

On Police Reforms in Sindh

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With

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Abbreviations

CrPC: Code of Criminal Procedure, 1898

PA: Police Act 1861

HRCP: Human Rights Commission of Pakistan

CHRI: Commonwealth Human Rights Initiative

DPPA: Draft Punjab Police Act, 2010

PO: Police Order 2002

SC: Supreme Court of Pakistan

LHC: Lahore High Court

FIR: First Information Report

INTRODUCTION

Over the past few years, the issue of police reform has assumed increasing urgency due to the rapidly shifting political and legal landscape in Pakistan. There is clear evidence that a fair, responsible, ethical and efficient criminal justice system is an important factor in the promotion of economic and social development and of human security. The rapidly deteriorating law and order situation wake of the 'War on Terror' and the inability of the police to cope in spite of rising budgets spent on the police over the past decade has resulted in a general consensus for change among NGO's, media, human rights groups, and the citizenry.

The purpose of this paper is to act as an explanation for a draft bill proposing police reforms to be presented in the Sindh Assembly aimed at setting up a more democratic police service in the province. The paper outlines the structure of Pakistan's police force, its colonial origins, and how these origins still influence the organization and functioning of the police today.

As an ancillary to the proposed Draft Bill for the Sindh Assembly, this paper outlines the principles that must govern police legislation in a democratic country. It highlights the shortcomings of the Police Act, 1861 and the changes made in the Police Order 2002. The paper also discusses the proposed Punjab Police Act 2010 as a significant recent addition to the conversation and borrows ideas and best practices from other countries conducting a cross-jurisdictional analysis of the same.

THE STATE OF THE POLICE

The last decade of the 20th century particularly witnessed an almost complete collapse of the existing law and order apparatus, thanks mainly to growing and reckless interference in vital aspects of police administration by the 'persons of influence.' No surprises, if the machine designed for colonial purposes failed to meet the aspirations of a free people who wanted to enjoy the fruits of liberty, freedom, and rule of law.

Common complaints against the police range from routine discourtesy and incidents of neglect, incompetence, inefficiency, arbitrariness, inadequate or no response to citizens' requests for help to institutionalised abuse of power and widespread resort to high-handedness and corruption. Policing by consent is virtually non-existent. Citizens lend little or no co-operation, at least little voluntary co-operation, to their police. They perceive police not as an instrument of rule of law, but as a corrupt, insensitive and a highly politicised force, operating mainly to look after the interests of the powerful.

This unacceptably high level of police-public estrangement did not come about lightly or suddenly. For most citizens confronting routine police misbehaviour is a bitter fact of everyday life, borne out of experience of successive generations at the hands of a force widely believed to be working beyond the bounds of civilized code of behaviour. This behaviour has defied change and is impervious even to the most scathing criticism by leaders of civil society.

Not many citizens are able to formally complain against any actual or perceived abuse of authority by the police. It is a widely-held belief that police can get away with anything and everything. There exists no credible mechanism of policing the police, notwithstanding the fact that an increasingly expanding range of coercive powers at their command require stricter accountability controls. Public confidence in the police has never been lower.

What people urgently want is "fundamental change" in the way they were policed, as the police organization designed for colonial purposes has since broken down. It has broken down under the strain imposed by a variety of complex factors, including the growth of terrorism, sectarianism, proliferation of weapons, population explosion, and modern conditions of life. Urban terrorism during the past decade claimed tens of hundreds of innocent victims and brought Karachi the infamous title of 'the City of Death.' The economy also lost hundreds of billions of rupees. Indeed the inability of the law enforcement apparatus, inter alia, to tame the sectarian dinosaur and control illegal arms cost the nation dearly, both in terms of dissipating the gains of economic growth and its image internationally.

Poor law enforcement over time has also become a serious threat to the emerging democratic order of Pakistan, its economy, and the safety, well-being and integrity of its citizens. Although the country has spent tens of billions every year on police, civil armed

forces and security agencies, yet the citizen suffered from a creeping sense of insecurity. It is almost as if the law enforcement system is designed not to work.¹

Among the serious constraints undermining the police system of Pakistan are: an outdated legal and institutional framework (devised for nineteenth century India consisting of near static villages with hardly any urbanisation or industrialization, and meant principally for a colonial rule), (2) arbitrary and whimsical (mis)management of police by the executive authority of the state at every level (policemen were increasingly recruited, trained, promoted and posted without regard to merit and mainly for their subservience to people with influence and power), (3) inadequate accountability, (4) poor incentive systems, (5) widespread corruption, and (6) severe under-resourcing of law and order.

For decades the police in this country have been castigated for being one of the most ineffective state institutions in the criminal justice system. Crime prevention and investigation are the main duties of the police and hence their performance in this respect can provide a good measure of their effectiveness and efficiency. The police seem to be failing on both counts. They are fast turning into a weak public service and a useless instrument of coercion that can neither provide the people minimum guarantee of safety and security nor maintain law and order or detect crime. Additionally, the police have completely lost the trust of the public. Instead of being the first port of call in an emergency they have become an instrument of the last resort.

The ineffectiveness of the police is illustrated by the low conviction rate in the country as well as the rising trend in crime and lawlessness in general. It is now widely acknowledged that the conviction rate is no more than 10 per cent and the main reason for this is poor investigations by the police.²

Incidents of mob justice have also risen in recent years indicating, among other things, that a growing number of citizens no longer rely on the police or for that matter the criminal justice system as a whole. A number of incidents in recent past are a stark reminder of how a law enforcement agency can degenerate itself into a helpless bystander before the growing tendency of mob justice and power of the vigilantes.

Incidence of torture at the hands of the police is also on the rise despite serious notice taken by the superior courts as well as the hue and cry raised in the Parliament. According to a report compiled by a civil society organisation, 441 women, 340 men, and 417 children were tortured by the police from January to November 2010. The organisation has recorded 9,364 cases of police torture in the last nine years. The main reasons for police torture in

¹ Suddle, Muhammad S. *REFORMING PAKISTAN POLICE: AN OVERVIEW*. Rep. N.p.: n.p., n.d. Print.

² "Low conviction rate", Dawn (Editorial), 21 April 2010: <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/editorial/low-conviction-rate-140>; Also see Tanoli, Ishaq, Criminal prosecution yet to take off, Dawn 22 January 2008.

Pakistan are said to be: (i) to recover weapon of crime or some other piece of evidence; (ii) to extract confession or other information; or/and (iii) extortion.³

If the public are getting a raw deal so are the police too. They have their own share of problems. Some are systemic, others have to do with outsiders, but a great many they have brought upon themselves. They too easily allow themselves to be wrongfully used by their political masters and invent far too many excuses for doing so. Their unwillingness to face this problem has meant that their operational efficiency has been badly compromised and their chain of command broken and disrupted by unconscionable political interference at every level of policing. Today, the police are functioning with a greater willingness to obey the unwritten and informal orders to subvert legitimate democratic and legal processes, for personal gain and political patronage or simply for lack of courage to resist the political pressure.

An example of this subversion is the continued pattern of extra-legal killings in staged encounters with the police. Human Rights Commission of Pakistan (HRCP) recorded 226 executions in police encounters in 2009.⁴

In recent years, failure to prevent ordinary crime (in general) and incidents of terrorism (in particular) and to investigate cases has further exposed the ineffectiveness of the police across Pakistan. According to newspaper reports, during the ten years (1999-2009)⁵

Seen in the context of rising allocation of funds to the police this trend makes the police appear more inefficient and ineffective. The Sindh Police budget was increased by more than 65 per cent from 2007-08 to 2009-10.⁶

Poor performance of the police stems from a number of factors. First, among others, is the tremendous political interference in the functioning of the police. Second, there are very few functional mechanisms to hold the police accountable for either their performance or for wrongdoing. Whatever there is in the name of accountability is not allowed to work effectively both by the police and the political

³ Madadgar Helpline website, 9364 cases of police torture reported during the last nine years: <http://www.madadgaar.org/Press%20Releases/police-torture2008.htm> as on 20 December 2010.

⁴ Human Rights Commission of Pakistan's annual report, State of Human Rights in 2009, page 77: <http://www.hrcp-web.org/pdf/Annual%20Report%202009.pdf> (as on 18 December 2010).

⁵ See Abbasi, Ansar, The 10-year crime picture gets dirtier, The News, 23 March, 2010: <http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=230503&Cat=2&dt=3/23/2010> as on 20 December 2010

⁶ Sindh budget 2010-11 unveiled The Express Tribune, 11 June 2010: <http://tribune.com.pk/story/20537/sindh-budget-2010-11-unveiled/> as on 25 December 2010. For the year 2009-10, the Khyber Pakhtunkhwa police were allocated 9.7 billion rupees, an increase of 47 per cent over the preceding year. The allocation was further raised to 21 billion rupees for 2010-11; Hassnain, Zakir, Khyber Pakhtunkhwa presents Rs 294bn budget with zero deficit, Daily Times, 13 June 2010

Third, the police are ill-equipped and ill-trained to meet the challenges posed by violent insurgency (specifically), and ordinary crimes and law and order situations (generally). Their training needs are not given the priority their job requires.

Pakistan's efforts to combat crime and to counter terrorist activities are being outpaced by the innovation and agility of criminal networks and protean terrorist organizations. Radicalized elements within the political and religious spheres further complicate security challenges. Internal efforts to build a stronger police force are discernible but limited in scope. A rise in police salaries in some provinces is a positive step, for instance, but that in and of itself will not enhance police performance. As this report illustrates, Pakistan's police system suffers severe deficiencies in a number of areas, including equipment, technology, personnel, training, and intelligence capability. Moreover, the political will needed to address these issues is largely missing. Besides a poor public image, both the police leadership and the rank and file appear to lack a sense of accountability to the public they are meant to serve. Moreover, the system simply is not structured to reward good behavior, as merit-based opportunities for professional advancement are scarce, low pay is the norm, and a lack of support and resources compels even many well-intentioned officers to misuse their authority in order to survive

All these factors contribute to make the police an ineffective and inefficient organisation. However, another important reason why the police are unable to function as an effective and efficient organisation, accountable or responsive to the public needs, is the missing democratic legal framework that is crucial for any public service institution in a democracy.⁷

Historical Context

⁷ Jamal, Asad. *Revisiting Police Laws*. Rep. Lahore: Human Rights Commission of Pakistan, 2011. Print.

Pakistan inherited, in 1947, a more-than-eighty-year-old police system from the British. The overriding consideration before those who designed the police organization in 1861 was to create an instrument in the hands of the – colonial – government for keeping the natives on a tight leash, not a politically neutral outfit for fair and just enforcement of law.

“The colonial police was a product of the very different social and political realities of the times. The police was mainly concerned with the collection of land revenue and maintenance of law and order. Both these – incompatible – functions were vested in a European officer, variously called Collector, District Officer, Deputy Commissioner or District Magistrate. In his latter capacity, the District Officer was head of the magistracy who tried most criminal cases.

It is crucial to understand the basic difference between a colonial police and a police meant for a free country. Whereas the former was geared at raising semi-militarised, semi-literate, underpaid, bodies of men for maintaining order by overawing an often turbulent and hostile – native – population, the latter aimed at creating quality professionals tasked to prevent and detect crime in plural, multi-ethnic and socially conscious communities, through just and impartial enforcement of laws. The former knew how to rule, the latter to serve.

Another important reason why tight and effective control over criminal justice administration was felt critical was to protect the interests of European middle class responsible for trade and administration in India. To that end, those who investigated and prosecuted criminal cases were effectively subordinated to the District Officer.

Not only was this union of distinct functions in one government functionary wrong in theory and bad in principle, it was also contrary to the pre-British and ancient Indian practices under which there existed a virtual separation between the judiciary and the executive. This – untenable – position of District Officer was severely criticised even by many Britons, but it was felt to be “absolutely essential” to the maintenance of British rule in India.”⁸

The Police Act, 1861 was legislated by the British in the aftermath of the Mutiny of 1857 or the First War of Independence. The British, naturally at that time wanted to establish a police force that would suit the purpose of crushing dissent and any movement for self-government. This Act continues to this day in most states of India despite far reaching changes in governance and India’s transition from being a colonised nation to a sovereign republic. The government and its police today are obliged to respect political diversity and guarantee a climate of peace in which people feel secure in the exercise of their rights and the protection of their freedoms. Because these sentiments are not reflected in the legislation governing the police, it has contributed to the police remaining outside the loop of prevailing democratic values. It is also the primary reason for the police being perceived by many as the handmaiden of the political elite rather than as an organisation that provides essential services through ensuring peace and security to the people.

⁸ Suddle, Muhammad S. *REFORMING PAKISTAN POLICE: AN OVERVIEW*. Rep. N.p.: n.p., n.d. Print.

Act of 1861

The Police Act, 1861, which held the field for 54 years after independence and was criticised for incorporating the principle of duality of control over the police (paragraph 2 of section 4 of the Act). Under this principle, the police officers were subject to the general control of the District Magistrate in certain areas of their functions especially those relating to their interaction with the public. However, there was no guarantee that control or superintendence was exercised to make the police function in accordance with law.

The 1861 Act was further criticised for the ill-defined and vague relationship between the District Magistrate and the Police and its impact on the latter's autonomy.²⁰ The Act vested superintendence of the police in the provincial governments. At the district level, it put the police under the command of the District Superintendent of Police, but subject to the general control and direction of the District Magistrate, a bureaucrat belonging to the District Management Group of Civil Services. But neither the word superintendence nor the phrase general control and direction was defined in law. This enabled the government of the day to use the police to serve the partisan interests of the regime in power, whenever required.

However, at the same time, the magisterial controls were said to serve two important purposes namely:

- a. To provide an inexpensive and local police accountability mechanism; and
- b. To ensure availability of police for effective delivery of regulatory services by various government functionaries.

'Under the Police Act 1861, the Inspector General of Police as the chief of provincial police assumed specific responsibilities in the areas of police policy formulation and the line operations involved in the execution thereof. His appointment was firmly controlled by central government although, once appointed, he was to act as an advisor to the provincial government on all matters connected with the police administration of the province.

