

**ANALYSIS AND RECOMMENDATIONS TO THE DRAFT NOTIFICATION ON  
CONSTITUTION OF DELHI POLICE COMPLAINTS AUTHORITIES**

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## ANALYSIS AND RECOMMENDATIONS

This note presents the Commonwealth Human Rights Initiative's (CHRI) comments on draft Notification No. F.No.28/1/2017/HP-I/Estt./Part file-635-641, dated 29 January 2018, constituting a Police Complaints Authority (Authority) for the National Capital Territory of Delhi, submitted to the High Court of Delhi on 31 January 2018.

CHRI is the petitioner in W.P. (C) 8978/2015 entitled *Commonwealth Human Rights Initiative vs. Union of India and Ors.* We filed the petition in 2015 seeking the re-constitution of Police Complaints Authorities for the National Capital Territory of Delhi in total compliance with the Supreme Court's directives issued in *Prakash Singh And Ors. v. Union of India And Ors.*

In this note, we identify gaps in the notification, provide comments, and suggest alternate drafting where required. As the petitioner, we seek the incorporation of our suggested changes into the draft notification to further strengthen the framework setting up Police Complaints Authorities for Delhi.

### OVERALL COMMENTS

#### 1. Constitution of a Police Complaints Authority

In contrast to standard practice, the draft notification does not have an opening clause on the constitution of a Police Complaints Authority. This is necessary in order to define the jurisdiction of the Authority. It is also necessary by way of clarifying that the Public Grievances Commission ceases to function as the Police Complaints Authority. At present, the draft notification states in Clause 4(iv), "*cases of complaints regarding Delhi Police will be looked into by Police Complaints Authority and not by Public Grievances Commission. Accordingly the cases relating to Delhi Police pending with Public Grievances Commission shall be transferred to Police Complaints Authority*". This language must be made clearer. **CHRI believes that the notification must clearly lay down the jurisdiction of the Authority. We further recommend the following language be inserted in the first paragraph of the notification: By this notification, the Public Grievances Commission shall cease to function as the Police Complaints Authority in Delhi. All pending complaints against police personnel at the Public Grievances Commission shall be transferred to the Police Complaints Authority.**

#### 2. Jurisdiction

The draft notification sets up a single Authority for the National Capital Territory of Delhi to deal with complaints against Delhi Police, contravening the Supreme Court's directive to set up a multi-tier Authority. It is also vague on the ranks of police personnel against whom complaints may be submitted and inquired by the Authority. This creates a confusion around the constitution and jurisdiction of the Authority. The notification must also clarify the standing of the Public Grievances Commission in handling complaints against Delhi police personnel hereafter.

The Supreme Court in 2006, in its judgment in *Prakash Singh And Ors. v. Union of India*<sup>1</sup> laid down that PCAs must be set up in each state at the state and district level. The notification neglects the Court's framework of setting up the Authority at two levels. It establishes one Authority presumably with jurisdiction over all complaints and all ranks. **We recommend that a multi-tier PCA be constituted for the National Capital Territory, at the city and range levels.** We put forward two reasons for this: 1) the total strength of the Delhi Police, and 2) the number of complaints received against Delhi Police personnel.

*Total strength of Delhi Police*

As of 01.01.2017, the strength of Delhi Police stands at 82,979 which amounts to an actual strength of 383 police per lakh of population. The actual national average of the police per lakh population stands at 150.75, indicating that this is one of the highest in the country. Also, the total police per 100 Sq. Km. of area stands at 5,595.3 which is the highest across the nation. Considering this high density of police personnel, the likely probability of a higher number of complaints filed against police increases. This is reflected in the data on the total number of complaints.

