

r police state?

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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 so-called '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 inter-

esting 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 so-called 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 three years, come what may, 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 people-friendly 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.."

... Making companies as well as 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 company-owned 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 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-

... to remove him. 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 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 detentions, and raid houses if he thinks that something suspicious is going on inside. The much-trumpeted 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 Mustaf

POLICE 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 constitutional 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 feder-

al governments. All the tools of controlling, already withdrawn from provinces. Section 18 of the ordinance further empowers the Police Chief to delimit provinces into police divisions, sub-division stations and sections, even consulting the provincial governments. If this is accepted then what is in declaring the provincial chiefs to be the provincial executives?

The section 82 of the ordinance entrusts power to the police officer to 'search or any carrier on a public passage, when he suspects carrying of an illegal object, so why not repeal the Criminal Procedure Code if police are already doing to make people's lives better and they do not need any law for that.

Furthermore, section 10 makes the police chief the heads of district police executive magistrates. Imagine the fallout of this section. The magistracy, possibly segregated from police department with intention to create an effective check and restraint. Our conveniently forgetting acted over the years - that has done well enough to tolerate an easing out of checks upon it.

The section 150 of the ordinance protects a police officer from being called in question by a court of law unless so ordered by another police officer. Remember we are trying to make our police "people friendly" and are trying to pull the "dark confines" of the nineteenth century. Even the Act of 1861 - an act we are tired of calling the colonial legacy - does not offer this immunity to police. This proves

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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.

Furthermore, section 24(2) makes the police chief and all the heads of district police, the executive magistrates. One can imagine the fallout of this single section. The magistracy was purposely segregated from, the police department with the intention to create an effective check and restraint. Our police - conveniently forgetting how it acted over the years - thinks it has done well enough to necessitate an easing out of all the checks upon it.

The section 150 of the ordinance protects a police officer from being called in question in a court of law unless so permitted by another police officer. Remember we are trying to make our police "people-friendly" and are trying to pull it out of the "dark confines" of the nineteenth century. Even the Police Act of 1861 - an act we never get tired of calling the colonial legacy - does not offer this impunity 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. ■