THE DELHI POLICE (AMENDMENT) BILL, 2010

ANALYSIS CRITIQUE AND COMMENTS

The Draft Delhi Police Amendment Bill, 2010 {the Amendment} is intended to incorporate the directives of the Supreme Court in the *Prakash Singh* case – 2006 into the Delhi Police Act of 1978 {the Principal Act}. The decision to amend the existing Principal Act rather than create an entirely new Act was taken on with the view that the Principal Act had been introduced in 1978 - a relatively recent moment given that other acts across the country are of much older vintage. However, the *Prakash Singh* judgement clearly indicated that it was the Court's hope "that governments would rise to the occasion and enact a new Police Act wholly insulating the police from any pressure whatsoever thereby placing in position an important measure for securing the rights of the citizens under the Constitution for the Rule of Law, treating everyone equal and being partisan to none, which will also help in securing an efficient and better criminal justice delivery system. It is not possible or proper to leave this matter only with an expression of this hope and to await developments further. It is essential to lay down guidelines to be operative till the new legislation is enacted by the State Governments."

In CHRI's view, the overall effect of incorporating present amendments piecemeal into the Principal Act severely disturbs its internal logic and creates legal uncertainties without at all taking forward the intention of the Supreme Court - but in fact thwarting them. The six directives of the Supreme Court in the *Prakash Singh* case required all governments to create a policing structure and new mechanisms that would make sure that the police were much more accountable than at present; they were insulated from unwarranted outside interference yet functioned within the policies and supervision of civilian authority; and had sole operational responsibility so that they could be held accountable for high standards of everyday policing and for malpractice, abuse of power, criminal activity and disciplinary infractions. Three mandated mechanisms were a Security Commission to lay down policy, a Police Establishment Board to deal with all transfers and postings, and an independent Police Complaints Authority that would oversee the handling of public complaints about the police. The Amendment does not make mention of a Security Commission as the Centre has already initiated a single such Commission to lay down policy and examine performance for all seven Union Territories. Likewise it also does not create any Police Complaints Authority to deal with public grievances against the police on the grounds that a body has recently been set up by the Ministry of Home Affairs by an Office Memorandum. It also considerably distorts the composition and dilutes the function of the Police Establishment Board so that it is not assured freedom from unwarranted outside interference whether from the political regime of the day or the bureaucracy.

All this is being done in a hurried manner. The text of the Amendment has been placed on the websites of the Delhi Police and Ministry of Home Affairs for the purpose of inviting people's views. However not much was done to advertise this process and a deadline of less than two weeks was set for the submission of people's views on the Amendment.

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EXCLUSIONS IN THE AMENDMENT

State Security Commission

The Draft Model Police Bill and the Supreme Court Directives required the set up of a State Security Commission which would be a body that would act as a buffer between the police and the political executive. The need for such a body cannot be over emphasised considering the chronic routine problem of unwarranted outside interference and influences that are brought to bear on the operational and establishment functions of the police. Typically a Security Commission is charged with setting overall policing policy while the chief of police manages the daily operations of the service and implements the Commission's policies or policy directions and goals. Such a Commission has been set up by the MHA through an Office Memorandum. However a single Commission has been set up for all the Union Territories. Given that the Commission is to develop policing plans and policy guidelines for the each police force we believe that a single body will not bring in local representation both official and lay on the Commission. The Commission also does not also follow the imperative mandates of the Supreme Court in relation to composition, selection of independent members and reports of the Commission. We believe all this taken together will defeat the purpose for which the Court required such a body to be set up. For a full critique of the Commission set up by the MHA please refer to ANNEXURE 1.

