DRAFT DELHI POLICE BILL, 2010

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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ANALYSIS AND RECOMMENDATIONS FOR AMENDMENTS

INTRODUCTION

This submission represents the Commonwealth Human Rights Initiative's (CHRI) consideration of the Draft Delhi Police Bill and our corresponding recommendations. We have analysed the Draft Bill, identified gaps and weakness, 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.

CHRI is an independent, non-partisan, non-governmental organisation headquartered in New Delhi. CHRI's areas of work are focused on the right to information, access to justice, and human rights advocacy.[1] For over 10 years now, CHRI has been campaigning for police reform in India. The organisation was a member on the Police Act Drafting Committee (PADC) which drafted the Draft Model Police Bill, 2006 to replace the existing Police Act of 1861. CHRI has also intervened in the proceedings leading up to the 2006 Supreme Court decision in *Prakash Singh*[2] and even today continues to provide submissions on the compliance with the Court's orders to the Supreme Court set up Monitoring Committee on police reform headed by Justice (retd) K T Thomas.

CHRI welcomes the move of the Ministry to introduce a new Draft Model Bill for Delhi instead of going the piecemeal amendment way. We are also pleased that the Ministry has chosen to use the Draft Model Police Bill as a template for the Draft Delhi Police Bill and at the same time followed in part the schema as suggested by the Apex Court in the *Prakash Singh* case.

However it is discouraging to note that the safeguards of independence and accountability explicitly drawn up by the Court directive and reflected in the Draft Model Police Bill have been removed or ignored in the present Draft. Given that the Draft Model Police Bill was developed at the behest of the Central Government and accepted by it we would expect that at a minimum the Union Territories most especially Delhi which is the largest and most populated of these would ensure that any legislative changes were in conformity with the recommendations of its own Committee.

Any law enacted by the Centre will be influential in shaping policing laws in other jurisdictions across the country. It is therefore imperative that the new law to govern future policing in the Capital fully take into account the recommendations of the Court and its own Committee without dilution as well as the needs and values of modern policing. It must be able to create an efficient responsive, and most importantly, accountable policing service and turn its back once and for all on the police being a suppressive force perceived as biased in favour of the powerful.

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[1] For more information on CHRI's activities, please visit www.humanrightsinitiative.org

[2] *Prakash Singh and Othrs v Union of India and Othrs* (2006) 8 SCC 1

ANALYSIS

DEFINITIONS – CLAUSE 2

Clause 2 of the Draft Bill sets out the definitions. Amongst others these include definitions for ‘crank telephone calls’, ‘insurgency’, ‘internal security’, ‘militant activities’, ‘organised crime’ and ‘terrorist activity’. It is unclear what the purpose of including definitions of any of these words are, as the Draft Bill then does not then use these phrases and therefore they hang there redundantly adding nothing to the law and creating uncertainty as to their purpose and use. While 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,"* we believe that the function of any Police Act is to establish and streamline the broad organisation of the police and establish any police specific oversight mechanisms. No Police Act should contain provisions on insurgency, militancy or naxalism because addressing these is outside the legislative scope of a Police Act. A Police Act cannot and should not create new crimes, or create new coercive powers for the police.

Crank Telephone Calls - Clause 2(1)(c)

The Draft Bill introduces the concept of ‘crank telephone calls’ at Clause 2(1)(c). The words ‘crank calls’ do not delineate a well recognised category and is too broad and vague to be a legal concept. We believe that what the Draft Bill seeks to address is the issue of frequent false reporting. This can be of nuisance value or result in serious costly responses and lead to damage, injury, loss of life as well as expenditure incurred 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 may face penal sanction as well as be made liable to pay the costs that were incurred in responding to the emergency. We therefore suggest that the definition use the term “false report” and differentiate between the more serious nature of such reports from the minor ones.

Insurgency – Clause 2(1)(f)

As mentioned above we find the definition of ‘insurgency’ redundant as there is no further mention of the concept in the substantive part of the Draft Bill. Insurgency is nowhere defined in any criminal law of the country. The definition itself offends against precision and words as “a group” or “a section of the population” are broad enough to include any persons the police find inconvenient at that point in time. Such latitude creates legal uncertainties and lets in the use of subjective discretions which then make it easy for police to target certain communities or people. 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.

We again re-emphasise that Police Acts should not be used as a device for creating new crimes. As the law stands today the circumstances described in Clause 2(1)(f) are in any case 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 have sufficient powers to deal with this

under the Indian Penal Code and the Code of Criminal Procedure and also under other special security laws. We therefore recommend that this clause be deleted from the Draft Bill.

Militant Activities – Clause 2(1)(h)
This clause is closely similar to the definition of insurgency as contained in Clause 2(1)(f) of the Draft Bill. Insurgency refers to a group waging an armed struggle to achieve a political objective. Militant activity refers to a *group of people using arms, explosives.... to achieve a political objective*. For the same reasoning as given above we would recommend that this clause be deleted from the Draft Bill.

Organised Crime – Clause 2(1)(i)
In exercise of the powers conferred by Section 2 of the Union Territories (Laws) Act, the Central Government has opted to extend the Maharashtra Control of Organised Crime Act (MCOCA) to the National Capital Territory of Delhi. The definition of organised crime is contained in Section 2(1)(e) of the MCOCA.[3] Thus to include the definition of organised crime in the Draft Bill which is not entirely similar to but not substantially different from that contained in MCOCA will only create legal uncertainties in the prosecution and trial of offenders charged under the Act. Again the Draft Bill then does not use the definition of organised crime anywhere else in the body of the Bill thereby making a definition entirely redundant.

Terrorist Activity – Clause 2(1)(s)
Clause 2(1)(s) defines 'terrorist activity' as any act by a person or group of persons using firearms and explosives to strike terror in society with the intent of overawing the government. 'Terrorist act' is defined under Section 15 of the Unlawful Activities (Prevention) Amendment Act, 2008.[4] The object and purpose of this Act is to deal with terrorist and unlawful activities directed against the integrity and sovereignty of India. It

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[3] "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.

[4] The Unlawful Activities (Prevention) Act, defines a terrorist act as '"whoever does any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,-

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—

(i) death of, or injuries to, any person or persons; or
(ii) loss of, or damage to, or destruction of, property; or
(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or
(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or
(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or any other person to do or abstain from doing any act,
commits a terrorist act."

gives police the requisite and often unjustified powers to deal with such activities. Thus there seems to be no clear purpose or objective of including the definition of 'terrorist activity' in the Draft Bill except to create ambiguities.

