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A Company setup under Section 42 of the Companies Ordinance, 1984



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Development Initiatives

Draft

Draft Punjab Police Act 2010 Analysis and Recommendations

March 2010

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Centre for Peace and Development Initiatives (CPDI) would welcome reproduction and dissemination of the contents of the report with due acknowledgments.

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I. Introduction:

Over the last decade, government of Pakistan has taken significant steps to reform the legal framework pertaining to the functioning of the police services. Most important of all was the promulgation of Police Order 2002, which aimed to provide for a police that would “function according to the Constitution, law, and democratic aspirations of the people...”. It also envisaged that the police “to be professional, service-oriented, and accountable to people...”. In order to achieve these objectives, the Police Order 2002 defined the responsibilities and duties of the police in such a manner which, if implemented in letter and spirit, would make it a public service as opposed to a force and an instrument of state oppression. The Police Order 2002 provided for mechanisms of public oversight, operational autonomy for the police department, functional specialization and public accountability. However, this Order had been promulgated by a military dictator, who lacked legitimacy and whose measures were rejected by the political leadership across the board. Hence, the changes made by his regime in the legal framework had a very narrow ownership base.

Therefore, before the Order could be fully implemented, it was massively amended in late 2004 and the mechanisms of public oversight, operational autonomy and public accountability were weakened. Even the massively amended Police Order 2002 has never been fully implemented, although several years have now passed since the promulgation of original Order as well as the amendments. In particular, the government and police authorities have been reluctant or very slow in implementing the provisions relating to public oversight and accountability. For instance, the public safety and police complaints commissions were either not constituted or not facilitated and enabled to perform their responsibilities. In many districts, police officers did not extend cooperation to these commissions; while there also existed problems in relation to the capacity or integrity of members of the commissions.

Now the provincial governments are again planning to substitute the Police Order 2002 with their own provincial legislation. The Punjab Police has already drafted an Act, which has been circulated in the government for comments and feedback. Centre for Peace and Development Initiatives (CPDI) has made a modest effort to analyze this draft and articulate its views in order to improve it in the larger public interest. Such civil society input and engagement is extremely important to ensure that the final Act reflects the views and aspirations of all stakeholders and, in particular, addresses the concerns of common people.

The analysis and recommendations presented in this paper are based on certain expectations, which civil society organizations have been articulating time and again in relation to the police service. These expectations are as follows:

- Police service should be run and managed in a completely transparent manner. The laws governing the police must ensure that police disclose maximum information proactively; besides providing for an effective mechanism for peoples’ access to information regarding the functioning and operations of the police.

- Police should be explicitly mandated to protect rights, entitlements and freedoms of the people, especially of disadvantaged sections; and any measures or steps that restrict rights or freedoms must be allowed only in exceptional circumstances in the larger public interest; and then there should be a requirement to justify these before the appropriate forums.
- Police is an institution with lots of powers, which can be abused to unfairly curb freedoms, deny or delay access to justice, and harass people. It is, therefore, important to provide independent, effective, cost-effective and credible mechanisms for accountability. Such accountability forums should have the powers to dismiss officers from the service, who fail to perform their duty or who commit misconduct. Such a mechanism is justified in view of weak departmental accountability systems and over-burdened courts, which cannot dispose of police related complaints in an efficient manner.
- There is a need to involve active citizens and public representatives in overseeing the day to day functioning and operations of the police department. This oversight must be non-intrusive; and yet it must provide a platform for debating issues, highlighting concerns, forwarding complaints, promoting transparency, improving planning and priorities, and assessing performance.
- The law must provide an objective, fair and comprehensive framework for evaluation of performance of police officers in order to minimize the role of personal likings and disliking of senior officers or political leaders. The performance thus assessed should become the basis for transfers, postings and promotions.
- Police department should have the operational autonomy in relation to the matters involving, among others, intra-departmental resource allocation, transfers, postings and promotions. However, the principle of devolution should be observed within the department as well to avoid concentration of powers in one or few offices.
- The laws related to police must emphasize functional specialization. In particular, there should be a focus on building capacities and specialization for investigating various kinds of crimes in a professional and scientific manner.
- Since law and order is a provincial subject and there has lately been a growing focus in our political discourse on greater provincial autonomy, the provincial governments must take steps to build their provincial cadre of police officers by providing options for recruitment in grade 16 or 17.

