Comprehensive Analysis

of the Karnataka Police Act 2007

the draft (version 2.0)

&

Recommendation 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 of the Karnataka Police Act 2007, The Draft (Version 2.0) & Recommendations for Amendments

Introduction

CHRI is an independent, non-partisan, non-governmental organisation headquartered in New Delhi. We are mandated to ensure the practical realisation of human rights in the countries of the Commonwealth. For the past 10 years, CHRI has been campaigning for police reform in India. The organisation participated in the Police Act Drafting Committee which drafted a Model Police Act, 2006 to replace the existing Police Act, 1861. CHRI has also intervened in the proceedings leading up to the Supreme Court decision in *Prakash Singh*.[1] Since that decision was released, CHRI has been involved in a series of consultations and meetings across India, where we have been interacting with law-makers, the police fraternity and civil society organisations, sharing our knowledge and expertise on policing. (For more information on CHRI's activities, please visit www.humanrightsinitiative.org.)

To date 11 different States have enacted new legislations in response to the *Prakash Singh* decision. We are extremely pleased that Karnataka has put up its proposed legislation in on the Internet, and invited public feedback. This is a commendable step which we hope will be emulated by governments throughout the country. This submission represents CHRI's comprehensive consideration of the *Karnataka Police Act 2007, the Draft (version 2.0)* (hereafter "Draft Bill") and our corresponding recommendations.

We have evaluated and critiqued the Bill against the following:

- The decisions of the Supreme Court in *Prakash Singh v Union of India case;*
- Other recent Police Legislations, including the Model Police Act, and the Police Acts/bills passed or proposed in several other States
- National Police Commission and Law Commission Reports, where applicable
- International Legal Covenants/Treaties, where applicable
- Our own experiences in interacting with governments throughout India over the previous decade on the issue of Police Reform

Overall, we believe this Draft represents the foundation for a very strong and progressive piece of legislation. However, there are several areas which we feel need amendment. (Please note that our analysis does not discuss those sections in the Draft which we approve. Rather, for the purpose of brevity, we analyse only those clauses which we would like to see amended.) We hope that the Police Draft Committee and the Karnataka Government give our submission careful consideration. CHRI is interested in consulting with you further, in person, regarding the contents of this document. In the future, we would like to work closely with the Government and Police Service to ensure that Karnataka's statute becomes the pre-eminent example of modern, progressive, democratic police legislation in India.

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

As a final note, while we are very pleased that Karnataka has invited public comment on its Draft Bill via the Internet, we hope that this vital process does not end at this stage. CHRI formally encourages the Government to continue to consult widely with the public and other key stakeholders on the Draft Bill, and to spread awareness of its existence and provisions. Our experience has shown that a participatory law-making process can be a major factor in laying a strong foundation for an effective and accountable police service. Indeed best practice from around the world calls on policy-makers to proactively engage the public during the legislative process. This can be done in a variety of ways, for example: by setting up a committee of stakeholders (including officials and public representatives) to consider and provide recommendations on the Draft; through convening public meetings to discuss the proposed law; by inviting submissions before the Legislature votes on the Bill; and by strategically and consistently using the media to raise awareness and keep the public up to date on the progress of the legislation.

ANALYSIS

Preamble

A preamble is the foundation of a law and sets forth the intent and purpose of the Act. The Act itself will be interpreted in the light of the preamble and it is therefore crucial that the preamble is carefully drafted.

CHRI is encouraged that the Draft Bill reflects the core values from the Model Police Act drafted by the Police Act Drafting Committee 2005-2006. The authors have carefully chosen its language to balance the demand for a tough police service dealing with terrorism and the demand for upholding human rights. However in this attempt a few but crucial points have to be highlighted.

The Preamble of the Draft Bill requires the police to "uphold the law". While it is important for any preamble to acknowledge the relationship between the police and the rule of law, this draft does not go far enough. The use of the word "uphold" suggests that police are only required to observe its maintenance, without imposing a positive obligation to advance and defend the rule of law in the course of their duty. To meaningfully capture the dynamic relationship between policing and the rule of law, which is at the heart of good police reform practice, the Preamble should be amended.

> ***Preamble Recommendation A***
> **The first paragraph in the Preamble should be amended by deleting the words "uphold the law" and instead insert:**
> **"protect, promote and uphold the rule of law"**

The Drafters of the Preamble have chosen very broad language in the first paragraph referring to protection of the "*rights"* of all people. CHRI welcome this provision but urges that emphasis will be given to especially protect the rights provided under the Indian Constitution.

> ***Preamble Recommendation B***
> **The first paragraph in the Preamble should be amended with insertion of the following sentence in the end of the paragraph:**
> **"; especially the rights enshrined in the Constitution of India**

CHRI recommends that the fifth paragraph of the Preamble shall mirror the spirit of the equivalent paragraph in the Model Police Act. This is imperative in a country where acts of terrorism occur frequently and where allegations of police abuse and their disregard for human rights are rampant. CHRI has several objections to the fifth paragraph of the Preamble.

To start with, the words *"by taking into account"* as stated in Preamble of the Model Police Act, have been replaced by *"meet"* in the Draft Bill which changes the intent of the paragraph. The Model Police Act sets out a non-exhaustive list that should be considered when redefining the role, functions and responsibilities of the police, while the Draft Bill provision instead is exhaustive. In addition, the paragraph has omitted the word *"policing",* putting sole emphasis on *state security* issues and not challenges faced in policing in general.

Further, in comparison with the Preamble of the Model Police Act, the Draft Bill has removed the words *"respect for human rights",* contrary to the spirit of the original paragraph. To ensure a modern and professional police service it is essential that the redefinition of the roles, duties and responsibilities of the police are made in accordance with good governance and human rights values. CHRI has found through its extensive work that the term "human rights" are in some circles criticised as being abstract and the term is often dismissed. However this is not a valid reason for excluding it in the Preamble. CHRI urges that the intent of the paragraph must be maintained but the term "human rights" could be redefined.

Recommendation C
The fifth paragraph in the Preamble should be deleted in its entirety and replaced by the following:

"WHEREAS it is expedient to redefine the role of the police, its duties and responsibilities, by taking into account the emerging challenges of modern day policing and growing security concerns of State, the imperatives of good governance and the protection and respect of the rights of the individual under the Constitution and under international covenants that India is party to"

The sixth paragraph of the Preamble has also taken guidance from the Model Police Act but has omitted the word "essential", leaving no statutory obligation on the State to empower its Police.

Recommendation D
The sixth paragraph of the Preamble should be replaced as under:

"WHEREAS it is essential to empower police

Section 2 – Definitions

Section 2 sets out definitions to aid the reader in interpreting terms used in the new statute. However the definitions of "organised crime" and "terrorism" need not be provided in the Draft Bill. These definitions are available in anti terror legislations applicable in Karnataka itself within the Karnataka Control of Organised Crime Act (KCOCA) and redefining them in the Draft Bill will only lead to confusion, duplication and abuse of law.[2]

2.1 f) & o) Recommendation
Section 2.1 f) and 2.1 o) should be deleted in its entirety

[2] By referring to the KCOCA CHRI by no means agrees to the definition of organised crime and terrorism contained in it. The definition is vague, overarching and lends potential for abuse. However an alternate definition of the same in the present Bill will only lead to further confusion and not address the core problem

Section 4 – Constitution and composition of the Police Service

Section 4 sets out the constitution and composition of the Karnataka Police service. To ensure general welfare of police officers and to ensure a people friendly and accountable police service, CHRI urges that the criteria set out in section 4 of the Model Police Act should be included in this section.

> ***4.3 – 4 Recommendation***
> **Section 4 should be amended by inserting the following sub-sections:**
>
> **"3) The pay, allowances, service and working conditions of police personnel shall be as prescribed by rules, from time to time. These shall always be commensurate with the nature of their duties"**
>
> **4) Police personnel shall at all times remain accountable to the law and responsive to the lawful needs of the people and shall observe codes of ethical conduct and integrity, as prescribed."**

Section 8 – Selection and term of office of the Director General of Police

The Draft Bill sets out certain criteria upon which the Director General of Police will be selected, but this list is incomplete. The Supreme Court, in its ruling in the *Prakash Singh* case, clearly set out that DGPs must be chosen based on "their length of service, very good record and range of experience". The Draft Bill omits the second of these three criteria. In our view, the Draft ought to be amended to bring it into compliance with the Apex Court's Order, so that it properly acknowledges the importance of seniority in selecting the DGP.

> ***8.2.a. Recommendation***
> **Section 8.2. a) of the Draft Bill should be amended by adding the term "very good record" so that the conclusion of the paragraph reads:**
>
> **"length of service, very good record, health and professional standards;"**

Tenure:

In its ruling in *Prakash Singh*, the Supreme Court stipulated that the DGP in charge of police in a state must be provided with a minimum tenure of two years, "irrespective of his date of superannuation". Section 8 of the Draft Bill expressly contradicts this part of the ruling, and is therefore in plain violation of the Apex Court's Order. Recognising the trend of politically motivated transfers of even the most senior officers, and acknowledging the host of Police Reform studies and commissions that had opined on the vital need for a fixed tenure, the Court was firm in its directions. It stated that tenure of the DGP must be for two years, and that retirement could not be justification for limiting such tenure. Under the current Draft Bill, tenure could potentially run for as little as a matter of months, if the DGP was appointed immediately prior to his date of superannuation. Such a scenario will hinder the Police Service in the State of Karnataka, which stands to benefit a great deal from continuity in its top leadership. Good management

practice dictates that people in leadership roles require stability of tenure and a fixed length of service (no less than two years) to deliver good results.

