IN THE HIGH COURT OF SINDH, AT KARACHI

Present:
Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

C.P No. D-6382 of 2019

Muhammad Jibran Nasir & others.....Petitioners

Versus

Federation of Pakistan and others.....Respondents

C.P No. D-864 of 2020

Arif Hasan & others.....Petitioners

Versus

Federation of Pakistan and others.....Respondents

C.P No. D-53 of 2021

Syed Zafar Ali Shah.....Petitioner

Versus

Federation of Pakistan and others.....Respondents

Faisal Siddiqui, Advocate for the Petitioners in C.P No. D-6382 of 2019 along with Sheza Ahmed and Amna Usman, Advocates. Basil Nabi Malik, Advocate for the Petitioners in C.P No. D-864 of 2020. Syed Farhan Ali Shah and Faizan Faizi, Advocates, for the Petitioner in C.P No. D-53 of 2021.

Hassan Akbar, Advocate General Sindh along with Zeeshan Adhi and Shaharyar Mahar, Additional Advocates General, Sindh; Saifullah, Asstt. Advocate General, Sindh and Asif Ali, Police Inspector on behalf of AIGP (Legal).

Kazi Abdul Hameed Siddiqui, DAG.

Umair Usman and Junaid Ahmed, Advocates, for the Interveners

Dates of hearing : 26.09.2022, 18.10.2022, 13.12.2022, 20.02.2023 and 02.03.2023

ORDER

YOUSUF ALI SAYEED, J. - The three petitions at hand pertain to the Police Order 2002 (the "**Police Order**"), as revived vide the Sindh (Repeal of the Police Act, 1861 and Revival of Police Order, 2002) (Amendment) Act, 2019 (the "**Amendment Act**") promulgated by the Provincial Assembly of Sindh on 26.06.2019, and have been brought by the respective Petitioners in their capacity as concerned citizens or NGOs as a matter of public interest.

2. As the somewhat convoluted title of the Amendment Act reflects, the law on the subject of policing in the province has remained in a state of flux, with the Police Act, 1861 (the "**Police Act**") and Police Order having interchangeably held the field from time to time. The Police Order, as firstly promulgated on 14.08.2002, repealed the Police Act and was then in turn itself repealed through the Sindh (Repeal of the Police Order, 2002 and Revival of the Police Act, 1861) Act, 2011 promulgated on 14.07.2011, which also revived the Police Act with immediate effect as it stood on 13.08.2002, inclusive of the amendments made thereto vide the Police (Amendment) Order, 2001. The Amendment Act was then promulgated on 26.06.2019 so as to revive the Police Order on and from 13.07.2011, albeit in an altered form, and to once again repeal the Police Act. Thus, the Police Order, in its amended form, presently represents the principal statute on the subject of the 'police' and the function of 'policing' in force in the province.

3. Of the Petitions, C.P. No. D-6382 of 2019 essentially impugns certain provisions of the Police Order falling under Chapter I thereof, pertaining to the constitution and administration of the police force and the postings of various key officials, whereas C.P. No. D-53 of 2021 casts a wider challenge to the statute as a whole, but as will be discussed in due course, came to be confined during the course of arguments in a manner similar to the earlier matter. On the other hand, C.P. No. 864 of 2020 challenges the vires of Chapters V and VIII, dealing with the Police Oversight and Complaint Redressal Mechanism, and impugns the deletion of Chapter X, which had dealt with the subject of the Police Complaints Authority.

4. Apart from pertaining to the same subject (i.e. the Police Order, as amended), the Petitions are bound by yet another common thread - being their predication on the tenets of 'autonomy of command' and 'independence of operations', free of interference from political interference, as have been held to be a *sine qua non* for proper policing and intertwined with the safeguarding of the fundamental rights of the public at large in a seminal judgment rendered on 07.09.2017 by a learned Division Bench of this Court in Constitutional Petitions Numbers D-7096 of 2016 and 131 of 2017, since reported as Karamat Ali and others v. Federation of Pakistan and others PLD 2018 Sindh 8 ("***Karamat Ali***") and upheld by the Supreme Court vide an Order dated 22.03.2018 in Civil Appeals Numbers 148 to 150 of 2018 (the "***SC Order***").

5. Succinctly stated, in *Karamat Ali*, whilst interpreting and adjudicating upon the erstwhile Police Act, as had then been revived and restored by the Sindh (Repeal of the Police Order, 2002 and Revival of the Police Act, 1861) Act, 2011, the learned Division Bench considered and applied an approach formulated by the House of Lords in the case of *Ghaidan v. Mendoza* [2004] UKHL 30, [2004] 3 All ER 411 ("**Ghaidan**"), as came to be summarized by the Court of Appeal in *Vodafone2 v. Commissioners* [2009] EWCA Civ 446, [2010] Ch 77, with that summation being then referred to with approval by Lord Mance in his minority judgment in the UK Supreme Court in *Assange v. The Swedish Prosecution Authority* [2012] UKSC 22, [2012] 4 All ER 1249.

6. As the relevant passages of *Ghaidan* have been extensively quoted in *Karamat Ali* (from paras 76 to 79), it is unnecessary to burden this Judgment with further reproduction thereof, other than to note the submission of the relevant principles of the '*Ghaidan* approach' and its exceptions, which were recorded by the learned Division Bench as follows:

> "(a) It [i.e., the *Ghaidan* approach] is not constrained by conventional rules of construction;
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> (b) It does not require ambiguity in the legislative language;
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> (c) It is not an exercise in semantics or linguistics;
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> (d) It permits departure from the strict and literal application of the words which the legislature has elected to use;
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> (e) It permits the implication of words necessary to comply with Community law [and Convention] obligations; and
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> (f) The precise form of the words to be implied does not matter.

> The *Ghaidan* approach is however subject to the following limitations, which are the "only constraints on the broad and far-reaching nature of the interpretative obligation":
>
> (a) The meaning should "go with the grain of the legislation" and be "compatible with the underlying thrust of the legislation being construed." An interpretation should not be adopted which is inconsistent with a fundamental or cardinal feature of the legislation since this would cross the boundary between interpretation and amendment; and
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> (b) The exercise of the interpretative obligation cannot require the courts to make decisions for which they are not equipped or give rise to important practical repercussions which the court is not equipped to evaluate."

7. Keeping those principles and limitations in mind, the learned Division Bench observed that:

> "81. In our view, the *Ghaidan* approach can usefully be adopted for purposes of Article 199, and especially clause (1)(c), and regarded as providing the necessary jurisprudential framework that allows for a statute, whose meaning is otherwise clear in terms of standard model interpretation, being nonetheless interpreted and applied in some other manner so as to enforce fundamental rights. Insofar as the High Court is concerned, the *Ghaidan* approach is to be applied in relation to Article 199 subject to the limitations noted above."