In keeping with the above outlined civil society expectations, the Table below provides comments and suggestions vis-à-vis various provisions of the Draft Punjab Police Act 2010. These suggestions are by no means exhaustive and may be improved upon in the light of further consultations and discussions. However, it is expected that these comments will inform the debate and ensure that civil society perspectives are also taken on board.

No	Draft Punjab Police Act 2010	Comments/ Recommendations
A Right to Information/ Transparency		
1	Draft Act does not include any provision about peoples’ right to information in relation to police matters.	<p>In its preamble, the Draft Act envisions a police service which is “professional, service-oriented, and accountable to the people”. These are laudable goals. However, the question is: How can a police service be accountable to people when it does not recognize peoples’ right to information in an effective and comprehensive manner? Without having access to correct and timely information or records, there is no way that people could play their role in holding the police accountable.</p> <p>It is now widely recognized that right to information is a pre-requisite for transparent, democratic and accountable governance. The UN declared in 1946 that: “Freedom of information is a fundamental human right and a touchstone for all freedoms.” Right to information is an effective anti-corruption tool and serves as ‘oxygen’ for democracy.</p> <p>It is, therefore, recommended that the Police Act should include strong provisions about peoples’ right to information. All information and records should be declared as accessible unless excluded on clearly defined and specific grounds like privacy of individuals or potential negative affect for law and order or ongoing investigation. The criterion should be based on whether the public interest would be better served by disclosure or treating a certain record as confidential. The existing framework/culture of treating all information or records as classified or restricted unless declared otherwise must be changed for transparency and democratic accountability.</p>

2	Draft Act includes no provision about proactive disclosure of any information or records held by the police department. Nor does it provide any other mechanism whereby it could ensure transparency in the matters related to police at any level.	<p>In order to ensure transparency and promote democratic accountability, the Police Act must declare that the following type of information/ records will be proactively disclosed through notice-boards, websites and published materials:</p> <ul style="list-style-type: none">i) Information about how police can be contacted for reporting crimes, filing complaints, seeking information or copies of record and making suggestions;ii) Particulars of its organization, functions and duties; as well as powers and duties of its officers and employees;iii) Procedures followed in the decision making process, including channels of supervision and accountability;iv) Norms, standards and codes set by it for the discharge of its functions;v) Codes of conduct, rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;vi) Statement of the categories of documents that are held by it or under its control;vii) Directory of its officers and employees;viii) Monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;ix) Budget allocated to each of its agency (or each district/ division), indicating the particulars of all plans, proposed expenditures and reports on disbursements made;x) Particulars of recipients of concessions, perks, benefits or facilities;xi) Names, designations and other particulars of officers, who could be contacted by people to access information/ records;xii) Any other information whose proactive disclosure may be in the interest of transparency or facilitating people.
B	Recruitment	
3	“The recruitment in the Punjab Police other than ministerial staff and	First of all, this would mean that the Punjab Police would remain dependant on officers belonging to Federal services to fill senior positions. It is because the people recruited in

	specialist cadres shall be in the rank of Constables and Sub-Inspectors....” [s. 7(3)]	<p>the rank of constables and sub-inspectors are not likely to reach higher grades; and hence would never be eligible for senior posts. The resultant dependence on the Federal officers may not be in the long term interest of the province, especially in the context of ongoing demands for greater provincial autonomy.</p> <p>Secondly, the Punjab Police will not be able to attract highly qualified people with specific expertise through recruitment in these less attractive ranks. This would particularly undermine the efforts of Punjab Police to develop a professional and highly capable cadre of investigators, who could equal the challenges of contemporary times.</p> <p>Therefore, the Punjab Police must retain the option (rather it should make it a priority) of recruiting staff in higher grades (e.g. as Inspectors and ASPs/ DSPs) in order to develop a professional investigative cadre. People thus recruited, trained and groomed would remain in the province throughout their careers and, hence, would be more beneficial for the province than the officers belonging to the Federal services.</p>
4	<p>“The Provincial Police Officer may, with the approval of the Government, appoint one or more experts to assist the Punjab Police”. [s. 30(1)]</p> <p>“The qualifications, eligibility, terms and conditions of service of experts shall be as prescribed”. [s. 30(2)]</p>	<p>It seems that these provisions are meant for temporary or short-term needs; and are not in recognition of the need to make regular or long-term appointments for experts in various branches of the Police.</p> <p>In general, it appears that the Police department has yet to appreciate the importance of developing or engaging expertise for various routine operations (e.g. investigation, intelligence gathering, prevention, etc.). Otherwise, there would have been a lot more focus in the Draft Act on specialization and engaging high quality human resource.</p>
C	Operational Autonomy/ Internal Governance	
5	“The Government shall post a police officer of the rank of Inspector General	In the current circumstances, the Provincial Government will not be able to do it on its own without the consent of the Federal Government. It is because the Provincial