8.3. Recommendation

Section 8.3 should be amended to ensure that the DGP has two years tenure irrespective of superannuation:

"3) The Director General of Police so appointed shall have a minimum tenure of two years irrespective of superannuation"

Removal:

The Supreme Court further set out that the decision of premature removal of the DGP shall be made by the State Government in consultation with the State Police Board. This is to ensure that the removal of the DGP is not based on political motives or extraneous pressure. Section 8 contradicts this part and is in direct violation of the Apex Court's Order.

8.4. Recommendation

Section 8.4 should be amended to ensure the State Government consults with the State Police Board before prematurely removing the DGP from his or her post:

"The Director General of Police may be removed from the post before expiry of his tenure by the State Government in consultation with the State Police Board through a written order specifying reasons, consequent to:"

Section 16 – Police Stations

Section 16.1 sets out the provisions for creating as many police stations as required. However it is not enough to create Police Stations without providing adequate infrastructure, budget allocations and manpower resources in line with modern day policing needs. To ensure a professional police service it would also be advisable to ensure that the increase in a Police Stations budget would be in relation to crimes registered by it i.e. the more crime registered the higher the cost of the police station.

16.1 Recommendation

Section 16.1 should be deleted in its entirety and replaced by the following:

"The State Government may in consultation with the Director General of Police and by notification, create as many Police Stations and outposts as necessary. Such Police Stations must be adequately resourced with infrastructure, trained and professional man power resources and provided with budgetary allocation in line with modern day policing needs"

Section 17 – Term of Office of Key Police Functionaries

Section 17.2 f) of the Draft Bill allows for removal of officers *in exceptional cases* by a *competent authority*. This section is broad and vaguely drafted. The Supreme Court laid down five objective grounds for premature removal of a police officer on operational duty. These five grounds are exhaustive and therefore it is concerning that "exceptional cases" are not defined in Draft Bill. Further the decisions of promotion, transfers and postings rest with the Police Establishment Committee created under section 53, which should be the competent authority in this case. Therefore to avoid any confusion section 17.2 f) should refer to the Police Establishment Committee instead of "competent authority".

17.2 f) Recommendation

Section 17.2 f) should be deleted in its entirety. Further a new sub-section should be created (3)

"3) the decisions of removal on grounds under sub-section 2) should be made by the Police Establishment Committee"

Section 20 – Criminal Investigation Department

The Draft Bill has set out grounds for a State level Criminal Investigation Department, dealing with inter-state and inter-district crimes. However it is silent on many crucial factors that would make such a department successful. For instance the Draft Bill is silent on the selection criteria for the police officers posted to this department. It is further silent on the requirement for such officers to undergo appropriate training. Neither is there any provision for proper tenure for crime investigators nor does the section supply the Department with legal advisors, crime analysts, forensic experts and adequately funds and infrastructure. To further ensure the success of the Department it is important that the Draft Bill stipulates that the crime investigation officers will not conduct duties such as law and order maintenance. Section 133 – 137 of the Model Police Act provides criteria, which in our view, are vital for the Departments success. We are therefore of the view that these criteria should be included under section 20 of the Draft Bill.

20.7 – 11 Recommendation

Section 20 should be amended by inserting the new sub-sections (7 – 11):

"7. The officers posted to the Criminal Investigation Department will be selected on the basis of their aptitude, professional competence, and relevant experience. They will undergo appropriate training upon induction, and their knowledge and skills will be upgraded from time to time through appropriate refresher and specialised courses;

8. Officers posted to the Crime Investigation Department shall remain within the department and only be transferred out of the department upon his own request.

9. The Criminal Investigation Department will be provided with an appropriate number of legal advisors and crime analysts to guide, advise and assist the investigation officers;

10. The Criminal Investigation Department shall be provided with adequate staff and funds. The head of the Department will be vested with financial powers of a head of the department;

11. The Crime Investigation Department shall be equipped with adequate facilities of scientific aids to investigation and forensic science including qualified and trained manpower, in accordance with the guidelines, if any, issued in this regard by the Directorate of Forensic Science or the Bureau of Police Research and Development of the Government of India"

Further, at times cases are handed over to the CID with the intent to remove the case from an efficient and honest police officer at a police station. To avoid such scenarios the offences that will be investigated by the CID need to be specified to avoid such ad-hoc transfer of cases to the CID. CHRI is therefore of the opinion that the CID shall investigate all crimes dealing with inter-state and inter-district ramifications.

Finally, as section 20 and section 71 both give directions to set up a Criminal Investigation Department, CHRI suggests deleting section 71 in its entirety and incorporating its provisions under section 20.

Section 29 – Training

There is already an agreement for police to improve training intuitions in Karnataka from its present mediocre level. To ensure that the training programme and its objectives fulfil the requirements of a modern, professional and accountable police service it is important that section 29.1 also includes personal development and identifying and developing leadership potentials in individual police officers.

29.1 Recommendation
Section 29.1 should be amended by deleting the last sentence and include the following:

". It shall achieve the objectives of imparting knowledge, developing professional and personal skills, identify and develop leadership potential in individual police officers, inculcating the right attitudes and promoting ethical values.

Further, regular training and refresher courses are vital. Section 29.3 provides for these courses. However to ensure that the police personnel is adequately trained and up to date in the latest science related to their work it is advisable that the refresher courses take place annually.

29.3 Recommendation
Section 29.3 should be amended by including "annually" in the end of the sentence.

Finally, to ensure that training facilities and training equipment are up to date, adequate money must be allocated to training. CHRI is therefore of the view that the State Government shall make an annual budgetary provision for training at the disposal of the DGP. The DGP shall at the end of every financial year submit an annual report to the State Government detailing where the money has been spent to ensure modern and professional police training in the State.

29.9 Recommendation
Section 20 should be amended by inserting a new sub-section (9):

"9. The State Government shall provide the DGP with adequate funding to ensure modern and professional training. This funding shall be specified in the annual budget to the Police and be at the disposal of the DGP. An annual report on expenditure for training shall be submitted to the State Government at end of every fiscal year.

Section 31 – Special Police Officers

CHRI is concerned that almost any Police officer can appoint "any able-bodied and willing person" "whom he considers fit" as a Special Police Officer to assist the police.

A Special Police Officer appointed under section 31 would have the same powers and immunities as ordinary police officers, but would not have the opportunity to undertake the comprehensive training a regular officer is required to undergo, in subjects as diverse as the use of fire arms, the principles of law relating to use of force and the legal rights of the public. By contrast, the answer to an understaffed force does not lie in empowering the Police to appoint a new batch of officers, with the same powers as regular officers, but none of the critical training. Experience in Punjab, where a system of Special Police Officers led to high levels of public complaints of police misconduct, shows that the scope for abuse of powers would be very high. If more police officers are required in a given situation, proper recruitment and appointment procedures must be followed to induct new officers. Under the Draft Bill it also appears that such Special Police Officers will not be accountable to the new Police Complaints Authority (section 81). In our view, sweeping powers to create Special officers are unwarranted and should be removed in their entirety given the pre-existing powers to appoint regular police officers in a timely manner.

31 Recommendation
Section 31 should be deleted in its entirety

Section 32 – Additional Police Officers

Similarly the Draft Bill creates the possibility for the police to appoint Additional Police Officers. As argued above the police should, instead of appointing Special Police Officers and Additional Police Officers, ensure proper recruitment and

training of police officers to guarantee that there are no vacancies in the police service.

32 Recommendation
Section 32 should be deleted in its entirety

Section 33 – Rule, Functions, Duties and Responsibilities of Police

The Draft Bill enumerates the role, function, duties and responsibilities of the police but has omitted some crucial criteria. The police today have a bad reputation and people do almost anything to avoid approaching the police. Therefore it is crucial that there is a change in image of the police. This would require some remodelling of duties of all officers especially officers on operational duties which have frequent contact with the public. Basically it is important for the police to create an environment where the public feels that the police is a service for the *people* not its rulers, with an emphasis on community policing. One crucial criterion is to ensure that the public places faith in policing is to ensure that the police are *impartially* upholding the laws and values regardless religion, culture, caste or class. This is somewhat covered in section 33.2 a) but could be improved. CHRI therefore urges that section 33.2 a) explicitly states that the police shall impartially uphold the laws and values, especially those enshrined in the Constitution of India.

33.2 a) Recommendation
Section 33.2 a) should be deleted in its entirety and the following should be inserted instead:

"a) impartially uphold the law at all times, in accordance with the values enshrined the Constitution of India

Further, section 33.2 e) refers to protection of public property. It is in our view that the police must not only protect public property but also private property in order to be a truly responsive police service.

33.2 e) Recommendation
Section 33.2 e) should be amended by inserting the words "and private" after the word "public":

"e) protect public and private property;"

Section 33.2 j) is generally drafted and vague. The notion that the police should aid people in distress is good but needs to be defined to ensure that the police know what situations to respond to and prioritise. In its current version the section is liable for subjective interpretations. The Model Police Act has defined the situation in section 57 j) and should be used as a guide.