8. Testing the various provisions of the Police Act on that touchstone, the learned Division Bench went on to consider "(i) whether the enforcement of fundamental rights requires the Police Act to be interpreted by applying the *Ghaidan* approach; and if so, (ii) what would be the appropriate basis for such interpretation?" (at Para 82)

9. In that particular context, the autonomy of command and independence of operation was identified as best addressing the objective of ensuring an effective, functional and efficient police, being essential for maintaining the rule of law and providing an environment and framework in which fundamental rights could thrive and be guaranteed. It was held *inter alia* (Munib Akhtar, J, speaking for the Court) that:

> "84. …It is of course undeniable that proper policing and an efficient and effective police force have a connection with many, and perhaps most, fundamental rights. This is true not merely because, in a general sense, fundamental rights are best enjoyed in an environment where the rule of law is respected and properly enforced, and the rule of law is in essential part dependent on the law and order situation, which in turn depends on effective policing. The nexus is deeper and more intimate. Some individual rights have a direct connection with policing. Obvious examples include Articles 9 and 10, which preserve the right to life and liberty and protect against arrest and detention. These rights are, in a most basic and direct sense, dependent on a police force that is properly responsive to the rule of law. Another example is Article 14(2), which prohibits the use of torture for the purpose of extracting evidence; the link here requires no explanation. Other fundamental rights also, on a moment's reflection, lead to the same conclusion. Here, one can refer to Article 15 (the right to free movement) and Article 16 (freedom of assembly). It must also be remembered that most fundamental rights are not cast in (apparently) absolute terms, but expressly allow the State to impose reasonable restrictions in certain specified circumstances (which vary from right to right). Where such restrictions are legitimately imposed, they may take the form of prohibitions that are backed by penal sanctions, i.e., are criminal offences. Here again, the connection between the fundamental right and proper policing is obvious. We may note that while an efficient police force is necessary for enforcing the rule of law and hence fundamental rights, efficiency in and of itself is not enough. A police force may be efficient but no respecter of fundamental rights. To some, that may be a legitimate tradeoff; the Constitution however, takes a different view. But, it cannot be denied that a functional police force and one that is effective at doing its job is a sine qua non for the proper enforcement of fundamental rights. There is in addition another aspect in which effective policing is necessary for such purposes. The traditional

approach to fundamental rights is to emphasize the "negative" role of the State, i.e., to focus on what the State cannot do. From this perspective, it is State inaction that is called for. However, it is not merely enough for the State not to do anything that violates fundamental rights. It may sometimes also be necessary for the State to play a "positive" role, i.e., take action and do things that lead to the enforcement of fundamental rights. (The exact scope of this obligation must be regarded as subject to further analysis and consideration in future.) The most basic of fundamental rights, that of life and liberty enshrined in Article 9, is dependent on proper and effective policing for its proper enjoyment. The State is not merely under an obligation not to take away life or liberty, save in accordance with law. Surely, it is also under a duty to ensure that all persons can even otherwise enjoy these rights without fear or interference from others. At its most basic level, this requires a police force vigilant in the preservation of law and order. Other examples can be cited. Take, for example, Article 15, the right of free movement. It is necessary for the State not to do anything that curtails this freedom (although it may impose reasonable restrictions in the circumstances listed in the Article). However, even if the State does nothing (i.e., imposes no restrictions at all) what good is this right if a citizen cannot move from place A to B because the law and order situation along the way is so bad that travel is sharply restricted or even, for some, impossible altogether. Is not the right effectively curtailed in such circumstances? Here, the State may well be under a duty to take the necessary action to ensure that the fundamental right can be exercised in a meaningful manner. As is obvious, the police have a vital role to play in this regard. Another example is Article 16, the right of assembly. If citizens wish to assemble peacefully and without arms for any legitimate purpose but are unable or afraid to do so because of (e.g.) hostility from this or that group, it is surely the duty of the State to ensure that the situation on the ground is such as enables the citizens to effectively exercise their right. Here again, proper policing is necessary. These examples can be multiplied across virtually the entire spectrum of fundamental rights, but perhaps enough has been said to make the point. However, if the police force is so inept, demoralized or reduced to such a level of incompetence, or its operations are organized and run in such a manner, that it cannot perform its essential functions and duties, then clearly many fundamental rights are effectively denied to the citizens. It is clear therefore that in appropriate circumstances it may be necessary to make orders and give directions in respect of policing and the police force in terms of Article 199, and in particular under clause (1)(c), to ensure the proper enforcement of fundamental rights."

10. In the same vein, it had earlier been held by the Supreme Court in the case reported as Province of Sindh through Chief Secretary and others v. M.Q.M. through Deputy Convener and others PLD 2014 Supreme Court 531 that:

> "43. Human rights law makes a distinction between positive and negative rights, wherein positive rights usually oblige action and negative rights usually oblige inaction. Similarly, many of the fundamental rights granted by our Constitution pertain to both positive and negative rights. The holder of a negative right is entitled to non-interference, while the holder of a positive right is entitled to provision of some good or service.
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> 44. Negative rights place a duty on the state not to interfere in certain areas where individuals have rights. The right holder can thereby exercise his right to act a certain way or not to act a certain way and can exercise his or her freedom of choice within the existing right. For instance, the freedom to profess religion and to manage religious institutions (Article 20) encases the right to both profess a certain religion and not to do so. It also places a duty on the State not to interfere with the religious beliefs and ideologies of individuals. Similarly, the freedom of speech and expression (Article 19) encases the right of an individual to express his views and opinions and engage in dialogue without fear of misplaced sanctions and State intervention, but simultaneously possesses the right to remain silent. Negative rights extend to all civil and political rights and thereby also include the Freedom of Assembly and the Freedom of Association (Articles 16 and 17 respectively).
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> 45. Positive Rights place a positive duty on the state and include social and economic rights. The Right to Education (Article 25A), protection of person and property (Article 9 and Article 24 respectively) and the promotion of social justice and eradication of social evils (Article 37) for instance, would be classified as positive rights. The arguments put forth by learned counsel for the appellant explaining the reasons for introducing the panel system however phrased in a manner that reflect positive rights in action, are discriminatory in practice and impede a greater number of fundamental rights than they propose to aid"

11. In *Karamat Ali*, the learned Bench then went on to state that orders and/or directions of such a nature were appropriate and necessary in the respect of the police in Sindh in order to ensure the proper enforcement of fundamental rights in the province, with it being observed as follows:

> "85. …Now, policing as a whole is a broad and complex matter. It is intimately connected with, and is an inseparable part of, the overall criminal justice system. It has many aspects and issues, many of which have at least the appearance of being so intertwined that some may argue that it is not possible to resolve even a few without trying to resolve them all. It is not possible to address all of the myriad issues involved in the scope of this judgment. However, simply because the task may appear to be gargantuan should not deter us. A start must be made somewhere even though, of necessity, our focus must be relatively narrow and specific. Furthermore, particularity has the advantage, important for a court of law, that any orders made or directions given in relation to the enforcement of fundamental rights can be cast in terms that are, if and as necessary, enforceable judicially, readily and in a meaningful manner. Which aspect of policing is therefore most suitable for present purposes in terms as just stated? That is the question that must now be considered.
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> 86. In our view, the proper approach for the Court in this judgment, while disposing off these petitions, is to consider the Police Act itself. The aspect of policing most suitable for present purposes is the police force, with which the statute is directly concerned. At the risk of repetition (and of yet again restating the obvious) an effective, functional and efficient police force is essential for policing, which provides the basis for a stable law and order situation, which is essential for the rule of law, which provides the environment and framework in which fundamental rights can best thrive and be guaranteed. Furthermore, focusing on the Police Act has the advantage of casting the exercise in statutory form, i.e., essentially requires interpretation and application of an enactment. That of course is a matter that is peculiarly the province of the Court. Additionally, the *Ghaidan* approach is itself concerned foremost with the proper interpretation of statutes in the context of applying them in a manner compatible with fundamental rights, i.e., of enforcing those rights. We will therefore limit ourselves to a consideration

