DRAFT DELHI POLICE BILL, 2011

CRITIQUE AND RECOMMENDATIONS FOR AMENDMENTS

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

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(Throughout this note we have used the words *'MHA Draft'* to refer to the Draft Delhi Police Bill, 2010 and which was put up on the MHA website and the words *'Police Draft'* to refer to the Draft Delhi Police Bill, 2011 prepared after internal consultations with the police.)

INTRODUCTION

ISSUE OF LEAVING IT TO THE RULES

At the outset we would like to point out that in several places in the legislation the skeleton of a new mechanism such as the Security Commission, Police Establishment Board or Police Complaints Authority has been sketched out while the major content left unresolved with a reference that this will be decided in the rules. We find this a pernicious practice. The mother Act has to be passed by both houses after debate and often after probable reference to a Select Committee. Everything in it is transparent and well known to the public. Rules on the other hand are drafted and the Act becomes operational immediately. They are affirmed into law automatically after 30 days of being tabled in Parliament. Being detailed, technical and lengthy they are all too frequently not amenable to careful scrutiny and pass routinely without much deliberation or examination. The best intentions of the mother Act can be undercut and subverted by the rules. Of course there is the Committee on subordinate legislation that rules can be referred to and there are procedures for raising objections. However, much that forms the crux of the way in which a law will work itself out lies in the rules. We strongly recommend that the mother statute retain the detailing in the MHA Draft and Model Police Act versions and not rely on 'rule making'. This will avoid any danger of dilution and ambiguities to a law which has been deeply thought out by the governments own appointed committees and its directions clearly stipulated by the Court.

IN RELATION TO THE SUPREME COURT'S DIRECTIVES IN PRAKASH SINGH

SECURITY COMMISSION [CLAUSE 25]

As per the *'Police Draft' t*he Security Commission will be set up within six months of the Act coming into force. The composition and selection process of members of the Commission is not laid down in the Draft. Instead it states that *the terms and conditions and composition of the Commission shall be as prescribed by rules.*

The MHA Draft has the composition and selection process clearly laid down and we cannot understand why it should now be omitted. We believe the rules are not the place for deciding such seminal matters as the terms of reference and composition. These matters go to shaping the strength and utility of the Security Commission. To retain their validity they need to have statutory sanction. To relegate the selection process and criteria for membership to rules is to diminish the status and functioning of the Security Commission and create an impermanence and opacity that will prejudice the credibility that is vitally important for the status and functioning of this body.

We note that the functions of the Commission in the Police Draft are as laid down by

the Supreme Court. However there is no requirement in it for the Commission to come up with an annual report or to place that before the Parliament. The annual report of the Security Commission is intended to over-view the performance of the police and give guidance for improved functioning. It is important to do this year on year to see that there is constant improvement in policy, procedures and performance. The existence of an annual report also indicates that the Security Commission is doing its job at the behest of the political executive in accordance with the mandate given to it and in the public interest. The absence of an annual report to Parliament deprives Parliament of an instrument of oversight to representatives of the public.

This omission of any kind of clarity on the role and performance of the Commission is deliberately designed to completely weaken its relevance. It is our view that there is no point in creating statutory bodies which are enfeebled at the outset by their design and mandate and regularly turn into sinecures supported by taxpayers' money but have no effect on the contexts they are set up to serve.

We Recommend

As regards police services under the command of the Centre, the Court did not make a distinction between Union Territories, nor specifically lay down a composition. The composition of the Commission as specified in the Model Police Bill was suited to states. However there are certain imperatives that the Court and Model Police Bill set out. These are intended to assure that the deficiencies and delinquencies of police functioning of the day are eliminated while oversight and functioning are strengthened.

We have in our submission to the Ministry dated 18th October (submission appended) suggested the composition for the Commission. We urge that this composition be adopted. For convenience we insert the composition as below. For the remaining functions and requirements of the Security Commission we urge that the wording as used in the Model Police Act at Clauses 44-50 be retained.