CONSTITUTION AND COMPOSITION OF THE POLICE SERVICE – CLAUSE 4

It is commendable that the Ministry has replaced the police force with police service. This is a right step towards creating a democratic police. Clause 4 of the Draft Bill lays downs the constitution and composition of the Police Service and the agency responsible for recruitment into the service. The requirement of a service that adequately represents all sections of society cannot be overemphasized. Despite a Ministry of Home Affairs circular advising the Delhi Police to induct women in at least 15% of the posts the percentage of women still remains at a mere 7%. Besides the inclusion of women, there is also the need to ensure other diversities - namely religious, linguistic and regional minorities. Knowledge of language and easy identification with the diverse populations residing and working in the Capital is essential for building trust with the community and one of the planks of effective policing for the future. Besides making it obligatory for the Police service to be inclusive and diverse the rules must insist on a time frame within which diversities within policing will be achieved. Such a provision would also be in tune with the Congress manifesto which had claimed to make the police force "**more representative of the diversity of our population"**

We would thus recommend the insertion of a Clause 4(5) as under:

> ***"The composition of the Police Service shall, as far as possible, reflect adequate representation of all sections of society, including adequate gender representation."***

SELECTION AND THE TERM OF OFFICE OF THE COMMISSIONER OF POLICE – CLAUSE 6

The Draft Bill sets out that the Commissioner of Police will be appointed from amongst the senior most ranking officers. The criteria however falls short of the Supreme Court directive in the in *Prakash Singh* case which clearly set out that the senior most police officer in the state must be chosen based on "their length of service, very good record and range of experience". The Draft Bill fails to include any of these criteria. In our view, the Draft Bill ought to be amended to bring it in conformity with the Apex Court's suggested criteria. This would properly acknowledge the importance of seniority but couple it with merit when selecting the Chief of Police. It would also ensure predictability in the appointment process as well as make sure that the best man or woman heads the service where the merits of candidates are relatively equally matched. This would leave little room for patronage or personal preference.

To immunise the process of selection from potential improper influence, the Supreme Court specifically required that the Chief of Police be selected from a panel of three candidates chosen by the Union Public Service Commission. The Draft Bill does not use this arms length process but permits the Chief of Police to be appointed by the Administrator in consultation with Central Government. This is violative of the Court's order and again creates a situation of possible patronage. We recommend that the Security Commission be the body responsible for empanelling potential candidates who would then be eligible for the post of Commissioner of Police.

We recommend an additional Clause 6(2) as stated below be inserted into the Draft

Bill to reflect the concerns expressed.

> ***6(2) The empanelment for the rank of Commissioner of Police shall be done by the Security Commission established under Section 34 of Chapter V of this Act, considering, inter alia, the following criteria:***
> ***a) length of service;***
> ***b) assessment of the performance appraisal reports of the previous 15 years of service by assigning weightages to different grading, namely, 'outstanding', 'very good', 'good', &'satisfactory';***
> ***c) range of relevant experience, including experience of work in central police and intelligence organisations, and training courses undergone;***
> ***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 shall make a person ineligible for consideration.***

APPOINTMENT OF LEGAL ADVISORS AND FINANCIAL ADVISOR – CLAUSE 7

This provision which is a major requirement in terms of financial planning and oversight has been imported from the Draft Model Police Bill.

The appointment of a dedicated legal advisor available on call to the police department as provided for in sub clause 2 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 the appointment of such officers 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.

SPECIAL POLICE OFFICERS – CLAUSE 22

Clause 22 of the Draft Bill empowers the Deputy Commissioner of Police to appoint any able bodied persons between the ages of 18-50 years as Special Police Officers (SPOs) to assist the Police. It does not stipulate any term for SPOs but creates an unlimited time for which they can continue as SPOs. The lack of criteria for appointment; the absence of any indication of the rank to which they can be appointed; the lack of time limits and absence of circumstances under which and purposes for which these appointments would be made opens the door to every kind of un-credentialed 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 personnel. 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. There have been too many recent instances of misuse of police powers by SPOs appointed in haste for this clause to be accepted onto the books.

Additionally a Special Police Officer appointed under sub clause 2(b) would have the same powers and immunities as regular police officers. Immunity provisions available to police officers are already a much debated issue. Extending immunities to SPOs runs the risk of the police service being seen as even more unaccountable. A new legislation seeking to bring about a new kind of policing should refrain from including such provisions.

We would point out that in the case of Delhi the presence of home guards and the ready availability of auxiliary and paramilitary units makes the inclusion of this clause unnecessary.

We therefore recommend the deletion of this clause from the Draft Bill.

SUPERINTENDENCE OF STATE POLICE TO VEST IN THE ADMINISTRATOR – CLAUSE 33

Clause 33 vests the responsibility to ensure "an efficient, effective, responsive and accountable police service for the state" in the Administrator. Sub clause 2 seeks to ensure that the superintendence over the police is exerted by the Administrator in a manner that allows the police to perform its tasks professionally and with the required level of operational autonomy. This is a welcome provision which deals with the perception that police functioning is unduly influenced by unwarranted interference.

However we would point out that sub clause 2 is still too general to cure the mischief it seeks to address. We strongly urge the inclusion of much more specific language which clearly defines the areas where the political executive can and should intervene in policing matters and also indicates the areas for which the Police Chief will be held responsible. It is only through a clear expression of the dual roles of executive superintendence and police administration that the operational responsibility and accountability of police can be assured, without sacrificing the important function of legitimate political oversight and supervision.

CHRI recommends the insertion of the following four sub-clauses to Clause 33

"(3) The Administrator may give the Commissioner 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.***

(4) No direction from the Administrator to the Commissioner of Police may have the effect of requiring the non-enforcement of a particular area of law

(5) The Administrator must not give directions to the Commissioner 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***

> ***(6) If there is dispute between the Administrator and the Commissioner of Police in relation to any direction under this section, the Administrator must, as soon as practicable after the dispute arises,***
>
> ***i) provide that direction to the Commissioner of Police in writing; and***
>
> ***ii) publish a copy in the Gazette; and***
>
> ***iii) present a copy to the Legislature***

SECURITY COMMISSION – CLAUSE 34

Clause 34 of the Draft Bill requires the Administrator to establish a Security Commission within six months of the Act coming into force. The Supreme Court judgement in the *Prakash Singh* case required the setting up of a Security Commission *immediately.* This was way back in 2006. Over four years have passed without this directive being implemented by the Centre. Any further delay is unwarranted. Considering that this is the apex body around which the schema of new policing will come into being the Commission must be immediately effectuated.

