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Devolution of Police Powers

A Guide for Decision-makers

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Executive Summary

In 1987, the 13th Amendment to the Constitution was passed in order to devolve powers to Provincial Councils, as a step towards solving the ethnic conflict. The scheme of devolution under the 13th Amendment sought to divide the exercise of legislative and executive powers of the government between the central and provincial governments. To this end, the constitutional amendment created three lists, namely the Provincial Council List, the Reserved List and the Concurrent List, among which all governmental subjects and functions have been divided.

Legislative powers over police and public order have been included in the Provincial Council List, which is the list of areas which fall within the purview of the Provincial Councils. Therefore, under the 13th Amendment, police powers have been devolved to provincial governments.

This constitutional amendment has been the subject of much debate from the time it was introduced and despite a lapse of twenty five years since it was passed, some of the significant proposals for devolution, i.e. devolution of land and police powers, are yet to be implemented.

The reluctance to implement these constitutional provisions is often characterised as being based on fears of secessionist tendencies arising again in the North and East, by allowing these provincial governments to have control over a force which could potentially supplement these tendencies.

In order to assess the reasonableness or otherwise of these fears as a causal factor for non-implementation of the said constitutionally mandated devolution, it is necessary to appreciate the actual extent of devolution of police powers anticipated under the 13th Amendment. In this context, this guide seeks to provide a clear and comprehensive account of administrative and institutional aspects of devolving police powers in Sri Lanka and the extent of devolution envisaged by the 13th Amendment. The study also provides some relevant comparative insights into the position of two Commonwealth countries (Canada and United Kingdom) which may also have had grounds to entertain similar fears. It is presented in four main parts.

Part I of this guide examines the constitutional framework of the devolution of powers and provides a detailed overview of the organisational structure and powers of the police force under the

13th Amendment. The powers relating to police, which is one of the main law enforcement agencies, are almost entirely based on the executive. The measures implemented through the 13th Amendment create an institutional framework that would secure the autonomy of the police service and protect it from political interference.

The 13th Amendment provided for the devolution of powers in respect of police and public order under Item 1 of List 1 (i.e. the Provincial Council List) of the 9th Schedule to the Constitution. However, this devolution is limited up to the extent set out in Appendix I of the 9th Schedule to the Constitution.

The organisational structure of the police force under the 13th Amendment establishes two divisions of the police force, namely the National Division and a Provincial Division for each province. Part I provides a description of the composition of divisions, jurisdiction, appointments, determination of cadres of each division of the Police service, uniforms and language requirements of the police officers.

With regard to the recruitment, transfer, promotion and disciplinary control of police officers, the 13th Amendment provided for the creation of a National Police Commission (NPC), and Provincial Police Commission for each province. Part I also describes the main structure and duties of these police commissions in these particular activities.

The functioning of the NPC has been subject to significant changes as a result of subsequent constitutional amendments, i.e. the 17th and 18th Amendments. The 17th Amendment sought to strengthen the NPC, by entrusting appointments of the NPC to a Constitutional Council. However, the 17th Amendment has been substantially changed by the 18th Amendment, which vested powers over appointments to the NPC in the President. These constitutional amendments have also resulted in some confusion with regard to the functions of the NPC. The 13th and 17th Amendments provided for the functions of the NPC to primarily include the recruitment of police officers to the National Division, promotion from the National to the Provincial Division, and promotion, transfer and disciplinary control of police officers in the National Division. The 17th Amendment had included the powers of the NPC in the 13th Amendment within its purview. The 18th Amendment vested these functions in the Public Service Commission and expressly stipulat-

ed that the functions of the NPC only include the investigation of complaints against police officers and redress for these offences. However, a lapse made in the 18th Amendment in the provisions relating to the functions of the NPC has led to certain provisions made in the 17th Amendment remaining in force and thereby providing the NPC with additional powers in respect to appointments, cadres of officers and provision of training for police officers.

Despite substantial reforms to facilitate the devolution of police powers in the Constitution, police powers are entirely under the control of the central government in practice. The two divisions of the police force and the two police commissions as envisaged by the 13th Amendment have not been established. While the members of the NPC have been appointed by way of the mechanism provided for under the 18th Amendment, there are still legislative constraints that prevent it from being able to function in an effective manner.

Part 2 of the guide provides an overview of the means provided for by the 13th Amendment for the Centre to maintain control over the police powers, despite the devolution of powers to the provinces. This can be done in two fundamental ways.

First, the Centre is able to prevent the constitution of the Provincial Police Divisions pertaining to each province. Under the organisational structure of the police force envisaged by the 13th Amendment, the Centre has the ability to refuse to second officers from the National Division to the Provincial Division, to refuse to make appointments to the Provincial Division and to refuse to approve cadre of officers and other ranks of each Provincial Division. The legislative provisions do not specify authorities responsible for implementing these duties; and even if specified, do not impose an obligation on the members to enforce these duties. In the absence of such provisions a situation can arise where these Provincial Divisions are not constituted. In addition, the failure to constitute Provincial Divisions does not significantly affect law enforcement in the country, as the constitutional amendment does envisage such a situation and provides that in such an instance, the National Division will perform all the functions vested in the Provincial Division for a specific time period.

Second, even if the Provincial Divisions were set up as envisaged by the 13th Amendment, the Centre still exercises significant control in the functioning of these divisions. These powers include the setting

of standards for recruitment and the promotion of police officers of all divisions and the ensuring of disciplinary control and accountability of the officers. The President is also given significant control over policing, in instances of the declaration of an emergency, or when there is a grave internal disturbance within the province. In such situations, the President is authorised to deploy units of the National Division in order to restore public order. In addition to this, the constitution effectively ensures that provincial cadres are under the financial control of the Centre, which influences the determination of cadres and salary scales, and is responsible for providing finances to maintain the Provincial Divisions.

Part 3 of the guide suggests substantive options for reforms to address the deficiencies of the current constitutional framework. It provides a comparative analysis of provisions available in the 2000 Draft Constitution of Sri Lanka and the legislative instruments and constitutions of certain Commonwealth countries. This study focuses on six main options for reform of the current scheme of devolution of police powers. These are: (i) the insulation of the police from arbitrary political influence, (ii) the modalities of appointing and dismissing the Head of the police force, (iii) ensuring the security of tenure of the Head of the police force, (iv) powers over the appointment, transfer, promotion and disciplinary control, (v) mechanisms to ensure accountability, and (vi) provisions relating to emergencies and public security.

The suggestions for possible reforms recognise the need to achieve a balance of competing interests which arise in respect to police powers: the need to exercise controls, checks and balances on police, while also taking into account the power that arises by being able to subject the police to checks and balances. The Commonwealth countries studied in this guide are those that have tried to ensure this balance, and thus provide credible models which could be followed by Sri Lanka.

Part 4 of the guide identifies that within the Sri Lankan context, the central government may perceive specific concerns which would discourage it from establishing provincial police forces, especially in the North and East. However, rather than completely refusing to grant the powers provided in the Constitution, there is a need to identify whether there are legislative provisions already in existence within the Sri Lankan jurisdiction that could address these fears. This study looked into other jurisdictions, namely Canada and the United King-



dom (Refer: Annex 1), both of which have also experienced separatist movements, and yet have successfully devolved police powers. In this respect, this section assesses the reasonability of potential practical concerns as a basis for not giving effect to devolution of police powers. It also provides a com-

parative analysis of some of the mechanisms available in the Sri Lankan model and those adopted in Canada and the United Kingdom, which could serve to address potential practical concerns with regard to devolving police powers.

PART 1: THE FRAMEWORK

1.1. Constitutional Framework

The 13th Amendment was introduced in 1987 to devolve powers of the government to Provincial Councils (PCs) as envisaged under the Indo-Sri Lanka Accord. The system of devolution of powers provided by the 13th Amendment operates within the framework of Sri Lanka's unitary constitution and has been functioning for almost 25 years. Much has been written and debated on its success and failure to address the purpose of its introduction, namely, as a solution to the ethnic conflict.

The 13th Amendment includes a scheme of devolution of powers with respect to executive and legislative branches of the government.² Each PC functions through a Governor (appointed by the President for a 5 year term) in whom executive power is vested, and a Board of Ministers comprising a Chief Minister and four Ministers to advise the Governor.³ Legislative power is devolved to each PC to make statutes applicable to the province on matters provided in the Provincial Council List.⁴

The competency of a PC is limited to the powers and functions specifically devolved by the 13th Amendment. Accordingly, the Amendment has divided all governmental subjects and functions into three lists: the Provincial Council List (List I), the Reserved List (List II) and the Concurrent List (List III). The fundamental feature of the devolution of powers scheme under the 13th Amendment is that it mainly involves the division of exercise of legislative and executive powers of the government between the Centre and the regional units. The powers relating to police as one of the main law enforcement agencies are unique in nature because they almost entirely involve the executive and very rarely the legislature (apart from the legislative authority derived for its functioning i.e. the Police Ordinance No.16, 1856). For example, the police are responsible for enforcing criminal and traffic law, enhancing public safety, maintaining law and order and peacekeeping in Sri Lanka. The duties and responsibilities of the police service are mainly stipulated in Sections 56-80 of the Police Ordinance. Apart from the aforementioned broad duties and responsibilities, the police department functions under a regulatory scheme commonly known as Departmental Orders of Police.

It is important to note that the main focus of the 13th Amendment has been the creation of an institutional framework that would secure the autono-

my of the police service and protect it from political interference rather than enabling the provinces to legislate on the responsibilities and conduct of the police force. The 13th Amendment allows PCs to legislate on matters set out in List I Item 5, which includes police and public order. At the same time it limits the devolved power to the extent set out in Appendix I, with the result that there is very limited devolved legislative power with respect to law and order. This is clearly unsatisfactory.

The subjects and functions devolved to the PCs are provided in List I. The items on which the PCs do not have any power to legislate upon and consequently falling within the exclusive purview of the central government are provided in List II. List III contains those functions relating to which both the Centre and the provinces can legislate, with the Centre prevailing over the provinces in a case of conflict.⁶

1.2. The Nature of Powers Relating to Law and Order

The police force is the primary law enforcement agency in Sri Lanka, and the duties of the police force are listed in the Police Ordinance. Section 56 of the Ordinance specifies that every police officer is considered to be always on duty and has the responsibility to:

- i. Use his best endeavors and ability to prevent all crimes, offences and public nuisances;
- ii. Preserve the peace;
- iii. Apprehend disorderly and suspicious characters;
- iv. Detect and bring offenders to justice;
- v. Collect and communicate intelligence affecting the public peace; and
- vi. Promptly obey and execute all orders and warrants lawfully issued and directed to him by any competent authority.

The duties of the police force are utilised in various aspects in order to ensure that law and order is effectively maintained. In this respect, the powers of the police force in fulfilling their duties can be divided into detecting, preventing and prosecuting

criminal activities and functions with respect to civil aspects of community life.

Criminal activities: The police force is responsible for creating a peaceful society by taking adequate measures to prevent crimes and actively participating in the criminal justice system. These measures include:

- Reporting functions – this includes reporting on matters relating to the commission of any offence, occurrence of death under suspicious circumstances or the unexplained finding of a dead body.⁷ Police officers are also required to report to the Magistrate Court, instances where arrests are made without warrants⁸, where investigation cannot be completed within 24 hours and more time is needed, and where an investigation has been completed and sufficient evidence is available to charge the accused.⁹
- Investigative functions – the power to take necessary actions to investigate offences by taking down information on commission of a cognisable offence, examination of witnesses and conducting searches.¹⁰
- Arrest – the police force has the power to effect arrest of persons with or without a warrant for cognisable and non-cognisable offences. In addition, the police force is allowed to conduct searches of persons arrested¹² and conduct searches of places.
- Inspection and search of places – the police have the power to conduct searches of places. This includes the power to conduct searches of places.¹³ This also includes the power to enter and inspect places such as drinking shops, gaming houses and other similar resorts. The police can also check premises suspected of receiving stolen property or belief that a crime has been or is about to be committed and take necessary measures for the effective prevention and detection of crime.¹⁴
- Narcotics – the Police Narcotics Bureau (PNB) is responsible for the enforcement of controls in respect to drug use. In this respect, the PNB has the power to arrest street level drug dwellers, conduct investigations on high profile drug syndicates, liaise with national and international agencies involved in drug law enforcement and conduct awareness programmes on drug

use to society.¹⁵

Civil duties: Specific mechanisms are in place within the police organisation in order to maintain law and order within the society. These include:

- Motor traffic-related functions – every police station maintains a traffic branch in order to implement and enforce traffic laws and regulations, investigate into accidents, control traffic on highways, provide pilot duties for VIPs and assist the public in various social events and functions where motor traffic is involved.
- Specific functions of the police in relation to traffic are provided for in the Motor Traffic Act 1951. These include the power to inspect the certificate of insurance or of security¹⁶ and driving licenses¹⁷, to ensure vehicles are driven within the speed limits and abide by the rules of the road¹⁸ and to issue traffic directions. The traffic police may submit drivers for a breath test or examination by a Government Medical Officer upon reasonable suspicion of consumption of alcohol or drugs.¹⁹
- Police officers are also given authority to clear obstructions and nuisances on roads²⁰ and seize any straying animals.²¹
- Emergency services – the police force maintains an emergency service in order to address emergency calls by the public, assist in traffic jams and make necessary investigations of motor traffic accidents, and provide support in disaster situations.²²
- Tourist Police – Specific powers are granted in respect to tourists to facilitate in order to facilitate effective services for tourist complaints and minimise irregularities in relation to tourism. In this respect, the tourist police division is empowered to investigate and take action with respect to complaints by tourists and conduct surveillance in tourist areas to prevent illegal activities against tourists.²³
- Maintaining peace in public places – in order to ensure peace within public places, the police force is allowed to regulate the use of instruments producing or reproducing sound in or near public places²⁴ and take action to remove and abate public nuisances.²⁵

In addition, large numbers of police officers are detailed specifically for the purpose of providing personal security to the President, Prime Minister, Ministers, Members of Parliament and VVIPs/VIPs.