25. Composition of the Security Commission

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

- ***(a) Administrator as its Chairperson;***
- ***(b) Minister in charge of Home department in the government of Delhi***
- ***(c) The leader of the opposition in the government of Delhi;***
- ***(d) A retired High Court Judge, nominated by the Chief Justice of the Delhi High Court;***
- ***(e) The Chief Secretary of Delhi;***
- ***(f) The Commissioner of Police as its member-secretary; and***
- ***(g) Five non-political persons of proven reputation for integrity and competence (hereinafter referred to as "independent members") including no more than one each from the fields of academia, law, public administration, media and NGOs, to be appointed on the recommendation of the Selection Panel constituted under Section 36.***

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

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

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

26. Composition of the panel for selection of Independent Members of the Security Commission who shall be appointed on the recommendation of a Selection Panel, which shall consist of:
(a) a retired Chief Justice of Delhi High Court as its Chairperson, to be nominated by the Chief Justice of the High Court;
(b) a person nominated by the Chairperson of the National Human Rights Commission; and
(c) a person nominated by the Chairperson of the Union Public Service Commission.

SELECTION, TENURE AND REMOVAL OF THE DGP [CLAUSE 6]

According to the '*Police Draft*' the Commissioner is to be appointed by the Administrator, in consultation with the Central government. The role of the Union Public Service Commission (UPSC) has been left out. The criteria for selection have also been left out.

The Commissioner will have a minimum tenure of two years but *subject to superannuation*. The Court in its directive was clear that the two year tenure would be irrespective of the retirement age. The idea of assuring a minimum two year term is to create a time period in which the senior most officer can do his job well; have enough time to put in place systems; and also allow a duration within which to ensure planned succession and continuity that will not jar the establishment. Tenures subject to frequent change due to superannuation do not allow this to happen and defeat the purpose of laying down a specific tenure in the first place.

The process of choosing from a panel created out of publicly known criteria in no way impinges on the powers of the appointing authority to select the best man for the job. At the last hearing in the Prakash Singh matter the Supreme Court has dismissed objections to this as being nugatory and unsustainable. Ensuring empanelment and criteria against which the choice of top police personnel can be judged removes any perception that the police chief serves at the pleasure of unfettered political whim and is therefore inclined to be subservient and act in biased ways inimical to good policing.

The rationale behind having the UPSC provide the political executive with a panel based on seniority and merit is intended to ensure a process which is patently at arm's length from appointments based on political expediency, favouritism and privately held prejudice. An arm's length process will give the police chief enormous credibility, enhanced authority over his force and increase overall public confidence. Choice from a panel based on publicly known criteria which includes seniority, professional merit

and integrity is fair to the cadre its chief will lead as well.

Retaining the present way of doing things while slightly changing the optics is a device to give legal sanction to the present unsatisfactory way of selecting the Chief of Police through private negotiations and retaining what are seen as cozy relationships between police and politicians. It is an opaque process that excludes public knowledge of how decisions are arrived at. The process suggested in the Police Draft improves nothing and is contrary to the spirit of the Court's directions and also contrary to the notion of greater public transparency which the country is striving to achieve. It also goes against every recommendation of every body that has looked into police reforms over the past so many decades.

We Recommend

The Model Police Act clearly lays down the selection process and term of office of the Chief of Police at Clause 6. We recommend that the same scheme be followed in the present Draft.

POLICE ESTABLISHMENT BOARD - CLAUSE 29

The *'Police Draft'* mandates the Administrator to set up a Police Establishment Board and as many Police Establishment Committees *as necessary*. The composition of the Board or Committees is not laid down in the said Draft but will be *as per rules prescribed*.

The functions of the Board or Committee mentioned in the *'Police Draft'* are nowhere in line with what the Court prescribed. The Supreme Court had made clear five years ago that Police Establishment Boards consisting of four senior most officers with the mandate to decide transfers, postings, promotions and other service related matters of police officers of and below the rank of Deputy Superintendent of Police and make recommendations on postings and transfers above the rank of Deputy Superintendent of Police were to be set up immediately in obedience to its directions.