of the statute. But even here the exercise needs to be further particularized. A review of every section of the Police Act, testing each in general terms on the anvil of fundamental rights while adopting the *Ghaidan* approach, would be too broad and diffuse. The exercise needs to be refined further and focused even more sharply. In our view, what is needed is an objective against which select provisions of the Police Act can be measured and analyzed by applying the *Ghaidan* approach. This will enable, as necessary, for appropriate orders to be made or directions given to ensure the proper enforcement of fundamental rights. Now, the one problem that has been highlighted by the Petitioners is the failure to adhere to the term or tenure associated with the post of Inspector General, which has resulted in a rapid turnover in the officers holding that post, and the all too frequent transfers and postings in the police force in general. As has already been seen above, there can be no doubt that this is a real problem; the abysmal record in this regard is undeniable. It cannot also be doubted that this problem has a seriously negative and indeed deleterious effect on the performance, efficacy and efficiency of the police force. No organization in which the personnel from the highest to the lowest levels are frequently reshuffled can ever hope to even minimally achieve any performance targets or tasks. Stability in the structure of an organization is essential for its professional health and performance. The frequent changes made in the organizational structure have destabilized the police force. The stability, and the balance that comes with it, must be restored. It would therefore be appropriate if the objective that is to be selected especially addresses this particular problem.

87. In our view, the objective that best addresses the problem just noted can be stated as follows: the police force must have autonomy of command and independence of operation. It is this autonomy and independence that must be regained and restored. Autonomy and independence will bring stability and balance to the organizational structure of the police force by curbing and reducing, and ideally eliminating, the farcical frequency of turnover, transfers and postings that now plague the system. This is therefore the objective against which certain specific sections of the Police Act will be measured and interpreted, using the *Ghaidan* approach for purposes of ensuring enforcement of fundamental rights. We now turn to this exercise."

12. Moving onwards, the learned Bench considered the Provincial Government's function of superintendence as per Section 3 of the Police Act vis-à-vis the administration of the police by the Inspector General of Police (the "**IGP**"), and Deputy Inspectors-General and Assistant Inspectors-General in terms of Section 4 thereof, in juxtaposition with the IGP's power to make rules under Section 12. Those three sections provided as follows:

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

> "**4. Inspector General of Police etc**. The administration of the police throughout a general police-district shall be vested in an officer to be styled the Inspector General of Police, and in such Deputy Inspectors-General and Assistant Inspectors-General, as to the Provincial Government shall seem fit.
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> The administration of the police in a district shall vest in a District Superintendent and such Assistant District Superintendents as the Provincial Government shall consider necessary."

> "**12. Power of Inspector General to make rules**. The Inspector-General of Police may, from time to time, subject to the approval of the Provincial Government, frame such orders and rules as he shall deem expedient relative to the organization, classification and distribution of the police force, ... and the particular services to be performed by them ... and all such other orders and rules relative to the police-force as the Inspector-General, shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties."
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> [Note: Section 12 stands reproduced in part, to the extent relevant.]

13. On a holistic reading of the Police Act, those Sections were measure and interpreted as follows:

> 88. …The key word in s. 3 which requires consideration is "superintendence". Keeping the objective in mind, and applying the *Ghaidan* approach, in our view "superintendence" must be given a meaning that moves within a specified locus only. If the word is understood and applied in terms of standard model interpretation, that would be too broad and diffuse. It would easily allow the autonomy of command and independence of operation to be breached, eroded and effectively reduced to a nullity. The stability of the police force would continue to be compromised and undermined. The problem identified above would not be redressed and all efforts to do so would be thwarted. Therefore, the statutory power of the Provincial Cabinet under s. 3 to "superintend" the police force in Sindh must be regarded as limited to taking decisions of high policy only without (directly or indirectly) impacting on, compromising, affecting, negating, eroding or otherwise curtailing or reducing the force's autonomy of command and independence of operation. Furthermore, the views of the police hierarchy, acting through the Inspector General, must be taken, and the Inspector General must be invited to attend the Cabinet meeting at which the high policy is to be formulated. Indeed, the Inspector General must be likewise invited to attend all Cabinet meetings in which one or more agenda items relate directly or indirectly to law and order, or state security, or policing or the police force so that the views of the police hierarchy can be obtained. He cannot be sidelined. The Inspector General may comment in writing on any proposed policy, and if the Cabinet decides on a policy inconsistent with the views expressed by the Inspector General, then the reasons for the disagreement must be properly recorded and minuted. Furthermore, any high policy that is formulated can only be implemented through the police hierarchy acting through the Inspector General in an autonomous manner, on its own independent assessment of what needs to be done to best achieve the goals of the policy. The objective of autonomy of command and independence of performance cannot be nullified in the guise of enforcing or giving effect to a policy decision. Additionally, if there is any reasonable difference or disagreement as to whether any proposed action or matter is one of high policy or not, then it must be resolved in favor of the police force, i.e., regarded as not being high policy and hence outside the scope of s. 3. In other words, the difference between policy simpliciter and high policy must be recognized, maintained and given due effect. Matters of policy

simpliciter are to be dealt with by the police hierarchy itself acting through the Inspector General in terms, inter alia, of ss. 4 and 12 in the manner as elaborated below.

89. …The key word in s. 4 which requires consideration is "administration". Keeping the objective in mind, and applying the *Ghaidan* approach, in our view "administration" must be given a broad and expansive meaning. Section 4 establishes a hierarchy which is headed by the Inspector General. The administration of the police force is vested in the Inspector General, and through him the hierarchy of officers. For this vesting to be meaningful and effective, it must be exclusive to, and remain within, the police force itself. In other words, the "administration" of the police force must be based on its autonomy of command and independence of operation. There cannot be any interference in this autonomy and independence by any other body or authority, including the Provincial Government. To put it simply, the police hierarchy, acting always through the Inspector General must have control over its own affairs as regards its operations and command. There can be no interference, direct or indirect, in the operational affairs of the force nor can anything be done to affect the autonomy of command. No authority or body, whether the Provincial Government itself, or in or of it (including any minister of whatever rank), can issue any order, direction, instruction, guideline, circular or notification that impacts on, compromises, affects, negates, erodes or otherwise curtails or reduces the force's autonomy of command and independence of operation. The control of the police force must lie where it is placed in terms of s. 4 as here interpreted and applied: the police hierarchy acting through the Inspector General. Of course, the meaning of "administration" in terms of the *Ghaidan* approach is broader than that. But at its core must lie the objective set herein above: autonomy of command and independence of operation. Here, we may make another point, which is also of importance. Since the administration of the police force vests in the police hierarchy acting through the Inspector General, his role is a key and central one. His position is at the apex of the force. The very structure of s. 4 clearly establishes this. Any attempt therefore to sideline or marginalize the Inspector General or to circumvent him or to otherwise curtail his powers directly or indirectly (by, e.g., holding meetings with police officers to which the Inspector General is not invited) would be contrary to law and of no legal effect. It could, among other things, expose any police officer concerned to appropriate disciplinary proceedings, whether by way of misconduct or otherwise. The command structure of the police hierarchy is clear.