In carrying out his responsibilities, the Inspector General was to be assisted by several Deputy Inspectors General posted on a territorial basis, usually each to a group of three to five districts called a range. The Deputy Inspector General was to exercise a general supervision over the District Superintendents in his range, and they were to look towards him for advice, guidance, leadership and co-ordination of police work within the range.

As head of the district police, a District Superintendent was made responsible for all matters relating to the internal economy of the force, its management and the maintenance of its discipline and the efficient performance of all its duties connected with the prevention, investigation and detection of crime.'⁹

⁹ Suddle, Muhammad S. *REFORMING PAKISTAN POLICE: AN OVERVIEW*. Rep. N.p.: n.p., n.d. Print.

Under the Police Act of 1861, in addition to being under the senior police hierarchy, the District Superintendent was simultaneously subjected to the operational – lateral – control of the District Magistrate. Under paragraph 2 of section 4 of the Act:

“The administration of the police throughout the local jurisdiction of the magistrate of the district shall, under the general control and direction of such magistrate, be vested in a district superintendent and such assistant district superintendents as the Provincial Government shall consider necessary.”

The police administration at the district level was thus subjected to a dual control – all administrative, technical, financial, professional and organizational control of Inspector General through his deputies; and the lateral general control and direction of the District Magistrate. Also, postings and transfers of Superintendents of Police and officers senior to them were the concern of the provincial government, not of the Inspector General.

Because of its failure to rectify the long-discovered structural defects of the Irish model, an intense criticism of the draft Police Act of 1861 started right from the day it was introduced in the Legislative Assembly. It was variously described as ‘old wine in new bottle’ and ‘a new friend with an old face.’ Nonetheless the Act was passed with the hope that ‘at no distant period’ the police in India would be reformed on lines similar to Peel’s.

Police Order, 2002

As a result of the criticism of PA, an attempt was made to shift responsibility of maintenance of law and order unambiguously with the police. The police hierarchy was made responsible

not merely for the organization and the internal administration of the force, but also for other matters connected with maintenance of law and order. Policing was no longer subject to dual control and the office of the District Magistrate was abolished.

The Act was aimed at ensuring efficient police operations, better quality decision-making, improved discipline of the force, and revamping of internal accountability mechanisms.

In a bid to insulate police from extraneous interference by the politicians in power, and emulating the Japanese public safety commission system, the changes established public safety commissions at national, province and district levels.

An attempt was made to bring police under a system of external accountability that enjoys public confidence. The idea was that once a policeman renders himself accountable to the community he serves; his work ethics undergoes a radical change. By subjecting himself to rule of law, he would be striving to uphold and promoting the cause of public interest. To ensure public confidence in the service, the new Police Ordinance sought to establish an independent statutory institution under the name of Police Complaints Authority.¹⁰

CRITICISM:

The district magistrate provided a kind of barrier to the police excesses under the Police Act, 1861, which was removed by the Police Order, 2002, without providing an effective and efficient alternative.

The offices of the District Magistrate and other executive magistrates were abolished through amendments in the Code of Criminal Procedure, 1898. Amendments to the Police Act, 1861 in 2001 and later police reform under the Police Order, 2002 accommodated the police views on duality of control.

Under the Police Order, 2002 the superintendence of the police vested in the hands of the political executive, i.e. the provincial government, and the control of the District Magistrate over the police were supposed to be abolished to the advantage of the citizens. However, the promulgation and implementation of the Police Order, 2002 remained problematic right from the beginning.

First, it was introduced as a federal legislation in the absence of democratically elected representative institutions. Consequently, due consultation could never take place and consent of the provinces was never sought. The provinces generally did not own the new law and were not motivated to implement some of its essential features, such as the provisions prescribing public oversight of the police functions.

¹⁰ Suddle, Muhammad S. *REFORMING PAKISTAN POLICE: AN OVERVIEW*. Rep. N.p.: n.p., n.d. Print.

Second, it was tagged with the local government project of the military regime of the time. This created problems as the local government project ran into severe resistance from the provincial governments that were elected later that year. Also, the provincial political executive resisted any idea of granting autonomy, howsoever nominal, to the police. Bowing to the pressure, amendments had to be introduced to the Police Order, which diluted the original intent of the legislation. As if depriving the provinces of the power to enact police related laws was not enough, the military ruler played another trick on the people by including the Police Order, 2002 in the constitutional list of protected laws (under Sixth Schedule of the Constitution) which could not be altered or repealed by any provincial legislature without his prior permission. It is another matter that the unelected ruler did not hesitate to amend the law to suit the demands of his collaborators in the provinces.

The reluctance of the political executive to accept the reforms propounded in the Order of 2002 led first to the dilution of its original provisions and later to its tardy and half-hearted implementation. The Police Order had diluted the powers of provincial governments to exercise control over the police by conferring powers on the Zila Nazim and by prescribing formation of District and Provincial Public Safety Commissions. The provincial governments, therefore, showed unwillingness to implement the reforms envisaged in the Order. The Federal Government could not resist the pressures and came out with an Amendment Ordinance known as the Police Order (Amendment) Ordinance, 2004, that restored some of the powers to control police forces to the provincial political executive.

The Amendment Ordinance was re-promulgated innumerable times. However, it was never passed by the Parliament. It was promulgated as the Police Order (Amendment) Ordinance, 2007 by the Musharraf-led government in July 2007 and was given protection under the Provisional (Constitution) Order, 2007. The Ordinance lost its validity after the Supreme Court in its famous judgment of 31 July 2009, directed all the ordinances protected under the Provisional (Constitution) Order, 2007, to be laid before the Parliament for validation. The ordinance was laid before the National Assembly as a bill in November, 2009; however, it never passed through the stage of consideration by the National Assembly's Standing Committee on the Interior. This has created a serious legal confusion and vacuum. This shows the priority and the level of importance attached to issues of policing in the highest political echelons of this country.

Third, mechanisms of public oversight and accountability provided in the new law were resisted by the bureaucracy within the police and without. The Police Order, 2002 provided two mechanisms for police oversight and accountability. The first pertained to the superintendence powers of the government that related to oversight at the institutional level. The second set of mechanisms related to public oversight of police through the Zila Nazim and the District Public Safety Commissions and Complaints Authorities. The main domain of such institutions was police accountability at local level on a case-to-case basis.

The Police Order of 2002 proposed the establishment of Public Safety Commissions at the federal, provincial and district levels. One of the important functions of the commissions at the provincial and district levels was to take steps to prevent the Police from engaging in any unlawful activity arising out of compliance with unlawful or mala fide orders. Another important function of the Commissions was oversight of the police. The District Public Safety Commission comprising six elected (members of Zila Councils, national and provincial assemblies) and three non- elected members was mainly responsible for:

- a. Disposal of complaints pertaining to incidents of police neglect, excess or failure or against a federal law enforcement agency when acting in aid of civil power;
- b. Approval of local policing plan and while doing so ensuring that the policing priorities and allocation of police resources is in line with the citizens requirements. The Commissions are also required to monitor performance against targets set in the policing plans;
- c. Preventing collusive relationship between Zila Nazim and the district police;
- d. Disposal of unclaimed properties taken in possession by the district police;
- e. Encouraging police-public cooperation; and
- f. Submitting reports to the provincial government and the provincial public safety commission on the above matters.

The commissions have however failed miserably to address public grievances.

Fourth, an important reason for the abysmal performance of the Commissions is lack of adequate legal powers vis--vis implementation of their decisions. In addition, the complex and slow processes of decision making in the Commissions is said to be another major impediment in the effective exercise of oversight function.

Further, the provisions relating to the Commissions were borrowed mainly from the Japanese and the United Kingdom (UK) local police oversight models. However, these models have been implanted without giving due consideration to the differences between the organisation of the justice sector and socio-cultural structures in these countries and Pakistan. It has been pointed out that:

- a. The police organisation in both UK and Japan is local. In case of Pakistan police is a provincial organisation that has an extended rigid hierarchy.
- b. The office of the Head of District Police enjoys far greater institutional strength than the Commissions due to, among other things, legal provisions in the Order of 2002 and socio-political environment, historical legacy etc.
- c. Civil society has traditionally remained far weaker in Pakistan and the state much more authoritarian. Even in the case of the UK, there are reservations on the capacity of their police authorities to effectively exercise their powers in the face of police resistance. It has been variously observed that there is a culture of compliance amongst police authorities and a reluctance or inability to challenge the authority of chief constables and senior

officers. Seen in this context, the Police Order, 2002 prescribed a model which, as shown by experience, was ill- suited to the social and political demands of the country. It was too ambitious and too much had been borrowed and implanted in an environment which was not ready to receive it.

The experience with the Police Order, 2002 in the past decade and before that with the Police Act, 1861, teaches us a few lessons: One, that it is futile to introduce new laws without a broad democratic set-up in the country. Laws introduced without political agreement lose utility even before they are enforced. In the absence of political will institutions like the police cannot be made responsive to the citizen's aspirations and needs. Two, police legislation is a provincial subject that has to be carried out by the provincial legislatures with broad-based consultation among all the stakeholders, especially the civil society organisations and the public at large. Laws passed without public debate are owned neither by the citizens they are supposed to serve, nor the institution that is supposed to be regulated. Without due public involvement, the police will not feel accountable. Three, the bad colonial laws must be done away with, but not to be replaced with laws strange to the institutional, political and cultural environment.

Upon the expiry of the constitutional protection to the Police Order, 2002 (under Sixth Schedule of the Constitution⁴¹), provinces started considering ways to amend or repeal the law altogether. The Punjab Government moved a step ahead of other provinces with the plan and constituted a committee for the purpose of reconsidering the mechanisms of accountability of the police in 2009.¹¹

Draft Punjab Police Act 2010

¹¹ Jamal, Asad. *Revisiting Police Laws*. Rep. Lahore: Human Rights Commission of Pakistan, 2011. Print.

A Draft Punjab Police Act, 2010, (DPPA) was proposed in January 2010 by the Punjab Police. However, this initiative, coming from within the police establishment itself, has borrowed selectively from the democratic models in ways that have the effect of strengthening the police establishment and the hold of the political executive without due guarantees of accountability or responsiveness to the public.

The accountability provisions have been seriously weakened with the justification that the internal accountability of the police will be sufficient to discipline errant officers. The model for superintendence and oversight in the form of the Provincial Police Council is not one that clearly defines the Police-Executive relationship or ensures accountability for wrongdoing. This will only increase the corrosive influence of politics on policing, while embedding a culture of impunity within the police at the same time.

Overall, the DPPA is not a strong, progressive piece of legislation designed to meet the modern day needs of society or the police. If passed in its current form it will not ensure improved police functioning and the Punjab Police will remain a force that imposes the law instead of becoming a service that upholds the law.

Democratic nations need democratic policing. There are alternatives to the present way of policing but we seem to be ignoring them. Of course, taking models from the West and implanting them without due consideration to the local conditions may not be the solution. But what the country needs is to look at the best and adapt it.

In a democracy the first thing to recognise is that the police are not mere enforcers alone. They are upholders of the law. Enforcement has the connotation of unquestionable authority. It assumes all power to the police and no challenge to it: the notion of upholding the law adds the dimension that in doing their duty the police must also act always in accordance with the law, never fall outside it and ever be answerable to it.

If the police are to be transformed from a force into a service their functions must be restated to take account of many things that are today taken for granted as basic constitutional assumptions but which had no place in the colonial policing. At the moment, the public has little faith in the police, which it views as abusive, corrupt and broken. The people of Pakistan deserve first-rate policing and nothing less.

This compilation of police laws is meant to serve as a resource for those who are engaged in efforts to reform the police through better legislation. For this purpose, an analysis on the proposed draft along with the Draft Punjab Police Act, 2010, the Police Act, 1861, and the Police Order, 2002 are included in this publication.

The analysis of the Draft Punjab Police Act, 2010, has been jointly prepared by Human Rights Commission of Pakistan (HRCP) and Commonwealth Human Rights Initiative (CHRI), two organisations that have joined hands to work for police reform. For this purpose, input was also obtained in a consultation held at Lahore on 12 February 2010, in which Punjab Police

representatives also participated along with lawyers and other civil society members. It was heartening to see the police officers receiving criticism with an open mind. It is hoped that the points raised in the analysis will be given due consideration and accommodated in drafting the final bill. It may also be said that the analysis presented by HRCP and CHRI is by no means exhaustive though it does give a direction that the police laws should take in Pakistan.¹²

Cross-Jurisdictional Comparison

¹² Jamal, Asad. *Revisiting Police Laws*. Rep. Lahore: Human Rights Commission of Pakistan, 2011. Print.

New Zealand:

The New Zealand Police (Police) is the national police force of New Zealand established originally under the New Zealand Armed Constabulary Act of 1867, having been officially recognized by virtue of the Armed Constabulary Ordinance 1846. Subsequently, the police was established as a single national force by virtue of the Police Force Act of 1886. Essentially, the most prominent structural changes within the police force arose in the Police Force Act in 1947 which established the role of the “Controller General” that is, a caretaker civilian leader of Police which allowed constructive development and initiated civilian interference with enforcing criminal law, enhancing public safety and maintaining peace throughout the country.

The Policing Act of 2008 establishes the body of the New Zealand Police force: at the top is the Chief Executive of Police who acts as the Commissioner and is appointed by the Governor General (at times on the recommendation of the Prime Minister). The Minister of Police holds the Commissioner accountable for the supervision of police services. However, he has full authority to act autonomously in carrying out law enforcement decisions. Following the Commissioner are the Deputy Commissioners; Deputy Commissioner Resource Management who is responsible for managing all of the Police's major resource issues and Deputy Commissioner Operations who is responsible for national operational, road policing, investigative and intelligence functions and overseas deployments. There are five Assistant Commissioners four of which head a particular district respectively and one who heads the Investigations/International department.

Although headed by the Commissioner, the New Zealand Police is a suburbanized organization divided into twelve districts, each of which has a central station from which auxiliary and suburban stations are managed.