1.3. The Scheme of Devolution of Police Powers Envisaged by the 13th Amendment

Under Item 1 of List 1 (i.e. the Provincial Council List) of the 9th Schedule to the Constitution, public order and the exercise of police powers have been devolved to the provinces. The exercise of these powers is:

- i. to the extent set out in Appendix 1
- ii. within the province
- iii. not inclusive of national defence, national security, use of any armed forces or any other forces under the control of the government in aid of the civil power
- iv. not inclusive of the city of Colombo, Sri Jayewardenepura Kotte and their environs (these limits are to be specified by the President in the gazette)

1.3.1. Composition

The 13th Amendment sets up two divisions of the police force, namely the National Division (including Special Units) and a Provincial Division for each province.²⁶ The head of the entire Sri Lanka Police Force is the Inspector General of Police (I.G.P.). The National Division consists of the I.G.P., Deputy Inspectors General of Police (D.I.G), Senior Superintendents of Police (S.S.P), Assistant Superintendents of Police (A.S.P), and other ranks recruited at the national level.²⁷ The Provincial Division consists of a D.I.G., S.S.P., S.P.P. and A.S.P., all seconded by the National Division and Provincial Assistant Superintendents of Police, Chief Inspectors, Inspectors, Sub-Inspectors (S.I.s), Sergeants and Constables recruited in the province. Furthermore, the members of the Provincial Division are eligible for promotion to the National Division.²⁸

The I.G.P. appoints the D.I.G. for each province with the concurrence of the Chief Minister of the province. However, where there is no agreement between the I.G.P. and the Chief Minister, the matter is referred to the NPC (NPC),²⁹ which, after due consultations with the Chief Minister, makes the appointment.³⁰

Determination of the cadres of each division of the

Police Service has also been provided in the 13th Amendment. Accordingly, the cadres of the police officers of all ranks of the National Division are to be fixed by the Government of Sri Lanka. The cadres of each Provincial Division are to be fixed by the provincial administration with the approval of the NPC having regard to uniformly applicable principles i.e. the area of the province, population of the province, number of police stations involved and other such agreed criteria.³² However, it is the Government of Sri Lanka that is responsible for determining the salary scales and perquisites of office enjoyed by various ranks in both National and Provincial Divisions, after consultation with the Chief Ministers of the provinces.³³ Similarly, the Government is responsible for the training of all recruits and of members of all Divisions of the police force. Further, the NPC³⁴ may provide for alternative training for members of any Provincial Division if it deems it necessary.³⁵

In terms of the uniforms of the police officers, the Constitution requires members of both National and Provincial Divisions to wear the same uniforms and insignia of rank provided that members of each Division shall bear a distinctive shoulder flash indicating the Division, for the purpose of identification. Emphasis is given to having one uniformed police force comprising of members of the Provincial Division and officers seconded by the National Division within a province.³⁶

In order to facilitate a meaningful exercise of devolution of powers, all gazette officers of the National Division and the Provincial Divisions are required to achieve prescribed standards of competency in both Sinhala and Tamil; and all officers ranked above A.S.P. are required to attain a prescribed standard of English.³⁷

1.3.2. Jurisdiction

The Provincial Division is responsible for the preservation of public order within the province and the prevention, detection and investigation of all offences (except the offences specified in the Schedule). It is subject to the powers of the Attorney General in terms of the Code of Criminal Procedure Act, the institution of prosecutions in the relevant Courts in respect to such offences.³⁸

The National Division of the Sri Lanka Police Force is responsible for the prevention, detection and investigation of all offences specified in the Schedule. It is subject to the powers of the Attorney General in terms of the Code of Criminal Procedure Act, the

institution of prosecutions in the relevant Courts in respect to such offences.

The offences specified in the Schedule include:

- Offences against the State;
- Offences relating to the Navy, Army and Air Force;
- Offences relating to the elections;
- Offences relating to coins, currency and Government stamps;
- Any offence committed against the President;
- Any offence committed against a Public Officer, a Judicial Officer, the Speaker, the Prime Minister, a Minister, a Member of the Judicial Service Commission, a Member of the Public Service Commission, a Deputy Minister, a Member of Parliament, the Secretary General of the Parliament, a Member of the President's Staff or a Member of the Staff of the Secretary General of Parliament;
- Any offence relating to property belonging to the State or a State Corporation, Company or Establishment, the whole or part of the capital whereof has been provided by the State;
- Any Offence prejudicial to National Security or the maintenance of Essential Services;
- Any Offence under any law relating to any matter in the Reserve List other than such offences as the President may exclude by order published in the Gazette, exclude;
- Any Offence in respect of which Courts in more than one province have jurisdiction; and
- International Crimes.

The Chief Minister may seek the assistance of the National Division to preserve public order within a province. In such a situation, the I.G.P. shall deploy such personnel of the National Division as are necessary and place them under the control of the D.I.G. of the province.³⁹ The I.G.P. may deploy units of the National Division in a province whenever a State of Emergency has been declared in the province.⁴⁰

Any offence which is ordinarily investigated by a Provincial Division may be investigated by the C.I.D. or any other unit of the National Division –

(a) where the Chief Minister requests; and

(b) where the I.G.P. is of the opinion that an investigation of such an offence by the Criminal Investigation Department (C.I.D.) or any other unit of the National Division is necessary, in the public interest and thereafter directs, after consultation with the Chief Minister and the approval of the Attorney-General, that such an offence be investigated by the C.I.D. or any other unit of the National Division.⁴¹

All Police Officers serving in units of the National Division and Provincial Divisions in any province are to function under the direction and control of the D.I.G of such a Province. This D.I.G is accountable to, and under the control of, the Chief Minister for the maintenance of public order and exercise of police powers in the province.⁴² However, the exercise of these powers is subject to the two stipulated conditions: first, where the President assumes powers and responsibilities of the Chief Minister in respect of public order, provided by regulation upon the declaration of an emergency in the province; and second, without declaration of an emergency in the province, but in consultation with the Chief Minister and subject to the provisions of the Public Security Ordinance, where the President is of the opinion that security or public order of the province is threatened, and amounts to a situation which requires deploying of any unit of the National Division.⁴³

1.3.3. National and Provincial Police Commissions

In order to facilitate a separate and transparent mechanism for the recruitment, transfer, promotion and disciplinary control of police officers of the National Division and Provincial Divisions, the 13th Amendment envisaged the establishment of a NPC, and a Provincial Police Commissions for each province.

The composition of the NPC under the 13th Amendment was as follows:⁴⁴

- i. The I.G.P.;
- ii. A person nominated by the Public Service Commission in consultation with the President; and

- iii. A nominee of the Chief Justice.

The main responsibilities of the NPC include the recruitment to the National Division; promotions of Police Officers in the Provincial Divisions to the National Division;⁴⁵ promotions, transfers, and disciplinary control of members of the National Division other than the I.G.P; promotion of officers of the National Division seconded to the Provincial Division above the rank of S.S.P; and transfer and disciplinary control over D.I.G.s seconded to the Provincial Division.⁴⁶ The recruitment to the National Division is to be made at the ranks of P.C, S.I and A.S.P.⁴⁷ In addition, the NPC can hear and determine appeals from officers seconded to Provincial Divisions against whom disciplinary action has been taken by Provincial Police Commissions and set standards for recruitment and promotion of Police officers of all Divisions, which are to be uniform for all Provincial Divisions.⁴⁸ It further provides that before promoting any Police Officer serving in any Provincial Division to the National Division, the NPC should call for a confidential report on such an officer from the relevant Provincial Police Commission. Further, he should take into consideration the matters specified in such a report on the issue of promoting the officer.⁴⁹

Additionally, the NPC is responsible for the determination of the nature, type and quantity of fire-arms, ammunition and other equipment for both the National Division and Provincial Divisions. In terms of the latter however, the NPC must consult with the Provincial Police Commission and apply uniform standards and principles for all the Provincial Divisions.⁵⁰

According to the 13th Amendment the composition of the Provincial Police Commission (PPC) is as follows:⁵¹

- i. The D.I.G. of the province;
- ii. A person nominated by the Public Service Commission in consultation with the President; and
- iii. A nominee of the Chief Minister of each province.

The recruitment of police officers to the Provincial Division is made by these PPCs, which are also responsible for transfers, promotions and disciplinary control over officers in the Provincial Division; for promotion of officers of the National Division seconded to the Provincial Division up to the rank of S.S.P; and for transfer and disciplinary control over

officers seconded to the Provincial Division except the D.I.G.⁵² Recruitment to the Provincial Division is to be made at the ranks of P.C, S.I, and P.A.S.P and should have regard to the standards of recruitment and other criteria prescribed in this regard.⁵³ At the time of the appointment, the Police Officers may set out preferences as to the Division in which he/she wishes to serve and should be posted according to this choice if possible. However, it is noteworthy that if the Constitution itself provides that the recruits have a choice to join the National or Provincial Divisions, the tendency to join the latter is low. Furthermore, it is worth mentioning that the Officers-in-Charge (O.I.Cs) of police stations play a crucial role in maintaining peace and order at the provincial level. Since the O.I.Cs are appointed from the ranks of Chief Inspectors and Inspectors who are to be recruited and transferred by the PPCs, in a case where PPCs are established provinces may exercise a certain amount of power over the functioning of police stations.

Furthermore, the NPC or a PPC is entitled to delegate certain powers to other recommended persons or authorities.⁵⁴

1.4. Changes Effected to the NPC of the 13th Amendment by the 17th and 18th Amendments to the Constitution

1.4.1. The Seventeenth Amendment to the Constitution (17th Amendment)

The 17th Amendment to the Constitution in 2001 aimed at creating a depoliticised and independent public service. Its introduction provided for the establishment of a stronger NPC which would collaborate with the one envisaged by the 13th Amendment. The scheme of the Amendment introduced a Constitutional Council, which in turn selects those who would be appointed, inter alia, to the NPC. Although most of the provisions of this Amendment have been repealed, the constitution and functions of the NPC are worth mentioning. The Amendment introduced a separate chapter to the Constitution titled 'NPC' and provided for its composition, powers and functions. The NPC comprised of seven members appointed by the President on the recommendation of the Constitutional Council.⁵⁵ Members were to be appointed for a term of 3 years and were eligible for reappointment for one more term. Only the President, on the recommendations of the Constitutional Council, could effect their removal.

The NPC was vested with the powers of appointment, transfer, promotion, disciplinary control and dismissal of all police officers except the I.G.P.; these powers were to be exercised in consultation with the I.G.P.⁵⁶ Most importantly, the NPC was conferred with the power to exercise all functions and duties vested in it under Appendix I of List I in the 9th Schedule. The appendix specifically limited the exercise of the NPC's powers that would detract from the powers and functions assigned to the PPCs as and when such Commissions are established, in order to avoid any confusion with the scheme of devolution of powers in the Constitution.⁵⁷ The NPC was empowered to establish procedures to entertain and deal with public complaints, and complaints of aggrieved persons made against a police officer or service.⁵⁸ The NPC was also required to determine all matters regarding police administration including the formulation of schemes, improving independence and efficiency of the service and determining the nature and types of arms, ammunition and other equipment necessary for the use of National and Provincial Divisions.⁵⁹

However, the term of office of the first NPC ended in November 2005; and since the Constitutional Council was defunct, a new commission was not constitutionally appointed under the 17th Amendment.⁶⁰

1.4.2. The Eighteenth Amendment to the Constitution (18th Amendment)

The 18th Amendment to the Constitution was introduced in 2010 and brought in substantive changes to the 17th Amendment. It has thus resulted in a rather confusing situation with regard to the status of the NPC. The NPC now comprises of 7 members appointed by the President, one of which acts as the Chairman of the Commission.⁶¹ The powers of the NPC under the 13th Amendment and the 17th Amendment primarily included the recruitment of police officers to the National Division, the promotion of police officers from the National Division to the Provincial Division and the promotion, transfer, and disciplinary control of police officers in the National Division. However, the 18th Amendment vests the appointment, promotion, transfer, disciplinary control and dismissal of all public officers⁶² in the Public Service Commission (PSC), subject to the provisions of the Constitution.⁶³ It provides that all matters pertaining to the appointment, promotion, transfer, disciplinary control and dismissal of Police Officers pending before the NPC established under Chapter XVIII A of the Constitution on the

date prior to the commencement of the amending Act, be vested in the PSC from and after the date of the commencement of this Act. The 18th Amendment also provides that any appeal made by a police officer pending before the NPC on the date prior to the commencement of this Act be transferred to the PSC, and be heard and completed from and after the date of the commencement of the amending Act.⁶⁴

Further, the powers of the new NPC have been expressly stipulated in Article 155FF of the Constitution and only include the investigation of complaints against police officers by any aggrieved person and the provision of redress for these offences. The 17th Amendment included the powers of the NPC in the 13th Amendment within its purview. By omitting to mention these powers and expressly repealing Article 155G⁶⁵, it is noteworthy that the 18th Amendment has created a rather anomalous situation. Due to a lapse made in the 18th Amendment and despite limiting the NPC's powers in the investigation of public complaints against Police officers, the provisions made in the 17th Amendment to amend Appendix I still remain in force. Therefore, the current NPC has additional powers to appoint a D.I.G. for each province in case of disagreement between the I.G.P and the Chief Minister after due consultations with the Chief Minister.⁶⁶ Further, he has the powers to approve cadre of officers and other ranks fixed of Provincial Divisions by the provincial administrations⁶⁷ and to provide for alternative training for members of any Provincial Division where necessary.⁶⁸ In addition, there is a contradiction with the provisions of the Constitution. This is because whilst the 18th Amendment vests the powers of appointment, promotion, transfer, disciplinary control and transfer of police officers with the PSC, Item 3 of Appendix 1 still remains in force, vesting those powers with the NPC. Therefore, given that the powers of the PSC are subject to the provisions of the Constitution⁶⁹, (the 13th Amendment being a part of the Constitution) it may be possible to argue that all actions concerning police officers remain vested in the NPC.

An additional drawback with regard to power sharing in Sri Lanka is that although both of the above mentioned constitutional amendments contained express amendments to the 13th Amendment, the fact that they were passed without the Bills being referred to any of the PCs as required by Article 154G (2) of the Constitution⁷⁰ has significantly weakened devolution.

1.5. The Current Status of Devolution of Police Powers

Although the Constitution expressly provides for a scheme of devolution of police powers, in practice police powers have not been devolved to the provinces. Police powers are exercised entirely within the central government's purview under the Ministry of Defence and Urban Development. As such the police force is not divided into a National Division and Provincial Divisions and remains a single entity with the I.G.P. as its head who is supported by other ranked police officers. Further, the Chief Ministers in effect do not exercise the powers vis-à-vis maintenance of public order in the provinces as envisaged in the 13th Amendment. The unconstitutionality of the current set-up, wherein the National Division exercises all police power in a province, is further indefensible because it goes beyond the interim arrangement for implementation provided in Item 13 of Appendix I. Item 13 enables the National Division to perform all the functions of the Provincial Division for a period of one year or until a Provincial Division is established in a province, whichever is earlier.

With regard to the establishment of National and Provincial Commissions as provided in the 13th Amendment, it is important to note that despite the legislative passage of the Police Commission Act No. 1 of 1990 which provides for the establishment of these institutions, the Act has not yet been brought into operation. This is because the President did not appoint a date of operation by the Order published in the Gazette. However, with the changes brought in by the subsequent Constitutional amendments, specifically the 17th Amendment, the first NPC was established and functioned without its provincial counterparts.

