

- (1) It shall be duty of any person intending to organise a procession on any road, street or thoroughfare, or to convene an assembly at any public place, to give intimation in writing to the officer in charge of the concerned police station.
- (2) On receiving such information or otherwise, if the Head of District Police or any officer not below the rank of Assistant/Deputy Superintendent of Police, is satisfied that such an assembly or procession, if allowed without due control and regulation, is likely to cause a breach of peace, may prescribe necessary conditions or orders not inconsistent with the Act on which alone such assembly or procession may take place. The conditions or orders may be about the following:-



- (a) the mode of any assembly or passing of any procession, or the conduct, behaviour or acts of members of such assembly or procession;
- (b) prescribing the routes and the time at which such processions may or may not pass;
- (c) preventing obstruction on the occasion of such a procession or assembly in the neighbourhood of any place of worship during the time of public worship, and in every case when any road, street or public place or any place of public resort may be thronged or is likely to be obstructed; or
- (d) maintaining order on roads, streets, public places and all other places where the public gather:

Provided that all orders and directions in respect of any procession or assembly for which intimation has been received from the organisers, shall be issued, as far as possible, within 48 hours of receipt of intimation.

Provided further that no order by the concerned police officer may prohibit the assembly or procession without moving the appropriate Magistrate to issue an order in accordance with Clause 144 of the Code of Criminal Procedure and further elaborated under Regulation 134 of the Bengal Police Regulations 1943.

Clause 107 - Powers With Regards to Assemblies and Processions Violating the Conditions of License:

This Clause empowers the Head of District Police or Assistant or Additional Superintendent of Police or Inspector or Officer-in-Charge of police station to stop any procession that violates conditions set out in the license. Yet again, this clearly contravenes the 1943 Bengal Police Regulations according to which “if a police officer considers that an assembly or procession should be prohibited, he should move the appropriate Magistrate to issue an order under Clause 144 of the Code of Criminal Procedure. No Police officer as such has power to prohibit it” (Regulation 134). Powers bestowed to the magistracy in the CrPC, such as issuing an order to regulate assemblies, should stay with the magistracy. As such, Clause 107, which undermines the CrPC, should be removed.

Recommendation

Clause 107 should be deleted in its entirety.

Clause 109 – Power to Give Directions Against Serious Disorder at Places of Amusement Etc:

The requirement of this Clause, that an organiser must give detailed notice of a meeting is a complete violation of fundamental rights. Such requirements are not necessary restrictions, but rather unfair and unlawful burdens placed on citizens.

It is the state that has an obligation to protect the rights of all citizens, and citizens are not to be required to give notice that they will, quite simply, be exercising their rights. The scheme outlined in this Clause of the Ordinance is not permissible under international law, nor does it protect the rights guaranteed by the Constitution. Rather, if the state seeks to co-operate with the public, what can be lawfully requested is that persons inform the police if a public event or meeting is planned. This cannot be a mandatory requirement and, further, in the event that the police are informed of a planned event, then it is their obligation under the law to make any arrangements necessary. They cannot prevent people from meeting or assembling; they do not have the option to either allow or disallow the assembly, nor otherwise