The Supreme Court also expressly stated that the role of the Commission is "to ensure that governments do not exercise unwarranted influence or pressure on the police". The Draft Bill at Clause 34 merely mentions that the Security Commission will "exercise the functions assigned to it." This opens the Security Commission to the danger of having its role restricted, changed or expanded at will and dilutes the assurance of a permanent and sustained role for the Commission in setting out well-known and certain policing policies.

CHRI recommends that Clause 34 be amended as below:

> ***34. Security Commission***
>
> ***"The Administrator shall immediately on coming into force of the Act, and no later than three months establish a Security Commission to exercise the functions assigned to it under the provisions of this Chapter."***

COMPOSITION OF THE COMMISSION – CLAUSE 35

Clause 35 lays down the composition of the Security Commission. The premier value of a Security Commission lies in its ability to be a bipartisan, impartial body that will look to ensuring that policing functions are performed in non-partisan ways away from the pulls and pressures of the government of the day. The Commission must be designed not only so that it is unable to be captured by any single party or by the regime of the day but also in ways that are designed to balance powerful interests. Membership that includes varied expertise, professional skills, life experiences and citizen's interests can enrich its functioning and assure its legitimacy and its acceptance by the force itself. In the models for Security Commissions identified by the Court, all comprise the Home Minister, the Leader of the Opposition, at least one member from the judiciary in addition to the members from the executive, police and the independent members. As regards police services under the command of the Centre the Court did not lay down a particular model. However it did set imperatives which are intended to assure that the deficiencies and delinquencies of police functioning of the day are eliminated while oversight and functioning are strengthened. These imperatives are to be followed in all their detail.

The Court required that:

- the Commission "shall" be headed by the Chief Minister or Home Minister as the Chair; it should also have the Leader of Opposition as one of its members and have the Director General of Police of the state as the ex-officio Secretary;
- *"the other members of the Commission shall be chosen in such a manner that it is able to function independent of Government control".* To decide who the other members should be and how to select them, the Court gave governments the choice between models recommended by the National Human Rights Commission, the Ribeiro Committee, or the Soli Sorabjee Committee.

The present composition is an improvisation of the three suggested models. It has no people's representative from the Opposition. It also does not have a member from the judiciary. This exclusion immediately removes its bi or non-partisan character. With three bureaucrats on it, the bias is tilted entirely towards officialdom which is naturally closely associated with and bound to serve the government of the day.

Independent members provide further checks and balances against narrowly perceived policy making dominated by police-government thinking. All wisdom does not reside within these narrow precincts. Representation from within the wider public assures policy making will benefit from informed diverse professional expertise and varied perspectives. But diversity is not sufficient. To be valuable on a policy making body 'independent' members require a credible process of selection. The Court directive required that independent members be selected by a panel comprising the Chief Justice of the High Court as the Chair, a nominee of the Human Rights Commission and the Public Service Commission. While a reasonable number of independent members - three in this case – is to be welcomed the Centre has laid down no objective selection criteria, nor constituted an arms length selection panel to choose them, nor any transparent process by which they will come on board. This defeats any semblance of members serving on the Commission being perceived as independent. It is extremely discouraging that the Centre has chosen to remove the safeguards of independence that the Model Police Bill lays down.

To meet all the requirements of the Court's directive as well as to be in conformity with the Model Police Bill we recommend that the clause be suitably amended to reflect the following composition of the Security Commission.

35. Composition of the Security Commission

(1) The Security Commission shall have as its members:

- ***(a) Administrator as its Chairperson;***
- ***(b) Minister in charge of Home department in the government of Delhi***
- ***(c) The leader of the opposition in the government of Delhi;***
- ***(d) A retired High Court Judge, nominated by the Chief Justice of the Delhi High Court;***
- ***(e) The Chief Secretary of Delhi;***
- ***(f) The Commissioner of Police as its member-secretary; and***
- ***(g) Five non-political persons of proven reputation for integrity and competence (hereinafter referred to as***

"independent members") including no more than one each from the fields of academia, law, public administration, media and NGOs, to be appointed on the recommendation of the Selection Panel constituted under Section 36.

(2) The composition of the Commission shall reflect adequate gender and minority representation, and will have not less than two women as members.

(3) Not more than one serving or retired government employee shall be appointed as an independent member.

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

36. Composition of the panel for selection of Independent Members of the Security Commission shall be appointed on the recommendation of a Selection Panel, which shall consist of:

(a) a retired Chief Justice of Delhi High Court as its Chairperson, to be nominated by the Chief Justice of the High Court;
(b) a person nominated by the Chairperson of the National Human Rights Commission; and
(c) a person nominated by the Chairperson of the Union Public Service Commission.

FUNCTIONS OF THE SECURITY COMMISSION – CLAUSE 39

An essential ingredient of the Court's order in relation to the Security Commission was that the recommendations of the Commission be binding on the government. Such a provision is not seen in the Draft Bill.

Thus to make the clause fully compliant with the Court directive we recommend the inclusion sub clause to Clause 39 of the Draft Bill.

"(d) the recommendations of the Commission shall be binding upon the Administrator and the Central government"

POWERS AND RESPONSIBILITIES OF THE COMMISSIONER OF POLICE – CLAUSE 43

Clause 42 vests the overall administration and management of the police with the Commissioner of Police. Clause 43 in turn describes the powers and responsibilities of the Police Chief wherein he/she will be responsible to operationalise the police and annual plan prepared for the police to ensure that efficient and accountable police services are delivered to the public. Whilst the clause is relatively clear we would encourage that it be further elaborated upon 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 Administrator have a clear understanding of the limits of their respective jurisdiction.

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

Powers and Responsibilities of the Commissioner of Police

(1) The Commissioner of Police shall be responsible to the Administrator 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 administrator; and

(e) giving effect to any lawful directions.

(2) The Commissioner of Police shall act independently of the Administrator regarding:

(a) the maintenance of order in relation to any individual or group of individuals; and

(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.

STRATEGIC AND ANNUAL POLICING PLANS

A significant omission in the Draft Bill is the requirement of strategic and annual policing plans. 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. The rising crime graph and general feeling of insecurity also requires that the police lay out priorities and achievable targets and goals clearly.

We have repeatedly emphasised the fact that the guidance given by the Supreme Court must be put in place as a package. Taken together the whole sets out a logical framework to implement improved policing. A strategic annual policing plan is absolutely necessary in order to effectuate and operationalise the policies laid down by the Security Commission and will also be the basis of budgetary allocations, long term infrastructure and manpower planning.

