DRAFT POLICE ORDINANCE

An agenda for police s

about police reforms package has finally been approved in a closed door meeting with the President / Chief Executive but its details are yet to be made public. It is sad to note that no public opinion or debate on its various aspects was sought before adopting the document. The draft ordinance was circulated only among a select few, some trusted agencies and government departments.

HE much talked

A look at the draft shows that it has everything for the police, but little for the people. It has a high sounding preamble, 16 schedules. What does it all add up to? The answer is: it is a formula or agenda for a police state. In case there is any doubt, consider the following provisions:

Under the Constitution, law and order is a provincial subject. The legislation about police reorganization and matters concerning criminal justice is a provincial subject which the fed-

believe, unconstitutional. This almost amounts to allowing the police to get away with murder. Elsewhere in the ordinance too there are shades of a similar mindset. Sec. 28, for example, provides for the "civilian employees" in the Police Department, as distinguished from the enlisted personnel. Does it mean that the police force itself would no longer be treated as civil employees of the government? Would they rather like to be titled as para-military? Would it also amount to ousting the jurisdiction of ordinary service tribunals over their service matters?

Now consider another twist: chapters, 186 sections and 4 / Sec. 153. Where an offence under this Ordinance has been committed by a company, every person who at the time of the offence was committed, was in charge or was responsible to the company for the conduct of the business of the com-

> The 'thana culture' is the bane of our society. The thanodaris the symbol of

itoring bodies both within, and without, the police such as the Police Appeals Tribunal, Criminal Justice Co-ordination Committee, and the Police ♥ Complaints Authority.

The functions of the Authority, of course, include receiving and taking suitable action on complaints against abuse of authority by the police. One of its functions, listed in the ordinance, shall be to "file anonymous. pseudonymous complaints". (1) The functions of the Police Appeals Tribunal (Sec. 87) are not explained in the ordinance.

The Inspector-General of Police in a province, to be redesignated as Police Chief, is going to be a powerful figure. The scrapping of the time-honoured designation will hardly make it people-friendly, or earn for its holder the loyalty of the force. If the idea was to follow western

> pattern, it would have been more appropriate to call him the Chief Constable. Once appointed, through a complicated process, it would be virtually impossi

of a case, nor could he ask for a report about a heinous crime the investigation of which has been hushed up or delayed.

The point, which needs to be driven home to the powers that be, is that mere issuance of ordinances is not going to deliver until the people's confidence is restored in the system. The socalled 'thana culture' is the bane of civil society. The thanedar is the symbol of the violent nature of our state. Our police stations are the vestiges of mediaeval mindset. These are chambers of Unorror where an ordinary citizen dreads to go. The tales of torture. rape and human degradation associated with thana are not a thing of the past. Not a single section in the ordinance, much less a chapter, is devoted to police station. Police will not become people-friendly merely because we wish it to be.

The draft Police Ordinance 2001 is a serious document and in spite of one's grave reservations it must not be taken lightly. However, there are some inter-

esting aspects of it, which to indicate that its author not without a certain se humour. The following exa should help illustrate this Section 93: (1) Public to as police - A person shall be to comply with the reas directions given by a police cer in the discharge of his under this Ordinance: (2) any person resists, refuses to comply with any dire referred to in sub-section police officer may, without dice to any other action th may take under any other sion of this ordinance of other law for the time be force, remove such perso either produce him before or, unless serious cases, i him when the occasion necessitated his remov ceased to exist.

Section 158: Coordina Police at district level head of district Police will co-ordination of police wit departments in respect of: ural calamities like earth

r police state?

hammad Ashraf

of a case, nor could he ask for a report about a heinous crime the investigation of which has been hushed up or delayed.

The point, which needs to be driven home to the powers that be, is that mere issuance of ordinances is not going to deliver until the people's confidence is restored in the system. The socalled 'thana culture' is the bane of civil society. The thanedar is the symbol of the violent nature of our state. Our police stations are the vestiges of mediaeval mindset. These are chambers of horror where an ordinary citizen dreads to go. The tales of torture, rape and human degradation associated with thana are not a thing of the past. Not a single section in the ordinance, much less a chapter, is devoted to police station. Police will not become people-friendly merely because we wish it to be.

The draft Police Ordinance 2001 is a serious document and in spite of one's grave reservations it must not be taken lightly. However, there are some interesting aspects of it, which seem to indicate that its authors were not without a certain sense of humour. The following examples should help illustrate this point: Section 93: (1) Public to assist the police - A person shall be bound to comply with the reasonable directions given by a police officer in the discharge of his duties under this Ordinance: (2) Where any person resists, refuses or fails to comply with any direction referred to in sub-section (1), a police officer may, without prejudice to any other action that he may take under any other provision of this ordinance or any other law for the time being in force, remove such person and either produce him before court or, unless serious cases, release him when the occasion which necessitated his removal has ceased to exist.