At present however, by virtue of the powers vested in the 18th Amendment to the Constitution the President has, with the concurrence of the Parliamentary Council, appointed the Chairman and the Members of the NPC. In terms of Article 155FF which was introduced by the 18th Amendment, the functions of the Commission are limited to entertaining and investigating complaints from members of the public or any aggrieved person against a police officer or the police force, and providing redress in accordance with the provision of any law enacted by Parliament. The Commission is empowered by Article 155FFF to make rules to establish procedures for entertaining and investigating complaints, and has taken action to gazette new "Rules of Procedure" (Investigation of Public Complaints against Police Officers or the Police Force) – 2012.⁷¹

However, in the absence of any law enacted by Parliament to provide redress to aggrieved persons as stated in Article 155FF, it is doubtful whether the NPC can function effectively even within its limited mandate. It is further noted that given the nature of public complaints, which generally involve police officers of ranks belonging to Provincial Divisions, it is pertinent to give the powers of dealing with public complaints against police officers to PPCs rather than limiting it to the NPC. At the functional level, the NPC has instituted 'Provincial Offices' in each of the provinces, in contrast to the PPCs under the 13th Amendment.

Therefore, successive governments have cited various reasons for the non-implementation of the provisions relating to devolution of police powers, in violation of the Constitution.

PART 2: SCOPE FOR MAXIMISING THE FRAMEWORK

2.1. How the Centre Maintains Control

The entire scheme of the 13th Amendment's provisions enables the Centre's maintenance of control over police powers. This control is exercised in two fundamental ways. First, the Centre is in fact empowered to prevent the constitution of Provincial Divisions for each province. The prevailing status quo – where there is no devolution of police powers whatsoever – is on account of acts or omissions made possible through these constitutional provisions. Second, even in a situation where a Provincial Division were to be set up within one or more provinces, the 13th Amendment provides for the Centre to maintain significant control with respect to police powers.

2.2. Centre's Power to Prevent Creation and Functioning of Provincial Police Division

2.2.1. Refusing to second

Item 2:2 of Appendix 1 states that the D.I.G., S.S.P.P., S.P.P. and A.S.P.P. of a provincial police division will be 'seconded' from the National Division. Unlike officers of inferior rank, they will not be recruited directly to the Provincial Division. However, Appendix 1 does not cast an obligation on any particular officer of the Police or a civilian official to in fact second such officers as necessary. Thus, it is unclear as to who in fact is authorised to make such a secondment. Critically, since no one officer is cast with a positive obligation to do so, it is most unlikely that a court will intervene to ensure that such secondment takes place. This is because the writ of mandamus – which is the general public law remedy applicable to compel the performance of a statutory duty – may only be issued where there is a positive statutory or constitutional duty imposed on identified persons. Because Appendix 1 does not identify the person responsible for secondment, it follows that a writ of mandamus filed in respect of a failure to second will likely fail. Thus, if the Centre were to decide not to second any officers to the Provincial Division, the Provincial Division will be rendered a non-starter.

2.2.2. Refusing to approve cadre

In this respect, Item 7 of Appendix 1 states that 'the cadre of Officers and other ranks of each Provincial Division shall be fixed by the Provincial Administration with the approval of the President, having regard to (a) the area of the Province; (b) population of the Province; and (c) other such criteria, as may be agreed to or prescribed.'

However, as noted previously there is no positive obligation on any person to ensure that secondments are made with respect to the decisions made in terms of Item 7. Indeed, Item 7 itself envisages the approval of the President for fixing the cadre of officers and other ranks for each Province. Thus, if the President were to refuse to approve any plan forwarded to him by the Provincial Administration [ostensibly, this would mean the Chief Minister and Board of Ministers through the Governor in terms of Article 154F[1]] no decision could be made in respect of fixing the appropriate cadre. Thus, the Provincial Division would again be rendered a non-starter. The immunity exercised by the President vis-à-vis Article 35 of the Constitution would also preclude any legal proceedings being filed in respect of the President refusing to approve even a reasonable proposal.

2.2.3. Refusing to appoint a Provincial D.I.G.

Item 6 specifies that the I.G.P. shall appoint a D.I.G. to the Province with the concurrence of the Chief Minister. While this may appear to suggest a measure of cooperation between the Centre and province, where the I.G.P. and Chief Minister are unable to reach agreement, it is the NPC who will make such appointments 'after due consultation' with the Chief Minister. Hence, it is open to the I.G.P. acting under the direction of the President [who presently acts as Minister of Defence] to refuse to cooperate with the Chief Minister, and pursuant to preliminary disagreements, refer the matter to the NPC. Critically, the NPC is under no obligation to make a decision 'with the concurrence' of the Chief Minister. In legal terms, 'concurrence' means agreement. 'Due consultation' however does not imply an obligation to obtain the consent of the party. It merely signifies an obligation to obtain the views

of that party. However, since the NPC is required to make the appointment, a writ of mandamus may be sought against the I.G.P, or the in the case of disagreement, the NPC, to compel the appointment of the Provincial D.I.G.

Before the 17th Amendment, the President could refuse to make such appointments or delay indefinitely in doing so, and since the President was immune from suit in terms of Article 35 of the Constitution, no legal recourse was possible to compel him to make an appointment. Therefore, the omission made by the 18th Amendment referred to previously has in effect broken the deadlock of the 13th Amendment's position where the President was the ultimate and immune authority.

2.2.4. Refusing to make appointments to the Provincial Police Commission

Item 4 provides that appointments to the PPC – which makes appointments to junior officers in the Provincial Division – will comprise the D.I.G. of the province, a person nominated by the Public Service Commission with the consultation of the President, and a nominee of the Chief Minister. As we noted previously, the Centre could potentially prevent the appointment of a Provincial D.I.G., which would in turn prevent the constitution of a PPC. Moreover, the second nominee too requires the consent of the President. Thus, appointments to two of the three members of the PPC potentially involve the participation of the President. For the reasons stated previously, the appointment of the nominee of the PSC cannot be compelled, and thus, the Centre has the power to prevent the constitution of a PPC as well.

2.2.5. National Division may continue to exercise Provincial Division's powers indefinitely

Item 13 of Appendix 1 envisages the eventuality of a Provincial Division not being set up. It provides that 'the National Division shall perform all the functions vested in a Provincial Division, in any province, for a period of one year or until a Provincial Division is established in such province, whichever is earlier.'

Thus, in the event a Provincial Division is not established, the National Division continues to exercise all powers in respect of policing – reserved or devolved. As we have noted, the Centre may resist the establishment of a Provincial Division in numerous ways, and thus, there is in effect no legal prohibition

to the continuation of the prevailing status quo. Of equal concern is the fact that there is no recourse in respect to this unwillingness to give effect to the devolutionary impulses of the 13th Amendment.

2.3. Centre's Powers to Maintain Control Even where Provincial Division is Established

2.3.1. Recruitment to the Provincial Divisions

Item 4 and 9:1 provide that recruitment to Provincial Divisions is to be made by the PPCs. However, it is noteworthy that according to Item 3:4, the power to decide on all schemes of recruitment is vested with the NPC. Item 3:4 reads as follows: 'It shall set standards for recruitment and promotion of Police Officers of all Divisions and such standards shall be uniform for all Provincial Divisions'.

The schemes of recruitment generally specify the salary scale of a post, the qualifications required, age limits and other relevant particulars. Therefore, although PPCs are responsible for recruitment, the power relating to it can be effectively exercised only if the schemes of recruitment can also be decided by the PPC. Schemes of recruitment decided by the NPC effectively undermine the spirit of devolution, even if the Provincial Divisions are established.

2.3.2. Disciplinary powers and accountability

Item 4:1 provides that the Provincial Police Commission shall be responsible for transfers, promotions and disciplinary control over officers in the Provincial Division; promotion of Officers of the National Division seconded to the Provincial Division up to the rank of S.S.P.; and for transfer and disciplinary control over officers seconded to the Provincial Division, except the D.I.G. The D.I.G. of the province himself is to be accountable to and under the control of the Chief Minister, in terms of Item 11.1. This provision is incongruous, because Item 3:2 specifies that the NPC possesses disciplinary power over the D.I.G. Thus despite the Chief Minister's notional control over the D.I.G., the D.I.G. is ultimately accountable only to the NPC - a central body. Moreover, because the power of appointment in respect to the D.I.G. ultimately rests with the President [in the event of an absence of consensus between the I.G.P. and the Chief Minister], the Chief Minister's powers are severely restricted.

Even with respect to inferior officers, the NPC retains powers of promotion over the officers of the National Division seconded to the Provincial Division above the rank of S.S.P. Thus, while those officers would be subject to the powers of transfer and disciplinary control by the PPC, any promotion prospects rest with the NPC. In turn, the President now controls the NPC. The power of appointment in respect to the NPC lies exclusively in the hands of the President, in terms of Article 41A[1] of the Constitution which was introduced by the 18th Amendment. Prior to the 17th Amendment – which vested such powers in a multi-partisan Constitutional Council – the NPC was to include the I.G.P, a nominee of the Chief Justice and a nominee of the Public Service Commission in consultation with the President.

2.3.3. Emergency/grave disturbance

Item 11:2 provides that ‘upon the declaration of an emergency in the province, the President may assume such powers and responsibilities of the Chief Minister and the Provincial Administration in respect of public order within the province...’ In such a case, Item 12:3 authorises the I.G.P. to deploy units of the National Division as he deems necessary in any province for the restoration and maintenance of public order.

Further, even where an emergency is not formally declared, where the President is of the opinion that the security of or public order in a province is threatened by grave internal disturbance, he may, in consultation with the Chief Minister deploy any unit of the National Division in the province for the purpose of restoring public order. Here, the determination of whether a ‘grave internal disturbance’ has arisen is solely the President’s prerogative.

These provisions provide wide discretionary powers to the President to control policing within a province. Wherever a province acts in a manner that the President disapproves of, it is open to him to effectively appropriate police powers within the province to himself. The second option of declaring a ‘grave internal disturbance’ does not even require subsequent Parliamentary approval, in distinction to the process mandated by the Public Security Ordinance for the extension of a declaration of emergency.

2.3.4. Financial control by the Centre

Similar to all other devolved subjects in the 13th Amendment, the exercise of police powers by the province (even in a case where the Provincial Divisions are established) will be controlled to a great extent by the Centre’s control of finances. The Centre maintains control of the financial aspects of the devolved Police functions of the provinces mainly in two ways; first, through the influence over the power to determine the cadres and salary scales, and second, through dependency of the PCs on the Centre for the financial maintenance of the Provincial Divisions.

With regard to the first issue, although the cadre of officers and other ranks of each Provincial Division is to be fixed by the Provincial Administration with the approval of the NPC,⁷² the salary scales and perquisites of office of both the National and Provincial Divisions are to be determined by the Centre after consultations with the Chief Ministers.⁷³ There is a significant amount of influence by the Centre in both instances. First, the NPC constitutes members appointed by the President⁷⁴ and its approval will be subjected to the will of the Centre. Second, while the Centre is only required to consult the Chief Ministers, the final determining authority of salary scales and perquisites still remains the central government.

With regard to the second issue of the dependency by the provinces on funds provided by the Centre, it is necessary to consider the way in which financial aspects are dealt with in the scheme of devolution of the 13th Amendment. Each province is to have a provincial fund for the purposes of the conduct of the PCs. This includes the proceeds of all taxes, the proceeds of all grants made by the Government, the proceeds of all loans advanced by the Government and all other receipts of the PC.⁷⁵ However, the income of the PC is mainly derived by two methods: provincial revenue derived from sources identified under Items 36:1 to 36:20 of List I, and allocation of funds by the National Budget. In practice the revenue collected from the wide range of taxes and fees provide a small percentage of the expenditure required by the PCs, and the expenditure required especially for salaries and allowances of provincial cadre is provided in full by grants made by the Centre.

Therefore even if the Police Provincial Divisions are established, since the Centre provides the majority of financing for the recurrent expenditure of provinces by way of the Block Grant, the cadre is in effect under the Centre's control, similar to the Provincial Public Service.

Furthermore, it is important to note that even if an allocation is made by the Annual Budget on the rec-

ommendation of the Finance Commission for the maintenance of Provincial Police Divisions, since such funds have to be released by the Treasury, it is in practice subjected to the discretion of central governmental officials. This in effect hinders the exercise of devolved powers by the PCs since in the case of inadequate release of funds, there is neither a method of obtaining redress nor any means of compulsion available to provinces.

PART 3: REFORM

3.1. Expanding Regional Control over Police Powers Beyond the Maximum via Constitutional Interventions

As police power has not been devolved to any extent in Sri Lanka, there is no practice under the current scheme upon which to base an evaluation of the adequacy or otherwise of current constitutional provisions. Accordingly, the comparative analysis to follow is based on inherent structural inadequacies and systemic deficiencies that have been identified in the preceding chapters. The provisions of the 2000 Draft Constitution of Sri Lanka are the primary point of reference. Additionally, legislative instruments and constitutions of Commonwealth countries are analysed.

Before delving into substantive options for reform it is worth noting that the most significant reform that is required in the status quo is the reformation of the government's lack of political will to implement what is constitutionally mandated under the 13th Amendment to the Constitution. Any substantive reform would be redundant in the light of Presidential immunity and lack of enforceability. Accordingly, a paradigm shift in the current political ethos would be an essential prerequisite to the devolution of police power.

3.2. Options for Reform

The discourse on police power in any democratic society has two aspects: first, the realisation that the police are empowered to exercise significant coercive power and thus should be subject to controls, checks and balances; and second, the understanding that subjecting the police to checks and balances could in itself, be a source of significant power that can be channelled to serve partisan and political interests. Accordingly, the grant of police power ideally involves the balancing of these competing interests. This is especially evident within a constitutional scheme of devolution and federalism, wherein units (i.e. States, provinces etc.) are entrusted with the exercise of coercive power. Most countries have achieved this balance through the exercise of institution-building, ensuring independence, competence, and functional autonomy.

In this context, this study will consider some options for reform of the current scheme of devolution

of police powers envisaged under the 13th Amendment to the Constitution. The study will focus on:

- i. The insulation of the police from arbitrary political influence;
- ii. The modalities of appointing and dismissing the head of the police force;
- iii. Security of tenure;
- iv. Powers of appointment, transfer, promotion and disciplinary control;
- v. Accountability mechanisms; and
- vi. Provisions relating to emergencies and public security.

3.2.1. The insulation of the Police from arbitrary political influence

Any state devolving police power has to strike a balance between competing interests; insulating the police from arbitrary and illegitimate political control whilst simultaneously retaining adequate executive and administrative oversight over this significant grant of power.

