

**Comprehensive Analysis
West Bengal Police Act (Draft) 2007
(West Bengal Police Reform Cell)
&
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.

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 was a member on the Police Act Drafting Committee which drafted the 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 delivered, 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 12 States have enacted new legislations in response to the *Prakash Singh* decision. We are pleased that the West Bengal Drafting Committee is inviting feedback on its Draft Act. This submission represents CHRI's comprehensive consideration of the *West Bengal Police Act 2007* (hereafter "Draft Act") and our corresponding recommendations.

We have evaluated and critiqued the Draft Act 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 2006, and the Police Acts/Bills passed or proposed in several other States
- National Police Commission and Law Commission Reports, where applicable
- Our own experiences in interacting with governments throughout India over the previous decade on the issue of Police Reform

It is encouraging that a Police Reforms Cell has been set up entrusted with the task of coming up with a new Police Act. However we strongly believe that more than a new Act what is really needed is the will to implement the reforms as suggested over the last few decades failing which no change will really be visible.

There are several areas which we feel need amendment. (Please note that our analysis does not discuss those sections in the Draft Act 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 Reforms Cell and the West Bengal Government give our submission careful consideration. CHRI would be interested in furthering this dialogue with the Reforms Cell and would appreciate a opportunity to present in person before this Cell.

As a final note CHRI feels that there is a general unwillingness for consultations both within the police service and with the public regarding the legislative changes governing the function of the police service. It is imperative that public discussion on legislative development within an institution that regulates an important government function takes place, to ensure that draft legislation fulfils its reform objectives. With this in mind CHRI formally encourages the Government to consult widely with the public and other key stakeholders in the drafting of the new legislation. It should hold widespread consultations and invite feedback from citizens. Communities are the main beneficiaries of good policing

¹ *Prakash Singh and Others v Union of India and Others* (2006) 8 SCC 1



and the main victims of bad policing – community and civil society participation in the process is essential if the police is going to be efficient, effective and accountable.

ANALYSIS

Chapter I – Preliminary: Definitions & Interpretation

Section 1.2 – Definitions

Section 1.2 provides the definitions of various terms used in the Draft Act. However the definition of “terrorist activity” (sub-section (1)(xxxv)) need not be provided in the Draft Act. This term has already been defined in the Unlawful Activities and (Prevention) Amendment Act, 2008² which is a central legislation applicable across the country. Redefining the term in the Draft Act will create confusion with the existence of two available definitions of a single prohibited activity. There is general dissatisfaction with the definition of the term even in the central legislation by virtue of the fact that it is vague and has wide sweeping, powers including almost all actions under which anyone can be picked up. However any attempt to redefine it in a police legislation does not address the problem.

CHRI would thus recommend that this definition be deleted from the present Draft Act.

² Section 15 of the UAPA defines a Terrorist Act as: Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—

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

(i) death of, or injuries to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or any other person to do or abstain from doing any act, commits a terrorist act.



1.2. (xxxv) Recommendation

Chapter 1 Section 1(xviii) and 1 (xxxv) should be deleted in its entirety

Chapter II – Constitution and Organisation of the State Police Service

Section 2.1 – One Police Service for the State

Section 2.1 (1) states that the superintendence of the Police should be vested in the state government and that no person except when authorised by a Court or directed by the state government can supersede or control any Police functionary.

It appears that the section attempts to address the issue of undue political interference in police work. The issue is further elaborated in section 6(2) of the Draft Act, where CHRI will provide a detailed explanation. However for the present section we recommend that the last sentence of section 2.1(1) is rephrased to read as follows.

2.1 (1) Recommendation

“(1) The entire police establishment under the State Government, [...] The Superintendence of the Police throughout the State shall vest in and shall be exercised by the State Government and except as authorised under the Constitution, procedural and substantive laws or under this Act, no person, officer or Court shall be empowered by the State Government to interfere or control the functioning of any police functionary.”

Section 2.4 – Method of Selection and Term of Office of Director General of Police

Section 2.4 sets out the provisions for selection and term of the Director General of Police. Guidance has been taken from the Model Police Act 2006 while drafting this section and a typing error has occurred; the section is referring to chapter 5 of the West Bengal Police Act when it should be chapter 6.

2.4(2) Recommendation

Change “Chapter V” to “Chapter VI”

Further section 2.4 (3) states that the Director General of Police has minimum tenure subject to superannuation. The Supreme Court specifically stated that the Director General of Police should have two years tenure regardless of superannuation. The reason for this was to ensure stability of the leadership of the police service. As seen around in the country many Director General of Police are appointed to their post with less than a year left to their superannuation which adversely affect the management of the police service and its long term goals and visions.

2.4(3) Recommendation

Section 2.4(3) should be amended to read as follows:



“The Director General of Police so appointed shall have a minimum tenure of two years *irrespective of superannuation* provided that the Director General of Police may be removed from the post before the expiry of his tenure by the State Government through a written order specifying reasons, consequent upon; [...]”

Section 2.10 – Police stations

Section 2.10 sets out the provision for a police station and sub-section (8) provides for creating a Criminal Investigation Unit at Police Station, Sub-division or District level. Setting up a separate Crime Investigation Unit at one of these levels is a welcome and crucial step to ensure professional policing. However to strengthen this sub-section the Draft Act needs to state that the personnel in this Unit should not be assigned any other duties (such as law and order duties). Only then will there be a fair chance for it to become the professional and efficient Unit that the section intends.

2.10(8) Recommendation

Section 2.10(8) should be amended by adding the following in the end of the sub-section:

“The personnel posted to this unit shall not be diverted to any other duty”

The Draft also does not specify the qualification of the staff and their experience and their selection procedure and tenure. We concede that these areas could be included in the rules and when doing so guidance may be taken from sections 122 – 130 of the Model Police Act 2006.

Section 2.10(9) provides that there shall only be women protection desks at the police stations where crimes against women are higher than the norm. CHRI understands the financial constraints to deploy a women’s desk at every police station in the state. However, in states which have deployed women’s desks at every police station the results have been visible. It has shown that the presence of women staff at police stations does not only improve the environment at the station but also encourages women to approach the police. CHRI therefore recommends that every police station should have at least one woman constable posted there.

2.10(9) Recommendation

Every police station in the state shall have at least one woman police constable posted at the station.

Section 2.15 – State Intelligence and Criminal Investigation Departments

Section 2.15 sets out the provisions for the State Intelligence and Criminal Investigation Departments. Sub-section (5) refers to appointing the officers to these two departments. To ensure an effective and fully operational criminal investigation department two factors have to be considered; first that the staff will not be deployed to other duties (such as Law and Order) and second to ensure that the department will not be understaffed. CHRI therefore recommends that this will be specified in the section.