Recently, a shift has been implied in the Policing Model by increasing focus on victims, prevention of crime and substantiating capability of the police force. In order to assure Policing Excellence, there has been a substantial increase in the attention paid to the needs of the victims rather than simply focusing on developing knowledge about the victim. Furthermore, the Police focus on working together with the community to reduce the frequency of recurring victimization. To achieve this Police works closely with NGOs and other government agencies, such as, Work and Income New Zealand (WINZ), Child, Youth and Family (CYF) and Housing New Zealand (HNZ).

Public response towards the Police has been overall complacent going as far becoming “enviable” in comparison to other jurisdictions. Research indicates an increase in public confidence from a low of 58% to 61% of respondents reporting they were ‘fully or quite a lot happy’ with Police in the late 1990s to a current level of 77%.

Consequently, New Zealand Police has been considered to be one of the best performing police service in the world. In essence, the international and domestic accolade given to the police is on the basis of its distinct style of policing. As there is an emphasis placed on a close relationship between the police and public in so much that a characteristic, that is having a national service that does not routinely carry firearms and thus establishes national unity, has emerged from this closeness.

The Police has developed a more “problem solving” approach as opposed to a particular approach based on the enforcement of law. By enveloping a strong operational independence about where, how and when to deploy police resources there is a guaranty that while dangers of policing decisions based entirely on local wishes are avoided without undermining public grievances and public certainty and respect for police.

The political neutrality being a part of New Zealand’s Constitution has played a vital role in the operational independence and independence guaranteed to all Constables such that in the Policing Act of 2008 it has been reaffirmed. However, the police have an oversight mechanism in the form of the Independent Police Complaints Authority (IPCA) which ensures a check on the leadership without undermining the actions of the Police Commissioner to exercise order within the police organization.

Comparison with PA:

In contrast to the Police Act 1861 in Pakistan, the New Zealand Policing Act 2008 was legislated following an extensive review of the Police Act 1958. What made the 2008 Act unique was that for the first time, the act was allowed to be viewed and edited by the public by the use of a wiki.

Police have the powers under the Policing Act 2008 to “temporarily close roads to traffic, including pedestrians, if there is reasonable cause to believe that public disorder exists or is imminent at or near that place”.**Error! Bookmark not defined.** In contrast, the Pakistan Police Act of 1861 gives the police the power to maintain due decorum in the public roads. Furthermore, the act stipulates the conditions under which the Magistrate has powers to make rules regarding the streets.

Essentially the Policing Act 2008 specified certain powers of the police such as; section 43 (4) enables sworn members of Police to execute all lawful summonses, warrants, orders and other Court processes (including warrants for arrest); section 51 entitles sworn members in the lawful execution of their duties to call for assistance from any over-18-year-old to apprehend or secure any person in their charge (and makes it an offence not to provide help, if called upon to assist); section 32 and 33 authorizes taking particulars of identification from people in custody (including the person's photograph, fingerprints, palm prints and footprints), and specifies that Police staff "may use or cause to be used such reasonable force as is necessary to secure these particulars"; section 32 authorizes the searching of people who are to be locked up, again with empowerment to use reasonable force, if necessary.

The Pakistan Police Act similarly gives certain powers to the police such as; section 24 enables sworn members of the Police to apply for warrant and summons before a Magistrate. On the other hand, application or the use of these warrants and summons is not explicitly stated in the act. Laws authorizing the police to take particulars of identification are vague and arbitrary.

Sweden:

The Swedish Police being a collaboration of government agencies operates mainly under the Police Act 1984 and The Police Ordinance 1998. The police have an obligation to prevent crime and other due decorum, uphold public order and maintain safety, prevent commotions and take immediate action when any disruptions occur and provide the citizens with protection and assistance when required.

Sweden employs a national police system that is accountable to the government. In terms of the number of workforces, the Police Force is Sweden's largest state operation. In August 2011, the Police had approximately 28,500 employees all over the country approximately 20,000 of which are employed as police officers.

The Police is centrally administered and supervised by the National Police Board (NPB). Ultimately the responsibility of operations within the NPB falls under the National Police Commissioner who is appointed by the government.

The Police work with certain models in order to maintain public safety and prevent crime. One such model is the Neighbourhood Watch which entails on residents keeping an eye on their own neighbourhood while the police provide them with training and other materials that will enable residents to act accordingly to suspicious situations thus helping to regulate the prevention of crime.

Another model that the police have adopted is the Stockholm Prevents Alcohol and Drug Problems method which entails the police to train waitressing staff in restaurants and licensed premises in alcohol serving such that they are trained to refrain from serving alcohol to minors and those who are already noticeably under influence. This is done under cooperation between the restaurant industry, municipality and the police.

The police may, within the initial inquiry, use numerous persuasive and intimidating measures. Some of which are: search of premises, person, a strip search and appropriation of property. The guidelines for such measures are derived from the Code of Judicial Procedure.

The Police Act gives each county the authority to make a police district which is headed by the County Police Commissioner under whom is the Deputy County Police Commissioner who is the head of operations. For each district there is a separate Police Board which ultimately is responsible for the management of the authority and making decisions on matters of comprehensive nature and organization of the police. By virtue of the Police Ordinance 1998, "the police board shall be particularly diligent" assuring that policing is in accordance with the precedence and regulations established by the Riksdagen (the Swedish Parliament) and the government for such policing activities.

Comparison with PA:

By virtue of Police Act 1984 “A police officer may, if other means are inadequate and if it is justifiable in view of the circumstances, use force to carry out an official duty, if he encounters force or threat of force, a person who is to be detained pending trial or investigation or who is otherwise, with statutory support, to be deprived of liberty, attempts to escape or the officer otherwise encounters resistance when he is to effect such a measure, it is a question of averting a punishable act or a threat to life, health or valuable property or a risk of extensive damage to the environment,” The police have statutory power to turn away or remove a person from an area or premises or to conduct or assist in the search of a person, a bodily examination *or some other similar measure*, a appropriation or some other confiscation of property or a search of premises as defined in the Code of Procedure.

The words *or some other similar measure* in the Police Act 1984 have been criticized to give wide arbitrary powers to the Police as it refers to procedures in the Code of Procedure, such as the taking of photographs or fingerprints, or the taking of a sample of blood

However, the National Board reviews any discrepancy with the use of force by the police establishing a corrective process of enabling police work.

For Pakistan neither exclusively following the wishes of State representatives nor simply upholding public requests will ensure a public interest system of policing. Impartiality holds the key in achieving such a system, especially political objectivity, and non-arbitrary professional decision-making laying specific emphasis on policing independence and use of police powers. The police must be given checked independence in professional judgment when responding to a specific situation. Leadership within the police must be autonomous and decisive and should be freed from any means of political intervention or interference with regards to deciding matters. However, independence in decision must be formulated within a set budget and in coherence with laws and policies, “how to respond to law-and-order situations and how to allocate resources, based on their professional expertise and intelligence as well as on their community contacts, subsequently accounting for their decisions.” In short, the police needs to be granted operational independence.

United States:

The Police in the United States are predominantly a civilian (non-military), locally funded, yet directed by local governments organization that is eminently fragile. Although they are widely distributed around the entire country they mostly are held accountable by the municipal government. The U.S. has approximately 18,000 separate law enforcement agencies, out of which 16,000 are local. The remaining of these organizations is split into special jurisdictions, state agencies and federal non-military agencies.

The largest divisions of the policing department are the municipal police departments and county sheriff offices. There is no chain of command between the policing agencies; individually there is collaboration within the offices, however, successively there is none.

The local police officers working in the field generally have little or no immediate supervision and are diabolically left alone to work and act out on behalf of the local police departments. Typically, when an officer's decision is succeeded by neither a report nor an arrest it is not subject to any form of senior review or accountability. Similarly, where the decision is left unreported there will be no official information for later analysis. As Peter Manning states, "information in police departments can best be characterized as systematically decentralized. Often, primary data known to one officer are not available to other officers". Moreover, "all essential police knowledge is thought to be contextual, substantive, detailed, concrete, temporally bounded, and particularistic". More often the information is retained in the officers' head or his personal notes and often if reviewed the investigation may be manipulated for bureaucratic purposes.

Police officers are moderately well educated considering that eighty three percent of US police departments require at least a high school degree to qualify as a police officer, whereas fourteen percent present pre-requisites two years of college or university in order to qualify as a candidate or applicant to become an officer and one percent requires a four year college degree.

In order to keep a balanced check on the police there has been strategic experimentation with independent monitors on police oversights. These are persons monitoring police in specific locations and are appointed jointly by the relevant municipal and police department. They are guaranteed open accesses to materials relevant to their investigations and monitoring after which they formulate periodic reports indicating the oversights in the police such as, excessive use of force by the police.

There are a few independent investigators who act as monitors in certain districts to oversee and direct police internal affairs investigations. In Seattle, a civilian lawyer is responsible for the Internal Affairs on the Seattle Police Department and is accountable directly to the Chief of Police.

The Civilian Review Board is another oversight monitor that is composed of a citizen bench which reviews an already completed internal police investigation and reporting or commenting on it to the Chief of Police. However, there has been a lack of reform through this monitoring process as civilians often succumb to the police departments' opinions and/or decisions.

Compulsory Monitoring and Reform occurs where the police does not voluntarily let up access to monitors and persists in using excessive force resulting in the interference of federal agencies, which then publically holds the offending officer accountable and if necessary the department and its heads who the officer was answerable to.

England and Wales:

The UK police are not a unitary body similar to the national police forces that exist in many parts of the world. In England and Wales, 43 forces undertake territorial policing on a geographical basis. There are also a number of 'non-Home Office' police forces that have a particular remit and apply their jurisdiction throughout the UK.

International Standards on Policing and Accountability

A number of international instruments have significant importance to police accountability in the UK. The UN Universal Declaration on Human Rights 1948 is a fundamental source for legislative and judicial practice. It provides human rights principles and standards that underpin the accountability of the police.

Two other measures provide guidance for police as to their conduct. The UN Code of Conduct for Law Enforcement Officials (1979) sets out fundamental standards for policing agencies across the world and relates to all law enforcement officers who exercise powers of arrest and detention. It requires them to recognize the rights set out in the UN Universal Declaration and other amount of force should be proportionate to the circumstances.

The Council of Europe Declaration on the Police (1979) defined the rules of conduct expected of police in the member states of the Council of Europe, which includes the UK. The rules were designed both to help protect human rights and to improve the status of police officers. In 2001, The Council of Europe supplemented the Declaration by the Code of Police Ethics. The UN Code of Conduct, the European Declaration on the Police and Code of Police Ethics provide basic standards for the operation of legitimate law enforcement. However, they are not directly judicable in law. They should, however, be regarded as guidance which indirectly informs the practice of policing and accountability in the UK.

The police are subject to the rule of law and to legislation, which is the product of Parliament. Although judicial processes and case law may affect the interpretation of legislation, and on procedure may be issued by the executive, the legislature is the origin from which the powers of police are derived. In this sense, they are subordinated to the law and to the law alone.

In relation to policy, however, the major public powers of government are vested in ministers who are servants of the Crown. Police also have allegiance to the Crown, which serves instead of the 'state', as a central organising principle of government. The arrangements for accountability of the police, therefore, are not simply those of subordination to government. A more complex system of accountability is in operation.

The tripartite system of police accountability

Currently, responsibility for the delivery of all policing services in England and Wales is shared between three different bodies. The power sharing responsibilities are divided amongst the Home Secretary, Police Authority and the Chief Constable. This arrangement is commonly referred to as the tri-partite system established by the Police Act 1964 (Home Office 1964). Under this system, the Home Secretary is responsible for the overall efficiency and effectiveness of policing in England and Wales and is accountable directly to parliament. The chief constable is responsible for all operational policing decisions within the force they control with autonomy over any available resource. The third and final party involved in policing is the police authority who regulates and holds the chief constable to account. In addition to this important duty, the police authority set the strategic direction and budget.

The Police and Criminal Evidence Act 1984 (PACE)

The police are also subject to the Police and Criminal Evidence Act 1984 (PACE). The criminal justice system makes sure that suspects apprehended by the police have the right to trial by a jury in serious cases and are given an opportunity to have legal representation. The court system also ensures that the police have followed the correct procedures, for example, those established by PACE 1984. Failure to follow these rules can and does result in failures to secure convictions because the courts increasingly use exclusionary rules to render inadmissible any evidence which has not been fairly obtained. The statutory powers of police on matters of stop and search; entry, search and seizure; arrest, detention and the questioning of suspects are provided by PACE 1984.

Her Majesty's Inspectorate of Constabulary (HMIC)

These Inspectors have independent status, being servants of the Crown and not Home Office employees. Section 38 of the 1964 Police Act (and section 33 of the Police (Scotland) Act 1967) specified the inspectors' role and gave them the authority to inspect and report to the Home Secretary on the competence and efficacy of police forces. The inspectorate's role, according to its statement of purpose, is:

To promote the good organization and effectiveness of policing in England, Wales and Northern Ireland through inspection of police organizations and functions to ensure:

1. Agreed standards are achieved and maintained;
2. Good practice is spread; and
3. Performance is improved.

Also to provide advice and support to the tripartite partners (Home Secretary, police authorities and forces) and play an important role in the development of future leaders.

There are currently six Inspectors (four are former chief constables, two are from non-police backgrounds) with regional responsibilities and three Assistant Inspectors (two seconded deputy chief constables and one from a non-police background (who specializes in race and diversity issues) who provide policy and inspection support. The inspectors conduct their work assisted by staff officers and support staff. The Chief Inspector of Constabulary

(HMCIC) coordinates their work and advises the Home Secretary on policing matters. Seconded police officers and Home Office civil servants provide support to the Chief Inspector.

The Audit Commission (England and Wales)

Since 1988 the police have been scrutinized by the Audit Commission. This independent body was established in 1982 by the Local Government Finance Act to monitor and support economy, efficiency and effectiveness in the management of local government.

Best Value

From April 2000, the Best Value programme placed a statutory duty on local authorities to deliver services to clear standards by the most effective, economic and efficient means. Local police authorities are included as 'best value authorities' and as such police forces are required to demonstrate 'best value'. Accordingly, police forces must report against a series of Best Value Performance Indicators.