It flows from, to and through the Inspector General. There can be no autonomy of command, nor independence of operation without this. It is also pertinent to note that prior to the 2001 Order, the second paragraph of s. 4 had read as follows (emphasis supplied):

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

By the 2001 Order, the words underlined were substituted with the words now appearing "in a district shall vest". Thus, while earlier the administration of the police was under the general control and direction of the District Magistrate, this external control was removed in 2001. The present application of the *Ghaidan* approach to s. 4 in one sense therefore merely amplifies and strengthens the trend kept in place when the Police Act was revived and restored by the 2011 Sindh Act inclusive of the changes made in 2001. Insofar as the statutory power of the Provincial Government (i.e., the Provincial Cabinet) is concerned, it must, again applying the *Ghaidan* approach (which allows also, as appropriate, for words to be implied) be exercised with the concurrence of the Inspector General and not otherwise. That power is in any case (again applying the *Ghaidan* approach) limited to establishing only the number of posts in the police force and does not go beyond that. Furthermore, in terms of the second paragraph of s. 4, the vesting of the administration of the police in a district in a District Superintendent and Assistant District Superintendents (as also now Senior Superintendents) is not to the exclusion of the Inspector General, but subject to his overall, direct and exclusive command and control. In other words, the second paragraph of s. 4 cannot be so read as to negative and nullify the meaning and effect of the first paragraph in terms of the *Ghaidan* approach.

90. When ss. 3 and 4 are compared, it is clear that even in terms of standard model interpretation, as a matter of law the nature of the relationship between "superintendence" (s. 3) and "administration" (s. 4) had to be ascertained. However, the manner in which the police force has increasingly been run in the past years and decades, a trend that continues unabated today, is such that the Provincial Government totally dominates police affairs and effectively controls the force in all aspects and respects, down to the minutest details. Translating that ground reality into statutory terms, it is as though "superintendence" has completely taken

over, if not wholly swallowed up, "administration", reducing the latter to a cipher. This state of affairs would be contrary to law even in terms of standard model interpretation. However, in our view, something much more is required than merely restoring the position on such basis. For the effective enforcement of fundamental rights in terms of the objective set above, the relationship between "superintendence" (s. 3) and "administration" (s. 4) must be recalibrated by applying the Ghaidan approach in terms as explained in the preceding paras. The former must be understood and applied narrowly and restrictively and the latter broadly and expansively. The roles of the Provincial Government on the one hand and the police hierarchy acting through the Inspector General must be recast in order to restore stability and efficacy to the police force. It is only then that proper policing will be achieved.

91. ...The rapid changes in personnel and the bewildering rapidity of transfers and postings, which afflict the whole of the police force, have been highlighted above. These changes are orchestrated by the Provincial Government. This farcical state of affairs must end. It is wholly inimical to the autonomy of command and the independence of operations. It is in this context that s. 12 must be viewed and construed, by applying the Ghaidan approach. In our view, in terms of this approach the power vested in the Inspector General to make rules and frame orders for the "organization", "classification" and "distribution" of the police force and to ensure that the said force is rendered "efficient in the discharge of its duties", is broad enough to vest in him the powers of transfers and postings throughout the police force and the entire hierarchy at all levels, including PSP officers. We therefore apply the Ghaidan approach and so construe s. 12. The power of postings and transfers cannot be exercised elsewhere in the executive branch, whether the Provincial Government or any authority or body (including any minister of whatever rank). It must, subject to what is said below, vest only in the Inspector General."

14. Furthermore, as regards Section 46(2) of the Police Act, which conferred rule-making powers on the Provincial Government (i) to "regulate the procedure to be followed by ... police-officers in the discharge of any duty imposed on them by or under [the Police Act]", and (ii) generally, "for giving effect to the provisions of [the Police Act]", it was observed that:

"For obvious reasons, and by applying the *Ghaidan* approach, the rule-making power cannot be exercised in such manner as is inconsistent with or which negates, contradicts or impacts on anything that has been said herein above in relation to the other provisions of the Police Act. Any proposed rules must first be circulated in draft, and must be considered at a duly called meeting of the Cabinet for which the agenda is circulated in advance. Any rules finally framed must have the concurrence of the Inspector General. In any case, the rule-making power cannot be exercised at all in relation to any matter that comes within the scope of s. 12. Furthermore, and more generally, the rule-making power cannot be exercised in relation to any other provision of the Police Act in such manner as impacts on, compromises, affects, negates, erodes or otherwise curtails or reduces the autonomy of command and independence of operation of the police force. Whatever has just been said shall also apply mutatis mutandis in relation to any other provision of the Police Act that confers any statutory powers on the Provincial Government, whether to be exercised by the making of rules or otherwise."

15. In that backdrop, it was ordered and directed *inter alia* that:

"h. There is a need for reforms of policing and the police force for law and order to be properly established, which is a sine qua non for the rule of law and which, in turn, enables fundamental rights to be fully and properly enjoyed. In order for fundamental rights to be effectively enforced in this Province, suitable directions can, and should, be given and appropriate orders made under Article 199 of the Constitution. One problem in particular that has been identified by the Petitioners is the rapid turnover in, and bewildering rapidity with which, postings and transfers are made in the police force at all levels. This farcical situation is wholly inimical to the stability of, and any meaningful performance by, the police.

i. In order to redress the situation, there must be autonomy of command and independence of operation in the police force. The police hierarchy, acting through the Inspector General, must have control over its own affairs especially insofar as postings and transfers are concerned (but certainly not limited to that) and outside interference, whether by the Provincial Government or any body or authority thereof or otherwise, (including any minister of any rank) must come to an end.

j. For purposes of giving directions and making orders for enforcement of fundamental rights, the Police Act ought to be interpreted and applied by adopting the approach articulated by the House of Lords in the Ghaidan case, in applying the (UK) Human Rights Act, 1998. Sections 3, 4 and 12 of the Police Act in particular have been so interpreted and applied, keeping in mind at all times the objective identified above, namely that there must be autonomy of command and independence of operation in the police force.

k. …

l. Pending formulation and adoption of such rules, and with immediate effect, the power of transfers and postings in the police force, at all levels and including that of PSP officers, shall be exercised only by the Inspector General, and any orders issued by him in this regard shall be self-executing. Without prejudice to the foregoing, such orders will also be forthwith given full effect by the Provincial Government, including all Departments and authorities thereof.

m. …

n. In terms of s. 4 of the Police Act, as interpreted and applied herein above using the Ghaidan approach, the administration of the police force vests in the police hierarchy acting through the Inspector General. His role is a key and central one. His position is at the apex of the force. Any attempt therefore to sideline or marginalize the Inspector General or to circumvent him or to otherwise curtail his powers directly or indirectly (by, e.g., holding meetings with police officers to which the Inspector General is not invited) would be contrary to law and of no legal effect. It could, among other things, expose any police officer concerned to appropriate disciplinary or other proceedings, whether by way of misconduct or otherwise. The command structure of the police hierarchy is clear. It flows from, to and through the Inspector General. There can be no autonomy of command, nor independence of operation without this.

16. Additionally, whilst holding that legislative competence of 'police' lay exclusively in the Provincial domain for being a non-enumerated subject following the redistribution of legislative powers between the Federation and Provinces through the 18th Amendment to the Constitution, detailed directions were given with specific reference to Section 12 of the Police Act for the formulation of rules to properly regulate postings and transfers in the force.