	of Police as Provincial Police Officer of Punjab”. [s. 11(1)]	<p>Government does not have a pool of eligible police officers belonging to provincial service, who could be appointed at senior posts.</p> <p>Furthermore, the process of selection needs to be made transparent and de-politicized. It should be based on a well-defined criterion and procedure, which should take into account past performance, integrity, reputation and strength of the vision or strategy that the relevant candidate may present to improve public safety conditions in the province.</p> <p>In specific terms, it is suggested that the Chief Minister should select an officer from a panel of 3 officers short-listed (on the basis of a clearly laid-out criterion) and recommended by the Punjab Public Service Commission. The person chosen by the CM should be confirmed through an open public hearing held by the Parliamentary Committee of the Punjab Assembly on Home Department.</p>
6	“During temporary absence of the Provincial Police Officer, the Government may empower an Additional Inspector General of Police to exercise all or any of the powers, perform all or any of the functions and duties, and discharge all or any of the responsibilities of the Provincial Police Officer”. [s. 11(2)]	The Act must not leave any lacuna, whereby an acting PPO could be appointed or retained for extended durations. It is because an acting PPO being uncertain about the tenure of his/ her posting would not be able to work effectively and with a long-term perspective. A person serving on temporary basis may also be more susceptible to pressures by vested interests.
7	<p>The Draft Act provides for a minimum 3 years term for police officers serving as PPO and DPOs as well as for officers in charge of a police division, sub-division or police station.</p> <p>However, police officers can be pre-</p>	<p>These are welcome provisions, as security of tenure is essential for the relevant police officers to come up with their own policing plans and then have adequate time to implement such plans to show performance and deliver results. This security of tenure should help in reducing incidence of erratic, arbitrary and politically-motivated transfers/ postings.</p> <p>Simultaneously, the Police Act must provide for an objective mechanism whereby</p>

	maturely transferred in ‘exceptional circumstances due to exigency of service’ or in view of ‘misconduct’ or ‘inefficiency that warrants major penalty. [see s. 12, s. 15, s. 19]	performance of police officers could be assessed at the end of each year, and then at the end of 3 years tenure. Such assessment must take into account factors like reduction in crime, detection rate, etc. There should also be a system of having feedback from junior staff as well as people about the reputation and performance of the officer. All future postings and promotions of relevant police officers must be linked with performance shown by an officer in a previous tenure at a certain level.
8	The Police Act does not provide for the security of tenure of Additional Inspector Generals, Deputy Inspector Generals and heads of Police Training Institutions. [s. 14]	All officers with a command/ supervisory responsibility for a region or institution or a branch should have the security of tenure.
9	“The Provincial Police Officer, with the approval of the Government, may post an officer not less than the rank of a Senior Superintendent of Police as the head of district police who may be called District Police Officer. [s. 15]	The Provincial Police Officer should be authorized to appoint a District Police Officer and no approval or concurrence of the provincial government should be required. This is important to allow operational autonomy and de-politicize the police department. It would also help in promoting accountability as, once having been given operational autonomy; the police officers will not be able to shift responsibility towards others. However, along with operational autonomy, strong and effective provisions should be made for holding the police officers accountable for bad performance or lack of progress.
10	“Provincial Police Officer shall post Senior Superintendents, Superintendents, Assistant and Deputy Superintendents of Police”. [s. 14(2)]	Powers and responsibilities must be devolved and institutionalized within the police department as well. Why the Provincial Police Officer should be posting Superintendents, Assistant and Deputy Superintendents of Police? Why these powers cannot be transferred to a committee headed by the Regional Police Officer (for transfers within the region) and to a committee headed by an Additional Inspector General (for transfers across regions)?
11	The Provincial Police Officer has been empowered to post officers as Commandant of the Police Training College and Principals of each Police	Interestingly, in the Draft Police Act, no approval of Provincial Government is required for such postings in the training institutions, which is consistent with the concept of operational autonomy. However, it is strange, as stated elsewhere, that approval from the Provincial Government is required for the posting of District Police Officers.