The Draft Constitution of 2000 (Sri Lanka)

Under the Draft Constitution, the 'Constitutional Council'⁷⁶ plays a significant role in appointments to both the National Police Commission (NPC) and the Regional Police Commission (RPC). The Council consists of the two Vice-Presidents (envisaged under the provisions of the draft Constitution); the Prime Minister; the Leader of the Opposition; the Leader of the House; the Minister of the Cabinet of Ministers in charge of the subject of Constitutional Affairs; the Chairman of the Chief Ministers Conference; and two retired judges of the Supreme Court appointed by the President, upon ascertaining the views of the Chief Justice.⁷⁷

Significant powers relating to the National Police Service and the Regional Police Service have been concentrated in the NPC and the RPC, respectively. Thus the involvement of the Constitutional Council in appointments to these Commissions is noteworthy.

The NPC consists of five members appointed by the President on the recommendation of the Constitutional Council, and all three numerically significant communities in Sri Lanka should be represented

within the Commission.⁷⁸ The RPC consists of five members: two members are appointed by the Chief Minister of the region and three members are appointed by the Governor of the region, upon being nominated by the Constitutional Council acting in consultation with the Board of Ministers for that region.⁷⁹

India

In a historic judgment on 22 of September 2006, the Supreme Court of India in the case of *Prakash Singh and Others vs. Union of India and Others* took the decisive step of instructing central and state governments to comply with a set of seven directives, laying down proposals reforming the police system in India. These directions are binding upon central and state governments until they pass 'appropriate legislations'.⁸⁰

In October 2005, as the Supreme Court was considering the matter, the central government set up a Police Act Drafting Committee (PADC) with the task of drafting a new model Police Act. The PADC was mandated to take into account the changing role and responsibilities of the police and the challenges before it and draft a Model Act that could guide states while adopting their own legislation.

Shortly after the Supreme Court delivered its judgment, the PADC submitted its Model Police Act, 2006 to the Home Minister. The Model Police Act complements the Supreme

Court judgment in that it provides the detailed nuts and bolts through which the directions of the Supreme Court can be most effectively implemented.

One such directive issued by the Supreme Court, and then countenanced in the Model Police Act of 2006 was the establishment of a State Security Commission.⁸¹ The Commission was established 'to ensure that the State Government does not exercise unwarranted influence or pressure on the State police and for laying down broad policy guidelines so that the state police always acts according to the laws of the land and the Constitution of the country'.⁸²

The Composition of the board is to be as follows:⁸³

- i. Chair: Home Minister of the State;
- ii. Member-Secretary: Director General of Police;
- iii. Leader of the Opposition in the state assembly;

- iv. Retired High Court Judge nominated by the Chief Justice of the High Court;
- v. The Chief Secretary;
- vi. The Secretary in Charge of the Home Department; and
- vii. Five non-political persons of proven reputation for integrity and competence from the fields of academia, law, public administration, media or non-government organisations to be appointed on the recommendation of a Selection Panel composed of:⁸⁴
 - A retired Chief Justice of a High Court to be nominated by the Chief Justice of the High Court;
 - The Chairperson of the State Human Rights Commission; in the absence of a State Commission, a person nominated by the Chairperson of the National Human Rights Commission; and
 - The Chairperson of the State Public Service Commission.

Given its functions,⁸⁵ the Commission derives much value from its representative nature, especially the inclusion of five non-political persons.

Pakistan

The Pakistan Police Order of 2002 proposed the establishment of Public Safety Commissions at the federal, provincial and district levels. An important function of the commissions at the provincial and district levels is to 'take steps to prevent the Police from engaging in any unlawful activity arising out of compliance with unlawful or mala fide orders'.⁸⁶

The composition of the National Public Safety Commission and Provincial Public Safety Commission is significant. Half of its members are derived from the political arena (at least two of whom should be women), and half of the members are independent members, appointed by the government on the recommendation of an independent selection panel (at least two of whom should be women).⁸⁷

3.2.2. The modalities of appointing and dismissing the Head of the Police Force

In the light of the hierarchical structure of the police force, the power to appoint and dismiss its head is a critical aspect of controlling the entirety of the force.

Draft Constitution of 2000 (Sri Lanka)

Despite the existence of the Constitutional Council, the Draft Constitution continues to vest the powers of appointment of the head of the police force in the President.⁸⁸ All national public officers hold office at the President's pleasure.⁸⁹ The power to dismiss the head of the police force presumably vests in the Cabinet of Ministers, which is empowered to *inter alia* dismiss all Heads of Departments.⁹⁰

This modality of appointment and dismissal is far from satisfactory.

India

In the case of *Prakash Singh*, the Supreme Court of India laid down the modalities concerning the appointment of the head of the Director-General of Police (D.G.P.), who is the highest-ranking Police Officer in the State.⁹¹ These criteria were elucidated in the Model Police Act of 2006. The Act stipulates that the state government should select the D.G.P. from amongst the three senior-most officers empaneled by the State Police Board for the post.⁹² The State Police Board should make its choice on the basis of *inter alia* the candidates:

- i. Length of service;
- ii. Very good record; and
- iii. Range of experience.

Specific details are provided in respect to these composite elements⁹³:

- Length of service and fitness of health, standards as prescribed by the State Government;
- Assessment of the performance appraisal reports of the previous 15 years of service by assigning weight to different grading, namely: outstanding, very good, good, and satisfactory;
- [Absence of] indictment in any criminal or disciplinary proceedings or on the counts of corruption or moral turpitude; or charges having been framed by a court of law in such cases;
- Due weight to awards of medals for gallantry, distinguished and meritorious service.

Pakistan

The Federal Government recommends a panel of three names for the head of the provincial police

force and the Provincial Government has to select and appoint a person from that list.⁹⁴

This approach is different to the Indian Model Act, wherein even the nomination of names is done by a provincial body, the State Police Board. The Pakistani approach enables the central government to retain a higher degree of control over the nomination process.

3.2.3. Security of tenure

It is imperative that the head of the police force enjoys security of tenure in order to facilitate the impartial exercise of his functions and duties. In order to prevent absolute power being concentrated in this office, it is also necessary to ensure that the police chief can be removed from his office. However, it is also vital to shield this procedure from arbitrary removal.

Draft Constitution of 2000 (Sri Lanka)

All officers in the National Police Service⁹⁵ and Regional Police Service⁹⁶ hold office at pleasure, except as otherwise expressly provided in the Constitution. In the absence of such express provisions in the Draft Constitution, it can be reasonably assumed that the head of the police force (both national and regional) do not enjoy security of tenure.

India

The Supreme Court in *Prakash Singh* and the Model Police Act of 2006 provide for a minimum tenure of two years⁹⁷ for the D.G.P. In practice, this does not mean that erring D.G.P.s cannot be removed, it only makes removal consequent on laid-down grounds in law:

- An action taken against her/him under the Discipline and Appeal section of the All India Services Rules;
- Suspension from service in accordance with the provisions of the aforementioned rules;
- Promotion to a higher post under the State of the central government, subject to the officer's consent;
- A conviction in a court of law for a criminal offence or a case of corruption; or
- Being otherwise incapacitated from discharging duties.

The Model Police Act specifies these conditions

with more clarity and detail.⁹⁸

Additionally, in order to help police officers withstand undue political interference, have time to properly understand the needs of their jurisdictions and do justice to their jobs, the Supreme Court provides for a minimum tenure of two years for the following categories of officers:

- Inspector General of Police (in charge of a Zone);
- Deputy Inspector General of Police (in charge of a Range);
- Superintendent of Police (in charge of a District); and
- Station House Officer (in charge of a Police Station).

Besides cases of promotion or retirement, premature removal of the above-mentioned officers will be possible only consequent upon;

- Disciplinary proceedings;
- Conviction for a criminal offence or a case of corruption; or
- Being otherwise incapacitated from discharging duties.

In addition to the above-mentioned grounds given by the Supreme Court, the Model Police Act suggests in exceptional cases, officers may also be removed before the expiry of tenure for (i) gross inefficiency and negligence; or (ii) where a *prima facie* case of a serious nature is established after a preliminary enquiry.⁹⁹ When an officer is removed under these exceptional cases, the Model Police Act sets out two types of safeguards: (i) the authority which orders the transfer must inform the next higher authority and the Director General of Police of the grounds for the premature transfer in writing, and (ii) the aggrieved officer may approach the Police Establishment Board to submit a representation against his/her premature removal. The Board is empowered to consider the merits of the case and make appropriate recommendations to the transferring authority.

South Africa

National and provincial Commissioners of Police enjoy a minimum tenure of five years from the date of their appointment or a shorter period as may be determined as the time of his appointment by the President (in relation to the National Commissioner) or the National Commissioner (in relation to the

Provincial Commissioner, in consultation with the Executive Council).¹⁰⁰

If the National Commissioner of Police has lost the confidence of the Cabinet, the President may establish a board of inquiry, with a judge of the Supreme Court as chairperson, to inquire into the circumstances that led to the loss of confidence and make recommendations.¹⁰¹ If the Provincial Commissioner has lost the confidence of the Executive Council, the National Commissioner, on receiving a notice from the concerned Minister, shall establish a board of inquiry, with a person qualified in law as chairperson, to make an inquiry.¹⁰²

The Board thus constituted submits its report to the President, or to the National Commissioner depending on whether the inquiry was conducted against the National or the Provincial Commissioner. In addition, the report is also to be submitted to the concerned Commissioner and to the Parliamentary committees.¹⁰³ The Inquiry Report may recommend that (i) no action be taken in the matter; (ii) the concerned Commissioner be transferred; (iii) his salary or rank or both be reduced; (iv) he be removed from office or (v) any other appropriate steps.¹⁰⁴

The President or National commissioner has the option to postpone taking a decision on the recommendations of the Board of Inquiry for a period not exceeding 12 calendar months.¹⁰⁵ If the decision is postponed, at the end of the period the same or a similar Board of Inquiry has to make a new recommendation after having considered the conduct of the Commissioner during such period.¹⁰⁶

This same procedure applies to any inquiries into an allegation of misconduct by the National or Provincial Commissioner or any inquiries into his or her fitness for office or capacity for executing official duties efficiently.¹⁰⁷

3.2.4. Powers of appointment, transfer, promotion and disciplinary control

The ability to administer decisions regarding appointment, transfer, promotion and disciplinary control can be misused, both as a political tool and a chilling effect on police officers who aspire to act conscientiously.

Police Acts in many jurisdictions make a distinction between the senior and junior hierarchy and adopt separate mechanisms and institutions to administer such decisions. Even though many variations exist, generally the government (either central or

regional) takes decisions concerning seniors, and the head of the police (either central or regional) takes them for lower ranks.

Draft Constitution of 2000 (Sri Lanka)

The NPC is responsible for the recruitment, promotion, transfer, disciplinary control and dismissal of officers in the National Police Service and for the transfer of officers of a Regional Police Service from one Region to another in consultation with the relevant Regional Police Commissions.¹⁰⁸ Powers of the Commission relating to disciplinary control may be delegated to any officer of the police service not below the rank of the Senior Superintendent of Police.¹⁰⁹

The Regional Police Commission is responsible for the recruitment, promotion, transfer, disciplinary control and transfer of officers of the Regional Police Service.¹¹⁰ In order to do this, it may adopt any criteria specified by the NPC.¹¹¹

India

To ensure that decisions related to career advancement are not made by just one officer, the Supreme Court of India in *Prakash Singh* issued a directive to create a Police Establishment Board¹¹² composed of the Director General of Police and four other senior officers of the police department. The Model Police Act clarifies¹¹³ the fact that the four other officers should be the four other senior-most officers within the police organisation of the state.¹¹⁴

The Police Establishment Board performs the following functions:

1. The consideration and recommendation of the names of officers of the ranks of Sub-Inspector and Inspector for posting to a Range and the transfer from one Range to another.¹¹⁵
2. Make recommendations to the state government on postings and transfers of officers to the ranks of Assistant/Deputy Superintendents and above in the police organisation of the state, excluding the Director General of Police.¹¹⁶ The state government is expected to give due weight to these recommendations and normally accept them.¹¹⁷
3. Be a forum of appeal¹¹⁸ for disposing of representations from officers of the rank of Superintendent of Police and above regarding: (i) their promotion or transfer; (ii) disciplinary proceedings against them; or (iii) their being subject to illegal or irregular orders.

Notably, the recommendation of the Supreme Court

and the Model Police Act of 2006 follows a trend in international best practice that the government has a role in appointing and managing senior police leadership, but service-related matters of other ranks remain internal matters.¹¹⁹

Nigeria

Nigeria has established a Police Service Commission to take all decisions concerning the appointment and promotion of all officials of the Nigeria Police Force, other than its head¹²⁰, and to take decisions concerning the exercise of disciplinary control and powers of dismissal over the same persons.¹²¹ The Commission is headed by a Chairperson, and also comprises of a retired justice of the Supreme Court or Court of Appeal and a retired police officer not below the rank of Commissioner of Police.¹²² The Commission also consists of one representative of the interests of women, the Nigerian press, NGO's in Nigeria, the organised private sector, and the Secretary to the Commission.¹²³

The composition of the Police Service Commission of Nigeria is instructive, and much of its value derives from its representative character.

3.2.5. Accountability mechanisms

The establishment of an independent body to receive complaints from the public is an integral component of the effective functioning of a police force. Given the level of expertise required and the variety of concerns, it is essential that this body be dedicated exclusively to look into complaints against the police.

United Kingdom

The Independent Police Complaints Commission (IPCC) was a creature of the United Kingdom Police Reform Act of 2002.¹²⁴ The Commission consists of a chairperson appointed by Her Majesty, and 10 other members appointed by the Secretary of State.¹²⁵ The functions and duties of the Commission are extensive.¹²⁶ Generally, it is empowered to supervise and investigate public complaints against the police and can take over the supervision or investigation of any complaints case. The Head of Police must by law give the IPCC access to police documents and premises. Complaints can be made by persons other than victims or even via a third party or through independent organisations like the Citizens' Advice Bureau. Complainants have the right to appeal to the IPCC if their complaints are not registered. Complainants are kept informed about the progress and conduct of the investigation

into their complaint and given a summary of evidence, explaining how conclusions were reached. If the complainant is not satisfied, he/she can appeal.