Section 158: Coordination of Police at district level - (1) The head of district Police will ensure co-ordination of police with other departments in respect of: (i) natural calamities like earthquakes

and floods etc; (ii) situations arising out of external aggression; (111) any other matter not within the purview of a single department and affecting the general law and order situation of the district.

(2) The Zila Nazim will ensure requisite support of other departments to the police.

The boot is on the other foot, as the saying goes. The much touted District Coordination Officer, does not find mention in the ordinance, and so far as police is concerned, they might have heard the last of him, devolution or not.

There is time between now and August 14, when the socalled reforms are to be formally introduced. An appeal would be in order to the good sense of those at the helm of affairs. They must give one more hard, dispassionate look to the documents. They should not allow themselves to be led up the garden path at the behest of a few individuals The stakes are high. There are great pitfalls in the path being charted.

have arrogated to itself. Involving Chief Justices of Supreme Court and the high courts, in the section of senior police functionaries (Section 33), appears to be a dangerous mix of judicial and executive functions, and outright ultra-vires of the Constitution. Allowing one organ of the state to encroach on another's mandatory functions can only lead to unnecessary complications.

Not only that but the prerogative of the provincial chief executive in controlling his police has been diluted so much that it looks like a mockery of the powers vested in him under the Constitution. A chief minister who is obliged to okay one name out of three referred to

him by the National Safety Commission (NSC), for appointment as the provincial police chief, and suffer him for the next could hardly deserve to be called the chief executive of his province

The rigmarole of layer upon layer of supervisory and regulatory bodies, proposed in the ordinance in the name of effective and depoliticized police force, looks good on paper but would it be possible to enforce it in our kind of environment in one go? Moreover, what do we mean by depoliticization? Every time the chief executive desires his police chief to carry out a decision taken at the highest echelon of the government, the latter could taken the plea of interference in his domain and sit tight over it, or refuse it point blank.

For instance, consider the following provisions of the ordinance: "Section. 150 (1) No court shall take cognizance of any offence under this Ordinance when the accused person or any one of the accused is a police officer, except on a report in writing of the facts constituting such offence by or with the previous sanction of any officer authorized in this behalf under the rules."

This kind of discrimination is, I

the violent nature of state. Our police stations are the vestiges of mediaeval mindset. These are chambers of horror where an ordinary citizen dreads to go. Not a single section in the ordinance, much less a chapter, is devoted to police station. Police will not become peoplefriendly merely because we wish it to be

pany, as well as the company, shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished accordingly ... "

individuals liable under the ordinance is indeed a strange perversity of legislation. The doctrine of vicarious liability is there but roping in the entire spectrum of social order into the sweep of the ordinance is difficult to comprehend. Theoretically speaking, should the driver of a companyowned vehicle "fail to keep on the left side, and when passing another vehicle proceeding in the same direction fail to keep on the right side of such vehicle" (Sec. 118), the entire board of directors of the corporation could be charged with a criminal offence. It all seems like an Alice detentions, and raid houses if he in Wonderland, or perhaps a Catch-22 situation!

The National Safety Commission, and its provincial and district tiers, will be managed by senior police officers. It defies reason why there couldn't be a watchdog regulatory body without the police itself standing guard over its corporate vested interests. What kind of credibility it will promote is not difficult to sense. Besides the safety commissions, they have proposed a plethora of supervisory and mon-

Die to remove nim. In a sense, it brings him at par with such constitutional posts as the Chief Justices, the Chief Election Commissioner, and the Auditor General of Pakistan. Even an oath of office has been prescribed for him and for those down the line in police hierarchy.

The Police Chief is going to have the following powers: a) he will also be ex-officio secretary to government. In other words he will be functioning as Home Secretary as well; b) he will appoint (and presumably, transfer, remove or suspend) any number of DIGs and officers, below that rank either in the field or elsewhere; c) he will constitute police regions, divide

police districts into police divisions, sub-divisions and police stations; d) he will have powers to make regulations, many of which are part of fundamental three years, come what may, U. Making companies as well as rights, under the constitution.

One may recall that when President Abdul Rehman Wahid of Indonesia recently sacked his police chief for resorting to excessive use of force against agitating mobs, the latter refused to step down and majority of his senior officers stood by him calling the order "a gross political interference". Our draft Police Ordinance will lead to an identical scenario.

The SP at district level will also have powers of the District Magistrate. He could issue search warrants on flimsiest grounds. He could even order preventive thinks that something suspicious is going on inside. The muchtrumpeted empowerment of the people through their district Nazim will be confined to receiving the monthly "all well" report from the SP, so far as the 'law and order' situation is concerned.