Police Complaints Authorities

The Draft Model Police Bill and the Supreme Court Directives required that each police force set up a Police Complaints Authority to oversee the way in which both serious and common public complaints against the police are handled by the police and make recommendations for improvement. This is necessary because present internal processes of accountability are slow, uncertain, opaque and do not inspire public confidence. Despite being an imperative direction of the Supreme Court, the Amendment Bill makes no mention of any such mechanism. This is due to the fact that such an Authority for Delhi has been set up by an Office Memorandum issued by the Ministry of Home Affairs. However we are concerned that the Police Complaints Agency designed for Delhi does not conform to the Court's directives or the Draft Model Police Bill and will be incapable of functioning as independent or effective complaints bodies. There are several inherent weaknesses in relation to the proposed composition, modes of setting up and nature of powers this Agency will have. For a full critique of the Authority set up by the MHA please refer to ANNEXURE 2.

ANALYSIS

The Amendment does not set out the purpose of the exercise in a preamble. The Principal Act also does not have a preamble. Without a vision of the goals of future policing, it will be business as usual and the police and public will continue to think that the police are meant only to act as a coercive force rather than be the essential public service that they must become. The purpose of reform has been well stated by the Court and has been captured by the Draft Model Police Bill developed by a committee of experts mandated to create it by the Centre itself.

Section 2 – Definitions

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Section 2 of the Amendment amends the Principal Act to add in amongst others definitions for 'insurgency', 'organised crime' and 'militant activity'. It is unclear what the purpose of including definitions of any of these words are, as neither the Principal Act nor the Amendment then uses these phrases and therefore they hang there redundantly adding nothing to the law and creating uncertainty as to their purpose and use. We acknowledge that one of the PADC's terms of reference was to suggest changes to Police Acts according to "the changing role/responsibility of police in view of the new challenges before it, especially growth and spread of insurgency/militancy/naxalism, etc". However we believe that the function of the Police Act is to establish and streamline the broad organisation of the police and establish any police specific oversight mechanisms, and no Police Act should contain provisions on insurgency, militancy or naxalism because these are outside the ambit of the legislative scope of a Police Act. No matter what the terms of reference of the PADC laid down a Police Act cannot create new crimes, or create new coercive powers for the police.

Section 2(ha) – Hoax Calls

The Amendment introduces the definition of 'hoax calls' at section 2(ha). Acknowledging the need for inclusion of this section in the Amendment we feel that what is really intended is to get to the serious false reporting that that causes damage, injury, loss of life as well as expenditure to respond to that emergency. These must not be mixed with the less serious calls or communications made. A person making such a false report when held guilty and if convicted should face any penal sanction as well as have to pay the costs that were incurred in responding to the emergency. We would thus suggest that to differentiate between the more serious nature of such reports from the minor ones the definition of hoax calls be changed to term it 'false reports'.

Section 2(hb) – Insurgency

No Police Act should be creating new crimes as in section 2(hb). 'Insurgency' is nowhere defined in any criminal law of the country. The present definition creates legal uncertainties by such words as "a group" or "a section of the population" which makes it easy to target certain communities or people. The words are broad enough to include any persons the police find inconvenient at that point in time.

According to the definition any group deemed by the police to have "a political objective" can come within the term insurgency. It allows the victimisation of communities and allows people to be picked up en masse. The wording 'with a political objective *including* the separation of a part from the territory of India' seems to indicate that any group with a political objective could be charged with insurgency whether or not separation of part of the territory is part of their agenda.

In any case the circumstances described in section 2(hb) are covered and far better defined in section 121 of the Indian Penal Code which refers to the crime of waging, or attempting to wage or abetting to wage war against the Government of India. The police has sufficient and more power to deal with this under the IPC and CrPC, and also under numerous special security laws

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Section 2(ia)(ii) – Organised Crime

Likewise section 2(ia)(ii) inserts the definition of 'organised crime' which is currently defined in the Maharashtra Control of Organised Crime Act (MCOCA) which Delhi has adopted.[1]

Section 12A - Terms of office of the Commissioner and other key functionaries

Section 12A sets out the terms of office and the premature transfer grounds of the Commissioner and other key police functionaries. The section is incomplete. Given the importance of key appointments to the management and functioning of the police detail and clarity are paramount. In our view this is absent from the present formulation. Sections dealing with senior appointments need to separate out the means of appointment of the Commissioner from the means of appointment of other senior officers. In each case the law must mention in simple plain English who the appointing authority is, the method of appointment, the tenure and the reasons and process for removal of the concerned rank. Such detailing will ensure that only such appointments that follow the process are valid and reduce the possibility of challenge and discontent if it is adhered to.