South Africa

South Africa has established an Independent Police Investigative Directorate. It is structured at the national level with provincial offices¹²⁷ and is empowered to investigate police misconduct at both national and provincial levels. The Independent Complaints Directorate functions independently and has its own staff.¹²⁸ It investigates¹²⁹ *inter alia* deaths in police custody and deaths occurring as a result of police action; police involvement in criminal activities such as assault, robbery, theft of motor vehicles etc. and police conduct or behaviour which is prohibited by the police regulations, such as violation of the code of conduct or neglect of duties; and failure to protect victims of domestic violence under the Domestic Violence Act. The Minister, in consultation with the Parliamentary Committees, nominates the head of the Directorate.¹³⁰ He/she is appointed to the post only when the nomination is confirmed by the Parliamentary Committees. He/she is required to submit an annual report to the Minister within three months of the end of the financial year, which has to be tabled in Parliament by the Minister within 14 days.

3.2.6. Provisions relating to emergencies and public security

In any scheme of devolution or federalism, the central government reserves the power to intervene in the province in exceptional circumstances. Procedural safeguards are essential to ensure that provincial autonomy is not arbitrarily impinged upon.

Draft Constitution of 2000 (Sri Lanka)

Where the Chief Minister of a region seeks the assistance of the NPC to preserve public order within the region, the NPC-er is mandated to deploy such personnel as are necessary for the purpose.¹³¹

The power to make emergency regulations under the Public Security Ordinance or the law relating to public security includes the ability to make regulations on any matter in List I of the Second Schedule (the Reserved List) and to the extent strictly required in the interests of public security and the preservation of public order, or from the maintenance of supplies and service essential to the life of the community, on any matter in List II of the Second Schedule (the regional list).¹³²

Where the President, upon the advice of the Prime Minister, is of the opinion that the security or public order in a region is threatened by armed insurrection, grave internal disturbances or any act of the Regional Administration that presents a clear and present danger to the unity and sovereignty of Sri Lanka, the President may make a proclamation bringing the provisions of the law relating to public security into force in the region.¹³³ Accordingly, the President may deploy the armed forces or any unit of the National Police Service for the purpose of restoring public order and making regulations which override, amend or suspend any written law, except the provisions of the Constitution relating to any matter on List 1 of the Second Schedule or any matter provided for in the Chapter on Defence, National Security, and Law and Order.¹³⁴

Where the Governor of a region, upon being advised by the Chief Minister of the region, is of the opinion that a situation has arisen in the region or part thereof, wherein the preservation of public order or the maintenance of supplies essential to the life of the community is threatened, the Governor may request the President to make a proclamation. This would then bring the provisions of the law relating to public security for the time being in force in the region or a part of the region.¹³⁵ When such a proclamation is made, the Centre may lawfully exercise powers specified on the regional list, as may be specified by the Governor acting on the advice of the Chief Minister of the region.¹³⁶ Further, the President may make regulations which override, amend or suspend any written law, except the provisions of the Constitution relating to any matter as may be specified by the Governor acting on the advice of the Chief Minister of the region, in the regional list¹³⁷. All regulations have thus to be made, as far as practicable, in consultation with the Governor acting on the advice of the Chief Minister and the Regional Advocate General.¹³⁸

Certain general procedural safeguards are stipulated.¹³⁹ A significant safeguard to protect regional autonomy is that when a proclamation is made under Article 220 it ceases to be in force in that region after 90 days unless approved by the Regional Council within 10 days of expiration. If the Regional Council is adjourned, prorogued or dissolved at the time of expiration of such period, it ceases to be in force unless approved at the first meeting of the Regional Council thereafter.¹⁴⁰ Also, when a proclamation is made according to Article 221, it ceases to be in force in that region unless approved by the Regional Council within 14 days of the making of

such a proclamation, or if the Regional Council is adjourned, prorogued or dissolved at the time of expiration of such period, unless approved at the first meeting of the Regional Council thereafter.¹⁴¹

Where the President, upon being advised by the Prime Minister, is of the opinion that a situation has arisen in which a region is promoting armed rebellion, insurrection or engaging in the intentional violation of Article 1, 2, or 3, the provisions of Chapter XV (Devolution of Powers to the region) or Chapter XXII (Defence, National Security and Law and Order) which constitutes a clear and present danger to the unity and sovereignty of Sri Lanka, the President may by proclamation assume to himself all or any of the functions of the administration of the region, and all or any of the powers vested in or exercisable by the Governor, the Chief Minister, the Board of Ministers, or any authority in the region. Where it is necessary for the effectual exercise of these powers, he may dissolve the Regional Council.¹⁴² Within 14 days of making such a pro-

clamation, the President is directed to constitute a tribunal for the purpose of ascertaining the continued existence of the situation that necessitated the making of such a proclamation.¹⁴³

The tribunal is to consist of a member appointed by the President, a member appointed by the Chief Minister of the region, and where the Regional Council has been dissolved, by the person who previously held the office of Chief Minister at the time of such dissolution, and a Chairperson nominated by the members so appointed. Where there is no agreement, the Chairperson is to be nominated by the Constitutional Council.¹⁴⁴ Upon receiving the tribunal report, the President has to lay the report before Parliament within a period of 30 days. If the tribunal reports that the situation necessitating a proclamation ceases to exist, the President will revoke the proclamation, and in any case where the Regional Council has been dissolved, re-summon such Regional Council.¹⁴⁵

PART 4: COMPARATIVE ANALYSIS

Despite the 13th Amendment being in place for the past twenty five years, there is still reluctance to devolve police powers to the provinces as it envisaged. The central government may be reluctant to allow provincial police forces, due to fears of another possible insurgency.

4.1. Overview of Separatist Movements in Canada and the United Kingdom

Canada

The Front de Libération du Québec (FLQ) was a revolutionary movement engaged in terrorist activities from 1963 to 1970, demanding an independent, socialist Québec.

United Kingdom

In the early 20th century, there were calls for separation of Ireland from the United Kingdom (UK). The Government of Ireland Act 1920 was passed by the UK Parliament, which partitioned Northern Ireland and Southern Ireland, and established two separate Parliaments in these areas.

The following year was marked by a period of guerrilla warfare between the nationalist Irish Republican Army (IRA) and the British Army, resulting in the signing of a treaty which created an Irish Free State. 23 Southern counties and 3 counties in Ulster made up the Irish Free State, while the remaining 6 counties made up Northern Ireland. In 1949, the Irish Free State became an independent republic, while Northern Ireland remained a part of UK. Subsequently, in the late 1960's, the IRA commenced

agitation, calling for the separation of Northern Ireland from the UK, by engaging in various terrorist activities.

4.2. Summary of Organisation of Police Forces

Canada

Police duties are divided between the federal police force and provincial police force. The federal police force, the Royal Canadian Mounted Police (RCMP) is responsible for the enforcement of the Criminal Code and all other laws made by, or under the authority of the Parliament of Canada. The provincial police forces are responsible for the enforcement of law within the provinces and are governed by the Police Act enacted by the respective provincial government. Provinces can maintain their own police forces, or contract out policing duties to the RCMP.

United Kingdom

The police force in the UK is structured by way of territorial police forces operating independent of each other. Independent police forces operate in England, Wales, Scotland and Northern Ireland. Wales, Scotland and Northern Ireland are given the power to operate their own police forces, following the devolution of powers through the Government of Wales Act 1998, Scotland Act 1998 and Northern Ireland Act 1998 respectively.

In England and Wales, there are 44 territorial police forces governed by the Police Act 1996. Scotland maintains the Police Service of Scotland and Northern Ireland maintains the Police Service of Northern Ireland.

4.3. Comparative analysis of legal and political provisions and mechanisms developed in specific jurisdictions to address possible concerns that could arise from the devolution of police powers.

Secessionist tendencies : Concerns could arise with respect to the possibility of separatist elements or any remaining supporters exercising influence or attempting to take over the police force, and using these resources to agitate for a separate state.

Table 1

| Canada | United Kingdom | Sri Lanka |
|--|--|--|
| <p>i. Emergencies Act.</p> <p>The Emergencies Act 1985 authorises the Government of Canada to implement special temporary measures in order to ensure safety and security during national emergencies. This Act replaced the War Measures Act 1914.</p> <p>ii. Maintenance of federal police units across Canada.</p> <p>The federal police force – Royal Canadian Mounted Police (RCMP) - maintains federal units in the provinces which have their own provincial police forces, i.e. in Québec and Ontario.</p> | <p>i. Specialist Police Forces</p> <p>The UK Government maintains several specialist police forces with special tasks. Most of these forces have jurisdiction throughout the UK and provide means to identify and deal with potential threats.</p> <p>ii. Inspection of local police forces.</p> <p>Her Majesty’s Inspectorates of Constabulary (HMIC) is a body responsible for the inspection of police forces in the UK. The Secretary of State can direct the inspectors of the constabulary to inspect and report on a police force maintained for any police area, as well as on certain specialist police forces.</p> <p>The Police Service of Northern Ireland (PSNI) is specifically subject to an annual inspection by the HMIC, as given in Section 41 of Police (Northern Ireland) Act 1998.</p> <p>iii. Accountability of local police forces.</p> <p>The police force in England and Wales are accountable to the public through a ‘tripartite’ governance structure, i.e. the Home Office, the local police authority and Chief Constable of the force.</p> | <p>i. Disciplinary action against police officers.</p> <p>The National Police Commission (NPC) is empowered to hear and determine appeals from officers seconded to Provincial Divisions against whom disciplinary action has been taken by Provincial Police Commissions. The 17th Amendment authorised the NPC to establish procedures to entertain and deal with public complaints and complaints of aggrieved persons against a police officer or a service. The 18th Amendment expressly provides that the powers of the new NPC include the investigation of complaints against police officers by any aggrieved person and the provision of redress for these offences.</p> <p>The NPC also possesses disciplinary power over the District Inspector General (D.I.G.). This ensures that even though the D.I.G. heads the provincial police force, he is still accountable to a central body.</p> <p>This system would provide the Centre to look into activities of the provincial police forces and authorise them to take action against police officers who engage in activities furthering the cause for separatism.</p> |

| Canada | United Kingdom | Sri Lanka |
|--------|----------------|--|
| | | <p>ii. Arms and Equipment to police forces</p> <p>The NPC is responsible for the determination of the nature, type and quantity of fire-arms, ammunition and other equipment for both the National and Provincial divisions. Therefore, the NPC has the option of restricting the equipment supplied to provincial divisions.</p> <p>iii. Training of Police Forces.</p> <p>The Central Government is responsible for the training of recruits and members of all divisions of the police force.</p> |

Challenge to Central Power: *The devolution of police powers to provincial governments could supersede the powers of the Centre and block their control over the police force, which is the main law enforcement agency in Sri Lanka.*

Table 2

| Canada | United Kingdom | Sri Lanka |
|---|---|--|
| <p>i. Clear division of powers between federal and provincial police forces</p> <p>The federal police force – the Royal Canadian Mounted Police (RCMP) – is responsible for the enforcement of the Criminal Code and all other laws made by, or under the authority of the Parliament of Canada, while the provincial police forces are responsible for the enforcement of law within the provinces and will be governed by the Police Act enacted by the respective provincial governments.</p> <p>ii. Criminal Law in Canada.</p> <p>Section 91(27) of the Constitution Act 1867 provides that the Parliament of Canada has the legislative authority in respect to ‘the criminal law, except the Constitution of Courts of Criminal Jurisdiction, but including the procedure in criminal matters’. Therefore, the Parliament of Canada has enacted the Criminal Code, which is applicable to all the provinces of Canada.</p> <p>iii. Federal control over provinces.</p> <p>RCMP divisions are maintained in the provinces which have their own provincial police forces (i.e. Québec and Ontario).</p> <p>iv. Role of the Attorney General of Canada.</p> <p>The Attorney General of Canada has the au-</p> | <p>i. Central government authority over national security</p> <p>Devolution of police powers to Wales, Scotland and Northern Ireland was given effect by the Government of Wales Act 1998, Scotland Act 1998, and the Northern Ireland Act 1998 respectively. However, the UK Parliament has reserved the right to pass legislation in areas relating to national security through the above mentioned Acts.</p> <ul style="list-style-type: none"> • Scotland – Section B8 of Schedule 5 of the Scotland Act 1998 provides that the reserved matters which are matters which can be legislated on by the UK Parliament. These matters include national security and special powers, and other special provisions for dealing with terrorism. • Wales – Section 94 of the Government of Wales Act 2006 does not place the subject of ‘national security’ within the legislative competence of Welsh Assembly. • Northern Ireland – The subjects of national security, special powers and provisions dealing with terrorism and subversion are ‘excepted matters’ under the Act. <p>‘Excepted matters’ are not matters not within the legislative competence of the Northern Ireland Assembly, and is thus under the leg-</p> | <p>i. Clear division of duties</p> <p>The 13th Amendment provides for two divisions of the police force, i.e. the National Division (including Special Units) and a Provincial Division for each Province and specifies the cadres within each division. The entire Sri Lanka Police Force is under the control of the I.G.P.</p> <p>ii. Restriction on powers devolved under the 13th Amendment</p> <p>The devolution of powers in this area is limited to police and public order.</p> <p>Powers in respect of national defence, national security, and use of any armed forces or any other forces under the control of the government in aid of the civil power have not been devolved and remain under the control of the Centre. In addition to this, the devolved powers will not include the city of Colombo and Sri Jayawardenepura Kotte and their environs.</p> <p>iii. Control of Central Government over Provincial Division police units</p> <p>Police officers serving in units of the National Division and Provincial Divisions in any Province are to function under the direction and control of the D.I.G. of the respective province,</p> |

| Canada | United Kingdom | Sri Lanka |
|---|--|--|
| <p>thority, under the Security Offences Act, to conduct proceedings in respect to an offence under any law of Canada, where such an offence constitutes a threat to the security of Canada.</p> | <p>islative authority of the UK Parliament. (Section 5(6) of the Northern Ireland Act 1998)</p> <p>ii. Inspection of local police forces</p> <p>Her Majesty’s Inspectorate of Constabulary (HMIC), is a central body which functions directly under the UK Government and is authorised to inspect all local police forces within the United Kingdom, as well as certain specialist police forces.</p> | <p>who is in turn accountable to and under the control of the Chief Minister.</p> <p>The President can assume the powers and responsibilities of the Chief Minister upon declaration of an emergency in the province; or even in instances where there is no declaration of emergency, where the President is of the opinion that the security or public order of the Province is threatened and amounts to a situation which requires the deployment of any unit of the National Division (provided that the respective Chief Minister is consulted and subject to the provisions of the Public Security Ordinance).</p> <p>iv. Power of Centre to prevent the creation and functioning of the Provincial Police Divisions</p> <p>The Centre is responsible for certain administrative functions with respect to the Provincial Police Divisions. In the event the Centre fails to or refuses to carry out these duties, it would prevent the formation of these Provincial Divisions. The Centre has the potential to:</p> <ul style="list-style-type: none"> • Refuse to second officers to the Provincial Division, refuse to approve cadre, refuse to appoint a Provincial D.I.G., refuse to make appointments to the Provincial Police Commission. The National Division may continue to exercise the Provincial Division’s powers indefinitely. <p>v. Financial control by the Centre</p> <p>The provisional administration is responsible</p> |



| Canada | United Kingdom | Sri Lanka |
|--------|----------------|--|
| | | <p>for fixing the cadre of officers and other ranks of each Provincial Division, with the approval of the NPC. However, the Centre is the body responsible for determining the salary scales and perquisites of office of both National and Provincial Divisions, after consultation with the Chief Ministers.</p> |