	Training School. [s. 17]	No security of tenure has also been provided for heads of training institutions. Why? Such a security of tenure is extremely important for heads of training institutions to ensure that they can focus on improving the quality of instructions. However, there should be incentives for officers to work in the training institutions as, in the current situation, such postings are not considered as attractive and, hence, police officers would not like to serve in these institutions for long. Perhaps, this is the reasons that the drafters have not considered it important to provide for a security of tenure for them. But, until and unless, the training institutions get the priority attention of police leadership, the performance of the police in general is not likely to improve. The Draft Police Act does not address this issue at all.
D	Separation of Investigation from Other Functions	
12	“All registered cases shall be investigated by the investigation staff in a police station under the supervision of the Officer in Charge of the police station. The investigation staff shall not be employed for duties other than investigation except with approval of the head of district police”. [s. 22(1)]	This provision does not make much sense. It will adversely affect the investigation process, as it would make the entire investigation process susceptible to the influence of Officer in Charge. This provision indicates that the realization for developing specialization in the police is still not there.
13	Under the Draft Police Act, an investigation can be changed 3 time i.e. firstly on the order of the head of the district police, secondly on the	Change of investigation should be allowed only when there is evidence to suggest that the investigation officer is biased and incompetent or that he / she has committed misconduct. With each change of investigation, an inquiry must be ordered against the concerned officer to ensure that he or she is punished for any bias, incompetence or misconduct.

	order of the regional police officer and thirdly on the order of the Provincial Police Officer. [See s. 22(4, 5 and 6)]	Police has limited resources, which should be used rationally and judiciously. Frequent changes in investigation would put a burden on police resources/ tax-payers. Therefore, at the most, only one change of investigation my be allowed and, that too, in special circumstances; while reasons / justification should be recorded in line with a clearly laid out criterion.
E	Code of Conduct	
14	<p>Under the Draft Act, the Provincial Police Officer “shall issue code of conduct to regulate police practices, particularly:-</p> <p>a). the exercise by police officers of statutory powers of stop and search;</p> <p>b). the searching of premises by police officers and the seizure of property found by police officers on persons or premises;</p> <p>c). the detention, treatment and questioning of persons by police officers; and</p> <p>d). the identification of persons by police officers.</p> <p>(2) Subject to rules, a police officer contravening the Code of Conduct may be awarded one or more penalties provided under law and rules.” [s. 34]</p>	<p>Similar provision existed in the Police Order 2002 but the Police Department did not take it seriously. Although code of conduct was notified but it was done in a non-serious manner and without any consultation with stakeholders. Apparently, it was notified just with the aim of meeting a statutory requirement and not really to ensure its implementation for general public benefit. In view of that experience, it is suggested that the Police Act should include provisions about the following:</p> <ul style="list-style-type: none">• Code of conduct shall be prepared and finalized in consultation with stakeholders, especially bar council and other relevant civil society organizations;• Final draft of the code of conduct will be presented in the Provincial Police Council; and will be notified after its approval;• Once notified, the code of conduct will be widely publicized for public information through notice-boards, websites, and newspaper advertisements;• Code of conduct will be published in the form of a pocket-sized booklet, and it will be made mandatory for all police officers to keep it in their pockets during duty hours. It will convey a strong message that the police leadership really takes it seriously;

		<ul style="list-style-type: none">• Police officers will be trained in the academies about the importance of code of conduct and how it should be implemented. <p>The proposed code of conduct should also include provisions about the following:</p> <ul style="list-style-type: none">• How the people visiting police stations should be treated?• Notification/ information to the families of the detainees;• Treatment of detainees with illnesses and their needs of access to medicines;• Proactive sharing of information about rights, potential threats, precautionary measures;• Dealing with female detainees or children or elderly;• Controlling mobs, demonstrations and protests etc. <p>The code of conduct would basically govern the way police should interact with general public in or outside the police stations. Hence, taken seriously, it could be used as a tool to gradually transform the police culture and the way police behave with citizens. On the one hand, it could be a way of sensitizing police staff and, on the other hand, it would inform and empower people about their rights (what the police is not authorized to do or should do for them) and responsibilities (in what situation they must cooperate with police).</p>
F	Public Oversight	
15	District Police Council	
15.1	“The District Police Council shall have seven members including	With a vast majority of the Council members being politicians, there is a risk that it would become highly politicized and may become a forum to