Commissioner of Police: Means of Selection

The Principal Act simply states "The Administrator shall appoint a Commissioner of Police…" and is silent as to method or criteria. Section 12A, the amending section is also silent about the process by which the police chief will be selected and does not lay down the criteria for his suitability to hold the post.

The Supreme Court required "The Director General of Police of the State shall be selected by the State Government from amongst the three senior-most officers of the Department who have been empanelled for promotion to that rank by the Union Public Service Commission *on the basis of their length of service, very good record and range of experience for heading the police force.*"

This was intended to ensure that there would be no room for arbitrariness in the appointment of the highest ranking police officer and that appointments are not made on considerations that can be construed as personal preference but rather will be seen as being made on objective criteria that can be verified. Once recommended on the basis of transparent objective criteria, the Administrator is free to choose from amongst the best of the candidates. This method in no way diminishes the authority of the Administrator but provides him a choice from amongst the very best. This method of choosing the chief functionary of the metropolitan service is likely to assure the trust of the opposition as much as the ruling regime, give stature to the Chief within his own peers and subordinates and enhance public confidence. It is inexplicable why it should be excluded from the Amendments but it is clear that in its present form the Amendment stands in complete disobedience to the Supreme Court's orders.

[1] "Organised crime" as defined in the MCOCA means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any person or promoting insurgency.

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Commissioner of Police and Other key Functionaries: Tenure

Section 12A guarantees two-year tenure for the Commissioner but omits that the Supreme Court had also said that the two years will be "irrespective of his date of superannuation." The quotes ensure stability of tenure. This is invaluable for both managing change and assuring operational stability. Without these words, it is easy to envisage situations where a succession of police officers rise to the top post when they have less than two years to go, are rapidly replaced, and have little stake in assuring diligent stewardship to an establishment they are soon going to quit.

In relation to other key functionaries, the Amendment again dilutes the intended effect of the Supreme Court's orders and the formulations in the Model Police Act by granting Joint Commissioner, (Ranges), Deputy Commissioner (District) and Station House Officer (SHO) a minimum one year tenure instead of the minimum two year recommendations. In addition to the reasons mentioned above, minimum two year tenure also assures accountability can be fixed on one leadership for attaining mid and long term goals for the department or locality. The Court's explicit direction to grant two year minimum tenures to these positions took into account the arbitrary and frequent transfers of police officers on operational duties done at the behest of influential third parties or as a means of punishment or reward outside any rational administrative necessities related to policing requirements.

The Amendment also squeezes into this one section the grounds on which premature removal from post can be done. Premature transfers from a post for reasons of administrative effectiveness should be separated from those made for reasons of misbehaviour. The Amendment must indicate that both are extraordinary situations while the two year tenure is the desirable norm. While moving out of a post for reasons of administration effectiveness gives operational flexibility, well planned policing should not require too many or too frequent changes. When they become inevitable, reasons in writing by supervisory personnel should sufficiently justify the move.

However, where grounds for moving a person out of post before the minimum tenure is complete relate to misbehaviour which could attract disciplinary or criminal sanction we believe that the practice of shifting the problem to another jurisdiction is one of the reasons for poor accountability within the police and merely lumbers another jurisdiction with ranking officers who can destroy the performance and morale in that location.

Grounds for transfer mentioned in the Amendment include 'incompetence', 'unsuitability for the job' and 'disciplinary action or court cases'. These conflate the concepts of poor job skills with misconduct and should not be clubbed together. Each requires a separate supervisory response. Broad phraseology like 'reasons of incompetence', 'unsuitability for the job' or 'disciplinary action/court cases' because they encompass a great many circumstances create enormous uncertainty in the rank and file and allow room for using biased and subjective discretionary powers which have been the bane of policing in the past. The amalgamation of these two concepts coupled with broad wording seems to indicate that transfers will remain a device for getting rid of inconvenient people who have misbehaved in a post where punishing them is difficult. This is precisely the kind of malpractice and poor supervision which any new law must remove once and for all.