The Police Standards Unit

The Police Standards Unit began work within the Home Office in July 2001, but was formally established by the Police Reform Act 2002. It has become increasingly influential. Its role is to identify good policing practice and the means of spreading it. It also has an intervention role. If a force is identified as requiring 'remedial actions', it will intervene to improve performance.

The Police Performance Assessment Framework (PPAF)

The PPAF was introduced in April 2004. It has been developed by the Home Office, in consultation with the Association of Chief Police Officers (ACPO) and Association of Police Authorities (APA). It introduced PPAF performance measures and aims to 'provide an effective, fair framework for comparing police performance and provide a firm basis for effective performance management'. It is therefore intended to be both a means of holding individual police forces accountable for their performance and a means of comparing forces' performance against each other.

Financial accountability

In the 1980s, the government applied its public sector Financial Management Initiative (FMI) to the police service. This was concerned with business management strategies and audit techniques and related to financial accountability in the stewardship of public money. The National Audit Office has produced reports on value for money in policing and District Auditors are empowered to undertake audits of the finances of public sector organisations, including the police.

Organisational Accountability

At an organizational level, accountability is provided through a hierarchical rank structure – a quasi-military structure aimed to produce a disciplined and answerable service. In addition police officers are subject to a disciplinary code that punishes offences including discreditable conduct, failure to obey orders, racially discriminatory behavior and falsehood. Offences are investigated internally and judged at disciplinary hearings. Punishments range from reprimand to fine to dismissal. A breach of the code may also constitute a criminal or civil offence. Officers taken through the courts can still face disciplinary boards.

The Police Complaints System

The majority of complaints against police officers continue to be investigated through internal investigation within police forces, in line with Home Office guidance. Police forces monitor complaint patterns for individual officers. Those with higher than average numbers or worrying patterns are identified and inquiries are made into their conduct. Some police authorities have complaints sub-committees that monitor trends.

Canada:

In Canada, police matters are the responsibility of individual provinces. In British Columbia, Canada, the Office of the Police Complaint Commissioner provides civilian oversight of complaints regarding municipal police. The Office is completely independent from the police, government agencies and political parties. The investigation procedures are defined in the Police Act. A complainant has a choice in submitting a complaint to either the Police Complaint Commission, the disciplinary authority, i.e. the Chief of Police or the municipal police board, or a senior constable who is on duty when the complaint is filed. In cases where the Commissioner disagrees with the disciplinary finding, he has authority to order a public hearing or, in serious cases, recommend a public inquiry in serious cases. These will be handled by the Solicitor General.

In contrast to British Columbia, all the other Canadian provinces have established independent investigative bodies. For example, Manitoba has an agency devoted to investigating non-criminal police misconduct arising out of the execution of police duties. The agency streamlines the complaint. If it is not resolved, or if there is no admission of wrongdoing by the police, the complaint is referred to a provincial judge and a public hearing is conducted.

Ontario has set up the Special Investigations Unit (SIU), a civilian agency comprised mostly of civilian experts (with some former police officers), which is responsible for investigating circumstances involving police and civilians that have resulted in a death, serious injury, or allegations of sexual assault. The police are required to report to the SIU incidents of serious injuries or deaths that happen under police custody, and the SIU can also initiate investigations suo moto or based on civilian complaints, including complaints by NGO's, media, and coroners. Complaints involving police conduct that do not result in a serious injury or death must be referred to the appropriate police service or to another oversight agency, such as the Ontario Civilian Commission on Police Services.

The SIU has far reaching powers and is the most expansive civilian police oversight agency in Canada. SIU has the power and authority to investigate and charge police officers with criminal offence. It

can summon witnesses, collects evidence, meets with medical officials, and employs forensic specialists. Although the findings are reported to the province's attorney general, an executive official, the SIU is institutionally independent. There is no governmental involvement in its decision-making process.

For lesser offenses there is the Ontario Civilian Commission on Police Services (OCCOPS). Its powers are defined in the Ontario Police Services Act.

In Ontario, police services and police services boards are ultimately accountable to the public through the Commission. The mandate and duties of the Ontario Civilian Commission on Police Services are set out in the Police Services Act. The Commission reports to the Solicitor General".

It is important to note that these external bodies do not replace other accountability mechanisms. In almost all Canadian provinces, the police have internal investigations departments. There are police service boards that serve as a buffer between the political establishment and the Chief of Police and are appointed jointly by the provincial government and the relevant municipal locality. Police boards are in charge of policies for effective management of police, though not operational matters. Their purpose is to protect the police from undue political interference on the one hand, while avoiding total insularity which will facilitate lawlessness, on the other hand.

Australia:

Similarly to the United States, Australia does not have a centralized police oversight system. Due to its federalist structure, police are a matter for the states and territories. In addition to internal accountability mechanisms, the various states established external mechanism to oversee police action.

Most states have established external agencies with independent investigative powers. The specific designs vary from state to state. The most advanced agency is in New South Wales. In addition to its ombudsman, the New South Wales parliament established the Police Integrity Commission (PIC) in 1996. The PIC is exclusively in charge of investigating serious offence, whereas less serious offences are investigated by the police or ombudsman, while the PIC may oversee these investigations. The PIC is also equipped with police investigative powers such as applying for search warrants and wire taps. It can compel the production of documents and witnesses and can hold public hearings. Even though the powers of the PIC are not binding in the sense that the police do not have to follow its recommendations, the PIC may require the police to submit a report of action, detailing the actions that have been taken to comply with the PIC's recommendations. The police, on their part, must inform the PIC on the actions that were taken and, in cases where no action has been taken, explain the reasons for inaction. Just like its South African counterpart, the PIC is charged with auditing aspects of police activities that may be conducive to police misconduct and to "monitor to quality of the management of investigations conducted within the NSW Police Force". It also makes recommendations on police education programs and can advise the police generally on methods of eliminating misconduct.

Most police forces now rely on a decentralized system of command, whereby police officers are seen to be accountable to their local community. The local police commander consequently enjoys a great deal of autonomy, both in terms of operational policy and resource allocation.

The Inspector General of the New South Wales Police an office set up to monitor and evaluate the performance of senior managers identified serious "anomalies" in the organization following decentralization.

By far the most significant ideological shift in recent years in Australian policing is the adoption of community based and problem-solving policing strategies. This approach, modelled after overseas police forces, emphasizes the importance of involving the community in a partnership relationship in policing, and de-emphasizes the traditional police preoccupation with random patrol, fast car response, and retrospective criminal investigation. A partnership with the community is manifested in various community association activities, the appointment of liaison officers, the establishment of crime prevention measures such as neighborhood watch and safety house, the increased use of foot patrols, and the encouragement of grassroots feedback through community consultative committees. The benefit of a community based policing strategy for multicultural communities is that police work is geared to a local level of accountability: providing quality service to ethnic minorities is no longer a marginal issue for police commanders whose jurisdictions consist of a sizeable proportion of people from minority ethnic backgrounds. In some cases, information pamphlets and phrase books are printed in community languages, multi-lingual liaison officers are employed, and language-specific community consultative groups are set up. Most of the efforts are directed at reducing the distance between ethnic minorities and the police, instilling confidence and building support among ethnic minorities.

In recent years, the push for professionalization of police has been renewed with great vigor and speed. Training of recruits and professional development of constables and education of managers have become a major growth industry. Many police forces have made substantial revisions to their training curriculum in a move away from a focus on operations towards a wider educational base, emphasizing "effective skills training in the areas of communication, negotiation, conflict resolution, cross-cultural awareness and the proper use of police discretion" (Etter 1992; NSW Police Recruit Education Programme 1991).

India:

India continues to be governed by the same archaic and colonial Act of 1861. State governments have the authority to propose any legislative changes to their respective Police Acts but few have taken the initiative with most relying heavily on the 1861 Act as their primary source of Police Laws. Some states like Maharashtra, Gujarat, Kerala and Delhi have enacted their own Acts but even these resemble and are modelled on the Act of 1861.

The Police Act, 1861 vests the superintendence of the police in the control of the state government. The powers and functions of the police officers in the Act of 1861 were designed keeping in mind the interests of the ruling monarchs and hence, are redundant and outdated today. Moreover, the 1861 Act fails to define some key terms relating to the Police Services such as 'public place', 'municipality', 'commission' etc.

The 1861 Act does not contain any mechanism whereby the grievances of the Police officers can be resolved. Moreover, the Act requires Officers to work for as many as eight to ten consecutive hours which will be considered exploitative today.

Moreover, the Act is not in consonance with the requirements of democratic policing because it is not subject to the rule of law and there is little or no accountability of police officers.

Of late, India has shown keen interest in citizen centric administration which will inevitably lead to good governance. The Second Administrative Reforms Commission has proposed the following measures to make governance citizen centric:

- a) Re-engineering processes to make governance 'citizen centric'.
- b) Adoption of Appropriate Modern Technology.
- c) Right to Information.
- d) Citizens' Charters.
- e) Independent evaluation of services.
- f) Grievance redress mechanisms.
- g) Active citizens' participation – Public-private partnerships.

Sri Lanka:

In recent times, the concept of community-oriented and citizen centric policing is gaining recognition in Sri Lanka. The police department functions under the Ministry of Defence.

The Police Ordinance was enacted in 1866 and the roles and duties of the Police are much wider than they used to be during the colonial period of the nineteenth century. During that period, the sole purpose of the Police was to maintain law and order whereas today the duties of police officers extend to performing services functions including mediating minor civil disputes or offering assistance during man-made or natural disasters such as fires or floods.

Sri Lanka has also reverted towards community policing. They have introduced a 'Community Policing Basic Training Manual' on their official police website.

Furthermore, in the year 2011 the British Scottish Police College conducted an Internal Vocational Qualification in Community Policing in Sri Lanka. The programme is expected to continue through till March, 2013.

South Africa has independent complaints authorities that investigate police misconduct at national and provincial levels. The Independent Complaints Directorate functions independently and looks at deaths in police custody and deaths occurring as a result of police action; police involvement in criminal activities such as and police conduct which is prohibited by the police regulations.

South Africa:

The South African Minister of Police has proposed an amendment to the 1998 Act by introducing the South African Police Service Amendment Bill, 2012. The Constitutional Court has discovered that Chapter 6A of the 1995 Act is inconsistent with the Constitution and fails to secure independence for the Directorate for Priority Crime Investigation.

South African Police Laws have undergone a profound transformation since the transition to democracy, particularly in 1994. The changes in policing practices have been manifested in the relation between the police and the communities they serve.

In recent years, Community Police Forums (CPFs) have been established and maintained. The primary function of a CPF is to bring together police representatives and people from

various communities who meet and discuss safety problems and possible measures taken for different communities. This forum is established in terms of Section 19 of the SAPS Act, 1995. CPFs have been instrumental in strengthening the legitimacy of the police as well as ensuring police accountability, effectiveness, efficiency and transparency in the community.

David Bruce writes: "The experience with CPFs has generally been that they have not really played a significant oversight role in relation to the police. While it initially sought to have an impact on the South African Police Service the national civilian secretariat was considerably weakened by government following the second democratic elections in 1999. Furthermore there is little evidence that the provincial governments have played a significant oversight and accountability role relating to police even though they have all established provincial 'secretariats of safety and liaison' to, amongst other things, monitor the police

The NPC's Model Bill realised that the superintendence of the police must vest with the state government. But to do away with the custom of undue dominant influence, it suggested the creation of the State Security Commission (SSC) The SSC would be comprised of the Minister in charge of the police (chair); two members from the State Legislature, one from the ruling party, the other from the opposition; and four members to be nominated by the Chief Minister after approval by the State Legislature from amongst retired judges of the High Court, retired senior government servants, social scientists or academicians of public standing and eminence.

Furthermore, the Model Bill limits the powers of superintendence of the state government over police. The SSC lays down broad policy guidelines and directions for the preventive and service –oriented functions of the police and the Commission is mandated to be a forum of appeal for police officers equivalent to and above the rank of superintendent

To circumvent the issue of subjective appointment of Head of Police, the Model Bill recommends the selection be made from a panel of a maximum of three Indian Police Service (IPS) officers of the state cadre prepared by a Committee consisting of the Chair/Member of the Union Public Service Commission, Union Home Secretary, Senior Heads of Central Police Organizations, the Chief Secretary of the state and the existing Head of Police in the state.

To counter the practice of powerful political lobbies appointing and dismissing the Police Chief at will, the Model Bill lays down three year tenure for the Head of Police. To reduce the effect of arbitrariness it also specifies the grounds on which the Head of Police may be replaced. The Bill also lays down conditions whereby an officer can be transferred before the expiry of tenure, though the condition must be 'strong, cogent and justified.'

The Police Act, 1861 does not put in place any mechanism to ensure external accountability. For this purpose the Model Bill limits itself to prescribing functions of the State Security

Commission, evaluation of the performance of the police and generally keeping in review, the functioning of the police.

Establishing an 'Independent complaints body' as in the UK and South Africa or 'specialised performance evaluation' as practiced in Northern Ireland and UK are some of the suggestions put forward by the report. The NPC Model Bill provides for a Director of Inspection to evaluate the performance of the police and report to the State Security Commission.

The list of offences committed by a police officer under the Police Act, 1861 includes 'wilful breach or neglect of any rule or regulation or lawful order; withdrawal from duties of the office or being absent without permission or reasonable cause; engaging without authority in any employment other than police duty; cowardice; and causing any unwarrantable violence to any person in her/his custody'. The Model recognises all of these and adds many other offences to this list such as 'being found in a state of intoxication while on duty; malingering or feigning illness or voluntarily causing hurt to self so as to render oneself unfit for service; being grossly insubordinate to superior officers or using criminal force against superior officers; and engaging in or participating in any demonstration, procession or strike or abetting any form of strike or coercion or physical duress to force any authority to concede anything.'

The NPC Model increases the number of disciplinary penalties that may be imposed on police officers. These are: outright dismissal; removal from service; reduction in rank; forfeiture of approved service; reduction in pay; withholding of increment; withholding of promotion and fine (not exceeding one month's pay).