In the form suggested in the *'Police Draft'* the Board's sole function is to decide the transfers and postings of all officers up to the rank of the Assistant Commissioner of Police and *"to recommend to the Administrator suitable names for posting to all the positions in the ranks of Additional Deputy Commissioner of Police and above".*

Once again the wording puts in statutory form the very practice of the present which the law is ostensibly designed to change. The Police Draft makes it clear that a) there is no real obligation to set up these Boards; b) there is no indication of where the authority to do this lies; c) its authority is limited to making "recommendations" of "suitable" names without ever mentioning the criteria that needs to be adhered to when recommending these names; and d) there is nothing to indicate that the political executive must accept these recommendations. Nor is there anything in the Police Draft to say what would happen if the political executive disagrees with the recommendations of the Board or refuses to accept them. There is no requirement that if recommendations are turned down then reasons in writing must be given and who is the final authority to make alternative appointments to the post in contention.

The Police Establishment Board as envisioned in the Model Police Act and by the Supreme Court and other recommendatory commissions that have deliberated on the question is intended to return the day to day management (and hence fix

responsibility) of the police establishment back into the hands of the police and exclude any space for unwarranted influence of the political executive in relation to transfers and postings. This is in keeping with the philosophy that all responsibility for delivering good policing must lie with the Chief of Police and his chosen team while the political executive has the responsibility for laying down policy and provisioning the police with sufficient resources to carry out its functions. It is understood across all management theories and good practice that it is the responsibility of the Chief Executive to decide his team. It is understood that at that level of seniority and experience the police establishment has the judgement and professional acumen to position police officers according to their experience and ensure the most suitable person for a particular job. The political executive may have a residuary power to question certain decisions or seek clarifications but only in the rarest cases and where it disagrees, any power to overrule the police chief must be bound by the need to give cogent reasons in writing.

In this spirit the MHA's Draft Delhi Police Bill, 2010 had a fulsome section (at clause 66) detailing the composition, mandate and processes of the Police Establishment Board. We do not understand why this should be relegated to the rules which again create opacity of functioning and impermanence.

Clarity in the law itself about the way the Board is supposed to work and transparency in its actual working will help to remove much of the sullen discontent and jockeying that is present in today's policing. Obvious fairness in hearing internal complaints and processing career advancement for police officers will also reduce the frequent litigation, recourse to tribunals and provide individual officers with the space to function much more according to their legal mandates and less in fear of private reprisal from supervisory categories.

We Recommend

The Model Police Act at **Clause 53** and the **MHA Draft at Clause 44** clearly laid down the exact requirements of the Police Establishment Board. We recommend that this clause be retained in the present Draft.

POLICE COMPLAINTS AUTHORITY – CLAUSES 86, 87, 88

The *'Police Draft'* requires the setting up of one or more Police Complaints Authorities within three months of the Act coming into force. However there is no mention of whether these Authorities will be at the state level or range level or district level.

The Draft once again does not lay down the composition of the Authority. It merely states that the Authority will consist of a Chairperson, Members and such other staff *as prescribed*.

Additionally there is a requirement that all complaints made to the Authority against police personnel for serious misconduct will be supported by sworn statements. We do not see any reason for an authority that is set up explicitly to provide the public with easy access in the case of complaints against the police to have a higher entry threshold than if an FIR was being lodged against the police. We see the presence of sworn statements as a clog on citizen's quick recourse. The tendency to formalize processes against a powerful state adversary is manifestly unjust.

The definition of serious misconduct (laid down both by the Supreme Court and in the

Model Police Bill) has been watered down. We take serious objection to these attempts to absolve the police of accountability. The definition fails to include *arrest or detention without due process of law* and *failure to register FIRs* as falling under the category of serious misconduct. Illegal arrest and detention and non- registration of FIRs remain the commonest illegalities and mischief of policing. These derelictions have been repeatedly condemned by courts, commissions and public complaints. We see these illegalities growing every day and yet in defiance of all authoritative recommendations and public dissatisfaction this draft seeks to omit them from the definition of serious misconduct. We cannot but condemn such an attempt to avail of the opportunity to put right the most obvious ills that plague the public at the hands of the police and indeed to shield the police from minimum accountability for what is very common malpractice.