33.2 j) Recommendation
Section 33.2 j) should be deleted and replaced by the following:

"to aid individuals, who are in danger of physical harm to their person or property, and to provide necessary help and afford relief to people in distress "

In addition, section 33.2 m) is very broad and leaves scope for abuse of power. It should be made clear that only a police officer on duty can take charge of unclaimed property and it should further ensure that its disposal is in accordance with prescribed procedures and rules.

33.2 m) Recommendation
Section 33.2 m) should be deleted and replaced by the following:

"m) to take charge, as a police officer on duty, of all unclaimed property and take action for their safe custody and disposal in accordance with the prescribed procedures and rules"

Finally section 33.3 is referring to the social responsibilities of the police. It is encouraging to see that this has been included in the Draft Bill and has borrowed some of its language from section 58 in the Model Police Act. However, section 33.3 h) in the Draft Bill is broadly drafted and should to be specified to ensure that the rights of a person under arrest are upheld. CHRI therefore urges that the Draft Bill should include the language of section 58 (g) of the Model Police Act with some modifications.

33.3 h) Recommendation
Section 33.3 h should be amended by inserting the following in the end of the sentence:

"h) as well as arrange for legal aid provisions to every person in custody unable to afford the same."

Section 37 – Role and Functions [of Armed Police]

Section 37 merely states that the Armed Police shall assist the civil police "when there is a need for deployment of armed police". In a democratic society it is imperative to ensure that the Armed Police is only deployed when absolutely necessary. It should be clearly defined when such police officers should be deployed, to ensure minimum harm to the society.

37 Recommendation
Section 37 should be amended by inserting the following sentence after "assist the civil police":

"wherever required and in particular in dealing with virulent and widespread problems of public disorder or other forms of violence"

Section 43 – Training [of Armed Reserve]

To ensure a modern and professional police service it is important that the police officers undergo basic training and get updated during their service in the field of their work. It is further important that these courses should be held regularly on

an annual basis and an imperative to ensure that the personnel undergoing training is not withdrawn for deployment of law and order or any other duty.

43 Recommendation
Section 43 should be amended to insert "annually" after the word "training programmes" and further the following should be inserted in the end of the sentence:

". Under no circumstances shall personnel undergoing such training be withdrawn for deployment on law & order, or any other duty"

Section 47 – State Police Board

In its ruling in the *Prakash Singh* case, the Supreme Court clearly indicated that a body was required in order to provide the police with functional autonomy and alleviate unwarranted political interference. This directive was mandatory and intended to have immediate effect. It is therefore concerning that the Draft Bill is delaying the creation further by stating that the State Police Board shall be created "after three months of the Act coming into force".

47 Recommendation
Section 47 should be amended by deleting "within three months of coming into force of this Act" and instead insert "immediately when this Act is coming into force"

Section 49 – Functions of the State Police Board

The function of the State Police Board is broadly set out in the Apex Court's order in the Prakash Singh case. It mentions that the Police Board shall "lay down policy guidelines so the police acts in accordance with law" and that the Board shall give directions for police performance and evaluate the same. It further sets out that the recommendations of the State Police Board shall be binding. Unfortunately the Draft Bill fails to mention these criteria.

Section 49.1 has omitted that the State Police Board should frame guidelines in *accordance with law*. This phrase should be inserted into the law.

49.1 Recommendation
Section 49.1 should be amended to include "in accordance with law" in the end of the sentence

Further, the Draft Bill has enumerated performance indicators in the second sub-section. It has specifically stated that the Board shall set bench marks for "observance of human rights vis-à-vis police investigation". Considering the many complaints against police officers it is crucial that observance of human rights should be included in all aspects of policing and not merely in relation to police investigations.

49.2 viii) Recommendation
Section 49.2 viii) should be deleted in its entirety and the following should be inserted:

"observance of human rights in all aspects of policing"

In addition, the Supreme Court was clear that the State Police Board should give *directions* for police performance and service oriented functions. However section 49.3 of the Draft Bill states that the State Police Board shall review and evaluate the performance, omitting the active role envisaged by the Supreme Court.

49.3 Recommendation
Section 49.3 should be amended by inserting "Give directions for," in the beginning of the sentence

Finally, the *Prakash Singh judgment* also ensured that the Police State Board's recommendations would be binding on the State Government. The Draft Bill is silent on the nature of the Boards powers and this would be contrary to the spirit of the Apex Court's ruling.

49.5 Recommendation
A sub-section should be inserted in the section to assure that the State Police Board has binding powers:

"49.5 The recommendations of the State Police Board shall be binding on the State Government"

Section 52 – Powers and Responsibilities of the Director General of Police

Section 52 outlines the powers and responsibilities of the DGP. It is not enough for the DGP to merely administer the police service but is essential that the administration is geared towards ensuring greater efficiency, efficacy, responsiveness and accountability of the police in the State.

52 b) Recommendation
Section 52 b) should be amended by inserting the following in the end of the sentence:

"to ensure its efficiency, effectiveness, responsiveness and accountability"

Section 53 – Police Establishment Committee

The Draft Bill creates a Police Establishment Committee but fails to do so in conformity with the Supreme Court directive in the *Prakash Singh* case.

The Apex Court's Order sets out that the Police Establishment Committee shall be a forum of appeal for police officers of the rank of Superintendents and above, if they have been subject to illegal or irregular orders. The Draft Bill recognises this function of the Police Establishment Committee but has omitted the opportunity for Superintendents of Police (SPs) and above to appeal an irregular order. This is a cause for concern. An order can be inappropriate or unacceptable even though it is not *illegal.* It is vital that police officers can appeal such orders to ensure that their posting or transfer has not been motivated by political or extraneous

interference. In our interaction with police officers all around India we have several times encountered the argument that transfers of police officers, based on political interference, are rampant. To succeed in setting up a modern, professional and people-friendly police service it is imperative that such orders are stayed and that there is an appeal board to look into the matter.

53.2 Recommendation
Section 53.2 should be amended to insert the word "irregular" after "issue of illegal"

Further, as stated above ad-hoc and frequent transfers is rampant in the police service today and this hugely demotivates the police. The mandate given to the Police Establishment Committee by the Apex Court is twofold. The PEC shall decide transfers, postings and promotions of Dy. Superintendent and below, while it can only make recommendations on transfers and postings for officers of the rank of Superintendent and above.

Section 53.4 sets out the provisions for the PEC to recommend transfers of SP and above. This section breaches the Supreme Court order in two aspects. First, it only provides the PEC with the power to recommend *postings* and not *transfers* of SP and above. Second, it has omitted the safeguard provided by the Apex Court which states that *"the Government is expected to give due weight to these recommendations and shall normally accept it".* Therefore this sub-section must be amended accordingly to be in compliance with the Supreme Court Order.

53.4 Recommendation
Section 53.4 should be amended to insert the word "transfers" after the word "posting" and should further be amended by inserting the following in the end of the sentence:

"; the State Government is expected to give due weight to these recommendations and shall normally accept it"

Finally, the mandate of the PEC to decide transfers, postings and promotions of Dy. Superintendents and below is spread over three sections. Section 53.6 sets the provisions for appointments; section 54 for transfers; and section 55 for promotions.

It is concerning to see that section 53.6 violates the Supreme Court directive. The section only gives recommendatory powers to the PEC where it should be binding and this power has been further diluted by only mandating the PEC to look into *initial appointments*, not *postings* as prescribed by the Apex Court. This is in clear violation of the Supreme Court Order and must be amended to ensure compliance with the same.

53.6 Recommendation
Section 53.6 should be deleted in its entirety and replaced by the following:

"6. The Committee shall decide all postings of officers of and below the rank of Dy. Superintendent of Police"

Section 55 – Promotion of State Police Officers

Section 55 sets out the provisions for promotion of police officers but fails to ensure that promotions shall be decided by the PEC for Dy.SP and below, which is a clear violation of the Supreme Court's Order. As argued above, political interference is rampant in the decision making relating to transfers, postings and promotions of police officers. To ensure that this vexed behaviour is terminated, it is crucial that section 55 explicitly ensures that promotions rest with the PEC. However, CHRI is of the opinion that the decision making power of transfers, postings and promotions remains in the hands of the District Superintendent/Commissioner of Police as these officers understand the policing needs of their constituencies best. CHRI would be concerned if these decisions are influenced extraneous political interferences.

55.5 Recommendation
Section 55 should be amended by inserting a new sub-section (5):

"5. Police Establishment Committee shall decide the promotions of Dy. Superintendent and below"

Section 59 – Police Beats

To ensure conformity in the Draft Bill, "Special Police Officers" and "Additional Police Officers" should be removed from section 59 based on the arguments above under sections 31 and 32.

59.3 a) Recommendation
Section 59.3 a) should be amended by deleting the words "Special Police Officers" and "Additional Police Officers"

Section 68 – Community Policing

CHRI is encouraged that community policing has been addressed in the Draft Bill. Through community policing the public can be informed of the difficulties police are facing in different stages of their work and the police may learn about specific community issues that can be addressed before crime occurs. In this way community policing permits the police to work proactively rather than reactively. The key element in community policing is to build trust and this is done through ensuring the right composition of the citizen groups, and by having regular meetings attended by both the public and police.