2.15(3) Recommendation

Section 2.15(3) should be amended by adding the following in the end of the section:

"The personnel posted to this unit shall not be diverted to any other duties"

2.15(5) Recommendation

Section 2.15(5) should be amended to read as follows:

"The State Government shall appoint appropriate number of officers in different ranks in the State Criminal Investigation Department and the State Intelligence Department as deemed appropriate with due regard to the volume and variety of tasks to be handled"

Section 2.17 – Appointment of Directors of State Police Academies and Principals of Police Training Colleges and Schools

Section 2.17 sets up a Police Training Academy, a Police Training College and Police Training Schools in the state. Sub-section (3) states that these training centres shall include staff from the Police as well as from academic institutions. Professional training institutions, well planned syllabus and refresher courses are fundamental parts of ensuring an efficient, effective, responsive and accountable police service. To successfully create such institutions it is crucial that the training centres have permanent training faculty. To merely post a serving IPS officer as the Director or Principal of the training institutions will not help build institutions. Guidelines may be drawn from sections 138 -143 from the Model Police Act 2006.

2.17(3) Recommendation

Section 2.17(3) should be amended to read as the following:

"(3) The Academy, College and Schools shall have permanent training faculty from amongst the Police, other related services and academic institutions. The Director of the Academy shall present an Annual Report on behalf of all the Training institutions to the State Police Board."

Further two new sub-sections should be added to this section:

"(4) The training policy shall aim at achieving the objectives of imparting knowledge in police subjects, developing of professional skills, inculcating the right attitudes, and promoting constitutional and ethical values among police personnel

(5) The State Government shall create and upgrade, from time to time, the infrastructure and capabilities of their training institutions in consonance with the holistic training needs of police personnel of different ranks, which shall include besides all types of specialised training, a



compulsory refresher course of appropriate duration, for all ranks annually.”

Chapter III – The Civil Police

Section 3.12 – Duties of Civil Police Officers

Section 3.12 sets out the duties for a civil police officer. The duties listed in this section are of general nature and need to be elaborated and specified. However, we understand that this list cannot be exhaustive in the Draft Act and therefore we recommend that the Draft Act stipulates a provision to say that the duties of all officers will be framed in regulations/Police manual within three months of passing the Act.

Section 3.12 – Recommendation

Section 3.12 shall amended by inserting the following sub-section:

“provided that an exhaustive list of duties of the civil police will be framed in regulations/Police manual within three months of passing this Act”

Chapter VI – Administration and Superintendence

Chapter 6 lays down the relationship between the police and the state government and it is welcoming that this complex relationship is being defined in the Draft Act. However the wording of the section needs to be strengthened in some aspects to provide more clarity on the relationship.

‘Police administration’ and ‘superintendence’ are two distinct functions and must be exercised by different bodies. The role of superintendence is the ultimate purview of the state government, whereas administrative functions must fall under the police leadership and the Director General of Police. If this chain of command is broken by unwarranted political interference, then operational initiative and responsibility also breaks down.

Defining the role of the police in this way does not diminish the fact that the people’s representatives ultimately have control over the police. It merely explains more clearly *how* the power is to be exercised. It also takes into account the competencies that reside with each body. The police have the expertise to enforce the rule of law and the people’s representatives retain the power to hold them to account for their performance. Both are obliged to remain within the limits of their competencies.

Section 6.2 – Powers and responsibilities of the Director General

It is encouraging to see that section 6.2 describes the powers of the Director General of Police. Whilst the section is relatively clear we would encourage that it be further elaborated upon to define the precise contours of the Police-Executive relationship. This clear delineation within police legislation itself is crucial so that both the police and the responsible Minister have a clear understanding of the

limits of their respective jurisdiction. This relationship has been defined in other jurisdictions and may be used as guidance³.

6.2 Recommendation

We recommend that the following two sub-sections should be added to section 6.2

(2) the Director General of Police is responsible to the Minister for –

- i) carrying out of the functions, duties and powers of the police**
- ii) tendering advice to the Minister**
- iii) the general conduct of police**
- iv) the efficient, effective and economical management of the police; and**
- v) giving effect to any directions of the Minister on matters of Government policy**

(3) The Director General of Police is not responsible to the Minister, but must act independently, in relation to the following:

- i) enforcement of the criminal law in particular cases and classes of cases;**
- ii) criminal law matters that relate to an individual or group of individuals**
- iii) decisions on individual members of the police**

Section 6.3 – Superintendence of the state police to vest in the state government

It is only through a clear expression of the dual roles of executive superintendence and police administration that the operational responsibility and accountability of police can be assured, without sacrificing the important function of legitimate political oversight and supervision.

Section 6.3 outlines the role of the state government in policing issues. However to address the problem in a more holistic manner it is equally important to define the areas of where the political executive can and should intervene in policing matters. Guidance may be drawn from what has been attempted in other jurisdictions.

6.3 Recommendation

We recommend that the following four sub-sections should be added to section 6.3

“(4) The Minister may give the Director General of Police directions on matters of Government policy that relate to-

- i) the prevention of crime; and**
- ii) the maintenance of public safety and public order;**
- iii) the delivery of police service; and**
- iv) general areas of law enforcement.**

³ Guidance has been taken from the New Zealand Police Amendment Bill (No.2), 1999

(5) No direction from the Minister to the Director General of Police may have the effect of requiring the non-enforcement of a particular area of law

(6) The Minister must not give directions to the Director General of Police in relation to the following:

- i) enforcement of the criminal law in particular cases and classes of cases**
- ii) matters that relate to an individual or group of individuals**
- iii) decisions on individual members of the police**

(7) If there is dispute between the Minister and the Director General of Police in relation to any direction under this section, the Minister must, as soon as practicable after the dispute arises,

- i) provide that direction to the Director General of Police in writing; and**
- ii) publish a copy in the Gazette; and**
- iii) present a copy to the Legislature**

Section 6.4 – State Policing Plan, Objectives of Policing and Priorities

Section 6.4(1) sets out that the state government's obligations to come up with policing plans and objectives. Strategic plans will go a long way in improving the present system of policing. However the foundation for any plan/sub plan should be the broad policy guidelines that the State Police Board have laid down for the police. Thus we feel that the policing plan should be based on the Director General of Police's report together with the State Police Board's (SPB) policy guidelines and its police performance evaluation report (in accordance with the Board's function under section 6.10). Thus section 6.4(1) should be amended to ensure that any policing plan will keep in mind the policy guidelines laid down by the SPB.

6.4(1) Recommendation

Section 6.4(1) should be amended to read as follows:

“(1) The State Government shall, on the basis of the report of the Director General of Police in this behalf and in accordance with the *policy guidelines and the performance evaluation report* of the State Police Board finalise [...]”