The Nazim would have no say in criminal administration by police. He would not be allowed to enter a police station, if his intention was to have a look into the lockup. He would have no powers to order the registration

Accountable

By Jamal Must

OLICE Ordinance 2001 is an attempt to create a police force that shall be absolutely self-governing and accountable to none. The very preamble of the ordinance makes you feel as if a new `organ

of state' is being brought into

existence. It lays down: 'That the objectives of police force to be created would be to work according to Constitution, aspirations of public...' Since the prime duty of any police force is prevention and detection of crime, then why talk in terms of 'taking care of public aspiration'? Let the constitution- or any carrier on a pu al bodies, meant for the purpose take care of the public's aspirations.

But the preamble is only an attempt to prepare you for what comes next. The details leave one with little doubt that the actual intention is to create a new constitutional body of the state. On the one hand, the NRB trusts the elected representatives of the district governments enough to hand over most of the provincial departments to them.

Here, the police is not being entrusted to even the provincial government. For instance sections 9, 12 (1), 12 (2), 14(1) are to clip the provincial wings. Once given force, the provincial governments, whose duty it is (according to the Constitution) to monitor and control the law and order in the provinces, shall be reduced to the status of onlookers, having no role but to obediently toe the provincial police chief's line. To watch the elected chief ministers flattering provincial police chiefs will be an interesting sight.

The irony is that the powers withdrawn from the provincial governments have been concentrated in the 'Police department' and also it has been made independent of provincial and federal governments. All the tools of controlling already withdrawn provinces. Section 18 of nance further empo Police Chief to del provinces into police divisions, sub-division stations and sections, even consulting the p governments. If this accepted then what is in declaring the provinc chiefs to be the provin executives?

The section 82 of nance entrusts powe police officer to 'searc sage, when he suspects carrying of an illegal of so why not repeal the 'Criminal Procedure Con police are already doing to make people's lives m and they do not need app law for that.

Furthermore, sectio makes the police chief the heads of district po executive magistrates. imagine the fallout of th section. The magistracy posely segregated fr police department w intention to create an check and restraint. Our conveniently forgetting acted over the years has done well enough to tate an easing out of checks upon it.

The section 150 of t nance protects a police from being called in que a court of law unless so ted by another police Remember we are try make our police "people ly" and are trying to pull the "dark confines" of the teenth century. Even the Act of 1861 - an act we ne tired of calling the coloni cy - does not offer this in to police. This proves

ntable to none

Jamal Mustafa Syed

al governments. All the effective tools of controlling police already withdrawn from the provinces. Section 18 of the ordinance further empowers the Police Chief to delimit the provinces into police regions, divisions, sub-divisions, police stations and sections, without even consulting the provincial governments. If this has to be accepted then what is the harm in declaring the provincial police chiefs to be the provincial chief executives?

The section 82 of the ordinance entrusts powers to a police officer to 'search person or any carrier on a public passage, when he suspects of their carrying of an illegal object'. If so why not repeal the whole of 'Criminal Procedure Code'? Our police are already doing enough to make people's lives miserable and they do not need approval of law for that.

ë

e

a

5.00

Furthermore, section 24(2) e R makes the police chief and all the heads of district police, the a executive magistrates. One can ts imagine the fallout of this single le section. The magistracy was pur-١. 1g posely segregated from they police department with the al intention to create an effective ecto check and restraint. Our police ce conveniently forgetting how it ovacted over the years - thinks it has done well enough to necessiis tate an easing out of all the m) checks upon it. aw

all The section 150 of the ordiof nance protects a police officer to from being called in question in ial a court of law unless so permitthe ted by another police officer. Remember we are trying to be make our police "people-friend-

ly" and are trying to pull it out of vers the "dark confines" of the ninecial teenth century. Even the Police cen Act of 1861 - an act we never get ient' tired of calling the colonial legandecy - does not offer this impunity der- to police. This proves we are bent upon going back beyond 1861 at least. What should be our model then: the Mogul one or a little further back, may be that of the Khiljis (who else's)?

The only conclusion one arrives at, after reading the draft, is that if at all anyone exercises effective control upon a police officer, he is none other than a more senior police officer. The other checks it talks about are: public safety commissions, police complaint authority or the directorates of inspections - each of them more of an invertebrate than the other. Even the checks on financial matters have to be exercised by the Director of Inspections, who "coincidentally" happens to be another senior police officer.

The assumption is that our police have acquired absolute perfection i.e. they are investigators, prosecutors, judges, custodians of public life and property, "caretakers" of public aspirations and above all, financial wizards. Shouldn't the rest of the 'executive organ' of the Constitution be done away with? All that is left to be done is to create a federal police chief to be donned with the prime ministerial mantle.

The laws (colonial ones, as we can't do without them) that govern our existing administrative dispensation were not brought about as a result of whimsical outburst of any bureau. They were distilled out of very long experience. By all means they need to be changed, only to make them more compatible with the new realities. The Japanese, or for that matter the Korean or Bhutanese models may be doing exceedingly well in those lands, but may prove disastrous once imposed upon our land. One can't import laws from abroad like any other commodity. Laws gradually evolve out of the social experiences.