Although community policing is a relatively new concept in India and is not addressed in the 1861 Police Act, it can be found in police acts all over the Commonwealth such as Northern Ireland, New South Wales, Australia, the United Kingdom, Ontorio, Canada and South Africa. To ensure that all this is achieved, CHRI recommends that language should be adopted from section 18 of the South African Police Act 1995 that comprehensively addresses the objectives of community policing. Further, the Model Police Act states that the meetings of the community liaison group should be attended by the Sub-Divisional Magistrate as well as the Sub-Divisional Police Officer, Station House Officer and Circle Inspector. CHRI endorses this provision as it is important that representatives from the police and magistracy are present at the meetings so that the public can discuss pressing matters with the police in a less intimidating environment than the police station.

Moreover, for community policing to be truly effective, it should be inclusive and allow for maximum participation. The language in the Draft Bill suggests that the Commissioner/ SP shall appoint members of the Citizen Committee and this is worrying as it can lead to members being chosen who are neither able to adequately represent the needs of the community nor are necessarily representative of it. CHRI urges 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.

68. Recommendation

Section 68 should be amended by deleting the first paragraph and replacing it with the following adopted from section 18 of the South African Police Act 1995:

"The objectives of the community policing program 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."

68.1 Recommendation

Sub-section 68.1(a) should be amended by the insertion of the following at the end of the paragraph:

"Provided that each Citizen Committee shall have eight representatives. Persons wanting to serve in the Committee shall submit an application to a Selection Panel constituted for the purpose consisting of the Station House Officer, Judicial Magistrate and District Superintendent/Commissioner of Police. The Selection Committee shall induct members from the applicant pool in a transparent manner. No person who is connected with any political party or an organisation allied to a political party, or has a criminal record, shall be eligible to be inducted into the Citizen Committee."

Sub-section 68.1(d) should be amended to read as "Station House Officer, Circle Inspector, Sub-Divisional Police Officer and Sub-Divisional/Metropolitan Magistrate"

Sub-sections 68.2(i), 68.2(ii) and 68.3 that refer to programmes involving children, programmes involving youth and helpline desks respectively are laudable in their goals but have been extremely vaguely and poorly drafted.

There is total uncertainty when and how these programmes and mechanisms would be established. Sub-section 68.2(i) in particular is excessively broad and appears to be more in the realm of ideals rather than achievable programmes. As they have neither been properly defined nor operationalised, these provisions are unlikely to be implemented if the legislation is enacted as is. In such case, these sub-sections would become mere window dressing rather than concrete steps in developing an effective public-police partnership.

The Drafting group should reconsider the purpose of the sub-sections 68.2 & 68.3 in the Draft Bill. To successfully achieve the intentions with the section, "Helpline Desks", "May I Help You Kiosks", "Young Friends of Police" etc. must be clearly defined in the legislation. Sub-section 68.2(i) should in particular be limited to a few programmes to be effective.

68.2 & 68.3 Recommendation
Sections 68.2 and 68.3 must be redrafted to ensure that the intentions with the sections are fulfilled.

Section 69 – Special Security Zones

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

The Draft Bill should not go beyond this remit to give extraordinary powers to the police or create obligations for the public. Consequently, section 69 has no place in the Draft Bill and should be removed. The provisions for severe curtailment of civil liberties and creation of parallel police and court systems within the Special Security Zones appear to be similar to provisions of emergency laws such as the Armed Forces (Special Powers) Act, 1958 and the Disturbed Areas (Special Courts) Act, 1976. Although the police are not given special powers overtly in the Draft Bill, the blanket provision to make rules at section 69.8 leaves open the potential for vast abuse of power to occur in the Special Security Zones without constitutional checks and balances.

Emergencies of public order and the problems of terrorism, insurgency or militancy require a coordinated and integrated approach that goes beyond the policing requirements and includes action by various other wings of administration. It is inappropriate that the Draft Bill, meant to regulate the police, should be dealing with issues of centre-state relations and of control over and coordination between different government agencies. The overly far reaching provisions and resulting constitutional implications of section 69 go well beyond the scope of this Draft Bill and should, if at all required, be addressed in separate security or emergency legislation. The same was acknowledged by the National Police Commission, which made no mention of such provisions in the model Police Bill they drafted but instead recommended a separate "special law for dealing with serious and widespread breaches of disturbance of public order."

69. Recommendation
Section 69 should be deleted in its entirety.

Section 70 – Prevention and Detection of Crime

Whilst this section appears to have been included in response to the Supreme Court's directive which calls for the separation of investigation and law and order wings of the police, the provisions regarding the substance of the actual separation are ambiguous and unclear. Section 70.1 of the Draft Bill states that there "shall be a separate *establishment* for effective prevention and efficient investigation of crime…" without defining the nature of this 'establishment' beyond the mostly material facilities provided at section 70.2. Although it is encouraging to note that the Draft Bill provides for the personnel deployed on investigative duties not to be diverted to other duties, it is silent on the question of whether existing police officers would be diverted to these duties or if new officers will be recruited specifically for the same. The Draft Bill should avoid this ambiguity by clearly stating who will be heading the Special Crime Investigation Units at each level, what crimes they would be mandated to investigate and also emphasise that these Units would be having a separate strength of officers and staff.

The Model Police Act impresses that the State Government "shall ensure in all urban Police Stations, and those in the crime prone rural areas, a Special Crime Investigation Unit…is created with an appropriate strength and staff" (Model Police Act section 122). However, the Draft Bill only guarantees for the same to be set up state headquarters (section 70.3 of the Draft Bill). Beyond that, section 70.9 of the Draft Bill, states only that "the Commissioner or District Superintendent of Police *may* create special Investigation Cells in his jurisdiction as and when required." The word *may* indicates that the intent to bring about an actual separation of law and order and investigation wings below the state level is weak. CHRI recommends that there be a literal separation between the investigation police and law and order police at all levels and that this is reflected in the form of strong wording in the Draft Bill. In practice, Karnataka can implement this provision gradually, beginning with the most crime prone districts and moving on to the less crime prone districts.

In this respect, we find that the Model Police Act is instructive. The Model Police Act sets out, in detail, several sections that pertain to the separation of the investigation function. In our view, these sections are vital in terms of their comprehensiveness, and the safeguards they provide to ensure the new investigative units receive sufficient infrastructure, training, support and tenure. Sections 122-137 of the Model Police Act should be incorporated in the Draft Bill to ensure that Karnataka will be in compliance with Directive 4 of the Supreme Court in the *Prakash Singh* case.

70.1-70.8 Recommendation

Section 70 should be deleted in its entirety and the following should be inserted

Investigations by district police

70.1. The State Government shall ensure that in all urban Police Stations, and those in the crime-prone rural areas, a Special Crime Investigation Unit, headed by an officer not below the rank of Sub-Inspector of Police, is created with an appropriate strength of officers and staff. The personnel posted to this unit shall not be diverted to any other duty, except under very special circumstances with the written permission of the State Police Chief.

70.2. The officers posted in Special Crime Investigation Units will be selected on the basis of their aptitude,

professional competence and integrity. Their professional skills will be upgraded, from time to time, through specialised training in investigative techniques, particularly in the application of scientific aids to investigation and forensic science techniques.

70.3. Officers posted to Special Crime Investigation Units will normally have a minimum tenure of three years.

70.4. Each Police Station shall be provided with an appropriate number of Crime Scene Technicians to promptly visit the scenes of crime along with the Investigating Officer concerned to spot and gather all available scientific clues. These Crime Scene Technicians will be specially selected and adequately trained for the purpose.

70.5. Necessary legal and forensic advice will be made available to investigating officers during investigations.

70.6. There will be a separate allocated budget for the Special Crime Investigation Units.

70.7 The hierarchy for officers serving in Special Crime Investigation Units shall be the same as for officers serving in the law and order police.

70.8. The officers and staff to be posted to this Cell shall also be selected and specially trained, as provided in section 70.2.

Section 74 – Penalties

Section 74.1 of the Draft Bill ambiguously states that "no police officer other than the Appointing Authority" can award certain punishment without specifying what constitutes the appointing authority. The legislation should strive to avoid such unnecessary ambiguity or loopholes and instead clearly state who the appointing authority is. This has been specified in the Model Police Act at section149.1.

Recommendation 74.1

Section 74.1 should be amended by deleting the words "no police officer other than the Appointing Authority can award any of the following penalties:" and instead insert the following:

"Subject to the provisions of Article 311 of the Constitution and the Rules and Regulations made under this Act, an officer of the rank of Superintendent of Police or above may award any of the following punishment to a police officer of a rank for which he is the appointing authority:"

Section 75 – Suspension

In India, suspension is often used as a weapon to remove officers who are seen to be acting inimically towards powerful political interests in the State. Although we have no objections to most of the substantive provisions of this section,

certain sub-sections need amendment to avoid confusion and/or deliberate misinterpretation.