Section 6.5 – Mechanism for performance evaluation of the police

Section 6.5(1) states that the *government* shall evolve and put in place a performance evaluation mechanism however, section 6.10 states that the *State Police Board* shall identify performance indicators to evaluate the functioning of the police as well as evaluate the organisational performance of the police. If the SPB is to identify performance indicators and evaluate organisational performance it would be obvious that they would devise a plan for the monitoring. The two sections thus seem to contradict each other. The Supreme Court directive in the Prakash Singh case stipulates that the evaluation functions should fall under the SPB.

Further, section 6.5(2) declares that there shall be inspections done annually by the Range Deputy Inspector General, and inspections twice a year by a Gazetted officer. While evaluating *organisational performance* should be done by the SPB, the evaluation of *police stations and district wise performance* should be the role of the police department. The Director General of Police should internally come up with a plan of such evaluation.

We therefore recommend that section 6.5 (1) should be deleted in its entirety to ensure conformity in the legislation and that sub-section (2) amended

6.5 Recommendation

Section 6.5 (1) should be deleted in its entirety to be in conformity with the rest of the Draft Act and section 6.5 (2) should be amended to read as follows:

“Mechanism for performance evaluation of the police

The Director General of Police shall issue standing orders for the purpose of ensuring:

- a. **Inspections periodically by the Range Deputy Inspector General of all the Districts in each Range; and**
- b. **Inspections periodically by a Gazetted Officer, including one by the Superintendent or the Additional Superintendent of Police personally, of each Police Station in every district. The standing order shall inter-alia, specify the format of the Inspection, the methodology and the content and shall endeavour to make the inspection an effective instrument for performance evaluation.”**

Section 6.6 – State Police Board

Section 6.6 creates a State Police Board (SPB) as directed by the Supreme Court in the Prakash Singh case. However, the section is silent on the binding powers of the SPB. Past experience has shown that any Board or Commission that has not been given binding powers has not been able to fulfil its mandate. Therefore CHRI makes the following recommendation

6.6 Recommendation

Section 6.6 shall be amended to add the following sentence in the end of the section:

“The recommendations of this Board shall be binding on the State Government”

Section 6.7 – Composition of the Board

Composition

The Supreme Court stipulated that the composition of the SPB must reflect both the government’s ultimate responsibility for the maintenance of law and order, plus the need for independent civilian oversight of the State Police. The Court said that governments could create its SPB based on any of three different models – the Model proposed under the Model Police Act 2006, the National Human Rights Commission or the J.F. Ribeiro Committee. The composition of the SPB in section 6.7(1) resembles the Ribeiro Committee Model, but not in its entirety. The sub-

section stipulates that the Principal Secretary Home should be a member of the SPB instead of a Judge. It further states that one of the three independent members should be a retired Director General of Police. The Supreme Court in Prakash Singh case suggested that any of the three models need to be adopted without any modifications to the composition. The composition ensures a balance of the responsible minister, the leader of the opposition, other elected representatives, experts, and credible members of civil society. These models have been designed to ensure bipartisanship and shield policing from changes in political power by keeping policies more or less constant. Its functions are designed to ensure that the political executive always has ultimate responsibility for providing the public with efficient, honest, unbiased and accountable policing while retaining authority over the police. Tampering with the composition as suggested in these models would only be detrimental to the effective functioning of the body.

6.7(1) Recommendation

Section 6.7(1) should be deleted in its entirety and replaced with the following:

- “(1) The State Police Board shall have as its members:**
- a) The Chief Minister or the Minister in charge of Police**
 - b) The Leader of Opposition**
 - c) The Director General of Police as ex-officio Member-Secretary**
 - d) Judge, sitting or retired nominated by the Chief Justice of the High Court**
 - e) Chief Secretary**
 - f) Three non-political persons of proven reputation for integrity and competence (hereinafter called ‘Independent Members’)**

Further, section 6.7(3) should be amended to be in accordance with sub-section (1).

6.7.(3) Recommendation

Section 6.7(3) should be amended by deleting:

“two independent members”

and replace with:

“three independent members”

Section 6.10 – Functions of the State Police Board

Under section 6.5 CHRI recommended that the section should be deleted to be in conformity with the Draft Act. However the obligation of the government to implement the policy guidelines and performance evaluation system mentioned in section 6.5 still remains and should be included accordingly under section 6.10.

6.10(e) Recommendation

Section 6.10(e) should be amended by inserting the following sentence in the end of the sub-section

“The State Government shall implement a systematic mechanism for the performance evaluation of the Police Service, in the state as a whole and also district wise, in accordance with the State Police Board’s directions”



Section 6.14 – Police Establishment Committees

The Supreme Court directed the states to create Police Establishment Committees (PEC) to counter the prevailing practice of subjective appointments, transfers and promotions. In effect, the PEC brings the crucial service related matters largely under police control. Notably, a trend in international best practices is that government has a role in appointing and managing senior police leadership, but service related matters of other ranks remain internal matters. Experience in India shows that this statutory demarcation is absolutely required in order to decrease corruption and undue patronage, given the prevailing illegitimate political interference in decisions regarding police appointments, transfers and promotions.

In drawing up the directive the Supreme Court has stated that police officers up to the rank of Deputy Superintendent should have their transfers, postings, promotions and service related matters decided by the police leadership, while police officers of and above the rank of Superintendents should have their postings and transfers recommended by the police leadership but finalised by the state government. However this has not been fully adhered to in the West Bengal Draft Act.

Function

Section 6.14(2)(i) only empowers the PEC to decide on postings and transfers but is silent on the issue of promotions and other service related matters. This is concerning since political interference, corruption and undue patronage is just as prevalent in these decisions as in the decisions of postings and transfers. Further, the sub-section 2 (i) states that these decision shall be approved by the state government which is in direct violation of the Supreme Court's order.

6.14(2)(i) Recommendation

Section 6.14(2)(i) should be deleted in its entirety and replaced with the following:

“(i) Approving all posting, transfers, promotions and other service related matters for officers of and below the rank of Deputy Superintendent.”

Section 6.14(2) (iii) empowers the PEC to function as a forum for appeal. Once again the PEC's function has been limited. According to the Supreme Court directive the PEC shall dispose complaints relating to *promotion, transfers, disciplinary proceedings and being subjected to illegal and irregular orders*. However sub-section 2 (iii) only empowers the PEC to dispose of complaints related to promotions and transfers. This is in violation of the Supreme Court order. To maintain the balance of the higher police officers being directly accountable to the state government but at the same time protect them from unwarranted political interference and corruption it is crucial that the PEC can look into all complaints.