	<p>a) Three MPAs from the concerned district to be nominated by the Chief Minister at least one of whom shall be from the opposition;</p> <p>b) Chairman of the District Council;</p> <p>c) Head of the municipal body of the district's largest urban centre;</p> <p>d) President of the District Bar Association; and</p> <p>e) Head of District Police as the Council's secretary.</p> <p>(2) If an opposition MPA has not been elected in the district, then all three may be form the treasury benches.</p> <p>(3) Each member shall have right to cast a vote in the matters of the Council except the dead of district police.” [s. 76]</p>	<p>influence police operations for partisan motives. It is, therefore, important to provide for the membership of more non-politicians such as eminent/ neutral citizens, representatives of civil society groups with proven record of working on police related matters and retired judges or other persons with experience of working in the government service. The selection process for non-politicians should be clearly laid-out and it must ensure that it would not be influenced by political or vested interests.</p> <p>MPAs, however, should remain a part of the Council, as they add to the weight of the Council and, in any case, their views and role would be important as public representatives. Police officers are also likely to listen to the Council more attentively if MPAs are included as its members.</p> <p>However, MPAs may be selected through a rotation principle in alphabetical order in each district, thus ensuring that all will have the opportunity to serve on the Council. The term of an MPA may be only 1 year, until he or she again gets the opportunity as a result of rotation.</p> <p>The Council should consist of 12 to 18 members, allowing larger districts to have more members and diverse representations. More than half of the members should be non-politicians including, at least, 2 women as members.</p>
15.2	“The Chief Minister shall appoint the Chairperson from among the voting members of the Council. In case the office of the Chairperson becomes vacant, another Chairperson shall be appointed within thirty days.” [s. 77(1)]	The Chairman should be appointed for one year through consensus or a majority vote. The CM will not have time to be able to decide about the Chairperson in an informed and fair manner for all the districts in the province. Any role given to him/her would create unnecessary delays in notifying the Chairpersons, besides creating a negative trend of political maneuvers aimed at influencing the CM along party lines.
15.3	The Draft Act provides that chairman can be	These are vague and subjective provisions and would be hard to prove. In

	<p>“removed from office by a majority vote of the total voting members of the Council if he...</p> <p>g. Is involved in activities prejudicial to the ideology, interest, security, unity, solidarity, peace and integrity of Pakistan and its people, and the good order and harmony of society;</p> <p>h. Brings the District Police Council into disrepute...” [s. 77(3)]</p>	<p>fact, there may be a risk that these are abused to curb different views and dissent based on bonafide and justifiable reasons.</p>
15.4	<p>“The council shall perform the following oversight functions:</p> <p>(a) To aid and guide the district police discharge of its functions and responsibilities under this Act;</p> <p>(b) To redress grievances against police;</p> <p>(c) To identify shortcomings regarding infrastructure and equipment in police; and</p> <p>(d) To promote citizen-police cooperation;</p> <p>(e) Any other item with the permission of the chair.</p> <p>(2) With respect to sub-section (1)(b) above the Council shall perform the following functions:</p> <p>a. Receive from an aggrieved person a complaint, in writing of neglect, excess or misconduct by a Police Officer;</p> <p>b. Refer it to the concerned District or Regional Police Officer to take action under the Punjab Police Efficiency and Discipline Rules, 2010 and</p>	<p>This section shows that there will be a highly restricted oversight role for the district police council. Furthermore, these provisions are vague and need to be clarified. In view of this, it is suggested that the Council should also be given role, responsibility and powers to:</p> <ul style="list-style-type: none">• Seek and receive data and information about the overall crime rate and the measures that are being taken to deal with the situation;• Require the police to develop an annual policing plan and then approve it after providing its input. The policing plan may clearly spell out the challenges, priorities and targets for the year. The Council should also have the responsibility to review the progress regarding policing plan at the end of the year;• Ask the police leadership in the district to take measures vis-à-vis certain types of complaints of general nature (e.g. non-registration of FIRs); and then seek reports about the actions taken;• Seek and receive detailed information about the annual budget and its utilization; and make recommendations for more efficient utilization of resources available;• Review the state of peoples’ right to information vis-à-vis police