Section 75.1 b) is worrisome if retained as worded as it allows for an officer to be suspended so long as an officer of rank SP and above argues that there is a *prima facie* case against him. There should be a requirement inserted that ensures that this can be done only if an inquiry is contemplated or pending to ensure that the officer concerned is provided an opportunity to present his defence.

75.1b) Recommendation
Section 75.1 b) should be amended by adding the following sentence at the end of the paragraph:

"for which an enquiry is contemplated or pending;"

Section 75.4 has been incompletely drafted and should be amended to specify the person who will be empowered to review/modify/revoke orders of suspension.

75.4 Recommendation
Section 75.4 should be amended by adding the following sentence at the end of the paragraph:

"by the authority which made the order or by any authority to which such authority is subordinate;"

Section 75.5 has been incompletely drafted and should be amended to specify the role of the State Police Board with regard to suspensions beyond one year. To this regard, language from section 150.5 of the Model Police Act can be incorporated.

75.5 Recommendation
Section 75.5 should be amended by adding the following sentence at the end of the paragraph:

"for inquiry and appropriate directions."

Section 76 – Misconduct

This section has been drafted in a very narrow manner that forecloses disciplinary action for misconduct not specified in the eight sub-sections. The Draft Bill should broaden the scope for disciplinary action by using the language adopted in the Model Police Act at section 152.

76. Recommendation
Section 76 should be amended by rewording the first sentence to read as follows:

"A police officer, shall, in addition to any other delinquent act or behaviour as specified in the relevant rules, be liable for disciplinary action for any of the following misconduct:"

Section 78 – Disciplinary Rules

While we welcome the provision for separate Disciplinary Proceedings Rules for personnel, it is important for the legislation to address the purpose for the same, as has been done in the Model Police Act at section 154.

78. Recommendation
Section 78 should be amended by inserting the following phrase at the end of the paragraph:

",which will, among other things, ensure timely disposal of disciplinary proceedings. "

Section 81 – Police Accountability Authority

Whilst CHRI welcomes the fact that the Draft Bill establishes a Police Accountability Authority for Karnataka, there are several provisions in the Draft Bill that would greatly undermine the spirit of the Supreme Court's directive in the *Prakash Singh* case which aims to create an independent authority that would bring a greater sense of accountability in the police.

Time Frame

The three month time stipulation for the State Government to set up the Authority creates an unnecessary delay and this should be removed. The Supreme Court gave a final deadline for States file an affidavit of compliance by 10th April, 2007. The Authority should be set up immediately after the Draft Bill comes into force as the Government of Karnataka is already long overdue in its compliance of the said SC directive.

81. Recommendation
The first paragraph of section 81 should be amended by deleting the following phrase:

",within three months of coming into effect of this Act,"

Jurisdiction

CHRI welcomes the wide jurisdiction granted to the Authority in terms of the type of complaints it can inquire into. However, we are concerned that section 81.1 limits the Authority to inquiring into such complaints "only having satisfied that the complainant has exhausted the remedy available within the police hierarchy." This is an ambiguous provision that can be interpreted to mean anything from internal police disciplinary proceedings to statutory remedies within the Criminal Procedure Code available to all citizens. Internal disciplinary proceedings by their very nature are neither independent nor based on the principles of natural justice and very rarely result in a satisfactory remedy for the complainant. Expecting a victim of police abuse to exhaust all remedies would destroy the very intent of the Supreme Court's directive to set up the Authority.

CHRI recommends that this section be amended to ensure that victims can approach the Authority regardless of whether they have made any attempt to gain redress via other means.

81.1 Recommendation
Section 81.1 should be deleted in their entirety and replaced with the following:

"81.1 The authority shall inquire into such complaints regardless of whether they are being investigated by any other institution."

Further, while CHRI welcomes that for suo motu powers are being provided for the authority at section 81.2, we urge that these powers not be limited only to a certain category of complaints. The Authority should have the freedom to conduct *suo motu* inquires into any case it deems fit.

81.2 Recommendation

Section 81.2 should be deleted in its entirety and replaced with the following:

"81.2 The Accountability Authority may also suo motu inquire into any act of omission or commission by police personnel."

Powers

The Apex Court's order expressly states that the recommendations of the Complaints Authority shall be binding on the concerned authority. The *binding* nature of the Authority's recommendations is what gives it "teeth", without which its effectiveness as an accountability mechanism will be completely diluted.

However, section 81.3 of the Draft Bill states that "the appropriate authority will comply with the directions within the specified time". Further with regard to disciplinary action, section 81.4 states that "the authority concerned *shall act upon* the recommendation". The language in both these sections make the recommendations of the authority appear as having far less than the binding powers envisioned by the Supreme Court. Moreover, they are entirely silent on whether the Accountability Authority can initiate *criminal* proceedings against the delinquent officer.

This is a serious subversion of the Supreme Court's directive and must be amended in order to ensure that the Authority is adequately empowered to fulfil its function. Section 171 of the Model Police Act is instructive to this regard and should be incorporated within this legislation.

81.3-81.4 Recommendation

Sections 81.3 and 81.4 should be deleted in their entirety and replaced with the following:

"81.3 In the complaints directly inquired by the Authority, it may, upon completion of the inquiry, communicate its findings to the appropriate authority with a direction to:-
(a) register a First Information Report where an offence is made out; and/or
(b) Instruct departmental disciplinary action based on such findings,
duly forwarding the evidence collected by it to the police. Such directions of the Commission shall be binding:
***Provided that* the Accountability Authority, before finalising its own opinion in all such cases shall give the Director General of police an opportunity to present the department's view and additional facts, if any, not already in the notice of the Commission;**
***Provided further that,* in such cases, the Accountability Authority may review its findings upon receipt of additional information from the Director General of Police that may have a material bearing on the case.**

81.4 The Accountability Authority may also recommend to the State Government payment of monetary compensation to the victims of the subject matter of such an inquiry. This compensation may be recovered from the erring officer."

Section 83 - Composition of the State Police Accountability Authority

In terms of composition, it is clear that the Supreme Court's directive has been entirely subverted. Whereas the Apex Court has called for the Authority to have its independent members selected by the State Government from a panel prepared by the State Human Rights Commission/ Lokayukta /State Public Service Commission, the Draft Bill has *all* State Police Accountability Authority (SPAA) members appointed *directly* by the State Government (Draft Bill section 83(1)). Furthermore, whereas the retired High Court judge chairing the SPAA should be appointed by the government a panel of names chosen by the Chief Justice as specified in the directive, the Draft Bill provides for this person to be appointed *directly*.

Any facade of independence is lost with the presence of a serving police officer as Member Secretary on the SPAA. This is a serious conflict of interest as it is likely that this member would not want to investigate reports of misconduct attributed to a fellow officer and his loyalties are likely to rest with the police rather than the SPAA. The mere presence of such an officer is bound to prejudice the work and compromise the independence of the authority.

Despite the composition appearing somewhat independent on paper, the fact is that all the other members of the Authority will essentially be political appointees. The arbitrary nature of selection of members will undoubtedly ensure that very few, if any, truly independent-minded members will be chosen. It is very likely that the Authority created will not be independent at all but will be largely beholden to the State Government. This allows the State Government to have the ability to interfere with the Authority's investigations and prevent the police from being held to account for misconduct.

As a result, the objective with the Supreme Court's directive of creating an independent mechanism to ensure accountability in the police will not be met if the existing legislation is passed unaltered. The final decision on selection should remain with the Government. However, inserting a role for non-state organisations in the process of empanelling candidates for the Accountability Authority contributes an additional layer of objectivity to the process. Consequently, it also reassures the public that the potential for wrongful interference is kept to an absolute minimum.

83 Recommendation

Section 83 should be deleted in their entirety and replaced with the following:

"83. Composition of the State Police Accountability Authority

1) The Authority shall have seven members with credible record of integrity and commitment to human rights & rule of law, who may be appointed by the State Government, as specified below:

(a) a retired High Court/Supreme Court Judge shall be the Chairperson;
(b) two persons of repute who are active in civil society movement and one of them shall be a women as Members;
(c) a respectable and committed representative of scheduled caste and scheduled tribe as Member;
(d) a respectable and committed representative of minorities as Member;
(e) a respectable and committed woman representative as a Member.
(f) a person with minimum of 10 years of experience either as a judicial officer, practicing advocate of impeccable repute, or a professor of law as Member.

Selection of Chairperson and members of the Authority

(5) The Chairperson of the Commission shall be appointed by the State Government out of a panel of three retired high court judges, received from the Chief Justice of the High Court concerned.
(6) 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 of the State Public Service Commission; and iii) the Chairperson or a member of the State Human Rights Commission or, in the event of there being no such Commission in the State, the 'Lokayukta' or the Chairperson of the State Vigilance Commission
(7) 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.
(8) In selecting members of the Authority, the Panel shall adopt a transparent process."

Section 84- Composition of District Police Accountability Authority

The arguments against section 83 are equally applicable to section 84. The Supreme Court's directive has been subverted with regards to composition of the District Police Accountability Authority. As with the state authority, all members of the district authority are to be appointed directly by the state government as per the Draft Bill. For the same reasons specified above for section 83, this section should be amended.