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Another broad ground allows premature transfer if in the opinion of the government the officer is found to be "professionally incompetent or his continuation in office is not in the public interest." These grounds once again provide "the government" with a broad override without reference to the Police Chief in a matter that should be within the operational functions of the Chief of Police.

Ideally, a nuanced and fair internal process would have ensured that the "professionally incompetent" should have been weeded out long before reaching high posts. It would indicate a very deep malaise within if they could have served for so many years while being professionally incompetent and yet occupy high and responsible posts that impact on public safety and security. For this reason we believe that these words should be deleted. However should it become expedient to prematurely transfer the person "in the public interest" It would, to our mind, fall to the Police Chief to make that judgement and recommend it to the Administrator who would normally agree with that judgement, or if he disagreed would record those reasons in writing. Often the reasons are not cogently indicated either to the satisfaction of the affected officer or to the public. Fairness and transparency would also demand that reasons in writing indicate what amounts to larger public interest that required that the officer be prematurely transferred.

Finally the Amendment nowhere indicates the grounds on which the Commissioner can be removed. The Supreme Court directive laid down a clear set of circumstances under which premature removal of the Commissioner would be permissible leaving little scope for misinterpretation or abuse. Three specific instances were laid down: a) disciplinary action against him/her under the All India Service Appeal and Discipline Rules, b) a conviction by a court of law in a criminal case or a case of corruption, or c) incapacity to discharge duties.

Section 15A - Police Establishment Board

To begin with - Section 15 of the principal Act refers to the general powers of the Commissioner in relation to regulation of drills, study of laws, distribution of duties etc. To insert an amendment at 15A that sets up a Police Establishment Board under this section appears to disturb the existing structure of the Principal Act as well as create confusion regarding the powers of the Commissioner.

In order to ensure that there exists a linear unbroken chain of command and overall responsibility rests with the Chief of Police at its head while at the same time ensuring that the procedures within the police itself are not arbitrary but transparent and merit based, the Supreme Court had required the setting up of a Police Establishment Board consisting of the Chief and four of the senior officers. This body was to *decide* all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police and make appropriate *recommendations* to the State Government regarding the posting and transfers of officers of and above the rank of Superintendent of Police. The government was to give due weight to these recommendations and *normally accept them*. The establishment board was also to be a forum for appeal for service matters and a forum to which any police officer could complain to when being subjected to illegal orders. Importantly the Model Police Act elaborated that "No authority other than the authority having power under this Act to order transfer shall issue any transfer order." This formulation makes it clear that nothing that breaks the chain of command is acceptable and brings certainty to all transaction.

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The Amendment at sections 15A(1), (2) and (3) sets up a Board, a Committee and Sub Committee respectively. These bodies are empowered "to deal with" postings and transfers and "other service related matters" without specifying what these could be or whether they would include the subject of illegal orders. It does not indicate where appeals from orders of the establishment boards and committees will lie. Language such as 'deal with' lacks the specificity required to arm the Board or the Committee with the requisite powers to transfer or post officers. The Supreme Court and the Draft Model Bill on the other hand make clear that any establishment board must have the power to *decide* transfers for officers of and below the rank of Assistant Commissioner and *recommend* transfers, for officers of and above Deputy Commissioner. The use of the word "deal" does not lend itself to clarity or adequately demonstrate the authority of the Boards. Additionally the Amendment does not speak of promotions at all.