Since there is no mention of district or range level Authorities it is obviously unclear how other matters falling outside of the definition of '*serious misconduct'* will be inquired into.

The Draft is silent on the nature of powers of the Authority. It also does not state what powers the Authority actually has in case it decides upon the guilt of a police officer. (As per the Court directive and the Model Police Act the Authority can either order the registration of an FIR or order a departmental inquiry)

There is no requirement for the Authority to prepare an annual report that would be laid before Parliament.

Finally the Draft disallows the Authority from inquiring into any matter that is pending before any court of law or any other statutory authority like National Human Rights Commission, State Human Rights Commission. This is contrary to what the Court directive or Model Police Bill stipulates.

Where matters of 'serious misconduct' are concerned we see no difficulty in allowing for concurrent jurisdictions lying with multiple oversight bodies. Each may be triggered by the same set of facts but each leads to separate remedies and protections as well as consequences for the accused. Given the magnitude and manifestations of police malpractice, the power it wields, its potential for abuse, and the depths of public dissatisfaction, we believe that police complaint authorities must exist at state and local levels and provide easy access to complainants.

We Recommend

The Model Police Act as well as CHRI October 2010 submission lays down the exact requirements, functions, mandates and powers of state and district level complaint bodies **(refer Chapter XIII Clauses 158 – 180).** We recommend that the formulation be retained and that district level authorities may be replaced by range level authorities.

OTHER PROVISIONS

DEFINITIONS – CLAUSE 2

The definitions of hoax calls, insurgency, militant activity, organised crime and terrorist activity as modified by the drafters for the purposes of policing have been retained in the present '*Police Draft*'. This despite the fact that these definitions are contained in legislations specifically meant to tackle with these issues. Including modified definitions

in this Draft will only create legal ambiguities but also allow for the likelihood of multiple prosecutions for the same offence.

We have earlier pointed out that police legislation must concern itself with issues relating to police oversight, establishment, and accountability and not take back door opportunities to expand the public's criminal liability. We do not believe this is justified and continue to strongly protest this use of the law making process.

We Recommend
These definitions are contained in other legislations and thus its best to remove these definitions from a Police Act and reliance be placed on existing legislations to deal with the such situations.

SPECIAL POLICE OFFICERS - CLAUSE 23
The *'Police Draft'* retains the provision of SPOs who will be appointed at ***any time.*** There are no specific circumstances laid down to explain when and why such officers will be appointed. However most disturbing is the fact that these SPOs will have the same privileges and immunities as police officers without any mention of their accountability.

We refer you to our note on the MHA Draft where we had elaborated there on the dangers of allowing unfettered powers to appoint special police officers. We have suggested that the power to appoint special police officers must be limited to specified circumstances. Given the experience with ad hoc, widespread and unsupervised appointment of special police officers in states like Chattisgarh we also say that the supervision of such persons must be carefully spelled out and accountability fixed for any wrong doing on their part.

We Recommend
In Delhi the presence of home guards and the ready availability of auxiliary and paramilitary units make the inclusion of this clause unnecessary. We therefore recommend the deletion of this clause from the *'Police Draft*'.

SUPERINTENDENCE OF STATE POLICE TO VEST IN THE ADMINISTRATOR - CLAUSE 24
Clause 24 of the *'Police Draft'* vests the responsibility to ensure "an efficient, effective, responsive and accountable police service for the state" in the Administrator. Sub clause 2 seeks to ensure that the superintendence over the police is exerted by the Administrator in a manner that allows the police to perform its tasks professionally and with the required level of operational autonomy.