84 Recommendation
The first paragraph of section 84 should be deleted and replaced with the following:

" 84. Composition of District Police Accountability Authority

The District Accountability Authority shall have a Chairperson and four members with credible record of integrity and commitment to human rights & rule of law, who will be appointed by the State Government on the

recommendation of the Selection Panel referred to in Section 84(2), as specified below:"

Further, sub-section (f) should be deleted in its entirety.

Section 85 – Eligibility for Membership

Section 85 is incompletely drafted and also leaves out some of the conditions for eligibility present in the Model Police Act. These discrepancies should be amended to ensure that the authority retains a suitable composition.

Section 85 c) rightly makes serving public servants ineligible for appointment, but provides an exception for member secretary. CHRI has recommended, for reasons specified above in sections 83 and 84, that serving police officers should not be appointed as member secretary of the authorities. The same argument regarding conflict of interest applies to other serving public servants as well. In this regard, this exception should be removed.

85 c) Recommendation
Section 85 c) should be amended by deleting the words "except member secretary"

Section 85 j) is incompletely drafted. While it is necessary to ensure that persons of an unsound mind should not be appointed to the authority, there should be some standard of proof that needs to be met before someone is declared ineligible on these grounds. This section should be amended to ensure that it does not become a loophole for the state government to reject persons recommended by the panel based on political motives.

85 j) Recommendation
Section 85 j) should be amended by adding the following in the end of the sentence:

"as declared by a competent court or state medical practitioner"

A notable omission in the list of ineligible persons in the Draft Bill are those who are currently serving or have recently served in police, military or allied organisations. Having members selected from such organisations would constitute a clear conflict of interest and prejudice and compromise the functioning of the authorities.

85 l) Recommendation
Section 85 should amended by inserting a new sub-section (l) :

"(l) not be serving in any police, military or allied organisation, or has so served in the twelve months preceding such appointment"

Section 86 – Terms of office and conditions of service of members and Chairperson

Tenure

Section 163 of the Model Police Act provides for three years tenure for the Chairperson and Members of the Authority as opposed to the two year tenure provided under the Draft Bill. Tenure is an important issue, as tenure for an Authority member will help ensure that members have adequate time to develop expertise in the subject matter of the complaints. More importantly, it will assure the public that protections are in place from inappropriate removals in the event Authority members render unpopular decisions.

86.1 Recommendation

Section 86.1 should be amended as follows:

(1) "Two" should be deleted and replaced with "Three"

(1) (b) The phrase "on any of the grounds mentioned in Section 87." should be added at the end of the sentence.

Salary

The Draft Bill references the issue of providing remuneration and allowances to members of both the State and District Level Authorities, however, the text is incomplete. First, nothing in the draft creates a positive obligation on Government to provide salary to the members of the Authority. This needs to be explicitly stated, as it limits the potential that non-public salaried individuals may be prevented from fulfilling their duty to provide independent oversight, because of financial pressures. Second, we note that the wording of section 86.3 tracks some of the language found in section 163(3) of the Model Police Act. However, it appears that the last portion of section 163(3) has been omitted, which states: "and shall not be varied to their disadvantage after appointment". This language is integral to guard against the potential for financial reprisals being taken against members of the Authority after they have commenced their work. In our view, the missing text from the Model Police Act ought to be reinserted.

86.3 Recommendation

Section 86.3 should be amended by inserting a new sentence at the very beginning which reads:

"3. Remuneration and other allowances of the members of the State Authority and District Authorities shall be paid by the Government."

Further, Section 86.3 should be amended by inserting the following at the end of the paragraph:

", and shall not be varied to their disadvantage after appointment."

Section 87 – Removal of Members

Section 87.1 (d) is overly broad and can be used by the Government of the day to remove members who render unpopular decisions. It should be replaced by a qualified condition for ineligibility, as seen at section 164.1(d) the Model Police Act.

87.1 Recommendation

This sub-section should be amended by removing (d) in its entirety and inserting the following:

"(d) occurrence of any situation that would make a member ineligible for appointment to the Authority under section 85."

Section 88 – Staff of the Authority

The proposed legislation addresses the need to provide "adequate staff possessing requisite skills and experience" for the Authorities. However, it fails to expressly reference the need to provide proper facilities as well. Furthermore, "adequate" is a word open to interpretation and this section of the Draft Bill does not go far enough in bringing Karnataka in compliance with the Supreme Court Order, which referenced the need for proper staffing "such as retired investigators from the CID, Intelligence, Vigilance or any other organisation". Moreover, in our work throughout India, CHRI found that the newly created Police Complaints Authorities are often denied proper staffing and facilities undermining the effectiveness of the Authority. To avoid the possibility of this occurring in Karnataka, we strongly urge the Government to adopt the language on staffing used in the Model Police Act.

88. Recommendation

Section 88 should be removed in its entirety and replaced with the following:

"88.1 (i) The Government shall, in consultation with the authority or authorities, provide all necessary facilities and infrastructure for their proper functioning;

(ii) Members of the Authorities shall be assisted by adequate staff with requisite skills, for efficient discharge of their functions of the Authority.

(2) The strength of the staff may be prescribed by the Government, keeping in view the size of Karnataka, its population, and the average number of complaints against the police, and shall be periodically reviewed and revised.

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

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

Section 89 – Conduct of Business

CHRI welcomes this provision that grants the State Authority the power to devise rules for the conduct of its business. However, for the Authority to function as an independent accountability mechanism as envisaged by the Supreme Court's Order in the *Prakash Singh* case, this provision must also stress that all proceedings of the authority must be based on the principles of natural justice.

89. Recommendation

Section 89 should be amended with the following sentence added at the end of the paragraph:

"All proceedings and inquiries of the authority must be based on principles of natural justice."

Section 90 – Powers of the Authority

The powers of the Authorities to compel evidence, etc. are fairly broad in the Draft Bill at section 90, however, the full scope of powers awarded to the Complaints bodies under Model Police Act section 168 are absent. We consider these provisions very significant. For example, the Model Police Act includes clauses regarding issuing authorities for the examination of witnesses (section 168). The Model Police Act also contemplates the power to require persons to furnish information, to protect witnesses and statements, and visit stations and lock-ups (sections 168-170). This language must be included in the Draft Bill, in order to ensure that the Complaints Authorities may not only receive complaints, but that it has the full scope of broad powers to investigate and address the complaints. In the absence of these various powers there is a potential that the Complaints Authorities may be needlessly delayed or actually prevented from fulfilling the mandate given them by the Supreme Court.

The Authority should live up to be a body capable of provide a speedy and effective remedy to a person who has been a victim of police misconduct or abuse. To avoid the risk of pendency of cases mounting up within the authority it is recommended that a provision be inserted in this section to mandate that complaints are disposed off within a reasonable time frame.

90. Recommendation

Section 90 should be deleted in its entirety and replaced by the following:

"90.1 In the cases directly enquired by it, the Authority shall have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters:

(a) summoning any person of the police department;
(b) receiving evidence on affidavits;
(c) requisitioning any public record or copy thereof from any court or office;
(d) requiring the discovery and production of any document;
(e) issuing authorities for the examination of witnesses and/or documents; and
(f) any other matter as may be prescribed.

(2) The State or District Authority shall have the power to require any person, subject to legal privilege, to furnish information on such points or matters as, in the opinion of the Authority, may be useful for, or relevant to, the subject matter of the inquiry, and any person so required shall be deemed to be legally bound to furnish such information within the meaning of sections 176 and 177 of the Indian Penal Code, 1860.

(3) The Authority shall have the power to advise the State Government on measures to ensure protection of witnesses, victims, and their families who might face any threat or harassment for making the complaint or for furnishing evidence.

(4) The Authority may visit any police station, lock-up, or any other place of detention used by the police.
(5) No statement made by a person in the course of giving evidence before the Authority shall subject that person to a civil or criminal proceeding or be used against him in such proceeding, except a prosecution for giving false evidence:

***Provided that* the statement**
(a) is made in reply to the question which he is required by the Authority to answer; or
(b) is relevant to the subject matter of the inquiry

***Provided further that* on conclusion of the inquiry into a complaint of 'serious misconduct' against the police personnel, if the Authority is satisfied that the complaint was vexatious, frivolous or malafide, the Authority may immediately dispose of the complaint.**

(6) If, at any stage of the inquiry, the Authority considers it necessary to inquire into the conduct of any person, or is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry, it shall give that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his support

***Provided that* nothing in this section shall apply where the credibility of a witness is being impeached.**

(7) All complaints should be disposed off within six months, to be extended in exceptional circumstances with the reason(s) provided in writing to the complainant.

Section 91 – Report of the State Police Accountability Authorities

The job of the Accountability Authority is to hold the police to account. However the Authorities themselves must be accountable as well, not only to the Government, but also to the Legislature and the people of Karnataka. The Draft Bill limits the Authority's reporting responsibilities to submitting a report to the State Police Board alone. By requiring the Accountability Authority to complete a report, place it directly before the State Legislature during the Budget session, and make accessible to the public, the Government can maximise the public accountability of both the police and the Authority that oversees the police. In our view, it is vital that the Draft be amended to include this language.

91. Recommendation
This sub-section should be amended by deleting the first sentence and replacing it with the following:

"(1)The State Police Accountability Authority shall prepare and submit to the State Legislature during the Budget Session an annual report containing:"

Subsequently, the following clauses should be added:

"(d) the number of complaints received by the District Accountability Authorities, and the manner in which they were dealt with;
(e) the identifiable patterns of misconduct on the part of police personnel in the state; and
(f) recommendations on measures to enhance police accountability."