Threats to national security: *Decentralisation of powers would decrease control over the provincial forces with respect to administrative matters etc. This may make it more difficult for the central powers to detect possible threats to national security from within the police forces.*

Table 3

| Canada | United Kingdom | Sri Lanka |
|--|--|--|
| <p>i. Role of Federal Police</p> <p>The RCMP primarily has responsibility over offences which constitute a threat to the security of Canada and offences against internationally protected persons.</p> <p>To facilitate this role, the RCMP has the National Security Criminal Investigations Program which is responsible for conducting criminal investigations into national security related terrorist and criminal activity.</p> <p>ii. Emergencies Act</p> <p>Section 2(2) of the Emergencies Act authorises the Government of Canada with the authority to deal with emergencies on any property, territory or area in respect to which the Parliament of Canada has jurisdiction.</p> <p>Section 3 of the Act defines a ‘national emergency’ as an urgent and critical situation of a temporary nature that seriously endangers Canadians and is of such proportions that it would exceed the capacity or authority of the province to address it, or is a situation where the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada is threatened.</p> | <p>i. UK Home Office in Northern Ireland</p> <p>ii. The UK Home Office maintains the Northern Ireland Office, which works in partnership with the Northern Ireland Executive. The Northern Ireland Office co-ordinates the government’s strategic response to terrorist threats and in doing so, the Office works closely with the Irish Government, the Police Service of Northern Ireland (PSNI), the Security Service and An Garda Síochána (Police force in Southern Ireland)</p> <p>iii. Specific legislation targeting terrorism</p> <ul style="list-style-type: none"> • Terrorism Act 2000 - provides for specific measures to be adopted in the event of terrorism, and further provides specific provisions to address issues in Northern Ireland. • Terrorism Prevention and Investigation Measures Act 2011 - authorises the Secretary of State to impose specific terrorism prevention and investigation measures on an individual, subject to certain conditions being met. <p>iv. Control of National Security Intelligence</p> <p>The National Security Intelligence work carried out in Northern Ireland is placed within</p> | <p>i. Role of the National Division</p> <p>The National Division is responsible for the prevention, detection and investigation of all offences specified in the Schedule. The offences so specified include, among others:</p> <ul style="list-style-type: none"> • Offences against the State; • Offences relating to the Navy, Army and Air Force; • Any offence prejudicial to National Security or the maintenance of Essential Services; • International Crimes. <p>ii. State of emergency</p> <ul style="list-style-type: none"> • Upon declaration of an emergency in the Province, the President may assume such powers and responsibilities of the Chief Minister and the Provincial Administration with respect to public order within the Province. • The I.G.P. may deploy units of the National Division in a province whenever a state of emergency has been declared in the Province. • Section 5 of the Public Security Ordinance authorises the President to make |

| Canada | United Kingdom | Sri Lanka |
|--------|--|--|
| | <p>the scope of the Security Service.</p> <p>This was previously carried out by the Royal Ulster Constabulary (RUC) and then by the PSNI.</p> <p>However, in 2007 the Government of UK placed this role under the Security Service, thereby ensuring that this line of work is carried out in the same way as the rest of the UK.</p> <p>v. Royal Military Police division in Northern Ireland</p> <p>The Royal Military Police maintains a Special Investigation Branch (SIB) division in Northern Ireland. This division is responsible for intelligence and control of police and civilian activities in that area.</p> | <p>Emergency Regulations as necessary or expedient in the interests of public security, for the preservation of public order and the suppression of mutiny, riot or civil commotion, or for the maintenance of supplies and services essential to the life of the community.</p> <p>iii. Grave internal disturbance</p> <p>Even if there has been no formal declaration of a state of emergency, in instances where the President is of the opinion that the security of or public order in a Province is threatened by grave internal disturbance, the President may, in consultation with the Chief Minister, deploy any unit of the National Division in the Province to restore public order.</p> <p>iv. Role of armed forces to maintain public order - Section 12 (1) of the Public Security Ordinance authorises the President to make an Order published in the Gazette, to call out all or any members of all or any armed forces for the maintenance of public order in that area. This can be utilized in instances where circumstances which endanger the public security in any area have arisen or are imminent, and the President believes that the Police are inadequate to deal with such a situation in that area.</p> |

Intensive development in the North and East: *Several development projects are being implemented in the North and East (such as the Sampur power plant, Heavy Industrialised Zone in Trincomalee etc.) If police powers were to be devolved to provinces, the provincial police forces would have important economic infrastructure under their control, and in the event the police force becomes a separatist movement, they would have significant control over the economic sources.*

Table 4

| Canada | United Kingdom | Sri Lanka |
|--------|---|---|
| | <p>i. Special police forces developed to protect important infrastructure</p> <ul style="list-style-type: none"> • The British Transport Police is a national police force responsible for policing railways throughout England, Scotland and Wales. • The UK Atomic Energy Authority Constabulary is an armed force established under the Atomic Energy Authority 1954, with the authority to provide armed protection to civil nuclear sites in order to guard against terrorist attacks. | <p>i. Control of central government over development</p> <ul style="list-style-type: none"> • Urban Development Authority Act No. 41 of 1978 provides for the creation of an Urban Development Authority and any area declared as an urban development area will be under the control of this Authority. This Act gives significant powers to the authority over these areas as provided for in Section 8 of the Act and as a result these areas would come under the full control of this central body. • Urban Development Projects (Special Provisions) Act No.2 of 1980 authorises the acquisition of any particular land or lands for the purpose of carrying out an urban development project, as provided for in Section 2 of the Act. In addition to this, Section 4 of the Act provides that the Supreme Court would have the jurisdiction in respect to any Order made under Section 2 of the Act. <p>Both these Acts confer significant power on the central government over development projects and would entitle the central government to enforce control in terms of security over these projects. Therefore, even though 'planning' is one of the topics that falls in the</p> |

| Canada | United Kingdom | Sri Lanka |
|--------|----------------|--|
| | | <p>concurrent list of the Constitution, thereby allowing both the central government to legislate on this area only with the concurrence of the Provincial Councils, these Acts would restrict the power of the provincial governments to enforce control over these projects. This in turn would also restrict the control these provincial police forces could exercise over these development projects, as it is an area which falls within the purview of the national government.</p> <p>The lands acquired under this Act to carry out urban development projects would generally fall within the scope of projects which are of national importance. These Acts therefore, provide almost exclusive control to the Urban Development Authority, which is a central body over such projects deemed to be of national importance. This will limit the control provincial governments would have over such infrastructure, as the central body has the authority to enforce controls with respect to security and ensuring its safety.</p> |

ANNEXURE

Overview of the organisation of police force in other jurisdictions

Canada

The police force in Canada is administrated on three main levels, namely the federal, provincial and municipal level. The Constitution of Canada expressly provides for the authority of each level of government with respect to police powers.

1. Constitutional provisions regarding law enforcement

The role of the Parliament of Canada and the provinces in Canada with respect to police powers is governed by the Constitution Act 1867.

Section 91(27) of the Constitution Act 1867, provides that the Parliament of Canada has the legislative authority with respect to ‘the criminal law, except the Constitution of Courts of Criminal Jurisdiction, but including the procedure in criminal matters’.

Section 92 (14) provides that the provincial legislature is to have the exclusive power to make laws in relation to ‘the administration of justice in the province, including the Constitution, maintenance and Organisation of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.’

In this respect, the Parliament of Canada has enacted the Criminal Code,¹⁴⁶ which is applicable in all the provinces of Canada. The provinces are responsible for maintaining their own police forces and can enact laws dealing with the organisation of the police force in their respective province.

2. Organisation of Police forces

2.1. Policing at the federal level

The Royal Canadian Mounted Police (RCMP) is the federal police force in Canada and is governed by the Royal Canadian Mounted Police Act.¹⁴⁷ Section 5(1) of the Act provides that RCMP will be under the control of the Commissioner, who, under the direction of the Minister,¹⁴⁸ has the control and management of the Force and connected matters. The RCMP is responsible for the enforcement of the Criminal Code and all other laws made by, or under

the authority of the Parliament of Canada.

Further, the RCMP is also able to provide policing services to provinces and municipalities under the terms of a policing agreement.¹⁴⁹ Presently, the RCMP provides contractual police services under the terms of policing agreements to eight provinces¹⁵⁰ and three territories (i.e. Yukon, the Northwest Territories and Nunavut)¹⁵¹ and under separate municipal policing agreements to 180 municipalities.¹⁵²

Other responsibilities of the RCMP include protection of foreign missions and important Canadian persons, policing duties for the United Nations and provision of operational support services to all police forces in Canada.¹⁵³

2.2. Policing at a provincial level

The provincial governments are responsible for the administration of justice within their provinces, and therefore have the duty to maintain their own police force. The provinces can either develop their own police force or contract policing duties to the RCMP. The provincial police force will be responsible for the implementation of the Criminal Code, enacted by the Parliament of Canada, and the provincial statutes, enacted by the provincial legislatures within the respective provinces. Each provincial government enacts a Police Act, through which the provincial police force will be regulated.

2.3. Policing on a municipal level

At the municipal level, there are three options with respect to municipal policing services. The municipalities may form their own police force, join an existing police force or enter into an agreement with a provincial police force or the RCMP.¹⁵⁴

3. Separatist movement in Québec

The state of Québec is one of the two provinces with its own police force. The provincial police force in Quebec, which is known as the Sûreté du Québec, provides police services to all regions of Québec and is regulated by the Police Act.¹⁵⁵

This provincial police force has been in existence since 1870 and continues to function even though this state was in the midst of several revolutionary independence movements in the 1950s and 1960s.

The Front de Libération du Québec (FLQ) was

a prominent revolutionary movement which emerged in 1963, calling for an independent, socialist Québec.¹⁵⁶ In the period from 1963 to 1970, the FLQ was involved in several terrorist activities and was also responsible for the events which are now referred to as the 'October Crisis'.¹⁵⁷ In October 1970, the British Trade Commissioner in Montréal, James Cross, was kidnapped. This was followed by another act in which the Minister of Immigration and the Minister of Labour, Pierre Laporte, was kidnapped and killed.¹⁵⁸

The escalation in the acts of violence resulted in a formal request by the Québec government for the assistance of the Canadian Armed Forces to supplement the local police. The federal government was able to intervene under the jurisdiction of the War Measures Act 1914. Through this Act, the federal government was able to send in troops into the state of Québec and temporarily suspended civil liberties. The use of this Act during the 'October Crisis' was the only instance it was used in a domestic crisis.¹⁵⁹

4. Mechanisms adopted by the federal government to maintain control in provinces

4.1. Legislative measures

The War Measures Act 1914 is an Act through which the federal government could employ emergency measures to maintain security and order during war. Section 6 of the Act provided certain broad powers to the Governor in Council in the event of 'the existence of real or apprehended war, invasion or insurrection' as would be 'necessary or advisable for the security, defence, peace, order and welfare of Canada'. The War Measures Act was repealed in 1988, but has been replaced by the Emergencies Act.¹⁶⁰

The Emergencies Act¹⁶¹ authorises the taking of special temporary measures to ensure safety and security during national emergencies. Section 2(2) of the Act provides the Government of Canada with the authority to deal with emergencies on any property, territory or area which the Parliament of Canada has jurisdiction. A 'national emergency' has been defined in Section 3 of the Act to be an urgent and critical situation of a temporary nature that seriously endangers Canadians and is of such proportions that it would exceed the capacity or authority of the province to deal with it, or is a situation where the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada is threatened.

4.2. Federal control within the provinces

RCMP divisions are maintained by the federal government in the provinces which have their own provincial police force (i.e. Québec and Ontario).

In Québec, the RCMP division (referred to as the 'C' division) was created in 1920 and is tasked with enforcing federal statutes within the province. This division maintains its headquarters in Montréal, and maintains detachments in two districts, namely the East and West districts. The services offered by the RCMP division focuses on action against highly criminal organisations on a national and international level. In addition to this, the division is involved in fields such as financial integrity, national and border security, criminal intelligence and provision of protective services.¹⁶²

In Ontario, the RCMP division (referred to as the 'O' division), which was created in 1920, is also tasked with the responsibility to enforce the law in federal matters. This division is divided into three districts within Ontario, namely the Greater Toronto Area District, the North East District and the South West District.¹⁶³ This federal division is involved in providing services with respect to commercial crime, criminal intelligence and drug trafficking. Further, the division is also involved in the customs and excise section as well as the immigration and passport section.¹⁶⁴

4.3. Threats to National Security¹⁶⁵

The federal police have specific authority to take action in instances of threats to national security. In order to facilitate this, Security Offences Act¹⁶⁶ provides that the members of the RCMP have primary responsibility of alleged offences which arise out of conduct constituting a threat to the security of Canada and offences against a person who is an internationally protected person.¹⁶⁷ In this respect, the RCMP maintains the 'National Security Criminal Investigations Program' through which the force is responsible for conducting criminal investigations into national security – related terrorist and criminal activity. There are two key components within the Program, namely the Integrated National Security Enforcement Teams (INSETs) and National Security Enforcement Sections (NSESs). The INSET consists of representatives from the RCMP, federal partners and agencies and provincial and municipal police services, while the NSES consists only of RCMP employees. These two components maintain divisions across the country.

The Attorney General of Canada is also given authority under the Security Offences Act¹⁶⁸ to conduct proceedings of an offence under any law of Canada, where such offence arises out of conduct which constitutes a threat to the security of Canada within the meaning of the Canadian Security Intelligence Service Act.¹⁶⁹ The Canadian Security Intelligence Service Act has defined 'threats to the security of Canada' to include activities within or relating to Canada which are directed towards or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state. It further includes activities which are directed towards undermining covert unlawful acts, or directed towards or intended to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada.¹⁷⁰

United Kingdom

The United Kingdom (UK) government is in the form of a constitutional monarchy and legislates through a parliamentary system. The UK consists of four countries namely, England, Wales, Scotland and Northern Ireland. Legislative power has been devolved to Scotland, Wales and Northern Ireland.¹⁷¹ This devolution of powers was achieved through the Scotland Act 1998, the Government of Wales Act 1998¹⁷² and the Northern Ireland Act 1998.¹⁷³

1. Organisation of Police Force in UK

The police force in the UK is structured by way of territorial police forces operating independent of each other, rather than in the form of a single unitary body similar to a national police force.