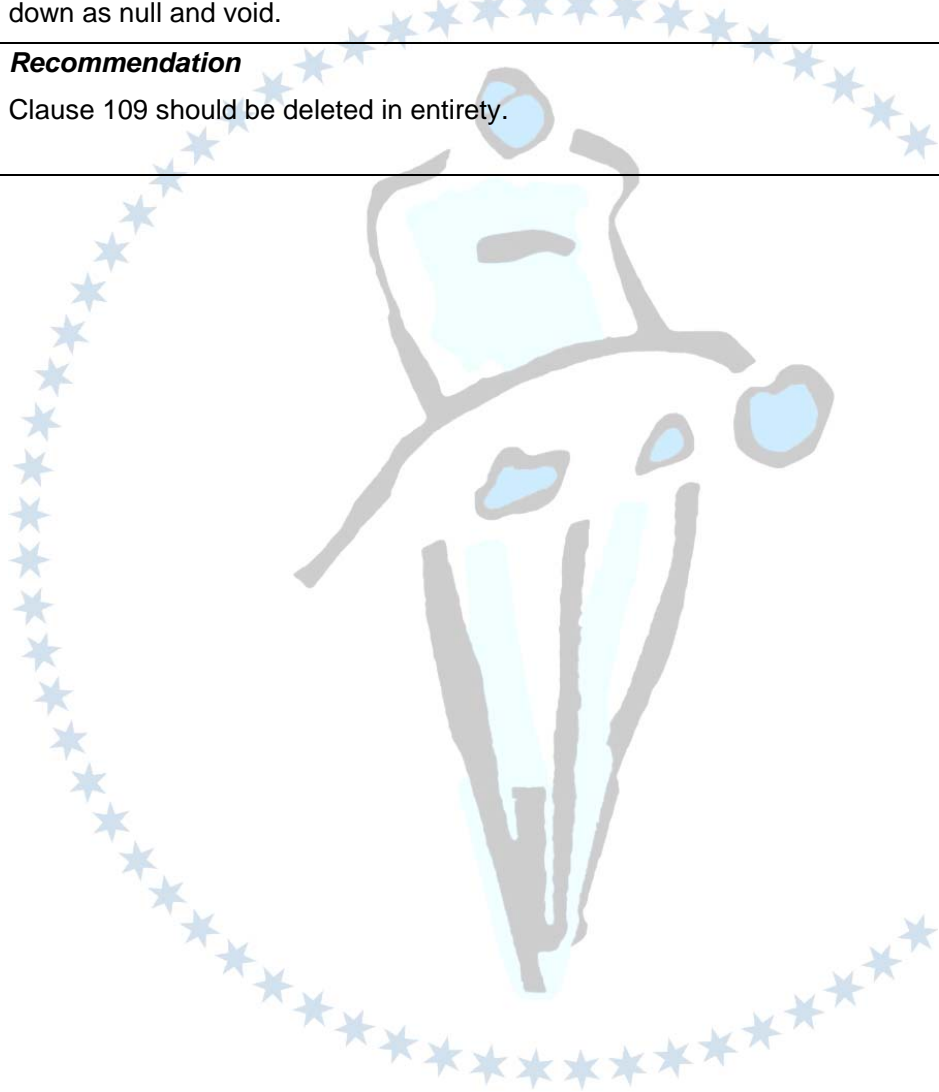


seek to restrict such peaceful and lawful activities. This is not to say that police cannot discuss arrangements with organisers, for example, in the event that they are informed about a planned event - but they are not to put any pressure on those persons, or take any other actions, to cancel or restrict a peaceful gathering in any way.

It can reasonably be expected that any attempt to make a law that purports to include such restrictive provisions would be found to be un-Constitutional and hence stuck down as null and void.

Recommendation

Clause 109 should be deleted in entirety.



Chapter XIII

Special Measures for Maintenance of Public Order and Security

Like Chapter VI, Chapter XIII does not fit well in police legislation. The chapter mitigates the objective of the Ordinance to establish a professional, efficient and just police service by, firstly, vesting enormous discretion and power on police officers without necessary checks and balances; and secondly, and more importantly, by including a broad, loose, and unclear understanding of public order and security that severely curtail civil liberties. Such provisions have no place in an Ordinance that is seeking to overcome the legacy of colonial policing and transform the police from a force into a service. Maintenance of public order and security are the very core functions of the police as elaborated upon under Chapter II and providing for additional police will only provide an excuse for delaying better training of the existing police personnel.

Clause 112 – Deployment of Additional Police to Keep the Peace

Clause 113 – Deployment of Additional Police at the Cost of Organizers

Clause 112 and 113 vests in the Commissioner or the Range Police Officer with the approval of the Chief of Police the power to depute additional police to keep the peace or to enforce any provisions of the Ordinance, or any other law, in respect of any particular class or classes of offences, or to perform any other duties imposed on the police” when an application is made. Whilst additional police may sometimes be justified under situations of emergencies when the sheer magnitude of the calamity may require more security personnel, but to authorize the police to employ additional police for *any class of offence* will severely hinder the professional development and growth of the police in handling various situations. Inclusion of such additional police within the force will surely increase the security risk to the police establishment as well as dangers to the public. The judicious use of coercive policing powers by such additional police cannot be guaranteed and is likely to create civil and criminal liabilities for the police under whose aegis they are acting.