17. The Appeals filed against the *Karamat Ali* judgment came to be dismissed on 22.03.2018, with the Supreme Court affirming the same with reference to the autonomy of command and independence of operation of the Police Force governed by the Police Act, as well as the tenure to be attached to PSP senior cadre posts in the province, of which the IGP is the principal officer, with it being declared and directed that transfers and postings on all senior cadres were to be made by order of the IGP pursuant to transparent rules framed under Section 12 in consultation with the Provincial Government. However, it was clarified that the Province of Sindh did not have exclusive competence in relation to all functions of the Provincial Police, some of which fell within the ambit of Article 142(b) of the Constitution and were subject to the concurrent legislative and executive authority of the Federal Government.

18. In the wake of the *Karamat Ali*, the Provincial Assembly promulgated the Amendment Act so as to reverse the statutory regime. The provisions of the Police Order since impugned by the Petitioners in CP. No. D-6382 of 2019 as offending that judgment stipulate as follows:

> **7. Constitution of police**. - (1) The police establishment for each general police area shall consist of such numbers in the senior and junior ranks and have such organization as the Government may from time to time determine.

(2) The recruitment criteria, pay and allowances and all other conditions of service of the police shall be such as the Government may from time to time prescribe.

(3) The recruitment in the police other than ministerial and specialist cadres shall be in the ranks of Constable, Assistant Sub-Inspector, Inspector and Deputy Superintendent of Police: Provided that selection for direct recruitment in the rank of Assistant Sub Inspector, Inspector and Deputy Superintendent of Police shall be through the Sindh Public Service Commission as per quota and manner notified by the Government from time to time including women quota:

(4) The appointment against the posts of senior ranks below the rank of Inspector General of Police shall be made in accordance with the respective recruitment rules made under the Sindh Civil Servants Act, 1973, in the manner as may be prescribed.

(5) Every police officer while on police duty shall have all the powers and privileges of a police officer throughout Pakistan and be liable to serve at any time in any branch, division, bureau and section.

13. Posting of Additional Inspectors General of Police or Deputy Inspector General of Police. - The Government may post such number of Additional Inspectors General of Police and Deputy Inspectors General of Police to assist the, Inspector General of Police and Additional Inspector General of Police, as the case may be, in the efficient performance of duties as it may deem fit, in consultation with the Inspector General of Police or Additional Inspector General of Police, as the case may be.

14. Appointment of experts. – (1) The Government may, on recommendation of the Sindh Public Service Commission, appoint one or more experts to assist the Inspector General of Police or Additional Inspector General of Police or Deputy Inspector General of Police.

(2) The qualifications, eligibility, terms and conditions of service of experts shall be as prescribed.

15. Posting of Deputy Inspector General of Police and Senior Superintendent of Police. - (1) The Inspector General shall in consultation with the Chief Minister post a Deputy Inspector General of Police of a Range or Senior Superintendent of Police of a District, as the case may be.

Provided that in case the Chief Minister and Inspector General, after a process of meaningful consultation do not reach any consensus, the Inspector General shall propose three names to the Chief Minister who shall approve one of them for posting as Deputy Inspector General of Police of a Range or Senior Superintendent of Police of a District, as the case may be.

(2) The term of office of Deputy Inspector General of Police and Senior Superintendent of Police shall be in the manner as may be prescribed.

(3) Under exceptional circumstances, due to exigency of service or on grounds of misconduct and inefficiency which warrant major penalty under the relevant rules, the Deputy Inspector General of Police and Senior Superintendent of Police may be transferred, with the approval of the Government, before completion of the term of office.

21. Constitution of regions and divisions etc. - (1) The Inspector General of Police may with the approval of the Chief Minister constitute police regions.

(2) The Inspector General of Police may, with the approval of the Chief Minister, divide districts into police divisions, sub-divisions and police stations • sub-divide police stations into police posts; and • define the limits and extent of such divisions, sub-divisions, police stations and police posts: Provided that the limits and extent of such divisions, police stations and police posts shall, as far as practicable, be coterminous with Revenue and Local Councils' limits.

(3) A police region under clause (1) shall be headed by a police officer not below the rank of Deputy Inspector General of Police: Provided that where the size of police establishment is more than ten thousand, the region shall be headed by a police officer not below the rank of Additional Inspector General of Police.

(4) A police division shall be under an officer not below the rank of a Superintendent of Police; a police sub-division under an officer not below the rank of an Assistant or Deputy Superintendent of Police; and a police station shall be under an officer of the rank of Inspector of Police:

Provided that an officer of the rank of Assistant Superintendent of Police may be posted as head of a police station, assisted by Inspectors as officer incharge in selected police stations;

> Provided further that the term of office of an officer under whom a police division, sub-division or police station respectively is placed shall be the same as that of Head of District Police from the date of posting and any transfer before completion of his term of office will only take place due to exigency of service or misconduct warranting major penalty.
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> [underlining added for emphasis]

19. Mr. Faisal Siddiqui, appearing in C.P No. D-6382 of 2019, led the arguments on behalf of the Petitioners. He invited attention to the provisions of the Police Order reproduced above and argued that the same violated the judgment of this Court in *Karamat Ali* as they offended principles that were vital to effective policing for purpose of properly safeguarding the fundamental rights of the public - being the 'autonomy of command' and 'independence of operations' in the police force. He argued that the enforcement of fundamental rights was not possible without an effective and efficient police force, which could only come into being if the necessary degree of autonomy and independence was vested in and flowed from the head of the institution, without external influence or control. He submitted that observance of those principles entailed the police hierarchy, acting through the IGP, having control over its own affairs, especially in so far as postings and transfers were concerned, therefore influence by the Provincial Government or any other external authority had to be brought to an end. He submitted that whilst the findings and observations in *Karamat Ali* had been recorded while considering the Police Act, they transcended the statute so as to apply to the subject of the "police" and the function of "policing" in general, hence were equally applicable to the Police Order.

20. Learned counsel argued that *Karamat Ali* envisaged exclusive power vesting in the IGP in relation to the transfer and posting of police officers at all levels in order to ensure such autonomy and independence, and that while upholding that judgment, the Supreme Court had enjoined that any new police law should be in conformity therewith and ensure that the transfer and postings of police officers fell within the exclusive domain of the IGP.

21. Furthermore, it was submitted that while dismissing the Appeals filed against the judgment, the Supreme Court had then observed that "the Province of Sindh (appellant) shall be entitled to make new laws conforming with the modern needs", but had emphasized that such law ought be made "also keeping in view the observations made in the impugned judgment", then going on to observe that "… we affirm the impugned judgment by the learned High Court in particular with reference to the autonomy of command and independence of operation of the Police Force governed by the Police Act, 1861. We also uphold a tenure to be attached to PSP senior cadre posts in the Province of Sindh, of which the IGP is a principal officer. Transfers and postings on all senior cadre posts shall be made by order of the IGP pursuant to transparent rules framed under Section 12 of the Police Act, 1861 in consultation with the Provincial Government…". It was pointed out that when the Amendment Act was in the process of being enacted, it had been opposed by various stakeholders, with the then IGP having also expressed his apprehensions/ reservations regarding various provisions violating *Karamat Ali* and the *SC Order*. It was also pointed out that the Governor had returned the underlying bill, with the Amendment Act then coming to pass through the process envisaged under clause (3) of Article 116 of the Constitution.