6.14(2)(iii) Recommendation

Section 6.14(2)(iii) shall be amended to read as follows:

“The Police Establishment Committee shall also function as a forum of appeal for disposing of representations from police officers of all ranks regarding their promotion, transfers, disciplinary proceedings and being subjected to illegal and irregular orders. The Committee would have powers of generally reviewing [...]”



Chapter VII – Role, Functions, Duties & Responsibilities of the Police

Section 7.1 – The Role and Function of the Police

Section 7.1 provides for the role, functions, duties and responsibilities of the police. It is a fairly exhaustive list but some of the sub-sections need to be strengthened and a few functions need to be added.

Sub-section (3) states that the police shall prevent and control industrial or other strikes. The right to freedom of assembly is a fundamental right under the Constitution. We agree that the right to assembly does not give the right to strike and the same is restricted by appropriate industrial legislation. However it is not the work of the police to prevent such strikes. The police definitely do have the duty to ensure that any such strike does not become violent and that law and order is maintained. We thus suggest that this word should be included in the sub-section to clarify the police responsibility.

7.1(3) Recommendation

Section 7.1(3) should be amended to read as follows:

“(3) Protect internal security and prevent and control terrorist activity, riots, insurgencies, *violent industrial or other violent strikes*, breaches of communal harmony, extremist violence, militant activities and other situations affecting internal security.”

Sub-section (4) is not fully drafted. The section states that the police must protect public property. It is in our view that police must not only protect public property but also private property against vandalism in order to be a fully responsive service.

7.1(4) Recommendation

Section 7.1(4) should be amended to read as follows

“(4) Protect public *and private* properties including roads, railways, bridges, vital installations and establishments etc. against acts of violence or sabotage”

Chapter VIII – Policing in Rural Areas

Section 8.2 – Duties and Responsibilities of the Beat Officer

Section 8.2 enumerates the duties and responsibilities of the beat officer in a rural area. Sub-section (iii) states that the police should keep watch over history-sheeters and persons with “bad character”. The term “bad character” is however not defined in the Draft Act. In order to prevent possible abuse of such surveillance which may interfere with the right to privacy of an individual such surveillance may be permitted only when reasonable materials exist to justify such action.



8.2(iii) Recommendation

Section 8.2 (iii) should be amended as follows:

“8.2 (iii) maintain watch over history-sheeted persons provided that reasonable materials exist to permit such surveillance. A record of such surveillance shall be entered in the general diary.”

Sections 8.4 to 8.13 – Village Police System

Sections 8.4 – 8.13 deal with the village policing system and the appointment of village guards. The criteria of selection and the duties and responsibilities of such village guards appear quite similar to those to be performed by regular constables/beat constables. The benefits of beat policing are well known and it is widely accepted that the beat system needs to be revived for policing to be improved, for crime to be contained and for the public confidence in the police to be strengthened.

Besides this, section 40 of the CrPC outlines the duty of officers employed in connection with affairs of a village. This substantially covers what the village police may be expected to do in terms of containing and reporting crime.

Thus, CHRI strongly recommends that instead of providing for a scheme of village policing, and replicating an already existing system, the beat patrolling in rural areas should be strengthened and accordingly sections 8.4 – 8.13 should be deleted.

8.4 – 8.13 Recommendation

Sections 8.4 – 8.13 should be deleted in its entirety.

Sections 8.14 to 8.21 – Village Defence Parties

There are two traditions of community involvement in maintaining order. One is that of the "community watchmen" or "volunteer watchmen", that patrolled their communities to keep order without taking the law into their hands. The second tradition is that of the "vigilante." The present sections 8.14 – 8.21 in the Draft Act have the potential of turning into the vigilante mode of community involvement in maintaining order where non policeman are likely to take the law into their hands. To prevent such a situation from arising CHRI strongly recommends that these sections be removed from the Draft Act.

8.14 – 8.21 Recommendation

Sections 8.14 – 8.21 should be deleted in its entirety.

Sections 8.22 to 8.23 – Community Liaison Group

CHRI is encouraged that community policing has been addressed in the Draft Act. 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, Ontario, Canada and South Africa. 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, we feel that the Committee should meet at least once every month, as opposed to once every three months as provided in the Draft Act, to ensure that there is a constant two-way communication occurring between the police and the public. This communication is an essential element to building trust and an effective police-public partnership.

Moreover, for community policing to be truly effective, it should be inclusive and allow for maximum participation. The language in the Draft Act suggests that the District Superintendent has the sole power to appoint members of the Citizens' Policing Committees and this is worrying as it can lead to members being chosen who are neither able to adequately articulate 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.

8.22 Recommendation

Section 8.22 – 8.23 should be deleted in its entirety and replaced with the following:

"Community Policing Programme

8.22 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."**

Provided that each Citizen's Policing 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 and members shall serve for a two year term. 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 Citizens' Policing Committee."

8.24 The meetings of these Committees will be convened, at least once every month. The concerned Station House Officer, Circle Inspector, Sub-Divisional Police Officer and Sub-Divisional/Metropolitan Magistrate shall attend the meetings of the Committee."

Chapter IX

Policing in Metropolitan Areas, Major Urban and Other Notified Areas

Section 9.8

Section 9.8 is a section devoted to giving police powers to preserve public peace and safety by prohibiting the carrying of arms, corrosive substances, carrying of stones, playing of music, delivery of harangues etc. In all urban areas other than Kolkata, the only jurisdiction where the Commissionerate system exists at present, these powers must be qualified and shared with the magistracy, as provided for in the CrPC. In Kolkata, the Commissioner of Police, who also functions as the District Magistrate, already has the powers provided for in section 9.8 and this need not be restated in the Draft Act.

Section 144 of the CrPC already deals sufficiently with some of the "public nuisances" that section 9.8 attempts to regulate. Power to regulate these nuisances, as per the CrPC, lie with the District Magistrate, who for reasons of maintaining public safety "can issue a written order to direct any person to abstain from certain act or to take certain order with respect to certain property in his possession or under his management." Section 144 CrPC is more than sufficient to address the concerns of section 9.8(d), 9.8(e) and 9.8(f) that deal with public nuisances. Similarly, section 144A of the CrPC clearly states that the preservation of public peace and public safety is the mandate of the District Magistrate. The District Magistrate can, according to section 144A(1) "prohibit...the carrying of arms in any procession." This addresses the concerns of section 9.8(a), 9.8(b) and 9.8(c) that deal with the carrying of arms and weapons.

Section 9.8 of the Draft Act needlessly undermines sections 144 and 144A of the CrPC by giving excessive powers to the police and should thus be removed.

9.8 Recommendation

Section 9.8 should be deleted in its entirety.