Section 15(5) subverts the judgement of the Court in relation to transfer and postings of officers of the rank of DCP and above up to the rank of Spl Commissioner of Police. The Amendment requires that recommendations of these transfers shall be placed before the Administrator who in consultation with the Principal Secretary (Home) will then decide on the matter. This is the very kind of practice that the Court intended to remedy by ensuring that decisions regarding establishment matters are left for the police leadership to decide on at an internal level, without extraneous influences coming into play. The Court intended that recommendations on transfers of senior officers would be made by the Board. These would be passed on to the Administrator who would give the Chief's judgement due weight and normally accept his recommendations. To ensure that the judgement of the Chief of Police about his officers and establishment is not easily overset the Model Police Act added the further rider that if the Government "disagrees with any such recommendations it shall record reasons for disagreement." {S 53(3)}. These checks and balances do not come into play in the Amendment, rather the new Amendment seems to give statutory sanction to practices which the police feel are today subverting its authority and with that its ability to handle policing.

Section 16A – Appointment of Legal Advisor

Section 16 of the Principal Act refers to the powers of the Commissioner of Police to investigate and regulate matters of police accounts. The Amendment seeks to appoint legal and financial officers to aid and advise the office of the Commissioner on legal and financial matters.

This provision which is a major requirement in terms of financial planning and oversight has been imported from the Draft Model Police Bill. However the Draft Model Bill makes the appointment of such advisors mandatory whereas the present amendment waters it down by including "may appoint". This again is a dilution of intent and outcome.

At present the Office of the Public Prosecutor is available to advise the police on legal issues including the adequacy of evidence gathered. The police should be in constant contact with it. However, the system delivers poor quality services to the police department due to overburden, imperfect methods of appointment, and lack of accountability for poor performance.

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The appointment of a dedicated legal advisor available on call to the police department as provided for in the Amendment will certainly assist the police to function within the law and evaluate the weight of evidence available before making arrests or charging suspects. However, the Amendment says that the appointment of a lawyer 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 for a district will do nothing to assist efficiencies.

The presence of a lawyer while welcome is also no substitute for ensuring that police personnel at all levels are both well trained with repeated training in the law and are themselves liable for acting within it. This responsibility to act within the law at all times needs to be emphasized in the Amendments.

Section 17 - Special Police Officers

The Amendment at Section 17 in relation to Special Police Officers (SPOs) illustrates the overall difficulties associated with evolving piecemeal laws. Section 17 of the Amendment empowers the Deputy Commissioner of Police to appoint any able bodied persons over 18 years of age as Special Police Officers (SPOs) for protection of persons and security of property. Under the Principal Act, SPOs could be appointed solely under a written order duly signed with the seal of the Commissioner of Police. The appointment was only in specific instances when a riot or grave disturbance of peace was apprehended.

The formulation in the Principal Act was designed to assist the police with increased numbers only in situations that merited the untoward step of temporarily augmenting the force to deal with some unusual circumstance.

The Amendment removes all these safeguards without specifying the purpose for this licence. It removes the need for special circumstances to exist. It does not stipulate any term for SPOs but creates an unlimited time for which they can continue as SPOs. It does not lay down criteria for the kinds of persons who may be appointed nor lay down the need for them to be trained at any point. The lack of criteria for appointment, lack of time limits, training requirements and the decentralisation of the authority to appoint opens the door to every kind of person being appointed an SPO on any kind of excuse.

This kind of unrestricted power to pluck people from an undifferentiated pool to serve in a specialist function of the State is ill-considered in the extreme. Inclusion of such SPOs runs the risk of expanding the ranks of the Delhi Police with poorly capacitated and unprofessional officers. This must surely increase the security risk to the police establishment as well as dangers to the public. The judicious use of coercive policing authority by SPOs cannot be guaranteed and is likely to create civil and criminal liabilities for the police under whose aegis they are acting. In addition it is doubtful if non-specialised persons will be able to fulfil the police mandate of protecting life, liberty and property of the population. There have been too many recent instances of misuse of police powers by SPOs appointed in haste for this Amendment to be accepted into the books.

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The inclusion of a limited scope of the Police Commissioners powers to appoint SPOs under the Principal Act was done at a time when there was not the proliferation of paramilitaries that are today readily available for deployment, especially in the Capital city.