22. Learned counsel argued that no law which compromises the power of the IGP to have control over police affairs, especially insofar as postings and transfers are concerned, and any law which allows outside interference whether by the Provincial Government or any other body or authority, would be unconstitutional as it would be violative of the judgment rendered in *Karamat Ali*. Secondly, if there was outside interference in the power of the IGP to post and transfer officers, that would lead to an inefficient and ineffective police force which would in turn undermine fundamental rights due to lack of proper enforcement. He submitted that the Police Order could not override *Karamat Ali* to the extent of the exclusive power of transfer and posting of police officers with the IGP as it was a matter inextricably linked to the safeguarding and enforcement of fundamental rights, and there was even otherwise no *non-obstante* clause in the statute purporting to have any such overriding effect, hence it was imperative for the law to be in conformity with the judgment.

23. With reference to Section 12 of the Police Order, he contended that the term of office of the IGP ought to be declared to be three years from the date of posting. Furthermore, as Section 13 purported to allow the Government to post senior police officers with only consultation of the IGP being required, the IGP stood relegated to a secondary role. Similarly, it was contended that Section 15 violated the *Karamat Ali* judgment as well as the *SC Order*, as it allowed the Chief Minister (the "**CM**") to ultimately post senior police officers. It was argued that transfers on the approval of the Government under Section 15(3) on the ground of exigency of service or on the grounds of misconduct and inefficiency were also violative of the aforementioned judicial pronouncements.

24. It was also submitted that all other provisions of the Police Order dealing with the operations of the police force, must similarly ensure the autonomy of command and independence of operation by according primacy to the IGP, hence in implementing Sections 7 and 14 of the Police Order, substantive consultation of the IGP ought to be a mandatory legal requirement, whereas in implementing Section 21 thereof, the word 'approval' ought to be construed as 'consultation' of the CM.

25. For his part, during the course of arguments learned counsel for the Petitioner in C.P. No. D-53 of 2021 curtailed the scope of that matter to the very provisions of the Police Order that had been assailed in C.P No. D-6382 of 2019 and presented his arguments along the same lines as had been advanced by counsel preceding him on that score. However, he went on to add that the police department, as it stands, had promoted and fostered nepotism, bias, corruption, and lack of effective governance over the years, hence those evils had pervaded the institution. He submitted that police officers had accordingly learnt to be entrepreneurial, so as to pursue their own personal agendas and ambitions while seeking out political patronage. He argued that the main corrective measure that could be taken in that regard was to ensure independence and autonomy within the police force, which could best be achieved by conferring independence upon the IGP.

26. Conversely, learned counsel appearing in C.P. No. 864 of 2020 invited attention to Chapters V and VIII of the amended Police Order, dealing with the Police Oversight and Complaint Redressal Mechanism from the district and provincial standpoints respectively, through the establishment of a District Public Safety and Police Complaints Commission in every District as well as an

overall Provincial Public Safety and Police Complaints Commission (hereinafter referred to individually as the "**District Commission**" and "**Provincial Commission**" respectively and collectively as the "**Commissions**"). He also highlighted the deletion of Chapter X, which had dealt with the subject of the Police Complaints Authority. Whilst the pleadings assailed the design of the Commissions so as to allege that their composition included politically aligned persons of dubious repute and that since the establishment of the Provincial Commission, meetings were not being regularly convened, hence the body had been rendered more or less dysfunctional, thus undermining its efficacy and the 'autonomy of command' and 'independence of operations' in the police force, the matter, as argued, proceeded on the plane of legislative competence, with it being submitted that the subject fell within the Federal Domain.

27. In response, while questioning the *locus standi* of the Petitioners and maintainability of the Petitions, the learned AG argued that the Provincial Assembly was competent to pass the Amendment Act, without limitation, and that the revived Police Order in its amended form was not *ultra vires* the Constitution. He submitted that the Supreme Court had itself envisaged the promulgation of a new law so as to specifically leave that course of action open to the legislature, and it was not for the Petitioners to question the wisdom of the Assembly or attribute *mala fides* to it in such legislative exercise. He argued that there was a presumption as to the correctness and constitutionality of legislation, which could not be challenged or struck down merely on the ground of it being violative of a judgment of a court. It was also argued that the Courts ought not to interfere in the executive domain of policy making.

28. We have heard and considered the arguments advanced in light of the Karamat Ali judgment, where it was clarified by the learned Division Bench that:

> "…in this judgment we have touched upon only some aspects of the very many problems relating to policing, the police force and the law and order situation. The reform of the police force, the revival of proper and effective policing, the regaining and restoration of law and order, and the enforcement of fundamental rights in the fullest sense is an on-going exercise and a work-in-progress. The problems and issues are many, and may need to be treated again in fresh petitions and other proceedings."

29. The question of *locus standi* of the Petitioners and maintainability of the Petitions may conveniently be answered in the affirmative for the very reasons that prevailed before this Court in *Karamat Ali*.

30. Thus, keeping in view the principles of autonomy of command and independence of operation of the police force identified in that judgment as a *sine qua non* for ensuring the enforcement of fundamental rights while measuring and interpreting the provisions of the Police Act adopting the Ghaidan approach, we embark on a similar exercise in respect of the specified provisions of the Police Order impugned through these Petitions.

31. The celebrated philosopher, Aristotle, has been credited with saying that "It is in justice that the ordering of society is centered". Indeed, when humanity departed from its state of nature to form organized or civil societies, there was a yearning for a civic structure where citizens would be secure in their persons and in their property. However, the establishment and preservation of such a society does not come by happenstance, but

through observance of the law, particularly the principles of human rights. The observance of law is essential to societal harmony and the fruits of life under a civil society would be eroded, if not lost, when that is not achieved. The criminal justice system, of which the police force is an integral part, is in many ways the bedrock of a civil society, since it is required to play a pivotal part in upholding the rule of law.

32. Thus, by nature, police and communities are intertwined. In 1829, Sir Robert Peel, known as the "Father of Modern Policing," established the London Metropolitan Police Force. He and his commissioners established a list of policing principles that remain as crucial and urgent today as they were two centuries ago, containing three core ideas and nine principles, as per which the basic mission for which the police exists is essentially "to prevent crime and disorder," with it is also being necessary to "recognize always that the power of the police to fulfill their functions and duties is dependent on public approval of [police] existence, actions and behavior, and the ability of the police to secure and maintain public respect." This is because police officers are in a unique position, being "both part of the community they serve and the government protecting that community." However, the former colonial rulers of the sub-continent developed the police as an armed force and as an organisation oriented geared not to the service of the people but to the maintenance of public order in the interest of preserving the authority of the British Crown. As a product of that time, the Police Act thus represented a piece of colonial legislation enacted to perpetuate an oppressive foreign rule, where the police force was often an agency of oppression and subjugation, with the relationship between the police and the public being one of suspicion.

33. In today's paradigm, with independence and self-governance under a Constitutional framework, the aspirations and expectations of the people have grown and it is sufficiently clear that there exists a duty of the State to protect and safeguard fundamental rights. Hence, it is manifest that a people-friendly and service-oriented police force is the requirement of the day, with there being a need for the system to inspire public confidence by serving all communities fairly, so as to usher in compliance with the rule of law. Indeed, that much can be gathered from the very preamble of the Police Order, which itself recognizes that "the police has an obligation and duty to function according to the Constitution, law, and democratic aspiration of the people" and that "such functioning of the police requires it to be professional, service-oriented, and accountable to the people".