The elements that will ensure better policing in future is that the policy be laid down in a bipartisan and unbiased manner, that recommendations be binding and its operationalisation be assured through reasonable budgetary allocation. The Draft Bill does violence to this schema and creates a weak apex structure without the necessary follow through. This will impede the development of good policing and signals an unfortunate ambiguity of commitment to the enterprise of improving police in a significant way.

Police strategic planning was made mandatory in the Model Police Bill with an entire section devoted to it. It is thus discouraging to note that the Draft Delhi Police Bill mostly sculpted on the Model Police Bill fails to include such a provision.

There appears to be no rationale for these omissions and dilutions when the necessity for a holistic scheme has been reaffirmed both by the Supreme Court and in the Draft Model Police Bill.

We would recommend that a clause be inserted in Chapter V of the Draft Bill that addresses the requirement to prepare policing plans as well as ensure that these plans are placed before the state legislature and Parliament for debate and discussion and also made readily accessible to the public.

Strategic Policing Plan and Annual Policing Plan

(1) The Administrator shall:

(a) in consultation with the Security Commission established under Section 34 of this chapter, 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; and obtain its approval from the Central Government;

(b) place the Strategic Plan before the Parliament within three months of the coming into force of this Act, Subsequent Strategic Plans shall, thereafter, be laid before the Parliament every three years;

(c) place before the Parliament, at the beginning of each financial year, a Progress Report on the implementation of the Strategic Plan as well as an Annual Policing Plan (Annual Plan for short) that prioritises the goals of the Strategic Plan for the year in question.

(2) The Strategic and the Annual Plans shall be prepared after receiving inputs on the policing needs of the districts from the District Deputy Commissioners of Police who, in turn, shall formulate the same in consultation with the community.

(3) The Strategic Plan, the Progress Report and the Annual Plan shall be made readily accessible to the public.

SECURITY FOR KEEPING PEACE AND ORDER – CLAUSE 57

REMOVAL OF PERSONS ABOUT TO COMMIT OFFENCES – CLAUSE 58

We have repeatedly said that any Police Act must regulate police functioning and not diminish liberties and freedoms or create penal consequences at the discretion of the police. Clauses 57 and 58 of the Draft Bill do exactly this. They widen in unacceptable ways powers given to the police.

We recognise the fact that it is necessary to have clauses in the Draft Bill that enable the police to maintain law and order and likewise it is acceptable that habitual offenders and history-sheeters who on well founded facts are frequently seen in circumstances very proximate to violence or property damage should have their activities curbed by being bound over to keep the peace. These circumstances are already to be found and have been dealt with in the various, Goonda Acts, preventive detention laws and the Code of Criminal Procedure. However in all these Acts there are oversight or advisory mechanisms to mitigate the possibility of unfair or unjust use. The discretion of the Executive Magistrate (which in the present Draft Bill rests with the Police Chief) is bound around with protections. Despite this there are well founded concerns that the powers are frequently abused. We therefore see no reason why the powers already provided to the executive magistrate should be broadened merely

because the powers are now transferred to the Police Chief under the Commissionerate system. Nor do we see any reason to dilute protections or broaden well understood words and precedent.

Clause 57(1)(a) mimics Section 107 of the Code of Criminal Procedure but dispenses with the safeguard that the Commissioner of Police must only act to bind over the person where there are *sufficient grounds*. We find no justification for a Police Act to reduce the levels of legal protections presently available under the Code of Criminal Procedure.

Clause 57(1)(b) hinges on the word '*habitually'"*. We understand that the police must be able to keep a close eye on habitual offenders in which case habitual offender must be defined to be an adult who has been finally convicted several times over a long period of time for acts that disturb the peace. However the explanation given for *'habitual offender'* under the Draft Bill once again seeks to remove the normal protections afforded to the public against arbitrary police action. The explanation is at considerable variance with the usual definitions "of habitual offender" (see for instance Karnataka Habitual Offenders Act). A deliberate vagueness is introduced by the words *'has been found on less than three occasions to have committed or to have been involved in any of the acts referred to in this section'*. There is no indication of who is do the finding or determination. We are presuming that the word 'committed' means that there has been a prior proven conviction which has not been overturned on appeal. But this remains unclear in the Draft Bill. Further it is unacceptable to include *"to have been involved"* because it is not clear what degree of actions can be considered 'involvement "and by whom this determination is to be made.

While Clause 57 purports to be preventive, Clause 58 seeks to introduce a penal provision through executive action. The clause grants extremely wide powers to the police to remove people from places they are resident. For instance a person may be removed if "it *appears* to the Commissioner of Police" that the person's "movements or acts" "are *likely* to cause alarm, danger or harm to person or property or is so dangerous as to render his being at large in the area of the Commissionerate". This opens a vast scope for abuse by powerful vested interests in the community to arbitrarily deprive the poor and the powerless of their livelihoods and homes by ensuring that they are removed from the Commissionerate.

The clause is not only undermining the Code of Criminal Procedure but it is breaching fundamental rights as contained in the Constitution. To state that the police has the right to remove a person under the broadly drafted clause is violative of these rights and mostly likely to be struck down. Article 21 of the Constitution ensures the right to life and *personal liberty* and article 19(d) ensures everyone's right to free movement in the country. It cannot be left to the police to curtail the valuable right of freedom of movement for the subjective satisfaction without reason or process to decide that there is the possibility of a *likely act that maybe hazardous to the community*. Fundamental guarantees can be curtailed only upon a conviction and not merely upon vague and undefined beliefs of the police.

Taken together the two clauses at 57 and 58 allow the police to either demand sureties from a person likely to commit acts that would cause a breach of peace or alternatively extern such persons whose mere presence is so dangerous to allow him to be at large. Police powers cannot be such as to squeeze the fundamental freedoms guaranteed to

all citizens or to obstruct the free exercise and enjoyment of those freedoms and we recommend that both these clauses be deleted from the Draft Bill and provisions in the Code of Criminal Procedure and other similar acts be relied upon to deal with these situations as they do at present.

COMMUNITY PARTICIPATION IN POLICING – CLAUSE 60

CHRI is encouraged that community participation in policing has been addressed in the Draft Bill. This would be achieved by setting up Citizen's Policing Committees for each locality or colony including slums. The benefits of community involvement in policing are many for both building public trust and increasing police capabilities to fight crime.

The key element in community policing is to build trust and the proven path to this is right composition of the Citizen's Policing Committees, and by having regular meetings attended by both the public and police.