The Preamble to the Model stresses that *"the police has a paramount obligation and duty to function according to the requirements of the Constitution, law and the democratic aspirations of the people"*, and requires it *"to be professional and service-oriented and free from extraneous influences and yet accountable to the people."* The NPC Model, however, has widened the ambit of the duties and responsibilities of Police Officers encompassing identification of problems and situations that are likely to result in commission of crimes, and reducing the opportunities for such commission through appropriate measures. They are required to help people who are in danger of physical harm and thereby help in creating and maintaining a feeling of security in the community. The police are required not merely to preserve but to promote public order. Secondly, the police are required not merely to investigate crime and apprehend offenders, but also to participate in subsequent legal proceedings connected therewith

Draft Bill Proposed for Sindh

'A state cannot achieve sovereign national authority without an ability to protect its supporters throughout the nation. Basic military control is not sufficient to provide such protection for individual citizens until it is complemented by effective policing and law enforcement.'

—Roger Myerson, Nobel Prize Laureate, University of Chicago¹³

The reform strategy seeks to establish an independent Prosecution Service in each province of Pakistan. The purpose is to improve the quality of both investigation and prosecution, in addition to introducing a system of check and balance. The measure will also be a major step forward towards establishing a standard criminal justice system in Pakistan

The process of reinvention requires that the political and police leaderships in Pakistan realise that the police have to respond to the expectations of their customers if they are to be effective. Historically, there has been reluctance on the part of senior police hierarchy to recognise the necessity of seeing police forces as organizations that are fundamentally no different from any other enterprise or business. As Butler points out, arising from this basic error there has been a tendency to hide behind the complexity of policing as a means of excusing poor management and leadership. The police organization of tomorrow will therefore have to evolve a shared vision and understanding of a common mission which will increasingly be focussed on meeting the community expectations. 'Putting the customer first' would certainly improve the confidence of the public and an overt commitment to enhance the standards of both public safety and police accountability will require the police leadership to lead and manage, not simply run, the force to get results consistent with the mission.¹⁴

¹³ Roger b. Myerson, "Rethinking the Fundamentals of state building," January 2011, accessed July 2, 2012, <http://home.uchicago.edu/~rmyerson/research/prism10.pdf>.

¹⁴ Butler, A. J. P. (1992), Police Management (Aldershot: Dartmouth Publishing Company Ltd.)

INTERNAL ACCOUNTABILITY:

Historically, internal accountability mechanism came first. The Police Act of 1861, for example, details disciplinary measures that can be taken against police officers by superior officers for breach of duty. Other internal mechanisms can include standard setting, internal review boards (e.g. an internal investigations department), general guidelines, and designing an environment of discipline. More systematic mechanism include developing and maintaining statistical databases relating to crime and enforcement that the police will periodically monitor and use to draw the appropriate conclusions.

Internal mechanisms are the responsibility of the police, and it is its job to make sure they function properly. This means that such mechanisms will be effective only if there is an organizational commitment to such processes. If the police hold themselves up to high standards then there is a greater chance that such review mechanism will be effective.

In a sense, internal mechanisms can be more important than the external ones because they have to do with the working culture of the police. This is what the police encounter on a day to day basis. The police will always be aware of more faults and failures than an external agency that is removed from the action and relies on reports by complainants. Thus, it is better located, from an institutional perspective, to realize the monitoring role essential for maintaining accountability. Adequate internal mechanisms are thus crucial to a properly functioning police force. If the police leadership does not view such mechanisms favourably, there is little chance the subordinate officers will. As a result, internal oversight mechanisms such as internal investigations or an internal complaint bureau might be understaffed or underfunded and receive little, or perfunctory, compliance from the police forces it oversees.

Statistical databases, for example, can be manipulated. It should also be noted, however, that even if internal mechanisms function properly, they will inevitably be perceived as unsatisfactory by the public and instil little confidence. This is so because so much of the work by these bodies is secret. Findings are usually not made public and disciplinary proceedings are not meted out in a visible process like judicial trials.

Moreover, there is abundant literature on the ineffectiveness of internal mechanisms. Longstanding empirical research has demonstrated that police officers do not "rat" on their colleagues, but display a high level of loyalty, making internal investigations difficult. This means that police officers are "increasingly expected to tolerate, although not necessarily condone, misbehaviour... by other officers, and the principle of mutual no denunciation (the "blue curtain")... Hence, the deviant behaviours of police officers are mostly not seen merely as the consequence of deviant individual personalities. On the contrary, many of them are

likely to be based on perceptions of a wide organizational subculture, which significantly contradicts the declarative formal messages of the organization."¹⁵

A further complication with police officers investigating their colleagues is the tendency of the police to believe police officers and discount the testimony of criminal suspects, whom the police are already predisposed against.

At the same time, some scholars favour internal mechanisms over external ones. Most notably, David Beyley highlights the problems associated with external monitoring. According to Beyley, there are six main problems with external monitoring.¹⁶

First, it is reactive. It catches people after the act instead of preventing it. Many acts will not be detected and there is no guarantee that other officers will be deterred.

Second, focusing on individual deterrence, as many external agencies do, touches only on the symptoms of the problem. The real issues that lead to police misconduct have to do with organizational and occupational culture, things that are not remedied by having an external authority. As Beyley argues, what people do is more powerfully shaped by what their associates expect of them than by their personal background or personal character. Thus behavior is influenced by the police organization itself and not by external norm enforcement.

Third, an outside agency is likely to do worse than an internal agency. Outside agencies will know less than the police force collectively. They are dependent on others to bring them information. The police are likely to know more about

misconduct by other officers. Outside discipline can be counterproductive because it undermines the willingness of the police to discipline itself. Moreover, it threatens the image of police officers as professionals. Police view themselves as skilled professionals who do forensics, use scientific evidence and have legal expertise. Civilian review threatens that status, implying that inexperienced outsiders can evaluate the propriety of police actions.⁷⁸ Fourth, civilian review raises the concern of improper and political influence on the police. The police are usually viewed as an autonomous body that should be removed from partisan considerations. Having civilian review jeopardizes this independence. The police are thus presented with a difficult choice: cooperate with outsiders, which can also undermine command authority, or stand alongside lifelong colleagues. This dilemma, Beyley suggests, is non-existent or is attenuated in internal review settings.

¹⁵ Sergio Herzog, *Suspect Police Officers Investigated by Former Police Officers: Good Idea, Bad Idea?* 23 *Law & Pol'y* 441, 442-43 (2001)

¹⁶ See David Beyley, *Getting Serious About Police Brutality*, in *Accounting for Criminal Justice* 93-99 (Philip C. Stenning, ed., 1995)

Fifth, the ability of an outside group to affect the behavior of police officers is more limited than that of the police organization itself. An outside agency cannot encourage, inspire, or lead by example, which is what is needed to uproot longstanding norms.

Sixth, and echoing the similar concerns raised by the 1994 Law Commission report, an external mechanism might be costlier and more cumbersome than internal review.

Despite these concerns, however, Beyley is not discounting the necessity of external mechanisms. The public needs to know that someone is monitoring the police, especially since internal accountability mechanisms can malfunction. The answer, therefore, is multiple levels of accountability. Moreover, one can easily see why internal mechanisms, in India, would be incomplete. In a culture where misconduct and human rights violation have become the norm, often supported by superior officers and operational practice, it is problematic to see how these same superiors can instill a radically opposite organizational culture without the aid of an external agency. While external agencies can perform worse than internal agencies, this can be overcome through the proper budgeting and training of the external agency. It could also be staffed with policing experts and even retired officers who have the necessary experience.

Similarly, there is less concern of overstepping the boundaries of police autonomy. These concerns might exist in countries where the police are indeed autonomous from the political branches, but, as was discussed above, this is not the case in India. The police do not enjoy a high level of political insulation and institutional independence. Thus, Beyley's concern seems unwarranted in this case. As for the police's lack of will to discipline itself should there be an external agency, one need only point to the current problems of police discipline and misconduct that go on without any external mechanism.

The point is not that external mechanisms should replace internal mechanisms, but that the two should co-exist. Internal mechanisms are still required because the police will usually have access to more information and internal norms can go a longer way in instilling operating procedures and a proper organizational culture. Generally, police will have a greater incentive to comply with internal orders that are generated by their own superiors from the same hierarchy than with an external agency that they might view in an adversarial manner. In addition, they are likely to cooperate more with police procedures than civilian ones. External mechanisms, therefore, are necessary because the proximity of the police to the internal investigatory process might subvert a proper supervision.

Police Complaints Commissions :

The most dramatic advance in past decades has been the establishment of independent agencies, or complaints commission, charged exclusively with monitoring the police. These agencies operate differently in different countries and accordingly have different powers. Some of them have full investigatory powers and some leave that to the police. Some work

with other agencies, while others are more independent. This section will review a variety of such external mechanism, according to the country in which they are found. It will then proceed to highlight a few guidelines for a successful oversight agency.

A. Review and appellate models

The investigation is conducted by the police and is reviewed by an external agency that can make recommendation whether the findings should be reversed or sustained, or recommend further inquiries. The agency usually examines individual complaints and does not look at the police as a whole. Consequently, it lacks independent investigative powers. Such models might allow for civic participation by non-experts but are correspondingly limited in their authority and power, partly due to the involvement of non-experts.

B. Investigative models

Investigative powers are given to the external agency. The agency will usually have some form of subpoena and evidence collection powers. It will conduct its own investigations and make recommendations, which may or may not be binding. In some cases, such as San Francisco's OCC and Israel's Machash, the agency will also have some independent prosecutorial power. The agency will usually be staffed by non-police officers (such as UK's IPCC), though it is possible for it to have former police officers as well (for example, Israel's Machash).

C. Performance based models

Instead of focusing on individual violations, performance based models attempt to solve systemic and residual problems that afflict the police. This model leaves the individual disciplinary aspect to the police. Its supporters argue that taking discipline away from the police actually undermines the accountability of senior police officials. Proponents argue that "unless the police are held strictly accountable up and down the chain of command for actively managing the risk of police misconduct, the self-protective habits of the police will never change. It is one thing to achieve a fair result in a given investigation; it is far more powerful, these reformers contend, to change police culture in general by requiring strict accountability." This goes together with the police's commitment to grant access to records so that at least public representatives will be informed of the internal disciplinary measures that have been taken against offending officers. This model entails appointing independent professionals to oversee the police as a whole and to submit reports to a police board on the police's management of risks of police misconduct. They collect data, track performance, and highlight worrisome trends. The auditor also evaluates the overall performance of the internal disciplinary system. The advantage of this model is its ability to address entrenched problems that will go untreated, or even unobserved, in the individualistic case by case models.

Guidelines for a successful oversight mechanism:

Accountability is admittedly a broad subject and there are many ways and institutional designs to achieve police accountability. Undoubtedly, choosing a particular scheme will also depend on the particular social and legal context in which the police operate. External authorities arose because there was public perception that internal mechanisms are unthreatening to the organization which they oversee. Most complaint systems have focused on the bad apple theory, meaning that there are individual officers that are not functioning properly, and not systemic malfunctions.

In our discussion of external complaint commissions, we need to think about the range of matters to be overseen. Making sure the police comply with procedural and substantive standards is a very incomplete approach. It is important not to be preoccupied with only identifying wrongdoing, but to make sure the accountability mechanism is helpful in setting standards of propriety, conformity with legal requirements, and establishing policies. Accountability should be concerned with system wide issues as well as individual cases.

The effectiveness of a police force is closely linked with its moral authority and is dependent in large part on community support. However, public support will be wanting if the police are only accountable to themselves. Independent agencies are a source of valuable information on police conduct, which contributes to public trust. The public distrusts internal investigations, and correspondingly there are fewer complaints. When the police command so much power and authority, complaining to them about their own misconduct is tremendously difficult for those who are intimidated by that authority.

At the same time, complaints mechanisms are not enough. The experience with most complaint commissions has left something to be desired. In some countries, the complaint commission is understaffed or underresourced. In another, it does not enjoy the necessary level of investigative independence. And in another, there is public dissatisfaction with the disposition of complaints. Thus, although complaint agencies need to be designed properly, in and of themselves they are probably insufficient to remedy all the ills of bad policing.

Which of the models described above is the best? What constitutes a successful oversight mechanism? From analyzing the various models, it appears that the most successful mechanisms share a few common characteristics. They are institutionally independent from the police in terms of staff, funding, and resources. They are adequately staffed and resourced so as to ensure an adequate complaint process. They possess an ability to compel compliance with their decisions. They empower the public by emphasizing victim involvement and notification. These considerations – independence, adequacy, public scrutiny, and victim involvement – have also been adopted by the European Court of Human Rights.

It is our position that no one mechanism is "the best". Rather, the choice of oversight mechanism is context specific. According to policing expert Merrick Bobb, in minimally damaged communities, where the relationship between the police and citizenry is strained but not at breaking point, review and appellate models are the best. Minimal measures will be needed to restore trust. If the bonds of trust have been substantially eroded, but there exists a level of good will, a more aggressive model is needed, such as outsourcing disciplinary investigations to an external agency. In places where there is no or very little trust and a complete overhaul is needed, the appointment of an auditor will be needed as well.¹⁷

It seems clear that the situation in Pakistan, in terms of police misconduct, is dire. Report after report, committee after committee, have all pointed out the same problems. Widespread torture, rampant corruption, lack of knowledge about human rights and the rule of law, violence and lack of accountability. Moreover, these phenomena are pervasive. The views held by the lowest ranking officer are the views essentially held by the higher ups. Indeed, the reason low ranking officers come to practice torture and corruption is because they are taught that these are acceptable ways for an officer to conduct himself. The organizational culture is such that it is actually difficult for an officer to behave differently.