34. Consequently, the edifice and functioning of the police needs to be reimagined and restructured so as to make it a people's police, which can best be done by striking the correct balance between autonomy and accountability. The task of injecting greater professionalism into the police force is an enormous challenge, and the solution is not only that of finding material resources, but also one of changing attitudes. Politicians, bureaucracy and perhaps even elements within the police force itself may have a vested interest in preserving the legacy of the colonial past to ensure that attitudes within the organisation remain such that it serves and promotes their partisan interest rather than the larger needs of the greater public. It need scarcely be emphasised that the police wields a double-edged sword, both protective and coercive, capable of safeguarding or violating the rights of citizens while discharging or failing to discharging their duties, depending on the manner in which its

functionaries act, or fail to do so, as the case may be. Controlling the levers of coercion is an indispensable tool, even those in a democracy, and the abuse of police power, can be a powerful weapon in the political arsenal, hence the need for reforms to shield the police from political interference.

35. As has been stated by Dicey, "every office, from the Prime Minister to a constable is under the same responsibility for every act done without legal justifications as any other citizen". The rule of law is a fundamental feature of our Constitution. No one, not even the Minister in charge of the police administration, has the power to direct the police as to how it would exercise its statutory powers, duties and discretion.

36. A doctrine of police independence to that effect had been expressed by Lord Denning, Master of the Rolls, in the Court of Appeal in the case of *R. v. Metropolitan Police Commissioner ex parte Blackburn* [1968] 1 All E.R. 763, in the following terms:

> "I have no hesitation, however, in holding that, like every constable in the land, [the Commissioner of the London Metropolitan Police] should be, and is, independent of the executive. He is not subject to the orders of the Secretary of State, save that under the Police Act 1964 the Secretary of State can call on him to give a report, or to retire in the interests of efficiency. I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone." [at 769]

37. This Court went several steps further in that vein in *Karamat Ali*, so as to record its detailed findings and observations in an endeavour to free the police from the shackles of political interference. Having examined the matter, we concur with the assertion that those findings and observations, as well as those then set out in the *SC Order*, transcend any particular statute so as to present an edict on the necessity for institutional autonomy and independence under any policing regime for purpose of ensuring that fundamental rights are properly safeguarded and advanced.

38. In *Karamat Ali*, it had also been noted by the learned Division Bench that "…it was fully within the legislative competence of the Sindh Assembly to repeal the 2002 Order and replace it with such legislation relating to the police as it considered appropriate (subject of course, to any other applicable constitutional limitations)". Whilst that was said in the context of the 2011 Act, which then repealed the Police Order while reviving the Police Act, the statement holds equally true of the latest legislative shift representing the mirror image of that situation, with the position of the two statutes being reversed, subject of course to the constitutional limitations alluded to at the time. The same qualification is to be found in the *SC Order*, where the principles of autonomy of command and independence of operation of the Police Force were upheld. Those constitutional limitations, to our mind, require that the subject of policing be legislatively dealt with in a manner consistent with the safeguarding and advancement of fundamental rights, for which the principles of autonomy and independence are absolutely vital. That being said, we turn to the particular provisions of the Police Order to which our attention was drawn.

39. A perusal of Sections 7 and 14 reflects that they remain essentially in the same form if not identical to what was provided when the Police Order was first promulgated. Be that as it may, since those sections deal with the constitution and composition of the police force from the standpoint of recruitments and appointments, and with the appointments of experts for purpose of assistance of the IGP, vesting power in the Government *sans* any role of the IGP, in view of the principles laid down by this Court in *Karamat Ali*, a consultative role of the IGP in those matters appears warranted and may properly be carved out in terms of the *Ghaidan* approach. As per the principles laid down by the Supreme Court in the Mustafa Impex case, the term 'Government', when used in a statute in the context of a province, means the Provincial Cabinet (the "**Cabinet**"). As observed in *Karamat Ali*, "the statutory power cannot be exercised elsewhere in the executive branch, by any other authority or body (including any minister of whatever rank). It is only the Cabinet itself that can act, and that too at a duly convened meeting for which the agenda is properly circulated in advance". That being so, drawing further from the approach in that matter, we are of the view that any exercise of powers by the Government through the Cabinet under Sections 7 and 14 would require meaningful consultation with the IGP, who would be invited to attend the relevant meeting, with proper and sufficient notice to necessarily be given and the relevant papers provided so as to enable the IGP to attend and participate in the meeting and make a representation, if the IGP so desires. Furthermore, it is apparent that the envisaged role of any experts as may be appointed is purely advisory and it would be the prerogative of the IGP to seek out and draw on such expertise at his discretion, but on no account can any expert dictate to the IGP on any matter falling within his competence.

40. As regard the aspect of security of tenure in terms of Section 12, and the prospect of removal of the IGP from his post prior to its conclusion, we would in that context reiterate the answer provided in *Karamat Ali*, where it was held that:

> 67. What of the situation where either the Provincial or the Federal Government wish to remove an officer during the term of office? Here, the law enunciated by the Supreme Court in the Anita Turab case would apply. The relevant portion, para 22(ii), is again reproduced for convenience: "When the ordinary tenure for a posting has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable". Thus, if the Provincial Government (here meaning the Provincial Cabinet) seeks to surrender the incumbent to the Federation or otherwise remove him from the post, then the decision must be taken at a duly convened meeting of the Cabinet, and the agenda circulated for the same, which must set out the compelling reasons for which it is proposed to remove him. Proper notice must be given to the incumbent Inspector General and the relevant papers provided to him so that he can make a representation and, if he so desires, attend the Cabinet meeting to explain his position. If the decision is taken to remove or surrender the incumbent then the reasons for the same must be fully and duly recorded in the minutes of the meeting. The decision, along with the relevant record, must be transmitted to the Federal Government to which also the incumbent may make representations. The Federal Government must properly apply its mind to the situation. If it disagrees with the Provincial Government, namely that the stated circumstances or reasons are not compelling, then the incumbent cannot be removed or surrendered to the Federation. It is only if the Federal Government concludes that the circumstances or reasons are compelling that the incumbent can then be removed and/or surrendered to the Federation. And of course, as held by the Supreme Court, the entire exercise would be subject to judicial review. Furthermore, while the exercise is being carried out, neither the Provincial nor the Federal Government (either unilaterally or even acting together) can remove, surrender, recall or replace the incumbent, whether by way of an "interim" measure or otherwise. It must also be kept in mind that any replacement would not follow automatically at the behest or desire of the Provincial Government. This is so because once the post is vacated it must then be filled in as a collaborative effort in the manner as indicated above.