Section 9.10

For the purpose of preventing annoyance, disturbance, discomfort or injury, Section 9.10 of the Draft Act provides for the Commissioner or Superintendent of Police to issue directions to any person for preventing, prohibiting, controlling or regulating music or other operations resulting in noise. As argued with respect to section 9.8, in all urban areas other than Kolkata, the only jurisdiction where the Commissionerate system exists at present, this power must be qualified and

shared with the magistracy, as provided in the CrPC. In Kolkata, the Commissioner of Police, who also functions as the Magistrate, already has the powers provided for in section 9.10 and this need not be restated in the Draft Act.

Section 133 of the CrPC allows a District Magistrate, Subdivisional Magistrate or any other Executive Magistrate to “make a conditional order requiring the person causing such obstruction or nuisance...to remove such obstruction or nuisance”. Additionally, Section 144 of the CrPC clearly states that a District Magistrate, Subdivisional 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 affray.” Section 133 and 144 CrPC adequately addresses the concerns of section 9.10 of the Draft Act and as such, this section should be removed.

9.10 Recommendation

Section 9.10 should be deleted in its entirety.

Section 9.20 – Community participation in policing

CHRI is encouraged that community policing for urban areas has been addressed in the Draft Act. Community Policing is the process which seeks the responsible participation of the citizenry in crime prevention at the level of the local community, conserving the resources, both of the community and of the police, in fighting against crimes which threaten the security of the community. It has gained currency across the world and is becoming the norm in all democratic countries. The key element for successful community policing experiments is to build trust between the police and the public and this is done through ensuring the right composition of the citizen's policing committees, and by having regular meetings attended by both the public and police.

To ensure that this objective is achieved, CHRI recommends that the Draft Act should be modified to adopt language from section 18 of the South African Police Act, 1995 that comprehensively addresses the objectives of community policing.

Moreover, for community policing to be truly effective, it should be inclusive and allow for maximum participation. The language in the Draft Act suggests that the Commissioner of Police shall appoint members of the citizens' policing committees. This process of appointment would not be truly democratic and may result in a committee that is not truly representative of the community it serves. 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.

9.20(1) Recommendation

Section 9.20(1) should be deleted in its entirety and replaced by the following adopted from section 18 of the South African Police Act, 1995:

“9.20(1) The objectives of the Citizens' Policing Committees 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 in urban localities;
- (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."

9.20(1A) Recommendation

A new section 9.20(1A) should be added to read as follows:

"9.20(1A) Each Citizens' Policing Committee shall cover one locality and have seven - ten representatives. Persons wanting to serve in the Group shall submit an application to a Selection Panel constituted for the purpose consisting of the Station House Officer, the concerned Judicial Magistrate and the Superintendent of Police/Commissioner of Police. The Selection Committee shall induct members from the applicant pool in a transparent manner. Members shall serve in citizens' policing committees for a two year term. The Superintendent of Police/Commissioner of Police may nominate one member to function as the convener of the Citizens' Police Committee."

9.20 (1B) Recommendation

A new section 9.20(1B) should be added to read as follows:

"9.20(1B) 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 a Citizens' Policing Committee."

9.20(2) Recommendation

Section 9.2 should be amended to read as follows:

"9.20(2) The police will take the assistance of the Citizens' Policing Committees in identifying the emerging needs and priorities of policing in the area, the needs of the community, the community's perceptions of the police and the community's perception of safety in the area.

9.20 (4) Recommendation

Section 9.20(4) should be amended to read as follows:

"9.20 (4) The meetings of these Committees will be convened, at least once every month. The meetings shall be attended by the concerned Circle Inspector/Assistant Commissioner of Police, officer in charge of the Police Station. An Additional Sub Inspector or an Assistant Sub Inspector from the Police Station may be designated as the Community Relations Officer by the Station House Officer."

Chapter X

Policing in the context of public order & internal security challenges

Sections 10.10 to 10.16 – Creation of Special Security Zones

The Draft Act stipulates that the state government may notify an area as a Special Security Zone (SSZ) if and when an area is threatened by “insurgency, any terrorist or militant activity, or activities of any organized crime group.” In such a Zone, the government may restrict the movement of funds, articles and materials.

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

Creating SSZs would establish new and relatively stable jurisdictions within which a 'heightened' war against terrorism could be waged, neglecting the fluidity, and extraordinary mobility of contemporary terrorist and insurgent groups, and the expanding networks of organised crime. The SSZ concept communicates the notion that a discrete and geographically isolated or concentrated effort is required for the containment of terrorism. Such zones would tend to be defined in terms of intensities of violence, and would exclude areas of substantial consolidation, where the incidence of violence is lower, even though terrorist activities and mobilisation is significant.

The fact, however, is that the problem of terrorism extends far beyond the targets or 'points of delivery' of terrorist acts. SSZs would tend to distort the focus of counter-terrorism and enforcement agencies, and would deepen the already chronic neglect of 'hinterland' areas.

The present chapter is entirely dangerous. It gives too much undefined power to the police and civilian authority without the requisite accountability. By virtue of a single declaration it will take whole chunks of India's geography and make it vulnerable to authorities not subject to the Constitution.

There is sufficient legislation on the books to deal with special situations such as a breakdown of law and order. Police Acts must not impinge on those other regulations. 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 Act should not go beyond this remit to give extraordinary powers to the police or create obligations for the public.

The need for the creation of SSZs would in itself be an indication that regular policing, maintenance of law and order and safety and security in that area has

completely failed. This would also be an indication that there would have been significant deficiencies in the ordinary everyday policing plans of that area.

Section 10.10 allows for the notification of such a declaration to be placed before the legislature within a period of six months. This effectively means that the zone will be out of the purview of legislative oversight for as long as six months.

At section 10.12, the Draft Act places an obligation on the state government to set up within each SSZ a suitable administrative structure to deal with problems of public order and security. What is presently governed by ordinary law is now sought to be controlled by a suitable administrative structure. This would also mean that in regular areas such an administrative structure does not exist which is probably the reason why the security situation has gone out of hand. It would thus be advisable that such an administrative structure is developed within the constitutional framework for the entire state to deal with order and security of the state.

Section 10.16 gives the state government the blanket provision to make rules to “prevent and control the activities of persons or organisations, which *may* have an impact on internal security or public order”. This section when read with section 10.12, which gives the power to the state to create a suitable administrative structure, simply means giving unbridled power to the police without the necessary constitutional checks and balances.

Emergencies of public order and the problems of terrorism, insurgency or militancy in specific areas 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 Act, meant to regulate the police, should be dealing with complex issues of centre-state relations and of control between different government agencies. The overly far reaching provisions and resulting constitutional implications of sections 10.10-10.16 go well beyond the scope of this Draft Act and should, if at all required, be addressed in separate security or emergency legislation by the government. 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.”⁴

10.10-10.16 Recommendation

Sections 10.10- 10.16 should be deleted in their entirety.