However we would point out that sub clause 2 is still too general to cure the mischief it seeks to address. We have repeatedly stressed the importance of explicitly defining the role, powers, responsibilities and functions of the Administrator. We believe that this goes to the heart of any reform agenda. We have provided wording and explained in all of our submissions the need for demarcating each authority's role with utmost care. We have urged that the legislation itself should define the areas where the political executive can and should intervene in policing matters and also indicate the areas for which the Police Chief will be held responsible. It is only through a clear expression of the dual roles of *executive superintendence and police administration* that the operational responsibility and accountability of police can be assured, without

sacrificing the important function of legitimate political oversight and supervision.

We find the omission of these clarifying provisions to be a seminal omission which defies explanation when every Commission and Committee looking into what ails policing has pointed out the need to define what amounts to supervision and control of the police and the need to carve out spheres of responsibility between the political executive and the police establishment. In the absence of this provision we feel that the exercise of creating a new statute for policing will be an exercise in futility. We have in all our submissions provided wording to address the issue and disappointed that it has been ignored each time indicating for sure that there is little seriousness in addressing the concern.

We Recommend

To address the mischief, we had in our earlier submission to the Ministry dated 18th October 2010 recommended the insertion of the following four sub-clauses to Clause 24. We include them once again for ease of reference with the hope that sufficient attention is paid to these recommendations.

> ***"(3) The Administrator may give the Commissioner of Police directions on matters of government policy that relate to:***
> ***i) the prevention of crime;***
> ***ii) the maintenance of public safety and public order;***
> ***iii) the delivery of police service; and***
> ***iv) general areas of law enforcement.***
>
> ***(4) No direction from the Administrator to the Commissioner of Police may have the effect of requiring the non-enforcement of a particular area of law***
>
> ***(5) The Administrator must not give directions to the Commissioner of Police in relation to the following:***
> ***i) enforcement of the criminal law in particular cases and classes of cases***
> ***ii) matters that relate to an individual or group of individuals***
> ***iii) decisions on individual members of the police***
>
> ***(6) If there is dispute between the Administrator and the Commissioner of Police in relation to any direction under this section, the Administrator must, as soon as practicable after the dispute arises,***
> ***i) provide that direction to the Commissioner of Police in writing; and***
> ***ii) publish a copy in the Gazette; and***
> ***iii) present a copy to the Legislature***

POWERS AND RESPONSIBILITIES OF THE COMMISSIONER OF POLICE - CLAUSE 28

The powers and responsibilities of the Commissioner as laid down in the *'Police Draft'* remain vague at best. The only power the Police Draft seems to bestow upon the Commissioner is the operationalisation of the policies, the Annual Plan and the administration, control and supervision of the Police Service to ensure its efficiency, effectiveness, responsiveness and accountability.

Tasked with operationalising the Annual Plan the *'Police Draft*' Bill does not mention who is to draw up this Annual Plan, what it would contain, what its purpose would be nor how it will be evaluated in relation to the ability of the police chief to fulfill it.

We Recommend

We encourage that the Clause be further elaborated upon to define in detail the role of the Chief of Police as well as the precise contours of the police-executive relationship. This clear delineation within police legislation itself is crucial so that both the police and the Administrator have a clear understanding of the limits of their respective jurisdiction.

We draw attention to our earlier submission dated 18th October 2010 wherein we had suggested wording that sought to remedy the mischief. We replicate it below once again.

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

REGULATION OF PUBLIC ASSEMBLIES AND PROCESSIONS - CLAUSE 41

In violation of the fundamental rights as guaranteed by the Constitution the *'Police Draft'* takes away the right of citizens to organize processions and rallies. Organizers of such events will now be required to seek written permission from the police to hold any rally or procession. The police are expected to give a decision on such request within five working days of the receipt of the complaint. This clearly indicates that permission for such events needs to be taken much in advance.

Additionally the police may refuse to grant such permission on the undefined grounds of public interest. This refusal may be either oral or in writing. In the case of oral permissions and refusals, in the absence of any written record of the transaction one can imagine the leeway for ex post facto manipulations on all sides and the ensuing contention and politicization of every issue – whether permissions have been granted or refused.