*Number of complaints*

In 2014, a total of 12,872 complaints, across the then 11 police districts, were received against Delhi Police personnel.<sup>2</sup> At the district level, the majority received more than 500 complaints in 2014 alone. A breakdown is given below:

<b>District</b>	<b>Total number of complaints received against police</b>
Central District	1,438
West District	675
East District	508
Outer District	136
New Delhi District	288
North District	1,599
North East District	3,012
North West District	1,976
South District	2,103
South East District	1,137
South West District	Data unavailable
<b>TOTAL</b>	<b>12,872</b>

Considering the volume of complaints received against the police, Delhi's population, and the number of police personnel deployed in Delhi, a multi-tier Authority is a must. A single complaints body will be heavily and unjustifiably burdened. This could potentially affect the efficient functioning of the Authority and result in loss of public trust. **Therefore, CHRI highly recommends that Police Complaints Authorities be set up at the following levels:**

- a. **City level PCA to deal with complaints received against police personnel of the rank of Deputy Commissioner of Police and above;**

<sup>1</sup> (2006) 8 SCC 1

<sup>2</sup> This data was received from the Delhi Police through Right to Information applications, for the year 2014.

**b. Range level PCAs to deal with complaints received against police personnel of the rank of Assistant Commissioner of Police and below.**

**There are a total of six police ranges in Delhi. There does not necessarily have to be one PCA for each range – for instance, three ranges can be clubbed together as jurisdiction for one PCA.** This would help in effectively dealing with the large volume of complaints filed against police personnel in Delhi.

### COMMENTS ON EXISTING CLAUSES

#### 3. Composition – Clause 2

In Clause 2, the notification lays down that the Authority consist of a Chairperson and three members. The Chairperson is a retired High Court judge and the members are from the following categories:

- i. A person of repute and stature from civil society;
- ii. A retired civil servant of minimum of scale of Secretary to GNCT of Delhi with experience in Public Administration; and
- iii. A retired police officer of minimum of scale of Joint Commissioner / Inspector General of Police or corresponding rank.

It specifies that one of the three members should be a woman. However, if the Chairperson is a woman, it is not mandatory to have another woman member.

Considering the scale and volume of complaints received against the police in the National Capital Territory of Delhi, stipulating only three members on each Authority will be inadequate. It is necessary to decide the number of members based on the number of complaints received in the jurisdiction of that particular Authority. **As a baseline, the number of members should be increased to three to five members, to be decided based on the number of complaints.**

**Additionally, the notification unnecessarily restricts a woman from being a member in case the Chairperson is a woman. We strongly recommend that this clause is deleted.**

*Suggested Drafting:*

The city level Authority shall consist of a Chairperson and three to five members from the following categories:

- i. A retired High Court judge, who shall be the Chairperson;
- ii. A retired civil servant of minimum of scale of Secretary to GNCT of Delhi with experience in Public Administration;
- iii. A retired police officer of minimum of scale of Joint Commissioner / Inspector General of Police or corresponding rank;
- iv. Three to five persons appointed by virtue of their knowledge and at least ten years' experience in the fields of criminology, psychology, law, human rights or gender issues:

Provided that at least one member of the Authority shall be a woman and not more than one member each shall be a retired police officer or a retired Government servant.

Provided also that the number of members of the Authority may be increased at the request of the Chairperson from a minimum of three to a maximum of five on the basis of the total number of complaints received.

The range-level Authority shall consist a Chairperson and three to five members from the following categories:

- i. A retired District and Sessions judge, who shall be the Chairperson;
- ii. A retired civil servant of minimum of scale of Secretary to GNCT of Delhi with experience in Public Administration;
- iii. A retired police officer of minimum of scale of Joint Commissioner / Inspector General of Police or corresponding rank;
- iv. Three to five persons appointed by virtue of their knowledge and at least ten years' experience in the fields of criminology, psychology, law, human rights or gender issues:

Provided that at least one member of the Authority shall be a woman and not more than one member each shall be a retired police officer or a retired Government servant.

Provided also that the number of members of the Authority may be increased at the request of the Chairperson from a minimum of three to a maximum of five on the basis of the total number of complaints received.

#### **4. Appointment, Removal and Terms and Conditions of Appointment – Clause 3**

##### *4.1. Selection Panel*

Clause 3 of the notification provides that the Lieutenant Governor of the National Capital Territory of Delhi is the Appointing Authority of the Chairperson and Members of the Authority. The Chairperson will be selected out of a panel of names proposed by the Chief Justice, High Court of Delhi. The members of the Authority will be selected out of a panel prepared by the Chief Secretary, Delhi after consultation with the Delhi Lok Ayukta and Chairperson, Public Grievances Commission.