Finally the redundancy of the Amendment becomes clear in relation to Section 17(4)(b) of the Amendment. Section 17(4)(b) of the Principal Act clothed the SPO with all the powers privileges and immunities afforded to ordinary police officers. Having broadened the scope of who can be appointed an SPO, the Amendment Bill removes this provision and dilutes the immunities and powers of the SPO to align with those that an ordinary citizen has under section 43 of the Code of Criminal Procedure. Sec. 43 allows any ordinary citizen to carry out arrests for non bailable and cognisable cases. If a specially appointed SPO has by law only the same powers and immunities that an ordinary citizen already has, the whole purpose of appointing a person an SPO is lost. For all these reasons we believe that the amendment should be removed.

Section 19 – Framing of regulations for Administration of the Police

Section 19 of the Principal Act gives the Commissioner of Police the power to make regulations not inconsistent with the Act subject to the orders of the Administrator. The regulations would amongst other things be in relation to the inspection of the force, assigning of duties of police officers and the deployment of officers. These in themselves are purely administrative and operational functions, the exercise of which should be the sole responsibility of the Commissioner.

The Amendment at Section 19 seeks to further weaken/dilute the powers of the Commissioner by substituting the words 'subject to the orders of' with the words 'subject to the overall control of'. Unless 'overall control' is carefully defined and its statutory parameters laid down with clarity changing the wording alone does not take the central reason for embarking on these amendments much further. In fact lack of definition of "overall control" introduces a new phrase into the lexicon of policing in India into which content will only be poured at some future date after litigation and other tests of strength between the police service and the bureaucracy and political executive have given "overall control" some shape. Meanwhile present practice may become further entrenched or "overall control" open the floodgates for even more hands on involvement of the political executive in policing work.

The lack of definition destroys the very foundations for making Amendments at all. The Supreme Court's directions which the Amendment is ostensibly designed to implement and the objective and the scheme of the Home Ministry's own Draft Model Police Bill were both clearly intended to create defined and unambiguous roles and functions for the political executive and the police chief. As mentioned before this neither diminishes the power of the political executive nor creates independence of the police. Rather it clarifies roles of each, lays down the means of ensuring that it is possible to ascertain where responsibilities lie and allows accountability to be fixed. A number of statutory formulations are available which allow the separation of powers and functions to be set out without any ambiguity and these are attached as ANNEXURE 3 for reference.

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Section 59A - Separation of Investigation

Section 59 of the Principal Act enumerates the duties of a police officer to enforce provisions of the Act. The Amendment at section 59A seems to suggest that the separation of the two wings would be the statutory duty of the police officer.

Both investigation and law and order are vital and specific police functions. In order to encourage specialization and upgrade overall performance, the Court has ordered a gradual separation of investigative and law and order wings, starting with towns and urban areas with a population of one million or more. It was felt that this separation will streamline policing, ensure speedier and more expert investigation and improve rapport with the people. The Court has not laid down how this separation is to take place in practice but clearly indicates that there must be full coordination between the two wings of the police.

The Supreme Court's directions included one to separate law and order functions from investigation. In order to comply with the directive the Amendment states *'the law and order machinery shall to the maximum extent feasible with the available sources be separated from the investigation wing."* The Court's direction came from the conviction based on previous recommendations and expert views that there is not sufficient professional investigative capability within the police, shortages of money and manpower, skewed deployment and workload frequently compromise investigation by diverting available resources. Improved policing requires specialization and better response capability.

Having said that, we do feel that statutes are not the place for inclusion of pious intent that give powers, create duties and functions that cannot be enforced. Disobedience to these must lead to certain and specific consequences flowing from it. Separation of law and order from investigation thus does not lend itself to being a statutory duty. Therefore merely saying that the separation will happen subject to availability of resources does not take the matter further. Separation of law and order from crime investigation is a matter that lends itself to policy formulation which must be decided by the police and the administration. This could be done by setting it out in a policy paper with the timeline by which specialization would be achieved and two separate but coordinated cadres are created.

Section 60 – Other duties of a police officer

Section 60 of the Principal Act lists other duties of a police officer. The Amendment suggests an insertion to include regular training to upgrade the police officer's professional skills as a duty. Ensuring that each officer has access to and undergoes the necessary training and refresher courses is the responsibility of the Police department. Once the training is made mandatory the officer would be obliged to meet the standards for training or retraining that are prescribed for that rank of officer.