Within each country, the police forces are divided by geographical divisions. In this respect, England and Wales have 43 territorial forces, Scotland has the Police Service of Scotland and the Northern Ireland has the Police Service of Northern Ireland (PSNI).¹⁷⁴

1.2. Police Force in England and Wales

In England and Wales, there are 44 independent police forces, governed by the Police Act 1996 (which replaced the Police Act 1964). Section 1 of the 1996 Act divides the police areas into the areas listed in Schedule 1 of the Act,¹⁷⁵ the Metropolitan

police district and the City of London police area.

These forces are accountable to the public through a 'tripartite' governance structure. The 'tripartite' governance structure is used to indicate the distribution of responsibilities over the police, between the Home Office, the local policy authority and the chief constable of the force.

The Home Office is responsible for ensuring that the police service is efficient and effective. Under the Police Reform Act 2002, the Secretary of State is required to prepare a National Policing Plan which must be approved by Parliament, which would include, among other specifics, the strategic policing priorities for the police forces in England and Wales.¹⁷⁶

The local police authorities are responsible for determining the strategic direction of the force. Each of the 44 police forces has a police authority which will consist of members of the local council and independent persons who are representative of the community.

The Chief Constable is responsible for the direction and control over the force and acts independent of the police authorities and the government. Each Chief Constable will be accountable to the Home Secretary and to the local policy authority.

There are also two special territorial police forces:

- Metropolitan Police Service - The Metropolitan Police Service is the territorial police force responsible for law enforcement in Greater London. It was established under the Metropolitan Police Act 1829. This Service, in addition to its duties of territorial policing, also performs certain specific specialist operations. The Specialist operations consist of a protection command, security command and a counter terrorism command, within which there are several units responsible for protecting and preventing against terrorism.¹⁷⁷ This police force is able to provide some of these services in all parts of the UK.
- City of London Police - The City of London Police is a territorial police force which provides policing services within the area of a square mile in Greater London. This area is an international financial and business Centre and is thus under constant threat from terrorism and fraud related crime.

This police force is therefore responsible for protecting the City of London from terrorism and extremism and fraud.¹⁷⁸

1.2. Police Force in Scotland

The Scotland Act 1998 devolves responsibility over police powers to the Scottish Parliament.¹⁷⁹ Therefore, the Government in Scotland is in charge of the organisation of the police force in Scotland.

Prior to April 2013, policing in Scotland was carried out by 8 territorial police forces, the Scottish Crime and Drug Enforcement Agency and the Association of Chief Police Officers in Scotland. However, as of 01st April 2013, these police forces have been integrated into a single service, 'the Police Service of Scotland'.¹⁸⁰

The Police Service of Scotland is subject to the authority of the Scottish Government, the Scottish Police Authority and the Chief Constable.

The Scottish Police Authority is responsible for the maintenance and direction of the Police Service.¹⁸¹ The Authority has the duty to make the appointments of the chief constable, deputy chief constable and assistant chief constables, and is the body responsible for ensuring the accountability of the Chief Constable.

The Scottish Government has the power to issue directions to the Scottish Police Authority, subject to certain restrictions¹⁸² and determine its strategic priorities, in relation to the policing of Scotland and the functioning of the Authority.¹⁸³ The appointment of the Chief Constable is subject to the approval of the Scottish Ministers.¹⁸⁴ Further, the Scottish Ministers also have the authority to make regulations with regard to the governance, administration and conditions of service of constables and police cadets.¹⁸⁵

The Chief Constable is responsible for the policing of Scotland and is accountable to the Authority.¹⁸⁶ Section 17 of the Act provides for the specific duties of the Chief Constable in carrying out his duties.

The Police force itself is divided into 14 local policing divisions, and is headed by a Local Police Commander. Each division has officers responsible for local crime investigation, road policing, public protection, local intelligence, community policing and for response.¹⁸⁷

In addition to this, there is a national police force

with jurisdiction in all parts of Scotland, known as the Specialist Crime Division. This division performs specialist investigative and intelligence functions with respect to crime investigations, public protection, counter terrorism, intelligence and safer communities.

1.3. Police Force in Northern Ireland

The police force in Northern Ireland is known as the Police Service of Northern Ireland (PSNI). The PSNI replaced the Royal Ulster Constabulary (RUC), which was the previous police force operating in Northern Ireland.¹⁸⁸

The PSNI functions under the direction and control of the Chief Constable,¹⁸⁹ who in turn is assisted by the Deputy Chief Constable.¹⁹⁰ In terms of organizing the police force, each district will be referred to as a police district, with the exception of Belfast, which will be divided into a number of police districts (not exceeding 4). Further, each police district will have a police officer of the required rank appointed as the district commander.¹⁹¹

The other special police forces operating in Northern Ireland are the Belfast Harbour Police, Belfast International Airport Constabulary Service and the Larne Harbour Police.

This force is held accountable by the Northern Ireland Policing Board and the Police Ombudsman for Northern Ireland.

The Northern Ireland Police Board replaced the Police Authority for Northern Ireland and is responsible for maintaining a police force that is efficient and effective.¹⁹² The duties of the Board include ensuring that the police force complies with the Human Rights Act 1998¹⁹³, appointment of the Chief Constable (subject to the approval of the Secretary of State)¹⁹⁴ and activities relating to the administration of policing in Northern Ireland.

The Police Ombudsman for Northern Ireland was a body established to replace the Independent Commission for Police Complaints for Northern Ireland.¹⁹⁵ The Ombudsman is to be appointed by Her Majesty for a period of 7 years.¹⁹⁶ This body is accountable to the Assembly, through the Minister of Justice for Northern Ireland. The Ombudsman will be liable for any unlawful conduct by members of the police force in the performance of their functions.¹⁹⁷ In this respect, the Ombudsman provides an independent, impartial police complaints system for the people and police of Northern Ireland

and investigates complaints made against police services within the country.¹⁹⁸

In addition to this, the PSNI is subject to an annual inspection by Her Majesty's Inspectors of Constabulary, and the constabulary will thereafter report the findings to the Secretary of State.¹⁹⁹

2. Separatist movement in the United Kingdom

The early 20th century was marked with calls for separation of Ireland from the UK. In 1920, the Parliament of UK passed the Government of Ireland Act, through which Northern Ireland and Southern Ireland were partitioned and separate Parliaments were established in these areas.²⁰⁰ The Act also contained provisions to enable the eventual unification of Ireland.²⁰¹ However, in the following year, after a period of guerilla warfare between the nationalist Irish Republican Army (IRA) and the British forces, a treaty was signed creating an Irish Free State. The Irish Free State comprised of 23 southern counties and 3 counties in Ulster, while the remaining 6 counties of Ulster made up Northern Ireland. In 1949, the Irish Free State became an independent republic, while Northern Ireland continued to remain a part of the UK.

In the late 1960's the Irish Republican Army, an Irish paramilitary organisation, commenced agitation calling for separation of Northern Ireland from the United Kingdom, so as to bring about a united Ireland. This organisation carried out several acts of terrorism during this period of time, which came to be known as 'The Troubles'. In 1998, after several rounds of peace talks, a settlement was reached referred to as the Good Friday Agreement. The IRA changed their policy stance in the Good Friday Accords, through which they agreed to work towards a united Ireland only on peaceful terms. However, some of the actions taken by the IRA demonstrated that violence was still an option as members continued to engage in criminal activities such as smuggling and robbery.²⁰²

This agreement called for an elected assembly in Northern Ireland and devolution of powers. The agreement was then approved in a referendum held in the Northern Ireland, and thereafter the Parliament of the United Kingdom passed the Northern Ireland Act 1998 to implement these arrangements.

Even during the time of terrorist agitation, policing in Northern Ireland was carried out by a separate police force, the Royal Ulster Constabulary

(RUC).²⁰³ This force had jurisdiction throughout Northern Ireland and had the support of the Ulster Special Constabulary (which was a part time auxiliary police body). The RUC was headed by an Inspector General, who was appointed by the Governor of Northern Ireland and was accountable to the Minister of Home Affairs in the Government of Northern Ireland.²⁰⁴

The unique aspect of the RUC was that it was an armed police force and performed a dual role, in that it provided normal law enforcement police services in Northern Ireland, while at the same time protected the citizens from terrorist activities. The RUC was significant in combating terrorist activities in the 1970's and 80's. During this period, a policy referred to as 'police primacy' was adopted, through which the responsibility for security lay primarily with the police and army support was available thereafter, if necessary.²⁰⁵ This force has since then been renamed as the Police Service of Northern Ireland.

3. Mechanisms adopted by the central government to maintain control over local police forces

3.1. Maintenance of special Police forces

Apart from the territorial police forces, there are also several police services which have jurisdiction across the UK in order to perform certain special tasks. These special police forces are:

- Ministry of Defence Police

The Ministry of Defence Police (MDP) is a national police force with units established across the UK at Defence and Critical National Infrastructure Sites.²⁰⁶ It is separate from the military service police and instead operates as civil servants providing constabulary policing across the UK so as to assist the Armed Forces in their duties of security and confidence.²⁰⁷

The MDP is governed by the Ministry of Defence Police Act 1987 and persons can be appointed to this force from all parts of the United Kingdom.²⁰⁸ This force also has jurisdiction to exercise the powers and privileges of constables in any place in the United Kingdom as specified in the Act.²⁰⁹ Further, the MDP operates under the direction and control of a 'Chief Constable' who is appointed by the Secretary of State.²¹⁰

The MDP engages with the local police force and

provides assistance if requested. The officers of the MDP do carry out the functions of a civilian police force, but also carry out several specialist roles, some of which are unique to the MDP.²¹¹ The specialist units include marine units, the Criminal Investigation Department (CID) and Fraud Squad, the Operational Support Unit, the Special Escort Group, Tactical Support Group and Divisional Support Groups.

- Association of Chief Police Officers (ACPO)²¹²

The Association of Chief Police Officers (ACPO) is an independent body which acts as a central structure to coordinate and lead the police services in England, Wales and Northern Ireland. It works in active partnership with the Government to organize these police services in times when a national response is needed, such as instances of terrorist attacks, natural disasters or riots.

- British Transport Police (BTP)

The British Transport Police (BTP) is a national police force responsible for policing the railways throughout England, Scotland and Wales.

This force is accountable to the British Transport Police Authority (BTPA) which is composed of 15 members appointed by the Secretary of State for Transport.²¹³

- UK Atomic Energy Authority Constabulary²¹⁴

The UK Atomic Energy Authority Constabulary is a force which provides armed protection to civil nuclear sites to guard against terrorist attacks. This Constabulary was established under the Atomic Energy Authority Act 1954. The force has jurisdiction to provide protection at a licensed nuclear site and anywhere within 5 km of a licensed nuclear site (excluding the defence sites which have the Ministry of Defence police). It also has the jurisdiction to escort nuclear material regardless of who owns it and also at transshipment points or storage points.

- Serious Organised Crime Agency (SOCA)

The SOCA was established under the Serious Organised Crime and Police Act 2005.²¹⁵ The duties of the SOCA are to prevent and detect serious crime, contribute to the reduction of organised crime,²¹⁶ and to deal with information

relating to crime.²¹⁷

The SOCA is to consist of a chairman, ex-officio members and ordinary members. The Chairman and the ordinary members are to be appointed by the Secretary of State.²¹⁸ The SOCA works with agencies and officials across the UK and in other parts of the world in carrying out their activities.

- National Crime Agency (NCA)

The National Crime Agency (NCA) was introduced by the UK government in July 2011²¹⁹ as part of its new strategy to deal with organised crime. In this respect, the NCA will be an operational crime fighting agency responsible for fighting organised crime, fraud and cyber-crime, strengthening borders, and protecting children and young people. This Agency took on the work of SOCA and the Child Exploitation and Online Protection Centre and will incorporate functions of the National Policing Improvement Agency.

- Security Service

The Security Service is responsible for protecting the national security of the UK, and in particular, protects it against espionage, terrorism and sabotage, from activities of agents of foreign powers and from actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means.²²⁰ The Service is also required to support the activities of the police force, the National Intelligence Service, the National Crime Squad and other law enforcement agencies in the prevention and detection of serious crime.²²¹

The functioning of the Service is overseen by the Ministerial body, judicial body and the Parliament.

Ministerial oversight is ensured by the Secretary of State who appoints the Director General, who is the official responsible for ensuring the efficiency of, and maintaining the control and direction of the Service.²²² The Director General briefs the Home Secretary on changes to threats to national security, major investigations and other serious matters.²²³

Parliamentary oversight of the Service is carried out by the Intelligence and Security Committee of Parliament, through examination of the expenditure, administration and policy of

the Security Service.²²⁴

Judicial oversight is carried out by independent commissioners, appointed by the Prime Minister, in order to oversee the work of the Security Service.²²⁵

- Secret Intelligence Service

The Secret Intelligence Service performs functions in relation to the interests of national security, particularly in defence and foreign policies of the government and the interests of the economic well-being of UK and in support of the prevention or detection of serious crime.²²⁶

In this respect, the Intelligence Service is responsible for obtaining information relating to actions or intentions of persons outside the British Island and performs necessary tasks in this regard.²²⁷

- Royal Military Police

The Royal Military Police (RMP) is the unit of the British Army responsible for the policing of service personnel and military community around the world, and are the Army's specialists in Investigations and Policing.²²⁸ The core tasks of this force are to 'police the Force and provide police support to the Force'. In this respect, this force has the authority to investigate crime committed by or against members of the Defence Department.²²⁹

The RMP has two specialisations, namely the Special Investigation Branch (SIB) and Close Protection (CP).

The SIB is the segment which provides investigative services to the Army in the UK. In order to carry out their functions, this section is organised into 3 regional areas of responsibility,²³⁰ and within these 3 regions, the SIB maintains centers in various cities in the UK.²³¹

3.2. Legislative Measures

- National Security

While powers have been devolved to Wales, Scotland and Northern Ireland, the UK Parliament still reserves the right to legislate on issues relating to national security.

The Scotland Act 1998 provides that the UK Parliament will still have powers to make laws for Scotland.²³² In this respect, there are certain matters in respect to which the power to

legislate have been reserved. These reserved matters include national security and special powers, and other special provisions for dealing with terrorism.²³³

The Welsh Assembly has the authority to make any provision that could be made by an Act of Parliament, as long as it is within the Assembly's legislative competence.²³⁴ The topic of 'national security' is not listed as one of the areas in which the Welsh Assembly has legislative competence.²³⁵ Thus this area will be dealt with by the UK Parliament.