As per sub clause 1 the aim of the Citizen's Policing Committees is to promote people's participation in safeguarding their own life and property. The present formulation of objective appears as it if it is shifting the responsibility for policing to the community. This cannot be the intention. Any community policing initiative should be to establish and maintain a partnership between the community and the police; promote co-operation between the police and the community in fulfilling the needs of the community regarding policing; promote communication between the police and the community; improve the rendering of police services to the community at the state, district and local levels; improve transparency in the police and accountability of the police to the community; and promote joint problem identification and problem-solving by the police and the community.

We recommend that sub clause 1 be deleted and replaced by the following:

> ***"60. The Commissioner of Police shall ensure involvement of the community by constituting a Citizen's Policing Committee every two years, for each locality, group of localities or colonies including slums.***
>
> ***(1) The objectives of the Citizen's Policing 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 state, district and local levels;***
> - ***(e) improving transparency in the police and accountability of the police to the community;***
> - ***(f) promoting joint problem identification and problem-solving by the police and the community."***

We would urge that the composition of the Committee and the requirement of diversity be more specifically laid out than the present formulation. Moreover, for community policing to be truly effective, it should be inclusive and allow for maximum participation. The Draft Bill does not suggest any procedure for selecting or appointing members of the Citizens Policing Committee. In the absence of a procedure or guidance on how this is done members may be chosen who are neither able to adequately articulate the needs of the community nor are necessarily representative of it. We 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.

> ***"(2) Each Citizen Policing Committee shall have eight to ten members. Persons wanting to serve in the Committee shall submit an application to a selection panel constituted for the purpose, consisting of the Chief Metropolitan Magistrate, the Deputy Commissioner of Police and the Station House Officer. The Selection Committee shall induct members from the applicant pool in a transparent manner ensuring a fair representation from all strata and professions of society in the area.***
>
> ***(3) No person who holds a position in any political party or an organisation allied to a political party, or has a criminal record, shall be inducted into the Citizen Policing Committee.***

Sub clause 2 provides that the police will take the assistance Committee to identify existing and emerging policing needs and develop action plans for ensuring the security of the area. CHRI also recommends that the identification of existing policing needs and the action plans prepared should be taken into due consideration by the Station House Officer while preparing the annual policing strategy.

> ***"The Citizen Policing Committee will identify the existing and emerging policing needs of the area which will be taken into consideration by the Station House Officer while preparing the annual policing strategy and action plan for the jurisdiction for submit the plan to the Deputy Commissioner of Police"***

Sub clause 4 requires that the meetings of the Citizen Policing Committees be attended by the Assistant Commissioner of Police and the Station House Officer. We however feel that the Committee should meet at least once every two months, as opposed to "frequently as deemed" as provided in the Draft Bill, to ensure that there is a constant two-way communication occurring between the police and the public. This communication is an essential element to building an effective police-public partnership.

We recommend that the sub clause be amended as under:

> ***"(5) The meetings of the Committee will be convened, as frequently as deemed necessary, but at least once every two months. The Deputy Commissioner of Police, the Assistant Commissioner of Police and the officer in charge of the police station, shall attend the meetings of the Committee."***

SUSPENSION – CLAUSE 65

Clause 65 describes the suspension process of police officers – under what circumstances an officer can be placed under suspension and in what manner. However it is frequently observed that suspension orders are passed immediately after an inquiry or investigation is initiated against a police but within a short while the officer is reinstated on duty because either the inquiry is taking too long or the concerned officer has been able to pull his way through.

Suspended officers suspected of wrongdoing who have returned to duty on technicalities cannot be expected to have public confidence or enhance the image of new policing as is the goal in enacting these new laws.

We recommend that an additional clause be added that till the completion of the inquiry the concerned officer will not be allowed to rejoin duties and that the powers and privileges vested in him as an officer will be suspended during such time. We believe that this will also spur the police establishment to sharpen internal proceedings to arrive at early decisions in ways that ensure that suspected officers are not duly prejudiced. It will also afford complainants a more satisfactory process.

> ***(6) The powers, functions and privileges vested in a police officer shall remain suspended while such police officer is under suspension from office;***
>
> ***Provided not withstanding such suspension, such person shall not cease to be a police officer and shall continue to be subject to the control of the same authorities to which he would have been subject if he had not been under suspension.***

ACCOUNTABILITY FOR CONDUCT – CLAUSE 74

Clause 74 of the Draft Bill states that within three months of the Act coming into force a Police Complaint Authority shall be established to inquire into public complaints against the police. The clause requires that such a complaint will be accompanied by a sworn statement against the police officer for serious misconduct.

The clause requires that a complaint against a police officer must be accompanied by a sworn statement. This creates unnecessary hurdles that will complicate the process and discourage persons from accessing the Authority.

At Clause 83(b) there is also a provision of a fine/penalty for vexatious or frivolous complaints. Taken together it is difficult to see how this provision will help the cause of police accountability which the Apex Court's order was intended to bring about. Indeed, these provisions are sure-fire ways of severely curbing complaints. In a largely migrant city, the difficulties of language alone will intimidate potential complainants from accessing the Authorities.

We strongly recommend that no provision be included in the Draft Bill that requires complainants to make sworn statements against the police. We do not see the value of this. We point out that our study of the working of the Police Complaints Authorities[5]

[5] CHRI 2009 Report - Police Complaints Authorities – Accountability in Action

indicates that most Authorities do not have this requirement. Neither does the public grievance cell nor the human rights commissions across the country. We cannot see justification for treating police complaints in any different manner or creating higher gate-keeping provisions for such complaints. If anything they should be made even more simple and lean toward orality given the composition of the population and the difficulties of language.

Endless waits, sworn affidavits, distant locations to find ones way to at regular intervals during working hours, will make it impossible for ordinary folks – often unlettered, already ignorant of their rights, fearful of the police - and especially the poor and powerless, to ever approach these bodies and gain satisfaction against powerful well connected mobile suspects. This will again be counter productive to building trust. We believe the unequal power of the protagonists must be taken into account when such bodies are designed or they will be seen as additional obstacles to justice and breed discontent.

> ***"74. The Administrator shall, shall as soon as the coming into force of the Act or within not more than three months of the coming into effect of this Act, establish a State-level Police Complaints Authority ("the Authority"), consisting of a Chairperson, Members and such other staff as may be necessary, to inquire into public complaints against the police personnel for serious misconduct and perform such other functions as stipulated in this Chapter."***

COMPOSITION OF THE AUTHORITY – CLAUSE 75

The Authority is to be headed by a retired High Court Judge and have four other members. Of these three are limited to specific categories and one is to be a person of "repute and standing from the [sic] civil society". We welcome the overall credentialing of members as requiring to have a 'credible record of integrity and a commitment to human rights". However, we would point out that experience indicates that these statutory requirements since they are not backed up by a process, by which the commitments can be tested, have little weight when it comes to choosing candidates.