While the procedures for selection of the Chair and members largely conform to the Court's directive, particularly through the inclusion of an independent shortlisting panel, CHRI **recommends the inclusion of the PCA Chairperson as part of the Selection Panel in appointing the members of the Authority** by way of ensuring a participatory and open selection process based on specific and objective selection criteria.

*Suggested drafting:*

The members of the Authority shall be selected out of the panel prepared by the Chief Secretary, Delhi after consultation with Lok Ayukta, Chairperson of the Public Grievances Commission and Chairperson of the Police Complaints Authority.

#### 4.2. Eligibility criteria

The notification does not lay down selection criteria for eligible candidates. Selection criteria must be laid down as an essential check and balance to avoid politicized selections. Police Acts and government orders contain stipulated selection criteria for appointment of candidates to Police Complaints Authorities, but these are not sufficiently rigorous or wide-ranging. Independent oversight bodies require people with diverse skills who are willing to develop the Authority's role to exercise accountability not just through fair and quick inquiries, but through regular reporting, easy access, assistance to complainants and the will to confront the police and government when necessary.

**In the selection process, CHRI urges that vacancies in the Authorities are advertised in all leading English and Hindi newspapers of Delhi to open up the process and invite applications from all eligible candidates.**

#### Suggested drafting:

The Lieutenant Governor shall, within seven working days of receiving a communication from the Secretary, about any vacancy in the Authority, advertise such vacancy in the Official Gazette and in the leading dailies of the State, inviting applications from eligible candidates and specify the last date for receipt of applications.

The Lieutenant Governor shall, for the purpose of scrutiny, make over to the Selection Panel in all applications not disqualified in accordance with the ineligibility criteria, no later than three weeks from the last date of receipt of applications.

The Selection Panel may also invite suo motu, applications from eminent persons to be appointed to the Authority.

In the case of eligible candidate, the person must possess:

- i. Proven record of personal integrity
- ii. Proven commitment towards upholding human rights
- iii. Superior knowledge of the law
- iv. Proven adherence to high professional and ethical standards
- v. High degree of verbal and written communication skills.

In the case of a candidate with a judicial background, his or her proven record of upholding due process and its reflection in judgments and decisions delivered.

In the case of a retired police officer, his or her untarnished and impeccable record of service to be ascertained on the basis of his or her Annual Performance Appraisal reports.

In the case of a retired government servant, his or her untarnished and impeccable record of service to be ascertained on the basis of his or her Annual Performance Appraisal reports.

A person shall be ineligible to be the Chairperson or a Member of the Authority, if s/he:

- a. Is not a citizen of India;
- b. Has completed 65 years of age;
- c. Has been employed in any police, defence or intelligence service or any other allied service for at least one year prior to his/her appointment to the Authority;
- d. Has not been a public servant for at least one year prior to his/her appointment to the Authority;
- e. Holds any elected office under the Constitution including that of a Member of Parliament or State Legislature or any local body;
- f. Is a member of, or is associated in any manner with an organization declared as unlawful under an existing law by any local body;
- g. Is a member of, or is associated in any manner with an organization declared as unlawful under an existing law by the appropriate authority;
- h. Is an office-bearer or member of any political party;
- i. Has been convicted of any offence punishable with imprisonment for a minimum of one year;
- j. Is charged with the commission of an offence specified in clause (i);
- k. Has been declared to be of unsound mind by a competent court.

#### *4.3. Removal of Chairperson or Members*

The notification provides that the Chairperson or Members of the Authority may be removed by the Lieutenant Governor, National Capital Territory of Delhi after giving him/her an opportunity to be heard on the following grounds:

- a. Proven misconduct or misbehavior; or
- b. Persistent neglect to perform duties; or
- c. Occurrence of any situation that would made him/her not suitable for appointment; or
- d. Engaging during term of office in any paid employment outside the duties of office.