But the problem goes even deeper. In a sense, the police are themselves trapped in a vicious circle created by the colonial Police Act of 1861 that conceives of the police not as a force to maintain law and order and prevent crime, but as an organization that practices institutionalized violence and quashes dissent.¹⁸ The colonial rulers themselves realized this. The Indian Police Commission appointed in 1902 (the Fraser Committee) concluded:

'The police force is far from efficient; it is defective in training and organisation; it is inadequately supervised; it is generally regarded as corrupt and oppressive; and it has utterly failed to secure the confidence and cordial cooperation of the people.'¹⁹

Not much has changed. Despite persistent criticism and calls for reform, the Police Act has not been repealed or reconceptualised by the central government or the provinces. There is a reason for this. Transforming the way the police is structured comes into conflict with deep seated political interests held by politicians of both the coalition and opposition. The ability to control the police carries with it great political strength. Relinquishing power is something elected officials are loath to do. Thus, the greatest problem is that of political will, which is not only confined to the political establishment. The police themselves do not believe that anything is wrong with their conduct. They tend to blame the problems on civil society, lack of cooperation, and a basic misunderstanding by the public of police work.

¹⁷ See, Review on National Police Oversight Models 26-27 (Police Assessment Resource Center, 2005) available at [http://www.parc.info/client_files/Eugene/Review%20of%20National%20Police%20Oversight%20Models%20\(Feb.%202005\).pdf](http://www.parc.info/client_files/Eugene/Review%20of%20National%20Police%20Oversight%20Models%20(Feb.%202005).pdf)

¹⁸ 173 Interview with M.K. Subramanian (date???)

¹⁹ Cited in T.N. Dhar, Governance, Policing, and Human Rights, in *Policing India in the New Millennium* 337 (P.J. Alexander, ed., 2002).

It is thus a good question whether even the most aggressive external oversight mechanism will actually make a significant difference. If the political branches will not set up such an agency, or if the police will not cooperate with an oversight agency should it be created, what will be the result of having such an agency?

The truth is that in such a case, we cannot expect significant progress to be made simply in virtue of having a complaints agency. Police reform can succeed only through the combination of multiple efforts, one which is an external complaints agency. The other prongs are a sustained political commitment, pressure from civil society, and a transformation of the police structure and organization itself

For the time being, and for the purposes of this report, we are of the opinion that an aggressive and vigorous external agency is but one necessary facet of a complete overhaul in the provision in police services.

The following key recommendations are also proposed in addition to the crucial Police Oversight Mechanism and are elaborated upon further in the accompanying 'Implementation Plan':

- The Terrorism Act 1997 should be revised to clarify the definitions of the crimes that it covers and to create categories for crimes that are currently outside the Act's scope.
- The leadership of the Federal Investigation Agency should be authorized to pursue complaints made against employees, regardless of their rank or status. The agency must be empowered to handle cases in anticorruption, terrorism financing, money laundering, cybercrime, and intellectual property rights.
- Ensuring tenure security for all provincial police chiefs, in addition to the heads of FIA, NACTA, and the Intelligence Bureau, would help to minimize political pressure on these offices.
- At present, information collected by the country's intelligence agencies during interrogations cannot be used against suspects in legal cases. Legal provisions to make this information permissible, provided that arrests are made by law enforcement agencies and due process of law is followed, would greatly benefit the criminal justice system. Similarly, legal provision for wiretaps (involving court approval) would aid police investigations and prosecution.
- Modification of the Evidence Act and High Court Rules is essential to convening incognito trials, maintaining the protection of the identity of witnesses, and facilitating a simpler procedure for the admissibility of modern types of evidence (e.g., cell phone call data) in terrorism cases.
- An overhaul of the current system of promoting and hiring police would help to ensure reasonable and fair opportunities for advancement. This system must be transparent and free from political interference.

- To check police corruption, the federal government should establish an independent police complaint authority under the leadership of a reputable retired Supreme Court/High Court judge in order to guarantee accountability at all levels of the force. Civil society and nongovernmental organizations should play an active role in guaranteeing the independence of all such oversight bodies.
- An improvement in working conditions and salaries and changes to organizational culture would help to create a force that is respected by the people and thus is more effective in maintaining security and stability. The success of the National Highways and Motorway Police is particularly instructive in this respect.
- Training and curriculum throughout the police academies should be revamped to address the needs of vulnerable groups, including women, children, and minorities. This can help increase their sensitivity, and strengthen the relationship between the police and the community. Training course books should be written in the standard, user-friendly style of contemporary training manuals, rather than in the dense style currently being employed.
- The government should commission a study of the viability of the new VIP Secret Service to protect top state functionaries and lessen the security burden on police and intelligence agencies.
- A special cadre of terrorism investigators with the expertise and resources that police currently lack must be created. There should be new positions for such experts at the basic police station level.
- The establishment of special units at each province's central police office would serve to facilitate rapid coordination with private cellular companies to get direct access to cell phone data of suspected terrorists as soon as the police acquire information on phone numbers.
- As part of its de-radicalization approach, the police in Sindh should pursue a behavioral reform program when dealing with inmates. This includes the better treatment of inmates and improved conditions in police stations and prisons.
- Strengthened cooperation between the military and police would better enable provincial police to take responsibility for internal security. Special training exchanges and the induction of soldiers into the police force at junior levels can benefit police readiness in field operations.
- The private sector should be encouraged to contribute to enhancing coordination between the public and police through institutions such as the Citizen-Police Liaison Centre (CPLC) in Karachi.
- Properly understanding the factors that contribute to terrorism is critical. The government and the private sector should dedicate greater resources to expand quantitative and statistical research on the causes of terrorism.
- Police must be provided with the technology needed to combat criminals and terrorists. For instance, police should be given independent facilities for the interception of terrorists' communications, mobile-tracking systems, and telephone

call data analysis. Investment in developing national databases on vehicles and weapons is long overdue.

- Women should be encouraged to join the police. Equally as important, however, are more woman- friendly laws and gender-sensitized law enforcement personnel, whether male or female.
- Greater international support in the spheres of technical assistance, training, and modern equipment would assist Pakistan in building a police force that is capable of meeting the challenges of the twenty- first century.
- Greater emphasis should be placed on law and order and on the increased outlay of resources during annual budget allocations.
- The role of civil society organizations and nongovernmental organizations working in the human rights arena should be fostered, thereby creating a lobby for citizens' rights.
- Increased oversight by international donors is needed. These donors must revisit the quality of their interventions in Sindh's justice system. Millions of dollars spent over the years have not made things any better; on the contrary, the situation continues to worsen.
- Appointments to key police positions must be executed through a transparent procedure that is free of political interference.
- The police structure must be reformed to ensure reasonable opportunities for career advancement.
- An independent police complaint authority should be created that enshrines balanced rules for strict punishment, checks on arbitrary decision-making by the police leadership, and provides a credible accountability system for all ranks.
- De-politicization of the police should be encouraged through the increased involvement of civil society. This can be done by reviving the practice of including members of civil society in police safety commissions at the district, provincial, and national levels, and by establishing citizen police liaison committees in every district.
- Efforts should be made to improve the living and service conditions of police.
- Training must emphasize service and the rule of law. Courses should contain case studies of instances in which human rights violations have brought suffering not only to victims, but also to perpetrators who blindly carry out illegal orders.
- Because liberty is a fundamental right of citizens, the police should never arrest a person unless there is solid proof or evidence. Officers should shun the temptation to arrest an innocent person because of interference by interested parties.
- Police officers should professionally and faithfully collect evidence on behalf of both the parties and present it before the court. Moreover, they should avoid becoming a judge or executioner, declaring the accused guilty or innocent. This is not the mandate of the police, nor does the law permit it.
- At a basic level, prompt and professional response in distress situations will win laurels for the police. When an individual reports a crime, he or she should not be

called into the police station; the police should travel to the incident site and fill out complaint forms, sending a copy of the First Information Report or daily diary report (used to formally initiate investigations) by post or by hand. Investigating officers should visit and record evidence at the shops, offices, and houses of witnesses rather than summoning the interested parties to their offices and stations. By adopting these measures and altering the structure of public interaction, the police can drastically transform their public image.

- Women and children represent a disadvantaged and vulnerable section of society. No woman or child under 18 years old should be arrested without prior approval of a superintendent or assistant superintendent of police. Female police officers should handle their custody.
- Pakistan needs to make serious changes to its police training curriculum: Course books should be written in the standard style of contemporary training manuals, rather than in the dense, non-user-friendly style currently being employed. Additionally, the passive lecture format should be abandoned in favor of training that employs a mixture of interactive methodologies, including role-playing, group work, and problem solving.
- It is a well-known fact that informal training in the field imparted by co-workers and ground realities erodes formal training over time. It is absolutely necessary to offset the effects of this informal training—which is based on the practice of “pragmatic solutions” rather than “best practices”—by instituting a built-in mechanism of continuous training that revisits the core teachings relating to service-oriented and professional policing.
- Training Needs Analysis should be carried out scientifically and continuously in order to better understand areas for improvement in training. There is a significant difference in the quality of training manuals between the lower-level courses and the command course taught at the National Police Academy, for instance.
- Wire-tap facilities should be made available to police.
- Emergency units should be established at each province’s central police office to facilitate rapid coordination with private cellular companies. Moreover, centralized databases should be established to study trends and establish data banks on high-profile criminals and terrorists.²⁰

²⁰ Abbas, Hassan, ed. *Stabilizing Pakistan through Police Reform*. Rep. New York: Asia Society Independent Commission on Pakistan Police Reform, 2012. Print.

Conclusion

This report has attempted to propose a structure for a police complaint agency that is geared to the particular problems of Indian policing. The report highlighted the current problems plaguing the Pakistan police service and discussed the many reform attempts that, overwhelmingly, have not been carried out. We then turned our attention to the experience of different countries when moving from internal police investigations to external oversight mechanisms. This move is fraught with difficulties, and the overall success is mixed. Police tend to resist external oversight agencies and substantiation rates remain low. Indeed, a major hurdle is the level of cooperation the agency receives from the police. This has been a problem that institutional design alone cannot deal with effectively. Rather, it depends on the good will and good faith of those at work and the establishment of good working relationships between the two bodies. This suggests that what is necessary is not just an effective institutional design, but a revamping of the institutional culture that underlies that design. Again, this process is transformative and for it to succeed it requires a change of attitude, something that is not present among police reformers at the moment.

As for the structure of the complaints agency, we recommend that such an agency be independent from the police in terms of staff, infrastructure, and resources. This should be guaranteed in legislation. The agency should receive broad powers to conduct investigations effectively. Though it is possible that it will not be able to handle all complaints, it should, in the minimum, supervise or manage internal investigations. However, the preference is for independent investigations conducted by agency personnel. The agency's recommendations should be binding upon the police in terms of disciplinary matters. In criminal matters, the agency must assume a prosecutorial role or recommend action to the prosecuting authorities, who must give a presumptive weight to the agency's recommendation to prosecute.

The agency's powers should be extensive: full investigative powers, subpoena powers, access to documents, personnel and records, and wiretap. Moreover, we recommend that, in order to bring about more extensive reform, the agency must play a proactive role as well. It must seek bad practices, systemic problems, and entrenched behavior that must be altered. It must work with the police and civil society to root out such practices, even when not grounded in a particular complaint.

Further, we recommended that reforms be made in the internal investigation process as well. Since some investigations will still be carried out by the police, the investigation must be made more transparent and accountable. We suggested steps in that direction: promulgation of standards, proceedings, and disciplinary outcomes. We also recommended that there will be sanctions against non-cooperation with external agencies.

Finally, we recommended that mechanisms be put in place to engage police with non- police elements such as civil society and NGO's.

It is hoped that the recommendations in this report, the accompanying Draft Bill and the implementation plan will prove to be useful contributions to the much needed conversation on Police Reforms in Pakistan.

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ANNEXURE

THE POLICE ACT, 1861 (5 of 1861)

[22nd March, 1861]

An Act for the Regulation of Police

Preamble: - WHEREAS it is expedient to re-organise the police and to make it a more efficient instrument for the prevention and detection of crime; It is enacted as follows: -

1. Interpretation clause: - The following words and expressions in this Act shall have the meaning assigned to them, unless there be something in the subject of context repugnant to such construction, that is to say-

The words "Magistrate of the district" shall mean the chief-officer charged with the executive administration of a district and exercising the powers of a Magistrate, by whatever designation the chief officer charged with such executive administration as styled;

The word "Magistrate" shall include all persons within the general police-district, exercising all or any of the powers of a Magistrate;

The word "police" shall include all persons who shall be enrolled under his Act;

The words "general police district" shall embrace any Presidency, State or place, or any part of any Presidency, State or place, in which this Act shall be ordered to take effect;

The words "District Superintendent" and "District Superintendent of Police" shall include any Assistant District Superintendent or other person appointed by general or special order of the State Government to perform all or any of the duties of a District Superintendent of Police under this Act in any District;

The word "property" shall include any movable property, money, or valuable security;

The word "person" shall include a company or corporation;

The word "month" shall mean a calendar month;

The word "cattle" shall, besides horned cattle, include elephants, camels, horses, asses, mules, sheep, goats and swine.

References, to the subordinate ranks of a police force, shall be construed a reference to members of that force below the rank of Deputy Superintendent.

2. Constitution of the force -- The entire police establishment under a State Government shall for the purposes of this Act, be deemed to be one police force, and shall be formally enrolled, and shall consist of such number of officers, and men, and shall be constituted in such manner, as shall from time to time, be ordered by the State Government.

(Subject to the provisions of this Act the pay and all other conditions of service of members of the subordinate ranks of any police force shall be such as may be determined by the State Government.)

3. Superintendence in the State Government -- The superintendence of the police throughout a general police district shall vest in and shall be exercised by the State Government to which such district is subordinate and except as authorised under the provisions of this Act, no person, officer or court shall be empowered by the State Government to supersede or control any police functionary.

4. Inspector-General of Police, etc. -- The administration of the police throughout a general police-district shall be vested in an officer to be styled" the Inspector General of Police, and in such Deputy Inspectors General and Assistant inspectors-General as to the State Government shall deem fit.

The administration of the police throughout the local jurisdiction of the Magistrate of the district shall under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant District Superintendents as the State Government shall consider necessary.

5. Powers of Inspector-General—Exercise of powers.—The Inspector General of Police shall have the full powers of a Magistrate throughout the general police district; but shall exercise those powers subject to such limitation as may from time to time be imposed by the State Government.