In relation to the presence of a police officer we are pleased to see that the clause limits the presence to just one out of state retired office. We would like to suggest two things: we don't believe it is necessary to have any police officer in the membership at all. It is often argued that the presence of a retired police officer, given his inside experience will in fact enhance the functioning of the authority. We do not accept this argument. Should an Authority need expert advice it can always call on retired police officers to provide them the same without having one sit on the Authority itself. It is also argued that a police member can access police information more easily. We reject this as a device that the Authority use as it is incumbent at 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 Authority 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. Secondly, 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.

If the Authority is to live up to its mandate a fair balance needs to be struck between retired government officers and independent civil society members, with exactly half being retired officers and half as independent members. In view of the fact that there is already a former judge of the high court at on board there is little need to restrict the membership pool by requiring one member to be form the legal profession, [Clause 75(c)]. As with police personnel, legal expertise is always available to the Authority especially in a capital city like Delhi and it may be advantageous to remove this category restriction in favour of opening up one more slot to accommodate other more diverse experiences. We urge the Ministry to recognise the need for a broader membership.

Further, the selection process for members must be such as assures the appearance of impartiality and independence. However, at the moment this is at a discount. The Court in its directive clearly laid down a procedure for selection and a panel that would appoint the Chair and the members. Alarmingly the Draft Bill fails to introduce these safeguards. There is no independent selection panel available to test whether members fulfill the criteria and the selection if it follows present processes in practice will not be open or transparent such that it can command the trust of the public. These arrangements taken together have the hallmark that has all too often created organisations which are seen as weak and subservient rather than independent oversight mechanisms that are able effectively to step policing malpractice and abuse.

We recommend the clause be suitably amended as below to address the concerns we raise as well as to be in conformity with the Court's directives and the Draft Model Police Bill.

> ***"75. Composition of the State Complaints Authority***
> ***The State Complaints Authority shall have five members with a credible record of integrity and commitment to human rights and shall consist of:***
>
> - ***(a) A retired High Court Judge, who shall be the Chairperson of the State Complaints Authority;***
> - ***(b) A retired police officer from another state cadre, superannuated not below the rank of Commissioner of Police or Additional Director General of Police;***
> - ***(c) A person with a minimum of 10 years of experience either as a judicial officer, public prosecutor, practicing advocate, or a professor of law;***
> - ***(d) Two citizens of repute and standing from the public; and***
> - ***(e) A retired officer with experience in public administration from another state.***
>
> ***Provided that at least one member of the State Complaints Authority shall be a woman and not more than one member each shall be a retired police officer and a retired government officer;***

Provided further that no retired police or government officer shall be appointed to the post within two years of his/her retirement.

76. Selection of Chairperson and members of the State Authority

(1) The Chairperson of the State Complaints Authority shall be appointed out of a panel of three retired High Court judges, received from the Chief Justice of the Delhi High Court;

(2) Members of the Authority, other than the Chairperson, shall be appointed on the recommendation of a Selection Panel consisting of (i) the Chairperson of the Authority appointed under sub-section (1); (ii) the Chairperson or a member of the Union Public Service Commission; and (iii) the Chairperson or a member of the National Human Rights Commission, iv) the Chairperson of the Central Vigilance Commission;

(3) Persons wanting to serve on the Authority shall submit an application to the Selection Panel constituted for the purpose. The Selection Panel may also invite applications from eminent persons suitable for these posts;

(4) The Selection Panel shall be constituted no later than one month from the coming into effect of this Act, and shall nominate members of the State Complaints Authority within two months of its constitution, and as and when required thereafter;

(5) Vacancies in the Authority shall be filled up as soon as practicable, and in no case later than three months after a seat has fallen vacant;

(6) In selecting members of the State Complaints Authority, the Panel shall adopt a transparent process.

STAFF OF THE AUTHORITY – CLAUSE 79

The clause states that the staff requirement of the Authority will be judged by the average number of complaints received by it. This is a reasonable provision. However the Court directive recognising the fact that the Authority may need the services of regular staff to conduct field inquiries recommended that the Authority utilize the services of retired investigators from the CID, Intelligence, Vigilance or any other organisation for this purpose.

We thus recommend that a sub clause 5 be inserted into Clause 79 in the Draft Bill that would enable the Authority to utilize such expertise.

"(5) The Authority 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."

CONDUCT OF BUSINESS – CLAUSE 80

The clause requires the Authority to devise its own rules to carry out its work. To date 18 states have set up Complaints Authorities. Of these only six seem to be actually

working at the ground level. None of these have till date formulated rules for their functioning despite being around for over two years or more. This has hampered the Authority in several ways. We would thus suggest that the Draft Bill introduce a clause that would ensure that the rules are drafted within three months of the Act coming into force.

It is also vital that the complaints received by the Authority are dealt with within a relatively short period. The Draft Bill should introduce a clause that requires complaints to be disposed within a fixed time. Arrears once they start building up only spiral and the Authority will need to pay utmost attention to delay and arrears and devise methods of speedy and judicious disposal of complaints before it. This alone would build confidence of complainants in the fair and impartial process of the Authority.

We recommend that Clause 80 of the Draft Bill be amended as under.

> ***(1) Subject to the above, the State Complaints Authority shall devise its own rules for the conduct of its business as well as conduct of business by the Range Complaints Authorities, within three months of its constitution and may amend it from time to time as necessary for its proper functioning;***
>
> ***(2) The State Complaints Authority or the Range Complaints Authority, as the case may be, on receipt of a complaint shall, as expeditiously as possible, and in any case within sixty days of the receipt of the complaint shall pass final order on the complaint.***

STATEMENTS MADE TO THE AUTHORITY – CLAUSE 83

This clause provides for the imposition of fine if the Authority is satisfied that the complaint of serious misconduct is *"vexatious, frivolous or malafide."* We disagree with the inclusion of this clause as along with the other clauses that insist on sworn statements backing the complaint it creates another impediment to freely bringing complaints. No other Police Complaints Authorities or Ombudsman, or Human Rights Commissions have this clog on bringing complaints. In addition, 'vexatious' and 'frivolous' are categories which are easily prone to subjective interpretation. In the case of proven *'malafide'* the usual remedies are open to the aggrieved persons and to the Authority itself and there is no need or virtue in allowing the complainant to present his complaint under threat of being penalized. There is as well no limitation on fine mentioned in the clause so that will add a further disincentive for persons already afraid of complaining against the police. 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 having to pay a fine in case his complaint does not meet the required standards of satisfying the Authority on its veracity. Such provisions would ensure the failure of the Authority in terms of realising its mandate.