The grounds for removal must be laid down unequivocally to prevent any confusion. The grounds given in the notification are vague and leave scope for multiple interpretations. **CHRI recommends that a clear list of grounds for removal be laid down as provided below. Further, the notification must provide for the suspension of a Chairperson or Member against whom removal proceedings are being undertaken.**

#### *Suggested drafting:*

The Chairperson or a Member may be removed from his or her officer only by order of the Lieutenant Governor, upon receipt of a recommendation from a majority of members of the Authority along with substantial material findings of any one or more of the following circumstances:

- a. Proven misbehavior; or
- b. Failure to attend three consecutive sittings of the Authority without reasonable cause; or

- c. Persistent and willful neglect to perform official duties; or
- d. Being adjudged an insolvent; or
- e. Conviction of an offence which, in the opinion of the Lieutenant Governor involves moral turpitude; or
- f. Engaged during his or her term of office in any paid employment outside the duties of office; or
- g. Is, in the opinion of the Lieutenant Governor, unfit to continue in office by reason of infirmity of mind or body; or
- h. Acquisition of such financial or other interest as is likely to affect prejudicially his or her functions as the Chairperson or Member.

An order of removal shall not be issued against any person without providing such person an opportunity of being heard.

The Lieutenant Governor may suspend from office, and if deem necessary also prohibit from attending office, the Chairperson or a Member who is the subject of a recommendation for removal until such time as the Lieutenant Governor passes orders.

## 5. Role and functions – Clause 4

Clause 4 of the notification lays down that the Authority will inquire into allegations of “serious misconduct” against police personnel either *suo motu* or on a complaint received from any of the following:

- a. A victim or any person on his/her behalf on a sworn affidavit;
- b. The National Human Rights Commission; or
- c. Lieutenant Governor or Chief Secretary or Principal Secretary (Home), GNCT of Delhi

Serious misconduct shall mean any act of commission or omission of a police officer that leads to or amounts to:

- a. Death in police custody;
- b. Grievous hurt in police custody;
- c. Rape or attempt to rape in police custody;
- d. Arrest or detention without due process of law;
- e. Extortion or land/house grabbing or any other incident involving serious abuse of authority.

It further states that the Authority cannot entertain complaints which are under consideration before any Court or the National Human Rights Commission.

**The notification unduly places several restrictions on the admissibility of complaints to the Authority. CHRI recommends these are amended and/or deleted.** We also note other gaps and suggest insertions.

### 5.1. Restrictions in admissibility of complaints:

- i. **Sworn affidavit:** The notification mandates a victim or his/her representative to submit their complaint “on a sworn affidavit”. This is an unnecessary requirement that will act as a barrier for potential complainants. It is crucial to keep the Authority’s procedures as



accessible to the public as possible. None of the statutory Commissions, such as the National Human Rights Commission, require complaints to be filed on a sworn affidavit. Complaints are generally submitted in the form of letters which describe the nature of allegations. **CHRI strongly recommends that the requirement to submit complaints on sworn affidavit is deleted.** The Authorities can facilitate the filing of complaints by publicizing the minimum information needed to substantiate a complaint and suggest the relevant supporting documents that can add weight.

- ii. **Restricts sources who can submit complaints to the Authority:** The notification states that complaints can be submitted by any of the following – a) a victim or any person on his/her behalf; b) the National Human Rights Commission; or c) Lieutenant-Governor or Chief Secretary or Principal Secretary (Home) GNCT of Delhi. This reads as if it is only these authorities that can submit complaints to the Authority. There is no justification to restrict the sources who can submit complaints to the Authority. In fact, the Authority should be accessible to as many potential complainants as possible. **We recommend this is redrafted to mandate maximum accessibility, as below.**
- iii. **Bar on Authority to admit complaints before any Court or the National Human Rights Commission or any other statutory body:** In Clause 4(iii), the notification prohibits the Authority from entertaining complaints under consideration in any Court or the NHRC or any other statutory body. While we agree that complaints under consideration by courts do not require PCA intervention, CHRI recommends that the prohibition on complaints before the NHRC or any other statutory body is lifted. Members of the public have rightful access to all the channels of redress available in these various statutory bodies as well as to a dedicated police complaints body. The possibility of accountability is only increased with recourse available to multiple oversight bodies. **CHRI recommends that Clause 4(iii) is redrafted to state: The Police Complaints Authority may not entertain cases which are under consideration before any Court.**

### *5.2. Category of allegations*

The Supreme Court directives and most Police Acts direct that allegations of “misconduct” and “serious misconduct” must be inquired into by the Authority. From the data on complaints of several functioning Police Complaints Authorities, it is evident that a majority of cases coming to PCAs fall into the category of “misconduct” which involves willful breach or neglect to perform duty such as non-registration of FIR.