	<p>furnish a report of findings of the enquiry and any action taken;</p> <p>c. Inform the complainant of the outcome of the matter in writing as soon as possible;</p> <p>d. In case of any frivolous, false or vexatious complaint, initiate legal action against the complainant under section 73 of this Act;</p> <p>e. Report the matter to the provincial police officer where the appropriate authority does not submit a report. [s. 79]</p>	<p>department/ records; and make recommendations for removing any barriers, constraints or inefficiencies that the people may be facing;</p> <ul style="list-style-type: none">• Make recommendations for making the police department more transparent and efficient in its functioning, as well as for reducing incidence of corruption;• Take steps for public awareness in respect of their rights vis-à-vis the police departments; and who the people could approach in the case of having complaints;• Review the police performance vis-à-vis implementation of code of conduct; and suggest ways for improvement;• Take steps to build trust and an environment of improved communication between the people and police;• Encourage and facilitate initiatives aimed at community policing;• Prepare an annual report, which will be laid and debated in all the elected councils in the districts (i.e. district council, municipal council, town council and union council, etc.). The said report should also be sent to RPO, PPO, CM, Provincial Police Council and the Punjab Assembly.
15.5	“On grounds contained in section 77 above the Chief Minister may terminate the council's membership of any of his nominees.” [s. 81]	CM should not have any such role, neither in terms of nominating members nor in terms of their removal, as suggested above.
15.6	“The head of district police shall provide shall secretarial support to the Council from the resources at his disposal.” [s. 83]	Council should have its independent secretariat, as dependence on DPO would undermine its autonomy. However, DPO may be asked to depute an officer of SP rank for attending all the meetings, maintaining a regular liaison with the Council and furnishing all the information and reports required by the Council. It may be appropriate to have DPO as an ex-officio (non-voting) member of the Council, as opposed to being its secretary.

16	Provincial Police Council	
16.1	<p>“The Provincial Police Council shall have eleven members, including:</p> <ul style="list-style-type: none">a. Chief Minister as Chairperson;b. Law Ministerc. Two members of the Provincial Assembly nominated by the Chief Minister at least one of whom shall be from the opposition;d. Three independent persons of proven reputation for integrity and competence from the fields of academia, law public administration, media, human rights or other relevant fields to be appointed by the Chief Minister;e. Chief Secretary of the Punjab;f. Secretary to the Government of the Punjab, Prosecution Department;g. Secretary to the Government of the Punjab, Home Department; andh. Provincial Police Officer as the Council's secretary. <p>1. Any vacancy in the Council shall be filled up as soon as practicable, but not later than one month of occurrence of the vacancy.</p> <p>2. Each member shall have a right to cast a vote in the matters of the Council except those mentioned at (e) to (h) in sub-section (1) above.</p> <p>Gender Representation: - There shall be at least two</p>	<p>Instead of CM, it is the Home Minister who should be made chairperson of the Provincial Council. [In the Punjab, the CM usually holds the portfolio of Home Minister himself/ herself but it might change in future]</p> <p>The number of independent members should be increased to more than 50 percent of the total strength of the Council in order to ensure expertise and representation. The selection of independent members should be based on a clearly laid-out criterion and it must ensure that it would not be influenced by political or vested interests.</p>