Further, the following sub-section should be added:

"(2) This report shall be made easily accessible to the public as soon as it is presented to the State Legislature."

Section 94 – Rights of the Complainant

While the Draft Bill does bestow complainants the right to be informed of the progress of the hearing and the outcome of the inquiry, as well as attend hearings, it is incomplete in guaranteeing full substantive and procedural rights to the complainant. These rights, enumerated in the Model Police Act, ensure, *inter alia*, that a complainant has the right to attend hearings, inquire about delays and receive information about the findings of the State or District level Complaints Authority. In our view, the language of the Model Police Act ought to be included in the Draft Bill, to ensure that complainant's rights are not unduly limited. Complainants must also have rights to procedural fairness regarding the handling and ultimate determination of their complaint.

94. Recommendation
Section 94 should be deleted in its entirety and replaced with the following:

"94. Rights of the Complainant

(1) The complainant may lodge his complaint with either the departmental police authorities or with the State or the District Accountability Authority:

(2) In cases where a complainant has lodged a complaint with the police authorities, he may inform the State or the District Accountability Authority at any stage of the departmental inquiry about any undue delay in the processing of the inquiry.

(3) The complainant shall have a right to be informed of the progress of the inquiry from time to time by the inquiring authority (the concerned State or District Accountability Authority). Upon completion of inquiry

or departmental proceedings, the complainant shall be informed of the conclusions of the same as well as the final action in the case at the earliest.

(4) The complainant may attend all hearings in an inquiry concerning his case. The complainant shall be informed of the date and place of each hearing.

(5) All hearings shall be conducted in a language intelligible to the complainant. In a case where hearings cannot be conducted in such a language, the services of an interpreter shall be requisitioned by the Government if the complainant so desires.

Section 96 – Protection for Action Taken in Good Faith

The Draft Bill retains an omnibus exemption clause, at section 96, which protects from liability any action taken in "good faith" by the State Government, State Police Board, Police Accountability Authorities, their members, or persons acting under their direction. It is particularly perplexing and illogical for such immunity to be provided for the State Government and their members in a *Police Act.* This type of omnibus exemption clause is dangerous and subject to significant abuse. The government can cloak any mishandling of police affairs under the guise of the undefined notion of "good faith", and thereby immunise the police accountability authorities, the State Police Board and the state government from the very type of accountability the Apex Court decision is meant to help bring about.

96. Recommendation
Section 96 should be deleted in its entirety

Section 98 – Weekly Off

CHRI is encouraged to note that the Draft Bill contains a provision for a weekly off for all police personnel. The Draft Bill also provides for adequate compensation to be provided in lieu of such weekly off. However, compensation is no substitute to a day off in terms of providing relief to overworked police personnel. Thus, we believe that it is important to include language that indicates that the weekly off provision can be waived and compensation be provided only under extraordinary situations. In this regard, the language from Model Police Act, at section 155.2.

98. Recommendation
Section 98 should be amended, with the following inserted at the end of the paragraph:

", if under extraordinary situations the same cannot be granted to any of them."

Section 100 – Welfare Bureau

The Draft Bill creates a Welfare Bureau to provide assistance and facilities to police personnel. This provision is long-awaited, and CHRI is encouraged to see its inclusion. Nevertheless, we have a few concerns with the manner in which it has been drafted. First, the Draft states the Bureau will be staffed by officers of all ranks, "and may interact with other departments, public sector undertakings, corporate bodies and other organisations for the above purposes". In our view, language ought to be inserted requiring that at least one member of the Welfare

Bureau be a public citizen. Incorporating public membership onto the Bureau will have many advantages. Members of public have a strong, on the ground, understanding of police work, and the conditions in which police officers operate; having a public member will enhance both real and symbolic accountability; having a public member will tangibly increase transparency in police operations.

100.2 Recommendation
Section 100.2 shall be amended, with the following sentence added at the end of the paragraph:

"In addition, at least one member of the Bureau shall be a public person of standing from the community."

Further, the word "may" used at section 100.3 indicates that the intent behind empowering the Welfare Bureau to lay down norms and policies relating to police welfare is weak. This should be amended to ensure that the Welfare Bureau is given an active role to carry out this important function.

100.3 Recommendation
Section 100.3 should be amended with the word "may" deleted and replaced with "shall."

In addition, CHRI urges that the Police Welfare Bureau actively interacts with other departments, public sector undertakings, corporate bodies and other organizations. Such exposure would be invaluable as Welfare Bureau members would be able to use the knowledge gained from these interactions to perform their functions more effectively. In this regard, this section should be amended to provide an active impetus for this interaction to occur.

100.5 Recommendation
Section 100.5 should be amended with the word "may" deleted and replaced with the word "shall."

Section 104 – Prevention of disorder

This section usurps powers that have been rightly vested in the hands of the Magistracy as per the Code of Criminal Procedure (CrPC) and gives it to the police. Section 144 of the CrPC clearly states that a District Magistrate, Sub-divisional Magistrate or an Executive Magistrate "may direct any person to abstain from a certain act if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance of injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an at-fray."

The CrPC is designed in a manner that balances the powers shared by the Police and the Magistracy. The preservation of public peace and prevention of disorder is a primary function of the government and the power under section 144 of the CRPC is conferred on the executive magistracy enabling it to perform that function effectively during emergent situations and as such it may become necessary for the Executive Magistrate to override temporarily private rights and in a given situation the power must extend to restraining individuals from doing acts lawful in themselves. This has to be done by a written order giving reasons for the same and such order shall last for no more than two months.

Section 104 of this draft bill is a replica of section 144 CrPC. It takes away the powers of the magistrate and vests similar powers in the hands of the Commissioner or Superintendent of Police without the necessary safeguards as mentioned in the CrPC of doing so by a written order. It is also silent on the length of time such an order would be in place.

Section 144 of the CrPC deals with the present situations addressed in this section of the Draft Bill and thus can be resorted to in response to "disorder." This section needlessly undermines and even dilutes the CrPC and thus should be deleted in its entirety from the Draft Bill to avoid abuse and confusion.

104. Recommendation
Section 104 should be deleted in its entirety.

Section 105 – Removal of persons about to commit offences

Section 105 of the Draft Bill grants extremely wide powers to the police to remove people from their homes and cities and the section will be subject to individual interpretations. For example, 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." This leaves 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/District after a complaint is lodged.

Further, section 105 is not only undermining CrPC but it is further breaching fundamental rights as contained in the Indian Constitution and article 9 of the International Covenant on Civil and Political Rights (ICCPR) which India has acceded to.

Article 21 of the Indian Constitution ensures the right to life and *personal liberty* and article 19(d) ensures everyone's right to free movement in the country. To state that a police commissioner has the right to remove a person under the broadly drafted section 105 is a direct breach of these rights. If section 105 would be enacted as law it will most likely be challenged in Court and struck down as unconstitutional under Article 13 of the Constitution. Article 13 states that any law inconsistent with fundamental rights shall be void, including state legislations. Further to keep section 105 in the final version of the new modern Karnataka Police Act would also be a complete contradiction with the Draft Bill's preamble which states that the Bill "shall uphold the law".

However, this does not mean that any person committing about to commit an offence cannot be removed .This is already provided under sections 107 – 117 of the CrPC which are upholding the safeguards of the Constitution. An *Executive Magistrate* can require a person who is "likely to commit a breach of the peace..." (section 107), is disseminating seditious materials (section 108), is a suspected person (section 109) or is a habitual offender (section 110) to show cause why he should not be ordered to execute a bond for his good behaviour. These sufficiently address the situations referred to in section 105 of the Draft Bill. Section 105 needlessly undermines the CrPC both by giving the police powers that should be vested with the magistracy and by widening the scope of these powers to allow for removal of persons from their homes.

105. Recommendation

Section 105 should be deleted in its entirety.

Section 107 – Prevention of danger to human life and imminent threat to peace and order

The above arguments against section 105 of the Draft Bill are applicable here as well. Section 107 gives the police the power to take preventative action against persons who "are an imminent threat to peace and order." These again are powers that fall under the purview of the Executive Magistrate under Section 107 of the CrPC. Preventative powers of this sort should remain vested in the magistracy where they belong.

107. Recommendation
Section 107 should be deleted in its entirety.

Section 108 – Security for keeping peace and order

This section, like section 105, undermines the CrPC by taking powers vested in the hands of the Executive Magistrate and bringing it in the purview of the police. As per section 108 of the Draft Bill, a *Station House Officer* has *carte blanche* to make a judgment on who "*is likely* to do any wrongful act that may result in disturbance of public order" or "is dangerous or hazardous to the community" and make them "show cause why he should not be ordered to executive a bond for good behaviour, in the interest of peace and order, in his jurisdiction, up to one year." Police officers are not required under this section to provide any reason for their determinations. This provision can thus be used by officers to harass the poor and powerless without due cause, on the pretext that they are "dangerous to the community."