6. Magisterial powers of police officers:- [Rep. by the Code of Criminal Procedure, 1882 (10 of 1882), sec. 2 and Sch. 1(b)].

7. Appointment, dismissal, etc of inferior officers.—[Subject to the provisions of Article 311 of the Constitution and to such rules as the State Government may from time to time make under this Act, the Inspector General, Deputy Inspectors-General, Assistant Inspectors-General and District Superintendents of Police may at any time dismiss, suspend or reduce any police officer of the subordinate ranks whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same; Or may award any one or more of the following punishments to any police-officer of the subordinate ranks who shall discharge his duty in a

careless or negligent manner, or who by any act of his own shall render himself unfit for the discharge thereof, namely:

- (a) Fine to any amount not exceeding one month's pay;
- (b) Confinement to quarters for a term not exceeding fifteen days, with or without punishment-drill, extra guard, fatigue or other duty;
- (c) Deprivation of good conduct pay;
- (d) Removal from any office of distinction or special emolument.

NOTE. —A Superintendent of Police can dismiss a Sub-Inspector of Police.

8. Certificates to police-officers.— Every police-officer appointed to the police force other than an officer mentioned in section 4 shall receive on his appointment a certificate in the form annexed to this Act under the seal of the Inspector-General or such other officer as the Inspector-General shall appoint by virtue of which the person holding such certificate shall be vested with the powers, functions and privileges of a police officer.

Surrender of certificate.—Such certificate shall cease to have effect whenever the person named in it ceases for any reason to be a police-officer, and, on his ceasing to be such an officer, shall be forthwith surrendered by him to any officer empowered to receive the same.

A police officer shall not by reason of being suspended from office cease to be a police officer. During the term of such suspension the powers, functions and privileges vested in him as a police-officer shall be in abeyance, but he shall continue subject to the same responsibilities, disciplines and penalties and to the same authorities, as if he had not been suspended.

9. Police-officers not to resign without leave or two month's notice.—No Police officer shall be at liberty to withdraw himself from the duties of his office, unless expressly allowed to do so by the District Superintendent, or by some other officer authorised to grant such permission, or, without the leave of the District Superintendent, to resign his office unless he shall have given to his superior officer notice in writing, for a period of not less than two months of his intention to resign.

10. Police-officers not to engage in other employment.—No police officer shall engage in any employment or office whatever other than his duties under this Act. unless expressly permitted to do so in writing by the Inspector-General.

11. Police superannuation fund:- [Rep. by the Repealing Act, 1874 (16 of 1874), sec.1 and Sch. Pt. I].

12. Power of Inspector-General to make rules. —The Inspector-General of Police may from time to time, subject to the approval of the State Government, frame such orders and rules

as he shall deem expedient relative to the organisation, classification and distribution of the police-force, the places at which the members of the force shall reside, and the particular services to be performed by them; their inspection, the description of arms accoutrements and other necessaries be furnished to them; the collecting and communicating by them of intelligence and information ; and all such other orders and rules relating to the police-force, as the Inspector General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties.

13. Additional police-officers employed at cost of individuals.—It shall be lawful for the Inspector General or Assistant Inspector-General, or for the District Superintendent, subject to the general direction of the Magistrate of the district, on the application of any person showing the necessity thereof to depute any additional number of police-officers to keep the peace at any place within the general police-district, and for such time as shall be deemed proper. Such force shall be exclusively under the orders of the District Superintendent, and shall be at the charge of the person making the application:

Provided that it shall be lawful for the person on whose application such deputation shall have been made on giving one month's notice in writing to the Inspector General, Deputy Inspector General or Assistant Inspector-General or to the District Superintendent, to require that the police-officers so deputed shall be withdrawn; and such person shall be relieved from the charge of such additional force from the expiration of such notice.

14. Appointment of additional force in the neighbourhood of railway and other works.—Whenever any railway, canal or other public work or any manufactory or commercial concern, shall be carried on or be in operation in any part of the country, and it shall appear to the Inspector-General that the employment of an additional police-force in such place is rendered necessary by the behaviour or reasonable apprehension of the behaviour of the persons employed upon such work, manufactory or concern, it shall be lawful for the Inspector-General, with the consent of the State Government, to depute such additional force to such place, and to employ the same so long as such necessity shall continue and to make orders, from time to time upon the person having the control or custody of the funds used in carrying on such work, manufactory or concern, for the payment of the extra force so rendered necessary, and such person shall thereupon cause payment to be made accordingly.

15. Quartering of additional police in disturbed or dangerous districts.—

(1) It shall be lawful for the State Government, by proclamation to be notified in the Official Gazette, and in such other manner as the State Government shall direct, to declare that any area subject to its authority has been found to be in a disturbed or dangerous state or that, from the conduct of the inhabitants of such area or of any class or section of them, it is expedient to increase the number of police.

(2) It shall thereupon be lawful for the Inspector-General of Police, or other officer

authorized by the State Government in this behalf, with the sanction of the State Government to employ any police-force in addition to the ordinary fixed complement to be quartered in the areas specified in such proclamation as aforesaid.

(3) Subject to the provisions of sub-section (5) of this section, the cost of such additional police force shall be borne by the inhabitants of such area described in the proclamation.

(4) The Magistrate of the district, after such enquiry as he may deem necessary, shall apportion such cost among the inhabitants who are, as aforesaid, liable to bear the same and who shall not have been exempted under the next succeeding sub-section. Such apportionment shall be made according to the Magistrate's judgment of the respective means within such area of such inhabitants.

(5) It shall be lawful for the State Government by order to exempt any person or class or section of such inhabitants from liability to bear any portion of such cost.

(6) Every proclamation issued under sub-section (1) of this section shall state the period for which it is to remain in force, but it may be withdrawn at any time or continued from time for a further period or periods as the State Government may in each case think fit to direct. Explanation.—For the purpose of this section, "inhabitants" shall include persons who themselves or by their agents or servants occupy or hold land or other immovable property within such area, and landlords who themselves or by their agents or servants collect rents direct from raiyatso occupiers in, such area notwithstanding that they do not actually reside therein.

15-A. Awarding compensation to sufferers from misconducts of inhabitants or persons interested in land.—(1) If, in any area in regard to which any proclamation notified under the last preceding section is in force, death or grievous hurt or loss of, or damage to, property has been caused by or has ensued from the misconduct of the inhabitants of such area or any class or section of them, it shall be lawful for any person, being an inhabitant of such area, who claims to have suffered injury from such misconduct to make within one month from the date of the injury or such shorter period as may be prescribed, an application for compensation to Magistrate of the district or of the sub-division of a district within which such area is situated.

(2) It shall thereupon be lawful for the Magistrate of the district, with the sanction of the State Government, after such enquiry, as he may deem necessary, and whether any additional police-force has or has not been quartered in such area under the last preceding section, to—

- (a) declare the persons to whom injury has been caused by or has ensued from such misconduct;
- (b) fix the amount of compensation to be paid to such persons and the manner in which it is to be distributed among them ; and
- (c) assess the proportion in which the same shall be paid by the inhabitants of such area other than the applicant who shall not have been exempted from liability to pay under the next succeeding sub-section:

Provided that the Magistrate shall not make any declaration or assessment under this subsection, unless he is of opinion that such injury as aforesaid has arisen from a riot or unlawful assembly within such area and that the person who suffered the injury was himself free from blame in respect of the occurrences which led to such injury.

(3) It shall be lawful for the State Government, by order, to exempt any persons or class or section of such inhabitants from liability to pay any person of such compensation.

(4) Every declaration or assessment made or order passed by the Magistrate of the district under sub-section (2) shall be subject to revision by the Commissioner of the Division or the State Government, but save as aforesaid shall be final.

(5) No civil suit shall be maintainable in respect of any injury for which compensation has been awarded under this section.

Explanation.—In this section the words "inhabitants shall have the same meaning as in the last preceding section.

16. Recovery of moneys payable under sections 13, 14,15 and 15-A, and disposal of same when recovered.—

(1) All moneys payable under sections 13, 14, 15 and 15-A shall be recoverable by the Magistrate of the District in the manner provided by section 368 and 387 of the Code of Criminal Procedure, 18821 for the recovery of fines, or by suit in any competent Court.

(2) [Omitted.]

(3) All moneys paid or recovered under section 15-A shall be paid by the Magistrate of the district to the persons to whom and in the proportions in which the same are payable under that section.

17. Special police officers - When it shall appear that any unlawful assembly, or riot or disturbance of the peace has taken place or may be reasonably apprehended, and that the police force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly or disturbance of the peace has occurred, or is apprehended it shall be lawful for any police-officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such police officers may require to act as special police-officers for such time and within such limits as he shall deem necessary; and the Magistrate to whom such application is made shall, unless he sees cause to the contrary, comply with the application.

18. Powers of special police officers.—Every special police-officer so appointed shall have the same powers, privileges and protection, and shall be liable to perform the same duties and shall be amendable to the same penalties and be subordinate to the authorities, as the ordinary officers of police.

19. Refusal to serve as special police-officer.—If any person being appointed a special police officer as aforesaid shall without sufficient excuse, neglect or refuse to serve as such, or to obey such lawful order or direction as may be given to him for the performance of his

duties, he shall be liable upon conviction before a Magistrate, to a fine not exceeding fifty rupees for every such neglect, refusal or disobedience.

20. Authority to be exercised by police officers.—Police-officers, enrolled under this Act shall not exercise any authority, except the authority provided for a police officer under this Act and any Act which shall hereafter be passed for regulating criminal procedure.

21. Village police-officer-- Nothing in this Ad shall affect any hereditary or other village police officer, unless such officer shall be enrolled as a police officer under this Act. When so enrolled, such officer shall be bound by the provisions of the last preceding section. No hereditary or other village police officer shall be enrolled without his consent and the consent of those who have the right of nomination.

Police chaukidars in the Presidency of Fort William.—If any police-officer appointed under Act XX of 1856 (*to make better provision for the appointment and maintenance of police chaukidars in Cities. Towns Stations, Suburbs and Bazars in the Presidency of Fort William in Bengal*) is employed out of the district for which he shall have been appointed under that Act, he shall not paid out of the rates levied under the said Act for that district.

22. Police-officers always on duty and may be employed in any part of district -- Every police officer shall, for all purposes in this Act contained, be considered to be always on duty, and may at any time be employed as police-officer to any part of the general police district.

23. Duties of police officers --It shall be the duty of every police-officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisances, to detect and bring officers to justice and to apprehend all persons whom he is legally authorised to apprehend and for whose apprehension sufficient ground exists; and it shall be lawful for every police officer, for any of the purposes mentioned in this section, without a warrant, to enter and inspect any drinking-shop gaming-house or other place of resort of loose and disorderly characters.

24. Police-officers may lay Information, etc.—It shall be lawful for any police officer to lay any information before a Magistrate, and to apply for a summons, warrant, search warrant or such other legal process as may by law issue against any person committing an offence.

25. Police-officers to take charge of unclaimed property and be subject to

Magistrate order as to disposal.—It shall be the duty of every police-officer to take charge of all unclaimed property, and to furnish an inventory thereof to the Magistrate of the district.

The police-officers shall be guided as to the disposal of such property by such orders as they shall receive from the Magistrate of the district. NOTES—Section 29 does not limit operation of Section 7—AIR 1969 SC 1020.

26. Magistrate may detain property and issue proclamation.—(1) The Magistrate of the district may detain the property and issue a proclamation, specifying the articles of which it consists, and requiring any person who has any claim thereto appear and establish his right to the same within six months from the date of such proclamation.

(2) The provisions of section 525 of the Code of Criminal Procedure, 1882 (X of 1882) shall be applicable to property referred to in this section.

27. Confiscation of property if no claimant appears.—(1) If no person shall within the period allowed, claim such property, or the proceeds thereof if sold, it may, if not already sold under sub-section (2) of the last preceding section, be sold under the orders of the Magistrate of the district.

(2) The sale-proceeds of property sold under the preceding sub-section and the proceeds of property sold under section 26 to which no claim has been established shall be at the disposal of the State Government.

28. Persons refusing to deliver up certificate etc. on ceasing to be police-officers: Every person, having ceased to be an enrolled police-officer under this Act, who shall not forthwith deliver up his certificate and the clothing, accoutrements, appointment, and other necessaries which shall have been supplied to him for the execution of his duty, shall be liable, on conviction before a Magistrate, to a penalty not exceeding two hundred rupees, or to imprisonment with or without hard labours or a period not exceeding six months, or to both.

29. Penalties for neglect of duty etc. -- Every police-officer who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice for the period of two months, or who, being absent on leave, shall fail, without reasonable cause, to report himself for duty on the expiration of such leave, or who shall engage without authority in any employment other than his police-duty, or who shall be guilty of cowardice, or who shall offer any m unwarrantable personal violence to any person in his custody shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay or to imprisonment, with or without hard labour, for a period not exceeding three month, or to both.

30. Regulation of public assemblies and processions and licensing of the same.—

(1) The District Superintendent or Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads, or in the public streets or thoroughfares, and prescribe the routes by which, and the times at which, such processions may pass.

(2) He may also, on being satisfied that it is intended by any persons or class of persons to convene or collect an assembly in any such road, street or thoroughfare, or to form a procession which would, in the judgment of the Magistrate of the district, or of the subdivision of a district, if uncontrolled, be likely to cause a breach of the peace, require by general or special notice that the persons convening or collecting such assembly or directing or promoting such procession shall apply for a licence.

(3) On such application being made, he may issue a licence specifying the names of the licensees and defining the conditions on which alone such assembly or such procession is to be permitted to take place and otherwise giving effect to this section : provided that no fee shall be charged on the application for or grant of, any such licence.

(4) Music in the street.—He may also regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies.

30-A. Powers with regard to assemblies and procession violating conditions of licence

(1) Any Magistrate or District Superintendent of Police or Assistant District Superintendent of Police or Inspector of Police or any police officer in charge of a station may stop any procession which violates the conditions of a licence granted under the last foregoing section, and may order it or any assembly which violates any such conditions as aforesaid to disperse.