	women among the members nominated by the Chief Minister. [s. 85] “In the absence of the Chairperson the Law Minister shall preside over a meeting.” [s. 87]	
16.2	<p>“The Council may</p> <p>a. Frame policy guidelines for promoting efficient, effective, responsive and accountable policing, in accordance with the law;</p> <p>b. Identify performance indicators to evaluate the functioning of the Punjab Police. Such indicators shall, <i>inter alia</i>, include: operational efficiency, public satisfaction, victim satisfaction vis-à-vis police investigation and response, accountability, optimum utilization of resources, and observance of human rights standards;</p> <p>c. Direct Provincial Police Officer to evaluate performance of the Punjab Police using performance indicators identified by the Council and submit to the Council by the end of August this evaluation in an annual report for each completed financial year;</p> <p>d. Review performance of the police in the Punjab as a whole as well as district-wise in the light of the annual report from the Provincial Police Officer keeping in view the resources available with and constraints of the police;</p>	<p>Like the District Police Council, the Provincial Police Council also has been given a limited role and responsibility. However, it will be a powerful forum in view of its composition and the fact that it will be chaired by the CM, as per the current Draft. Yet it is important to explicitly expand its mandate, which would ensure that independent members also have their say in relation to broad spectrum of police related matters.</p> <p>For example, the Council may be given the responsibility and powers to:</p> <ul style="list-style-type: none">• Require the police to develop an annual policing plan and then approve it after providing its input. The policing plan may clearly spell out the challenges, priorities and targets for the year. The Council should also have the responsibility to review the progress regarding policing plan at the end of the year;• Review the procedures and practices related to transfers and postings, and then make recommendations to make the entire process fair, merit-based, transparent and de-politicized;• Seek and receive detailed information about the annual budget and its utilization; and make reforms for more efficient utilization of resources available;• Review the state of peoples’ right to information vis-à-vis police department/ records; and make recommendations for removing any barriers, constraints or inefficiencies that the people may be facing;• Make recommendations for making the police department more transparent and efficient in its functioning, as well as for reducing

	<p>e. Refer a complaint to a District Police Council for action under section 35.</p> <p>2. The report mentioned in sub-section (1) (c) above shall deemed to be the annual administration report of the Police Department as required by rules or any other law.” [s. 88]</p>	<p>incidence of corruption;</p> <ul style="list-style-type: none">• Take steps for public awareness in respect of their rights vis-à-vis the police departments; and who the people could approach in the case of having complaints;• Review the police performance vis-à-vis implementation of code of conduct; and suggest ways for improvement;• Assess the legitimate needs of police, especially with a focus on improving <i>thana</i> culture and facilities in the police stations meant for visitors, mobility, investigation and junior police staff; and• Prepare an annual report, which may be laid in the Provincial Assembly.
16.3	<p>“Removal of Members:-</p> <p>1. On grounds contained in section 77 above the Chief Minister may terminate the Council's membership of any of the MPAs.</p> <p>2. An independent member may be removed by a majority vote of the total voting membership of the Council on grounds contained in section 77 above.” [s. 90]</p>	<p>Such a power in relation to MPAs also should rest with the voting members of the Council and it may be exercised through a majority vote.</p>
G	Accountability	
17	<p>The Draft Act does not provide any independent and effective mechanism for dealing with individual or collective complaints in relation to police. Although Chapter VIII of the Draft is titled as “Police Accountability and Oversight”, the actual provisions in the Chapter only provide for a weak mechanism</p>	<p>It is suggested that the Police Act should provide for establishing Police Complaint Commissions at the divisional levels. Such commissions should be staffed with professionals / experts, who could investigate complaints of serious nature related to police and impose appropriate penalties that may include, among others, fines, award of compensation or damages to victims and dismissal from service. The decisions of such commissions may only be</p>

	for oversight, and not of accountability.	challenged in higher courts. Such commissions or authorities are absolutely necessary in view of the fact that regular court system is over-burdened and, in many situations, the internal accountability mechanisms of the police department do not deliver. Such commissions or authorities should be established at the divisional level in order to ensure that people have relatively easy access. These bodies should have a simple procedure to facilitate people; and should follow a proactive approach in terms of seeking records, collecting evidence and engaging police authorities to address public grievances.
H	Powers to Issue Orders and for Maintenance of Public Order and Security	
18	The Draft Police Act provides a large number of powers to police officers aimed at regulating public assemblies and processions. [Chapter V and VI]	While such powers are generally required, it may be kept in mind that these powers can also be misused by police officers or staff. It is, therefore, important to define such powers as specifically as possible; and then to build safeguards against the abuse and selective or arbitrary use of such powers. The Draft Act must recognize that right to association or assembly is a fundamental human, democratic and constitutional right; and it must be rarely restricted only in extra-ordinary circumstances. The Act must state that the police will make its utmost efforts to protect this right of the people but may resort to imposing restrictions in the larger public good – but it will be done based on justifiable reasons which will be recorded and explained to the people.
19	The draft Act provides for depute additional police to keep peace and order at the cost of organizers of events, functions or large works. [Chapter VI]	Such provisions must be deleted. Police agency should provide security as a public service to all without seeking any payment. It should not be reduced to the status of a private security agency, whose services can be hired.