We recommend that the said provision be deleted from Clause 83.

RANGE COMPLAINTS AUTHORITY

The Draft Bill creates just the one Complaints Authority for the whole of Delhi which has a population of 12 million and over. The Court's directive in the *Prakash Singh* case expressly required the set up of Complaints Authorities at the state and

district level. We recognise that the Court order did not refer to police forces administered by the Centre. As a result, inevitably, the Centre would have to improvise somewhat when designing Complaints Authorities. However we do believe that having just the one Authority for the all of Delhi will inevitably lead to it being severely overburdened with the volume of complaints. At the same time it will present practical problems of access for complainants.

Delhi has three ranges and 11 districts. Whilst we understand there may not be a requirement to set up Complaints Authorities in every district it may beneficial to set these up at the range level. Facilitating rather than limiting access should be the aim of any Complaints Authority. We would thus urge that the setting up of range wise Police Complaints Authorities in addition to the state level Authority in order to bring the remedy closer to the local public. Given that one in every 10 police persons in the Delhi police has a complaint against him we believe that numbers and decentralisation counts. One Authority is likely to quickly become dysfunctional by virtue of being overburdened, especially given the very limited staff and facilities provided for in the governments order.

We would urge that the Draft Bill establishes Authorities at every range and bringing Delhi in full compliance with the Apex Court directive.

To reflect the setting up of Range Complaints Authorities we recommend the inclusion of the below clauses into the Draft Bill.

87. Range Complaints Authority

(1) The Administrator shall establish in each police range, a Range Police Complaints Authority to enquire into misconduct or abuse of power against police officers below the rank of assistant commissioner of police and to monitor departmental inquiries into cases of complaints of misconduct against police personnel, as defined in Section 81(3)

(2) The Range Complaints Authority shall have three members with a credible record of integrity and commitment to human rights and shall consist of a retired District and Sessions Judge, who shall be the Chairperson of the Authority; 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.

(3) The Chairperson and other members of the Range Complaints Authorities will be appointed by the Administrator on the recommendation of the Selection Panel referred to in Section 76 (2).

(4) Vacancies in the Authority shall be filled up as soon as practicable, and in no case later than three months after a seat has been vacated.

(5) In selecting members of the Authority, the Selection Panel shall adopt a transparent process.

(6) The conditions of eligibility, term of office, terms and conditions of service, and conditions of removal from office

for the Chairperson and members of the Range Complaints Authorities will be the same as provided in Sections , 76, 77 and 78 respectively.

(7) The Range Complaints Authority shall be assisted by adequate legal and administrative staff with requisite skills and experience.

(8) The staff shall be selected by the State Complaints Authority, inter alia, on a contractual basis, through a transparent process.

(9) The remuneration and other terms and conditions of service of the staff shall be as prescribed from time to time.

(10) The provisions of Section 85 in respect of decisions and directions of the State Complaints Authority shall also apply to Range Complaints Authorities.

88. Functions of Range Complaints Authority

(1) The Range Police Complaints Authority shall:

(a) have the power to enquire into misconduct or abuse of power against police officers below the rank of assistant commissioner of police. It shall exercise all the powers of a civil court. The authority shall have the power to investigate any case itself or ask any other agency to investigate and submit a report. The recommendations of the range complaints authorities shall be binding on range disciplinary authorities;

(b) forward the complaints of "serious misconduct", received directly by it, to the State Complaints Authority for further action;
Provided that if the complaint contains allegations against any police officer of or above the rank of Assistant Commissioner of Police, the Range Police Complaints Authority shall forward the same to the State Complaints Authority, for further action.

(c) monitor the status of departmental inquiries or action on the complaints of "misconduct" against officers below the rank of Assistant Commissioner of Police, through a quarterly report obtained periodically from the District Deputy Commissioners of Police;

(d) issue appropriate advice to the District Deputy Commissioners of Police for expeditious completion of inquiry, if, in the Authority's opinion, the inquiry is getting unduly delayed in any such case;

(e) report cases to the State Complaints Authority where departmental enquiry into "misconduct" is not concluded in time by the police department in spite of the Authority's advice(s) to the District Deputy Commissioner of Police issued under sub-section (d) above.

(2) The Authority may also, in respect of a complaint of "misconduct" against an officer below the rank of Assistant Commissioner 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 Deputy Commissioner 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.

89. Report of the Range Complaints Authority

(1) Each Range Complaints Authority shall prepare and submit to the Authority 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 State Complaints Authority 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.

90. Relationship between the State Complaints Authority and the Range Complaints Authority

(1) The State Complaints Authority shall control and supervise, and issue suitable directions to the Range Authorities for their proper functioning;

(2) The Range Authorities will assist the State Authority in every way for the proper discharge of its functions;

(3) Where the State Authority considers that any of the conditions laid down in Section 78 read with Section 87(6) of this Chapter for the removal of a member has been fulfilled, it shall be competent to request the Administrator to initiate appropriate proceedings against that member of the Range Authority.

OFFENCES BY THE POLICE

DERELICTION OF DUTY BY A POLICE OFFICER – CLAUSE 105

CHRI welcomes the idea behind the incorporation of this clause in the Draft Bill. As rightly included these sub clauses - 1(a), 1(c), 1(d) fall in the category of dereliction of duty and should be liable to disciplinary action and internal punishments as provided for in the law. However we have consistently held that Police Acts should not create new crimes. On that principle we cannot see how merely being in "state of intoxication

on duty" shifts from being a disciplinary misdemeanor to becoming a criminalised offence liable to an imprisonment for three months. We believe that this is excessive and must be deleted from the present Draft.

We would recommend that clauses that amount to a mere dereliction of duty be separated out from those that are of such gravity as to attract penal consequences. We recommend that sub clauses 1(b) and 2(e) be deleted from Clause 105, and placed in a separate category to indicate the consequences of what will follow in case a police person commits what is already an offence at law.

In relation to sub clause 1(b) - non-registration of First Information Reports by a police officer without lawful reason, we point out that the offence is already part of the Indian Penal Code under Section 166.[6] Nevertheless we believe that since the offence is hardly ever evoked and has fallen into disuse it will be important to make it explicit again in this Draft Bill and amend the penalty as is in the present Draft from one year to three months. The 152nd Law Commission report has recommended a longer sentence of one year for police who refuse to register First Information Reports. Nevertheless we believe that three months prison will serve as a sufficient deterrent if it is used in proper measure especially by senior officers insisting and making an example of those whose duty it is to register. We would point out that registration and non-registration are matters of policy guidance provided from above and the issue of 'command liability' for allowing consistent non-registration in police stations under ones command will make senior supervisory categories liable for abetment. We also point out that a longer punishment for non-registration is likely to create great reluctance within the investigating bodies to come to reasonable and correct conclusions in relation to the dereliction of duties of comrades in arms.