The magistracy is the institution best suited for determining when it is necessary to take extraordinary preventative actions prescribed in section 108 of the Draft Bill. Sections 107 – 110 of the CrPC deal with habitual offenders (section 110), persons about to commit a breach of the peace (section 107) etc. and sufficiently address the concerns of section 108 of the Draft Bill. It is important that these provisions should not be subverted or undermined in any way and in this regard, Section 108 of the Draft Bill should be deleted.

108. Recommendation
Section 108 should be deleted in its entirety.

Section 111 – Directions to keep order on public roads

As in earlier sections of the Draft Bill, section 111 is another case in point where powers currently vested in the magistracy have been appropriated to the police. The CrPC, at section 132, provides for the District Magistrate, Sub-Divisional Magistrate or any other Executive Magistrate, on receiving the report of a police officer or otherwise, the power to make conditional orders for the removal of nuisance from public places. These existing provisions are more than sufficient to address the concerns of section 111 of the Draft Bill. Thus, these sections should be removed to ensure that there is no confusion and that the CrPC is not undermined.

111. Recommendation
Section 111 should be deleted in its entirety.

Section 116 – Return of Certificate on Ceasing to be a Member of Police

This section has been drafted incompletely. It appears that the drafters' intent is for persons convicted of this offence to be liable to either a fine or imprisonment or both. However, even this is unclear because neither imprisonment nor duration of imprisonment is specified. The Model Police Act, at section 197, only provides for a fine, which we think is an appropriate and adequate punishment for this offence. This provision should be corrected to prevent ambiguity when the law is enacted.

116. Recommendation
Section 116 should be amended with the last sentence deleted and replaced by the following sentence:

"Failure to do so, shall on conviction by a court of law, be liable to a fine."

Section 119 – Dereliction of Duty by a Police Officer

CHRI welcomes the idea behind the incorporation of this section in the Draft Bill that provides for greater accountability from the police. However, this section does not go far enough with respect to accountability because it limits police officers liability only to "disciplinary action" and not criminal proceedings/prosecution. CHRI, through its extensive work, has found that provisions for internal disciplinary action have failed to make substantial inroads in deterring offences listed in this section, such as non-registration of FIRs, illegal detentions and arrests, illegal search or seizures etc. The Supreme Court's order has been issued with the intent of changing a culture of impunity within the police. The seriousness of these offences calls for a more effective deterrent.

Further, in almost all cases, offences listed in this section are already offences in the Indian Penal Code, 1860 and are punishable by fines or imprisonment or both. Section 119.1(a) of the Draft Bill, for example, corresponds with section 166 of the IPC that provides for a one year prison term or fine or both for public servants disobeying law. Similarly, section 119(c) of the Draft Bill corresponds with section 510 of the IPC that provides for a twenty-four hour imprisonment or ten rupees fine or both for misconduct in public by a drunken person. Section 119(m) of the Draft Bill, that refers to sexual harassment, is not defined in the IPC but in the case *Vishaka v State of Rajasthan*[3] this has been define as

> "sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as: a) physical contact and advances; b) a demand or request for sexual favours; c) sexually coloured remarks; d) showing pornography; e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature".

[3] *Vishaka and Othrs v State of Rajasthan and Othrs* (1997) 6 SCC 241

This section is also analogous to section 509 of the IPC which provides for a one year prison term or fine or both for the offence of using words and making gestures or acts intended to insult the modesty of a woman.

All the offences listed in this section have already been listed as offences under the IPC and thus, it is inappropriate in making these offences only liable to disciplinary action in the case of the police. Like all citizens, police too when they commit offences should be subject to the same rules. The fine/imprisonment provisions for these offences should remain as specified in the IPC for the police as for ordinary citizens, and in this regard, this section should be removed.

119. Recommendation
Section 119 should be deleted in its entirety.

Section 120 – Illegal arrest, search or seizure

The arguments made with regard to section 119 are applicable here as this section undermines existing provisions in the IPC. Once again, this section does not go far enough in providing a strong deterrent against illegal search and seizure, limiting reprisal to disciplinary action. Basically an illegal arrest, search or seizure are the equivalent offences of *wrongful restraint* and *wrongful confinement* (section 339 and 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. Each one of these offences are punishable with much higher penalties under the Indian Penal Code than provided for in the Draft Bill.

For example, *wrongfully confinement* and *criminal trespass* are both punishable under the IPC with imprisonment which can extend to one year and a fine of one thousand rupees or both; and *theft* is punishable with imprisonment which can extend to three years or with a fine or both. These punishments are more severe than punishments provided for under section 120 of the Draft Bill which only prescribes disciplinary actions. Therefore if this section should remain in the Draft Bill, it must be amended to ensure that there is harmony between the two acts.

Further, even though it is welcoming that the section includes offences such as illegal arrest, search or seizure it is deeply concerning that the most common allegations against the police (torture and custodial violence) is not included in section 120. 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. Therefore torture and custodial violence should be incorporated in the Draft Bill to deter officers from abusing their authority and taking the law into their own hands. The punishment for these grave offences would be equivalent to sections 325-327 and 330-331 of the Indian Penal Code. These offences are punishable with imprisonment for a term such can extend from seven years to ten years with or without fine.

120. Recommendation
Section 120 shall be deleted in its entirety and replaced as follows:

"120. Illegal Arrest, search, seizure and violence

Whoever, being a police officer:

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

(2) unlawfully and without reasonable cause seizes the property of any person;
shall, be punishable with a term extending one year and fine

(3) unlawfully and without reasonable cause detains, searches, or arrests a person;

shall, on conviction be punishable with a term extending one year and fine

(4) 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 punishable with a term extending one year to three years and fine;

(5) 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; or

(6) holds out any threat or promise not warranted by law;

shall, on conviction, be punished with imprisonment for a term of 7 years to ten years and fine.

Section 123 – Protection to Police Officer

The good faith exemption clause and the provision that no court may take cognisance of any complaint or suit against police officers and persons authorised by them in section 123 of the Draft Bill mirrors the language used at section 197 of the CrPC However, the Law Commission of India, in its 152nd Report, suggested the insertion of section 197(1) which explained that the provisions of section 197 CrPC do not apply to any offences committed by any public servant being an offence committed against the human body committed in respect of a person in his custody nor to any other offence constituting an abuse of authority.

CHRI strongly recommends the insertion of the Law Commission's suggestion into the Draft Bill with the view of strengthening its accountability provisions and ensuring that the Draft Bill becomes an example of progressive police legislation for the twenty first century.

123. Recommendation
Section 123 should be amended by inserting a new sub-section (3)

".3 Provisions of this section do not apply to any offences committed by a public servant being an offence committed against the human body committed in respect of a person in his custody nor to any other offence constituting an abuse of authority.

Section 124 - Limitation

Though section 468 of the CrPC provides for certain time limitations for Courts to take cognisance of offences, CHRI recommends that this be waived in the case of the Draft Bill. Considering the generally slow pace of police investigations in India and the tendency for police officers to be especially reluctant to investigate charges made against fellow officers, the stipulated limits would not provide adequate time for proper investigations to be carried out.

124. Recommendation
Section 124 shall be deleted in its entirety and replaced with the following:

"No limitation period, as provided for in section 468 of the Code of Criminal Procedure, 1973 shall apply to the provisions of this Act."

Section 129 – Power to remove difficulties

The Draft Bill reserves power for the State Government to remove difficulties in the Draft Bill, as it should, via notification. Moreover, the draft legislation mandates that the State Government lay down such notifications before the legislature for approval within six months from the date of notification. However, as provisions in a Police Act will undoubtedly have a wide ranging effect on every section of society, any notifications should be laid before the legislature soon after they are issued for its approval. Going to the legislature for approval is in keeping with the democratic nature of India's political system. Indeed, making the police accountable to the people of Karnataka vis-à-vis their elected representatives is one of the major goals of enacting new police legislation.

129.2 Recommendation
Section 129.2 shall be deleted in its entirety and replaced with the following:

"129.2 Every such notification shall, as soon as may be after it is issued, be laid before the legislature for approval."

Section 130 – Framing of Rules

Section 130.1 is vaguely drafted. The word "may" shows a lack of intent, especially when one considers that rules have to be framed to operationalise several of the sections of the Draft Bill. This should be amended to ensure that the provisions of this Draft Bill are rapidly implemented by the Government upon the Act coming into force.

130.1 Recommendation:
Section 130.1 shall be amended with the word "may" replaced with the word "shall."

Further, the arguments against section 129 are even more applicable in the case of section 130, which deals with framing rules to carry out the purposes of the Bill. These Police Rules are likely to have extensive impact on the public, and thus, must be expeditiously approved by the public vis-à-vis their elected representatives. The six month time-frame for the Government to lay down rules

before the legislature undermines the democratic process. One of the underlying problems in existing police legislation across India is the lack of transparency and excessive control of the police services by State Executives. In the spirit of democracy and public consultation, the Draft Bill should be amended and incorporate the language seen at section 219(b) of the Model Police Act.

130.3 Recommendation

Section 130.3 shall be deleted in its entirety and replaced with the following:

"130.3 Every such rule made under this Act shall be laid, as soon as may be after it is made, before the Legislature while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session or in two or more successive sessions aforesaid, the Legislature agrees in making any modification in the rule, as the case may be, or the Legislature agrees that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect as the case may be."

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