> 68. If the Federal Government seeks to recall its officer or replace him with another while the term has not expired, then that decision must be taken by the Federal Cabinet, in order to show proper regard and respect for provincial law. Again, the decision must be taken at a duly convened meeting of the Federal Cabinet, and the agenda circulated for the same, which must set out the compelling reasons for which it is proposed to recall the incumbent and/or replace him with another officer. Proper notice must be given to the incumbent Inspector General and the relevant papers provided to him so that he can make a representation and, if he so indicates, he must be invited to attend the meeting of the Federal Cabinet to explain his position. If the decision is taken to recall the incumbent and/or replace him with another (the reasons for which must be fully and duly recorded in the minutes of the meeting), then it must be transmitted along with the relevant record to the Provincial Government to which also the incumbent may make representations. The Provincial Government (here meaning the Provincial Cabinet) must properly apply its mind to the situation at a duly convened meeting to which the incumbent must be invited. If the Provincial Cabinet disagrees with the Federal Government, namely that the stated circumstances or reasons are not compelling, then the incumbent cannot be recalled by the Federal Government and/or replaced by another officer. It is only if the Provincial Government concludes that the circumstances or reasons are compelling that the incumbent can then be recalled and/or replaced by the Federal Government. And of course, as held by the Supreme Court, the entire exercise would be subject to judicial review. Furthermore, while the exercise is being carried out, neither the Provincial nor the Federal Government (either unilaterally or even acting together) can remove, surrender, recall or replace the incumbent, whether by way of an "interim" measure or otherwise. It must also be kept in mind that any replacement would not follow automatically at the behest or desire of the Federal Government. This is so because once the post is vacated it must then be filled in as a collaborative effort in the manner as indicated above.

41. Turning then to Section 13 and 15, it is discernible that whilst the former section remains true to its original form, the latter has been substantially altered through the insertion of a proviso to sub-section (1) so as to essentially accord primacy to the CM in the overall matter

of postings of Deputy Inspectors General and Senior Superintendents of Police, albeit that the sub-section initially casts the CM in a consultative role. Contrarily, the proviso envisages that in the event of a lack of consensus through the consultative process envisaged *inter se* the IGP and CM, the latter would forward a panel of three names for the ultimate decision as to appointment to be made by the latter. As such, its net effect is to blunt the role of the IGP in those postings, if not relegate that office to a secondary position. Suffice it to say that this runs completely contrary to the principles laid down in *Karamat Ali*, and is anathema to the principles of autonomy of command and independence of operation in the police force, that have been held to be a basic tenet for proper policing in order to safeguard the fundamental rights of the populace.

42. On that score, with reference to earlier authorities it had been observed by the Supreme Court in the MQM case (Supra) that:

> "...It is a settled principle of statutory interpretation that a proviso cannot be construed to nullify the enacted clause. In Dr. Muhammad Anwar Kurd v. The State through Regional Accountability Bureau, Quetta (2011 SCMR 1560 at page 1578), the Court dilating on the effect of a proviso held as follows:--
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> > "Thus, natural presumption of providing such proviso is to exclude the general application of the relevant section/subsection in the matter notified under the proviso. In the words of Hadayatullah, J. "As a general rule, a proviso is added to an enactment to qualify or create an exception in what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule" (see: AIR 1961 SC 1596). It is, therefore, understandable that proper function of the proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment. Thus, to say that proviso shall normally be construed not merely to limit or control, but nullifying the enactment and taking away completely a right conferred by the enactment, is incorrect."

43. Under such circumstances, keeping in mind at all times the identified objective, namely that of maintaining independence and autonomy, it is manifest that the proviso to sub-section (1) of Section 15 of the Police Order runs contrary thereto and is liable to be struck down. As for sub-section (3), using the *Ghaidan* approach, the term 'approval' appearing therein ought to be read as 'consultation'. Similarly, Section 21 of the Police Order relating to the constitution of police regions and divisions is similarly liable to be read down for the same reasons so that the word 'approval' instead be read as 'consultation' of the CM.

44. Moving on to the subject of C.P. No. 864 of 2020, it merits consideration that the composition of the Commissions is dictated in terms of Section 38 in the case of the District Commission and Section 74 in that of the Provincial Commission. In either case, the composition is such as to provide for a certain proportion to be made up from amongst the ranks of members of the Provincial or National Assembly, including at least one female member. As for the independent members to be appointed, in either case, a selection panel is to be constituted and a selection criterion has been specified. Notably, some of the objective parameters that have been specified ostensibly appear to be geared towards curbing political interference. Even otherwise, no compelling argument was advanced so as to persuade us that the legislative competence on the subject lies anywhere other than with the Provincial legislature. Nor was any argument otherwise advances as to the repeal of Chapter X dealing with the erstwhile Police Complaints Authority. As such, we see no cause for interference in the Petition under reference, other than to observe that the Police Order appears silent as to the frequency with which the meetings of the Commissions are to be convened.

45. Indeed, one of grievance espoused through the pleadings in that matter is that whilst the Provincial Commission has been constituted, its meetings seldom if ever take place, hence the body has effectively been rendered dysfunctional. Furthermore, while it was mandatory to establish a District Commission in each District of the province, the same had not been done. In our view, it is incumbent upon the Provincial Government to give proper effect to the statute so as to ensure that the Commissions are properly constituted and activated in letter and spirit, and for meetings thereof to be held at least once every calendar month, until such time as proper rules are framed in that regard.

46. In view of the forgoing, while reaffirming the principles laid down in *Karamat Ali*, we hereby dispose of these Petitions in the following terms:

(a) It is declared that, henceforth, any exercise of powers by the Government through the Cabinet under Sections 7 and 14 would require meaningful consultation with the IGP, who would be invited to attend the relevant meeting, with proper and sufficient notice to necessarily be given and the relevant papers provided so as to enable the IGP to attend and participate in the meeting and make a representation, if the IGP so desires.

(b) It is declared the role of any experts as may be appointed under Section 14 is purely advisory and it would be the prerogative of the IGP to seek out and draw on such expertise at his discretion, but on no account can any expert dictate to the IGP on any matter falling within his competence.

(c) It is declared that any move to remove an IGP from the post prior to conclusion of the term/tenure specified in Section 12 would be subject to the rule laid down by the Supreme Court in the Anita Turab case and subject to the observations and directions set out in *Karamat Ali*, as reproduced in paragraph 39 above.

(d) The proviso to sub-section (1) of Section 15 of the Police Order is struck down, and in terms of the *Ghaidan* approach, the term 'approval', as appearing in sub-section (3) thereof is to be read as 'consultation'.

(e) Section 21 of the Police Order relating to the constitution of police regions and divisions is read down so that the word 'approval' is to be read as 'consultation' of the CM.

(f) The Commissions, as defined in Paragraph 25 above, are to be activated and meetings thereof are be convened and held at least once every calendar month until such time as proper rules are framed in that regard.

(g) The Respondents and all instrumentalities of the Provincial Government, and also as appropriate the Federal Government, are directed to give full, immediate and meaningful effect to the orders made and directions given in this judgment, and towards that end the Respondents are restrained from acting in any manner that is either inconsistent with or which contradicts any such orders or directions.

47. Before parting with the matter, we would like to record our sincere appreciation for the able assistance rendered by learned counsel and by the learned AG.

48. Additionally, touching upon the subject of entrepreneurialism, as alluded to during the course of arguments, we are conscious that an unfortunate reality and uncomfortable truth is that there may be functionaries of the police, and indeed other services, who may actively seek out political alliances and ends or place themselves at the disposal of political forces so as to curry favour for personal benefit, but that does not mean that a proper enabling environment should not be ensured for those officers who wish to protect and serve with dignity and honest intent in accordance with the best traditions of policing, whilst asserting their independence. That being said, we leave the final reality of such matters to divine providence and end this judgment with a silent prayer for betterment.

JUDGE

CHIEF JUSTICE

Karachi
Dated