Additionally, like in the case of Special Police Officers as explained above at Clause 34, the additional police recruited will not have the requisite training and knowledge to effectively police the area assigned to them. Additional police will also run the risk of abuse of power. The police must make up its shortfall through direct recruitment and should not have to depend on hiring additional police.

The Clause is also in direct contravention of the 1943 Bengal Police Regulations which make it clear that any application for additional police shall be submitted to the provincial government through the District Magistrate (Regulation 667). There is no requirement placed on the police to explain the reasons for deputing additional police or to explain its continued existence or withdrawal. The discretion allowed to the police together with the broad conditions laid down for authorizing additional police leave a lot of space for abuse and malpractices.

The Clause also provides that the cost of such additional police shall be borne by the person requesting for the same. Maintenance of public order and security is the core function and responsibility of the police which they are statutorily obligated to perform. Levying a charge from people for this will only perpetuate corruption. Since Clause 113 leaves it upon the police to determine circumstances necessitating deployment of additional police, the fact that the cost must be borne by the organizer



even if they did not request additional police themselves, leaves tremendous scope for corruption.

In view of the arguments made above Clauses 112 and 113 should be removed from the Ordinance.

Recommendation

Clause 112, 113, 114, 115, 116, 117, and 120 of Chapter XIII should be deleted in entirety.

Clause 118 and 119 may be better placed in Chapter XIV on Offences and Punishments

Clause 121 may be placed in Chapter XV under Miscellaneous.



Chapter XIV

Offences and Punishments

This Chapter seeks to create punishments for offences which are however already laid down in the penal code. Several clauses in this chapter duplicate provisions in the penal code but with punishments that are substantially different. No police act should be creating new offences or duplicate existing ones that will give more coercive powers to the police. Inclusion of such offences in the Ordinance will only create legal uncertainties in the prosecution and trial of offenders charged under the Act.

Provision in the Police Ordinance		Punishment	
Issue	Section	Police Ordinance	Penal Code, 1860
Penalty for unauthorized use of police uniform	Clause 137	Imprisonment up to three years or fine of hundred thousand taka or both	Imprisonment up to three months or fine up to two hundred taka (Clause171)
False or misleading statement made to the police	Clause 118	Imprisonment up to six months or fine or both	Imprisonment up to three years (Clause181)
Penalty disobeying any order given by police officer under * Clause105 - directions to the public on occasion of processions and assemblies, and * Clause109 - directions against serious disorder in places of amusement	Clause 130 (1)	Fine up to fifty thousand taka	Imprisonment from one month to six months and/or fine from two hundred taka to one thousand taka (Clause188)
Penalty disobeying any order given by police officer under Clause108 (1) – power to prohibit certain acts like carrying arms, swords etc.	Clause 130 (2)	Imprisonment up to two years or fine up to hundred thousand taka	

Recommendation

The sections above may be amended as below (Clause137 has been taken for illustration):



Clause 137. Penalty for unauthorized use of police uniform - Any person not being a member of the police wears without authorization the uniform of police or any dress having the appearance or bearing any of the distinctive marks of police uniform, shall be liable to punishment under Clause 171 of the Bangladesh Penal Code, 1860.

Clause 129 – Penalty for contravening orders etc under Clause 104:

Clause 129 imposes a punishment for disobeying or violating conditions of the license issued by the police for holding a procession or assembly. But since we have recommended the deletion of the requirement of a license, Clause 129 has no relevance.

Recommendation

Clause 129 be deleted

Clause 138 - Penalty for Frivolous or Vexatious Complaints

As per Clause 138 vexatious or frivolous complaints against the police will attract a punishment of six months to two years and a fine of fifty thousand taka. Such a provision is sure to have a chilling effect on people's inclination to register a complaint against the police. Fear of the police already runs deep in society. It is unlikely that a victim would put himself at the risk of not only complaining against the police, but also taking the risk of being imprisoned for six months to two years and having to pay an onerous fine of 50,000 takas in case of the complaint not meeting the required standards of satisfying the Complaints Commission of its veracity. It is difficult to see how this provision, taken together with the weak Police Complaints Commission envisioned in Chapter VIII, will further the cause of police accountability as desired by the Ordinance.