Currently training programs for officers once they have undergone the induction training are few and far between. In the absence of such training programs it would be premature to include 'undergoing training' as statutory duty. This inclusion to some extent also reflects the casual approach of the department and administration with regards to the training needs of officers.

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We thus recommend that a policy on training needs is set out with specific training requirements for each rank and category of police officer.

In addition the Draft Model Police Bill at section 57 lays down a comprehensive list of roles, functions and duties of the police. This is much in line with present day policing needs as well as taking into consideration the common neglect of duties by the police. The principal Act does not reflect these duties and the Amendment has not taken on the duties as listed in the Draft Model Bill. This seems to be a significant omission.

Section 62A – Servant Verification

The Amendment sees the inclusion of a section 62A on compulsory registration of servants with a penal liability levied on employers. This is offensive to privacy, equality of treatment, and the spirit of the society we are seeking to build. It smacks of middle class bias and is offending to our constitutional norms. We appreciate that faced with public pressure for their inability to solve crimes committed by employees who work for a while in private homes and then disappear the police are keen to get a head start on finding culprits through compulsory registrations of one segment of the population when it comes into conflict with the law.

However, we feel that police convenience is not sufficient reason to include clauses that unnecessarily create liabilities in the law. It is even less acceptable that the law is willing to overtly indicate that somehow 'servants' by and large form a class of individuals more prone to crimes than others in the population. The world 'servant' is a category that indicates an inferior status. Is this a distinction Indian laws want to perpetuate in the 21st Century as a particular contribution to global jurisprudence? The law will also have to explain how a "servant" comes to be treated differently from any other type of employee. The inclusion of this clause will require definition of what a 'servant' is in order to distinguish this category of person from other employees – say itinerant workers in small workshops or tea stalls, or other service deliverers like dustmen who come to the door, are employed, but don't work inside the house or do so part-time.

The 'master' 'servant' relationship is essentially a relationship of contract. One provides services to the other for periodic payments of money while both are willing to keep this relationship. It is a relationship which if breached leads only to civil remedies. If the drafters wish to introduce legal elements of criminal law into this relationship between two people because compulsory servant registration is vital to preventing overall crime in the city, then it must surely be equally necessary to insist on registration of employers (or in this case 'masters') just in case they transgress employment standards. Fairness demands that to be reciprocal compulsory registration must extend to the 'masters' so that servants can complain that they are not being paid minimum wages, being given time off, being asked to work beyond statutory time limits, not being provided fresh food or decent living accommodation, or being exploited, beaten, burned, locked up, or raped by their employers. This will certainly prevent and address a deeply underreported area of crimes against the person.

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At the present time the police have a voluntary scheme of "servant registration" and this should be allowed to lie undisturbed and not be made compulsory or unwisely placed in statutes.

Section 146 – Powers of Commissioner of Police under other Acts

Section 146 of the Principal Act lists the powers of the Commissioner of Police under other Acts. It gives the Commissioner of Police the power to exercise all those functions that vest with the District Magistrate. The Amendment at this section suggests the inclusion of an additional section – 146(4) that exempts the police from any obligations that fall within section 58 of the Code of Criminal Procedure.

Section 58 of the Code requires the Officer in Charge of all police stations to report to the District Magistrate or Sub-Divisional Magistrate all cases of warrant-less arrests. In wake of the Commissioner being vested with the powers of the District Magistrate it is understandable that the role of the District Magistrate is considerably reduced in Commissionerate system. However the amendment should instead affirm that arrests without a warrant should be reported to the Commissioner, not that it should go unreported.

The sole purpose of reporting warrant-less arrests is a check on police powers and the subsequent abuse. It ensures that arrests are not unnecessary and that the arrested person is not detained for longer than the statutory 24 hours. The Amendment in no way should do away with checks on police powers especially one that is known in any case to be sufficiently misused.

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