We Recommend
Whilst we do appreciate that the police hold the important task of maintaining law and order and preservation of peace and public safety, this however cannot come at the expense of curbing rights and liberties.

REMOVAL OF PERSONS ABOUT TO COMMIT OFFENCES - CLAUSE 61
The *'Police Draft'* retains the provision that empowers the Commissioner of Police to remove certain persons from within the territory of Delhi if he is a danger to society or is a habitual offender.

We in our earlier submission have explained the dangers of such provisions as well as their very retrograde nature. Whist we recognise the fact that it is necessary to have clauses in the Draft Bill that enable the police to maintain law and order and likewise it is acceptable that habitual offenders and history-sheeters who on well founded facts are frequently seen in circumstances very proximate to violence or property damage should have their activities curbed by being bound over to keep the peace, we do not think that these powers vested with the police should come with reduced checks. There are already well founded concerns that the powers with the checks are frequently abused. In such a scenario we therefore see no reason why the powers already provided to the executive magistrate should be broadened merely because the powers are now transferred to the Police Chief under the Commissionerate system.

Additionally and importantly the explanation given for a *'habitual offender'* under the Draft Bill seeks to remove the normal protections afforded to the public against arbitrary police action. The explanation is at considerable variance with the usual definitions "of habitual offender" who is a person convicted several times over a long period of time for acts that disturb the peace.

We Recommend
The treatment of habitual offenders is provided for in the Code of Criminal Procedure. We thus recommend that the clause be deleted from the *'Police Draft'* and provisions in the Code of Criminal Procedure and other similar acts be relied upon to deal with these situations as they do at present.

TAKING MEASUREMENTS AND PHOTOGRAPHS OF PERSONS - CLAUSE 69
The clause gives power to the police to take *measurements* and *photographs* of a person violating police orders. Such provisions interfere with fundamental rights as guaranteed by the Constitution. Besides provisions with safeguards to this effect are available in the Code of Criminal Procedure.

We Recommend
Clauses such as these without doubt indicate the desire for the police to have wide powers outside of what the law and Constitution provides. Trying to sneak in provisions as these as we repeatedly state will only increase citizens distrust of the police. We thus urge that such retrogressive provisions be deleted from the *'Police Draft'* and also urge that attempts are not constantly made by the police and other players to introduce such provisions.

RESISTANCE TO THE TAKING OF MEASUREMENTS - CLAUSE 70
The Clause empowers the police to use *all necessary means* to compel a person who resists being photographed or measured. It goes on to say that the necessary means

adopted to achieve the purpose shall be *lawful.* Arbitrary and excessive use of force is a frequent and well founded accusation against the police and remains a contentious issue within the police force. To add in a provision in the Police Draft which makes lawful *"all necessary means"* will result in abuse of the power without any accountability. The clause also clearly contradicts provisions of the Code of Criminal Procedure which lays down strict circumstances under which force is to be used.

We Recommend
Such Clauses do not support the cause of democratic policing and do not find a place in progressive modern day police legislations. We thus recommend the deletion of these clauses in its entirety.

DERELICTION OF DUTY BY A POLICE OFFICER - CLAUSE 107
Sexual harassment, illegal searches, seizures and arrests and torture and inhuman or unlawful personal violence and threats, all fall under the category of *dereliction of duty* under the *'Police Draft'*. Besides not being termed offences they attract a penalty of 3 months imprisonment **OR** a fine of Rs 5000.

The penal provision is nowhere in comparison with its equivalent in the Indian Penal Code and definitely does not match the seriousness or gravity of the offence. Such provisions in the Draft Bill only seem to signal that wrongdoing and misconduct are not major concerns of the police force and that there will be greater tolerance or probably even greater acceptance of deviant behaviour amongst the police.

We Recommend
It must be made clear that the punishments for dereliction of duty are in addition to the ordinary penal provisions under the law and can be justified because the accused is an officer of the law. It cannot be an alternative or a bar to criminal prosecution arising from the same set of facts.