It is, therefore, urged that this Clause be deleted from the Ordinance.

Recommendation

Clause 138 be deleted in its entirety.

Clause 139 - Certain Offences to be Cognizable

The Clause classifies offences under Clauses 134 -139 as cognizable offences. This is beyond the remit of a Police Act. Creating new offences is not the mandate of police legislation and are better introduced through amendments to the penal code or special legislations. It is recommended that this Clause be deleted.

Recommendation

This Clause be deleted from the Ordinance



Chapter XV

Miscellaneous

Clause 145 - Prosecution of Police Officers

Clause 145 of the Ordinance contains one of the most serious of barriers to accountability within the police. It prevents any court from taking cognizance of any offence under the Ordinance committed by a police officer except on a written report of the facts constituting the offence. Through this, the Clause provides an additional layer of protection to police officers than what is already available to them under Clause 197 of the CrPC which mandates previous sanction of the government for prosecution of certain class of public servants. Therefore, while up till now, only those police officers appointed and dismissed by the government enjoyed protection from prosecution under Clause 197 CrPC, the Ordinance extends this immunity to the entire police force.

The discretion in Clause 197 is a limited power of government that can only be rightly invoked where an action is felt to have been done in good faith and in the course of the public servant's legitimate duties. In reality, however, its use has been the cause of defeating delays and constant denials of permission to prosecute. This immunizes the police from the very type of accountability the Draft Ordinance is meant to bring about. To include similar immunity provisions explicitly in favour of police personnel in the Ordinance which are already available to public servants in other laws will only further reinforce the belief that the police will always remain unaccountable to the law.

Its inclusion amounts to explicitly giving suspected criminals added protections for no other reason other than the fact that they are police personnel. If the rule of law is to be supreme then there appears to be no rational cause for such differentiation between criminal suspects. The purpose of explicitly including offences and punishments in the Ordinance is lost if there are clogs on bringing the suspect to justice. We do not see why executive discretion on whether to permit or not permit prosecution should trump judicial exercise of power or be a clog on the right of the state and the victim to seek redress for wrongdoing at court. It is this particular executive protection along with the absence of legislation removing sovereign immunity that has created a perception of confident impunity within the police and distanced the public from their functioning. If the new police law is to change anything it must change this.

It is strongly urged that this Clause be deleted in its entirety or at least qualified such that grave crimes committed by the police are not given any protection. We also suggest additional amendment to the Clause to ensure that the sanction to prosecute is time bound and

Recommendation

145. Prosecution of police officers –

- (1). No court shall take cognizance of an offence under this Ordinance when the accused person is a police officer except on a report in writing of the facts constituting such offence by, or with the previous sanction of an officer authorized by the government in this behalf

Provided that the decision regarding the grant of sanction to prosecute the offending public servant shall be taken not later than three months from the date of application, failing which the sanction to prosecute shall be deemed to have been granted.



Provided further that the sanction for prosecution shall not be refused by the Government or the competent authority as the case may be except for reasons to be recorded in writing

- (2) Any person aggrieved by the decision of the Government or the competent Authority as the case may be under this Clause may prefer an appeal to the High Court within ninety days from the date of the decision in such form and manner and accompanied by such fee as may be prescribed.
- (3) The High Court shall endeavour to dispose of the appeal within six months from the date of its filing.

Clause 156 – Power to Make Rules by the Government

Clause 156 states that the government may frame rules for operationalising the Act by notification in the official gazette. Use of the word “*may*” displays the lack of intent, especially when one considers that rules have to be framed to operationalise the Ordinance. This Clause should be amended to ensure that the provisions of the Ordinance are rapidly implemented by the government upon the draft coming into force.

Recommendation

156. Power to make rules by the Government –

- (1) The Government ***shall***, by notification in the Official Gazette, make rules for carrying out the purposes of this Ordinance, within one year from the date on which this Ordinance comes into force.
- (2) Every rule made under this Ordinance, shall be laid, as soon as may be, after it is made, before the Parliament while it is in session, for a total period of fourteen days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the successive sessions as aforesaid, the Parliament agrees in making any modification in the rules, or the Parliament agrees, that the rules should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