**Therefore, the Authority must inquire into two categories of offences which include “misconduct” and “serious misconduct”.**

*5.3.Ranks of police personnel*

The notification does not state the ranks of police personnel that are subject to scrutiny and inquiry of the Authority. **Particularly in line with our recommendation of the need for multi-tier Authorities, CHRI strongly recommends that the notification clarifies this aspect.**

*Suggested Drafting:*

The state-level Authority shall inquire into allegations of “misconduct” and “serious misconduct” against officers of the rank of Deputy Commissioner of Police and above. The range-level Authority shall inquire into allegations of “misconduct” and “serious misconduct” against officers of the rank of Assistant Commissioner of Police and below.

The complaints may be received from any of the following:

- a. A victim or any person on his/her behalf;
- b. The National Human Rights Commission; or
- c. Lieutenant-Governor or Chief Secretary or Principal Secretary (Home), GNCT of Delhi; or
- d. Any other source.

Any person who is desirous of an inquiry to be made by the Authority into one or more instances of misconduct or serious misconduct of police personnel, shall submit to the Authority a complaint in writing in English or Hindi as soon as may be practicable subsequent to the occurrence of such instance.

Provided that a complainant can include the person in relation to whom the instance of misconduct or serious misconduct took place, or any person acting on behalf of that person.

A complainant may submit a complaint on plain paper providing all relevant details, to the extent available.

Provided that where such a complaint cannot be made in writing, the Secretary, or any other officer of the Authority assigned by him or her, shall provide reasonable assistance to the complainant to reduce his or her complaint into writing.

Provided further that the verbal complaint reduced into writing shall be read back to the satisfaction of the complainant by the officer recording it and the signature or thumb impression of the complainant shall be affixed on the complaint letter.

Explanation:

“Misconduct” for the purpose of this chapter shall mean any serious abuse of authority, willful breach or neglect by a police officer of any law, rule, regulation applicable to the police that adversely affects the rights of any member of the public, excluding “serious misconduct” as defined in this notification.

Serious misconduct means any act or omission of police personnel that leads to or amounts to:

- a. Death in police custody;

- b. Grievous hurt in police custody;
- c. Rape or attempt to rape in police custody;
- d. Arrest or detention without due process of law.

## 6. Powers of the Authority – Clause 5

Clause 5 of the notification lays down the powers of the Authority. We note several gaps and suggest amendments.

### 6.1. Powers of the Authority

Clause 5(i) contains insufficient language on the powers of the Authority. Like all operational Police Complaints Authorities and other statutory bodies, **the Authority must have the powers of a civil court to enforce its mandate.** It is important these are stated in the notification.

#### Suggested drafting:

In matters directly inquired into by it, the Authorities shall have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters:

- a. Summoning and enforcing the attendance of witnesses and examining them on oath;
- b. Discovery and production of any documents;
- c. Receiving evidence on affidavit;
- d. Requisitioning any public record or copy thereof from any Court or office;
- e. Issuing authorities for the examination of relevant witnesses or documents; and
- f. Any other matter as may be prescribed.

### 6.2. Time limit and bi-annual report:

The notification sets a time limit of sixty days to submit the findings and recommendations from the date of receipt of complaint. It also provides that the Authority must submit biannual reports to the Lieutenant-Governor, National Capital Territory of Delhi where cases are pending before the Authority for more than sixty days.

It is positive that the notification establishes a time limit of sixty days and places a requirement on the Authority to submit bi-annual reports on cases which are pending for more than sixty days. At the same time, it does not indicate the action to be taken to address delayed cases. In the absence of this, the bi-annual reporting should not simply become isolated to reporting delay and seeking repeated extensions. It is important that the Authority set strict adherence to time limits, with reporting as one mechanism to enforce adherence. CHRI urges that strict time limits be put in place for effective functioning and speedy disposal of complaints. **We also recommend that the reporting of delay in cases is included as part of the reporting through a mandatory consolidated Annual Report of each Police Complaints Authority in Delhi rather than**

**through bi-annual reports (Refer to Point 8 below).** This lessens the reporting requirements on the Authority and ensures that reporting will be done.