(2) Any procession or assembly which neglects or refuses to obey any order given under the last preceding sub-section shall be deemed to be an unlawful assembly " Police to keep order on public roads, etc.—It shall be the duty of the police to keep order on the public roads, and in the public streets, thoroughfares, Ghats and landing-places and at all other places of public resort, and to prevent obstructions on the occasions of assemblies and processions on the public roads and in the public street or in the neighbourhood of places of worship during the time of public worship and in any case when any road, street, thoroughfare, ghat or landing-place may be thronged or may be liable to be obstructed.

32. Penalty for disobeying orders issued under last three sections. etc.—Every person opposing or not obeying the orders issued under the last three preceding sections or violating the conditions of any licence granted by the District Superintendent or Assistant District Superintendent of Police for the use of music, or for the conduct of assemblies and processions, shall be liable, on conviction before a Magistrate, to a fine not exceeding two hundred rupees.

33. Saving of control of Magistrate of district.—Nothing in the last four preceding sections shall be deemed to interfere with the general control of the Magistrate of the district over the matters referred to therein.

34. Punishment for certain offences on roads, etc.—Any person who, on any road or in any open place or street or thoroughfare within the limits of any town to which this section shall be specially extended by the State Government commits any of the following offences, to the obstruction, inconvenience, annoyance, risk, danger or damage of the residents or

passengers shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees, or to imprisonment with or without hard labour not exceeding eight days ; and it shall be lawful for any police-officer to take into custody, without a warrant, any person who within his view commits any of such offences, namely :-

First-Slaughtering cattle, Curious riding, etc:- Any person who slaughters any cattle or cleans any carcass; any person who rides or drives any cattle recklessly or furiously, or trains or breaks any horse or other cattle;

Second-Cruelty to animal:- Any person who wantonly or cruelly beats, abuses or tortures any animal; . .

Third-Obstructing passengers:- Any person who keeps any cattle or conveyance of any kind standing longer, than is required, for loading or unloading or for taking up or setting down passengers, or who leaves any conveyance in such a manner as to cause inconvenience or danger to the public; ..

Fourth-Exposing goods for sale:- Any person who exposes any goods for sale;

Fifth-Throwing dirt into street:- Any person who throws or lays down any dirt, filth, rubbish or any stones or building materials, or who constructs any cowshed, stable or the like or who causes any offensive matter to run from any house, factory, dung-heap or the like ; .

Sixth-Being found drunk or riotous.-Any person who is found drunk or riotous or who is incapable of taking care of himself; .

Seventh-Indecent exposure of person.-Any person who wilfully and indecently exposes his person, or any offensive deformity or disease, or commits nuisance by easing himself, or by bathing or washing in any tank or reservoir, not being a place set apart for the purpose ;

Eighth-Neglect to protect dangerous places.- Any person who neglects to fence in or duly to protect any well, tank or other dangerous place or structure.

35. Jurisdiction—Any charge against a police-officer above the rank of a constable under this Act shall be enquired into and determined only by an officer exercising the powers of a Magistrate.

36. Power to prosecute under other law not affected-- Nothing contained in this Act shall be construed to prevent any person from being prosecuted under any other Regulation or Act for any offence made punishable under this Act, or from being liable under any other Regulation or Act or any other or higher penalty or punishment than is provided for such offence by this Act:

Proviso.—Provided that no person shall be punished twice for the same offence.

37. Recovery of penalties and fines imposed by Magistrates.—The provisions of sections 64 to 70 both inclusive, of the Indian Penal Code, (XLV of 1860) and of sections 386 to 389 both inclusive, of the Code of Criminal Procedure, 1882 (X of 1882) with respect to fines shall apply to penalties and fines imposed under this Act on conviction before a Magistrate : Provided that notwithstanding anything contained in section 65 of the first-mentioned

Code, any person sentenced to fine under section 34 of this Act may be imprisoned in default of payment of such fine, for any period not exceeding eight days?

38 – 41: Repealed

42. Limitation of actions.—All actions and prosecutions against any person, which may be lawfully brought for anything done or intended to be done under the provisions of this Act, or under the general police powers hereby given shall be commenced within three months after the act complained of shall have been committed, and not otherwise; and notice in writing of such action and of the cause thereof shall be given to the defendant, or to the District Superintendent or an Assistant District Superintendent of the district in which the act was committed, one month at least before the commencement of the action.

Tender of amends.—No plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of such action brought by or on behalf of the defendant, and, though a decree shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge before whom the trial is held shall certify his approbation of the action :

Proviso.—Provided always that no action shall in any case lie where such officers shall have been prosecuted criminally for the same act.

43. Plea that act was done under warrant.—When any action or prosecution shall be brought or any proceedings held against any police-officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate.

Such plea shall be proved by the production of the warrant directing the act, and purporting to be signed by Magistrate and the defendant shall thereupon be entitled to a decree in his favour notwithstanding any defect of jurisdiction in such Magistrate. No proof of the signature of such Magistrate shall be necessary, unless the Court shall see reason to doubt its being genuine :

Proviso.—Provided always that any remedy which the party may have against the authority issuing such warrant shall not be affected by anything contained in this section*

44. Police-officers to keep diary.—It shall be the duty of every officer in charge of a police-station to keep a general diary in such form as shall, from time to time, be prescribed by the State Government to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons of property that shall have been taken from their possession, or otherwise, and the names of the witnesses who shall have been examined.

The Magistrate of the district shall be at liberty to call for and inspect such diary.

45. State Government may prescribe form of returns.—The State Government may direct the submission of such returns by the Inspector-General and other police officers as to such State shall deem proper, and may prescribe the form in which such return shall be made.

46. Scope of Act

(1) This Act shall not by its own operation take effect in any Presidency, State or place. But the State Government by an order to be published in the official Gazette may extend the whole or any part of this Act to any Presidency, State or place, and the whole or such portion of this Act as shall be specified in such order shall thereupon take effect in such presidency. State or place.

(2) When the whole or any part of this Act shall have been so extended, the State Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act—

(a) to regulate the procedure to be followed by Magistrates and polices-officers in the discharge of any duty imposed upon them by or under this Act;

(b) to prescribe the time, manner and conditions within and under which claims for compensation under section 15-A are to be made, the particulars to be stated in such claims, the manner in which the same are to be verified, and the proceedings (including local inquiries if necessary, which are to be taken in consequence thereon ; and

(c) generally, for giving effect to the provisions of this Act.

(3) All rules made under this Act may from time to time be amended, added to or cancelled by the State Government.

47. Authority of District Superintendent of Police over village police.— It shall be lawful for the State Government in carrying this Act into effect in any part of the territories subject to such State Government, to declare that any authority which now is or may be exercised by the Magistrate of the district over any village-watchman or other village police-officer for the purposes of police, shall be exercised, subject to the general control of the Magistrate of the district, by the District Superintendent of Police.

FORM (See section 8)

A B. has been appointed a member of the police force under Act V of 1861, and is vested with the powers, functions and privileges of a police-officer.

The Police Act, 1888 (India)

This act received the Governor-General's assent on 17th February, 1888 and was enacted to amend the law with regards to the regulation of Police.

- In spite of what may be contained in the Madras District Police Act, 1859, the Indian Police Act, the Bombay District Police Act, 1890 or 'any Act relating to the Police in any presidency town' the Central government has the authority, by way of notification to the Official Gazette, to create a special police district comprising of two or more states, and to extend the jurisdiction and powers of the police-force in the said district, to the extent that may be specified in the notification.
- Contingent on any orders made by the Central Government on this front, members of the said police force within the said district, will enjoy the same duties, powers, liabilities and privileges which, in their capacity as police officers, they have in their own State.
- The Central Government may (subject to any orders which the Central Government may make with regards to this) empower anyone in the said district to exercise any of the powers that an officer in charge of a police station in that State may exercise. And in exercising those powers shall be deemed to be an officer in charge of a police-station discharging his given duties within the limits of his station.
- A part of a State included in the said district shall not by virtue of that inclusion cease to be part of the State.
- An officer of the police force of any State may discharge his functions in any other State and while discharging these functions, be deemed to be a member of the police-force vested with the powers, functions and privileges and subject to the same liabilities as that of an officer.
- No provision of this Act can authorize a police officer of one State to exercise powers in another State (the only exception being a railway area) without the consent of the Government of the other State.

The Police Act, 1949 (India)

- This Act is meant to provide for the constitution of a general police district encompassing two or more Union territories and the establishment of a police force.

- This Act extends to all Union Territories and shall come into force in a Union territory on the date the Central Government, by way of notification in the official Gazette, appoints.
- After notification in the official Gazette, the Central Government has the discretion to constitute a general police district that includes two or more Union territories.
- A single police force shall be constituted for general police district, consisting of a given number of officers and shall be constituted in such manner as the Central Government may think fit.
- The Central Government shall oversee the superintendence of the police throughout a general police-district.
- The administration of the said police-force shall vest in a Central Government appointed officer, who shall exercise those powers exercisable by an Inspector-General of Police under the Police Act, 1861 as the Central Government may specify by way of notification in the official Gazette.
- Application of the Police Act, 1861,—Except for situations where it is explicitly stated in this Act, the provisions of the Police Act 1861 shall be applicable to the police force constituted for the general police-district as if it were one police force constituted for a single State, and members of the said police force shall have those powers, duties and privileges, and shall be subject to the same liabilities, as they would have been subject to as police officers if they had formed a police-establishment under one State Government.
- No clause in this Act shall be deemed to affect the provisions contained in the Delhi Special Establishment Act 1946.

Police Ordinance, 1866 (Sri Lanka)

- Article 3 relates to the establishment of the Police force and Article 4 provides that a police force may be established in certain places.
- Ministers are allowed to establish a police force in any rural district.
- It is lawful for a minister to quarter of police in disturbed or dangerous districts.
- Wherever any 'large work' is required to be carried out, the Inspector-General of Police, with the approval of the Minister, has the authority to employ additional police force.
- For the purposes of the section mentioned above, 'large work' will include 'any railway, tramway, manufactory, any plumb ago mining or other commercial business or concern in which a considerable number of artisans, operatives, workmen, coolies, or persons are employed.'
- The administration of the police is vested in the Inspector-General, Superintendents and Assistant Superintendents, inspectors, sergeants, and constables.
- Articles 21-26 of the Act deal with the appointment of police officers.
- A police force established in any district may be placed under the control of an officer, by approval from the minister.
- Articles 29 to 54 deal with the expenses and taxes of police officers.
- The Inspector-General of Police has the authority to make rules for the police force.
- Article 56 sets out the various duties and responsibilities of Police Officers.

Police Commission Act, No. 1 of 1990 (Sri Lanka)

- The National Police Commission shall consist of the Inspector-General of Police who shall act as Chairman of the Commission; one person nominated by the Public

Service Commission, after consultation with the President; and one person nominated by the Chief Justice.

- No Member of Parliament, a Member of a Provincial Council or a Member of a Local Authority can be a member of the National Police Commission.
- The appointment, transfer, dismissal and disciplinary control of Police Officers of the National Division of the Sri Lanka Police Force is vested in the National Police Commission.
- The National Police Commission shall determine the functions of the Police Force.
- Cadres of Police and ranks of all officers shall be fixed by the Government of Sri Lanka in consultation with the National Police Commission. Similarly, the Cadres and other ranks of each Provincial Division shall be fixed by the Provincial Administration with the approval of the President.
- An aggrieved Police Officer with regards to dismissal, transfer etc can appeal to the National Police Commission.
- A Provincial Police Commission for every Province, appointed by the President by Order must be published in the Gazette.
- The Provincial Police Commission of a Province should consist of the Deputy Inspector-General of the Province, a person nominated by the Public Service Commission (through consultation with the President) and a person nominated by the Chief Minister of that province.
- The appointment, transfer, dismissal and disciplinary control of the ranks of Superintendent, Provincial Assistant Superintendent, Chief Inspector, Inspector, Sub-Inspector, Sergeant and Police Constable is vested in the Provincial Police Commission of every Province.
- Article 11 of the Act deals with the delegation of Police officers.
- Investigations of offences may be conducted by the National Division of the Sri Lanka National Police.
- National Division to assist Provincial Division in investigations if the Chief Minister of any Province so requests.
- Article 16 deals with the exercise of powers by Provincial Division outside the Province.
- The Provincial Division shall assist the National Division in the investigation of offences by approval of the Inspector-General of Police.
- The Inspector-General has the power to issue directions.

South African Police Service Amendment Act, 1998 (South Africa)

- This Act amends the South African Police Service Act, 1995 (referred to as the principal Act) and provides a framework for the ‘establishment, functions and control of municipal police services’.
- Section 1 of the principle Act is amended to give the definition of ‘municipal police service’ as one established under section 64(1)(a), section 64A
- Section 3 sets out the establishment of municipal Police Service which is applied by the member of the Executive Council for its area of jurisdiction.
- The chief executive officer of a municipality will be held responsible to the municipal council for the functioning of the municipal police service.
- Sections 64B, C and D set out the appointment of the executive head of municipal police service.
- The functions of the municipal police service are traffic policing; the policing of municipal by-laws and the prevention of crime.
- Section 64F sets out the powers and duties of a member of the municipal police service.
- A person arrested with or without warrant by a municipal police officer shall be dealt with under Section 50 of the Criminal Procedure Act, 1977.
- In order to ensure accountability and promote transparency in the municipal police service, the municipal council will appoint a committee consisting of members of the council and other persons approved by the council to look into the functioning of the municipal police service.
- The Provincial Commissioner, after consultation with the Executive
- Council will establish at least one of the following committees to co-ordinate policing:
 - (a) local policing co-ordinating committees
 - (b) area policing co-ordinating committees
 - (c) provincial policing & coordinating committees
- The National Commissioner shall determine the powers and duties and the standards with regards to the training of municipal officers.
- Sections 64M and N set out the Minister’s powers and Executive Council’s powers, respectively, with regards to members of the municipal police service
- As per Section 64P, the Minister has the authority to make regulations with respect to the ‘effective functioning’ of the municipal police services.