Section 10.17 – Special Police Officers

CHRI is concerned that a Superintendent of Police can appoint “any able-bodied and willing person whom he considers fit” as a Special Police Officer to assist the police service in a Special Security Zone. A Special Police Officer appointed under section 10.17 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. This provision would have the effect of creating a vigilante force which at some point the state/police would be unable to control. Setting up such a force would be extra-constitutional.

⁴ *Third Report*, National Police Commission.

Rule 674 of the 1943 West Bengal Police Regulations allows for the appointment of Special Police Officers “only to meet cases of sudden emergency”. The regulation clearly specifies the information that the government must provide before a *Magistrate* passes orders deploying special police officers. One of the questions the government must answer satisfactorily is why the police force ordinarily employed is insufficient. 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.

10.17. Recommendation

Section 10.17 should be deleted in its entirety.

Section 10.18 – Appointment of Additional Police

Employment or appointment of additional police that does not follow the regular process of appointment into the police force should not be encouraged.

10.18. Recommendation

Section 10.18 should be deleted in its entirety.

Section 10.20 – Additional Courts

Section 10.20 of the Draft Act provides for the creation of additional courts within Special Security Zones (SSZs). It seems illogical to make provision for setting up additional courts in a police act. This is completely out of the purview of a Police Act and must be left to be included in any other legislation. The provision also appears to bear similarity to the Disturbed Areas (Special Courts) Act, 1976, an emergency law. As argued above with regard to SSZs, creation of parallel police and court systems within Special Security Zones leaves open the potential for vast abuse of power to occur in the SSZs without constitutional checks and balances. CHRI recommends that this section be removed.

10.20 Recommendation

Section 10.20 should be deleted in its entirety.

Section 10.22 – Special Measures for Maintenance of Public Order and Security of State

Section 10.22 provides for the state government to deploy as many additional police officers as may be deemed necessary in areas of the state it considers to be in a “dangerous or disturbed” condition. The section also provides for the cost of deploying additional police officers in these disturbed areas to be borne by “all persons who are inhabitants of the disturbed area or especially from any particular section or class of such persons...as the state government may direct.” This section parallels Rule 667 of the 1943 West Bengal Police Regulations which provides for all or part of additional police deployed in disturbed areas to be paid by local inhabitants. CHRI is particularly disturbed by this provision; it is the state’s basic responsibility to provide safety and security to persons living in all areas within its jurisdiction, whether “disturbed” or not. Indeed, it has no business to be levying additional charges for this.

For all these reasons, section 10.22 should be removed in its entirety.



10.22 Recommendation

Section 10.22 should be deleted in its entirety.

Chapter XI

Crime Investigation

Sections 11.1 to 11.2 – Investigations by district police

Section 11.1 of the Draft Act provides for the government to “separate the investigating police from the law and order police in such area as *may* be specified in order to ensure speedier investigation, better expertise and improved rapport with the people.”

In its directive, the Supreme Court has stressed that the investigation and law and order functions of the police *must* be separated. Use of the word “*may*” in Section 11.1 indicates that the intent of the government to separate the two wings is weak. The Draft Act leaves absolute uncertainty as to if and when separation will be effected in reality.

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 Act. In practice, West Bengal can implement this provision gradually, beginning with the most crime prone areas and moving on to less crime prone districts.

11.1-11.2 Recommendation

Sections 11.1 and 11.2 should be deleted in their entirety and replaced with the following:

“Investigations by district police

11.1 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 special circumstances with the written permission of the State Police Chief.

11.2 The Director General of Police shall ensure the full co-ordination between the two wings of the police force.”

Section 11.4 – Tenure of officers posted to Special Crime Investigation Units

Section 11.4 allows the Director General of Police to decide the tenure of officers posted to Special Crime Investigation Units. CHRI recommends that instead of leaving tenure to the discretion of the Director General of Police, these officers be



granted a minimum two-year tenure in keeping with the spirit of the Supreme Court judgment.

Additionally, Section 11.4 states that officers will be rotated to law and order and other assignments upon completion of tenure. Shifting officers that have specialised in a particular branch to law and order duties would simply mean a waste of resources and would also involve having to train a new batch of officers every two years. One of the main purpose of having two separate wings of policing was to ensure specialisation of roles. After making a significant investment in terms of resources in training officers in investigative duties, rotating them to law and order assignments is wasteful and counter-productive. CHRI recommends that Section 11.4 be amended to provide for a stable cadre of officers specialising in investigative duties.

11.4 Recommendation

Section 11.4 should be amended to read as follows:

“11.4 Officers posted to Special Crime Investigation Units will normally have a minimum tenure of two years.

Section 11.15 – Tenure of officers posted to the Crime Investigation Department

The argument made above with regard to tenure of officers posted to Special Crime Investigating Units is equally applicable to officers posted to the state level Crime Investigation Department (CID). CHRI recommends that these officers be granted a minimum two-year tenure in keeping with the spirit of the Supreme Court judgment.

11.15 Recommendation

Section 11.15 should be amended to read as follows:

“11.15 Officers posted to the Criminal Investigation Department shall have a minimum tenure of two years.”

Chapter XIV

Police Accountability

Section 14.1 – State Police Complaints Authority

Section 14.1 of the Draft Act confers the powers and mandate of the State Police Complaints Authority with the Lokayukta, West Bengal. This section completely subverts the Supreme Court order. In its judgment, the Apex Court has clearly specified the composition of the Authority to ensure that this institution is able to function as a robust, independent accountability mechanism. In West Bengal, the Lokayukta is a one-man institution created by the West Bengal Lokayukta Act for investigation into complaints by citizens against public functionaries alleging corrupt practice and non-exercise of their power. Considering that this in itself is a very wide mandate it is difficult to see the same Lokayukta as an institution doing justice to the mandate of the Complaints Authority.



CHRI recommends that this section be amended to ensure that an independent and separate Authority be set up which is able to function as an institution solely devoted to looking into cases of police misconduct.

14.1 Recommendation

Section 14.1 should be deleted in its entirety and replaced with the following:

“14.1 (a) The State Government shall establish a State Police Complaints Authority to look into allegations of serious misconduct against officers of the rank of Superintendent of Police and above.

14.1 (b) The Authority shall be headed by a retired judge appointed by the State Government from a panel of names proposed by the Chief Justice of the Calcutta High Court.

14.1 (c) The Authority shall have three additional members appointed by the State Government from a panel of names proposed by the West Bengal Public Service Commission. The panel may include members from amongst, retired police officers or members of civil society. At least one member should be an independent member from civil society who has long standing experience and repute in the field of human rights, criminal law or gender rights.”