In light of this we recommend that recommendation given in our earlier submission be adopted to reflect the above mentioned concerns.

> ***(1) Whoever, being a police officer:***
> ***(a) Wilfully breaches or neglects to follow any legal provision, procedure, rules, regulations applicable to members of the police service; or***
> ***(b) Without lawful reason, fails to register a first information report as required by Section 154 of the Code of Criminal Procedure, 1973;***
> ***shall, on conviction, be punished with imprisonment for a term which shall extend to three months and shall also be liable to fine.***
>
> ***(2) Whoever, being a police officer, is guilty of sexual harassment in the course of duty, whether towards other police officers or any member of the public shall, on conviction, be punished with imprisonment for a term which shall extend to one year and shall also be liable to fine.***
>
> ***Provided that this will be in addition to the penal sanctions as***

provided for in Section 354 and 509 of the Indian Penal Code.

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

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

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

(c) unlawfully and without reasonable cause delays the forwarding of any person arrested to a Magistrate or to any other authority to whom he is legally bound to forward such person;

shall, on conviction be punished with imprisonment for a term which shall extend to one year and shall also be liable to a fine

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

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

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

PROTECTION FOR ACTION TAKEN IN GOOD FAITH - CLAUSES 108, 109
BAR TO SUITS AND PROSECUTIONS - CLAUSE 110

Clauses 108 and 109 of the *'Police Draft'* take away any possibility of prosecuting a police officer. The provision at Clause 108 states *no police officer shall be liable to any penalty or to payment of any damages on account of an act done in good faith in pursuance of or purported to be done in pursuance of any duty imposed or any authority conferred on him by any provision of this Act or any other law.* The protection is furthered under Clause 109 whereby no police officer will be liable to any penalty or payment of any damages for giving effect in good faith to any orders or directions issues by the Administrator or under any rule or regulation made under the Act.

Clause 110 bars any prosecution against a police officer for an alleged wrong if the wrong was done under the *colour of duty.* The clause also places a limitation period wherein prosecution if entertained would be dismissed if instituted, more than three months after the date of the act complained of. This limitation period is contrary to the limitation period as prescribed under section 468 of the Code.

The term *colour of duty* is undefined and any possible police action could fall under this broad undefined term. The Clause mirrors Section 197 of the Code of Criminal Procedure but replaces the words '*official discharge of duty'* with the words *'colour of duty'* **thereby broadening the immunities and taking accountability to vanishing point.** Further section 197 does not expressly prohibit a prosecution but disallows a magistrate from taking cognizance of an offence allegedly committed by a police officer without the permission of a competent authority. The said clause thus gives additional protection or immunity to errant officers other than those prescribed under the Code.

Taken together the three clauses will guarantee that guilty officers will never be brought to book for alleged wrongdoing, will embed a culture of enhanced impunity with the force and further the growing public distrust and dissatisfaction with the police.

We Recommend
The protections provided to police officers are sufficiently provided for in the Code of Criminal Procedure and reliance may be placed on that instead of inserting further protections that take away all chances of bringing to account errant behaviour.

PROVISIONS EXCLUDED FROM THE DRAFT ACT

The Model Police Bill contained several progressive provisions which this present *'Police Draft'* seem to have left out.

STRATEGIC AND ANNUAL POLICING PLANS

A significant omission in the Draft Bill is the requirement of strategic and annual policing plans. The Annual Plan has been referred to in several clauses of the Draft Bill. However as mentioned earlier there is no duty cast upon any body or individual to draw up these plans. Police strategic planning was made mandatory in the Model Police Bill with an entire section devoted to it. There appears to be no rationale for these omissions and dilutions when the necessity for a holistic scheme has been reaffirmed both by the Supreme Court and in the Draft Model Police Bill.

We Recommend
The value of strategic and annual police planning cannot be over emphasised. We recommend that **Clause 40 of the Model Police Act** which elaborates on police planning be replicated in this said Draft.