In relation to sub clause 2(e) - sexual harassment in the course of duty towards other police officers or members of public, we point out that this offence is also provided for in the Indian Penal Code and there is no need to repeat them in legislation relating to policing, unless the law is seeking to say that because the offender is a police officer there will be *an additional enhanced* punishment apart from natural consequences of a judicial process and those that follow on internal disciplinary actions.

In our view this is justified in order to signal that the high standards that are required of members of the police service who have an explicit duty to protect. In addition it will address the present dominantly male oriented sub-culture. We believe the Draft Bill must make this point very clearly to leave out any space for ambiguity or abuse of process.

In light of this we recommend that a new Clause 106 be inserted in the Draft Bill that would reflect the above mentioned concerns.

106
(1) Whoever, being a police officer:

[6] Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

(a) Wilfully breaches or neglects to follow any legal provision, procedure, rules, regulations applicable to members of the police service; or

(b) Without lawful reason, fails to register a first information report as required by Section 154 of the Code of Criminal Procedure, 1973;

shall, on conviction, be punished with imprisonment for a term which shall extend to three months and shall also be liable to fine.

(2) Whoever, being a police officer, is guilty of sexual harassment in the course of duty, whether towards other police officers or any member of the public shall, on conviction, be punished with imprisonment for a term which shall extend to one year and shall also be liable to fine.

Provided that this will be in addition to the penal sanctions as provided for in Section 354 and 509 of the Indian Penal Code.

ARREST SEARCH, SEIZURE AND VIOLENCE – CLAUSE 106

Illegal arrest, detention seizure and violence in custody remain the greatest ills that continue to plague policing. Thus the inclusion of these offences in the Draft Bill is welcome and if properly implemented it will provide for greater accountability in the police.

However, in almost all cases, offences listed under this section are already offences under the Indian Penal Code. This clause does not go far enough in providing a strong deterrent but in fact undermines the Penal Code.

An illegal arrest, search or seizure are the equivalent offence of *wrongful confinement* (Section 340 IPC), *criminal trespass* or *house trespass and house breaking* (Sections 441, 442 and 445 IPC) and *theft* (Section 378 IPC). So even though the sections are not referring to the same heading it is in effect the same offence.

We appreciate the sentiment expressed in sub clause 5 which refers to torture or to any kind of inhuman or unlawful personal violence or gross misbehaviour. However torture is currently nowhere defined in the Penal Code. The Prevention of Torture Bill is currently with a Rajya Sabha Select Committee who is examining its provisions. Till such time the Bill becomes law there would be no definition of torture in place to rely upon.

More importantly we do feel that this sub clause is a glaring example of the inconsistencies between this provision of the Draft Bill and the Penal Code. The Draft Bill imposes a three year imprisonment and a fine on the officer found guilty of the offence. This is in stark contrast to Sections 325-327 and 330-331 of the Indian Penal Code which provide for a punishment of seven to ten years and a fine for these grave offences. In light of frequent reports of police brutality throughout the country and the inability to bring such officers to book there needs to be strong deterrents for officers committing such offences.

Relying upon the same explanation as provided these offences since they are so

particular to the police be explicitly listed in the Draft Bill. However the clause should state very clearly that the penal sanctions will be in addition to the sanctions provided for in the Penal Code or at minimum at least carry the same penalties as provided for in the Penal Code coupled with the internal disciplinary proceedings.

If this clause should remain in the Draft Bill it must be amended to ensure that there is consistency between the two laws.

We would recommend that Clause 106 be amended as detailed below.

"106. Illegal Arrest, search, seizure and violence
Whoever, being a police officer:

1(a) illegally or without reasonable cause enters or searches, or causes to be entered or searched, any building, vessel, tent or place;

(b) illegally or without reasonable cause detains, searches, or arrests a person;

(c) unlawfully and without reasonable cause delays the forwarding of any person arrested to a Magistrate or to any other authority to whom he is legally bound to forward such person;
shall, on conviction be punished with imprisonment for a term which shall extending to one year and shall also be liable to a fine

2. Whoever being a police officer:
illegally or without reasonable cause seizes the property of any person;
shall, on conviction be punished with imprisonment for a term which shall extending to three years and shall also be liable to a fine

3. Whoever being a police officer:
subjects any person in her/his custody or with whom he may come into contact in the course of duty, to torture or to any kind of inhuman or unlawful personal violence or gross misbehaviour;
shall on conviction, be punished with imprisonment for a term not less than seven years but which may extend to ten years and shall also be liable to a fine.

4. Whoever, being a police officer:
subjects any person in her/his custody or with whom he may come into contact in the course of duty, to torture or to any kind of inhuman or unlawful personal violence leading to death,
shall, on conviction, be punished as per the provisions of Section 302 or Section 304 of the Indian Penal Code, 1860, as applicable.

PROSECUTION OF POLICE OFFICERS – CLAUSE 109

The inclusion of Clause 109 in the Draft Bill in large part negates the very purpose of a new Act and should be removed or at the very least carefully qualified and bound around.

The clause mirrors Section 197 of the Code of Criminal Procedure which provides public servants with protection against prosecution in the form of prior executive sanction. The discretion in Section 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 Model Police Bill and the Apex Court's decision are meant to bring about. To include similar immunity provisions explicitly in favour of police personnel in the Draft Bill 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.

In its present form the clause reinforces the extraordinary protections given to public servants by particularising them to policing. 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 Draft Bill 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. The Administrator being the supreme executive supervisor of the police and its functioning would in effect be making a decision to remove his charge from outside the purview of the court and acting as a judge in his own cause. In effect he has the option to put the suspect beyond the normal consequences that follow any suspected crime. 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.

We strongly urge the removal of Clause 109 in its entirety or at the very least it must be accompanied by the proviso to Section 197 as suggested in the 152nd report of the Law Commission on Custodial Crimes which stated that no sanctions for prosecution were required in case of bodily offences or abuse of authority.

Based upon this recommendation of the Law Commission we suggest that a proviso be added to Clause 109 to read as below:

> ***"Provided that provisions of this section shall not apply to any offence committed by a police officer being an offence against the human body committed in respect of a person in his custody, nor to any other offence constituting a dereliction of duty or abuse of authority."***