Section 14.2 – Functions of State Police Complaints Authority

Section 14.2(a) states that the State Police Complaints Authority shall inquire into complaints received from a victim or any person on his behalf on a *sworn affidavit*. This is a needless requirement that will put an unnecessary burden on potential complainants. This provision is very likely to discourage persons from coming to the Authority and should thus be removed from the Draft Act.

14.2(a) Recommendation

This section should be amended by deleting the words “on a sworn affidavit”.

Section 14.2A – District Police Complaints Authorities

The Supreme Court directive expressly stated that Police Complaint Authorities should be set up at both the state level *and* at the district level. The idea was to make these Authorities as accessible as possible to the general public. West Bengal has 18 districts and it is unlikely that persons in far flung districts would travel to the state capital, Kolkata, to attend hearings. The Draft Act should therefore set up Authorities at every district and bring West Bengal in full compliance with the Apex Court directive.

14.2A Recommendation

A new section 14.2A should be added to read as follows:

“14.2A District Police Complaints Authority



(1) The State Government shall establish District Police Complaints Authorities in every district to look into complaints against police officers of and up to the rank of Deputy Superintendent of the Police.

(2) The District Police Complaints Authorities shall consist of three members; the chair shall be a retired District Judge appointed by the State Government from a panel of names proposed by the Chief Justice of the Calcutta High Court. Two additional independent members shall be appointed by the State Government from a panel of names proposed by the West Bengal Public Service Commission. The panel may include members from amongst, retired police officers or members of civil society. At least one member should be an independent member from civil society who has long standing experience and repute in the field of human rights, criminal law or gender rights.

(3) The District Police Complaints Authorities shall, in addition to inquiring into complaints of serious misconduct as defined in section 14.2, also look into allegations of extortion, land/house grabbing, non-registration of a First Information Report or any incident involving serious abuse of authority."

Section 14.3 – Powers of the State Police Complaints Authority

Section 14.3 should be amended to reflect the presence of separate Authorities at the state and district level.

14.3 Recommendations

The title of Section 14.3 should be amended to read as:

"14.3 Powers of the State Police Complaints Authority and District Police Complaints Authorities"

Additionally, "the Authority" should be deleted and replaced by "the State Police Complaints Authority and the District Police Complaint Authorities"

Section 14.4 – Decisions and directions of Authorities

The Supreme Court judgment unequivocally states that "the recommendations of the Complaints Authority...for any action, departmental or criminal, against the delinquent police officer shall be binding on the concerned authority." Section 14.4 does not specify whether the directions of the Authorities are binding or not. It merely states that the state government shall "*consider* the findings and recommendations of the Authority and take *appropriate* action."

CHRI recommends that this section be amended to ensure that the Authorities are given the 'teeth' they require to function as an effective redressal mechanism for victims of police misconduct. In cases of misconduct the Authorities should have the power to initiate a disciplinary/departmental inquiry and where an

offence/serious misconduct has been made out, the Authorities should have the power to order the registration of a First Information Report (FIR).

14.4 Recommendation

Section 14.4 should be amended to read as follows:

“14.4 (a) In the cases directly inquired by the Authorities, they may, upon completion of the inquiry, communicate their findings to the appropriate authority with a direction to:

- (i) register a First Information Report where an offence is made out; and/or**
- (ii) initiate disciplinary/departmental action in cases of misconduct**

(b) Such directions of the State Police Complaints Authority or District Police Complaints Authorities shall be binding on the appropriate authority.”

(c) the Authorities shall monitor the status of departmental inquiries on the complaints of “misconduct” against the Police through a quarterly report obtained periodically from the Director General of Police of the State, and issue appropriate advice to the police department for expeditious completion of inquiry, if in the Authorities’ opinion the department inquiry or department action is getting unduly delayed in any such case.”

Section 14.7(3) – Interference with the functioning of the State Police Complaints Authority

Most people view the police as a fairly powerful body and, even if they are a victim of police abuse, would hesitate to complain against the concerned police officer. The ones that complain would do so after gathering much courage. To put in a severe penalty clause for vexatious complaints would only further demotivate a person from approaching the Authority for justice. CHRI recommends that this sub-section be removed.

14.7(3) Recommendation

Section 14.7(3) should be deleted in its entirety.

Section 14.8 – Staff of the Authorities

CHRI’s experience in monitoring police complaints authorities across India has shown that many of the new authorities are unable to fulfil their mandate effectively due to a lack of staff and facilities. The Supreme Court directive explicitly provided for the Authorities to have regular staff to conduct field inquiries. CHRI recommends that a provision for the Authorities to have adequate staff and facilities be inserted into the Draft Act to ensure that the effectiveness of newly created Authorities is not undermined.

14.8 Recommendation

A new section 14.8 should be added to read as follows:

“14.8 Staff of the Authorities



- (1) Members of the Authorities shall be assisted by adequate staff with requisite skills, for efficient discharge of their functions.
- (2) The staff shall be selected by the Authorities, inter alia, on a contractual basis, through a transparent process.
- (3) For the purpose of conducting field inquiries, the Authorities shall utilize the services of retired investigators from the CID, Intelligence, Vigilance or any other organisation.
- (4) In addition, the Government shall, in consultation with the Authorities, provide all necessary facilities and infrastructure for their proper functioning."

Section 14.9 – Funding

Besides providing authorities with inadequate staff, one of the surest ways that state governments have crippled nascent police complaints authorities across India has been for them to dry up the funding for these Authorities. To avoid the possibility of this occurring in West Bengal, CHRI recommends that a specific section on funding be inserted in the Draft Act to ensure that the Authorities are provided with sufficient funds to fulfil their mandates effectively.

14.9 Recommendation

A new section 14.9 should be added to read as follows:

"14.9 Funding

The State Government shall ensure that adequate funds are provided to the State Police Complaints Authority and District Police Complaints Authorities for their effective functioning."

Section 14B.2 – Performance Audit/Surveys

As argued earlier with regard to section 6.5, evaluation of the state police is a function that has been designated to the *State Police Board* in the Supreme Court directive in the Prakash Singh case. The usual procedure with regard to evaluation of the police is for the Director General of Police to receive performance reports from the district Superintendents of Police and compile these into an overall annual performance report that he/she subsequently submits to the state government. With the creation of the State Police Board, however, this new institution now plays an important role in the performance evaluation process. The State Police Board is mandated to use the Director General of Police's report to formulate its recommendations to improve police performance. Section 14B.2 should therefore be amended to reflect the role of the Board in this process.

14B.2 Recommendation

Section 14B.2 should be amended to read as follows:

"14B.2 Performance Audit/Surveys

(1) The Director General of Police shall arrange to conduct an annual performance audit of the police functioning, studying various aspects of police performance. District Superintendents of Police shall submit annual performance audits of the police functioning under their jurisdiction to the Director General of Police. He shall further arrange to conduct various kinds of surveys including public opinion

surveys and place this information before the State Police Board.