*Suggested drafting:*

Every inquiry initiated on the basis of a complaint received by the Authority shall be completed and appropriate orders passed, as expeditiously as possible, and within a period of sixty days from the date of receipt of the complaint.

Provided that where orders are passed after the expiry of sixty days, the Authority shall record the reasons for delay in writing. In any case, the inquiry shall be completed and appropriate orders passed within ninety days from the date of receipt of complaint.

## 7. Decisions and directions of the Authority – Clause 6

Clause 6 of the notification provides that the recommendations of the Authority shall ordinarily be binding unless for the reasons to be recorded in writing, the Government decides to disagree with findings of the Authority.

The Supreme Court directive mandates that the recommendations of the Authority, at both levels, for any action, departmental or criminal, against an implicated police officer shall be binding on the concerned authority.

The notification dilutes the binding nature of the Authority's directions by empowering the Government overturn the decision. This violates the Court's directive which is unequivocal that the recommendations of the Authority are binding.

**It goes without saying that the Authorities must deliver reasoned final orders that clearly state the reasons for arriving at their final conclusion. To avoid confusion, the notification must categorically mention the nature of final orders that may be given by the Authority.**

*Suggested drafting:*

Upon completion of an inquiry, the Authority shall communicate its findings to the Commissioner of Police with a direction to:

- a. Register a First Information Report against the respondent officer if a case of serious misconduct is borne out; and/or
- b. Initiate departmental action against the respondent officer.

The decision and directions of the Authority shall be binding on the concerned parties.

Every final direction of the Authority shall consist of:

- (a) a summary of the allegations made in the complaint;
- (b) a summary of the replies, reports and submissions received by the Authority;
- (c) the findings of the Authority;
- (d) the specific directions to the concerned authorities or the Government or both; and
- (e) dissenting views of any Member of the Authority, if any.

**SUGGESTED NEW CLAUSES****8. Independent Investigators**

The notification neglects to provide the Authority with independent investigators.

The Supreme Court directive states that the Authority may need the services of regular staff to conduct field inquiries. For this, the directive authorized Police Complaints Authorities to utilize the services of retired investigators from the CID, Intelligence, Vigilance or any other organization.

**CHRI urges that the necessity to appoint independent investigators is incorporated in the notification. It can be left to the Authorities' Rules of Procedure to prescribe the selection process and criteria to select and recruit the independent investigators.**

*Suggested drafting:*

The Authority may utilize the services of retired investigators from the CID, Intelligence, Vigilance or any other organization to conduct field inquiries.

Provided that such retired investigators have not been in service for at least one year prior to their appointment as independent investigators.

**9. Annual Report**

The notification does not mandate the Authority to prepare and publish an Annual Report.

Transparency and public reporting are of vital importance to the long-term success of Police Complaints Authorities. The purpose of these reports is to document the complaints received, as well as to provide a check on the value of the oversight being provided. Regular and comprehensive reporting serves to help make the Authority accountable to the public and also can have a significant impact on the accountability of the police. **Regular reports need to be provided by the Authorities on its activities to the government who in turn places it before the state legislature for argument and debate.** Such reports can facilitate policymaking and generate public demand for a more accountable police. Reporting requirements have been set out in most statutes or Government Orders setting up these authorities.

*Suggested Drafting:*

The Authority shall submit to the Government an annual report at the end of each calendar year, inter alia, containing:

- a. The number and type of cases of complaints inquired into by it;
- b. The number and type of cases of misconduct inquired into by it;
- c. The number and type of cases it referred to any other agency or officer for the purpose of conducting an inquiry;
- d. The findings and final decision of the Authority in each case;

- e. The extent of any delay, and the reasons for the delay, in the completion of any inquiry, if any;
- f. The identifiable patterns of misconduct and serious misconduct of police personnel in the National Capital Territory of Delhi; and
- g. Recommendations for enhancing police accountability.

The Government shall, along with an action taken report, cause a copy of the report of the Authority to be laid down before the House of the State Legislation, in the budget session of each year.