		However, police being the main and primary security provider may, in certain circumstances, direct organizers of certain functions of private or business nature to make adequate security arrangements on their own. The police can have the powers to oversee such security arrangements and advise or instruct appropriate improvements.
I	Gender Aspect	
20	The draft Police Act does not include any significant provisions aimed at promoting gender equity in various aspects of policing.	Given that women are more than 50 percent of our population and often face violence and discrimination, the Police Act must make strong and explicit provisions aimed at promoting gender sensitive policies in all aspects and at all levels. In particular, the Police Act must provide for the following: <ul style="list-style-type: none">• Its language should be gender sensitive;• The Act must set out a clear vision and provisions for recruitment of women officers and staff in various branches of the police service. It is too important to be left to sub-ordinate legislation;• There must be provisions for additional incentives to encourage women to join the police service;• The Act must provide for a forum comprising senior police officers and representatives of civil society with a mandate to promote gender sensitive work environment in the police service; as well as to set standards for dealing with female detainees;• Any other measures relating to special needs of women in the society.

J	Miscellaneous	
21	“No Police Officer to be liable to any penalty or payment of damages on account of acts done in good faith in pursuance of duty: - No police officer shall be liable to any penalty or to payment of damages on account of an act done in good faith in pursuance or intended pursuance of any duty imposed or any authority conferred on him by any provision of this Act or any other law for the time being in force or any rule, order or direction made or given therein.” [s. 104]	While such a provision may be necessary, the Draft Act must also take into account the damages or injuries, which may have been caused to members of the public as a consequence of “an act done in good faith in pursuance or intended pursuance of any duty imposed or any authority conferred on him by any provision of this Act or any other law for the time being in force or any rule, order or direction made or given therein”. The police department cannot completely absolve itself from the responsibility of such consequences in any civilized society. Therefore, in such situations, the police department, as opposed to individual officers or staff, should be made responsible to pay compensation and/or damages to the member of the public. In cases where the Department cannot prove that it has made utmost efforts to prevent potential harm or damage to member of public, the award of compensation/ damages should be of punitive nature, so as to ensure that incidence of harm is reduced to the minimal.
22	“Suits or prosecutions in respect of acts done under color of duty not to be entertained if not instituted within the prescribed period:- in case of an alleged offence by a police officer, or a wrong alleged to have been done by him or by any act done under color of duty or in exercise of any such duty or authority of this Act or when it shall appear to the Court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained, or shall be dismissed, if instituted after more than six months from the date of the action complained of.” [s. 105]	Why this limitation of 6 months? There may be situations where a weak party could not have the opportunity or courage to file a complaint within this period due to a variety of reasons. In any case, whenever a bonafide complaint is made, it should be investigated in the interest of justice, particularly when it involves weaker sections of society.
23	“Notice of Suit to be given with sufficient description	Why a notice of two months in this age of prompt communication? Why not

	<p>of wrong complained of:-</p> <ol style="list-style-type: none">1. In the case of an intended suit on account of an alleged wrong referred to in section 106 by police officer, the person intending to sue shall give two month's notice as prescribed in section 80 of Civil Procedure Code 1908 of the intended suit with sufficient description of the wrong complained of.2. The provisions of section 80 of the Civil Procedure Code, 1908, shall mutatis mutandis apply to the notice referred to in clause (1). [s. 106]	<p>of 7 days? Should not this provision be examined/ reviewed from the perspective of public interest as well?</p>
24	The draft Police Act provides for a punishment of imprisonment term of up to 1 year and/ or RS 50,000 fine against those who may file frivolous or vexatious complaints against a police officer. [S. 73 and s. 74]	This provision must be deleted, as it will deter people from filing even the genuine complaints. It will also lend itself to excessive abuse by police officers against people, as complaints that cannot be proved may be dubbed as ‘frivolous’ or ‘vexatious’. Furthermore, the police department must recognize that frivolous and vexatious complaints are more likely to be filed in a situation when the department does not have a strong and robust complaint management system. If the people know that the complaint management system is strong and credible, there would be less likelihood of anybody opting for ‘frivolous’ or ‘vexatious’ complaints.
25	Since the form of the new local government system is not clear yet, this draft Police Act falls short of providing necessary links with the local government system.	There is a need to carefully analyze the need and importance of linkages between the draft Police Act and the new local government system currently being discussed.