(2) The State Police Board shall use the information obtained to carry out its annual evaluation of the police service and make recommendations to improve the quality of policing or on assessing policing requirements to the State Government as per section 6.10(e) of this Act."

Section 14B.3 – Protection of action taken in good faith

The Draft Act retains an omnibus exemption clause, at section 14B.3, which gives immunity from prosecution to the state government, state police board, state police complaints authority, its members, investigators, staff or any person acting under their direction for any action taken in "good faith". The government can cloak any mishandling of police affairs under the guise of the undefined notion of "good faith", and thereby immunize the police complaints authority, state police board and state government from the very type of accountability the Apex Court decision is meant to bring about. Immunity provisions under section 197 CrPC itself are under much debate and there have been several recommendations from different groups and the Law Commission in its 152nd report to modify this clause. To include such similar provision in the Draft Act will only further reinforce the belief that the police will always remain unaccountable to the law.

14B.3 Recommendation

Section 14B.3 should be deleted in its entirety.

Chapter XVI

General Offences, Penalties and Responsibilities

Section 16.2 – Assemblies and processions violating prescribed conditions

This is yet another section giving police - specifically the District Superintendent of Police/Commissioner of Police or any Sub-Inspector authorized by the Superintendent of Police, the power to stop any assembly or procession that violates certain conditions. As argued earlier, this contravenes the 1943 Bengal Police Regulations, which clearly state, at regulation 134 that "if a police officer considers that an assembly or procession should be prohibited, he should *move the appropriate Magistrate* to issue an order under section 144 of the Code of Criminal Procedure. No Police officer as such has power to prohibit it." Section 144 of the CrPC more than sufficiently addresses the concerns raised by section 16.2. Powers bestowed to the magistracy in the CrPC, such as issuing an order to regulate assemblies, should stay with the magistracy. As such, section 16.2, which undermines the CrPC, should be removed.

16.2 Recommendation

Section 16.2 should be deleted in its entirety.



Section 16.3 – Regulation of the use of music and other sound systems in public places

This section closely resembles section 9.10. The Draft Act grants wide powers to the District Superintendent of Police/ Commissioner of Police and officers above the rank of Deputy Superintendent of Police or Assistant Commissioner of Police to regulate the time and volume at which music and sound systems are used in streets and public places. CHRI strongly believes that this power must be qualified and shared with the magistracy, as provided in the CrPC. Section 144 of the CrPC clearly states that a District Magistrate, Subdivisional 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 or 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 affray.” Section 144 CrPC adequately addresses the concerns of section 16.3 of the Draft Act and as such, this section should be deleted from the Draft Act.

16.3 Recommendation

Section 16.3 should be deleted in its entirety.

Section 16.12 – Arrest, search, seizure and violence

Illegal arrest, search, seizure and detention are some of the common malpractices of the police. Section 16.12 goes on to deal with these malpractices and lists them down as offences with the corresponding penal provision. It is encouraging to find these provisions in the Draft Act as points towards a recognition that such illegal practice is frequent and that there is an initiative to address the problem.

However, the attempt is half hearted. In almost all cases, offences listed under this section are already offences under the Indian Penal Code (IPC). This section does not go far enough in providing a strong deterrent.

Illegal arrest, search or seizure are equivalent to the offence of *wrongful confinement* (sections 341-348 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.

A glaring example of the inconsistencies between this section of the Draft Act and the IPC is highlighted by the punishment for torture and unlawful personal violence – merely one year imprisonment and a fine is provided for in the Draft Act. This is in stark contrast to sections 325-327 and 330-331 of the IPC, which provide for a punishment of seven to ten years and a fine for these heinous offences. In light of frequent reports of police brutality throughout the country and the inability to bring such officers to book, there needs to be strong deterrents for officers committing such offences.

If this section should remain in the Draft Act it must be significantly amended to ensure that there is harmony between the Act and the Code.

16.12 Recommendation

Section 16.12 should be deleted in its entirety and replaced with a new Section 16.12 that reads as follows:



"16.12 Arrest, search, seizure and violence

Whoever, being a police officer:

- 1. a) illegally or without reasonable cause enters or searches, or causes to be entered or searched, any building, vessel, tent or place;**
- b) illegally or without reasonable cause detains, searches, or arrests a person;**
shall, on conviction be punishable with imprisonment for a term not extending one year and shall also be liable to a fine

- 2. (a) illegally or without reasonable cause seizes the property of any person;**
(b) 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 imprisonment for a term not extending three years and shall also be liable to a fine

- 3. subjects any person in her/his custody or with whom he may come into contact in the course of duty, to torture or to any kind of inhuman or unlawful personal violence or gross misbehaviour;**
shall, on conviction, be punished with imprisonment for a term of 7 years to ten years and shall also be liable to a fine."

Section 16.15 – Prosecution of police officers

Section 16.15 of the Draft Act provides that "no court shall take cognizance of any offence under the Act when the accused person is a police officer except on a report in writing of the facts constituting the offence or with the previous sanction of the state government."

Section 16.15 of the Draft Act resembles section 197 of the CrPC, which prohibits prosecution of judges and public servants without the prior sanction of the government under which they are serving. Section 197 also puts in the clause that sanction is required for only those acts which may have been committed while acting or purporting to act in the discharge of official duty. Section 16.15 of the Draft Act does not include that portion of section 197. It gives a blanket protection from prosecution for any offence under the Act.

There are enough difficulties in the way of a successful prosecution of public servants and there does not seem to be a need to add to the difficulties by allowing a provision acting as a bar to prosecution. The Law Commission of India, in its 152nd report confirmed that attempts were being made to seek shelter under section 197. The Commission and several Supreme Court judgements have stressed that protection provided under section 197 CrPC is not available when official duty is merely a cloak for doing the objectionable act. There must be a direct and reasonable nexus between the offence committed and the discharge of

the official duty. Despite this it is exceedingly difficult to bring an errant official to book.

Considering that section 197 CrPC gives sufficient protection to all public servants, a similar provision in the Draft Act need not be added.

16.15. Recommendation

Section 16.15 should be deleted in its entirety.

Chapter XVII

Miscellaneous

Section 17.10 – Power to make rules

Section 17.10 is vaguely drafted. The word “may” indicates a lack of intent, especially when one considers that rules have to be framed to operationalise the Draft Act. This section should be amended to ensure that the provisions of the Draft Act are rapidly implemented by the government upon the Act coming into force.

17.10 Recommendation

Section 17.10 should be amended to read as follows:

“17.10 The Government shall make rules for carrying out the purposes of this Act.”

DRAFTED BY

Commonwealth Human Rights Initiative

New Delhi

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