The Northern Ireland Act 1998 also has a similar provision enabling the UK Parliament to make laws for Northern Ireland, although it may be modified by the Assembly as far as it is a part of the law of Northern Ireland.²³⁶ The Northern Ireland Assembly does not have the competence to legislate in 'excepted matters'.²³⁷ These matters would therefore fall within the ambit of the UK Parliament and this includes national security, special powers and other provisions for dealing with terrorism or subversion.²³⁸

- Specific legislation relating to Terrorism

*Terrorism Act 2000*²³⁹

This Act provides for specific measures which can be taken in the event of terrorism (as defined in Section 1 of the Act). It also provides a list of organisations which are proscribed²⁴⁰ and gives power to the Secretary of State to add or remove organisations from the list.²⁴¹ Specific provisions relating to procedures to be followed are provided with respect to Northern Ireland.²⁴²

Terrorism Prevention and Investigation Measures Act 2011^{243, 244}

This Act authorises the Secretary of State to impose specified terrorism prevention and investigation measures on an individual, subject to certain conditions being met.²⁴⁵

3.3. Central control in Northern Ireland

The UK Government has also taken further steps to maintain control over national security issues in Northern Ireland.

The Home Office maintains the Northern Ireland Office which works in partnership with the Northern Ireland Executive and through

which they represent Northern Ireland interests within the UK Government and represent the UK Government in the Northern Ireland.²⁴⁶ The Northern Ireland Office is responsible for co-ordinating the government's strategic response to terrorist threats and in order to do so, the office works closely with the Irish government, the PSNI, and the Security Service and An Garda Síochána (which is the police force in Southern Ireland). The PSNI, which is the body responsible for day-to-day policing, is accountable to the Northern Ireland Policing Board and the Northern Ireland Minister of Justice. However, in matters of national security, it will be accountable to the Secretary of State for Northern Ireland.²⁴⁷

The UK Government has also maintained control of national security intelligence work through the Security Service. The Secret Service Act 1989 expressly provides that it is applicable to Northern Ireland as well.²⁴⁸ Up until 2007, the role of national security intelligence was carried out by the PSNI, and prior to that the RUC in Northern Ireland. However, presently the UK Government placed the aspect of work in Northern Ireland within the scope of the Security Service^{249,250}. Through this change, national security intelligence in Northern Ireland will be dealt with in the same as the way it is dealt with in the other parts of the UK.

The RMP also maintains a SIB division in Northern Ireland. The 38 Section SIB (UK) RMP is the particular division responsible for Northern Ireland. It is situated in Lisburn (which is close to Belfast City) and is placed there in order to maintain control over Northern Ireland.²⁵¹ During the 'The Troubles' in the 1970's, this investigative role was carried out by the 178

Provost Company (Investigations), which consisted largely of SIB. The SIB has members in almost every RUC CID Office and assisted in investigation of terrorist murders and bombings, provided assistance in crime scenes, investigations, and liaised with the military community.²⁵² The presence of the SIB in the Northern Ireland will provide the UK Government with intelligence and control with respect to police and civilian activities in that area.

3.4. Inspection of Police forces

Her Majesty's Inspectorates of Constabulary (HMIC), headed by the Chief Inspector of Constabulary, is tasked with the duty to inspect and report on the efficiency and effectiveness of the police force.²⁵³ In this respect, the Secretary of State may require the inspectors of the constabulary to inspect and report on a police force maintained for any police area, the National Criminal Intelligence Service or the National Crime Squad.²⁵⁴

This organisation has the jurisdiction to inspect police forces in England and Wales. In addition to this, the Secretary of State may also appoint inspectors from HMIC to carry out inspection of the Police Service of Northern Ireland.²⁵⁵ They also have authority to inspect other law enforcement agencies such as the Serious Organised Crime Agency, HM Revenue and Customs and the British Transport Police.²⁵⁶

In Scotland, this role is carried out by HM Inspectorate of Constabulary for Scotland (HMICS). The Police (Scotland) Act, grants authority to appoint inspectors of constabulary to inspect and report on the operation of police forces, the Criminal Intelligence Service and related matters.²⁵⁷

Endnotes

- 1 The judicial decisions have constantly referred to the purpose of the 13th Amendment of the Constitution as devolution of power from the central government to the provincial councils, *Madduma Bandara v Assistant commissioner of Agrarian Services*, [2003] 2 Sri.L.R.80, Town and Country Planning (Amendment) Bill (SC SD 03/2011) as cited in, the Determination on 'Divineguma' Bill (SC SD 01/2012) p. 25.
- 2 The judicial power per se has not been devolved to the Provinces but with the establishment of the Provincial High Court (Article 154P) there is an institutional arrangement for a court system which has the jurisdiction to determine on a matter falling within the legislative competency of the Provincial Council.
- 3 Article 154C of the 13th Amendment.
- 4 Article 154G of the 13th Amendment.
- 5 Article 154G (1).
- 6 Ninth Schedule to the Constitution.
- 7 Section 22 of the Criminal Procedure Code No 15 of 1898.
- 8 Section 38 of Criminal Procedure Code.
- 9 Section 126A and 127 of Criminal Procedure Code.
- 10 Section 120 to 124 of the Criminal Procedure Code.
- 11 Section 23, 32, 33 and 128 of the Criminal Procedure Code No. 15 of 1898.
- 12 Section 29 of the Criminal Procedure Code No. 15 of 1898.
- 13 Section 24,25,26 of Criminal Procedure Code.
- 14 Section 68 of the Criminal Procedure Code.
- 15 Sri Lanka Police, 'Police Narcotics Bureau', Official Website of Sri Lanka Police, Available at: <http://www.police.lk/index.php/narcotic-bureau>, (Accessed on 24.10.2013).
- 16 Section 104 of the Motor Traffic Act 1951.
- 17 Section 135 of the Motor Traffic Act.
- 18 Section 148 of the Motor Traffic Act.
- 19 Section 151 of the Motor Traffic Act.
- 20 Section 63 of the Police Ordinance.
- 21 Section 64 of the Police Ordinance.
- 22 Sri Lanka Police, '1-1-9 Emergency', Official Website of Sri Lanka Police, Available at: <http://www.police.lk/index.php/1-1-9-emergency>, (Accessed on 24.10.2013).
- 23 Sri Lanka Police, 'Tourist Police', Official Website of Sri Lanka Police, Available at <http://www.police.lk/index.php/tourist-police>, (Accessed on 24.10.2013) Section 80 of the Police Ordinance.
- 25 Section 86 of the Police Ordinance.
- 26 Item 2 (a), (b), Appendix I.
- 27 Item 2:1, Appendix I.
- 28 Item 2:2, Appendix I (emphasis added).
- 29 The original text of the 13th Amendment referred to the President but by the 17th Amendment it was to be referred to the NPC, Section 23(2) of the 17th Amendment.
- 30 Item 6, Appendix I.
- 31 The original text of the 13th Amendment subjected it to the approval of the President but by the 17th Amendment the approval was to be given by the NPC, Section 23(3) of the 17th Amendment.
- 32 Items 7 and 7:1, Appendix I.
- 33 Item 7:2, Appendix I.
- 34 The original text of the 13th Amendment referred to the President but by the 17th Amendment the responsibility is with the NPC, Section 23(4) of the 17th Amendment.
- 35 Item 9:2, Appendix I.
- 36 Item 10.1, Appendix I.
- 37 Item 14, Appendix I.
- 38 Item 12:1, Appendix I.
- 39 Item 12:2, Appendix I.
- 40 Item 12:3, Appendix I.
- 41 Item 12:4, Appendix I.
- 42 Item 11, Appendix I.
- 43 Item 11:2, Appendix I.
- 44 Item 3, Appendix I.
- 45 Item 3, Appendix I.
- 46 Item 3:2 read with 4:1, Appendix I.
- 47 Item 9, Appendix I.
- 48 Items 3:3 and 3:4, Appendix I.

- 49 Item 3:1, Appendix I.
- 50 Item 8, Appendix I.
- 51 Item 4, Appendix I.
- 52 Item 4:1, Appendix I.
- 53 Items 9 and 9:1, Appendix I.
- 54 Item 5, Appendix I.
- 55 Article 155A to the Constitution (as in the 17th Amendment).
- 56 Article 155G (1) (as in the 17th Amendment).
- 57 Article 155G (4) (as in the 17th Amendment).
- 58 Article 155G (2) (as in the 17th Amendment).
- 59 Article 155G (3) (as in the 17th Amendment).
- 60 Transparency International Sri Lanka, In Pursuit of “Absolute Integrity” Identifying causes for Police Corruption in Sri Lanka, Transparency International Sri Lanka, 2006, p. 62.
- 61 Article 155A (1).
- 62 The definition of public officer includes Police Officers by virtue of the amendment of Article 61F by the 18th Amendment (Section 12).
- 63 Article 55(3).
- 64 Section 36(5) of the 18th Amendment.
- 65 Section 28 of the 18th Amendment.
- 66 Item 6, Appendix I as amended by Section 23 (2) of 17th Amendment.
- 67 Item 7, Appendix I as amended by Section 23 (3) of 17th Amendment.
- 68 Item 9:2, Appendix I as amended by Section 23 (4) of 17th Amendment.
- 69 Article 55(3).
- 70 N. Selvakkumaran, Legislative Devolution and the Thirteenth Amendment, 13th Amendment: Essays on Practice, Ed. Jayampathy Wickramaratne, Lakshman Marasinghe, Stamford Lake, 2010, p. 88.
- 71 Rules of Procedure (Investigation of Public Complaints against Police Officers or the Police Force) 2012, Extraordinary Gazette No. 1770/19, 10th August 2012.
- 72 Item 7, Appendix I.
- 73 Item 7:2, Appendix I.
- 74 Article 155A (1), as amended by Section 26 of 18th Amendment.
- 75 Section 19 (1), Provincial Councils Act No. 42 of 1987.
- 76 Chapter XIV, *Draft Constitution of Sri Lanka, 2000* (‘Draft Constitution’).
- 77 *Draft Constitution*, Draft Article 122(1).
- 78 *Draft Constitution*, Draft Article 216(1)(b).
- 79 *Draft Constitution*, Draft Article 217(1)(b)(i).
- 80 *Prakash Singh and others v Union of India and others* (2006) 8 SCC1, p8 [‘Prakash Singh’].
- 81 The Model Police Act refers to the State Security Commission as the ‘State Police Board’: Model Police Act, Section 41.
- 82 *Prakash Singh*, p8.
- 83 Model Police Act, Section 42(1).
- 84 Model Police Act, Section 43.
- 85 Model Police Act, Section 48.
- 86 Pakistan, Police Order of 2002, Section 80(1) (b).
- 87 Pakistan, Police Order of 2002, Sections 74(1) and 74(2) (regarding Provincial Public Safety Commissions) and Sections 86(1) and 86(2) (regarding National Public Safety Commissions).
- 88 *Draft Constitution*, Draft Article 190(1).
- 89 *Draft Constitution*, Draft Article 192.
- 90 *Draft Constitution*, Draft Article 193(1)(a).
- 91 The term ‘State’ herein refers to the federal unit, and not to the State of India.
- 92 Model Police Act, Section 6(1) and (2).
- 93 Model Police Act, Section 6(2).
- 94 Pakistan, Police Order of 2002, Section 11(1).
- 95 *Draft Constitution*, Draft Article 216(5).
- 96 *Draft Constitution*, Draft Article 217(3).
- 97 Model Police Act, Section 6(3).
- 98 Model Police Act, Section 6(3).
- 99 Model Police Act, Section 13(2).
- 100 South African Police Service Act of 1995, Section 7(1).
- 101 South African Police Service Act of 1995, Section 8(1).
- 102 South African Police Service Act of 1995, Section 8(2).
- 103 South African Police Service Act of 1995, Section 8(6)(a).

- 104 South African Police Service Act of 1995, Section 8(6)(b).
- 105 South African Police Service Act of 1995, Section 8(6)(b)(vii).
- 106 South African Police Service Act of 1995, Section 8(7).
- 107 South African Police Service Act of 1995, Section 9.
- 108 Draft Constitution, Draft Article 216(1)(c).
- 109 Draft Constitution, Draft Article 216(1)(d).
- 110 Draft Constitution, Draft Article 217(1)(c)(i).
- 111 Draft Constitution, Draft Article 217(1)(c)(ii).
- 112 Prakash Singh, pp9-10.
- 113 The Model Police Act refers to the Police Establishment Board as the 'Police Establishment Committee'.
- 114 Model Police Act, Section 53(1).
- 115 Model Police Act, Section 53(4). Sections 53(5) and 53(6) prescribe the recommendatory function of the Commission.
- 116 Model Police Act, Section 53(3).
- 117 Model Police Act, Section 53(3).
- 118 Model Police Act, Section 53(2) and Section 13(2).
- 119 Bruce, D. and Nield, R. (2005) *The Police That We Want: A Handbook for oversight of police in South Africa*, Centre for the Study of Violence and Reconciliation, Open Society Foundation for South Africa and the Open Society Justice Initiative, p24.
- 120 Nigeria Police Service (Establishment) Act of 2001, Section 6(a).
- 121 Nigeria Police Service (Establishment) Act of 2001, Section 6(b).
- 122 Nigeria Police Service (Establishment) Act of 2001, Section 2(1).
- 123 Nigeria Police Service (Establishment) Act of 2001, Section 2(1)(d).
- 124 United Kingdom Police Reform Act of 2002, Section 9(1).
- 125 United Kingdom Police Reform Act of 2002, Section 9(2).
- 126 United Kingdom Police Reform Act of 2002, Section 10.
- 127 South Africa, Independent Police Investigative Directorate Act of 2011, Section 3(1).
- 128 South Africa, Independent Police Investigative Directorate Act of 2011, Section 8(1).
- 129 South Africa, Independent Police Investigative Directorate Act of 2011, Section 28.
- 130 South Africa, Independent Police Investigative Directorate Act of 2011, Section 6(1).
- 131 Draft Constitution, Draft Article 218(2).
- 132 Draft Constitution, Draft Article 219.
- 133 Draft Constitution, Draft Article 220(1).
- 134 Draft Constitution, Draft Article 220(2).
- 135 Draft Constitution, Draft Article 221(1)(a).
- 136 Draft Constitution, Draft Article 221(1)(b)(i).
- 137 Draft Constitution, Draft Article 221(1)(b)(ii).
- 138 Draft Constitution, Draft Article 221(2).
- 139 Draft Constitution, Draft Article 222(1) to (6).
- 140 Draft Constitution, Draft Article 222(7).
- 141 Draft Constitution, Draft Article 222(7).
- 142 Draft Constitution, Draft Article 223.
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